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DEPARTMENT OF ENERGY FISCAL YEAR 1979 AUTHORIZATION

(Energy Production and Supply)

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENERGY PRODUCTION AND SUPPLY

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 2692

A BILL TO AUTHORIZE APPROPRIATIONS FOR THE CIVILIAN PROGRAMS OF THE DEPARTMENT OF ENERGY FOR FISCAL YEAR 1979, AND FOR OTHER PURPOSES

APRIL 13 AND 14, 1978

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DEPARTMENT OF ENERGY FISCAL YEAR 1979 AUTHORIZATION

(Energy Production and Supply)

THURSDAY, APRIL 13, 1978

U.S. SENATE,
SUBCOMMITTEE ON ENERGY PRODUCTION AND SUPPLY,
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 235 Russell Office Building, Hon. Floyd K. Haskell presiding.

Present: Senator Haskell.

Also present: Tom Laughlin, professional staff member, and George Dowd, counsel.

OPENING STATEMENT OF HON. FLOYD K. HASKELL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator HASKELL. Gentlemen, I want to apologize for being late. I stopped by a water hearing that the full committee, not the subcommittee, is having and got somewhat bogged down.

I will submit my opening statement for the record and will hear from you gentlemen in whatever order you wish to appear. I would like to present the regrets of Senator Bartlett who would like to be present today but is away on personal business. He does wish to express his pleasure at having Mr. Langenkamp testify before the subcommittee.

Mr. Langenkamp is a welcome newcomer to the Department of Energy, who is an Oklahoman from Seminole, and Tulsa, and Mr. Bartlett says it is a great pleasure to have him in Washington—and I hope he finds it a pleasure to be here.

[The prepared statement of Senator Haskell follows:]

STATEMENT OF HON. FLOYD K. HASKELL, A U.S. SENATOR FROM THE STATE OF COLORADO

The purpose of this morning's hearing is to hear testimony from the Department of Energy on certain aspects of the Fiscal Year 1979 Department of Energy Authorization bill. S. 2692.

Several diverse elements of the DOE budget come within the purview of this Subcommittee. This morning, we will hear testimony regarding four of these areas: 1) the Uranium Resource Assessment program; 2) the coal utilization program; 3) the hydro resource program; and 4) the predevelopment plan of the Office of Naval Petroleum and Oil Shale Reserves. Tomorrow, the Subcommittee will hear testimony on the power marketing administrations.

The Committee's recommendation to the Budget Committee in the areas to be addressed at the hearings are as follows:

(1) The Committee recommended no change in the Department's request for the Uranium Resource Assessment program.

(2) The Committee recommended an increase of $12.56 million for the coal utilization program to deal with the expanded coal conversion program contemplated by the Conference agreement on the pending energy bill and an additional $6.87 million to fund the coal loan program for new low-sulfur coal mines.

(3) The Committee recommended an increase of $1.2 million for the hydro resource program for increased personnel to process hydro project license and for dam inspection. Some of this increase is intended for environmental studies.

(4) The Committee recommended that the budget for the Naval Oil shale predevelopment program be increased from $1.3 million to $24 million, so that the program can start in earnest this year rather than next.

Today's witnesses have been asked to comment on these recommendations and to generally describe the program areas.

STATEMENT OF R. DOBIE LANGENKAMP, DEPUTY ASSISTANT SECRETARY FOR LIQUID FUELS, DEPARTMENT OF ENERGY

Mr. LANGENKAMP. Thank you, Mr. Chairman. It is a pleasure to be here and an honor to be able to make my maiden voyage in congressional testimony here on the subject of the naval petroleum reserves and the naval oil shale reserves.

We have submitted our statements. In the interest of time I will merely say the Department of Energy seeks $199 million to continue the development of the Elk Hills Naval Petroleum Reserve, which is reserve No. 1, continue the development of Teapot Dome, Naval Petroleum Reserve No. 3, continue operations in Naval Petroleum Reserves No. 2, and to continue with the funding of pre-development plan on the naval oil shale reserves.

In very brief outline, the naval petroleum reserve has had production over the last year resulting in approximately $400 million in sales of petroleum products. Production is presently at the rate of 120,000 barrels of oil a day at Elk Hills, and approximately 3,000 barrels a day at the Teapot Dome site. Our share of petroleum reserve No. 2 is approximately 400 barrels of oil a day.

According to the mandate of law, we are developing pipeline capacity of 250,000 barrels of oil a day which will be sufficient together with pipeline capacity that we have contracted for in southern California to handle the maximum efficient rate production, which the Naval Petroleum Reserve Office anticipates will reach approximately 260,000 barrels a day in late 1979.

We hope this 260,000 barrels a day of Elk Hills oil will be supplemented by 8,000 barrels a day from Teapot Dome and the production at NPR No. 2 continue at the 400 barrels per day level.

If there are any questions, I would be glad to answer them at this time.

I would like to introduce Captain Nelson, the Director, Naval Petroleum and Oil Shale Reserves.

Senator HASKELL. It might be well to hear from Captain Nelson and then I can ask questions of both of you.

[The prepared statement of Mr. Langenkamp follows:]

STATEMENT OF R. DOBIE LANGENKAMP, DEPUTY ASSISTANT SECRETARY FOR LIQUID FUELS, DEPARTMENT OF ENERGY

I am Dobie Langenkamp, Deputy Assistant Secretary for Liquid Fuels, Department of Energy. Accompanying me is Captain Robert H. Nelson, Civil Engineer Corps, United States Navy, who is the Director of the Naval Petroleum and Oil Shale Reserves.

As you may be aware, these Reserves were transferred to the Department of Energy by the Department of Energy Organization Act effective October 1, 1977. I would like to briefly explain those steps taken to implement the mandates directed by the Congress when it passed the Naval Petroleum Reserves Production Act of 1976.

For the 64-year period before the Production Act was passed on April 5, 1976, the Naval Petroleum Reserves were produced only in such amounts as were necessary for their protection, conservation, maintenance, and testing. The one exception was during World War II, when limited production was authorized for a brief period during the latter part of the war. With the passage of the Production Act 2 years ago, Naval Petroleum Reserve Nos. 1, 2, and 3 were required to be produced at the maximum efficient rate, consistent with sound engineering practices, for a period of 6 years, with optional 3-year extensions.

Presently, Naval Petroleum Reserve No. 1 at Elk Hills is producing at a rate of approximately 120,000 barrels of oil per day. When the field is fully developed in about two years, the maximum efficient rate of production is anticipated to reach 260,000 barrels of oil per day. Chevron USA Inc., a subsidiary of Standard Oil Company of California, owns roughly 20 percent of the hydrocarbons underlying Elk Hills and receives a share of production from the Reserve pursuant to the terms of a Unit Plan Contract entered into with the United States in 1944. Chevron receives approximately 20 percent of production based on its ownership share.

Most of Naval Pertoleum Reserve No. 2 at Buena Vista Hills near Taft, California, has been leased out by the Government to private operators. These leases were entered by the Department of the Interior during the early twenties. It has been necessary to continue producing from these Reserves to prevent drainage. The United States receives a royalty share of production from Naval Petroleum Reserve No. 2 lessees. All known productive areas of this Reserve are essentially developed and producing at the maximum efficient rate of production of approximately 8,300 barrels of oil per day at this time. The United States' royalty share of this production is roughly 400 barrels of oil per day.

Naval Petroleum Reserve No. 3 at the Teapot Dome near Casper, Wyoming, is currently producing approximately 2,700 barrels of oil per day. When this Reserve's full development is achieved, it is estimated that the maximum efficient rate of production will be approximately 8,000 barrels of oil per day.

The Production Act provides that the United States' share of production from the Naval Petroleum Reserves shall be sold at public sale to the highest qualified bidder, with the stipulation that no one purchaser may buy in excess of 20 percent of the United States' share of the annual production from Elk Hills. The law also provides that the price received for such oil is not restricted by Federal, State or local regulations controlling sales or allocations of petroleum products.

The most recent sale of crude oil at Elk Hills resulted in nine contracts being awarded, effective February 15, 1978, for a total amount of 98.795 barrels of oil per day at an average price of $12.53 per barrel. Included in this amount was approximately 25,000 barrels of oil per day sold to five refiners under the small business set-aside portion of the sale. Also, at Naval Petroleum Reserve No. 1, the liquid hydrocarbon products—propane, butane, and natural gasoline—were sold by contracts awarded on July 3, 1977. At Naval Petroleum Reserve No. 3, 4,000 barrels of oil per day were sold at an average price of $15.56 per barrel. The anticipated annual revenue from the total sales of crude oil and products from the Reserves in Fiscal Year 1978 is approximately $500 million. Anticipated sales for Fiscal Year 1979 is approximately $720 million.

The law requires the Government to develop a capability to transport not less than 350,000 barrels of oil per day from Elk Hills by April 5, 1979. Consistent with the intent of Congress regarding this mandate, the Director and his staff have met with numerous West Coast oil companies in an attempt to utilize their existing oil pipelines, as well as to discuss the possibility of such companies constructing new facilities out of Naval Petroleum Reserve No. 1 to potential sales points. These meetings resulted in arrangements for approximately 140,000 barrels of oil per day to be transported through existing pipelines owned by Chevron and Atlantic Richfield Company. The remaining 200,000 to 250,000 barrels of oil per day will be transported through a Government pipeline.

The Department of Energy, like the rest of the Nation, is vitally interested in alternate fuel sources. Certain public lands in Colorado and Utah containing substantial amounts of oil shale have been set aside as Naval Oil Shale Reserve

Nos. 1, 2, and 3. The Department is assessing the quality and quantity of resources contained in these reserves.

At this time I would like to ask Captain Nelson to present to you in more detail, some of the specific programs his office is conducting with respect to the Naval Petroleum and Oil Shale Reserves.

STATEMENT OF CAPT. ROBERT H. NELSON, USN, DIRECTOR, NAVAL PETROLEUM AND OIL SHALE RESERVES, DEPARTMENT OF ENERGY

Captain Nelson. Mr. Chairman and members of the committee, I am Capt. Robert H. Nelson, Director, Naval Petroleum and Oil Shale Reserves. I appreciate this opportunity to appear before you to discuss our programs for fiscal year 1979.

Four naval petroleum reserves and three oil shale reserves were created by separate Executive orders during the period 1912 to 1924. Naval Petroleum Reserve No. 4 in Alaska was transferred to the Department of the Interior on June 1, 1977, pursuant to title I of the Production Act, previously referred to by Mr. Langenkamp.

Continuation of the exploration, development, and production programs at Naval Petroleum Reserve Nos. 1 and 3 make up the major part of our 1979 budget request of $199,005,000. The budget is in five parts: $51,906,000 for operations and maintenance; $62,952,000 for development drilling, $60,876,000 for facilities; $15,141,000, for exploratory drilling; and $1,300,000 for predevelopment for the naval oil shale reserves.

I have broken that out in a table.

[The table follows:]

FISCAL YEAR 1979

[In thousands]

	NPR-1 and NPR-2	NPR-3	NOSR's	Total
Operations and maintenance	$44,876	$6,860	$170	$51,906
Development drilling	50,701	19,251	0	69,952
Facilities	60,876	0	0	60,876
Exploratory drilling	13,141	2,000	0	15,141
Predevelopment	0	0	1,300	1,300
Total	169,594	28,111	1,300	199,005

These programs will allow us to operate, maintain and produce the petroleum reserves at their current maximum efficient rates. Included are operation and maintenance costs for facilities, wells, gas plants, roads, and buildings.

Extensive development and exploration drilling programs to further enhance the productive capabilities of petroleum reserve Nos. 1 and 3 will continue through fiscal year 1979. During fiscal year 1979, approximately 245 development wells are planned which will contribute directly to the planned maximum efficient rate of production for the reserves. Exploratory drilling is necessary to identify, or further define, any new productive zones at the reserves.

I would like to emphasize, as we drill wells we learn more, and hence the numbers of wells will vary from year to year. We just learn more about them. We may increase the wells or decrease them by the changes.

During fiscal year 1979, 15 exploratory wells are planned. As a result of our exploratory program during fiscal year 1977, an estimated 20 million barrels of new recoverable oil were identified at the Elk Hills Reserve.

At Elk Hills, additional facilities are being constructed to accommodate increased production. These include oil collection lines, storage tanks, and shipping facilities necessary to gather crude oil from the wellhead and move it to processing and transportation facilities. The construction program also includes gas processing and handling systems, comprising collection lines, processing plants, and compression facilities. The processing plants are utilized to extract the propane, butane, and natural gasoline from the wet gas produced in association with the crude oil.

After extracting the liquid products, the residue gas is injected into the reservoir to maintain pressure in the oil producing zones. This is necessary to insure maximum ultimate hydrocarbon recovery as provided by law. The liquid products are sold at public sale. During fiscal year 1979, one gas processing plant with a capacity of 100 million cubic feet per day will be completed, and construction will begin on another similar plant. Planned gas processing capability at Elk Hills, consisting of four plants, is 360 million cubic feet per day.

A 1 million cubic foot per day plant is now in operation. Two additional plants, each with a capacity of 100 million cubic feet per day are currently under design and construction. We plan to use 60 million cubic feet per day of existing capacity at a Chevron-owned gas processing plant near Elk Hills.

At Teapot Dome, the major development work will consist of waterflood facilities.

The Office of Naval Petroleum and Oil Shale Reserves is implementing a predevelopment program on the oil shale reserves. The program includes environmental studies and engineering analyses necessary to ascertain the optimum procedures for developing the naval oil shale reserves. This includes evaluations of the environmental impacts which would be associated with any such development.

The program will result in the formulation of a master development plan which will provide a detailed description of the best method of utilizing the naval oil shale reserves. Upon completion in 1983, the master development plan will be presented to the administration and Congress for review, along with any decisions that may require confirmation before implementation.

Senator HASKELL. You have asked for a fiscal year 1979 budget request of $1.3 million to implement the naval predevelopment plan for oil shale reserves. Now, at that rate of expenditure, how long will it take to implement the plan?

Captain NELSON. The total plan is $70 million. At $1.3 million per year, it would be beyond my lifetime, I suppose, before it would be accomplished.

Senator HASKELL. Join the club; mine, too. We, of course, the subcommittee, are going to recommend $24 million. I think you folks were probably leaned on by OMB. I tell you it is not a fair question to ask a Navy officer, but I darned well can ask the Deputy Assistant Secretary.

Was your request cut down in this area by OMB?

Mr. LANGENKAMP. This is my 28th day with the Department, Mr. Chairman.

Senator HASKELL. So it is not exactly within the scope of your knowledge.

Mr. LANGENKAMP. That is correct.

Senator HASKELL. I am not sure it is really material. I get so tired of one administration stressing the fact we should get less dependent upon foreign sources and other branches of the administration seem to cut down monetarily. Let me ask you this. I understand your program personnel feel pretty well on top of the plan and would not have any difficulty in really getting well behind it. Am I correct in that? Seventy years is a little long.

Mr. LANGENKAMP. Mr. Chairman, I am sure you are aware the scheduled budgets for the years 1980–83 are $22 million, $11 million and $8 million, respectively. So the 60-year scenario is not exactly what we had in mind.

Senator HASKELL. I think we would like to accelerate it, we on this side of the table consider there is in fact some very serious difficulties, I am sure you individually would agree, in the entire energy field. We would, therefore, intend to recommend $24 million in fiscal 1979. I suppose I should ask you, do have you any objections?

Mr. LANGENKAMP. Let me say a word in justification of this funding level that has been requested. Resource applications in the Department of Energy are very interested in the naval shale oil development program and want very much to unlock that very tremendous reserve of shale oil.

I think we would agree this is one of the key pivotal aspects of the energy program. What we have learned however from talking to a number of experts in the shale oil area, is that the problem is not so much the assessment of the value and content of the shale oil reserve; those are known to be very good in your home state of Colorado, and in Utah.

The problem is few companies feel that the existing technology, when enlarged to the commercial level will result in profit. There is some hesitancy to move from that pilot phase into the full commercial phase. What the Department is doing at this time is coming to grips with the No. 1 problem, which is to encourage the development of industry; to encourage those with the technology to try to move into the commercial phase.

The predevelopment plan is very important. However, it will tell us what we think we already know with regard to the naval oil shale reserves. That is, these reserves have value and, until at such time as the technology is commercialized these reserves will be of considerable value to the United States, and should be developed.

The real question is how do we get the industry started in a responsible way to develop the reserves we know exist. That is not to say the predevelopment plan is not important. However, I believe the Department views the most important thing is to try to get those companies that have leases, now in effect, to construct commercial-size plants.

Senator HASKELL. That is a whole different subject. A whole different ball game. If you got $24 million for your predevelopment plan in fiscal year 1979, are you staffed up to use it?

Mr. LANGENKAMP. I will let Captain Nelson answer that.

Captain NELSON. Yes. We could obligate that money without waste.

Senator HASKELL. I think those are the only questions I have. I wonder if you could elaborate on your statement vis-a-vis shale reserve predevelopment program, Captain Nelson, perhaps elaborate for the record for three or four pages so we can have on the record more in detail what it is?

Captain NELSON. Yes, sir.

Senator HASKELL. Thank you.

[Subsequent to the hearings the subcommittee received the following information:]

Naval Oil Shale Reserves (NOSR's) 1 and 2 were established by Executive Order issued by President Wilson in 1916. Naval Oil Shale Reserve 3 was established by an Executive Order by President Coolidge in 1924. NOSR 3 which contains no significant oil shale resources was set aside for access roads, future plant sites, and waste disposal areas for operations on NOSR 1. NOSR 1 and 3 are generally considered jointly.

Naval Oil Shale Reserve No. 1 covering about 36,500 acres is located just north of the Colorado River in Garfield County, Colorado. It occupies the southeast corner of the Piceance Creek basin. An escarpment, the Roan Cliffs, generally marks the boundary between Naval Oil Shale Reserves 1 and 3. A high tableland north and west of the escarpment has an elevation of about 8,500 feet above the level and is known as the Roan Plateau. NOSR 3, located to the east and south of NOSR 1, is on the lower ground which slopes toward the Colorado River. The difference in elevation between the Roan Plateau and the Colorado River averages about 3,500 feet. This vertical differential occurs in a horizontal distance of from 2 to 3 miles. The towns nearest to NOSRs 1 and 3 are Rifle, about 5 miles southeast, and Grand Valley, about 2 miles southwest, both are situated on the banks of the Colorado River. Figure 1 shows the location of NOSR 1 and 3 with respect to other oil shale holdings in the Piceance Creek Basin.

NOSR 2 is located in a portion of northeast Carbon County and a portion of southwest Uinta County, Utah, covering about 91,000 acres in rugged dissected tableland about 50 miles southwest of Vernal, Utah. The area is characterized by flat topped mesas and steep-walled canyons and is situated along the south flank of the Uinta basin. The area is accessible by unpaved roads and jeep trails. Ground elevation within NOSR 2 varies from 4,600 feet above sea level on the Green River at the west boundary of the Reserve to 7,050 feet above sea level near the center of the Reserve. Figure 2 shows the location of NOSR 2 and the major Uinta basin oil shale ownership.

It is currently estimated that NOSR 1 contains approximately 22 billion barrels of oil shale in-place. It is estimated that 5.1 billion barrels could be recovered using the types of technologies currently under development. In-place reserves at NOSR 2 are estimated to be 3.8 billion barrels. No estimate of the recoverable resources at NOSR 2 have been calculated.

It is also possible that the NOSRs contain conventional deposits of oil and gas. The general geoolgy and the oil and gas production in surrounding areas indicate that the oil and gas potential of the NOSRs may be promising.

Program Description.—The purpose of the pre-development program is to assess the quality and quantity of the resources (oil shale, oil, gas and other minerals) present on the NOSRs and to perform the engineering analysis and environmental studies necessary in planning and designing a resource development program for the NOSRs. In addition, an assessment of the environmental impacts which would be associated with the development of the NOSRs will be performed. The major program activities are as follows:

Determine the extent, thickness, and grade of specific oil shale beds, as well as the chemical (e.g., trace elements) and physical properties of the shale. Evaluate the potential of the NOSRs for conventional sources of oil and gas. This will involve exploratory drilling and seismic surveys.

Determine the location, quality, and quantity of the surface and subsurface water systems at the Reserves.

Inventory the existing baseline environmental conditions including: soils, biology, land use, seismicity, air quality and climatology.

Analyze production technologies and select retorting systems for the NOSRs which are compatible with resource characteristics, environmental conditions, cost criteria, maximum resource recovery, and feasible oil shale transportation systems.

Determine the best mining techniques and material handling methods from a standpoint of cost and ability to meet production goals which are compatible with the selected retorting processes, oil shale grade and environmental considerations.

Determine utility requirements and the optimum means of meeting those requirements.

Develop environmental protection and mitigation plans, addressing the selected mining and retorting schemes.

Select tentative plant sites and perform a conceptual design of production facilities. Formulate a construction schedule and budget estimates addressing development of the NOSR's.

Assess socioeconomic impacts of development and prepare a community development plan which identifies measures to mitigate the potential impacts.

Prepare an Environmental Impact Statement addressing full development.

The result of the Pre-Development Program will be a document describing in detail the optimum methods of developing the Naval Oil Shale Reserves in Colorado and Utah. The document termed a Master Development Plan will be similar in scope and detail to the Detailed Development Plans documents submitted to the Department of Interior in conjunction with the prototype oil shale leasing programs. The Master Development Plan will be of sufficient scope to serve as the basis for detailed design of all production and ancillary facilities, and will include conceptual design of facilities, a schedule of development and a detailed estimate of the cost to implement the Master Development Plan. As currently envisioned the Predevelopment Program will require 5½ years to complete at an estimated cost of $70 million.

In order to implement the many tasks described above the Director, Naval Petroleum and Oil Shale Reserves will utilize a "Management Support and Systems Engineering Contractor" who will execute the Predevelopment Program under the direction of that office.

Upon completion of the Predevelopment Program the Master Development Plan will be presented to the Administration and Congress for review and a decision concerning the possible implementation of the Master Development Plan.

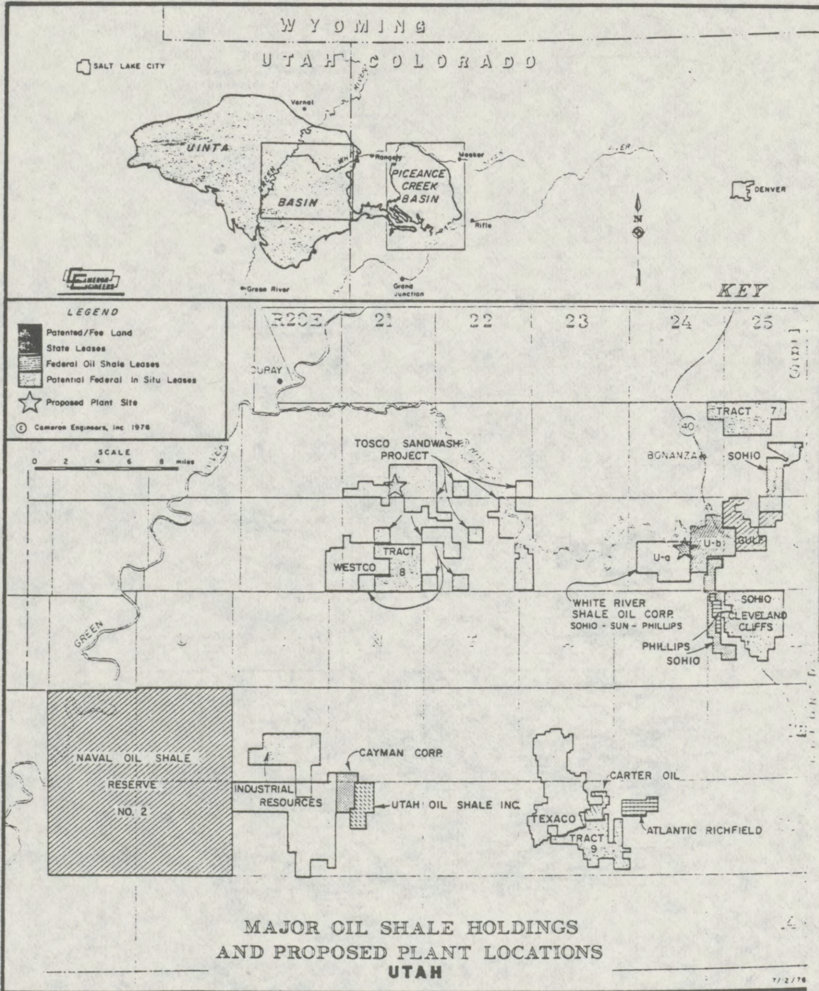

FIGURE 1

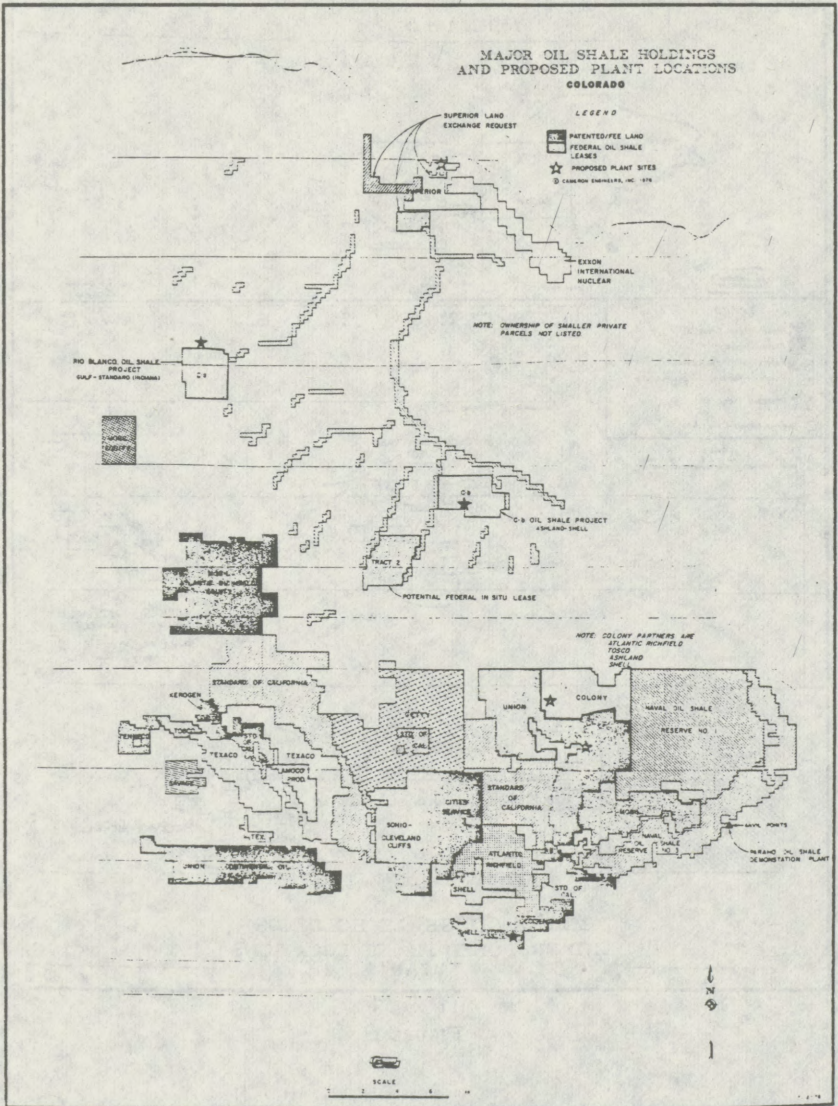

FIGURE 2

STATEMENT OF JOHN F. AHEARNE, DEPUTY ASSISTANT SECRETARY FOR POWER APPLICATIONS, DEPARTMENT OF ENERGY

Mr. AHEARNE. I am glad to be here this morning to talk about the coal loan guarantee program. I have a statement I have submitted and I would like to summarize it.

The main points in the coal loan guarantee program are that over the—it was originally authorized in 1975 and expanded in 1976. Resource applications and its predecessor starting last January found a program which was not very aggressively pursued. We have taken all of the steps we think are necessary to get it back on the track as originally intended.

Last year an environmental assessment was made which determined, that an environmental impact statement should be prepared. That was prepared, and it was published for comment in March of this year. That is the leading item at this time. The public comment period will be completed the beginning of May and the revisions at that time will be done and there is a 30-day waiting period that has to elapse before any action can be taken. Then it can go into effect.

The notice for publication of regulations was done last year. Comments were received. We have now completed most of the Department coordination to put those final regulations out. I suspect those will be published next month. The time taken for those is much shorter than the environmental impact statement, so we would expect probably to be able to hold a public hearing on those regulations in the first week of June.

At that time, we would still be waiting for the environmental impact statement to be completed.

Senator HASKELL. When would you be in a position to——

Mr. AHEARNE. Sometime between July and August. I say between because it really depends on how many comments are received back. On May 5, the public comment period on the environmental impact statement ends and depending on how many comments are received, how much change is required, we have people ready to do any revisions that are necessary.

After that is republished based upon those comments, there is a 30-day no-action period that has to exist before we can actually put them into effect. After that one-step, the 30-day no-action period, is completed, then we can make the guarantees.

We have asked our legal people whether it is possible to begin accepting applications prior to that actual receipt of that final environmental impact statement. I believe we will be able to do that. So we ought to be able to have in hand applications we could put into effect as soon as the environmental impact statement would be approved.

Senator HASKELL. You are not going to wait to receive applications until the final environmental impact statement process is through?

Mr. AHEARNE. We are trying to get legal approval to go ahead.

Senator HASKELL. Who do you go to to get legal approval?

Mr. AHEARNE. Our general counsel.

Senator HASKELL. Apparently the President's budget does not include any new authorization for this program?

Mr. Ahearne. That is right, Senator. We had in the supplemental in 1978, we had requested and received $6 million for the default portion of the loans and the authorization for up to $62 million of outstanding debt to be guaranteed plus about $1.4 million for operating expenses.

Since we are at the moment still in the final stages of getting the program underway, we believe that would be adequate moneys for 1979. It would be carried over to 1979.

Senator Haskell. Did you say $600,000 or $6 million?

Mr. Ahearne. $6 million for the default has been authorized.

Senator Haskell. Mr. Grundy points out OMB turned down $6 million of your coal loan guarantee program, and I suppose my question then is, if OMB had gone along with your request and if this committee had gone along, what would you have done with the $6 million that you can't do now?

Mr. Ahearne. I am not familiar with the details of the OMB issue there. There are two ways we will use the money that is already authorized there. First, is for essentially the contract work that goes along with the work once the contract applications start coming in. That is $1.4 million. The second, the $6 million, is if loans are defaulted. It is moneys available in case there is default.

So under the assumption if there is authorized currently $62 million for the current amount of loans that could be outstanding in the next year, people tell me the $6 million should be adequate to cover that.

Senator Haskell. To cover the default. All right. Thank you.

Mr. Ahearne. The final point I would like to make is we have recently gone through the exercise of trying to get this thing accelerated. We believe we are now pushing ahead as rapidly as possible. We have also requested and received authority from the Secretary to increase the office size handling this program so we can get the environmental impact statement, turn it around fast, and handle the applications as quickly as possible.

Senator Haskell. Thank you, sir, I don't have any further questions.

[The prepared statement of Mr. Ahearne follows:]

Statement of John F. Ahearne, Deputy Assistant Secretary for Power Applications, Department of Energy

Mr. Chairman and members of the committee, I am pleased to have the opportunity to appear before you to discuss the Coal Loan Guarantee Program.

This program was established by Section 102 of the Energy Policy and Conservation Act, enacted in December 1975, which authorized the FEA to establish a loan guarantee program for new underground coal mine development. This program was further expanded by Section 164 of the Energy Conservation and Production Act, enacted in August 1976, which allowed guarantees for the expansion of existing mines and for reopening closed underground mines.

The objectives of the Program are to encourage and assist small and medium size coal producers to increase underground low-sulfur coal production, to enhance competition among coal producers, and to encourage new market entry by small coal producers.

The key provisions of the legislation are as follows:

1. Outstanding loan guarantees may not exceed $750 million.
2. A limit of $30 million per borrower.
3. The guarantee may not exceed 80 percent of the loan.
4. At least 80 percent of the guarantees are for low sulfur coal.
5. The borrower must: (1) in the last year, have produced: (a) less than 1 million tons of coal, (b) less than 300,000 barrels of oil, (2) in the last year,

had less than $50 million in gross revenues, and (3) not be affiliated with an oil refinery.

6. The borrower must have a long-term coal sales contract of at least the duration of the guaranteed loan.

7. The Environmental Protection Agency must certify that the coal can be burned in compliance with provisions of the Clean Air Act.

It is anticipated that most of the new coal that will be produced as the result of the program will be used in existing eastern electricity generating plants which have continued to burn coal but are not in compliance with the Clean Air Act sulfur emission standards. Since a large tonnage of noncompliance coal was delivered to eastern utilities in 1976, there is a large market for the program coal.

Our data indicates that over 300 existing coal producers meet the legislative requirements for prospective applicants.

Seventy percent of these potential applicants are located in West Virginia and Kentucky. A further indication of potential interest in the program is the more than 250 inquiries received by DOE to date.

Our discussions with bankers and coal producers indicate interest in the program. While it is true that some banks have made loans to small underground coal producers, the collateral requirements for these conventional loans are frequently far beyond the means of the small coal producers. In the absence of these bank loans, many small producers have been forced to rely on equipment trust certificates and accounts receivable financing, which are short term, expensive, and only equate to 15 to 20 percent of total project costs.

Our fiscal year 1978 budget of $7.4 million includes $6.0 million in default funds and $1.4 million in operating expenses, which will largely be carried over to fiscal year 1979. Consequently, we have not requested additional funds in fiscal year 1979. As we gain operating experience with the program, additional funds may be requested for the default fund and for operating expenses.

The previous administration placed a low priority on this program and essentially no progress was made toward program implementation for over a year after passage of the Act. In early 1977, we began to take the first steps toward implementation, and by July 1977, we had completed an Environmental Assessment of the program. On the basis of this assessment, we concluded an Environmental Impact Statement was required. The Draft Programmatic Environmental Impact Statement was published and made available for public review last month. The 45-day comment period that is required by the National Environmental Policy Act (NEPA) ends on May 5, 1978.

We also published draft implementing regulations for public comment in an Advanced Notice of Proposed Rulemaking on July 18, 1977. Currently, the implementing regulations are in final review in the Department. These Proposed Regulations will be published later this month. After public review and after a Final Environmental Impact Statement has been published in compliance with NEPA, we will issue the Final Regulations.

Although we had made considerable progress in the last year, we have also taken some very significant actions in the last few weeks to speed up the implementation of this important program. We are considering accepting loan guarantee applications on the basis of the proposed regulations and to issue conditional commitments to guarantee the loan, contingent upon publication of the Final Regulations and full compliance with the NEPA. This will significantly accelerate the loan guarantee process once the regulations are finalized. Further, Under Secretary Myers has approved our request for additional staff, which will allow us to accelerate the preparation of the Final Environmental Impact Statement which we now expect to publish in July and to process the applications more rapidly.

Senator HASKELL. Mr. Voight.

STATEMENT OF WILLIAM R. VOIGT, JR., DIRECTOR, DIVISION OF URANIUM RESOURCES AND ENRICHMENT, DEPARTMENT OF ENERGY

Mr. VOIGT. It is my pleasure to appear before this committee today to discuss the uranium resources program. I would like to submit my detailed testimony for the record and briefly summarize it.

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Mr. Chairman, our national endowment of uranium cannot be increased but we can increase our knowledge of uranium resources and improve the chances of ore discovery so that the nuclear energy option is not limited by a lack of nuclear fuel.

To do this, we carry out a uranium resource assessment program which is principally concerned with how much uranium we have now and are likely to have in the future, as well as our ability to produce it. Where we—and I say "we" collectively—meaning Government and industry, should look for uranium, and how exploration and production technology can be improved and applied.

In my testimony, I refer to chart 2 which shows our estimate of total domestic uranium resources. We currently estimate uranium reserves, our most reliable resource category, at 840,000 tons plus an additional 140,000 tons as a byproduct from phosphate and copper production.

In addition to that, we have what we call potential resources and we divide these into three categories: probable, possible, and speculative. These have lesser degrees of certainty. The total estimate of uranium resources at the present time is 4.3 million tons, at a cost of $50 per pound.

I would also like at this time, Mr. Chairman, to give a preliminary estimate——

Senator HASKELL. This is tons of the U_3O_8 after it has been through a mill?

Mr. VOIGT. That is correct. We will be issuing a report sometime this month which will update this January 1, 1977, estimate and we expect the new total of resources will increase to 4.5 million tons.

The first two columns, reserves and probable potential, constitute 2.3 million tons. We consider this to be a prudent basis for light water reactor planning. This 2.3 million tons will supply the 30-year requirements of about 400,000 megawatts of nuclear power. These resource estimates reflect the current state of knowledge and are not considered to be a complete assessment of U.S. uranium resources.

Chart 3 of the testimony, Mr. Chairman, compares estimated U_3O_8 requirements with the production that could be made available from $30 reserves plus probable potential resources. The total production capability——

Senator HASKELL. Go a little slower, I cannot understand you.

Mr. VOIGT. This chart shows the annual production capability from reserves and probable potential resources, compared to the requirements for U_3O_8 to supply the current forecast of 380 megawatts through the year 2000; this is from $30 resources, it does not encompass the $50 resources I mentioned earlier. This is saying, Mr. Chairman, the current production right now from the mining industry is on the order of 15,000 tons. We are estimating this could climb to around 60,000 tons per year by the early 1990's. Actual production will be a function of industry's assessment of the nuclear power growth, the cost of uranium ore exploration, et cetera.

We monitor production capability to assure ourselves that indeed it would be adequate to supply reactor growth.

Chart 4, Mr. Chairman, shows the highlights of the national uranium resource evaluation program. It is a well-balanced program, and is applied systematically throughout the country.

During fiscal year 1978, for example, we plan to fly about 165,000 line miles of aerial radiometric surveys. Our fiscal year 1979 coverage will be almost 260,000 line miles of aerial surveys.

We intend to sample the Nation's surface and ground waters and stream sediments for uranium and related elements. In fiscal year 1979 we will more than double the areas completed in fiscal year 1978. All of this information, together with the results of our geological and drilling investigations, is being incorporated at an increasing rate into our data base for national uranium assessments.

The first phase of this program is due for completion and an assessment report is to be issued at the end of calendar year 1982. This report will be an in-depth, comprehensive evaluation of the priority areas of the country, which encompass all of the areas containing estimated potential uranium resources and other areas which have geologic characteristics favorable for uranium deposits.

I might add at this point, Mr. Chairman, we have divided the Lower 48 States into 1-degree by 2-degree topographic map series quadrangles. The principal thrust of the program by 1982 is putting priority on 272 of these quadrangles with the remainder of them to be completed by 1984.

In addition, we have concluded an interagency agreement with the U.S. Geological Survey for their evaluation of 42 quadrangles. The remaining quadrangles will be handled by our principal contractor, Bendix Field Engineering Corp., in Grand Junction, Colo., in cooperation with State geological organizations and private firms.

I think we have found the best expertise in the country to carry out the President's direction. In addition to this, we are also making an assessment of thorium. We are contracting this out with the U.S. Geological Survey. The first report will be completed this year and we will then make a determination as to what follow-on effort, if any, is required.

The fiscal year 1979 budget request is shown in chart 5. It represents an increase in operating expenses from $59.5 million in 1978 to $91.2 million in 1979. The largest increase is requested for geologic and related investigations. The basic program elements include aerial radiometric surveys, hydrogeochemical water and stream sediment sampling surveys, subsurface geological investigations and surface geologic investigations.

Most of the $21.5 million increase requested is to enhance the subsurface geological information where such information is lacking. Specifically, $15 million is requested to initiate a cost sharing joint Government/industry drilling program to improve the reliability of potential resource estimates. Many areas have had insufficient exploration to date to permit an adequate evaluation of the subsurface.

An additional $3.6 million is requested to initiate a program to log holes drilled by industry for oil, gas, water, and so forth, to expand our knowledge of favorable subsurface formation of interest for uranium.

Senator HASKELL. Let me get oriented here. In the budget you are talking about, the program you are talking about now, is under subsurface investigations drilling, right?

Mr. VOIGT. That is correct.

Senator HASKELL. Some of this drilling you are doing yourself?

Mr. VOIGT. That is right, sir.

Senator HASKELL. Some of it is jointly with private industry or programs?

Mr. VOIGT. Yes.

Senator HASKELL. What portion of the budget represents the drilling you will do yourself and what portion represents the total of joint drilling?

Mr. VOIGT. The drilling we do ourselves, which we call favorability drilling, constitutes $6.5 million. The joint Government/industry program I am referring to is proposed at a level of $15 million. This would be a jointly funded program by Government and industry.

When I say jointly funded, our current conception is that in the "probable" potential areas, the Government would pick up 30 percent of the cost and industry would pick up 70 percent of the cost. In the "possible" potential areas, we are proposing a 50–50 split between Government and industry.

In the "speculative" potential area, we are proposing the Government pick up 70 percent of the cost with industry picking up 30 percent.

Senator HASKELL. In this program, let us assume there is discovery. What happens?

Mr. VOIGT. If a discovery is made, Mr. Chairman, we would be refunded all of our costs.

Senator HASKELL. Will this program function just on public land or public and private?

Mr. VOIGT. It would be both public and private. We have structured the program so that once we go out with a proposal, we will consider as first priority funding those projects in which there is already: access to the land, permits obtained for drilling, and the environmental impact has been assessed.

These would be our priority A considerations.

Senator HASKELL. In any one of these three categories you mentioned, I believe it was 30, 50, and 70 from a governmental share viewpoint, of course, going toward the more risky——

Mr. VOIGT. That is right.

Senator HASKELL. How do you, meaning Government, pick the tract and solicit private venturing?

Mr. VOIGT. We have picked out 12 tracts which encompass the probable, the possible, and the speculative areas.

Senator HASKELL. How do you intend to select a given tract for a particular private joint venture?

Mr. VOIGT. We would establish criteria by which we will evaluate proposals and it would be a function of what they are putting into the project, vis-a-vis what they want the Government to put into that project. That is one consideration.

Senator HASKELL. It will all be in your lease. If it is risky, they will put in 70 percent?

Mr. VOIGT. They would put in 30 percent for the very risky areas; for the least risky areas they would put up 70 percent of the money.

Senator HASKELL. What, then, are the variables that make you pick A over B, over C, over D?

Mr. VOIGT. Principally, that would involve to what degree the various subelements of the program had been mapped out; that is, do they

have a permit to go ahead and drill; have they performed the economic assessment of that drilling; do they have direct access to that land and the mineral rights?

Senator HASKELL. In other words, do it on who has the best laid out program?

Mr. VOIGT. That is correct.

Senator HASKELL. Mr. Evered, from Senator Bartlett's office, has asked if the Government will get their money back if discovery is made. This money is to provide dry-hole money. I think with people who have knowledge of the oil industry that is probably an adequate assessment.

Now, I think we have to find out what uranium resources are and I think this method in your opinion will further that end, and I think it is excellent. I hope you are not going to abandon in other areas, however, solely governmental exploration in your aerial surveys, that type of thing. I assume you are not abandoning those?

Mr. VOIGT. No, sir.

Senator HASKELL. I assume there would be subsurface investigations that might be done solely at Government expense?

Mr. VOIGT. That is right, sir.

Senator HASKELL. I think it is an excellent program, a very good idea. I personally am not a great proponent of nuclear energy. Nevertheless, it seems in our Nation we have to go forward on all fronts, have the maximum information possible.

Gentlemen, I have no further questions. I appreciate your appearance here.

[The prepared statement of Mr. Voigt follows:]

STATEMENT OF WILLIAM R. VOIGT, JR., DIRECTOR, DIVISION OF URANIUM RESOURCES AND ENRICHMENT, DEPARTMENT OF ENERGY

INTRODUCTION

Mr. Chairman and Members of the Committee, I am pleased to have the opportunity to appear before this Committee and discuss the budget request for the Uranium Resource Assessment Program for fiscal year 1979.

Our national endowment of uranium cannot be increased, but we can increase our knowledge of uranium resources and improve the chances of ore discovery so that the nuclear energy option is not limited by a lack of nuclear fuel.

To do this, DOE carries out a Uranium Resource Assessment Program (Chart 1) which is concerned with: how much uranium we have now and are likely to have in the future, and our ability to produce it; where we should look for uranium; and how exploration and production technology can be improved and applied.

URANIUM RESOURCE ASSESSMENT PROGRAM OBJECTIVES

- **ASSESS U.S. NUCLEAR FUEL RESOURCES**
- **IMPROVE RELIABILITY OF CURRENT RESOURCE ESTIMATES**

CHART 1

U.S. URANIUM RESOURCES

Chart 2 shows DOE's January 1, 1977 estimate of domestic uranium reserves of 840,000 tons of U_3O_8 at a forward production cost of $50 per pound of U_3O_8 or less. Reserves are the most reliable category of resources, since they are based upon detailed drilling data.

U.S. URANIUM RESOURCES
JANUARY 1, 1977

Thousands of Tons U_3O_8

$/LB U_3O_8 COST CATEGORY	RESERVES	POTENTIAL			TOTAL
		PROBABLE	POSSIBLE	SPECULATIVE	
$30	680	1,090	1,120	480	3,370
$30-50 Increment	160	280	290	70	800
$50	840	1,370	1,410	550	4,170
By-Product Production	140	–	–	–	140
	980	1,370	1,410	550	4,310

CHART 2

The chart also shows total U.S. resources which include not only ore reserves, but also our estimate of potential resources which are not as well defined as reserves. Potential resources are estimated in three categories. The probable potential resources are located in mineral trends within uranium producing districts. As there is extensive information on these resources, the estimates are considered to be of relatively high reliability. Possible potential uranium resources are located in productive formations within productive uranium provinces but beyond established mineral trends. Speculative potential resources are located in formations not previously productive or in new geologic provinces. Estimates of possible and speculative resources are considered to be less reliable than probable resources. Of the total resources, 2.3 million tons shown in the first two columns are in ore reserves, byproduct sources and the probable potential category, and are considered a prudent base for light water reactor planning. Without recycle of uranium, or plutonium, the 2.3 million tons would supply the 30-year requirements of about 400,000 megawatts of nuclear power. These resource estimates reffiect the current state of knowledge and are not considered to be a complete assessment of U.S. uranium resources.

Over 95 percent of our current uranium reserves are in sandstone type deposits in the western U.S.; however, exploration in new areas and for different kinds of deposits may expand our resource base. Industry, to date, has placed its major effort in known uranium areas containing sandstone type deposits. Greater effort in other geologic environments and geographic areas is considered desirable to meet prospective demands, and our National Uranium Resource Evaluation (NURE) program, which I will discuss shortly, will do this.

DOMESTIC U_3O_8 REQUIREMENTS

Chart 3 compares estimated U_3O_8 requirements with the production that could be made available from $30 reserves plus probable potential resources. With contracted imports and private inventories, the U.S. is in a reasonably good uranium supply position through the 1980's. Total production capability could reach a level of 60,000 tons of U_3O_8 per year in the early 1990's compared to the production in 1977 of about 15,000 tons. Achievement of expanded production levels and a satisfactory overall U.S. long-range supply position, however, will depend on attractive prices; the level of industry exploration activities; the expansion of mining and milling capacity by industry; and the extent of ad-

ditional potential resources identified. Uranium demand will influence such developments. Demand will depend on electric energy growth, the number of additional orders for light water reactors, and Government policies for nuclear power and the fuel cycle.

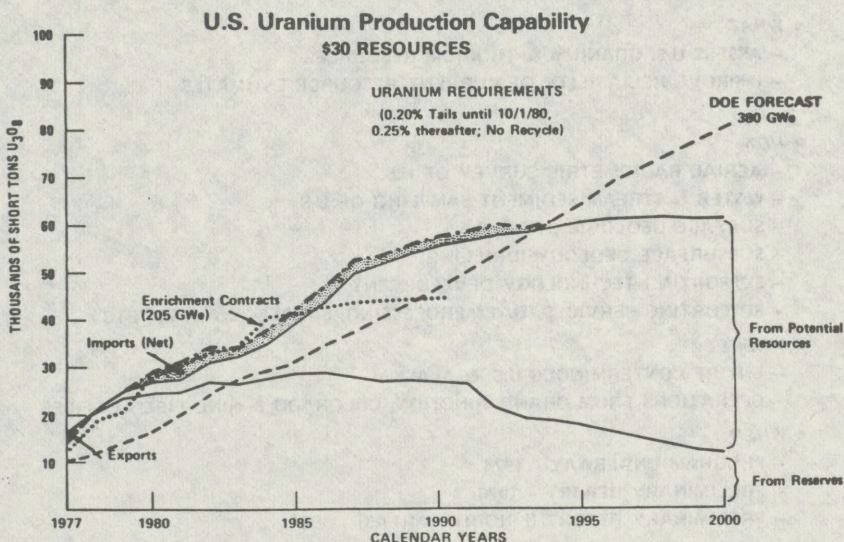

CHART 3

NATIONAL URANIUM RESOURCE EVALUATION

DOE is carrying out NURE as part of its Uranium Resource Assessment Program in order to improve prospects for expanded domestic uranium supply for reactor development and nonproliferation policy planning. Highlights of this program are displayed on Chart 4 and indicate a technically well-balanced program, applied systematically throughout the country, using the best available expertise and expanding our data base on a regular schedule. During fiscal year 1978, for example, we plan to fly about 165,000 line miles of aerial radiometric surveys, and our fiscal year 1979 coverage will be almost 260,000 line miles of aerial surveys. Also, we sample the nation's ground waters and streams sediments for uranium and related elements content, and our coverage in fiscal year 1979 will more than double the areas completed in fiscal year 1978. All of this information, together with the results of our geologic and drilling investigations, are incorporated at an increasing rate into our data base for national uranium assessments.

HIGHLIGHTS OF THE NATIONAL URANIUM RESOURCE EVALUATION (NURE) PROGRAM
(Funded Under the Uranium Resource Assessment Program)

- *WHAT*
  - ASSESS U.S. URANIUM & THORIUM RESOURCES
  - IMPROVE RELIABILITY OF CURRENT RESOURCE ESTIMATES
- *HOW*
  - AERIAL RADIOMETRIC SURVEY OF U.S.
  - WATER & STREAM SEDIMENT SAMPLING OF U.S.
  - SURFACE GEOLOGIC STUDIES
  - SUBSURFACE GEOLOGY (DRILLING)
  - SUPPORTING TECHNOLOGY DEVELOPMENT
  - SUPPORTING SERVICES (DATA PROCESSING, SAMPLE ANALYSIS, ETC.)
- *WHERE*
  - ENTIRE CONTERMINOUS U.S. & ALASKA
  - OPERATIONS FROM GRAND JUNCTION, COLORADO & NINE FIELD OFFICES
- *WHEN*
  - PROGRAM UNDERWAY - 1974
  - PRELIMINARY REPORT - 1976
  - PRELIMINARY REPORT (PRIORITY AREAS) - 1981
  - FINAL REPORT (PRIORITY AREAS) - 1982
  - COMPREHENSIVE REPORT - 1984
- *WHO*
  - DOE
  - PRIVATE INDUSTRY & UNIVERSITIES
  - USGS & STATE AGENCIES

CHART 4

The first phase of the NURE program is due for completion and an assessment report is to be issued at the end of calendar year 1982. This report will be an in-depth, comprehensive evaluation of the priority areas of the country, which encompass all of the areas containing estimated potential uranium resources and other areas which have geologic characteristics favorable for uranium deposits. These areas are located in 272 of the 621 National Topographic Map Series 1° by 2° quadrangles which cover the conterminous United national assessment. This phase is scheduled to be completed at the end of calendar year 1981. The second phase of the NURE program will complete evaluation of all the remaining parts of the country to provide a comprehensive States and Alaska. A preliminary NURE report will be prepared by the end of calendar year 1984.

We have concluded an interagency agreement with the U.S. Geological Survey for their evaluation of 42 quadrangles. The remaining quadrangles will be done by our principal contractor, Bendix Field Engineering Corporation, State geological organizations and private firms. With this broadly scoped participation, I believe we are drawing upon the best expertise in the country in order to carry out the President's direction.

Inasmuch as thorium may be used to breed fuel in some of the advanced nuclear technologies, the President's National Energy Plan directed the NURE program to include thorium. More than ten years have elapsed since U.S. thorium resources were assessed in detail. To update that assessment, we have asked the U.S. Geological Survey to reexamine the principal thorium districts and

potentially productive areas. After completion of this initial assessment in 1978, a determination will be made as to whether work should be expanded to include other lesser known thorium deposits.

URANIUM RESOURCE ASSESSMENT PROGRAM
(Budget Authority in Millions)

	FY 78	FY 79
OPERATING EXPENSES		
GEOLOGIC & RELATED INVESTIGATIONS	$49.0	$70.5
Aerial Surveys	$14.0	$12.1
Hydrogeochemical Surveys	17.0	16.0
Subsurface Investigations (Drilling)	6.4	25.2
Surface Geologic Investigations	11.6	17.2
TECHNOLOGY DEVELOPMENT	6.5	7.9
Supporting work in geophysics to provide new & improved instrumentation, procedures & techniques to assist in the evaluation & exploration of uranium resources		
SUPPORTING SERVICES	4.0	12.8
Operation of analytical & mineralogic labs. Support for international activities, data processing, drafting, subcontracted sample analysis, technical reports, etc.		
TOTAL OPERATING EXPENSES	$59.5	$91.2
CAPITAL EQUIPMENT	4.8	2.5
CONSTRUCTION - GENERAL PLANT PROJECTS	.5	1.5

CHART 5

The fiscal year 1979 budget request as shown in Chart 5 represents an increase from $59.5 million in fiscal year 1978 to $91.2 million in fiscal year 1979 in operating expenses. The requested increases in funding are for the following purposes:

An increase of $21.5 million is requested for the activities called Geologic and Related Investigations: Geologic and Related investigations integrate existing information and generate new data concerning the occurrence, distribution and character of uranium deposits. The basic program elements include aerial radiometric surveys, hydrogeochemical water and stream sediment sampling surveys, subsurface geologic investigations and surface geologic investigations. Most of the proposed increase is for subsurface geologic investigations. The balance, $2.7 million, is for priority quadrangle evaluation activities including correlation of aerial, hydrogeochemical and surface geologic data and preparation of resource assessments to maintain the program schedule.

The increase of $18.8 million in the Subsurface Geologic Investigations element of the Geologic and Related investigations category is requested to enhance the reliability of resource estimates and to develop subsurface geologic information pertaining to the favorability of specific geologic environments where such information is lacking. Specifically:

An additional $15 million is requested to initiate a cost sharing joint Government/industry drilling program to improve the reliability of potential resource estimates. Many of the areas containing potential uranium resources have had insufficient exploration to date to permit an adequate evaluation of the subsurface.

An additional $3.6 million is requested to initiate a program to log holes drilled by industry for oil, gas, water, etc., to expand our knowledge of favorable subsurface formations of interest for uranium. A sizeable information potential exists in these holes that can be secured at low cost to supplement our data base.

An additional $0.2 million is requested for DOE drilling to determine the extent of geologically favorable formations in the subsurface and test geologic models.

An increase of $1.4 million is requested for the Technology Development activities that apply new and improved techniques to the evaluation, exploration and production of uranium resources. The requested increase includes the evaluation, testing and demonstration of geophysical and analytical techniques and equipment, and is intended to expand and improve calibration facilities for DOE, contractor, and industry-owned aerial radiometric reconnaissance and borehole logging equipment. Industry voluntarily provides DOE with their radiometric drilling logs from which we compute reserves and resource estimates. It is essential for computational and comparison purposes that the industry data input be uniform and the calibration facilities make this possible.

An increase of $8.8 million is requested for the activities called Supporting Services: Supporting Services, includes operation of the analytical, mineralogical and electronics laboratories; automatic data processing and drafting; preparation of technical reports; rental of equipment and materials; and sample analyses. In addition, it also includes funding support for international resource assessment activities. The requested increase is directed to the following activities:

An additional $3.8 million is required to handel analysis and processing of the large additional sample load resulting from expansion of DOE surface and subsurface investigations and industry exploration activities.

An additional $5 million is requested for support of international activities. In view of the uncertainty of the size and location of worldwide uranium resources, and the foreseen world demand for uranium, the International "Uranium" Resource Evaluation Project (IUREP) was begun in fiscal year 1977 by the International Atomic Energy Agency and the Nuclear Energy Agency (OECD) at the suggestion of the United States through the International Energy Agency. The funding requirements of this program, which are expected to be shared by member countries of the International Energy Agency, are needed to maintain momentum and to enter the field phase of this program. The funding requested represents the estimated United States contribution for support of the field phase.

The NURE program is not open ended. Funding is projected to decrease after fiscal year 1981 and a final report will be issued in calendar year 1984. Pursuing the program to completion at the funding levels requested is essential in order to assure reliable resource estimates for national and international energy policy determinations and to help assure an adequate nuclear fuel resource base. A systematic appraisal of uranium resources over as vast an area as the conterminous U.S. and Alaska is a complex and difficult undertaking. The present schedule is cost effective, timely and provides for optimum use of programmatic resources.

This concludes my statement, Mr. Chairman and Members of the Committee. I would be happy at this time to answer any questions.

STATEMENT OF GEORGIANA SHELDON, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY; ACCOMPANIED BY RONALD CORSO, OFFICE OF ELECTRIC POWER REGULATION; AND TIMOTHY DIRKS, EXECUTIVE DIRECTOR'S OFFICE

Commissioner SHELDON. Mr. Chairman, I have a prepared statement which I will submit for the record. It is a pleasure to be here today.

I am a Commissioner of the Federal Energy Regulatory Commission and am here at the request of our Chairman, Charles Curtis, to discuss with you the hydroelectric power authorization for the coming year.

I will not go into the background of the Commission and from whence we came. I am sure you are all well aware of that, but I will discuss our budget request for fiscal year 1979. We did request from the Office of Management and Budget more than we received, as most agencies do. The resources included in the Department of Energy's 1979 budget request for the Commission's electric power activities are shown under two different headings in the Department's budget.

There are two subcategories. Hydro and multiresource. The hydro category includes $2.2 million in funding for water resources analysis and $7.4 million for hydroproject licenses. Within the multiresources category, $4.5 million was included for basic electric utility regulation.

The Secretary of Energy supported the Commission in the Department's request to OMB. OMB recognized our need for additional resources but suggested we be given priority reallocation from existing resources within the Department. Following that suggestion, the Secretary did support us for 200 additional positions which he authorized for fiscal year 1978 from within Department totals.

When the Office of Electric Power Regulation's allocation of 45 positions from the 200 was made, 14 and 11 were provided for dam inspections and licensing activities respectively.

This time last year the Commission had before it more than half the number of license applications now pending. Currently, there are over 80 projects awaiting license under study or requesting authorization for study. All of these involve new capacity.

In addition, based on recent experience regarding applications other than those for new capacity, we expect that the Commission will receive between 250 and 300 other hydro applications during fiscal year 1978.

During 1977, the Commission staff conducted about 740 dam safety inspections. Some dams, approximately 58, were not inspected due in part to lack of travel funds and inadequate staffing. At the present time the staff assigned to dam inspections consists of 25 full-time staff members and 15 additional man-years from staff members who devote a portion of their time to inspections and design review work. Without clerical and support staff, this gives us about 45 man-years.

During fiscal year 1979, we expect to conduct approximately 1,000 inspections, a 35-percent increase over fiscal 1977. In addition, we expect to license additional projects, conduct more indepth inspections and exercise increased supervision to assure compliance with license conditions.

In our additional budget requests to OMB, we requested 25 positions for dam inspections and safety, or 11 more positions than will be available within the limits of the final Department of Energy budget which was submitted to Congress by the President.

One thing I would like to bring to your attention is the fact the U.S. Treasury recovers in license fees roughly 90 percent of the cost of licensing activities. In our additional request, we plan to give more emphasis to our environmental activities. We have just finished a comprehensive review of our many environmentally oriented programs which we have scattered throughout the Commission. Although we do not have a complete analysis of the results of that review, we do know we are going to have to change our method of operation. We are considering several possible options. One of them is to con-

solidate all of our environmental programs into one office. Another is to use other areas of the Department of Energy, particularly our National laboratories to conduct some of our environmental studies for us.

There are disadvantages to both avenues of approach and we are trying now to sort out which would be most advantageous.

Mr. Chairman, I have skimmed over this presentation in the interest of time for you. If you have any questions, I would be pleased to answer them for you.

Senator HASKELL. I do, for the record. As you know, the committee has recommended an increase over the present budget of $700,000 for increased personnel for projects, dam inspections; this restores money cut by OMB. Since you originally requested this money, I assume you can use it?

Commissioner SHELDON. That is right, sir.

Senator HASKELL. We did, at the request of your agency, add half a million dollars the day before the committee considered the budget report. The money is for environmental studies. Perhaps you could elaborate a little more why you think that money will be useful.

Commissioner SHELDON. In our present licensing process, the environmental impact statement is not prepared until well along in the processing of the license application. We would like to involve our environmental people at a much earlier stage, which would take more personnel and more resources. It would also shorten the time of application processing as well.

Senator HASKELL. That seems reasonable. The whole thing would speed up the process by getting a handle on the Bureau. I have no further questions. Thank you for being here.

[The prepared statement of Commissioner Sheldon follows:]

STATEMENT OF GEORGIANA SHELDON, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

Mr. Chairman, and members of the Subcommittee, my name is Georgiana Sheldon. I am appearing today in my capacity as a Commissioner of the Federal Energy Regulatory Commission to provide my views regarding the role of the Commission in regulating hydroelectric power facilities in the United States.

As you know, the Federal Energy Regulatory Commission's jurisdiction over hydroelectric facilities dates back to the Federal Water Power Act of 1920. That Act established the original Federal Power Commission, which became an independent commission in 1930. The hydroelectric regulatory responsibilities of the Commission were incorporated as Part I of the Federal Power Act in 1935, and those functions were carried on by the Federal Power Commission until that agency ceased to exist on September 30, 1977.

On October 1, 1977, the Federal Energy Regulatory Commission came into existence as an independent commission within the overall structure of the Department of Energy. The FERC continues to exercise all of the jurisdiction formerly exercised by the Federal Power Commission related to hydroelectric power regulation, with the exception that the Commission and the Secretary of Energy have concurrent jurisdiction under two individual sections of Part I of the Federal Power Act. The authority to conduct river basin appraisals under Section 4 of the Act, and the disposition of power site lands under Section 24 of the Act were reserved to the Secretary of Energy, but he has delegated those responsibilities to the FERC for a six-month period.

In short, the Federal Energy Regulatory Commission is responsible for the licensing and regulation of non-Federal hydroelectric projects and related facilities which: are located on navigable waterways; are located on United States lands; affect interstate or foreign commerce; or utilize the surplus water or water power from any Federal dam.

The significance of these responsibilities is, of course, much broader than the basic terms of the legislation indicates. Among the mandates which must be fulfilled by the Commission are the rapid improvement of dam safety inspection activities as ordered by the President, expeditious consideration of the rapidly increasing number of applications for hydro licenses and permits, and increased attention to the special regulatory needs of smaller hydroelectric facilities.

The Commission's Office of Electric Power Regulation is responsible for carrying out our responsibilities with regard to hydroelectric power. The resources included in the Department of Energy's FY 1979 budget request for the Commission's electric power activities are shown under the major heading of Regulation, and two sub-categories—Hydro and Multi-Resource. The Hydro category includes $2.2 million in funding for water resources analysis, and $7.4 million for hydro project licenses. Within the Multi-Resource category $4.5 million was included for basic electric utility regulation.

This Subcommittee, of course, is concerned mainly with the hydro regulation functions of the Commission.

In preparing the FY 1979 request for our hydroelectric functions, the Commission targeted its request on reducing the backlog of cases in the hydroelectric area, managing growing case and filing workloads, and reducing the time required in processing hydroelectric licenses of all types. The Commission also specifically requested additional resources to augment its dam licensing and inspections activities.

The Commission's request was forwarded to the Secretary who supported the Commission in the Department's request at OMB. The OMB recognized the needs generated by the Commission's growing workload but was unwilling to include any increases for personnel or funds in the FY 1979 budget. Rather, the OMB voiced its concern that the FERC be given priority in reallocating existing resources from other areas within the Department of Energy.

The Secretary did support the FERC's requirements for 200 positions which he authorized for FY 1978 from within Departmental totals. When the Office of Electric Power Regulation's allocation of 45 positions from the 200 was made, 14 and 11 were provided for dam inspections and licensing activities respectively.

Additional resources for licensing and dam inspection work are needed for several reasons. The interest in hydroelectric development is growing as a direct result of increased costs of constructing alternative generating facilities, the high costs and limited availability of fossil fuels for use in generating electric energy, and the efforts being made to develop renewable energy resources.

At this time last year, the Commission had before it less than half the number of license applications now pending for new generating capacity. Currently, there are over 80 projects awaiting license, under study, or requesting authorization for study, all of which involve new capacity.

In addition, based on recent experience regarding applications other than those for new capacity, we expect that the Commission will receive between 250 and 300 other hydro applications during Fiscal Year 1978. These other applications include amendments to existing licenses, transfers, surrenders, changes in land rights, and rehearings following contested Commission actions.

The workload for these applications involving other than new hydro capacity increased by approximately 50 percent between Fiscal Year 1976 and Fiscal Year 1977, and the rate of increase in such applications has continued into the current fiscal year.

We expect the increasing interest in hydroelectric power as a viable energy supply source to result in an acceleration of this rapid increase in applications through the coming fiscal year.

An increasing number of the applications propose new and expanded developments utilizing existing dams. This growing interest in hydro development is also being stimulated by the Department of Energy's research, development, and demonstration project programs now under way. The impact on our workload of DOE Programs represents work required in addition to work on the current applications pending.

We believe the modest increase in staff we have requested in light of the renewed interest in hydro development, will enable the Commission to be more responsive to the need for expeditions licensing of new projects, particularly those utilizing existing dams where environmental impacts are minor.

The Commission staff conducted about 740 dam safety inspections in Fiscal Year 1977. Some dams (approximately 58) were not inspected in Fiscal Year 1977, due in part to inadequate staffing and lack of travel funds. The dams not inspected are relatively small and considered to have a very low hazard potential.

At present, the staff assigned to dam inspections consists of 25 full time staff members and 15 additional man-years from staff members who devote a portion of their time to inspections and design review work. With approximately 5 man-years for clerical and support staff, the total staffing for dam safety is about 45 man-years.

During Fiscal Year 1979, we expect to conduct approximately 1,000 inspections, a 35 percent increase over Fiscal Year 1977 inspections. In addition, we expect to license additional projects, conduct more in-depth inspections, and exercise increased supervision to assure compliance with license conditions.

Additional personnel will be required for design review, review of safety inspection reports by consultants, and other supervision activities. In our original budget presentation to OMB, we requested 25 positions for dam inspections and safety, or 11 more positions than will be available within the limits of the final Department of Energy budget for Fiscal Year 1979 submitted to Congress by the President.

In assessing the cost of Federal energy regulatory activities. as this Subcommittee and others must do, I feel that it is most important to remember that the Commission's activities provide both directly identifiable cash benefits to the Federal government, and less quantifiable, but equally important, benefits to the general public.

The Federal Power Act requires that the Commission assess annual charges to hydro licensees to reimburse the United States for its costs of regulation. While this provision of the organic statute under which hydro regulation is authorized has not received much public attention, the fact is that the United States Treasury recovers in license fees roughly 90 percent of the cost of Commission hydro licensing activities.

The reimbursement to the Federal government is not 100 percent because public licensees are exempt from payment of fees to the extent that power generated at those projects is sold without profit. The costs to the Commission of administering regulation of private licensees remains fully reimbursable.

In addition, the less obvious benefits to the public are considerable. There are over 49,000 dams in the nation 25 feet in height or larger. Of these, only about 1400 dams produce hydroelectric power. As you know, the Commission's licensing authority extends only to non-Federal hydropower developments, or slightly more than half of the 1400 dams that include hydropower.

The Commission must assure that a licensed project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes. Further, the Commission has the responsibility for assuring that licensed projects are constructed, operated, and maintained to assure the protection of life, health, and property.

The Commission assures that licensed projects include, in addition to the use of a renewable energy resource for power development, recreation development, fish and wildlife enhancement or mitigation, minimum flow releases for water quality and other resource protection, environmental protections, aesthetic and cultural protections, and operational and maintenance requirements to meet such needs as water supply, irrigation, flood control, and thermal-electric plant cooling water.

The Commission has a long-standing dam safety program that includes design review by Staff and special consulting boards, and periodic inspections by Staff and consultants, during both construction and subsequent operation of the projects. The dam safety and inspection program not only assures the safe operation of licensed projects, but also assures that the multiple-use benefits will be available to the public.

Finally, a Commission initiative which directly affects hydroelectric regulatory activities is the comprehensive review of our many environmentally-oriented programs which has just been completed. Although a complete analysis of the results of that review is not yet finished, the initial results show that the scope and complexity of FERC environmental review and compliance activities are far broader and significant than has been identified by any previous assessment.

More than 90 Commission staff members devote all or a significant portion of their time to tasks that relate directly to environmental issues.

As a result of the new study, we are now considering several possible changes in the ways the Commission fulfills its environmental responsibilities. One possibility involves a centralization of all Commission environmental activities—

including those related to electric power and natural gas pipeline regulation—in one organizational unit. Another possible action involves considering the desirability and feasibility of having the envronmental reviews and reports now done in-house at the Commission prepared under contract by the staffs of the National Laboratories of the Department of Energy, which have had considerable experience in this area of concern.

The advantages of both these potential actions would include the more effective utilization of staff time for consideration of other important issues where in-house expertise is essential. The disadvantages we are now considering include the great differences between electric power environmental issues and those affecting the natural gas industry, as well as the possibility that the National Laboratories may not have sufficient specialized experience to be able to fully and effectively conduct environmental studies on behalf of the Commission.

Mr. Chairman, I have attempted to limit remarks to a brief overview of the Federal Energy Regulatory Commission's responsibilities and activities relating to hydroelectric power regulation. I realize that you and other members of the Subcommittee may have more detailed questions, and I will attempt to answer any such inquiries you may have, either now or for the record.

STATEMENT OF BARTON R. HOUSE, ASSISTANT ADMINISTRATOR, FUELS REGULATION, ECONOMIC REGULATORY ADMINISTRATION, DEPARTMENT OF ENERGY, ACCOMPANIED BY SCOTT BUSH, DEPUTY ASSISTANT ADMINISTRATOR FOR REGULATION AND ENERGY PLANNING; AND WALTER A. ROMANEK, DIRECTOR, DIVISION OF COAL UTILIZATION

Mr. House. I would like to introduce my two associates, Mr. Scott Bush, Deputy Assistant Administrator for Regulation and Energy Planning, and Mr. Walter A. Romanek, Director, Division of Coal Utilization.

I would like to give a brief statement and then answer your questions.

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you today to discuss the fiscal year 1979 Department of Energy Authorization Act, and in particular, those sections of the act that relate to the fiscal year 1979 budget request for the ERA coal utilization program. This program falls within the DOE mission of energy supply, production, demonstration, and distribution.

My introductory remarks will be brief in order to allow a maximum of time to address the questions of the committee.

Under the authority of the Energy Supply and Environmental Coordination Act (ESECA) of 1974, as amended, DOE has issued utility and industrial prohibition orders prohibiting the consumption of natural gas and oil, and utility and industrial construction orders requiring the installation of coal-capable combustor units. The implementation of these orders could result in an increased coal demand by 1985 of approximately 250 million tons per year. This is the equivalent of about 900 millions barrels of oil per year.

Senator Haskell. This is under existing law with regard to the coal conversion program?

Mr. House. This is if the existing program continued on to 1984.

ERA will continue to identify candidates for utility and industrial prohibition and construction orders. Environmental assessments and environmental impact statements will be completed on the national and regional environmental impacts of the proposed coal conversion

program now being considered by Congress as part of the National Energy Act (NEA).

For fiscal year 1979, $2.9 million is requested to implement the coal utilization programs which are an integral part of the national energy plan. These funds will be used for contractual support for the development of environmental impact assessments, and engineering and financial analyses. Salary and other expenses are included under the policy and management mission part of our budget. Funds are also requested for processing the remaining ESECA activities, and the anticipated implementation of provisions of the NEA presently before Congress. Upon implementation of the NEA we expect several hundred petitions for exceptions and appeals from utilities and industries seeking to burn oil and gas.

Mr. Chairman, this concludes my brief statement. I will be pleased to respond to any questions which you or members of the committee may have.

[The prepared statement of Mr. House follows:]

STATEMENT OF BARTON R. HOUSE, ASSISTANT ADMINISTRATOR, FUELS REGULATION, ECONOMIC REGULATORY ADMINISTRATION, DEPARTMENT OF ENERGY

Mr. Chairman and members of the Committee, I appreciate this opportunity to appear before you today to discuss the FY 1979 Department of Energy Authorization Act, and in particular, those sections of the Act that relate to the FY 1979 budget request for the ERA Coal Utilization Program. This program falls within the DOE mission of Energy Supply, Production, Demonstration and Distribution.

My introductory remarks will be brief in order to allow a maximum amount of time to address the questions of the Committee.

Under the authority of the Energy Supply and Environmental Coordination Act (ESECA) of 1974, as amended, DOE has issued utility and industrial Prohibition Orders prohibiting the consumption of natural gas and oil, and utility and industrial Construction Orders requiring the installation of coal-capable combustor units. The implementation of these orders will result in an increased coal demand by 1985 of approximately 250 million tons per year. This is the equivalent of about 900 million barrels of oil per year. ERA will continue to identify candidates for utility and industrial prohibition and construction orders. Environmental Assessments and Environmental Impact Statements will be completed on the national and regional environmental impacts of the proposed coal conversion program now being considered by Congress as part of the National Energy Act (NEA).

For fiscal year 1979, $2.9 million is requested to implement the Coal Utilization Programs which are an integral part of the National Energy Plan. These funds will be used for contractual support for the development of environmental impact assessments, and engineering and financial analyses. Salary and other expenses are included under the Policy and Management mission. Funds are also requested for processing the remaining ESECA activities, and the anticipated implementation of provisions of the NEA presently before Congress. Upon implementation of the NEA we expect several hundred petitions for exceptions and appeals from utilities and industries seeking to burn oil and gas.

Mr. Chairman, this concludes my brief statement. I will be pleased to respond to any questions which you or members of the Committee may have.

Senator HASKELL. The committee has requested an increase in this area of $12.5 million. I don't know if you are aware of this, I presume you are, but the committee made a recommendation of $12.5 million increase. This is on the presumption the President signs and coal conversion bill. I presume staff of the committee has been in touch with you on the reasonableness of this amount in that event, am I correct?

Mr. HOUSE. I am hearing it for the first time.

Senator HASKELL. What I would like you to do is perhaps get together with Mr. Grundy, the gentleman on my left, following the hearing or at your convenience. There will be additional tasks to be performed when that legislation is passed. I would like to see, we would like to have your comments for the record. I don't think we can have another hearing. I presume you and Mr. Grundy can get together within the next week.

Mr. HOUSE. Forthwith.

Senator HASKELL. On your existing program, how many proposed orders do you have outstanding for conversion?

Mr. HOUSE. We have approximately 43 utility projects outstanding, utility prohibition orders.

Senator HASKELL. What time were they issued?

Mr. HOUSE. In 1975 and 1977.

Senator HASKELL. I think I will ask you to submit for the record the actual dates of issuance and the actual dates that they will be effective.

Mr. HOUSE. I have that with me. I could read it.

Senator HASKELL. I don't want you to read the whole thing—43 is a long list. Are they all over the country or concentrated in one area or what?

Mr. HOUSE. I would say they are all over the country but they are concentrated in the industrial areas. Is that fair, Walter?

Mr. ROMANEK. Yes.

Senator HASKELL. You have estimates of when each order will be finalized?

Mr. HOUSE. Yes; we do. But I would like to qualify my remark. You do know we go through the process, we essentially turn the ball over to the EPA for a certain period of time. Then the football gets passed back to us from the environmental area. We do have estimates of our schedules but it is pretty much—we lose control at one point in the project.

Senator HASKELL. Perhaps you could submit your estimates for finalization. In the normal course of events could you estimate they could be finalized within the current or succeeding fiscal year?

Mr. HOUSE. ESECA order issuing authority expires in December of this year under the present act. That is the first part of the process. We then have to get what we essentially call a notice of effectiveness which allows us to enforce that prohibition order after environmental certification has been received. The follow-up process can take between 2 to 21 or 24 months, and that assumes no litigation.

Senator HASKELL. I think what you might do, you might submit a table. It is my understanding you have a proposed list of step 1, then that goes to EPA?

Mr. HOUSE. We have a notice of intent, NOI, which says we intend to issue a prohibition or construction order, that goes to a hearing. If our findings in the draft notice of intent is substantiated as a result of the hearing, is not changed, we then issue the prohibition order, the construction order. Prohibition orders being for existing facilities. Construction orders being for existing facilities.

At that point, an environment assessment is made and a review by the EPA is made of the ability to effect the order under the Clean Air

Act; that comes back to us at that point in time. We would then review our facts in the case and proceed with the notice of effectiveness.

Senator HASKELL. Which would be the final order?

Mr. HOUSE. Yes.

Senator HASKELL. Why don't you do this: Apparently some complaints have been received that this process is unduly long. Why don't you give us a table of these 43 which specifies the date each of those things occurred in the first notice of intent, your proposal, when it goes to EPA, when it came back from EPA, so we can see how the process is working.

Also, I would like your opinion, assuming no litigation because you cannot control that, your opinion as to which ones of those 43 would be completed by the end of the fiscal year 1979. If you could get that in for the record. Then we may or may not ask you to come back and discuss this some more.

I think that concludes the situation. This information, the hearing record will stay open for 7 days, you will get with Mr. Grundy on this, money for the new statute, you have stated that 250 exemptions may be received in the first year. We have got to see what level of funding would be required. I am particularly anxious to see how the process has been working in the past.

Therefore, I would like that schedule. I think we understand each other. Thank you for appearing.

Mr. HOUSE. I will supply you also with the 14 industrial prohibition orders schedules. We intend to close out the 43 utilities. For completeness we should do it.

Senator HASKELL. For completeness, you should do both. Thank you for appearing. The hearing is recessed, the record will stay open for 7 days.

[Whereupon, at 11:35 a.m., the hearing was recessed, to reconvene Friday, April 14, 1978, at 9 a.m.]

[Subsequent to the hearings Mr. House supplied the subcommittee the following:]

DEPARTMENT OF ENERGY,
Washington, D.C., April 19, 1978.

Hon. FLOYD K. HASKELL,
Chairman, Subcommittee on Energy Production and Supply, U.S. Senate, Washington, D.C.

DEAR SENATOR HASKELL: It was a pleasure appearing before you on April 13, 1978, to discuss the budget request for the Department of Energy's Coal Utilization Program. At that time you requested that Mr. Richard Grundy and I get together to identify certain information to be submitted for the record.

Enclosed are responses to the following questions:

Question 1. What resources would be required to complete all outstanding ESECA Prohibition Orders by the end of fiscal year 1979?

Question 2. What additional funds would be necessary to handle the petitions anticipated in fiscal year 1979 (250 industrial)?

Also enclosed are four tables which indicate our best estimates as to when the ESECA process will be completed on currently outstanding Prohibition Orders. Also indicated on the tables is the information related to the nine Prohibition Orders for which the ESECA Process has been completed.

I would be most happy to answer any further questions you might have.

Sincerely,

BARTON R. HOUSE,
Assistant Administrator,
Fuels Regulation,
Economic Regulatory Administration.

Enclosures.

Question 1. What resources would be required to complete all outstanding Prohibition Orders by the end of fiscal year 1979?

A. At present a total of 44 Prohibition Orders have been issued to utilities (32 in June, 1975; 11 in June, 1977; and one in April, 1978) and 14 Prohibition Orders have been issued to industrial facilities. Nine of the utility Prohibition Orders issued in 1975 have been completely processed through the Notice of Effectiveness stage, and coal burning (more precisely, oil and gas prohibition) has commenced or will commence on a date certain in each of these cases. Of the remaining outstanding prohibition orders, it is likely that several will not be pursued through the Notice of Effectiveness for environmental reasons.

Further, a number of prohibition order recipients are presently being considered and it is expected that prohibition order issuance will ensue in both the utility and industrial sector until the proposed NEA is implemented.

It is estimated that of the outstanding prohibition orders seven will be completed in fiscal year 1978 and 42 in fiscal year 1979. The completion process includes environmental evaluations, both through the statutory EPA certification process and compliance with NEPA, and modifications of findings, chiefly for currency and accuracy.

The fiscal year 1979 budget request included the resources listed below to follow-up on outstanding orders:

[Dollar amounts in thousands]

Program	Positions	Personnel and other costs	Contracts	Total
Industry	13	$1,165	$685	$1,850
Utility	23	1,238	495	1,733
Total	36	2,403	1,180	3,588

The budget includes resources for presently outstanding orders as well as number of the orders yet to be issued. The request therefore adequately covers all outstanding prohibition orders.

Question 2. What additional funds would be necessary to handle the petitions anticipated in fiscal year 1979 (250 industrial)?

Answer. As originally submitted, the fiscal year 1979 budget contained DOE estimates of a total of 250 industrial petitions for exemptions from prohibitions from burning oil and gas. This called for a total of 113 positions and 1.5 million in contract dollars. The approximate $2.6 million in personnel costs is contained in the Policy and Management Mission Section of the budget. Thus a total of approximately $4.1 million was requested from the Congress for the NEA provisions of the Coal Conversion Program dealing with exemption petitions from industry.

At the time of the budget request the precise requirements for site specific environmental evaluations were not yet established. Subsequent developments in the House-Senate Conference on H.R. 5146 have made clear that certain exemption petitions, including most new facility petitions and some existing facility petitions will require environmental analyses pursuant to the requirements of the National Environmental Policy Act.

For example, 90 percent of the expected petitions could result in a requirement for an EIS or other environmental analysis. It has been estimated that each EIS would require an expenditure of $40,000. The aggregate cost of such analysis could be very substantial. Of course, not all EIS's would be initiated and completed in fiscal year 1979, as it could be anticipated that necessary environmental evaluations begun in the mid-part or late in the year would extend into fiscal year 1980. However, without knowledge of the final Conference Report, it is difficult to determine the institutional requirements involved in processing exemptions. In addition, the proposed NEA provides for the opportunity for a hearing for each exemption petition.

Thus, the fiscal year 1979 budget request is underestimated. However, until the proposed NEA materializes, DOE is unable to precisely estimate the budgetary changes that may be necessary.

TABLE 1.—DIVISION OF COAL UTILIZATION, UTILITIES PROHIBITION ORDERS ISSUED JUNE 30, 1975—32 SITES AND 74 POWERPLANTS

Owner	Generating station	Capacity (MW)	Environmental analysis	Notice of effectiveness	Coal burn date [1]
Public Service Co. of New Hampshire.	Schiller, Portsmouth, N.H	100	August 1978	November 1978.	March 1981.
Atlantic City Electric Co	B. L. England, Beesleys Point, N.J.	299	June 1978	September 1978.	December 1979.
Central Hudson Gas & Electric Corp.	Danskammer, Roseton, N.Y.	386	November 1978.	March 1979	March 1982.
Niagara Mohawk Power Co	Albany, Bethlehem, N.Y	400	January 1979	April 1979	October 1981.
Potomac Electric Power Co	Morgantown, Newburg, Md	1,252	June 1978	September 1978.	PBC.[2]
Virginia Electric Power Co	Chesterfield, Chester, Va	1,354	November 1978.	March 1979	February 1982.
Do	Yorktown, Yorktown, Va	376	Do	do	October 1981.
Do	Portsmouth, Chesapeake, Va	650	July 1978	October 1978	November 1981.
Baltimore Gas & Electric Co	Crane, Baltimore, Md	391	September 1978.	December 1978.	March 1982.
Delmarva Power & Light Co	Edgemoor, Wilmington, Del	361	October 1978	February 1979.	June 1983.
Baltimore Gas & Electric Co	Riverside, Baltimore, Md	153	September 1978.	Decenber 1978.	March 1982.
Do	Wagner, Baltimore, Md	268	do	do	Do.
Alabama Electric Cooperative, Inc.	McWilliams, Gantt, Ala	25	September 1977.	July 1978	August 1978.
Carolina Power & Light Co.[3]	Sutton, Wilmington, N.C	646	July 1977	August 1977	PBC.
Florida Power Corp	Crystal River, Red Level, Fla.	965	November 1978.	March 1979	March 1980.
Georgia Power Co	McManus, Brunswick, Ga	144	July 1978	October 1978	May 1981.
Savannah Electric & Power Co	Port Wentworth, Port Wentworth, Ga.	207	November 1977.	July 1978	January 1979.
Wisconsin Public Service Corp.[3]	Weston, Rothchild, Wis	75	May 1977	June 1977	PBC.
Detroit Edison Co	St. Clair, East China Township, Mich.	358	September 1978.	December 1978.	June 1982.
Village of Winnetka	Winnetka, Winnetka, Ill	28	August 1978	November 1978.	March 1982.
Ames Electric Utility [3]	Ames, Ames, Iowa	33	April 1977	June 1977	PBC.
Iowa Electric Light & Power Co.[3]	Sutherland, Marshalltown, Iowa.	158	September 1977.	January 1978	PBC.
Do.[3]	Des Moines, Des Moines, Iowa.	180	May 1977	August 1977	PBC.
Iowa Public Service Co	George Neal, Salix, Iowa	139	June 1978	September 1978.	October 1978.
Do.[3]	Maynard, Waterloo, Iowa	50	January 1977	April 1977	PBC.
Kansas City Board of Public Utilities.	Kaw River, Kansas City, Kans.	701	December 1978.	March 1979	May 1979.
Do	Quindaro No. 3, Kansas City, Kans.	240	do	do	PBC.
Kansas City Power & Light Co	Hawthorne, Kansas City, Mo	771	do	do	December 1978.
Kansas Power & Light Co.[3]	Lawrence, Lawrence, Kans	576	July 1977	August 1977	PBC.
Do.[3]	Tecumseh, Tecumseh, Kans	232	June 1977	do	PBC.
Nebraska Public Power District[3]	Sheldon, Columbus, Nebr	229	do	do	PBC.
Springfield City Utilities	James River, Springfield, Mo.	114	November 1978.	March 1979	PBC.

[1] EPA or DOE estimated coal burn date, assuming no litigation.
[2] Presently burning coal.
[3] Notice of effectiveness issued.

TABLE 2.—DIVISION OF COAL UTILIZATION UTILITIES PROHIBITION ORDERS, ISSUED, JUNE 30, 1977—11 SITES AND 18 POWERPLANTS

Owner	Generating station	Capacity (MW)	Environmental analysis	Notice of effectiveness	Coal burn date [1]
New England Electric System/New England Electric Power Co.	Brayton Point, Somerset, Mass.	1,157	November 1978.	March 1979	March 1982.
Holyoke Water Power Co	Mount Tom, Holyoke, Mass	147	December 1978.	April 1979	April 1982.
Northeast Utilities/Hartford Electric Light Co.	Middletown, Middletown, Conn.	416	do	do	Do.
Northeast Utilities/Connecticut Light & Power Co.	Norwalk Harbor, Norwalk, Conn.	322	do	do	Do.
City of Vineland	Down, Vineland. N.J	25	November 1978.	March 1979	PBC.[2]
Long Island Lighting Co	Port Jefferson, Port Jefferson, N.J.	329	December 1978.	April 1979	April 1982.
Philadelphia Electric Co	Cromby, Phoenixville, Pa	201	November 1978.	March 1979	March 1980.
Corn Belt Power Cooperative	Wisdom, Spencer, Iowa	94	October 1978.	January 1979.	January 1980.
Independence Power & Light Department.	Blue Valley, Independence, Mo.	440	do	do	Do.
St. Joseph Power & Light Co	Lake Road, St. Joseph, Mo	361	do	do	Do.
Fremont Department of Utilities	L. D. Wright, Fremont, Nebr	92	November 1978.	March 1979	March 1980.

[1] EPA or DOE estimated coal burn date, assuming no litigation.
[2] Presently burning coal.

TABLE 3.—DIVISION OF COAL UTILIZATION, ISSUED APR. 14, 1978

Owner	Generating station	Capacity (MW)	Environmental analysis	Notice of effectiveness	Coal burn date
United Power Association	Elk River, Elk River, Minn	49	December 1978.	March 1979.	April 1979.

TABLE 4.—INDUSTRIAL PROHIBITION ORDERS, ISSUED JUNE 30, 1977—14 SITES AND 28 UNITS

Parent company	Installation and location	Size (MM Btu hour)	Environmental analysis	Notice of effectiveness	Coal burn date [1]
Allied Chemical Corp	Hopewell Chemical Plant, Hopewell, Va.	525	December 1978.	March 1979	March 1982.
Avtex Fibers, Inc	Front Royal Plant, Front Royal, Va.	900	February 1979.	May 1979	June 1980.
Continental Forest Industries	Hopewell Mill, Hopewell, Va.	532	December 1978.	March 1979	March 1982.
E. I. du Pont de Nemours & Co	Seaford Plant, Seaford, Del	414	February 1979.	May 1979	May 1979.
Union Carbide Corp	Institute Plant, Institute, W. Va.	350	do	April 1979	December 1978.
Chesapeake Corp	West Point Mill, West Point, Va.	459	December 1978.	March 1979	June 1980.
Westvaco Corp	Kraft Division, Charleston, S. C.	439	January 1979.	April 1979	December 1979.
Continental Forest Industries	Port Wentworth, Ga	478	December 1978.	March 1979	March 1982.
Weyerhaeuser Corp	Plymouth Plant, Plymouth, N.C.	937	November 1978.	February 1979.	December 1981.
Marathon Oil Co	Robinson Refinery, Robinson, Ill.	504	February 1979.	May 1979	May 1982.
Brown Co	Parchment Plant, Parchment, Mich.	400	March 1979	June 1979	June 1982.
A. E. Staley Manufacturing	Decatur Plant, Decatur, Ill	350	January 1979	April 1979	April 1981.
International Paper Co	Pine Bluff Plant, Pine Bluff, Ark.	1,092	March 1979	June 1979	February 1982.
Kennecott Copper Corp	Utah Copper Div., Magna, Utah.	2,135	November 1978.	February 1979.	PBC.[2]

[1] EPA or DOE estimated coal burn date, assuming no litigation.
[2] Presently burning coal.

DEPARTMENT OF ENERGY FISCAL YEAR 1979 AUTHORIZATION

(Energy Production and Supply)

FRIDAY, APRIL 14, 1978

U.S. SENATE,
SUBCOMMITTEE ON ENERGY PRODUCTION AND SUPPLY,
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9 a.m., in room 3110, Dirksen Office Building, Hon. Floyd K. Haskell presiding.

Present: Senators Haskell, Melcher, and Hansen.

Also present: Tom Laughlin, professional staff member.

OPENING STATEMENT OF HON. FLOYD K. HASKELL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator HASKELL. The meeting of the subcommittee will commence.

This morning we will hear from representatives of the Department of Energy and from the Administrators of the two largest power marketing agencies, the Western Area Power Administration and Bonneville Power Administration. We will also hear from representatives of several public power groups.

The purpose of this morning's hearing is to examine the power marketing aspects of the DOE fiscal year 1979 authorization bill and to examine several policy issues which relate to the relationship of the Department of Energy and the Power Marketing Administrations.

This committee's report to the Budget Committee included the recommendation that the budgets and the Power Marketing Administrations not be subject to Department of Energy budget cuts or personnel ceilings. The Administrations are involved in production and marketing of electric power and therefore require a greater certainty with respect to both their budgets and personnel levels. Traditionally, Bonneville Power Administration has enjoyed this type of independence. It is the committee's intention that a similar relationship be established for the other Power Marketing Administrations.

A second major issue of concern to the committee is the rapidity with which the Western Area Power Administration is being established. There are remaining uncertainties as to staffing, the location of a headquarters, the appointment of an Administrator and the existence of a formally approved organization chart.

A third issue which has come to the attention of the committee concerns the relationship between the Economic Regulatory Admin-

istration and the Power Marketing Administrations in rate setting procedures. The criteria which are to be considered in ratemaking decisions also remain unclear.

This morning's witnesses have been asked to address themselves to these issues.

We will first hear from the Honorable George S. McIsaac, Assistant Secretary for Resource Applications, who is accompanied by the Honorable John F. Ahearne, Deputy Assistant Secretary for Power Applications and Mr. Daniel Ogden, Coordinator for Power Marketing Activities. I welcome all of these gentlemen, but I particularly welcome Dan Ogden who has been a friend of mine for many years. I am delighted to see you, Dan.

STATEMENT OF GEORGE S. McISAAC, ASSISTANT SECRETARY FOR RESOURCE APPLICATIONS, DEPARTMENT OF ENERGY; ACCOMPANIED BY JOHN F. AHEARNE, DEPUTY ASSISTANT SECRETARY FOR POWER APPLICATIONS AND DANIEL OGDEN, DIRECTOR, OFFICE OF POWER MARKETING COORDINATION

Mr. McIsaac. Mr. Chairman and members of the committee, it is a pleasure for me to be here once again to discuss the Bonneville and Western Area Power Administrations.

I have deliberately kept my opening statement brief so we can move quickly to the Power Administrators who are here for the first time. I will try to deal with the issues you mentioned at the end of your statement during a question and answer session.

With me, as you know, are Sterling Munro, Administrator of the Bonneville Power Administration, on my far left, and Bob McPhail, Acting Administrator for the Western Area Power Administration. Bob is soon to be the Administrator for the Western Area Power Administration.

Also with me are John Ahearne, my Deputy for Power Applications, and Daniel Ogden, Jr., recently appointed Director of the Office of Power Marketing Coordination. Mr. Ahearne will coordinate the activities of all the Power Marketing Administrations through Mr. Ogden.

We are requesting $103,738,000 in budget authority in fiscal year 1979 for the Western Area Power Administration. Although we estimate the Bonneville Power Administration will have budget outlays in fiscal year 1979 of $39,800,000, no budget authority is requested for them, as they operate on a self-financing basis authorized by the Federal Columbia River Transmission System Act. It is worthy of note to this committee that we are planning to propose legislation which would extend self-financing authority to the other Power Marketing Administrations as well.

We are requesting budget authority in fiscal year 1979 of $2,614,000 for the Alaska Power Administration, $1,212,000 for the Southeastern Power Administration, and $19,909,000 for the Southwestern Power Administration.

As you are aware, the Western Area Power Administration was created to assume the power marketing functions previously conducted by the Department of the Interior's Bureau of Reclamation. Turning this new Power Marketing Administration into a viable

entity is one of my highest priorities. Thus far, we have announced that its headquarters will be in Denver and its organization has been approved. We are now proceeding to staff this organization. We plan to have office space available May 15.

Mr. Chairman, that concludes my prepared remarks. Each of the Administrators with me have statements which will address the activities of their respective Power Marketing Administrations in more detail.

I would like to have each of the Administrators address the activities of his Power Marketing Administration in more detail.

Senator HASKELL. I think that is very good, with the concurrence of Senator Hansen, we will do that.

STATEMENT OF ROBERT McPHAIL, ACTING ADMINISTRATOR, WESTERN AREA POWER ADMINISTRATION, DENVER, COLO.

Mr. McPHAIL. Mr. Chairman, my name is Robert McPhail. I am pleased to come before this committee to request authorization of appropriations for the Western Area Power Administration's fiscal year 1979 proposed budget program for carrying out its transmission and power marketing functions with other entities to meet the nation's present demand for electric energy.

I would like to summarize my written statement.

Senator HASKELL. That will be the far best way to proceed. The statement will be received and reproduced in full.

Mr. McPHAIL. The principal problem we have been faced with in the Western Area Power Administration these past few months is to try to take all the pieces of the Bureau of Reclamation transferred to the Department of Energy and mold those pieces into a viable operating organization.

This new organization markets 7,668 megawatt capacity over a 15-State area. The States are California, Nevada, Montana, Arizona, Utah, New Mexico, Texas, North and South Dakota, Iowa, Colorado, Wyoming, Minnesota, Nebraska, and Kansas.

We have 15,982 circuit miles of line scattered over these States. We have contracts with 426 wholesale power customers who retail power to approximately 7 million people in these States. Last year we sold 35,933,289 megawatt-hours of electricity.

Senator HASKELL. Are your customers by and large cities and towns?

Mr. McPHAIL. That is true. The majority are cities and towns, and mostly small cities and towns in the Western States. If you like, I could give you a breakdown.

Senator HASKELL. No; that is all right.

Mr. McPHAIL. Our annual revenues in 1977 were $247,600,000.

Senator HANSEN. What was that figure again?

Mr. McPHAIL. $247,600,000. At the date of transfer October 1, 1977, the Bureau of Reclamation transferred 1,039 positions to the Department of Energy and approximately 65 of those positions were vacant at the time of transfer. Another major problem we have been working on these past few months is to increase our rate base to make our operation financially sound.

On April first of this year we increased the power rates on the Rio Grande project in New Mexico, effective May 25; we will implement

an interim rate increase on the Central Valley project in California. We are initiating annual rate studies on all our projects. The preliminary study for the Colorado River storage project indicates a need for a 45-percent rate increase. Some of the other projects we operate, and sell power from, such as the Pick-Sloan Missouri basin program are operating on a sound financial basis. We have made substantial progress these last few weeks, especially since Secretary McIsaac has been confirmed.

On March 15, 1978, the Department released the 65 positions that were vacant at the time of transfer, which allows us to go ahead and start hiring people to build our central staff for our headquarters in Colorado. We are in the process of advertising the 65 vacancies to put together the key people to run the Western Area Power Administration in Denver.

Senator HASKELL. Is that adequate when that personnel is added to do the job?

Mr. MCPHAIL. At the present time, we have an operating agreement with the Bureau of Reclamation whereby they provide the administrative services to the Western Area Power Administration. At the time of transfer, the guidelines were if a person works 50 percent or more of his time in the power marketing and transmission business, he transfers to DOE. If he worked less than 50 percent of his time, he stayed in the Bureau of Reclamation.

As a result, almost all of the administrative people only worked a small fraction of their time on power matters. Therefore, they stayed in the Bureau of Reclamation, so we have a large void in the administrative area. We do not have enough personnel to do the administrative work.

Senator HASKELL. You mean the administrative work of your agency is being done in some other agency?

Mr. MCPHAIL. Yes. At the present time it is being done by agreement with the Bureau of Reclamation.

Senator HASKELL. Is that going to continue?

Mr. MCISAAC. No. It is not. As soon as we manage to staff the positions in Denver, the 65 positions Bob mentioned, we will begin transferring the administrative work. At that time, we plan to find out whether an appropriate number of positions were transferred from the Bureau of Reclamation to the Department of Energy when this Power Administration was created. I suspect at that point we will be given more positions. If not, we will have to add more positions to the Western Area Power Administration.

Senator HASKELL. Sixty-five people will be added. They will assume some of the duties that are now being done by the Bureau of Reclamation. There will be some duties remaining?

Mr. MCISAAC. Yes, sir.

Senator HASKELL. Is it your intention and if so when, to have the work of the Administration done by the Administration? In other words, the work of WAPA done by WAPA rather than by the Bureau of Reclamation; is that your intention?

Mr. MCISAAC. That is my intention. I would hope we can fill the 65 positions just as soon as possible.

Senator HASKELL. Sixty-five will not get the job done. I take it.

Mr. MCISAAC. It will get a considerable part of it done, but not all of it. There are many kinds of staff activities.

Senator HASKELL. Perhaps you might be able to submit for the record the duties of these 65 people, that they will assume, now performed by the Bureau of Reclamation, and then on a man-hour basis give us the duties transferred and the duties remaining and those in WAPA. Would you be able to do that for the record?

Mr. MCPHAIL. It will take a little time, but we will do it.

Mr. MCISAAC. One of our problems, Senator Haskell, is that we need the 65 positions to do the kind of staff work requested here.

Senator HASKELL. You must know now how many man-hours the Bureau of Reclamation is spending on WAPA. Doesn't the Bureau of Reclamation? Doesn't somebody?

Mr. MCPHAIL. We have just rough estimates.

Mr. MCISAAC. We have rough estimates from the Bureau of Reclamation.

Senator HASKELL. Then let's take the estimates provided by the Bureau of Reclamation and that will show a certain number of man-hours done on WAPA and you just plug in the number of hours those 65 folks will be spending that were previously done by the Bureau of Reclamation. That is a very easy task. That would be a pushover.

Mr. MCISAAC. It is a pushover, sir, but the numbers are suspect, as they were when this original discussion was first held, when the DOE was first created.

Senator HASKELL. Have you any independent estimates of your own?

Mr. MCISAAC. No, sir.

Senator HASKELL. Has anybody got any independent estimates of their own?

Mr. MCPHAIL. We have estimates on what we need to operate the Western Area Power Administration.

Senator HASKELL. Maybe that is where we ought to go. Why don't we forget about the Bureau of Reclamation. Why don't you supply for the record a table of organization chart and the staffing you consider necessary to operate the Administration. Would you do that, Mr. McPhail?

Mr. MCPHAIL. Yes, sir. I can do that.

One other item of progress we have made these past few months since Mr. McIsaac was confirmed, we did get our request for office space cleared through the Department of Energy so we could in turn submit that request to the GSA in Denver. We have arrangements made to open our office May 15 in Lakewood, Colo., adjacent to the solar energy research operation there.

Senator HASKELL. Do you have space adequate to encompass the people you consider necessary to operate the Administration?

Mr. MCPHAIL. It may not be adequate an May 15 but it should be soon after that. The May 15 date will be space for the office headquarters to get started. They are building additional space in that complex at the present time and they tell me there will be adequate space available sometime in September for the complete operation.

Senator HASKELL. Thank you.

Mr. MCPHAIL. I might also mention, Senator, Mr. McIsaac came to Denver 2 weeks ago and spent 2 days. He gave us an opportunity to completely brief him on all of the operations of WAPA. We took him to the Montrose operation. Since that time, a lot of things have begun

to move internally that were stymied before. We are really encouraged by the progress we are making within the Department of Energy

Senator HASKELL. I am very pleased to hear you say that.

Mr. McPHAIL. That completes my statement.

[The prepared statement of Mr. McPhail and a subsequent submittal received by the subcommittee follows:]

STATEMENT OF ROBERT L. MCPHAIL, ACTING ADMINISTRATOR, WESTERN AREA POWER ADMINISTRATION, U.S. DEPARTMENT OF ENERGY

Mr. Chairman and Members of the Committee, I am pleased to come before this Committee to request authorization of appropriations for the Western Area Power Administration's fiscal year 1979 proposed budget program for carrying out its transmission and power marketing functions with other entities to meet the Nation's present demand for electric energy.

Our budget request for fiscal year 1979 totals $103.7 million. This reflects an increase of about $12.1 million over fiscal year 1978 appropriations. Before continuing with discussions on problem areas and the fiscal year 1979 budget, I would first like to provide you with some background information on this new power marketing administration, the magnitude of area served, and the facilities involved.

On December 21, 1977, the Department of Energy announced the establishment of the Western Area Power Administration which will be headquartered in Denver, Colorado. This new power administration will be responsible for the Federal power marketing and transmission functions transferred from the Department of the Interior's Bureau of Reclamation to the Department of Energy as part of the legislation signed by the President in August 1977 creating the Department of Energy. Our work involves the sale and distribution of power to about 426 wholesale preference customers (cooperatives, municipalities, State, and Federal agencies), who provide service to some seven million retail power consumers in the 15 Western States of California, Nevada, Montana, Arizona, Utah, New Mexico, Texas, North and South Dakota, Iowa, Colorado, Wyoming, Minnesota, Nebraska, and Kansas. In addition to the electric power marketing function, WAPA has the responsibility for operation and maintenance of transmission lines and appurtenant facilities transferred from the Bureau of Reclamation, and for construction, operation, and maintenance of additional transmission facilities that may be needed and authorized in the future.

The Corps of Engineers and the Bureau of Reclamation will continue their responsibilities for the production of hydroelectric power from the existing facilities, and for the construction, operation and maintenance, and power production of hydroelectric facilities authorized in the future. Hydroelectric power production from existing and future Federal facilities will be closely coordinated with the Corps of Engineers, the Bureau of Reclamation, and the Department of Energy.

Power marketed by WAPA is generated by 44 powerplants (43 hydro, 1 thermal) located in various Western States and are operated by the Bureau of Reclamation, U.S. Army Corps of Engineers, the International Boundary and Water Commission, and the Salt River Project. The following additional statistics will give you an idea of area served and facilities:

Installed generating capacity (1977) (megawatts)	7, 668
Circuit miles of line (miles)	15, 982
Number of substations	256
Number of power customers	426
Energy sold (1977) (megawatts)	35, 933, 289
Annual power sales revenue (1977)	$247, 600, 000
Service area in 15 Western States (square miles)	1, 269, 958

STAFFING

A total of 1,039 people and 63 vacancies were transferred to DOE from the Bureau of Reclamation.

A major objective of the Bureau of Reclamation, in accomplishing the transfer, was to keep their organization whole while at the same time transferring appropriate persons who had been concerned with power marketing and transmission activities. However, these activities represented only a small portion of Reclamation's overall program so that it was inevitable that fragmentation

would occur in many areas of the newly created WAPA. At present we are taking action to resolve an existing imbalance in management, supervisory, technical, legal, and administrative support positions in the headquarters office and at all field offices where the water and power functions were integrated under the same management.

We have an interim operating agreement with Reclamation where they will provide administrative and technical support to WAPA until we are adequately staffed to assume those functions.

EXISTING FIRM POWER RATES

Firm power rates for the WAPA are analyzed annually on an individual area basis. Rates for the Pick-Sloan Missouri Basin Program analyzed in a fiscal year 1976 Power Repayment Study are currently adequate to maintain that system's repayment obligations. A fiscal year 1976 Power Repayment Study for Parker-Davis Project indicates a need for an increase of approximately 14 percent in firm power revenues to insure repayment of the project. This need is attributable to increased operation, maintenance, and replacement (OM&R) costs and for the repayment of planned additions through fiscal year 1983. A preliminary repayment study made for the upcoming Colorado River Storage Project fiscal year 1977 Annual Report indicates that at the projected 50-percent load factor, the rate increase needed by fiscal year 1980 will be approximately 45 percent to accomplish repayment of costs within legal established time limits.

Studies in 1976 for the Central Valley Project (CVP) indicated that an increase of around 180 percent in CVP firm power rates is required to eliminate the current deficit and meet projected operating cost through fiscal year 1981.

Because of request from various CVP power customers for more time to examine the power rate studies and the need to get a power rate in effect at the earliest possible date, revised rules have been proposed which would allow interim rates to be charged, subject to refund with interest. Interim rates consisting of an initial increase in rates of about 95 percent to take effect in May 1978, and a subsequent increase of 140 percent to take effect in April 1979, have also been proposed. Comments on the proposed interim rates were due on or before February 22, 1978, and a public forum was held on February 27, 1978.

PROPOSED PROGRAM FOR FISCAL YEAR 1979

WAPA's budget for which I am requesting authorization in fiscal year 1979 totals some $103.7 million. It consists of two major activities—operating expenses and construction. Operating expenses are $91.3 million which primarily funds operation and maintenance requirements to meet contract power deliveries to customers and to operate and maintain the transmission facilities in an efficient manner.

Within this total for operating expenses in fiscal year 1979 is $59.9 million for purchase power and wheeling. This compares to $53.2 million in fiscal year 1978. The $6.7 million increase covers principally increased costs of purchased power from Centralia Thermal Plant in the State of Washington. Our other ongoing project operating expenses total $31.4 million and reflect increased operating expenses over 1978 of $4.9 million largely due to higher labor costs, material and equipment costs, and for new facilities coming into service on the Fryingpan-Arkansas Project which places its first 100-mw unit on line in fiscal year 1979, first full year of O&M of the Watertown-Sioux City 345-kv transmission line of Pick-Sloan Missouri Basin Program and partial expenses on supervisory control system of the Parker-Davis Project.

The construction request in fiscal year 1979 includes $12.2 million for continuing construction of transmission facilities in selected areas of the 15 Western states. This amount reflects an increase of $400,000 over 1978. The Central Valley Project, Pacific Northwest-Pacific Southwest Intertie, and the Transmission Division of the Pick-Sloan Missouri Basin Program have increased while Parker-Davis Project and the Transmission Division of the Upper Colorado River Storage Project have decreased from 1978. The Auburn-Folsom South Unit and the Washoe Project are not funded in fiscal year 1979.

This construction request does not contain any new project starts; however, acquisition of right-of-way will be started for the Miles City-New Underwood 230-kv transmission line and terminal facilities of the Pick-Sloan Missouri Basin Program, Transmission Division. This transmission line is scheduled for construction in fiscal year 1980 and will provide increased transmission capacity in eastern Montana for reliable power system operations. Federal system operations

normally required transfer of Federal hydropower from eastern Montana into North Dakota to meet Federal obligations. The eastern Montana area transmission system is vulnerable to severe power outages in the event of the loss of Dawson County-Dickinson-Bismarck 230-kv transmission line. Power stability studies show that additional transmission capacity is also needed to stabilize the Montana-Dakota area when critical transmission line faults occur in central North Dakota. Since January 1973, eastern Montana has experienced 13 such disturbances which resulted in customer outages. This proposed line will remove operating restrictions and allow long-term full utilization of east system generation resources at USBR Yellowtail Powerplant under all system conditions.

Preconstruction funds are also included for the Pacific Northwest-Pacific Southwest Intertie. Although Bonneville has not finalized their studies, they have indicated that their preliminary results show a favorable benefit-cost ratio for that project.

The fiscal year 1979 budget also includes $200,000 for emergency funds to assure a source of funds with which to meet emergencies.

In conclusion, we support the Administration's appropriation of $103.7 million for WAPA in fiscal year 1979. If there are any questions at this time, I will be happy to answer them.

The following table details the allocation of WAPA's current position ceiling against organizational elements and related functions. At the present time several manpower related matters preclude us from providing meaningful estimates of total position requirements. The primary difficulty is in developing detailed workload estimates of the support previously provided by elements in the Department of Interior that were not transferred to DOE. It is still unclear as to what services will continue to be provided under an existing agreement with the Bureau of Reclamation and to what extent the Department may challenge the validity of the number of positions provided to support the functions transferred from DOI by the September 30, 1977 Determination Order. In addition, there are a few items of administrative support that might be provided initially by the DOE Denver Office.

WESTERN AREA POWER ADMINISTRATION, SUMMARY OF POSITION ALLOCATIONS

Organization and related function	Summary of position allocations	
	Permant	OIFTP
Headquarters Office, Denver, Colo.:		
Office of the Administrator	9	0
Division of Engineering, Construction and Planning	63	4
Immediate office	3	1
Electrical design branch	26	2
Civil design branch	13	0
Systems engineering and planning branch	15	1
Construction and inspection branch	3	0
Land branch	3	0
Division of Power Management and Operations and Maintenance	17	1
Immediate office	4	0
Marketing and rates branch	7	0
Operations and maintenance branch	4	1
Power resources branch	2	0
Division of Management Services	44	2
Immediate office	6	0
Organization and personnel management branch	10	0
Budget and finance branch	16	0
Date processing branch	2	0
Supply and service branch	10	2
Subtotal	133	7
WAPA Area Offices:		
Sacramento Area Office (MP Region) Office of the Area Manager	33	0
Boulder City Area Office (LC Region) Office of Area Manager	208	17
Salt Lake City Area Office (SW and VC Region) Office of the Area Manager	118	1
Billings Area Office (UM Region) Office of the Area Manager	346	17
Denver Area Office (LM Region) Office of the Area Manager	153	6
Subtotal	858	41
Total	991	48
Total	1,039	

Senator HASKELL. Mr. Munro, I kept looking at you and I kept saying I have known that gentlemen, I have seen that gentleman before, but it was not until you sat down that I recognized you.

STATEMENT OF STERLING S. MUNRO, ADMINISTRATOR, BONNEVILLE POWER ADMINISTRATION, PORTLAND, OREG.

Mr. MUNRO. Thank you, Mr. Chairman. It is a special pleasure for me to be here for my first appearance before this committee since I became Bonneville Power Administration's eighth Administrator in January of this year.

Of course, it is nice to be back in this room, although I find the circumstances are very different on this side of the table. As this committee well knows, the Bonneville Power Administration is the electric power marketing agency for the Federal Columbia River Power System which consists of the generating facilities of the U.S. Corps of Engineers and the Bureau of Reclamation, some 30 hydroelectric projects.

We also have a transmission system of more than 12,600 circuit miles of high-voltage transmission lines and 339 substations.

The Bonneville Power Administration markets about one-half of the electric power generated in the Northwest and provides about four-fifths of the region's high-voltage transmission capacity. Also, Bonneville Power Administration markets and exchanges electric power interregionally over the Pacific Northwest-Pacific Southwest Intertie, and in Canada over interconnections with utilities in British Columbia.

With the approval of the Federal Columbia River Transmission System Act of 1974, the power marketing and transmission portion of the Federal power program in the Northwest was put on a self-financing basis. The act authorizes BPA to use its revenues to finance operating costs and as much of the capital construction program as possible, and to sell revenue bonds to the U.S. Treasury to finance any remaining capital program requirements.

The basic thrust of the Federal Columbia River Transmission System Act has been to recognize the need for continued autonomy in BPA's management of its organization so that it can respond to the expression of the public interest and to enhance BPA's multiyear planning flexibility to enable it to make the necessary year-to-year program adjustments required to carry out its responsibility in helping to provide the region's electric power supply.

The act continues the requirements for budget review and approval by the Department, Office of Management and Budget, and Congress; but, pursuant to the FCRTSA, the legislative and executive branches agreed that BPA's planning and employment allowances would be separate and distinct from those of the Department and, so far as fiscally possible, they intended to enable BPA to meet its power-marketing agreements and energization schedules for new system facilities.

The fiscal year 1979 program requires total budget obligations of $447.8 million. Program outlays will be $439.8 million; with receipts of $400 million, net outlays of $39.8 million will result.

In addition to outlays for its transmission and power marketing program, BPA will make a capital transfer out of the BPA fund of

$135.5 million to repay other Federal entities' costs of the Federal electric power program in the PNW.

Fiscal year 1977 revenues were $223 million, which were down 25 percent from 1976's total of $297 million, and the reason, of course, was the drought which all of us in the West have been familiar with. It was a drought that broke a 52 year record on the Columbia River system. Our next year picture is going to be a lot better. The drought has been broken. In fact, the drought has been broken to the extent that we have now, for the first time since 1956, started deliveries of surplus electric power outside of the region to the Southwest. We started 2 weeks ago and we are delivering an average power rate of over 1 million kilowatts. That is the equivalent of about 600,000 barrels of oil in 2 weeks that has been saved in the Southwest.

Our revenues, for the coming year are estimated to be about $301 million, assuming average stream flows. Recognizing the average levels were low at the start of this fiscal year, our 1979 revenues are estimated to be at $342 million. Of course, the additional revenues with average stream flow will more than offset the slight interruption we had in our revenue picture of last year.

I might mention the rate increase that Bonneville will need, effective December 20, 1979. That is the earliest date under our contracts at which we can increase our rates. The increase in rates will have to increase our revenues at that time by about 80 to 90 percent. We will need an additional increase to produce 20 percent more revenue in 1981. With that anticipated, we have asked for the concurrence of our customers for a change in contract provisions, so instead of having 5 year rate adjustments, Mr. Chairman, which means prospects of high rate increases under current inflationary conditions we want to be able to change rates if necessary on an annual basis.

Senator HASKELL. Just for my education, you go about the ratemaking process based upon hearings, how do you go about it, what criteria do you apply?

Mr. MUNRO. We have just had approval by the Department and announced in the Federal Register this year, Mr. Chairman, the full public involvement program involving several processes, including our rates. We give notice, as we have already of the expected need for a revenue increase. We ask people to advise us concerning this suggestion for new rates. We also consult with our customers in this regard. But we also have a public input program for that purpose.

I must say it did touch me a bit to see we actually had ads in the newspapers inviting people to come and tell us what they would think of an 80- to 90-percent increase in revenues. I don't know how we can anticipate other than what I expect we will be getting in that regard from people. But I think it is important the public have an opportunity to comment. After hearing initial comments, we will indicate what rates we propose, and provide an opportunity for further comment before a final decision is made and before the review process then occurs in the Department.

Senator HASKELL. Then the criteria applied, Mr. Munro, do you try and allow a return such as to retire your debt and pay for your plant? Do you use normal utility ratemaking process?

Mr. MUNRO. We are required by statute, Mr. Chairman, to return all of our costs, including our obligations under the law to pay all the

Federal investment that has been made in the power system, so our rates are cost-based rates. We are not assessing rates for any other purpose than as a private utility would be expected to do.

Maybe I should make one comment with regard to our conservation program, Mr. Chairman. In 1973, we had a drought in the Northwest. It gave the Bonneville Power Administration and the rest of the Northwest some experience in the need for conservation policies which we applied to our own system to the extent Bonneville Power Administration itself in our operations was able to achieve a 24-percent reduction in energy use.

We are applying what we learned in 1973 to the region in attempting to educate the region on how to achieve conservation. We are also developing programs which we hope will result in an opportunity to invest in conservation not just exhort people about conservation but provide some opportunity for real energy saving which we think will be an energy resource, just as the additional generation capacity that may be required in the region is an energy resource. We think we can achieve substantial savings in kilowatts that will amount to an energy resource itself.

We attach great importance to it. We do not think it is a slogan or a fad. We think energy conservation is something of real substance we want to apply.

One final thing I think we should mention, Mr. Chairman is our transmission program. We are adding less mileage to our system. We are constructing less new mileage in our system because of delays in thermal plant construction, and planning less new mileage due to the lessening of usage of energy, decreases in energy demand through conservation and consumer response. Also, we have had problems in securing rights of way, but we have overcome some of those problems.

We have made an agreement, for example, just about to be finalized with the Warm Springs Indian Tribe for right-of-way across their lands to continue construction of Ashe-Willamette Valley facilities. The agreement conforms with a land use policy they are applying to the reservation and provides a corridor system for our energy transportation requirements across their reservation.

We hope to persuade other Indian tribes to work with us in applying that kind of a policy that we think is in their interest as well as in our interest.

Perhaps that is a sufficient summary without going on too long here.

Senator HASKELL. Thank you very much, Mr. Munro. I would like to defer to Senator Hansen if he has any questions.

Senator HANSEN. Mr. Munro, Wyoming and Montana are not major service areas insofar as being areas concerned, because only those portions of the two States that drain into the Columbia, as I understand, are part of it.

Mr. MUNRO. We have Montana west of the Continental Divide and a small area in Wyoming.

Senator HANSEN. A very important area.

Mr. MUNRO. Any part of Wyoming I realize is a very beautiful and important area. That is a beautiful part of Wyoming; I am proud of having it in our service area.

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Senator Hansen. Thank you for your very generous comments, Mr. Munro. Both of the States, Montana and Wyoming, do have a significant potential for power generation control, as you know. People in those States, and I know Mr. McPhail will understand our concern about the real need and demand for power in the Pacific Northwest.

I would like to have your assurances that full communication will take place between Bonneville Power Administration and State officials, local officials, in Wyoming, and I might be able to express a concern shared by my good friend, Senator Melcher from Montana, in that our people could be kept informed and apprised of what your goals are and your objectives are.

I think major new powerplants, their siting, mining of coal, and their impacts on communities where these important activities are taking place, can indeed be mitigated and minimized somewhat by advance knowledge of what you are planning. There was an expression of concern in Billings, not too long ago, by Wyoming officials and other individuals, they felt at that time they really had not been kept as well advised of plans as they would hope could be the case.

Would you be able to assure me it would be your intention to see that every opportunity to give advance information to officials and individuals will be made?

Mr. Munro. Delighted to give that assurance, Senator Hansen.

Senator Hansen. Thank you. I don't mean in any way to criticize, but to express a concern I am sure you can understand. We think we can do a better job of working with you in supporting those efforts that are clearly in the public interest and do it in a way so as not to unduly burden communities and individuals with the problems that can result by failure of understanding of what is taking place.

Mr. Munro. The Bonneville Power Administration has had for a year and a half an overall program environmental impact statement, underway which we hope to complete this fall or next year. In that connection, public hearings were held throughout the region and throughout our service area.

There was a concern expressed, a very valid concern in eastern Montana that public sessions were not held in eastern Montana, and I know Senator Melcher is concerned about that because it had been viewed not within the service area of the Bonneville Power Administration. Apparently, we had not recognized that eastern Montana has a very important concern because of the location of the Colstrip plants there, which would be serving utilities in our service area. Therefore, we did schedule early this year at the request of the people of Montana, hearings in eastern Montana.

Senator Hansen. I think that summarizes precisely one of the major concerns in Wyoming. While the service area will be in those portions of my State where it may reasonably be anticipated little coal, if any, will be mined. The enormous deposits in the Powder River Basin will most likely be called upon to supply that power and that coal and possibly as well powerplants, and if that hearing process and informational activity could encompass the eastern part of the State as well, that would be very helpful.

Mr. Munro. I think this experience has further sensitized us to this need.

Senator Hansen. I have no further questions.

Senator HASKELL. Senator Melcher.

Senator MELCHER. Mr. Munro, you have stated it takes about 10 years from the time you start planning to bring a steam generating plant on line and I don't think that is an exaggeration.

Mr. MUNRO. I just hope it doesn't get longer.

Senator MELCHER. They are now finding themselves embroiled in two lawsuits, one in the State court in Montana, one in Federal court. The crunch seems to be air pollution control and the ability to meet the standards which in the case of Colstrip three and four means preserving air quality in the Cheyenne Reservation, about 13 or 14 miles from Colstrip. It is no small task for conventional steam generating plants to meet air pollution standards, and there is no reason to think those standards are going to be relaxed. If anything, they are going to become even tougher.

So that puts a whole question of the purpose of generating electricity in limbo. We don't know where we are at. Yet at the same time we have MHD research, now seeming to take hold. I don't know if you are aware of it or not, when the component development integration facility started at Butte, the construction was started, Dr. Plunkert estimated the changes of MHD technology being successful was about 50–50. A good risk but about 50–50.

Now, last month, with AVCO running a generator of their own design for 450 hours, a scheduled run, successfully, in shutting it down as scheduled—I don't know how long it could have run, they don't know either, but it ran for 450 hours which is a substantial amount of hours. Dr. Plunkert has said he believes the technology for MHD, chances are 95 percent now. They have moved up into that.

Since there is no air pollution problems with this technology and since the component development integration facility at Butte will start testing these various components of MHD next year and then 1980 or 1981 it was presumed, and I think safely assumed, it will be a successful technique and that testing facility will be generating 50 megawatts, we are reaching very shortly what we call the small pipe size in that testing facility.

If we accelerate that program this year by $78 million, adding that to the $72 million requested by the President, it looks like you could have a breakthrough or shortening of the timespan for this process in about 2 years, which is a relatively small investment if that is a possibility. If that were done, it looks like the engineering test faciltiy, the next phase after that, would be at least construction started in late 1981 or early 1982. If that is successful, that is 150 to 200 megawatts.

Doesn't it appear to you we should be starting to plan with MHD?

Mr. MUNRO. Senator, I am delighted to hear of progress in the technology of magnetohydrodynamics. We have not been in the generation business but we obviously have an abiding interest in the success of it. Our engineering department does devote some considerable attention to it, to what is going on in that area.

I think we ought to ask them to look even more carefully at your comments and what the possibilities are there. Anything we can do to bring on line that kind of clean technology in electric power generation, and also hopefully with the promise it would be able to be

accomplished in a more reasonable time frame than we are experiencing now in other energy resources, is something we ought to be aiding, pushing, doing anything we can to accomplish.

I don't know who has the foresight to look ahead 10 or 12 years as we are now expected to do really, from the standpoint of energy requirements and how we are going to meet them. Anything that is going to reduce that, reduce it in a way that it looks more reliable or acceptable to people, I am for it 100 percent.

Senator MELCHER. I think our only problem is the public recognition here is a technology that is very likely to succeed, and the public understanding has been sort of held back.

We have never had—whatever national prominence has come from Congress. It has never come from ERDA and so far the Department of Energy has had its feet on the ground to take a strong position. It seems to me for a relatively small amount of money spent by the Federal Government we are finally reaching something that looks like it will not only be very practical in terms of generating electricity but avoiding air pollution requirements or meeting air pollution standards, and therefore, the processing of permitting would be cut down to a very minimum.

Colstrip 1, 2, 3, and 4 have been on the drawing board for all of 10 years and are nowhere near completion. It seems like a 10-year time frame we may be talking before that 10 years are up we are not going to use the old convention method for generating electricity from coal but during the latter part of that next 10 years we will be looking at the blueprints for MHD.

Plans which will be perhaps much less expensive for consumers in that the technology promises to provide 40 to 50 percent more electricity.

Mr. McISAAC. If I might add, Senator Melcher, one of the great assets of the Department of Energy with regard to keeping abreast of technological developments, particularly with transmission technology, is the capabilities represented by the Bonneville Power Administration.

I know, Sterling has developed a very active program to make sure that the Bonneville Power Administration, with the enormous reserve of talent we have out there, always stays on the leading edge of this technology. He can make sure it is supplied not only to Bonneville but to all of the power administrations and called to the attention of those in the Department of Energy who should be focusing on these things in order to apply it to the country as a whole.

Senator MELCHER. I think Bonneville could play a very important role right now as an advocate to accelerate that program to this extent, a rather modest portion of our research funds go into MHD. It is a modest amount really to ask for acceleration during the next fiscal year to the amount of $78 million to see whether we can truly reduce the time frame for successful technology with MHD in 2 to 3 years.

Senator HASKELL. Mr. McIsaac, in your testimony you refer to a bill you are going to send up. It is on page 2. It would be modeled on the Federal Columbia River Transmission System Act, is that right?

Mr. McISAAC. Yes; that will serve as the basic model.

Senator Haskell. When will this see the light of day in this committee?

Mr. McIsaac. I understand it will be forwarded to the Office of Management and Budget for review. There is sufficient support there so it should be coming up in about 2 months. That is their timetable, Senator Haskell.

Senator Haskell. Was that bill along the lines sent to OMB that parallel this act referred to?

Mr. McIsaac. I am not sure it parallels the act in every single detail. There will be some questions ironed out.

Senator Haskell. What would be the main effort?

Mr. McIsaac. I think mostly it has to do with some of the authorities contained in the act of a regional nature. Could I ask Mr. Clagett to testify?

Senator Haskell. That would be fine.

Mr. McIsaac. I might say, Senator Haskell, Bill Clagett, whom I am introducing, has been Assistant Administrator of the Bonneville Power Administration office here in Washington. He is in the process of becoming Deputy Director of our Western Area Power Administration and will be moving to Denver.

Mr. Munro. I am losing and they are gaining in that respect.

Mr. Clagett. Thank you, Mr. Chairman. I believe the most significant difference is we are addressing four power marketing areas instead of one, Bonneville. The four we are addressing generally do not have prescribed service areas such as Bonneville does. So when we talk about major transmission facilities, we have to address them slightly different than you see them addressed in Bonneville's legislation.

Senator Haskell. Is the same autonomy granted to the agencies that Bonneville has——

Mr. Clagett. The same general procedure has been adopted.

Senator Haskell. Let me ask you this Mr. Secretary. Mr. McPhail will submit a table of organization which he will consider appropriate for WAPA and which in effect would make one self-sustaining, you would not be contracting out administrative services to the Bureau of Reclamation. That is my understanding. Is this table of organization something that has been approved by, Mr. Secretary?

Mr. McIsaac. Yes; It has been approved by me. It has been approved by the Secretary of Energy as well. There are two or three minor items which are still open to question. There is a question on the nature and extent of the ERA responsibility for safe review for the Western Area Power Administration, but that is not slowing down the process of establishing the organization.

Senator Haskell. One of the things I believe that is a matter of concern to a great many people and that is the relationship between the Economic Regulatory Commission and the various power marketing administrations.

Can you, Mr. Secretary, give me a viewpoint as to what the option on relationships, if any, would be?

Mr. McIsaac. You are referring to the Energy Regulatory Administration, the ERA?

Senator Haskell. All right.

Mr. McIsaac. My view on that is the ERA should make whatever input they have to ratemaking procedures. When rates are determined, that will be according to the laws that are established. It will be up to Dan Ogden, to Bob McPhail, and to Sterling to study what actions we want to take to conform to the law which has guided the procedure being followed today. We are now examining the procedure on how the final rates will be adjudicated after they have been announced.

The process Mr. Munro is describing raises the question of where in the Department final approval authority will rest. There are two alternatives. One is to have that vested in ERA and the other is to have it vested in FERC.

We are examining all of the pro's and con's of that particular issue at this time. At the moment—I might add—there is a divergence of opinion among our customers as to what is the most efficacious approach. My concern is to construct a method that can in no way be considered to be divergent either with the law or the principle that in appearance or in fact we cannot be arbitrary or capricious about our rate increases. They will continue to be cost-based.

Senator Haskell. I am informed by counsel under the Department of Energy Act which organized the Department FERC must be the entity that does this. Do you happen to have any advice of counsel from your viewpoint? I am informed that——

Mr. McIsaac. I am seeking advice from counsel at the moment as we examine the alternate methods of determining rate procedure. Our counsel, I believe, would indicate it could go either way according to the act. The authority in the act is not that specific.

Senator Haskell. This is something maybe you can keep the committee advised on as you proceed.

Mr. McIsaac. I might add I believe that Bonneville is not at issue here.

Senator Haskell. Who has the final say in your case?

Mr. Munro. Historically, Mr. Chairman, the rates of the Bonneville Power Administration were reviewed by the Federal Power Commission. Since they moved to the new Department of Energy, however, I believe because of secretarial directive ERA was designated to review rates. I believe that is a matter now under consideration in the Department.

Senator Haskell. We will all have to look at the statute. I am informed it is reasonably clear—but that is something we will have to work on. The criteria for rates. However, I take it there is no dispute on the criteria is based upon cost-based rates, am I correct there?

Mr. McIsaac. That is correct, sir.

Senator Haskell. Would there be any other yardsticks or criteria you would apply in your current thinking?

Mr. McIsaac. I can't think of any, Senator Haskell. The authorizing legislation on some projects mandates payback over a 50-year period and a rate of interest which has been set at 3 percent of the original investment. This is in addition to the operating cost which, of course, is directly measurable. This is the criteria which we intend to use and under which we would operate.

Senator Haskell. Is there any flexibility in making rates? I guess, Mr. Munro, you refer to some conservation thrust in Bonneville, is that helped along by any particular rate structure changes?

Mr. MUNRO. No. Not at this time, Mr. Chairman. I expect in our public involvement process when we ask people to comment to us, then we will receive some comments, and I am anticipating now because I have already seen some in this direction, that ratemaking ought to consider conservation as a desired goal.

We will then have to consider the arguments made to us in that regard. We, of course, are charging rates on a wholesale level. It is our preference customers, utilities, who are charging rates at the retail level, which I assume would be the point of most efficacious application of conservation principles.

The question of whether at the wholesale level we could appropriately or adequately influence those decisions at the retail level is one that I think is up in the air.

Senator HASKELL. Gentlemen, I don't believe I have any further questions. We may want to as we move along in this procedure have a hearing just to find out what is going on, but I appreciate all of you being here. Thank you very much, indeed.

[The prepared statement of Mr. Munro follows:]

STATEMENT OF STERLING MUNRO, ADMINISTRATOR, BONNEVILLE POWER ADMINISTRATION, PORTLAND, OREG.

INTRODUCTION

Mr. Chairman and Members of the Committee, I am pleased to make my first appearance before this Committee since assuming my duties as Bonneville Power Administration's (BPA) eighth Administrator on January 1, 1978. BPA's basic program authorization is provided by our organic legislation, so our program does not require annual authorizing legislation from Congress. However, we welcome this opportunity to help the Committee carry out its legislative oversight responsibilities by describing the electric power situation in the Pacific Northwest, and BPA's program to help provide the region's electric energy supply.

BACKGROUND

BPA was created by the Bonneville Project Act of 1937 to market electric power from the U.S. Army Corps of Engineers' Bonneville Dam on the Columbia River, and was reassigned to the new Department of Energy by the Department of Energy Act of 1977. BPA is the electric power marketing agency for the Federal Columbia River Power System (FCRPS), which consists of the hydroelectric generating facilities in the Pacific Northwest of the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation (30 projects at present) plus BPA's transmission system of more than 12,600 circuit miles of high-voltage transmission lines and 339 substations. BPA markets about one-half of the electric power generated in the Northwest and provides about four-fifths of the region's high-voltage transmission capacity. Also, BPA markets and exchanges electric power interregionally over the Pacific Northwest-Pacific Southwest Intertie, and in Canada over interconnections with utilities in British Columbia.

The Federal Columbia River Power System has always been, and will continue to be, self liquidating. By law, BPA sets its wholesale power and transmission rates to recover all of the costs of the Federal electric power program in the region. With the approval of the Federal Columbia River Transmission System Act (FCRTSA) in 1974, the power marketing and transmission portion of the Federal power program in the Northwest was put on a "self-financing" basis. The act authorizes BPA to use its revenues to finance operating costs, and as much of the capital construction program as possible, and to sell revenue bonds to the U.S. Treasury to finance any remaining capital program requirements.

The Federal Columbia River Transmission System Act recognizes BPA's basic power-marketing mission to integrate and transmit the electric power from Federal and non-Federal generating units, serve BPA customers, provide interregional transmission facilities, and maintain the electric stability and reliability of the Federal system in concert with the region's electric utilities as part of a

coordinated approach to the planning, construction, and operation of the region's electric power supply system as if it were the responsibility of a single entry.

The basic thrust of the FCRTSA has been to recognize the need for continued autonomy in BPA's management of its organization to be able to respond to the expression of the public interest and to enhance BPA's multiyear planning flexibility to enable it to make the necessary year-to-year program adjustments necessary to carry out its responsibility to help provide the region's electric power supply. The region supported the legislation and has assumed the higher costs of self financing of the Federal transmission system in exchange for assurance that BPA has the capability and flexibility, compared to appropriation financing, to provide the backbone transmission facilities required for regional power planning on a timely and reliable basis in accordance with energization schedules for new generating resources. In passing the legislation, Congress expressly acknowledged the adverse impact of the uncertainty of the annual appropriations process on BPA's long-range utility planning requirements, and the businesslike nature of BPA's regional utility mission, by requiring BPA to submit budgets as if it were a wholly-owned Government corporation under the terms of the Government Corporation Control Act. The act continues the requirements for budget review and approval by the Department, Office of Management and Budget, and Congress; but, pursuant to the FCRTSA, the legislative and executive branches agreed that BPA's planning and employment allowances would be separate and distinct and, so far as fiscally possible, intended to enable BPA to meet its power-marketing agreements and energization schedules for new system facilities.

Since enactment of the FCRTSA in 1974, BPA has received no appropriations and has financed its program through the BPA Fund established by the act. BPA's fiscal year 1979 budget, which requires no appropriations, has been formulated to enable BPA to continue its mission within the provisions of the FCRTSA.

POWER OPERATIONS

A drought of unprecedented magnitude persisted throughout the Pacific Northwest and most of the western United States during fiscal year 1977. As a direct result of the drought, a 52-year record for low water runoff was broken, and Federal hydroelectric generation of about 63 billion kilowatt-hours for fiscal year 1977—equivalent to the thermal electric generating capability of about 105 million barrels of oil—was 30 percent less than the previous year. BPA made no sales of surplus energy to the Southwest during calendar 1977.

If streamflows had been average during fiscal year 1977, we could have expected revenues of $320 million from FCRPS operations. Instead, the drought held revenues to $223 million, 25 percent less than fiscal year 1976 revenues of $297 million. The FCRPS experienced a loss of about $56 million on the cost-accounting basis in fiscal year 1977 because of the drought and higher costs.

LONG-RANGE POWER OUTLOOK

The region's electric power supply is ample, at least for the remainder of this operating year (the operating year covers the period July through June). It's difficult to be optimistic about the next decade or so, however. The region faces large firm energy deficits each year of the 10-year planning period ending 1987–1988 under critical streamflow assumptions. And, these assumptions must be used to plan new resources to insure meeting firm energy requirements. With a recurrence of sustained drought conditions, the region's biggest energy deficit of the next decade, about 2,375 average megawatts, would occur during the 1983–84 operating year. Since it takes more than 10 years to develop new thermal electric generating projects, we must depend upon energy conservation, continued availability of existing thermal resources, timely completion of those underway, and average or better hydro conditions to avoid energy deficits.

The region also may face peaking power problems as well as energy shortages. In the future, forecasted levels of peaking capability will be reduced to recognize that peaking capability is a function of the duration of the peak demand period and not equal to the instantaneous maximum system generating machine capacity using all available water for that level of operation. Future utility planning will assume daily peaking periods as long as 10 hours, possibly longer with sustained cold weather.

The Pacific Northwest Utilities Conference Committee's (PNUCC) estimate of load growth in the region over the next 20 years forecast an annual growth rate of 4.4 percent; their forecast was 4.7 percent in the prior year's 20 year

forecast. The PNUCC's recently completed forecast covering the period 1978 through 1989 anticipates an average annual load growth rate of 4.2 percent. Others in the region forecast different growth rates. For instance, the Oregon Department of Energy forecasts the State's energy demand to grow at an average annual rate of 2.8 perecnt during the 20-year period 1977–1997. A study by the Northwest Energy Policy Project of the Pacific Northwest Regional Commission (composed of the Governors of Washington, Oregon, and Idaho, and a Federal representative serving as co-chairman and appointed by the President) forecast average annual load growth rates ranging between 1.4 percent and 4.4 percent for the combined States of Washington, Oregon, and Idaho during the period 1974–2000. Although the PNUCC forecasts a higher load-growth rate, it has been relatively accurate except for isolated periods when abnormal factors influence energy demand. We desperately need a consensus in the region as to what specific growth rate the utilities must plan to meet, or continued controversy will only widen the gulf of possible deficits in the future.

UNCERTAINTY IN REGIONAL POWER SUPPLY PLANNING

A high mark in the history of cooperation among elements of the electric utility industry in the Pacific Northwest occurred 10 years ago, when the Federal Government and the region's investor-owned and publicly owned utilities obtained executive and legislative approval to implement the Hydro-Thermal Power Program to guide transition of the region's power system from a hydro base, as the region's hydro energy development neared completion, to a system of hydro resources for peaking and thermal resources for baseload. Essentially, the program provided that non-Federal utilities would develop thermal resources on the basis of regional rather than individual utility needs, and the Federal Government would provide integrating transmission facilities, coordinated operation of hydrogenerating facilities, and other services. Practically since its inception, the Hydro-Thermal Power Program has experienced extended delays in permit and licensing procedures for development of thermal resources, continued cost escalation and capital scarcity, labor disputes, retrofitting, and other technical problems. All have combined to increase costs and delay or prevent development of new generating resources.

The inability of BPA and other power entities in the region to carry out portions of their responsibilities under the Hydro-Thermal Power Program in a timely manner has heightened the uncertainty of the region's future electricity supply. Consequently, BPA has notified its preference customers (public bodies and cooperatives) that after July 1, 1983, BPA will no longer supply their requirements, but will limit its obligation to a specific allocation pursuant to current power sales contract provisions. Preference customers will be responsible for meeting their energy load growth in excess of the BPA allocation. BPA has indicated that, under present circumstances, it will not be able to renew power sales contracts with direct-service industrial customers as they expire beginning in 1981. As these contracts expire, preference customers are expected to claim the available power.

BPA power sales contracts with preference customers terminate between 1983 and 1994, and contracts with industrial customers terminate between 1981 and 1991. BPA is about to start formulation of a policy for allocating the energy that will become available when these contracts terminate.

Several groups in the region have taken measures intended to provide them with preference customer status and enable them to share in power from BPA. The State of Oregon, where most electric power customers are served by investor-owned utilities, has enacted legislation with the objective of qualifying it as a BPA preference customers by creating a State Domestic and Rural Power Authority. Other states in the Northwest have indicated they too may take similar action.

The City of Portland, Oregon, has brought suit against BPA challenging our application of the preference clause in allocating Federal power and our execution of contractual agreements on environmental grounds. Some BPA preference customers have sought to intervene on BPA's behalf in these Portland suits because the litigation could affect their power supply. These efforts to share in Federal power, unfortunately, will not enlarge the pool of power available from BPA; they can, if successful, only affect its allocation.

As the Committee knows, legislative proposals have been made which would affect both BPA's power supply and our role in meeting the region's power

requirements. These legislative proposals include "The Pacific Northwest Electric Power Supply and Conservation Act" developed and sponsored by the PNUCC, and a proposal by Congressman Weaver from Oregon to create a Columbia Basin Energy Commission. Congressional hearings were held on both proposals in the region during December of 1977. Basic to both of these proposals is the objective of providing a regional power supply and conservation plan that equitably represents the concerns of power users, utilities, industry, and the public, and is accepted by them.

1979 RATE FILING

BPA has announced that it is developing new wholesale power rate schedules to take effect December 20, 1979.[1] Our rate adjustment is planned for that date because that is the earliest a rate adjustment can be made in accordance with most power sales contracts which provide for adjustments only at 5-year intervals.

BPA has had only two rate increases in its history. The first, averaging 3 percent on December 20, 1965; the last increase, averaging 27 percent, became effective December 20, 1974.

Preparations for the 1979 rate filing involve a review of rate levels and structures (e.g., time-of-day pricing and marginal-cost pricing), analyses of power costs, cost-of-service studies, and evaluation of repayment requirements. Also, we expect to prepare an environmental assessment and to develop and conduct a public involvement program to insure public participation in the ratemaking process.

The 1979 rate increase will have to be sufficient to produce an increase in total revenues of from 80 to 90 percent, with an additional 20 percent increase in 1981. The size of the increase is greater than previously estimated, reflecting the rising costs of new thermal resources from which BPA will acquire power, as well as increases in BPA's direct costs. These estimated revenue increases also assumed that BPA would be able to obtain amendment of power sales contracts to permit rate adjustments at more frequent intervals than the 5-year period provided by contracts. Nearly all contracts have been amended to enable BPA to propose rate adjustments on an annual basis effective July 1, 1981.

BPA's commitment to acquire thermal power from non-Federal nuclear-fired generating plants on a net-billing basis is the overriding factor determining the magnitude of the revenue requirements of the 1979 rate increase. The costs of nuclear plants planned and under construction in the region have escalated rapidly as a result of extended permit and licensing delays, environmental opposition, Nuclear Regulatory Commission and architect-engineer design changes and retrofitting, inflation, and interest during construction. For instance, recent estimates of the annual costs of the Washington Public Power Supply System's (WPPSS) nuclear projects, WNP1, WNP2, and WNP3, have about doubled since 1974 estimates were made.

Both BPA and WPPSS are concerned about these dramatic increases and have taken steps to attempt to better control costs and help insure that projects stay on schedule. BPA has reorganized its staff to more effectively carry out its oversight responsibilities concerning the WPPSS projects. WPPSS has staffed up to better manage its contractors, focusing special attention on improved methods of processing change orders and streamlining day-to-day work in order to obtain greater efficiency in contract management.

ENERGY CONSERVATION

Conservation of energy is an important element of energy resources development. In the short-run, many forms of energy conservation offer the least-cost, cleanest, and most readily developed alternative for supplying energy demand. In the long-run, conservation, along with the development of needed new resources, will close the impending gap between energy supply and demand and assist in minimizing the need for rate increases.

BPA has had an active energy conservation program since 1973 when a drought precipitated an electric energy supply crisis in the Northwest. We have endeavored to set an example in our own operations, and to provide leadership and assistance to utilities and power consumers of the region to bring about

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[1] BPA has transmission (wheeling) rate schedules, within interim approval until June 30, 1978, before DOE for final approval.

voluntary reductions in energy demand. Through our energy conservation efforts, we have reduced energy use in our buildings and vehicle fleet by more than 24 percent since inaugurating our energy conservation program.

In conjunction with local utilities, BPA completed an aerial infrared photographic pilot project in several communities of the region during fiscal year 1977 to determine the feasibility of this technique for analyzing heat losses from buildings. During fiscal year 1978, we are conducting a more extensive aerial infrared flyover project for utilities in the region that request it, with participating utilities paying part of the costs of the project.

Recently, BPA submitted to the Department of Energy for publication in the Federal Register a "Notice of Intent to Develop a Conservation Policy." We plan to complete a new conservation policy by the end of 1978 using our new public involvement process for formulating power marketing policies. We believe that it will take about 9 months to complete development of an overall conservation policy. If this formal process commences immediately, the process could be completed, including the conduct of public information and comment forums and evaluation of public comments, by November 1978, at the earliest. In order to provide our customers and the region's energy planners, producers, and consumers needed conservation guidance and support, BPA's conservation policy should be developed as soon as possible. We will develop our new energy conservation program based on this overall policy. Development of significant elements of the program will include separate public involvement processes and environmental statements, as appropriate.

TECHNICAL INVESTIGATION AND DEVELOPMENT

Our long-standing program of technical investigation and development complements our energy conservation efforts toward a comprehensive commitment to energy management.

Throughout our history, technological investigation and development directly related to the functions of designing, building, and operating a bulk power transmission system have been essential to our mission. This has included use of BPA facilities to advance the state-of-the-art in extra-high-voltage electric power transmission, coordination with the utility industry's research and development programs, and participation in national research and development efforts related to alternative energy resources, such as solar conversion and wind energy.

In the past, BPA's technological investigations and development have resulted in reduced insulation levels in power transformers, uprating of power circuit breakers, and development of one of the largest 500-kV transmission networks in the world. Today, we have in test operation prototype 1,200-kV electrical and mechanical test facilities at two locations in Oregon. This is a key element of our technological investigation and development of ultra-high-voltage transmission which may be needed by the late 1980's to provide high-capacity circuits to transmit increased amounts of power with very little increase in transmission right-of-way.

BPA coordinates its technological investigation and development efforts with the research and development programs of the Federal Government and the electric utility industry. Related to the Department of Energy's (DOE) national effort to develop alternative energy resources, BPA is conducting investigations into the potential for harnessing wind energy in the Pacific Northwest. In addition to our own efforts and coordination with DOE's research and development program, BPA is actively involved in the development and review of related research and development by the utility industry's Electric Power Research Institute (EPRI) through membership on committees and task forces.

We recognize EPRI's key and independent role in coordinating on a voluntary basis the industry's research and development effort in the best interests of the Nation's electric energy requirements. Therefore, we plan to contribute $500,000 for participation in EPRI's program during fiscal year 1978 and up to $9.3 million to participate fully in EPRI's program in fiscal year 1979 based upon the application of an industry-accepted assessment formula.

HIGHLIGHTS OF FISCAL YEAR 1979 BUDGET PROGRAM

BPA's budget program for fiscal year 1979 has been formulated in accordance with requirements of the Federal Columbia River Transmission System Act and the Government Corporation Control Act. It will be financed through the BPA

Fund by operating revenues and the use of borrowing authority, thus, requiring no appropriations.

As of the end of fiscal year 1977, we had exercised about $80 million of our "self-financing" Treasury borrowing authority of $1.25 billion. The addition of planned borrowings of $186.5 million this fiscal year and $175.0 million in fiscal year 1979 will bring our cumulative borrowing to $441.5 million, or about one-third of the authorized limit of outstanding BPA debt.

Our budget for fiscal year 1979 will require total budget obligations of $447.8 million. Outlay requirements are estimated at $439.8 million. With estimated revenues and other receipts of $400 million to offset against total outlays, net outlay requirements are estimated at $39.8 million.

CONCLUSION—CHALLENGE AND OPPORTUNITY

As I stated previously, BPA has been on a "self-financing" basis since the Federal Columbia River Transmission System Act was approved in 1974, and I wish to reiterate that the FCRTSA is accomplishing its fundamental purpose. The legislation has insured our ability—so far as finances are concerned—to meet our power marketing obligations and energization schedules efficiently.

Fiscal uncertainty associated with appropriations financing is no longer a major area of concern. Today, we confront a complex web of interdependent program issues presenting both challenges and opportunities. Our present-day concerns are not primarily financial, although their resolution will have extensive fiscal impacts. Our concerns now center on the future availability and cost of electric energy in the Pacific Northwest, and what we can do to help insure a reliable supply of electric energy at the most economical cost compatible with our environmental protection responsibility and energy conservation ethic.

After 40 years of service to the people of the Pacific Northwest, PBA and its stewardship of the Federal power program in the region are at a crossroads. The original goals established by our organic legislation—the Bonneville Project Act—to construct, operate, and maintain an electric power transmission system and market power so as to encourage the widest possible use of electric energy, to provide reasonable outlets therefor, to prevent monopolization by limited groups, and to give preference to public bodies and cooperatives—have been largely achieved. The past attainments of our program were based upon abundant hydroelectric resource potential, continuous growth rate in energy use, and the decreasing average cost technology of electric power generation and transmission.

Our future program strategies must recognize that the situation is much different and that we are constrained by scarce resources and our ability to develop and use them. The inclusion of the full social costs of energy production, transmission, and use (i.e., pollution control, land use, opportunity costs, etc.) in the price of electric energy and inflation have increased dramatically the average unit cost of electricity. Historic growth rates of energy demand which have doubled utility loads every 10 years are dropping. The twin forces of economic reality and environmental necessity are prompting an increasing awareness and sustained response to the growing need to conserve energy.

Thus, BPA must reexamine its guiding principles and develop strategies that respond positively to regional power needs and address the central issues of who gets the available Federal hydropower, in what amounts, and at what prices. While we face perhaps unprecedented challenges, I believe that the increased public awareness and involvement in energy issues that is developing in the region can be a positive force and a notable opportunity to develop a regional power plan with BPA continuing to play a leadership role.

Thank you for your attention. My staff and I will be pleased to answer your questions.

Senator Haskell. Mr. Radin if you would submit your statement for the record, it will be reproduced in full and perhaps just talk.

STATEMENT OF ALEX RADIN, EXECUTIVE DIRECTOR, AMERICAN PUBLIC POWER ASSOCIATION, WASHINGTON, D.C.

Mr. Radin. I would be glad to do that, Mr. Chairman. My name is Alex Radin. I am executive director of the American Public Power Association. We are a national organization representing about 1,400

publicly owned electric utility systems in 48 States, Puerto Rico, Guam, and the Virgin Islands. I am accompanied by Alan H. Richardson, who is legislative director and counsel of APPA.

We have a special interest in this because the members of our association represent the largest group of customers of the Federal power marketing agencies. So we are very directly affected by their actions and hence are quite concerned about their budget.

In my prepared statement, the latter part of it, we indicate all of the reasons for support of the various budget items of the Federal power marketing agencies. I would like to have my prepared statement suffice as our justification at this time. I would like to spend a few minutes discussing several major issues underlying the entire Federal power marketing program that are of concern to our association.

We have been concerned since the initiation of the Department of Energy with two major issues. First, the continued existence of the Federal power marketing agencies as separate and distinct entities within DOE and second the adherence of DOE to traditional ratemaking concepts that are contained in the law and which we think they should follow. To insure the power marketing and ratemaking activities were simply transferred, not altered, as Congress specifically provided the various Federal power marketing agencies should be preserved as second and distinct organizational entities within the Department headed by individual Administrators who were to maintain their principal offices in the region served.

The Congress when it passed the Department of Energy Act, also with regard to multipurpose water projects in the jurisdiction of the Bureau of Reclamation, the Congress in transferring the power marketing aspects of those projects provided the transfer should not be deemed to change the cost allocation and project evaluation standards.

We supported both of those provisions of the Department of Energy Act.

Since it commenced operation on October 1, 1977, there have been some disturbing indications that the Department, notwithstanding the clear expression of congressional intent, is attempting to control many of the Federal Power Marketing Administration functions from Washington or from DOE regional offices. There have also been indications that various persons or offices within the Department would like to restructure the ratemaking policies of the Federal power marketing agencies in ways which may not be supported by congressional enactments.

In recent weeks our concerns have been allayed to a considerable degree. But inasmuch as your subcommittee has oversight over these agencies, we wanted to take this opportunity to bring these concerns to your attention so you might continue to monitor these aspects of the operations of the Federal power marketing agencies.

I think our greatest focal point of interest is the Western Area Power Administration. That interest has been in connection with the Department's attitude toward the Federal power marketing agencies and the Department's efforts to centralize control over the power administrations.

We understand the headquarters office of WAPA has been approved, as Mr. McIsaac indicated this morning, but we also under WAPA has not yet had a complete organizational chart clearly de-

lineating the change of command and all of the personnel required to perform the functions necessary to market power in the most efficient manner. Without a complete organizational chart, it is difficult for the Congress to accurately assess the personnel needs of the Western Area Power Administration.

Senator HASKELL. It is my understanding from what Mr. McIsaac said of the organizational chart, Mr. McIsaac put it together with Mr. McPhail. Mr. McIsaac is here, I had better ask him.

The organizational chart they are going to submit is an organization chart that will suffice for the purpose of complete administration of WAPA, within WAPA, with a few loose ends such as ERA, is my understanding correct?

Mr. MCISAAC. Yes, sir.

Senator HASKELL. I hope that lays it to rest.

Mr. RADIN. I understand that covers Western Area Power Administration but does not cover all of the functions and as Mr. McIsaac explained is in anticipation of some of the administrative work presently done by the Bureau of Reclamation will ultimately be transferred to the Western Area Power Administration.

We would like to see—we realize it takes time to develop this type of organizational chart—but we merely want to call your attention to the fact there is still work to be done in completing the organization of Western Area Power Administration to encompass the functions presently performed for the WAPA by the Bureau of Reclamation.

Senator HASKELL. I think we will wait for the chart to be available for the record. It is my understanding this chart presupposed adequate personnel to take care of complete transfers of all Bureau of Reclamation work, let's see what it looks like when it comes.

Mr. RADIN. We will be glad to reserve judgment, Senator. It is our intention today to bring the committee's attention to the fact there has been some delay in completing the work of organizing the Western Area Power Administration. Our utilities deal on a daily basis with WAPA and we want to be sure that organization is fully staffed and able to take care of their day-to-day requirements.

We also in that connection have been concerned about the delay in the appointment of an Administrator of the Western APA. Mr. McPhail has been in an acting capacity. We understand there have been some problems in getting this organization completed. But on the other hand, it has been about 6 months since the DOE was created and we think the most efficient administration could be achieved by getting these positions filled as soon as possible.

We appreciate the problems of forming a new Government agency and getting it fully staffed. Our intention is to call the committee's attention to the delay that has taken place. We are certainly pleased with the commitment Mr. McIsaac and his associates have made and some of the problems we are bringing to your attention predate Mr. McIsaac's appointment and some of the problems also I think are reflection of the authorities, responsibilities, that lie outside of this jurisdiction. We are not being critical of Mr. McIsaac or Mr. Ahearne or other people within his group. I think they have done an excellent job. But the problem remains.

Another aspect of our concern we have had in the past is a question of whether or not some of the authorities formerly exercised by the

WAPA would be brought into Washington. I think we are seeing some gradual change of those authorities from Washington back to the field where they originally were.

There are some that have been taken back into Washington and we believe should remain in the field. Our philosophy is to the greatest extent possible the Federal power marketing agencies should be given a great deal of autonomy and be able to function as independently as possible so they can best serve the needs of their customers.

One of those functions formerly delegated to the administrators and we understand has been brought into Washington is the approval of labor contracts. Another, the Director of Administration is currently the only person authorized within the DOE to file notices in the Federal Register.

We believe that Congress in adopting the DOE Act intended that such activities should be performed by the administrators.

With respect to ratemaking activities, APPA is concerned that the Department not diverge from traditional, statutory ratemaking concepts. Specifically, rates must be established to encourage the most widespread use of federally generated power at the lowest possible rates consistent with sound business principles. Such rates should be set to recover the costs of producing and transmitting the power, together with the amortization of capital investment allocated to power over a reasonable period of years.

In the past, some departmental representatives have indicated that they would like to utilize the Federal power marketing agencies as testing grounds for different rate techniques. We believe such action would not be permissible under existing law and would be inconsistent with the congressional intent expressed in the Department of Energy Organization Act.

Regardless of the rates proposed for the various power marketing administrations, APPA is anxious to insure that preference customers of the Federal power marketing agencies are afforded reasonable due process protections in the ratemaking proceedings. APPA has a task force which has been working on this issue. In January of this year, the task force recommended, and the APPA legislative and resolutions committee adopted, a resolution on ratemaking procedures which should be employed by the Federal power marketing agencies. A copy of that resolution is attached.

I want to reiterate we have had meetings with several individuals in the Department exercising jurisdiction over the administrations and these meetings have taken place with Mr. McIsaac and Mr. Ahearne. We think they have been quite productive and have allayed some of our previous concerns.

We did want to take the opportunity to bring these to your attention and note the origins of the problems currently facing the power marketing administrations predate the appointments of these gentlemen and some of the problems may not be within the jurisdiction of these positions.

Senator Haskell. I don't have any further questions. We will be mindful of your concerns, as I am sure the Department will. This committee will be watching what goes on in the same way you will.

[The prepared statement of Mr. Radin follows:]

Statement of Alex Radin, Executive Director, American Public Power Association

My name is Alex Radin. I am the Executive Director of the American Public Power Association, a national service organization representing more than 1,400 publicly owned electric utility systems in 48 states, Puerto Rico, Guam, and the Virgin Islands.

APPA's member systems have a preference in the marketing of electric power by the five Federal power marketing administrations: the Bonneville Power Administration (BPA); the Western Area Power Administration (WAPA); the Southwestern Power Administration (SWPA); the Southeastern Power Administration (SEPA); and the Alaska Power Administration (APA). For this reason, APPA has carefully monitored activities of the Federal marketing administrations following their transfer to the Department of Energy upon the enactment last year of the Department of Energy Organization Act (Public Law 95-91).

APPA member systems purchasing power from the various power marketing administrations have been particularly concerned with two major issues: first, the continued existence of the Federal power marketing agencies as separate and distinct entities within the DOE, with sufficient autonomy from Departmental control to permit them in the future, as they have in the past, to make most administrative, legal and technical decisions to fulfill their power marketing mission subject only to broad policy guidance of the Secretary of DOE; and second, adherence by DOE to traditional ratemaking policies of existing law.

When the Congress considered the DOE Organization Act as submitted by the Administration, it noted a potential deficiency in the manner in which the Administration proposed to treat the Federal power marketing agencies once they were transferred from the Department of the Interior. To insure that power marketing and ratemaking activities were simply transferred, not altered, the Congress specifically provided that the various Federal power marketing agencies should be preserved as separate and distinct organizational entities within the Department, headed by individual administrators who were to maintain their prinicipal offices in the regions served. The power marketing functions transferred to DOE, under the provisions of the Organization Act, are to be "exercised by the Secretary, acting by and through" the individual administrators. With respect to the multipurpose water projects under the jurisdiction of the Bureau of Reclamation, the Congress, in transferring the power marketing aspects of those projects, provided that the transfer should not be deemed to change the cost allocation and project evaluation standards. Under the terms of the Act, such changes cannot be made without Congressional approval. APPA actively supported these Congressional modifications.

Since it commenced operation on October 1, 1977, there have been some disturbing indications that the Department, notwithstanding the clear expression of Congressional intent, is attempting to control many of the Federal Power Marketing Administration functions from Washington or from DOE regional offices. There have also been indications that various persons or offices within the Department would like to restructure the ratemaking policies of the Federal power marketing agencies in ways which may not be supported by Congressional enactments.

The Western Area Power Administration is the focal point of our greatest concern in connection with the Departmental attitude toward the Federal power marketing agencies and the Department's efforts to centralize control over the power administrations.

WAPA was created to assume jurisdiction over the power marketing functions of the Bureau of Reclamation which were transferred to DOE. In transferring staff to WAPA, the Bureau employed what might be referred to as a 50 percent rule. Rather than determining the overall percentage of time spent by the various Bureau offices on power marketing functions and transferring the equivalent proportion of individuals from such offices to WAPA, the Bureau transferred only those individuals who actually spent more than 50 percent of their time on power marketing activities. As a result, individuals performing support functions, such as administrative and personnel activities, were not transferred. The inequity of the transfer scheme employed is evident from the fact that WAPA now contracts for the performance of such support functions from the Bureau. We believe that WAPA should have the capability to perform these functions in-house.

The transfer, of course, has been accomplished, and WAPA must proceed from that point. To do so, it must have an organizational chart which is a prerequisite for the justification of its personnel needs. We understand that a functional organizational chart for the headquarters office has been approved. However, WAPA does not as yet have a complete organizational chart, clearly delineating the chains of command and the personnel required to perform the functions necessary to market power in the most efficient manner. At present, WAPA has no safety officer, no deputy administrator, no division chiefs, and all the area managers are serving in an acting capacity. Without a complete chart, it is difficult for the Congress accurately to assess the personnel needs of WAPA in acting on the Administration's authorization and appropriation requests. We hope that once the skeleton of the organization is in place under the functional organizational chart, the DOE will move expeditiously toward fleshing in the total organization.

One of the more troubling aspects of WAPA's operation is the continuing failure of DOE to appoint an administrator. Robert McPhail is currently the acting administrator, but has yet to be formally appointed. (I might note that James B. Hammett has been the Acting Administrator of Southwestern Power Administration for more than a year.) Such long delays in appointing an individual so central to the effective operation of the power marketing administrative functions are incompatible with efficient administration. We urge prompt action by DOE in resolving this matter. It seems clear to me that DOE delay with respect to the issues of organization and personnel appointments significantly reduces the effectiveness of the power marketing operation.

In addition to these organizational issues, administrative actions have been taken by DOE which reduce the authority of the various administrators to perform functions which has historically been within their prerogative. For example, directives have been issued which take away authority formerly delegated to the Administrators to approve labor contracts. The Director of Administration is currently the only person authorized within the DOE to file notices in the Federal Register. Not only is this a break from past practice, but it also causes unnecessary delays with respect to Federal actions. I believe, and I think the Congress in adopting the DOE Act intended, that such activities should be performed by the Administrators.

Similar problems are facing the Bonneville Power Administration. Various public power associations in the Northwest are concerned with what appears to be an attempt by DOE to centralize in Washington significant authorities of the marketing agencies. Specifically, they have heard that ratemaking, contract administration and personnel issues are matters which will be handled in Washington rather than by regional officials.

With respect to ratemaking activities, APPA is concerned that the Department not diverge from traditional, statutory ratemaking concepts. Specifically, rates must be established to encourage the most widespread use of Federally generated power at the lowest possible rates consistent with sound business principles. Such rates should be set to recover the costs of producing and transmitting the power, together with the amortization of capital investment allocated to power over a reasonable period of years.

In the past, some Departmental representatives have indicated that they would like to utilize the Federal power marketing agencies as testing grounds for different rate techniques. We believe such action would not be permissible under existing law and would be inconsistent with the Congressional intent expressed in the Department of Energy Organization Act.

An article in the April 10, 1978, issue of Inside D.O.E., appears to me to indicate that individuals within the Department have come to the realization that existing law leaves little latitude for experimentation with rates for sale of Federal power. The article suggests that traditional rates and ratemaking procedures will be employed by DOE. APPA will continue to monitor DOE activities in this area.

Regardless of the rates proposed for the various power marketing administrations, APPA is anxious to insure that preference customers of the Federal power marketing agencies are afforded reasonable due process protections in the ratemaking proceedings. APPA has a task force which has been working on this issue. In January of this year, the task force recommended, and the APPA Legislative and Resolutions Committee adopted, a resolution on ratemaking procedures which should be employed by the Federal power marketing agencies. A copy of that resolution is attached.

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I would call your attention in particular to paragraph four of the resolution which suggests the minimum due process requirements for ratemaking procedures. The central thread tying these requirements together is the firm belief that ratemaking should from the beginning be open to all involved and interested persons, and that the process should begin in the field, not in Washington.

I should note, at this point, that representatives of APPA and several of its members who deal on a day-to-day basis with the Federal power marketing agencies have had several meetings with individuals within the Department exercising jurisdiction over the administrations, including the Assistant Secretary for Resource Applications, Mr. McIsaac, and the Deputy Assistant Secretary, Mr. Ahearne. These meetings, particularly those with McIsaac and Ahearne, have been quite productive. I believe these two officials are very sincere in their desire to insure that both the letter and the spirit of the power marketing provisions of the Department of Energy Organization Act are carried out. However, the origins of the problems currently facing the power marketing administrations pre-date the appointment of the Assistant Secretary and Deputy Assistant Secretary for Resource Applications, and some of the problems which we have noted may not be within the jurisdiction of these two individuals.

This Committee has before it the 1979 DOE authorization bill. This bill could serve as a vehicle for a Congressional directive to DOE to insure that the intent of the Congress expressed in the DOE Organization Act is not ignored. The directive could be in the form of specific language within the bill itself, or a statement in the Committee report. We would be happy to work with Committee staff on this matter.

Having addressed the issues of overriding concern to APPA and its members, I would now like to turn briefly to specific authorization requests for the various power marketing administrations.

For fiscal year 1979 a total of $127.5 million has been requested for the Federal power marketing administrations: $103.8 million for WAPA; $19.9 million for SWPA; $1.2 million for SEPA; and $2.6 million for APA.

WESTERN AREA POWER ADMINISTRATION (WAPA)

The Western Area Power Administration was established in the Department of Energy in December, 1977, to administer the power marketing functions transferred to the new Department from the Bureau of Reclamation in the Department of Interior. WAPA's service area in 15 western states includes more than 16,000 miles of transmission lines and approximately 9.7 million kilowatts of capacity from hydroelectric projects constructed by the Bureau of Reclamation and the Army Corps of Engineers. Power sales during the fiscal year ending September 30, 1977, were 52.8 billion kwh and power revenues were $249 million. Four hundred twenty-six wholesale preference customers purchase power marketed by WAPA.

WAPA has requested a total of $103,738,000 for fiscal year 1979. This includes $101.3 million for construction, rehabilitation, operation and maintenance of WAPA $200,000 for emergency operations, and $2.3 million for the Colorado River Basin's power marketing. Of the amount requested, $25.5 million is for 976 permanent staff positions and 63 vacancies, some of which are temporary.

Efficient utilization of WAPA and its continued vitality not only benefits the public power systems that buy from WAPA, but also the nation as a whole. These benefits include increased tax revenues generated by business activity and the associated taxable personal income, corporate profits and employment. According to a study prepared by the Denver Research Institute, University of Denver for the Bureau of Reclamation, January, 1977, entitled "Economic Impact of Federal Reclamation Projects," the power functions of the Reclamation program in 1975 resulted in over $1.5 billion in increased business activity. The power function is estimated to have generated over $676.1 million in personal income, $275.6 million in corporated taxes, and $602..3 million in non-tax base items such as depreciation, indirect business taxes, transfer payments and payments for land purchases. About $501.5 million in wages and net farm income resulted from power sales which would have the employment equivalent of over 49,000 man-years in 1975.

I have already noted that DOE has failed to complete work on WAPA's organizational chart. This makes it difficult to assess accurately the precise personnel and financial requirements of WAPA. We hope that this fact will be kept in mind by this Committee as it proceeds through the authorization process. We urge the Congress to insure that WAPA has the ability to operate effectively through the authorization and appropriation of sufficient funds.

SOUTHWESTERN POWER ADMINISTRATION (SWPA)

The Southwestern Power Administration was established in 1944 to market the electric power produced at multipurpose reservoir projects constructed by the Army Corps of Engineers. SWPA markets power from hydroelectric projects located in Arkansas, Missouri, Oklahoma and Texas. Power is sold to utilities in these states and also in Kansas and Louisiana. In 1977, SWPA sold 4 billion kwh of electricity from 21 projects with a total installed capacity of 1,816,700 kw and had gross revenues of $848 million. SWPA has a total of 65 customers, of which 59 are preference customers.

Currently, the SWPA budget request for fiscal year 1979 is $19.9 million. However, SWPA estimates that it will need $16.1 million more than requested in the budget for purchase power and wheeling because of an anticipated low water year. This would bring the total for fiscal year 1979 to $36 million. We understand the revised estimate of the additional $16.1 million is moving through the final review process at the Office of Management and Budget before being sent to the President, and then to the Congress for consideration. We support the current request of $19.9 million and urge favorable consideration of the supplemental request of $16.1 million.

SOUTHEASTERN POWER ADMINISTRATION (SEPA)

One hundred ninety-two preference customers purchase power marketed by the Southeastern Power Administration. SEPA was established in 1950 to market electric power produced at multipurpose reservoir projects constructed by the Army Corps of Engineers in ten Southeastern states: Mississippi, Alabama, Florida, Georgia, North and South Carolina, Virginia, West Virginia, Kentucky and Tennessee.

SEPA does not operate or maintain transmission lines. It "wheels" Federal power to its customers over non-Federal lines.

In fiscal year 1977 SEPA sold 6.2 billion kwh from 21 projects with a total installed capacity of approximately 2.5 million kw and had revenues of $44 million. Estimated revenues for 1978 are $52 million.

SEPA has requested $1.2 million for fiscal year 1979. Of this amount, $800,000 is for 37 staff people. This is the same level of staff as last year. APPA urges sufficient funding to carry out SEPA functions effectively.

ALASKA POWER ADMINISTRATION (APA)

The Alaska Power Administration was established in 1967 to operate and market power from Federal hydroelectric projects in Alaska. In fiscal year 1979, APA sold 286 million kwh of electric energy and had power revenues of $2.3 million. This year the APA has requested $2.6 million, an increase of $519,000 over last year. APPA supports this request.

BONNEVILLE POWER ADMINISTRATION (BPA)

APPA supports the Bonneville Power Administration's fiscal year 1979 budget program which will be financed through the BPA self-financing revolving fund, thus requiring no appropriations. We understand that the Administration is working on legislative proposals to provide similar revolving funds for each power marketing administration. We support this concept and hope it will soon be introduced.

Rate Setting by Federal Marketing Agencies

Whereas, many local public power systems rely on Federal power marketing agencies for all or part of their power supply, and

Whereas, administration of these agencies has been transferred from the Department of the Interior to the Department of Energy, and

Whereas, the transfer has raised questions about future marketing practice of the agencies, including procedures for setting rates;

Now, therefore, be it resolved: That the American Public Power Association supports the following positions on pricing of Federal power:

1. In the pricing of Federal power, the guiding principle should continue to be the adequate recovery of the costs of the projects. We believe that this has been, and should continue to be, the criteria for such pricing and that this is the proper application of existing statutes. Any attempts by the Department of

Energy to include pricing criteria not provided for in the laws authorizing Federal power projects would be strenuously opposed by APPA and its members. Rate structures or designs to control or affect consumer use of power should continue to be the right and responsibility of the utility or agency providing service to the ultimate consumer and as established by legislative bodies.

2. If, and to the extent that, the Department of Energy has review responsibility over rates of Federal power marketing agencies, the agency or officer exercising review authority for pricing Federal power should establish the procedures for such review through a rule-making proceeding which would give all interested parties an opportunity for comment and an opportunity to develop a full record.

3. Review by any such DOE agency should be preceded by a published rate-making procedure to be adopted and followed by the Federal marketing agencies.

4. The rate-making procedure for Federal marketing agencies should include at least the following due process elements:

(a) Informal meetings with all interested parties.

(b) Comprehensive average rate and repayment study.

(c) Publication of proposed rates and rationale.

(d) Availability of all relevant studies to all interested parties.

(e) On-the-record hearings which include an opportunity to question representatives from marketing agencies and any other interested parties submitting studies or recommendations.

(f) Opportunity for interested parties to cross-examine representatives of the marketing agency and representatives of other interested parties submitting studies or recommendations, as to those matters where cross-examination appears reasonably necessary for the development of a complete record for decision and review.

(g) Opportunity to file written comments.

(h) Publication of written comments and opportunity to comment on comments.

(i) Publication of recommended rates and rationale for rates.

5. Rate-making shall be conducted by the Federal marketing agencies on a regional basis with common rate-making criteria employed to the extent justified by applicable law, but with the understanding that exceptions to such common criteria might be desirable because of regional differences.

6. If, and to the extent that, DOE has review powers, the agency or officer exercising review authority should be limited by the record established by the Federal marketing agencies during rate-making proceedings and the reviewing agency or officer shall not engage in ex parte communication with any interested party or with the Federal marketing agency whose proposed rates are being reviewed.

7. No interim rates should be imposed.

8. The procedures recommended above would apply only for general increases in power rates and are not intended to address any other power marketing functions.

9. In recognition of the fact that different procedures may be appropriate for the allocation of Federal power than would be appropriate for the pricing of Federal power, this resolution does not attempt at this time to address procedures which apply to Federal power allocation.

STATEMENT OF FRED G. SIMONTON, EXECUTIVE DIRECTOR, MIDWEST ELECTRIC CONSUMERS ASSOCIATION, INC., EVERGREEN, COLO.; ACCOMPANIED BY EDWARD WEINBERG, ESQ., COUNSEL, DUNCAN, BROWN, WEINBERG & PALMER, WASHINGTON, D.C.

Mr. SIMONTON. Thank you, Mr. Chairman. I am accompanied today by one of our counsel, Mr. Edward Weinberg of Duncan, Brown, Weinberg & Palmer of Washington.

I have prepared a statement. I would like to put it in the record. I do not want to be repetitious with what has gone on here.

Senator HASKELL. It will be received in the record and reproduced in full.

Mr. SIMONTON. Midwest Electric Consumers Association has been unique in representing Midwest puplic power systems. We have been

concerned with what seems to be inaction or lack of action in the Department of Energy. I have been reassured this morning by Mr. McIsaac that progress is being made and we are delighted.

We have been, our concerns have been expressed very well by Alex Radin, the executive director of the American Public Power Association, so we are glad there is a headquarters in Denver. I hope this committee will help us make certain there gets to be a desk and a telephone there because there was none there last Tuesday when I left our State.

We want also professional staffing in that office, and in the area offices that exist in the entire WAPA organization. There are some pressing problems that need to be dealt with in the area. One is one of your constituents, the peaking which will come on in 1979. There is a need to get marketing criteria policy outlined immediately as to how that power is going to be handled.

We also have problems with a master contract, with the Wyoming Municipal Power Agency and WAPA. We do want the decisionmaking to be made on the local level. That is where the best decisions can be made and that means a strong and independent Western Area Power Administration.

Senator HASKELL. I think those views are shared by the committee. I am hopeful they are shared by the Department. I think the table of organization that will be submitted for the record will probably confirm or deny my assumptions, but I think it would be very helpful.

Mr. SIMONTON. There is one other point I would like to say. The Western Area Power Administration stretching as it does from the borders of Iowa-Minnesota to California is comprised of several definite regions having many different river basins as resource and Federal power systems.

The Colorado River storage project, instance, and the Pick-Sloan Missouri basin program are really each more comparable to the Bonneville Power Administration than are some of the other subregions within this vast WAPA area. So I hope the committee will also be cognizant of that.

The Bonneville Power Administration serves a continuous cohesive administrative function. But we don't all have Columbia Rivers in our areas.

Senator HASKELL. We could use one in Colorado.

Mr. SIMONTON. We sure could. There is another matter that concerns us and that is why I asked Mr. Weinberg to come with me this morning. He was Solicitor of the Department of the Interior and, for many years, the Deputy Solicitor, and that involves ratemaking policy.

Senator HASKELL. Mr. Weinberg, we would appreciate hearing what you have to say.

Mr. WEINBERG. Thank you, Mr. Chairman. I have a prepared statement which has been furnished the committee.

Senator HASKELL. That will be received and reproduced in full.

Mr. WEINBERG. I will not burden the committee with reading what the committee already has. I would like to highlight a couple of points having to do with ratemaking. One of these involves the criteria for ratemaking. The other involves locus, or the place, within the DOE where this function is going to be performed with finality.

On the criteria, it was very gratifying to hear Mr. McIsaac say this morning that there is no inclination in the Department of Energy to depart from the statutory bases which historically have governed the marketing of federally generated power through the Department of Interior and this committee has had a considerable hand in shaping those statutory criteria.

Basically while words may differ from one statute to another, it is cost based ratemaking. In the case of WAPA, the costs are not only the costs allocated to power but the irrigation costs which are also assigned to be repaid from power revenues, together with an interest charge and the return of operation and maintenance costs and replacement costs.

One basic element in cost ratemaking, of course, is the allocation of the cost. When you have a multiple-purpose project, a dam, the cost of the dam has to be allocated as between the functions that are served and it doesn't take much imagination, of course, to realize if one starts playing around with the allocations one can materially and substantially influence the costs that have to be returned.

In recognition of that fact, Senator McGovern offered on the Senate floor when the Federal Department of Energy Organic Act was being considered, an amendment which was adopted in the Senate, accepted by the conferees, and is now a part of the act.

That amendment provides that no changes in either cost allocations or project evaluation standards, which is the other factor by which a great deal of leverage can be exerted upon the costs that are to be returned, shall be deemed to authorize the reallocation of joint costs of multipurpose facilities allocated before the act was passed unless Congress hereafter approves the change.

What Senator McGovern was concerned with and what that language is addressed to in the case of what is now WAPA are the cost allocations of the projects from which WAPA markets power including the main Missouri River dams and Shasta Dam and the other existing dams in the Central Valley project.

We think it was indeed fortunate the McGovern amendment was included in the act because it serves to underscore the point that what was done in the DOE Organic Act was to transfer existing functions and authorities and not to establish new rules.

One more word on the criteria and, again, we were gratified to have this clarification from Mr. McIsaac that there is no intention to depart from the presently legally established criteria. But we have a concern because the DOE is getting pressured to change those criteria and, in our judgment, without the benefit of a change in the law.

I have attached to my statement a letter of February 1 from an official of the General Accounting Office to the Secretary of Energy which includes a rather remarkable statement.

Unfortunately, says the letter, to the extent WAPA's charter is to deliver electric power at the lowest possible cost for the widest possible use, WAPA's success in conservation and pricing is somewhat limited.

I find that a remarkable statement. The fact of the matter is that what this official finds regretable is the statutory basis for Federal power and ratemaking for Federal projects which has been hammered out over a 75-year period.

I find it even more remarkable this official who is in an agency which is Congress creature to exercise surveillance, to see the executive agencies are faithful to Congress mandate, takes it upon himself to lecture the Secretary of Energy about this official's dissatisfaction with the statutory mandate that Congress has given the Secretary of Energy.

It would seem to be more appropriate if this is in fact the view of the GAO, and I doubt Mr. Staats would endorse it.

I would suppose if this accurately reflected the GAO position, Elmer Staats would make his appeal directly to Congress and not proceed through the backdoor. It is efforts like that that have caused us and continue to cause us concern.

We think it would be most helpful for the committee, most helpful to the Department of Energy, as well as reassuring to the purchasers of the federally generated power, if the committee in reporting out the authorization reiterates the concepts that govern DOE and which were transferred to it.

Senator Haskell. As I see it, in other words that letter from GAO plain did not like the statute.

Mr. Weinberg. That is the conclusion I come to.

Senator Haskell. A statute is a statute.

Mr. Weinberg. Yes. My point is I think it would be helpful to the Department of Energy and reassuring to the customers to reiterate that a statute is a statute and Congress is the place to debate whether there should be changes of the nature suggested in that letter.

On the question of the locus, of the place making the determination, I would like to register some divergence from the view of committee counsel that the Federal Energy Regulatory Commission must have, or is now vested, under the Department of Energy Act with final rate approval authority for the marketing of federally generated power. I express that divergence, Mr. Chairman, out of historical evolution. WAPA, which is the former power marketing function of the Bureau of Reclamation, has never been subjected by Congress to the requirement that its rates must be confirmed and approved by the Federal Power Commission.

That requirement applies to Bonneville, to the former Southeastern and Southwestern Power Administrations and I believe also to the Alaska Power Administration, but it never was applied to power marketing by the Bureau of Reclamation.

There the Secretary was the final ratemaking authority. Now in establishing the Department of Energy, Congress provided two things directly bearing on the subject of where responsibility lies. First of all, in section 203 of the act, and this is the section which establishes the positions of Assistant Secretaries of the Department of Energy—that section is very interesting, it is very unusual, by the way, at least in my experience; what Congress did there was not only to say there shall be a certain number of Assistant Secretaries in the Department of Energy, it also provided that the Secretary must—not should—not may—not might consider, but must assign the functions listed in section 203(a)(10) to an Assistant Secretary. One of those functions the Secretary must assign to an Assistant Secretary is the power marketing functions, including responsibility for marketing and transmission of Federal power.

Section 302 provides that the former power marketing entities in the Department of the Interior are transferred to the Department of Energy and each is to be headed by an Administrator, each is to be continued as a separate Administrator, and because the Bureau of Reclamation's power functions were not a separate administration, title III created or mandated the creation of a separate administration to handle the former Bureau of Reclamation market functions, and that is WAPA, under the general supervision of the Secretary of Energy.

Well, when you take section 302 and then look at section 203, which says the Secretary must assign power marketing functions to an Assistant Secretary and the Secretary of Energy has done that, Mr. McIsaac is that Assistant Secretary, what that means to me is that the power marketing administrations report to Secretary McIsaac and between the two all of the power marketing functions are provided for including ratemaking, for ratemaking is an essential element of power marketing.

Now, the question arises what happened to the former Federal Power Commission in all of this? Certain of the responsibilities formerly exercised by the Federal Power Commission are now in the Federal Energy Regulatory Commission which is a part of the Department of Energy. However, the explicit transfers to FERC from FPC are set forth in section 402(a) of the Organic Act and they do not include the transfer of approval authority over the Secretary of DOE's rate determinations.

There is another provision of the act which arguably might be said to confer final rate approval authority for federally marketed power in FERC. That is section 402(d). It states the Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary meeting one of two criteria. One, involves an agency determination required by law to be made on the record after an opportunity for an agency hearing. I put it to you, Mr. Chairman, that that does not embrace the approval of rates for the marketing of Federal power.

I will tell you why I come to that conclusion. The phrase "agency determination required by law to be made on the record after an opportunity for an agency hearing" is a term of art. It has a well-defined meaning in Federal law. It means either an act of Congress which specifically states, in so many words, that the decision must be made on the record after an opportunity for an agency hearing or it means a situation where the Constitution itself mandates such a requirement.

Now, the Supreme Court has held that ratemaking is what is known as rulemaking and rulemaking is not, unless the statutes specifically so provide, a matter which involves an agency determination required by law be made on the record after an opportunity for an agency hearing.

I would not want to be misunderstood, Mr. Chairman. I am not suggesting the Federal power marketing agencies should engage in ex parte contacts and make backroom deals on rates. Far from it. Some of the customers of the Bureau of Reclamation have had occasion in the past to criticize and to secure legal review over some of the Bureau's ratemaking practices because they were conducted too much

in secret and in a fashion so mysterious that nobody could figure out what in the world it was that they did to arrive at their conclusion.

But that is not the point. It is one thing to say the ratemaking functions in WAPA and the other power marketing agencies and in Mr. McIsaac's office should be conducted in a dialog that public participation should be received and that the generally accepted precepts of fair dealing be observed.

But that is a far cry from saying Congress has mandated the type of procedure which is referred to in section 402(d)(1) of the act.

Now the other criteria under which FERC has jurisdiction is this: The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing.

I draw two conclusions from looking at that language. One, it completely rules out ERA because ERA is not equipped to make and is not established within the Department of Energy to make, determinations on the record after an opportunity for an agency hearing. In fact, ERA could not function under that constraint and it does not function under that constraint.

The other conclusion is that if the Secretary determines that final ratemaking shall be on the basis of a completely formal adjudicatory type hearing then FERC would be the place in the Department of Energy where that function would have to be lodged under this provision.

But let me go one step further. I speak only for myself and as a lawyer with some experience on both sides of the Government power marketing situation, as Mr. Simonton says, I spent many years in the Interior Department as an official concerned with power marketing from these agencies and I now sit on the other side of the table representing customers. I would think the type of formalism that is involved in such a formal procedure would be one that the Secretary would want to be reserved for use on an appellate basis; that is to say, let the power market agencies and Secretary McIsaac go through the procedures which are provided for, which are suggested in the APPA resolution. Then if a prospective customer, or someone else who participated feels aggrieved, then let them have an appeal to the Secretary which would mean an appeal to FERC, so FERC could function as it was traditionally established to function in that traditional sense, as an appellate body. So it would come into play only if the final Secretary's review power were invoked and not as a matter of continuing routine.

I believe that is all I have to say. I would be glad to answer any questions.

Senator MELCHER. Mr. Weinberg, you are making a persuasive argument. Do you think the proper implementation of sections 302 and 203 could be handled in report language?

Mr. WEINBERG. As I said, I think that would be useful to the Department to have an expression of the committee's views.

Senator MELCHER. Would report language be adequate?

Mr. WEINBERG. This depends upon the willingness of the Department of Energy to be guided by what the committee has to say. I think

it would be a very unusual situation if DOE were to deliberately turn its back on an expression of the views of the committee.

Senator MELCHER. My question is, with your experience you know how report language guides the executive branch; do you think it is adequate?

Mr. WEINBERG. I certainly would think in these formative days, if I were on the committee I would want to give it a whirl before I thought it was time to bring out the artillery. Because relationships between an agency and the Congress should not be viewed as an adversarial matter where banks of lawyers are lined up on each side trying to probe the outer limits, how far one can exert and how far the other can get away.

I don't think that is good administration. I think Congress has made itself pretty clear in terms of what it really had in mind here. It is something hard to define. It is like Mr. Justice Stewart said one time in an opinion about pornography. He said: I can't define it but I know it when I see it.

I think when the committee makes its views known, and they are certainly within the ambit of the statute, I would think an agency would hestitate to say, well, the heck with that, we are going to go a different way.

Senator HASKELL. If the Senator would yield. I think it would be helpful if Mr. McIssac would submit the Department's views on this subject matter. It seems to me there is a divergence of views or maybe there is a divergence of views. I am speaking as one member of the committee. I don't believe I have sufficient knowledge of this matter to make up my mind as to what the statute says. I have heard your argument, but maybe there is another argument, I don't know. But I think if Mr. McIssac would submit for the record the Department's views on how the procedure in this ratemaking, you obviously start with the agency, WAPA, and where do you go from there?

We may find there isn't a great divergence of opinion. So as one member of the committee, I would like to wait and see that statement before we adopt any particular position.

[Subsequent to the hearings, the Department supplied the following:]

Currently the procedures outlined below are followed in power rate adjustments for WAPA.

1. WAPA announces to the public that a rate adjustment is being considered.

2. WAPA provides an opportunty for interested persons to consult and comment on the rate adjustment. Public information and public comment forums are held during the consultation and comment period.

3. After review of comments, WAPA announces a decision on proposed rates to be submitted through Resource Applications to the Economic Regulatory Administration (ERA) for confirmation and approval.

4. Further public comments accepted by ERA on announced proposed rates.

5. ERA announces acceptance or rejection of proposed rates. The ERA presently considers further comments as received in its review of proposed rates.

Currently, we are conducting an internal review to determine the most appropriate location for the rate approval function.

Mr. WEINBERG. I would like to add, as I have understood Mr. McIsaac here and in conferences we have had, this issue was still open

within the Department. The Department itself apparently has not yet come to a conclusion. It was raised in a WAPA proposed rule making last January on which we submitted extensive comments. Our legal opinion is attached to my statement.

As far as I know the Department has not yet come to a final conclusion.

Senator HASKELL. We have the Department present. Let me ask Mr. McIsaac. When, sir, would you be able to submit a statement for the record as to the Department's official view of this area?

Mr. McISAAC. I would hope within a month, Mr. Chairman. We are looking at this. It is an extraordinarily complicated process because of the differences in how this has been handled in the past amongst the various power administrations and I don't know all the law. We are looking at it from a legal standpoint within the Department, and I suspect there is going to be a period of examination of the various positions both within and without the Department before we make up our minds.

My concern is how quickly we can do this.

Senator HASKELL. Could you do this: We have a deadline reporting our budget—your budget, really—of May 15. I don't know to what extent this impacts necessarily on the budget process but I would think it would have an impact. Would you suppose we could agree on May 10 as the time for you to officially submit your views on this? That is a little bit short of a month, 4 days short of a month, but I think we ought to have your views on it.

If there is a divergence of opinion, then we will have to take it from there. I don't know if there is a divergence of opinion in what Mr. Weinberg said, but I think it would be helpful if we could do that.

Mr. McISAAC. Thank you.

Mr. SIMONTON. Senator Haskell, for the record, I want to say Mr. McIsaac came to Denver, as did John Ahearne, the Deputy, and had a fine meeting with the preference customers in our region. It was a constructive meeting and it is providing us the opportunity to get acquainted also on these problems.

I want to make certain the legal opinion Mr. Weinberg has been talking about here is put into the record and I know Mr. McIsaac here, we have not transmitted our legal opinion to the Department of Energy but I will see to it that it is done.

Senator HASKELL. Mr. Weinberg's written statement will appear in the record. There is no question about that.

Thank you, gentlemen, we appreciate it.

[The prepared statements of Mr. Simonton and Mr. Weinberg with attachments follow:]

STATEMENT OF
FRED G. SIMONTON, EXECUTIVE DIRECTOR
MID-WEST ELECTRIC CONSUMERS ASSOCIATION, INCORPORATED

BEFORE THE
SENATE SUBCOMMITTEE ON ENERGY PRODUCTION AND SUPPLY

COMMITTEE ON ENERGY AND NATURAL RESOURCES
APRIL 14, 1978

My name is Fred G. Simonton. I am the Executive Director of Mid-West Electric Consumers Association, Inc., with headquarters at Evergreen, Colorado. Mid-West is a regional service and policy organization of the rural electric cooperatives, and publicly owned electric systems located in nine states comprising the Missouri Basin: Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, South Dakota, and Wyoming. Mid-West was organized in 1958, and is composed of 250 systems, which serve almost two million people. It was formed to obtain an adequate supply of low-cost and dependable electric power for these groups, and to secure the best possible management of the water resources of the arid and semiarid region where members live, work, and play.

Mid-West appreciates the courtesy of the Chairman in inviting us to comment at this hearing on S. 2692, a bill to authorize appropriations for the civilian programs of the Department of Energy for Fiscal Year 1979, and the special emphasis the Chairman has placed on the Western Area Power Administration.

The Congress, in establishing the Department of Energy, transferred jurisdiction previously held by the Secretary of Interior over Federal power marketing agencies, to the Secretary of Energy. In doing so, the Congress transferred the agencies created to administer Federal power projects to the Department of Energy. Among these was the power marketing and transmission functions of the Bureau of Reclamation. It has now been given the name, Western Area Power Administration.

This Federal power marketing agency is the power system of the West. It affects more than seven million retail power consumers in 15 western states: California, Nevada, Montana, Arizona, Utah, New Mexico, Texas, North Dakota, South Dakota, Iowa, Colorado, Wyoming, Minnesota, Nebraska, and Kansas.

The Western Area Power Administration is not directly comparable to other existing power administrations which operate within a single identifiable region that has common interests.

For example, the Pick-Sloan Missouri Basin Program (Missouri River Basin Project) or the Colorado River Storage Project are each more nearly comparable to the Bonneville Power Administration than is the Western Area Power Administration. Size alone, whether measured by generation, transmission, revenue, or even the size of the service area, is not as important a factor in comparability as the nature of the area being served.

The Bonneville Power Administration serves a single, cohesive, contiguous region in one river basin. The resource is the Columbia River. One integrated power system serves the total region.

The Western Area Power Administration is comprised of several definite regions having many different river basins as resources and several federal power systems.

The electric industry is one of the most dynamic in our economy. Changes occur rapidly in costs, and in needs peculiar to a region. Federal power systems that comprise the Western Area Power Administration are mature systems with all, or nearly all, available firm hydroelectric power committed for several years. Commitments are under contract, and have been made in accordance with marketing policies developed over the years, in consultation with the preference customers, and understood by the customers. Basic changes in marketing policies cannot be made, in most areas, for several years. However, rapid changes in arrangements (within established policies) are needed for efficient transaction of business.

Of particular concern to our members and other preference customers located in the western United States is the administrative structure and functions of the Western Area Power Administration.

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We are becoming increasingly alarmed with actions taken by the Department of Energy, as well as actions not initiated which could adversely effect small communities, rural areas, and millions of municipal and rural electric consumers.

Mr. Chairman, six and one-half months after the Department of Energy Organization Act became effective, the Western Area Power Administration is operating in a caretaker role without a functional formal organization or authority to solve everyday provlems in the power business.

The Western Area Power Administration (WAPA) has been completely stymied since October 1, 1977, because the Director of Administration's Office has not approved the proposed organizational chart. WAPA cannot hire people to operate and manage the organization until their organizational chart is formally approved.

For six and one-half months, the Western Area Power Administration which is a major power supplier to millions of people in 15 western states, has been completely stymied with temporary management. While Denver has been designated the headquarters of the Western Area Power Administration, there isn't a headquarters telephone number or even a desk.

The White House gave clearance to the ACTING Administrator a month ago, but he is still Acting Administrator. We still have in the Area Offices of WAPA at Denver, Billings, Salt Lake City, Boulder City and Sacramento ACTING Administrators for the Western Area Power Administration.

Some levels in the Department of Energy are ignoring Congress' intent in requiring, under section 302(a) that separate power marketing administrations be established and maintained within the Department of Energy. It is our belief that it was the purpose of Congress, under broad policy guidance of the Secretary of the Department of Energy, that each power marketing administrator should establish and maintain a complete and separate organization responsible for hiring its own administrative, legal, and technical staff to carry out those power marketing and transmission activities.

We believe Congress intended that the Administrator of the Western Area Power Administration, as well as those of other power marketing agencies, be responsible for establishing and maintaining an efficient organization.

Further, because we believe the closer the authority for necessary action is to the customer, the more efficient the operation will be, the Administrator of the Western Area Power Administration should be responsible for establishing and maintaining an efficient organization with appropriate area offices to efficiently conduct relatively short-term or normal business within the region.

As Chairman of the Ad Hoc Committee of representatives of preference customers from the region in which the Western Area Power Administration is to operate, I want the Committee to know that we were very pleased when Assistant Secretary for Resource Applications, Mr. George McIsaac and his Deputy, John Ahearne, met with us in Denver on March 28, 1978. It was a productive meeting in which the Assistant Secretary and his Deputy shared our concern that the rate of progress in the organization and authority of the Western Area Power Administration was moving, at best, with glacial speed. We were encouraged by Mr. McIsaac's statement that he intends to establish a strong, decentralized power marketing agency, and that his Office would conform with "the spirit and letter" of the laws governing Federal power projects.

But there are levels within the Department of Energy that give the preference customer in the West concern. Directives have been issued which are aimed at centralizing decisionmaking at the Washington, D.C. level, and directives that are taking back authorities previously delegated to the Administrator of the Federal power marketing agency.

The Director of Administration in the Department of Energy has issued numerous directives which present major roadblocks to the Power Marketing Administration in carrying out their assigned mission as directed by Congress.

A directive has been issued by the Director of Administration which takes away authority formerly delegated to the Administrator of the Power Marketing Agency to approve labor contracts with union employees. The International Brotherhood of Electrical Workers' Union and the Power Marketing Agencies' employees are upset about this action.

The Director of Administration is the only person authorized in the Department of Energy to file notices in the Federal Register which causes unnecessary delays on Federal actions.

The Director of Administration has taken away authority from the Administrators to work with the GSA at local levels to acquire office space for the Power Marketing Administration's operations.

The Director of Administration has ignored Section 302 of P.L. 95-91 which calls for the Power Marketing Administrations to be separate and distinct organizations. He had a task force in Denver looking at options that would take away certain operating functions from the Western Area Power Administration, and place them under the direction of the Department of Energy field representative. This analysis was made under the guise of centralizing and improving Government efficiency, but if implemented, it would create major problems for an efficient Western Power Administration organization.

These actions not only fly in the face of Congressional intent that the Power Marketing Administrations be separate and able to respond quickly to the dynamic problems in the power business, but are presenting roadblocks to the Power Marketing Administrations that could endanger the reliability of service adversely affecting millions of small town and rural electric consumers.

We are hopeful that appropriate steps can be taken as soon as possible to correct the Department of Energy and to stop directives now being issued that are not consistent with Congressional intent and are not in accord with existing

legislation. In the main these directives do not consider the complexities involved in the management and operation of large power marketing and transmission programs. Such a barrage of inaccurate directives willfully violating existing legislation means the concerns and foresight Congress exerted on behalf of millions of rural electric consumers will not be served.

Section 660 of P.L. 95-91 provides that appropriations for the Department of Energy shall be subject to annual authorization from the Congress. This Committee could provide, in the view of Mid-West and preference customers in the Western Area Power Administration region, more guidance for the Department of Energy on what the Congress meant by "separate and distinct" by inserting specific language in the 1979 Department of Energy Authorization Act.

Since the Western Area Power Administration does not have an adequate staff to carry out its functions and responsibilities as directed by Congress, we trust this Committee will share our concern over what appears to be a low-level priority by some officials in the Department of Energy to staff the Western Area Power Administration with knowledgeable people for an efficient administrative, legal, and technical staff who can operate, plan, design, construct, and maintain the Federal system.

Mid-West is also concerned that the Department of Energy not depart from traditional, statutory rate making concepts and procedures for the Western Area Power Administration.

Our Counsel, Mr. Ed Weinberg will discuss our view of rate making policy and procedures.

STATEMENT OF EDWARD WEINBERG
OF DUNCAN, BROWN, WEINBERG & PALMER, ATTORNEYS,
WASHINGTON, D.C.
COUNSEL FOR
MID-WEST ELECTRIC CONSUMERS ASSOCIATION, INC.

BEFORE THE
SUBCOMMITTEE ON ENERGY PRODUCTION AND SUPPLY
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

APRIL 14, 1978

My name is Edward Weinberg. I am an attorney with offices in Washington, D.C. I appear here today as counsel for the Mid-West Electric Consumers Association, Inc.

Mr. Simonton has asked me to testify concerning the legislative standards for the establishment of rates for power marketed by the Department of Energy and particularly power that will be marketed through the Western Area Power Administration. Specifically, I would like to focus my testimony on the McGovern amendment which appears as a part of section 302(a)(3) of the Department of Energy Organic Act.

As Mr. Simonton has already stated, in transferring power marketing functions for federally generated power from the Department of the Interior to the Department of Energy, Congress was at great pains to make clear that it was not changing existing authorities and criteria for the establishment of power rates in any degree. Section 302 of the Energy Department Organic Act transferred legal authorities as they existed. The Act is quite specific in this regard.

Further, Congress took great care to require that the former separate power marketing administrations of the Department of the Interior and the power marketing functions of the Bureau of Reclamation be preserved as separate and distinct organizational entities, each to be headed by a separate administrator.

Congress' purpose in so doing was to preserve the regional and sub-regional character of these power marketing agencies, each of which operated under long established and well understood power marketing statutes and guidelines. Congress' purpose in retaining both the existing statutory charter and the individual administration concept was not out of a concern to perpetuate bureaucratic aggrandizement. We are convinced that Congress' purpose was to forestall what might otherwise be a tendency when a new department is established to "reinvent the wheel" so to speak. Congress wanted to get on with the job of power marketing through a department whose focus would be on energy in its multiple aspects. It did not want its transfer of functions and of authorities to be taken as a signal that the experience gained and the policies established over three quarters of a century of federal power marketing should be cast aside and torn asunder.

Last January, the Energy Department announced a proposed rule making dealing with procedural rules to permit

interim rate making for the Western Area Power Administration. Under that proposed rule making, the authority for the establishment of interim rates pending final determination of power rates, as well as the authority to make final determinations reviewing the determinations of the Assistant Secretary to whom the power marketing administrations report, was proposed to be vested in the administratator of the Economic Regulatory Administration of the Department of Energy.

This proposal appeared to Mid-West and to other entities representing the purchasers of federally generated power, to be a departure from what Congress intended in transferring the federal power marketing functions to the Department of Energy. The Department of Energy Organic Act, in addition to providing that the power marketing functions transferred shall be carried out through separate administrations reporting to the Secretary -- this is provided for by section 302 -- also contemplates in section 203 that the Secretary shall assign to an Assistant Secretary the power marketing functions, including responsibility for marketing and transmission of federal power. This is expressly provided for in section 203 (a)(10). Congress provided not that the Secretary <u>might</u>, but that the Secretary <u>must</u> assign those responsibilities of supervision over the power marketing administrations to an Assistant Secretary. The Secretary of

Energy has assigned supervision of power marketing responsibilities to the Assistant Secretary for Resource Applications. However, it seemed to us in January, and it seems to us now, that to take from the Assistant Secretary the final authority over the rates charged by the power marketing administrations is to take from the Assistant Secretary an essential element of his responsibility for power marketing and to assign it elsewhere in contravention of Congress' command.

As a part of Mid-West's comments on this proposed rule making, our firm prepared a legal opinion reviewing in detail the requirements of the federal power marketing statutes with respect to rate making, and the authority of the Department of Energy under the Department of Energy Organic Act. That opinion is appended to this statement and I offer it for the record. The opinion is specific and detailed and I will not repeat what is there said. To this date, the Department of Energy has not announced its decision on the proposed rule making.

As I indicated, there is one matter -- the McGovern amendment -- upon which I would like to focus. The McGovern amendment is a part of section 302 of the Department of Energy Organic Act. That section deals specifically with the power marketing functions transferred from the Department of the Interior to the Department of Energy. As I have stated, it provides for the retention as separate administrations within

the Department of Energy of the former power marketing administrations that had been established in the Department of the Interior, including the power marketing functions of the Bureau of Reclamation. The McGovern amendment itself reads:

> Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

As this Committee knows, since it has had a major role in shaping the statutes under which the Bureau of Reclamation marketed power, power rates are established to return the cost of Bureau of Reclamation multipurpose projects allocated to power, together with other project costs assigned under the Reclamation Law to be made from power revenues. Generally speaking, the latter refers to the portion of the cost of a Reclamation project allocated to irrigation but beyond the ability of the water users to repay over the repayment periods established by law. In addition, the power rates must, of course, return the single purpose costs allocated to power (generators, transmission lines, etc.) and the operation and maintenance costs associated with power generation and transmission. It is obvious, therefore, that a major element of the rate base is

represented by the costs of multipurpose projects allocated to power. It is equally obvious that any substantial change in those allocations will have a major effect upon the rate base and hence upon the power rates.

In offering the McGovern amendment on the Senate floor, Senator McGovern said:

> The Congress has carefully evaluated the financial aspects of the total project during previous years. The Department of the Interior prepared a financial report and recommendations for financial management that were accepted by the Congress in conjunction with the Garrison unit in 1966.
>
> * * *
>
> Congress should determine cost allocations and project repayment requirements. This becomes even more important with the new alinements and adjusted responsibilities in the executive branch.
>
> We need this assurance at the time when new alinements and adjusted responsibilities are being considered in the executive branch.
>
> Cong. Rec., May 18, 1977, S-7940.

The Senate accepted the McGovern amendment. So did the Conferees, and it was enacted as a part of section 302. It seems plain that by inclusion of the McGovern amendment in the Organic Act, the Congress has made unmistakably clear the position that it has reserved to itself, and has not delegated to the Department of Energy, authority to institute fundamental changes in the basis upon which power rates for power formerly marketed by the Bureau of Reclamation are to be established.

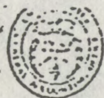
We believe, Mr. Chairman, that it would be most helpful to the responsible officials in the Department of Energy who are struggling with the task of smoothing the transition of the power marketing administrations from the Department of the Interior to the Department of Energy so that they can get on with the job that Congress intended them to do, and I know that it would be most reassuring to the millions of consumers who are served by the power marketing administrations, for this Committee, in reporting out S. 2692, to reaffirm the Congressional policy and objectives that are embodied in section 302 of the Department of Energy Organic Act. We think such a reaffirmation would be particularly useful in the light of efforts that have come to our attention to persuade the Department of Energy that it should turn its back upon the existing statutory criteria under which power rates are determined.

That our concerns are something more than a reflection of ungrounded fears is, I am sorry to say, demonstrated by a letter of February 1 sent by a subordinate official in the GAO to the Secretary of Energy. That letter, the full text of which is attached to my statement and which I offer for the record, includes the following statement: "Unfortunately, to the extent WAPA's charter is to deliver electrical power at the lowest possible cost for the widest possible use, WAPA's success in conservation and pricing is somewhat limited."

I find this a remarkable statement on two grounds. First, this official of Congress' own agency, which Congress has charged with the responsibility to see that its will is faithfully observed by the executive branch, takes it upon himself to lecture the Energy Department about his own dissatisfaction with Congress' command that federally generated power be marketed at the lowest possible cost for the widespread benefit of domestic and rural consumers, a command that Congress has repeated time and time again in enacting power marketing legislation. Second, is the unwarranted aspersion cast upon the consumer owned utilities, through which most federally generated power reaches the ultimate consumer, that they are not interested in conservation of electric energy. To a rancher to whose ranching operation electric energy is absolutely essential, it is chilling indeed to be accused of gluttony. I suggest that the level of farm income in this country does not bear out the charge.

The consumer owned utilities are ready and anxious to do their part in achieving the Nation's conservation goals, but we must dissent from the notion that those goals require that the cost basis of rate making for federally generated power should be discarded. If such a change is to be proposed, we believe that the forum in which such far reaching change should be considered is the Congress of the United States. Particularly in the light of the February 1 letter, we believe that a reiteration of the existing Congressional mandate would be very much in order.

Thank you.



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

ENERGY AND MINERALS
DIVISION

FEB 1 1978

The Honorable
The Secretary of Energy

Dear Mr. Secretary:

In line with our continuing efforts to evaluate the role of Federal power agencies such as the Tennessee Valley Authority and the Bonneville Power Administration, we are currently evaluating the role of the newly formed Western Area Power Administration (WAPA) within the Department of Energy. As you know, WAPA is essentially the transfer of marketing activities formerly assigned to the Bureau of Reclamation.

Foremost in our evaluation are the policies set forth in the Administration's Energy Plan, especially as they relate to key facets of energy conservation, pricing of energy, and the exploitation of renewable resources.

WAPA markets electrical power to a broad spectrum of customers in the Western States. It provides a direct link between the Federal government and the consumer and therefore it is logically placed to spur the goals of the Administration's Energy Plan. Unfortunately, to the extent WAPA's charter is to deliver electrical power at the lowest possible cost for the widest possible use, WAPA's success in conservation and pricing is somewhat limited.

As Secretary of Energy you are now faced with implementing a most complex and ambitious energy plan. We would appreciate receiving your views in writing in the near future, as to how WAPA may fit into this long term effort especially as it relates to conservation, pricing, and renewable reserves. As part of this, we would be particularly interested in what changes you envision in the present WAPA charter to enable it to more effectively respond to the goals enumerated in the Administration's Energy Plan.

If you or your staff have any questions or would like to discuss this, please contact Mr. Kevin Boland, Assistant Director of my staff. He may be reached at 275-3576.

Sincerely yours,

Monte Canfield, Jr.
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January 12, 1978

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Gentlemen:

In response to your request for a legal opinion concerning the authority of the Department of Energy to depart from the traditional rate-making practices for the sale of federal power, we submit the following:

I

Background

On August 4, 1977, the President signed Public Law 95-91 (95 Stat. 565) establishing the United States Department of Energy (DOE). The enactment is popularly known as the Department of Energy Organization Act and will be referred to as "the Act."

Pursuant to Section 302 of the Act, Congress transferred to the Secretary of DOE jurisdiction over federal power marketing agencies previously vested in the Secretary of the Interior under, inter alia, Section 5 of the Flood Control Act of 1944, the Reclamation Project

Act of 1939, and the Bonneville Project Act of 1937. In doing so, Congress also transferred to DOE the agencies previously created to administer the power projects (generally hydroelectric) constructed under the foregoing acts, amendments thereto, and complementary authorization acts and appropriation acts. These agencies include, the Bureau of Reclamation (now the Western Area Power Administration), the Southeastern Power Administration, the Southwestern Power Administration and the Bonneville Power Administration.

In Section 204 of the Act, Congress created the Federal Energy Regulatory Commission (FERC) and, pursuant to Section 402 of the Act, transferred to FERC most of the jurisdiction of the pre-existing Federal Power Commission (FPC). Although the Secretary of the Interior disputed the extent of FPC's jurisdiction over his rate-making authority, Congress had vested in the FPC ultimate jurisdiction over rates to be charged by the Secretary of Interior from certain (but not all) of the federal power projects subject to his jurisdiction.

In Section 206 of the Act, Congress created the Economic Regulatory Administration (ERA) and authorized the Secretary to "...utilize the Economic Regulatory Administration to administer such functions as he may consider appropriate." (Section 206b). Pursuant to regulation, the Secretary has vested in ERA confirmatory authority over power rates of the various power marketing administrations established in Section 301(a) of the Act (42 Fed. Reg. 60726-60727, Nov. 29, 1977). The Secretary's action was taken notwithstanding the previous jurisdiction of the FPC over rates for some of the federal power projects previously administered by the Secretary of the Interior.

Prior to the formal promulgation of the rule establishing confirmatory rate jurisdiction in ERA, it was made known to preference customers of the federal power marketing agencies that serious consideration was being given to altering the traditional approach to rate-making by the aforesaid agencies. That is, instead of setting rates on the basis of the "lowest possible cost consistent with sound business principles" (as mandated by Section 5 of the Flood Control Act of 1944; see below), policy makers in ERA stated at a November 3, 1977, meeting with preference customer representatives, that ERA had under active consideration the following considerations for federal rate-making:

1. adequacy of cost coverage based upon the costs to be incurred during the term of the proposed rates;

2. evidence of the fairness of the cost allocation across classes of rate payers;

3. effect of the proposed rates on system reliability and power supply adequacy;

4. effect of proposed rates upon fuel use patterns and fuel form dependencies;

5. impacts of proposed rates upon power wholesalers and (through them) upon ultimate customers: residential, commercial, industrial;

6. impact of proposed rates upon inter-regional competitive advantages exercised by firms within service area relative to similar business enterprises outside of service area and competition between public and private power suppliers within service area;

7. effect of proposed rates upon system efficiency, plant availability, load factors;

8. effect of proposed rates on power pooling, interconnections, and coordinated system operations designed to increase efficiency and reliability, and reduce reserve margins;

9. effect of proposed rates upon growth in future energy consumption, peak loads and demand patterns;

10. effect of proposed rates on system financing capability to support necessary expansion in generation and transmission facilities;

11. effect of proposed rates upon regional land use and resource consumption patterns and locationally specific land use planning objectives; (including water)

12. a discussion of the competing public purposes and their balancing proposed rate structure; e.g.

agricultural requirements
environmental protection objectives
energy conservation objectives 1/

Conspicuous by its absence is mention of the statutory cost criteria for preference customers. And, many of the considerations mentioned, on their face, seem inconsistent with the statutory preference for federal power given public agencies and other consumer owned electric utilities and the statutory mandate that power rates be cost related, and even then as "low as possible consistent with sound business principles."

For example, a consideration of "inter-regional competitive advantages" (par. 6) before setting a power rate can only mean that a cost related, relatively low rate for federal hydro power, would be raised to remove rate differentials between retail customers served by preference entities and retail customers served by non-preference entities which generate, in the main, from more expensive thermal plants. Such action is in flat disregard of the congressional command that public agencies be given preference to federal power (see below) in that the cost advantage Congress intended for the public agencies would be done away with through imposition of a non-cost related rate.

By way of further example, consideration of the "effect of proposed rates upon growth in future energy consumption, peak loads and demand patterns" (par. 9), can only mean that rates will be raised for other than cost of service considerations to artificially restrain consumption of the very power Congress has granted public agencies and other consumer owned electric utilities a preference to.

This opinion, then, is meant to explore the legal authority of DOE to establish some criteria other than the "lowest possible cost consistent with sound business principles" to look to in establishing rates for federal power. The opinion is, of course, limited to a discussion of the legal authority of DOE to consider some of the more

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1/ The above is quoted from a Memorandum for File dated November 8, 1977, prepared by Douglas C. Bauer, Assistant Administrator for Utility Systems, and represents his summary of the criteria under consideration as ennunciated at the November 3 meeting.

objectionable factors set out in the Bauer Memorandum previously quoted from. Specifically, the opinion addresses the legality of non-cost related federal power rates and does not attempt to deal with other possible rate issues (like time of day pricing) where rate structure, and not revenue levels, are in contest. For convenience sake, such rates will be referred to as "conservation rates."

The ultimate concern of preference customers, and of this opinion, is to insure the continuation of the policy of cost related rates. As we have previously indicated, however, by letter dated November 16, 1977, to Leroy Michaels, Esquire, the transfer of rate-making functions to DOE, and by the Secretary to ERA, raises a number of procedural issues as well. The procedural and substantive issues identified in that letter are as follows:

A. Did the Energy Organization Act Transfer to DOE rate-making authority for federal hydro power marketing agencies?

B. Assuming that the answer to the foregoing question is yes, who in DOE has jurisdiction over rates?

1. The Secretary directly?
2. The Economic Regulatory Administration (ERA)?
3. The Federal Energy Regulatory Commission (FERC)?
4. Split jurisdiction between the Secretary, ERA or FERC depending on jurisdiction under previous law?

C. May the Secretary prescribe over-all policy on how rates will be set?

1. Does the answer to the foregoing question change if ERA or FERC has jurisdiction over rates?

D. Is the National Environmental Policy Act applicable to DOE's rate-making activities, and, if so, to what extent?

1. Does the answer to the foregoing question change if no overall policy is formulated and rates are raised on a project specific basis?

E. What procedures must DOE follow in establishing an over-all rate-making policy or in attempting to raise rates on a project specific basis?

1. Rulemaking?
2. Adjudication?
3. A split, depending on whether ERA or FERC have split jurisdiction?

F. May DOE depart from the traditional cost-of-service approach to rate-making?

1. What has been past policy and is it binding?
2. What specific statutory mandates under existing law limit Doe's administrative discretion to depart from cost-of-service standards in whole or in part?

After further consideration, we believe that the list of issues above enumerated fairly reflect the legal questions presented by DOE's incipient shift in rate-making policy. These issues will, therefore, be dealt with in substantially the manner presented in the November 17 letter.

II

Issues Presented

A. Department of Energy Rate-Making Jurisdiction Over Federal Hydro Power Marketing Agencies.

Prior to the enactment of the Act the Secretary of the Interior was vested with jurisdiction over the marketing of electric power and energy generated both by Bureau of Reclamation projects (43 U.S.C. §§ 485h(c)) and Department of the Army projects for which the Secretary has marketing authority. (16 U.S.C. § 825s). Included projects serve all or a major portion of the requirements of members of the Mid-West Electric Consumers Association, Inc. and the Salt River Project.

Pursuant to the Act, the power marketing functions of the Secretary of Interior were transferred to DOE. In relevant part, Section 302 of the Act states:

SEC. 302. (a)(1) There are hereby transferred to, and vested in, the Secretary all functions of

the Secretary of the Interior under section 5 of the Flood Control Act of 1944, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to--

(A) the Southeastern Power Administration;
(B) the Southwestern Power Administration;
(C) the Alaska Power Administration;
(D) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 and the Federal Columbia River Transmission System Act;
(E) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and
(F) the transmission and dispostion of the electric power and energy generated at Falcon Dam andAmistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

The conclusion that these broad regulatory powers were transferred to the DOE is supported by the legislative history of the Act. See Sen. Rep. No. 95-164, 95th Cong., 1st Sess. at 29 (1977); Conf. Rep. No. 95-539, 95th Cong., 1st Sess. at 65 (1977) and H.R. Rep. No. 95-346, Part 1, 95th Cong., 1st Sess. at 22 (1977).

Having concluded that DOE has at least the initial rate-setting jurisdiction as was possessed by the Secretary of the Interior, the issues arise concerning how the rate-making function is to be exercised within DOE and who or what within DOE has reviewing authority over initial rates and is thus final arbiter of the rate level of federal hydro power. The answer to this inquiry is less than clear.

As above discussed, Section 302(a)(1) of the Act transferred the power marketing functions of Interior to the Secretary of the DOE. However, the apparent full blown transfer of power to the DOE Secretary is limited somewhat by Sections 302(a)(2) and 302(a)(3) of the Act. For example, 302(a)(3) states:

> The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions.

Rather than giving the Secretary of DOE full reign over who within DOE would have authority to deal with the marketing of hydro power from subject projects, the Act on its face states that this authority lies in the Secretary, through an Assistant Secretary,2/ and the various Administrators. The legislative history of the Act bears out this conclusion. The Senate Report on S. 826 states:

> Section 302(c) created a separate and distinct administration within the Department to exercise authority over the functions transferred from the Bureau of Reclamation and the Falcon and Amistad Dams.
>
> S. Rep. No. 95-164, 95th Cong., 1st Sess. at 29 (1977).

It is our opinion that it can be strongly argued that the authority within the DOE to set rates for projects under former Interior jurisdiction lies with the DOE Secretary or the properly delegated Assistant Secretary and the various Administrators. At the least each Administrator must have a strong input into the rate setting function for projects formerly under Interior authority.

The DOE, however, apparently disagrees with our analysis.

In two separate but related publications emanating from the DOE, the DOE Secretary has delegated substantial authority over rates to the Economic Regulatory Administration (ERA) which, as above discussed, we feel has been delegated by the Act to the Secretary and the WAPA Administrator. On October 1, 1977, the Secretary of DOE, *inter alia*, delegated to the ERA the power over the final decision for rate adjustments for federal hydro-projects formerly governed pursuant to, *inter alia*, the Reclamation Project

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2/ Section 203(a)(10) (delegation to Assistant Secretary).

Act of 1939 and the Flood Control Act of 1944.3/

This delegation of authority to ERA was again noted in the new procedures promulgated for the regulation of WAPA rate proceedings. Those regulations,4/ as presently formulated, indicate that the Assistant Secretary for Resource Applications, assumedly with input from WAPA, will announce that new rates for WAPA are under consideration. After certain procedural niceties are followed, the Administrator of ERA, not the Secretary or the WAPA Administrator, may announce an "interim" rate for the project in question, and after hearings before WAPA, the final rate as well. Under prior regulations,5/ the Secretary, Assistant Secretary or Deputy Assistant Secretary of the Department of Interior both announced the rate change and made final disposition of the proceeding.

No doubt the Secretary of DOE will argue that the delegation of authority for project rates is proper. The Secretary could rely in this assertion on Section 206(b) of the Act which states:

> Consistent with the provisions of title IV, the Secretary shall utilize the Economic Regulatory Administration to administrator such functions as he may consider appropriate.

The Secretary of DOE could strongly argue that this provision grants him broad power to delegate authority to ERA including the authority over interim and final rates.6/ However, in light of ERA's apparently firm position that federal hydro power is severely underpriced, ERA jurisdiction should be resisted. We feel that it is appropriate and proper to argue that the Congress in stating in Section 302(a)(3) that federal power marketing duties "shall be exercised" by the Secretary and the Administrator preclude ERA from involvement in these activities, or, in the least, requires that the WAPA Administrator perform an important role in the development of rate levels. It can be further argued that Section 203(a)(10) of the Act requires the Secretary to delegate power marketing to an Assistant Secretary (assumedly the Assistant Secretary for Resources Application) and does not permit a delegation to ERA.

3/ See 42 Fed. Reg. 60726, 60727 (November 29, 1977).
4/ The regulations appeared in the Federal Register on January 3, 1978 at 43 Fed. Reg. 31.
5/ These regulations appeared in the Federal Register on August 15, 1975 at 40 Fed. Reg. 34431.
6/ In this vein it should be noted that ERA has asserted jurisdiction over the approval of SEPA rate contracts. See Notice, ERA Docket No. SEPA 78-1, 42 Fed. Reg. 64406 (December 23, 1977).

Thus, as concerns the marketing of power from federal projects, the Secretary of DOE has delegated final authority in that area to the Administrator of ERA. We feel that the Secretary in so delegating, may have undertaken an improper delegation of authority and that the Secretary, or an Assistant Secretary, and WAPA have primary, if not sole, responsibility and authority for the setting of hydro rates for reclamation projects.

Before departing the discussion of where jurisdiction in DOE lies over federal power rates, there remains one additional, but potentially substantial wrinkle.

As above indicated, the FPC formerly had approval authority over rates established by the Secretary of the Interior for certain projects subject to his jurisdiction (e.g., 16 U.S.C. § 825s). So, in addition to the issue of transfer of the Secretary of Interior's authority over rate-making, the additional issue of the transfer of FPC's authority to DOE must be considered.

Section 301(b) of the Act transferred to the Secretary of Energy all functions of the FPC, its officers or components which were not transferred by the Act to the Federal Energy Regulatory Commission (FERC). The explicit transfers to FERC from the FPC are set forth in Section 402(a) of the Act and do not include the transfer of approval authority over the Secretary of DOE's rate determination.

The only other provision of the Act which could arguably vest FERC with approval jurisdiction over the Secretary's established rates is Section 402(d) which states:

> (d) The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary--
>
> (1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or
>
> (2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,
>
> except that nothing in this subsection shall require that functions under sections 105 and 106 of the Energy Policy and Conservation Act shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

The argument here would be that Congress has vested ultimate jurisdiction over federal power rates with FERC since it has been held that due process requires federal rate determinations "to be made on the record after an opportunity for an agency hearing." Northern California Power Agency v. Morton, 396 F.Supp. 1157 (D.D.C., 1975) (affirmed without opinion); see also, Santa Clara v. Kleppe, 418 F.Supp. 1243 (N.D. Cal., 1976) (on appeal). It is settled that constitutional requirements are encompassed in the term "statute" as found in 5 U.S.C. § 554 (APA),7/ and there is no reason to believe that the Section 402(d)(1) reference to "required by law" would be construed differently. Thus, on the face of Section 402(d)(1) a strong argument can be made that FERC does, in fact, have jurisdiction over federal power rates.

We are nonetheless reluctant to conclude that FERC does have jurisdiction over federal power rates. Our reluctance stems from an amendment to Section 301 of the Act by Representative Tucker which was "...designed to clarify that [jurisdictional] ambiguity so that there can be subsequently no litigation or debate over it." Congressional Record, June 2, 1977 at H-15324-25. Simply stated, the amendment deleted a specific vesting of jurisdiction in FERC of all Title III matters (including federal power rates) "which involve an agency determination required by law to be made on the record after opportunity for an agency hearing."

While normally the seeming grant of jurisdiction under Section 402d(1) would be accepted without question under the "plain meaning" rule of statutory construction, we believe that a court, when reading the Act together as a whole, together with the legislative history, would conclude that FERC has no jurisdiction in the premises. Chemehuevi Tribe of Indians v. FPC, 420 U.S. 395, 403 (1975).

With these transfers and delegations of authority, proper or improper, having been described, the issue arises whether the DOE Secretary can prescribe an overall policy on rates for federal hydro power. We conclude that with certain limitations imposed on the Secretary, the DOE Secretary could formulate overall policies for federal power marketing.

7/ Clardy v. Levi, 545 F.2d 1241 (9th Cir., 1976).

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If one consistent theme runs through the provisions of the Act and the Act's legislative history it is that DOE was formed in order to streamline federal energy action and to coordinate federal policies and programs into a cohesive plan.

The Act itself states:

"...a strong national energy program is needed..."

Section 101(3).

"responsibility for [present] policy, regulation and research, development and demonstration is fragmented...and does not allow for the comprehensive, centralized forms necessary for effective coordination or energy supply and conservation programs..."

Section 101(4).

"The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of federal energy policies and programs."

Section 102.

The Act abounds with language like "coordinated energy policy", "comprehensive energy conservation strategy", "national energy policy and programs" and so forth.

The legislative history underscores this Congressional intent:

The basic purpose of S. 826 is to establish a permanent, Cabinet-level Department of Energy in the executive branch and to bring together in the Department of Energy all of the major energy programs in the federal government, including those programs relating to economic regulation of energy supply systems.

The legislation achieves the following additional purposes:

The provision of an appropriate organizational framework for the implementation of energy programs;

> The provision of an effective permanent mechanism for the development and implementation of a comprehensive national energy policy;
>
> The creation and implementation of a comprehensive national energy conservation strategy;
>
> The assurance of a coordinated and effective energy research, development, demonstration, and commercialization program within the framework of a comprehensive energy policy, with the aim of increasing the efficiency and reliability of all feasible energy resources to make the Nation self-sufficient in energy;
>
> The provision of a strong and effective organizational framework for the development of energy supply and energy conservation technology and initiatives, interrelating and balancing these programs within the context of national energy strategy;...
>
> S. Rep. No. 95-164, 95th Cong., 1st Sess. at 1-2 (1977).

In no section does this Act specifically give the Secretary the explicit authority to implement an overall rate policy and the legislative history of the Act points out that this Act does not alter existing statutory policies or add any new substantive authorities.8/ However, the overall tenor of the Act clearly points to the conclusion that the Secretary has broad power authority, thus specific limitations both within and without DOE on the Secretary's ability to implement grandiose rate schemes must be located.

Within DOE, those limitations may come from three distinct areas. First, assuming that ERA was properly delegated rate approval authority, the Administrator of ERA could take an active role in policy determination and refuse to approve rates which do not fit into ERA's master scheme. However, as a practical matter it strains credulity to assume that an internal rift between ERA and the Secretary could exist in substantial magnitude for a sufficient time to scuttle the Secretary's plans.

Similarly, an active WAPA Administrator or Assistant Secretary for Resource Applications could cause temporary problems in the implementation of an overall rate scheme. However, as with a maverick ERA Administrator,

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8/ H.R. Reg. No. 95-346, Part 1, 95th Cong., 1st Sess. at 3-4.

bureaucratic dynamics would not permit these activities to upset overall planning by the Secretary.

Third, FERC could cause problems for the Secretary's overall plans. If FERC has approval authority over rates for power generated by Department of the Army hydro projects, 9/ FERC could fail to approve rates proposed by the Secretary for jurisdictional projects. In the past, the FPC (now FERC) has, at least on the face of its decisions, limited its scope of review to the statutory standards of the 1944 Act:

> "Our role is to review the Secretary's proposal and confirm and approve it if we conclude, on the basis of our independent judgment, that it comports with the dual statutory standard of providing consumers with the benefits of power at the lowest possible price consistent with good business practices as well as protecting the interests of the United States in amortizing its investment in the projects within a reasonable period."

Bonneville Power Adm., FPC Opinion No. 482, 34 FPC 1465 (1965). See also Bonneville Power Adm., FPC Opinion No. 741, ___ FPC ___ (Aug. 21, 1975).

We have previously concluded that, although some uncertainty may exist concerning FERC's role in federal hydro power marketing, FERC has no present authority in rate-making determinations. Thus despite the FPC's former, at least facial, adhesion to statutory standards, FERC will be of little use in countering an overall DOE policy on rates.

The sole clearly effective limitation on the ability of the Secretary to implement an overall rate policy comes from without the DOE. That limitation stems from the statutory restraints in the federal power marketing laws which circumscribe at least to some extent the Secretary's ability to go forward with rate schemes at his or her whim and discretion. Those limitations are discussed elsewhere in this letter.

In establishing federal hydro rates on a policy basis or on a project by project Administration by Administration basis, the issue arises whether the Secretary of DOE must do so by means of rulemaking or adjudication.

9/ We have previously concluded that FERC has no such authority.

If the Secretary may set rates by rulemaking, the procedural requirements are minimal, requiring only publication of the proposed rule and an opportunity for public comment on the issue. If the Secretary must implement rate policy through adjudication, interested persons have much greater procedural rights and may take advantage of the full panoply of trial type protections such as decision by an impartial tribunal, the opportunity to present evidence, cross-examine and argue.

The Act provides 10/ that the DOE's administrative procedures will, with limited exceptions, be subject to the provisions of the Federal Administrative Procedure Act. See 5 U.S.C. § 551-559 (APA). Under the APA, rate-making procedures have been considered rulemaking proceedings. 11/ 5 U.S.C. § 551(4) states:

> (4) "rule" means the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;
>
> (Emphasis supplied).

Under the Act, then, it would seem that the Secretary is only required to set rates pursuant to rulemaking procedures. Recent decisions, however, suggest that a rule-making procedure for the setting of federal power rates is constitutionally deficient and that something more is needed.

In Santa Clara v. Kleppe, 418 F.Supp 1243 (N.D.Cal., 1976), Santa Clara brought an action seeking to protect its status as a preference customer. In finding in favor of Santa Clara on procedural issues, the Court criticized the Bureau of Reclamation's allocation of preference power on an ad hoc basis and remanded the proceeding on due process grounds under procedures much more detailed than the APA rulemaking requirements.

10/ Section 501.
11/ This interpretation of rate-making constituting a rule making for APA purposes has been judicially recognized. See Associated Electric Cooperative Inc. v. Morton, 507 F.2d 1167, 1177 (D.C. Cir. 1974).

In Northern California Power Agency v. Morton, 396 F.Supp. 1187 (D.D.C., 1975), the Court enjoined a rate increase for the Central Valley Power project on due process grounds. In doing so, the Court stated:

> In the context of rate-making of this kind, due process requires that the basis advanced for the change be set out in sufficient detail to permit those affected to make meaningful response. As a practical matter this may require on-the-record questioning of experts to lay bare their assumptions and reasonings. Id. at 1193

In Mobile Oil Corp. v. FPC, 483 F.2d 1238 (D.C. Cir., 1973), the Court refused to allow "notice and comment" rulemaking for area gas rates and required a hybrid procedure in order to permit the testing of evidence by procedures designed to provide a reasonable prospect of accuracy. But see, Phillips Petroleum Company v. FPC, 475 F.2d 842 (10th Cir., 1973).

Unfortunately, the precise nature of procedure that the courts will require cannot be predicted with any degree of accuracy, since "...the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Santa Clara, supra, at 1260. It can be stated, though, that future DOE federal power rate proceedings will require something more than "notice and comment", but perhaps something less than a full blown adversary proceeding. It remains to be seen whether the recent regulations for WAPA will withstand due process scrutiny.

B. Is the National Environmental Policy Act of 1969 Applicable to DOE's Rate-Making Activities?

Assuming that the Secretary or his properly delegated representative attempts to establish criteria which mandate the establishment of conservation rates, the applicability of the National Environmental Policy Act of 1969 12/ must be considered. The substantive policies of the Act and its procedural requirements may be utilized to require the DOE to undertake an exhaustive analyses both of the impact of conservation pricing as an overall federal policy and of specific project rate increases.

12/ 42 U.S.C. § 4332 et seq. (NEPA).

The National Environmental Policy Act is a broad mandate which delegates a wide range of authority to new and old administrative agencies alike. The general substantive policy of the NEPA is flexible. Section 101 of the Act requires the federal Government to cooperate with State and local governments in using "all practicable means and measures" to protect the environment. This section allows for the exercise of discretion by agency officials and often does not require particular substantive results. In its review of an agency's decisions regarding its use of "all practicable means and measures," a court is restricted to determining whether the agency's action was "arbitrary, capricious or an abuse of discretion". Thus the general policies of NEPA provide little substantive protection from the imposition of conservation rates.

Unlike the substantive policy, NEPA's procedural provisions command a strict standard of compliance which can be utilized to insure that potentially impacted preference customers have a full opportunity to present cross-disciplinary studies on the impact of conservation rates with a concomitant prospect of convincing DOE of the evils of such rates.

The most important of these procedural requirements is Section 102(2)(C) of NEPA which provides that "every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment" include "a detailed statement by the responsible official..." This "detailed statement," otherwise known as an "environmental impact statement" (EIS) must contain:

"(i) The environmental impact of the proposed action,
(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
(iii) Alternatives to the proposed action,
(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
(v) Any irreversible and irretrevable commitments of resources which would be involved in the proposed action should it be implemented."

Section 102(2)(c) also provides that the responsible federal official "consult with and obtain the comments of any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved." This is to occur prior to making the detailed environmental impact statement.

Copies of the EIS and the comments of appropriate Federal, state and local agencies are to be made available to the President, the Council on Environmental Quality and the public. In addition, EIS copies and comments are to accompany the proposal through the existing agency review processes.

The purposes of requiring an environmental impact statement are manifold. Not only does the EIS requirement insure that each agency decision-maker takes into proper account all possible approaches to a particular project that would alter the environmental impact and cost-benefit analysis, but the requirement also aids the decision-making process by advising other agencies and the public of the environmental consequences and wisdom of the proposed federal action.

A federal agency must file an environmental impact statement when the following three conditions are present: The agency's proposed undertaking must be (1) a "major" action, (2) a "federal" action, and (3) the major federal action must "significantly affect the quality of the human environment." A Department of Energy proposal to substitute conservation rates in lieu of the traditional standards most certainly constitutes "federal" action.

In construing the term "major" action, the courts have held that a major action is one that "requies substantial planning, time, resources or expenditures." Natural Resources Defense Council, Inc. v. Grant, 341 F.Supp. 356, 366-7 (E.D.N.C. 1972); Smith v. Cookeville, 301 F.Supp. 100 (M.D. Tenn. 1974); Citizens Organized to Defend the Environment v. Volpe, 353 F.Supp. 520 (S.D. Ohio 1972). The large quantities of time and money which have been and will be expended by the DOE in its effort to study and develop the proposed policy changes qualifies its action as "major" in the NEPA sense. A further substantiation of DOE's proposal as a "major" action is founded on the ground that the substitution of conservation costs constitutes a "general revenue proceeding." According to the Supreme Court, "a general revenue proceeding is itself a 'major federal action', independent of any later adjudication of the reasonableness of particular rates, requiring its own final environmental impact statement so long as the proceeding has a substantial effect on the environment." Aberdeen & Rockfish R.R. Co. v. SCRAP, 422 U.S. 289, 318, (1975).

The final and more complicated criterion is that the proposed federal action significantly affect the quality of the human environment.

The courts have articulated several factors which should be considered in determining whether certain identified environmental impacts should be deemed "significant." The Second Circuit has formulated the following approach:

> In the absence of any congressional or administrative interpretation of the term, we are persuaded that in deciding whether a major Federal action will 'significantly' affect the quality of the human environment, the agency in charge, although vested with broad discretion, should normally be required to review the proposed action in light of at least two relevant factors: (1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area affected by it and (2) the absolute quantitative adverse environmental effects of the action itself...
>
> Hanly v. Kleindienst
> 471 F.2d 823, 830-31
> (2nd Cir. 1972).

The Fifth Circuit has also indicated that a factor to be weighed when determining the significance of environmental impact is whether the action "may cause a significant degradation of some human environmental factor (even though other environmental factors are affected beneficially or not at all.)..." Save Our Ten Acres v. Kreger, 472 F.2d 463, 467 (5th Cir. 1973). In addition, the Fifth Circuit observed that it is incorrect to read NEPA as requiring an EIS only where environmental impacts are adverse.

> A close reading of Section 102(2)(c) in its entirety discloses that Congress was not only concerned with just adverse effects, but with all potential environmental effects that affect the quality of the human environment.
>
> Hiram Clarke Civic Club, Inc. v. Lynn, 476 F.2d 421, 427 (5th Cir. 1973) (Emphasis in the original).

In addition to judicial interpretations, the guidelines promulgated by the Council on Environmental Quality on the preparation of an EIS must be consulted. Charged by NEPA with the formulation and recommendation of policies to promote the purposes of the Act, the CEQ guidelines reiterate

the considerations expressed by the courts with respect to the criteria of "major", "federal" actions and "significant" impacts and mandates the preparation of EIS in controversial situations.

> The statutory clause "major Federal actions significantly affecting the quality of the human environment" is to be construed by agencies with a view to the overall, cumulative impact of the action proposed, related Federal actions and projects in the area, and further actions contemplated. Such actions may be localized in their impact, but if there is potential that the environment may be significantly affected, the statement is to be prepared. Proposed major actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases. ...
>
> Section 101(b) of the Act indicates the broad range of aspects of the environment to be surveyed in any assessment of significant effect. The Act also indicates that adverse significant effects include those that degrade the quality of the environment, curtail the range of beneficial uses of the environment, and serve short-term, environmental goals. Significant effects can also include actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial...
>
> (Emphasis added).

The CEQ guidelines further provide that:

> ...the action must be one that significantly affects the quality of the human environment either by directly affecting human beings or by indirectly affecting human beings through adverse effects on the environment.

Judged against these criteria, and as more fully discussed below, we conclude that an overall federal policy to impose conservation rates in the marketing of federal hydro power requires the preparation of an overall EIS on the impact of the policy change prior to implementation of that policy. We further conclude that a general revenue

proceeding which substantially increases rates for a particular project or Administration must be critiqued in an EIS which considers the localized impacts of each rate proceeding.

The EIS requirement for the overall policy change in the marketing of federal hydro power will be considered first.

If DOE continues to pursue an overall policy change in the marketing of federal hydro power, and if the change is implemented, DOE will clearly have made a policy alteration with nation-wide effects and nation-wide applicability.

Such overall changes in federal policy have in the past resulted in the preparation of environmental impact statements which attempt to analyze the environmental consequences of the policy change. One such overall EIS, or so-called "programmatic EIS," was prepared by the Department of Interior to evaluate the impact of the proposed federal coal leasing program. That programmatic EIS was prepared voluntarily by the Department of Interior, i.e., it was not prepared pursuant to court order, and was released in September, 1975.

Subsequent to publication in its final form, the coal programmatic EIS was challenged in the United States District Court in a case entitled Natural Resources Defense Council v. Hughes, 437 F.Supp. 980 (D.D.C., 1977). Without getting too deeply involved in the development of that litigation, two aspects must be mentioned. First, the court there at least tacitly recognized the necessity for preparation of the EIS to comply with NEPA's mandates. The Hughes court stated that the necessity of the EIS was not in issue in the proceeding since the Interior Department had considered its necessity. Id. at 987. However, the Hughes court pointed out that the U.S. Supreme Court had indicated that the coal programmatic EIS was necessary under NEPA. The Supreme Court, in an earlier case had stated:

> "Similarly the federal petitioners agreed at oral argument that § 102(2)(C) required the Coal Programmatic EIS that was prepared in tandem with the new national coal leasing program and included as part of the final report on the proposal for adoption of that program. Tr. of Oral Arg. 9. Their admission is well made, for the new leasing program is a coherent plan of national scope and its adoption surely has significant environmental consequences."
>
> Kleppe v. Sierra Club, 427 U.S. 390, 400 (1976).

Second, the Hughes court analyzed the final coal programmatic EIS and found it lacking in certain respects. The court enjoined the Department's implementation of their coal leasing program pending the preparation of a supplemental EIS. Id. at 993.

A second instance where a programmatic EIS was prepared involved the Interior Department's EIS on the sale of oil and gas leased for Atlantic Ocean Outer Continental Shelf tracts. The EIS was programmatic in nature and focused generally on the basic environmental impacts of OCS development and analyzed alternative energy sources.

The occasion of the preparation of these two programmatic EIS's would strongly support a theory that a programmatic EIS must be prepared prior to the implementation of DOE's conservation rate scheme. It may be, however, that DOE will determine that no EIS is required thus requiring the institution of an action to delay implementation of the policy until an EIS is prepared. If litigation under NEPA proves necessary, it should be pointed out here that the outcome cannot be guaranteed. For example, at least two evidentiary problems could arise.

First, there may be initial problems establishing that we are confronted with an overall DOE policy. However, DOE pronouncements and documents would most probably be sufficient to establish that we are dealing with an overall policy change. Second, we may have difficulties establishing that the policy change will affect the quality of the human environment and thus fall within the requirements of NEPA. Expert testimony from economists, engineers, etc., would have to be developed to establish that portion of the case.

Briefly stated, however, it is our opinion that a DOE policy change to conservation pricing would be an action requiring the preparation of a programmatic EIS. If we prevail on that theory, rate increases to implement conservation pricing could be enjoined on a nation-wide basis through one lawsuit and, more important, preference customers will have a real opportunity to establish the adverse impact upon the social fabric of their service areas and regions that substantially higher power rates would cause.

A second area of concern under NEPA is the necessity of the preparation of an EIS by the DOE for each individual rate increase it seeks to impose. If

the conservation rate scheme is implemented, rate increases of enormous magnitude could be expected.

In the absence or in the presence of an overall conservation pricing programmatic EIS, it is clearly arguable that each individual rate increase of any substantial magnitude on a project-wide basis or on an Administration wide basis must be supported by an EIS which critiques the impacts of the increase.

As indicated above, a general revenue proceeding has been deemed by the U.S. Supreme Court to be a major federal action. 12/ The preparation of an EIS then hinges upon a finding that the effects of the proposed rate increase will significantly affect the quality of the human environment. As in the analysis on the necessity of an EIS for the overall policy change, a suit to enjoin a specific rate increase pending the preparation of an EIS may present proof problems on the issue of the significant effect on the quality of the human environment. Testimony and proof must be developed through experts to establish the effect. Two potential significant effects which quickly come to mind are that the rate increases could cause population and/or industry geographic shifts and that the rate increase could cause consumers (residential, commercial and industrial) to switch to alternative fuels. In addition, since most preference customers are located in rural areas of the country, increased power costs would certainly have a devastating effect on already marginal agricultural operations. This is a serious, but not an insurmountable, hurdle, in maintaining a NEPA action.

In this vein, it should be noted that in October, 1977, WAPA issued a determination on the pending 180% Central Valley Project rate increase which held that no significant environmental effect will occur as a result of the increase. Thus, WAPA intends to prepare no EIS on the increase. The factual predicate for the negative determination on the need for an EIS is that CVP rates will still be below rates of alternative suppliers (*e.g.*, Pacific Gas and Electric Company), thus causing no effect on consumption of power. Although suit has not been filed, the negative determination, which we feel is questionable, is ripe for judicial review.

12/ *Aberdeen & Rockfish RR. Co.* v. *SCRAP*, 442 U.S. 289, 318-19; cf. *Asphalt Roofing Manufacturers Association* v. *ICC*, ___ F.2d ___ (nos. 75-1641 *et al.*, D.C. Cir., October 17, 1977) (rate increases of 10% and 7.5% remanded to ICC to determine necessity of an EIS).

It should be further noted that, assuming DOE proposes a programmatic EIS for the conservation rate policy, that does not obviate the need for an EIS analyzing the effects of specific rate increases since the programmatic EIS simply would not have sufficiently specific information to comply with NEPA in the analysis of the effects of a project rate increase. This conclusion is borne out by the Department of Interior's treatment of the coal development EIS situation. On the coal side, there is a three-tiered requirement for the preparation of EIS's which must be completed prior to mining: (1) the coal programmatic EIS; (2) a regional EIS (e.g., the Eastern Powder River Basin); and (3) the site specific EIS.

In brief conclusion, we feel that a strong case can be made that NEPA requires that an EIS be prepared both to analyze the shift in the policy for marketing federal hydro power and to analyze the effects of each specific rate increase. If DOE disagrees, there may be difficulties in maintaining the litigation successfully. However, a successful NEPA suit results in an injunction issuing against DOE enjoining them from carrying their programs into action until an adequate EIS has been prepared. Clearly, this prospective relief is attractive given the enormous importance of cost related power rates to preference customers.

C. May DOE Depart From Traditional Cost-of-Service Rate-Making?

Procedural issues, while important, should not obscure the primary concern addressed here. It matters little, or at most not as much, whether NEPA is applicable or the Secretary is prohibited from vesting rate-making authority in ERA if the Secretary does in fact have authority to establish conservation rates. In our opinion, if the Secretary has the authority to establish conservation rates, and he desires to do so, a way will be found to accomplish the objective in a manner consistent with the Act, NEPA and the requirements of procedural due process.

The opposite of this proposition seems equally true to us. That is, if the Secretary lacks the authority to establish conservation rates, no matter what chain of administrative command he is allowed to employ, the courts will not allow establishment of rates that depart from the congressional mandate.

We conclude that, under existing law, the Secretary lacks the authority and discretion to establish rates for federal hydro power that are based on any consideration other than project costs. In other words, we believe that imposition of a conservation rate for any power project now administered by DOE would be ultra vires.

Congress has established a statutory framework for the administration of federally owned and operated hydroelectric projects. That is, Congress has decreed that elecrric power and associated energy generated at these projects must be marketed to preference customers in such a way to encourage widespread use at the lowest possible cost consistent with sound business principles. This mandate, as will be seen below, appears again and again in federal statutes dealing with federal hydroelectric facilities in the form of what is now commonly referred to as the preference clause.

The historical genesis of the preference clause is clear and its binding nature on DOE is beyond dispute. Arizona Power Pooling Association v. Morton, 527 F.2d 721 (9th Cir., 1975).

A Library of Congress study of the preference clause traces its genesis as far back as colonial days. 13/ The policy was spawned during an era of acute interest in developing a comprehensive, national scheme for development of the Nation's waterways. See Fly, The Role of the Federal Government in the Conservation and Utilization of Water Resources, 86 Penn. L. Rev. 274 (1938). [hereafter Fly].

While early attention was focused on development of the Nation's water potential for commerce and agricultural development, it became apparent in the early Twentieth Century that a vast power potential was also presented, a potential that could be utilized to defray the capital and operating costs of water projects primarily conceived for other purposes.

As stated in Fly:

> In the planning and development of public projects, power is only one of the many phases of water control which enter into the complete

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13/ Preference to Public Bodies in the Marketing of Public Power, Library of Congress, Legislative Reference Service, January 20, 1956. [hereafter Preference].

picture. However, it bears a special relation to the others, it is the paying partner.

Id. at 289.

While the federal government recognized the potential for power development on the Nation's waterways, so did private interests. The battleground, then, in the earliest days of water development was between proponents of government development of public resources with resulting wide-spread public benefit and proponents of private development of the same resources with immediate benefit to the equity owners of private entities, and a lesser, though still tangible, public benefit resulting from private ownership.

While this argument continues today in much the same mode as in days past, proponents of government development and/or control, in the main, prevailed. *See* Pinchot, *The Long Struggle for Effective Federal Water Power Legislation*, 14 Geog. Wash. L. Rev. 9 (1945). The adoption of the philosophy of government development also resulted in the creation of the preference clause for power output from the resulting projects.

That is, in disposing of the power generated at projects funded through public dollars, preference in the sale of power will first be given to public agencies and other consumer owned electric utilities like the rural electric cooperatives that have been so important in the development of rural America. *See* *Preference*, *supra*, fn. 13.

At the same time, while Congress was concerned with recovering capital expenditures and operating expenses for the projects through the sale of power, Congress also has consistently provided that rates be designed to recover project costs only, in recognition of the importance of low cost power to development of the areas to be served.

Thus, in the Boulder Canyon Project Act of 1928, 43 U.S.C. § 67, *et seq.*, Congress decreed that power be priced with a "view to meeting revenue requirements" (§ 617d(c); in the Boulder Canyon Project Adjustments Act of 1940, 43 U.S.C. § 618, *et seq.*, Congress directed that the Secretary of the Interior establish rates for the sale

of Hoover Dam energy on a basis computed to be sufficient, together with other project revenue, "to meet specified financial requirements of the project" (§ 618); 14/ in the Bonneville Project Act of 1937, 16 U.S.C. § 832, et seq., Congress decreed that rates be set with a view to encouraging the widest possible diversified use of electric energy (§ 832e); in the Flood Control Act of 1944, 33 U.S.C. § 701, et seq., Congress decreed that power be sold at the "lowest possible rate consistent with sound business principles" (16 U.S.C. § 825s).

Only the Reclamation Project Act of 1939, 43 U.S.C. § 485, et seq., appears to allow the Secretary to set rates on a basis other than cost. There Section 485h(c) provides that power be priced so as to "produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost...as the Secretary deems proper." [Emphasis added]. But this language is of little help to a proponent of a conservation rate for power marketed pursuant to that provision.

As stated by Secretary of the Interior Steward L. Udall, in a letter dated May 15, 1965, to Representative Wayne Aspinall of Colorado, concerning the appropriate rates to be charged under the reclamation laws for power sales from the Colorado River Storage Project:

> Although the principles stated in section 9(c) of the Reclamation Project Act of 1939 pertaining to power rates are stated in terms of the minimum charge for power, they are also clearly intended to set the maximum charge. The Government of the United States markets power to serve the public interest, not to make a profit. We believe that the public interest is best served by marketing power at the lowest rate consistent with orderly repayment of all proper costs, and we believe that is what Congress intended. [Emphasis supplied].

Secretary Udall's interpretation of the Reclamation Project Act is unassailable.

14/ In the regulations promulgated by the Secretary to carry out this directive, the Secretary provided that the rates should be calculated so that revenue from power (plus revenue from water) would be "sufficient but not more than sufficient" to return the project costs. General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act, § 6 [Emphasis supplied].

The Attorney General of the United States has opined that all laws pertaining to the sale of federal hydroelectric power are to be construed in pari materia. 41 Op. A.G. 236 (1955). In Santa Clara v. Kleppe, 418 F.Supp. 1243, 1253 (N.D. Cal., 1976), the Court recognized the continuity of congressional policy through the years with respect to federal hydro power development.

Indeed, Secretary Udall himself recognized the need to construe all of the various acts together and to administer all projects in a consistent manner.

> The provisions relating to power marketing and power rates in section 9(c) of the Reclamation Project Act of 1939, section 5 of the Flood Control Act of 1944, and section 6 of the Bonneville Power Act are in pari materia, and each may be examined to shed light on the Congressional intent with respect to the others. Indeed, as a practical matter, as illustrated by the Bonneville Power Administration, because a single system may be used to market power from three different sources, the three statutes have to be read together and interpreted as establishing identical criteria for power rates. Consequently, the mandate of the Flood Control Act of 1944 to market power from Army projects "in such a manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles," applies also to power marketed from reclamation projects under reclamation law. (Letter of Secretary Udall to Representative Aspinall, May 15, 1965, in re basis for establishing power rates for the Colorado River Storage Project). [Emphasis supplied].

To be sure, it has been recognized that the Secretary has discretion in determining the appropriate period of amortization of capital costs, for a particular project, 15/ or the appropriate interest rate to be charged on capital costs, 16/ but there has been no instance that

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15/ Missouri Basin Water Problems: Joint Hearings Before the Senate Committees on Interior and Insular Affairs and Public Works, 85th Cong., 1st Sess. 334 (1957).
16/ H.R. Rept. No. 314, 83rd Congress, 1st Sess. 12 (1953).

we are aware of where any federal official or Member of Congress has maintained that it is within the authority of the Secretary to charge a rate for federal power that is other than cost related.

It is also a fact that the Congress, in passing the Act, has further circumscribed the discretion in DOE to alter rates for federal power. In Section 302(a)(3) Congress provided that:

> Neither the transfer of functions affected by paragraph 1(E) [Bureau of Reclamation] of this subsection nor any change in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

Under this provision, then, DOE is without authority to increase power rates for conservation or any other purpose by assigning a greater allocation of project costs to power functions without prior congressional approval. In our opinion, this latest provision of law is a reaffirmation of the long established congressional mandate that rates for power be cost related, and only cost related. 17/

Senator McGovern, the sponsor of the provision, made it abundantly clear that its purpose was to protect preference customers from increased power charges based upon a "new look" by DOE at cost aspects of multipurpose projects. As Senator McGovern explained to the Senate:

> The Congress has carefuly evaluated the financial aspects of the total project during previous years. The Department of the Interior prepared a financial report and recommendations for financial management that were accepted by the Congress in conjunction with the Garrison unit in 1966.
>
> * * *
>
> Congress should determine cost allocations and project repayment requirements. This becomes even more important with the new alinements and adjusted responsibilities in the executive branch.

17/ So too is the Section 102(9) statement of purpose of the Act "to promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost." This statement, of course, must be read in pari materia with the federal power marketing statutes which, under the Act, are now to be administered by the Secretary.

> We need this assurance at the time when new alinements and adjusted responsibilities are being considered in the executive branch. Congressional Record, May 18, 1977, S-7940. [Emphasis supplied].

The only possible argument that could be advanced by proponents of a conservation rate would be based on the Flood Control Act of 1944 language that power be sold "at the lowest possible rates to consumers consistent with sound business principles" (16 U.S.C. § 825s) [Emphasis supplied]. That is, the argument might be advanced that in these days of potential energy shortfalls, it is "consistent with sound business principles" to discourage electric consumption through an artificial increase of rates.

We, of course, express no opinion whether a conservation rate would achieve a net public benefit and be "consistent with sound business principles" (save for observing that the contention is not free from doubt and that other methods might be employed to achieve the same end). We do believe, however, that the clause itself was only intended by Congress to direct the Secretary to recover actual project costs while otherwise maintaining "the lowest possible rates to consumers."

This conclusion is directly supported by the further command in § 825s that:

> Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable number of years.

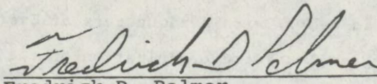
To us, the congressional command that rates "be drawn" to recover costs, with no mention of any extraneous factor such as "competition" or "conservation", is dispositive of the issue under discussion in this Section IIC. DOE may not impose conservation rates under existing law, if it attempts to the courts will hear resulting litigation, and the courts will invalidate any federal power rate that is not cost related nor designed to recover project costs. Cf. Associated Electric Cooperative v. Morton, 507 F.2d 1167 (D.C. Cir., 1974), cert. denied, 423 U.S. 830.

In Ivanhoe Irrigation District v. McCracken, 357 U.S. 274 (1958), the Supreme Court dealt with fears of future arbitrary federal treatment on the part of irrigation users of the Central Valley Project by quoting from the legislative history of the project:

> Senator Gore (then Representative) gave this compelling answer to these trepidations in 1947: "I cannot conceive of a Government that would spend $384,000,000 building one of the great reclamation-irrigation projects of the world and suddenly because some evil agent of Government had gotten into a bureau, turning its back upon a people who had been benefited by it and who in turn had greatly benefited the Nation by production of foodstuffs and wealth. I just do not conceive of the United States as being that kind..."
>
> Id. at 300, fn. 10.

Senator Gore's observation in another context would become a reality with respect to federal power users if conservation rates are allowed to become a reality. For years the Nation has benefited from the "production of foodstuffs and wealth" from areas of the country that benefit from low-cost preference power. If DOE is allowed to adopt conservation rates for federal power, the Nation would, in effect, be "turning its back on a people who had been benefited by it and who in turn had greatly benefited the Nation."

We conclude that conservation rates, if adopted, would be contrary to existing federal law and policy as developed to date and would be unlawful. Congress has the power to change existing law; DOE does not.



Fredrick D. Palmer
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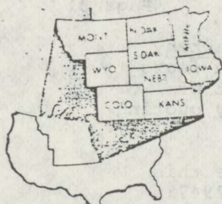
DUNCAN, BROWN, WEINBERG & PALMER, P.C.



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UNITED STATES DEPARTMENT OF ENERGY

Comments by
Mid-West Electric Consumers Association, Inc.
on Rate-Making Procedures for the
Western Area Power Administration

On January 3, 1978, the Department of Energy proposed amendments to the rate-making procedures for the Western Area Power Administration (WAPA). 43 Fed. Reg. 31 (January 3, 1978). Pursuant to the invitation there contained for submission of written comments on t e proposed procedures, Mid-West Electric Consumers Association, Inc. submits the following:

I

Mid-West Electric Consumers
Association, Inc.

Mid-West Electric Consumers Association, Inc. (Mid-West), with headquarters at Evergreen, Colorado, is the regional service organization of the rural electric cooperatives and publicly-owned electric systems located in the nine states comprising the Missouri Basin: Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, South Dakota and Wyoming. Mid-West is composed of approximately 250 systems, which serve almost 1,500,000 consumers. It was

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formed to obtain an adequate supply of low-cost and dependable electric power for constituent members, and generally to promote the interests of electric consumers in the region.

Mid-West's members qualify as entities entitled to preference in the sale of federal power generated at projects constructed pursuant to the Flood Control Act of 1944 (16 U.S.C. § 825s), mostly located on the - in stem of the Missouri River. These projects are now under the jurisdiction of WAPA, the successor agency to the Bureau of Reclamation in the area of power marketing.

For many years members of Mid-West purchased all of their electric requirements from the Bureau of Reclamation. As their loads have grown beyond the capacity of existing hydroelectric generating facilities, Mid-West's members have banded together to obtain an additional source of electric energy at a reasonably low cost. Resulting generation and transmission organizations include Basin Electric Power Cooperative, Missouri Basin Municipal Power Agency, Tri-State Generation and Transmission Association and Wyoming Municipal Electric Joint Power Board.

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Additional generating facilities planned or under construction by these entities are, by necessity, coal fired steam plants which must rely on low sulfur western coal as a fuel supply, coal which is owned, in the main, by the federal government. Mid-West will not detail here the difficulties which its members have experienced in securing access to federal coal, but will state that federal policies with respect to this resource are confused and ill defined, charitably speaking, which confusion has spawned a rash of litigation and a freeze by federal agencies on the leasing of federal coal which is necessary to meet the needs of electric consumers in the western region (See, e.g., Kleppe v. Sierra Club, 427 U.S. 390 (1976), in which Mid-West participated, with others, *amici curiae*).

Notwithstanding that Mid-West's members have or are developing sources of electric power supply independent of the federal government, WAPA's policies with respect to federal power projects are of acute interest to Mid-West. First, federal hydro-power remains a substantial portion of the total electric supply needs of Mid-West's members. Second, the historically low cost of federal hydro-power

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enables Mid-West's members to blend more expensive thermal power to provide electric consumers with power supply at a price compatible with the fragile rural economies of the areas served by them.

Thus Mid-West files these comments for the primary purpose of ensuring that the procedural framework for WAPA decision-making with respect to federal power rates is such as to ensure a continuation of historical federal power marketing policies, policies which Mid-West believes are mandated by existing law and which Mid-West will do everything in its power to see are continued.

Briefly stated, these historical policies are:

1. That rates be drawn to recover only the proper allocation of project costs to electric users;

2. That rates be developed at the local level by those involved with project operation;

3. That rate design for the ultimate electric consumer be left to the distributing utility and not mandated by the federal power marketing agency.

II

The Regulations

Mid-West will not repeat here the details of the regulations proposed but does say that the regulations, as

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drawn, are objectionable in four respects. Specifically, Mid-West objects:

1. To the involvement of the Economic Regulatory Administration (ERA) in the rate-setting process;

2. To the lack of procedural safeguards provided for by the regulations;

3. To the omission of a requirement that WAPA follow the dictates of the National Environmental Policy Act (NEPA) in the formulation of rates;

4. To the provision allowing the setting of an "interim" rate by ERA.

A. The Involvement of the Economic Regulatory Administration Is Contrary to the Energy Organization Act.

On October 1, 1977, the Secretary of the Department of Energy (DOE) delegated to ERA confirmatory authority over rate adjustments for federal hydro-projects constructed under the Flood Control Act of 1944. 42 Fed. Reg. 60726, 60727 (November 29, 1977). The delegation of authority is recognized in the regulations here under discussion in Section 10, which vests ERA with the jurisdiction to set an "interim" rate pending review of a rate adjustment proposal by the Assistant Secretary for Resource Application, and in Section 11, which vests ERA with the jurisdiction to announce a "final decision on the rate adjustment."

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Any involvement by ERA in the rate-making process is, in Mid-West's view, improper both as a matter of policy and under the Energy Organization Act (the Act).

ERA is still another amalgamation of "experts," isolated in Washington, with little, if any, understanding and sensitivity to the needs of western America and its rural economy. ERA is charged with a vast array of other responsibilities by the Secretary and it can hardly be expected to take the time and effort to acquaint itself with the intricate relationship of power supply and cost and the economic well-being of already hard-pressed, rural Americans. Instead, ERA can be expected to tinker with federal rate levels and rate design to achieve what it perceives to be worthwhile social goals in the selling of federal power regardless of the spin-off effect this tinkering may have on the social framework of those areas dependent on federal power.

With this in mind, Congress, in the Act, very carefully mandated that WAPA remain separate and distinct within DOE, and that the Secretary, in exercising his supervisory jurisdiction over WAPA, do so through an Assistant Secretary, and not ERA. The structure created by Congress for federal

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power marketing functions within DOE is, of course, a continuation of the historical chain of command utilized in the Department of the Interior. The involvement of ERA, on the other hand, is inconsistent with the congressionally-mandated structure and historical policies.

Attached as a part of these comments is a Legal Opinion (the Opinion) prepared at the request of Mid-West and the Salt River Project.[1/] At pp. 7-10 of the Opinion, the propriety of ERA's involvement in rate-making is discussed. The conclusion reached there is that the delegation of authority to ERA is improper under the Act. Mid-West adopts the conclusion and urges that the regulations be altered to remove any involvement of ERA in the rate-making process. Instead, the Assistant Secretary for Resource Application and WAPA should propose an appropriate rate adjustment directly to the Secretary for his review and decision with appropriate procedural safeguards.

1/ The Salt River Project, also a customer of WAPA, has prepared its own comments on the regulations and nothing in these comments should be construed as the view of the Salt River Project.

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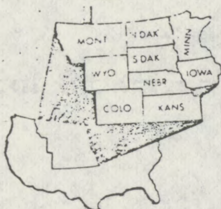
B. <u>The Regulations as Proposed Are Inconsistent with Procedural Due Process.</u>

The discussion at pp. 14-16 of the Opinion clearly shows that procedures for federal rate-making must meet the requirements for procedural due process. Mid-West maintains that the regulations as proposed fail to meet the judicial interpretation of due process in that no opportunity is provided for the presentation of witnesses by affected customers, no opportunity is provided for cross examination under oath of both WAPA personnel and customer witnesses, and ERA (under Section 11) is not limited to the record developed before WAPA and the Assistant Secretary for Resource Application in passing on a final rate. Instead, ERA would seem to have the freedom to adopt a rate higher than that proposed or to alter rate design after the close of the record below.

Also attached as a part of these comments is a Resolution adopted by the Legislation and Resolutions Committee of the American Public Power Association at its meeting of January 25, 1978. The Resolution addresses the subject matter at hand and Mid-West concurs with it in its



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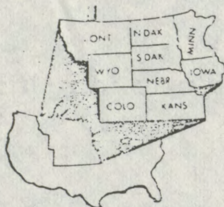
entirety. Paragraphs 4 and 6 of the Resolution specifically deal with appropriate rate-making procedures for federal power marketing agencies and Mid-West believes that, at a minimum, these procedures are required to insure the validity of any final rate decision for federal power projects.

C. The Regulations Improperly Omit Procedures for Compliance with NEPA.

Mid-West believes and maintains that NEPA is applicable to the power marketing func ons of WAPA, and specifically rate-making. At pp. 16-24 of the Opinion the application of NEPA to rate-making activities is discussed in detail. If DOE continues to ignore NEPA's application to its rate-making activities, DOE simply must realize that litigation will ensue at some point (and probably critical) given the enormous stakes involved to the customers of WAPA.

Certainly DOE is aware that Section 2(f) of Executive Order 11514 requires federal agencies to implement procedures designed to meet the mandates of Section 102(2)(C) of NEPA. Regulations of the Council on Environmental Quality interpret Section 2(f) to require each



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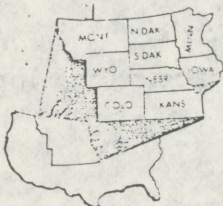
agency to establish procedures to identify those actions requiring environmental statements and the timing of the preparation of statements, among other matters. 40 C.F.R. § 1500.3.

The vice of the proposed regulations here addressed is that they are totally silent on NEPA and procedures designed to insure compliance with NEPA. The assumption made must be that NEPA is never applicable to ratemaking. If so, the assumption is patently erroneous as the Opinion makes abundantly clear.

For example, if ERA proposed to impose rate levels or rate design to achieve the conservation of electric energy, a NEPA statement would, by definition, be required prior to the proposal to implement such a rate on an "interim" or final basis. The federal action, by definition, would have a significant effect on the quality of the human environment since its sole purpose would be to alter the way people live and work.

Mid-West is not saying here that a NEPA statement is required prior to the implementation of any rate adjustment. Mid-West does maintain, however, that the proposed



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regulations are presently inadequate and illegal since no provision is made for a process to determine when and under what circumstances a NEPA statement is required prior to the implementation of a rate adjustment, or even proposal for a rate adjustment.

D. There Is No Authority for the Setting of an Interim Rate in the Power Marketing Statutes Which Control DOE's Rate-Making Activities.

Section 10 of the proposed regulations provides a procedure whereby ERA can put the Assistant Secretary for Resource Application's proposed rate into effect on an interim basis where it is deemed "necessary and appropriate" to do so. Mid-West believes that it will never be appropriate under the power marketing statutes which govern federal power rate-making (see the Opinion, pp. 24-31) to set interim rates since the statutes neither expressly provide for an interim rate procedure nor can the statutes be construed to impliedly authorize such a procedure.

It cannot be argued that rates for federal power projects can only be set in accordance with the statutory criteria. Cf. Associated Electric Cooperative v. Morton, 507 F.2d 1167 (D.C. Cir. 1974), cert. denied, 423 U.S.

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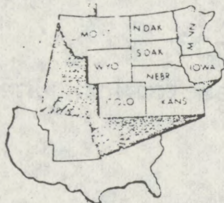
830. The criteria applicable to federal power rates is found in 16 U.S.C. § 825s which mandates that rates be set ". . . in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles."

Thus, ERA is unable to set an "interim" rate for federal power since it will be unable to determine on an "interim" basis whether the proposed rate meets applicable criteria.

Had Congress intended that federal power marketing rates be set on an "interim" basis, it would have specifically provided for it.

For example, in Hope Natural Gas Company v. Federal Power Commission, 196 F.2d 803 (4th Cir. 1952), the company sought to effectuate a rate increase during a statutory suspension period by posting bond. The FPC denied the company's request on the ground that the Natural Gas Act did not authorize interim rates during the suspension period. The Court agreed:

> It is argued that since the rates allowed by the Commission were found to be reasonable with reference to a test year which



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> ended just before the beginning of the suspension period, there is as much reason in making the rates applicable during the suspension period as during the following period when the rates which had been suspended were in effect. This however, was a matter for Congress and not for the Commission or the courts. As pointed out above, Congress might have provided for the increased rates to become effective at once upon the giving of bond for the refund of any portion found to be unreasonable. It preferred, however, to adopt the method which had been found to work satisfactorily in railroad rate regulation and to make no provision for the collection of increased rates during the period of suspension. Ibid. at 808. (Emphasis supplied).

Similarly, in Northern California Power Agency v. Morton, 396 F. Supp. 1157 (D.D.C. 1975) (affirmed without opinion), the Court held that rates could not be put into effect until procedures comporting with due process had been completed and set aside an interim rate increase. The Court stated that ". . . our jurisprudence has traditionally valued an opportunity for a hearing comporting with due process prior to the time a person may be deprived of a statutory entitlement." Ibid. at 1194-95.

In addition, the concept of an "interim" rate is inconsistent with the requirements of NEPA. Since NEPA

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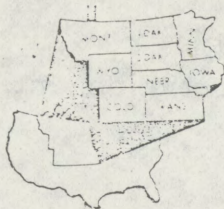
requires an assessment of the environmental impact of a proposed action prior to its implementation, and since an "interim" rate may well be different from the rate finally adopted, it is difficult to conceive how the EIS process could adopt itself to the promulgation of any rate that is subject to future alteration in the same proceeding.

Finally, even if the statutes in question explicitly or impliedly allowed utilization of interim rates, Section 10 of the regulations is nonetheless deficient on due process grounds since it lacks any specificity on when an "interim" rate may be "necessary and appropriate." To repeat, no one in DOE has unfettered discretion to set rates; rates must comply with statutory standards. DOE simply may not set any rate when it is deemed "necessary and appropriate," no matter the perceived justification for departing from historical practices.

III

Rate Level, Rate Design and Conclusion

Mid-West is well aware of the desire in ERA to depart from historical practices with respect to federal power marketing. As the Opinion makes abundantly clear,



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Mid-West's primary concern is over the future electric bills of its members, not how rates are adopted.

In this regard, Mid-West will vigorously object to any departure from traditional rate-making practices for projects under WAPA's jurisdiction, either as to rate level or rate design. In Mid-West's view, applicable statutory criteria will neither justify rate levels derived on any basis other than recovery of project costs (see the Opinion, pp. 24-31) nor rate design prompted by conservation considerations (e.g., time of day pricing). Congress has commanded that rates be set as low as possible to consumers, and this is the only criteria that may now be used.

Whether Mid-West's views prevails on this subject must await another day, but, in the interim, Mid-West and other customers of WAPA are entitled to carefully-defined procedures under which crucial decisions will be made. The proposal before the house today is neither carefully defined nor complete. We are all entitled to more and

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Mid-West respectfully requests that they be altered to meet the views expressed here.

Fred Simonton
Executive Director
Mid-West Electric Consumers Association, Inc.

Senator HASKELL. Mr. Dubrow.

STATEMENT OF MORGAN DUBROW, STAFF ENGINEER, NATIONAL RURAL ELECTRIC COOPERATIVES ASSOCIATION, WASHINGTON, D.C.

Mr. DUBROW. Good morning, Mr. Chairman, I am delighted to be here.

Senator HASKELL. Perhaps you could do what the other witnesses have done, if it is satisfactory, and submit your statement for the record and summarize.

Mr. DUBROW. I will be pleased to do that, Mr. Chairman. As I indicate in my statement, I am staff engineer of the National Rural Electric Cooperatives Association. We represent some 1,000 cooperatives in 46 States that purchase power from the area power agencies.

I want to say at the outset we have had, and I have participated in, several meetings with Secretary McIsaac and his Deputy. We have been extremely pleased to view the way in which he has taken hold of some of these matters which are of grave importance to our people. We are delighted to have assurances from him as we have had, and as you have had here today, that he intends to administer these power marketing agencies with a lot of autonomy and he intends to set rates and to comply with the law.

As my statement indicates, our people have been so concerned that they passed a resolution at our most recent annual meeting setting out the views on the policies and procedures which should be followed in administering and directing the activities of the power marketing agencies. Speaking specifically to ratemaking, we anticipate the rates will continue to be established so as to recover the costs as required by law over the normal 50-year period with the O. & M. charges and whatever charges are required by law to repay the cost to the Government.

As I have indicated, and as has been indicated here, this is the course of action that would be followed. I would like to comment specifically on the personnel ceilings for Bonneville and for WAPA. I have noted this committee took notice of the fact a certain number of positions have been taken away from Bonneville and also that WAPA needs additional positions.

In the case of Bonneville I was Washington manager of Bonneville for 10 years. I believe Bonneville still has the same personnel ceiling they had of about 3,100 employees at that time or shortly thereafter. I know for a fact that they need all of the positions which were formerly in their budget to do the kind of job they have to do.

As for WAPA I am delighted to see they are in the process of setting up an office and I am delighted to see they are going to get the administrative and legal staff they need to do their job. I also served for many years as engineering adviser to the Assistant Secretary of the Interior, Supervisor of Power Marketing Agencies. I know a lot of these people. I know, Senator, at the time transfer was made somewhere between 175 and 225 positions, which might have been and should have been transferred to WAPA remain in the Bureau.

I hope in one way or another they will get these people where they can do the kind of job they should do. I am glad to see they are going

to attempt to follow the pattern that was established and has been traditionally the way Bonneville has operated with a great deal of autonomy, with a group of people professionally qualified to deal with power matters on a day to day basis.

I am encouraged. I will conclude like I started. I am encouraged about the way Assistant Secretary McIsaac has taken hold of this problem. I want him to know and you to know we will continue to work with this committee and with the Department of Energy to the end we can achieve the goals of having these power marketing agencies not only operate locally but to do the kind of job they have been doing, but to set some kind of goals to inspire the utility industry of this country to do a better job in building interconnections, that sort of thing, that are needed to conserve energy.

I want to thank you very much for the opportunity to appear here. I have attached a statement prepared by our Southeastern Power Resources Committee and it pretty well sets out their views on these matters as well as the views of the Southwest power people.

I thank you.

Senator HASKELL. Thank you, Mr. Dubrow. I appreciate your being here. I appreciate your cooperation.

[The prepared statement of Mr. Dubrow follows:]

STATEMENT OF MORGAN D. DUBROW, STAFF ENGINEER, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Mr. Chairman and members of the Subcommittee, my name is Morgan D. Dubrow. I am Staff Engineer of the National Rural Electric Cooperative Association (NRECA). NRECA is a national service organization representing about 1,000 rural electric cooperatives in 46 states. These cooperatives serve about 25 million consumers in 2600 of the 3100 counties in the United States. Members of NRECA provide electricity to about 75 percent of the land area of this Nation.

I appreciate this opportunity to appear before the Subcommittee to express our views on the power marketing agencies of the Department of Energy, with special emphasis on the Western Area Power Administration (WAPA) and the Bonneville Power Administration (BPA). However, our cooperatives purchase power from all four of the federal power marketing agencies. Our members hold strong views on this subject as is set forth in a resolution which was unanimously adopted on February 9, 1978 at NRECA's 36th annual meeting in Las Vegas, Nevada. This resolution follows.

U.S. DEPARTMENT OF ENERGY MARKETING

POLICIES AND PROCEDURES

"Federal power has been, and should be, so priced as to meet and reconcile the essential criteria prescribed by federal law.

"The fixing rates by several marketing agencies has, in the past, adhered to these principles and effectively achieved the purposes of federal law as dictated by the rate criteria, especially with regard to recovery of reasonable cost to the federal government of project ownership and for producing and transmitting such power and energy.

"We strongly urge that the pricing policies of the Department of Energy be such as to result in a substantial continuation of the previous practices of such marketing agencies. The rate structure, as it relates to the component parts applying to capacity and energy, is a necessary adjunct to the marketing arrangement and is woven into the fabric of very complex arrangements. The overall purposes and intent of the law can be achieved only if all of the elements of rate making are taken together in conjunction with the particular marketing arrangement achieved by the marketing agency.

"In the pricing of federal power, NRECA believes the guiding principle should continue to be the adequate recovery of the costs of the projects. We believe that this has been, and should continue to be, the criteria for such pricing and

that this is the proper application of existing statutes. Any attempts by the Department of Energy to include pricing criteria not provided for in the laws authorizing federal power projects will be strenuously opposed. Rate structures or designs to control or affect consumer use of power should continue to be the right and responsibility of the utility or agency providing service to the ultimate consumer. Inasmuch as the power marketing functions of the Department of the Interior (BR, BPA, SWAP, APA) have been transferred into the Department of Energy (DOE), we further request the DOE to adopt policies wherein review of the pricing procedure of the DOE becomes mandatory for purposes of preference customers."

Having thus set forth what NRECA believes has been and should continue to be the basic policies and procedures for the marketing of federal power, I want the record to show that Assistant Secretary McIsaac and John Ahearne, the Deputy Assistant Secretary for Power Applications have indicated on several occasions that both "the letter and spirit of the law" will be followed in administering and establishing rates for the federal power marketing agencies. Assistant Secretary McIsaac also has indicated to our National Preference Customer Committee, made up of two representatives from each of the power marketing regions, and to a somewhat similar American Public Power Association (APPA) Ad Hoc Committee on Public Power Marketing, that in compliance with the authorizing legislation and in the interest of sound effective management he plans to have the several marketing agencies operate with a great deal of autonomy, thus enabling them to effectively conduct their business. Assistant Secretary McIsaac added that he envisioned departmental action only on the policies and matters essential to sound management and rate review and approval. At this point I would respectfully submit for the record the attached statement of the Southeastern Power Resources Committee which represents rural electric cooperatives in the SEPA marketing region. This statement which also is in accord with the general thinking of the Committee for Power as the SPA marketing area discusses principles for the development and implementation of federal power policy. It has been submitted to Assistant Secretary McIsaac.

NRECA wishes to express appreciation for the forthright position of the Assistant Secretary of Resource Applications and his Deputy for Power Applications. We appreciate the candor of their position and indicate for the record that we will cooperate fully in working with the Department of Energy and attempt to keep them informed of our members' position on these vital matters.

Our fundamental goal is to make certain that DOE operates so as to assure that publicly generated power is made available to the public at the lowest possible rates to consumers, consistent with sound business principles, based on the cost of generation, transmission and repayment of the project costs assigned to be repaid from power resources.

Our grave concerns for the future of the federal power marketing agencies began when NRECA learned in the middle of our 35th annual meeting held in February 1977 in Atlanta, Georgia, that the Carter Administration had, at that time, withheld funding for and recommended that the Congress deny funds for some 34 (later reduced to 19) water resource projects including such important potential hydroelectric power projects as the 600-MW Richard B. Russell Project in Georgia and South Carolina, the 200-MW Fryingpan-Arkansas Project in Colorado, the 600-MW Bonneville Unit in Utah, the 700-MW Auburn-Folsom South Project in California, and even the installation of two 700-MW units which were 95 percent completed in the 6,000-MW Grand Coulee Project in Washington State. As you know, this action was followed by several announcements, first from the White House staff and later from various DOE sources that federal power should no longer be sold at low rates, but should be priced high enough to force this "so-called conservation of electric energy" by marginal pricing or by setting rates at the equivalent present day cost of power from new coal-fired steam plants. This would as you know represent a drastic departure from the long established method of setting rates to recover power cost from federal water resource projects. I must say that it certainly got our attention.

In the interest of fairness, let me again pause to say that Secretary McIsaac never has espoused any such theory. On the contrary, he has indicated to us that power rates have traditionally been established to recover cost and that he firmly holds to this method for setting utility rates, both for the private sector and for the federal power marketing agencies. Again we applaud his position in this most important matter.

In my testimony before the House and Senate Appropriation Subcommittees on Public Works, I indicated our broad support for adequate funding for the power marketing agencies. We also noted that the Bonneville Power Administration operates on a revolving fund and is self-financed. Further, we have indicated our support of this concept for the other power marketing agencies.

NRECA is still concerned about adequate funding for the power marketing agencies to retain their regionalization as mandated by the Congress in the Department of Energy Organization Act. The legislative history of the DOE Act clearly expresses the Congressional intent to retain the regional programs and aspects of each federal power marketing agency. Section 302(a)(2) of the DOE Act provides that the federal power marketing administrations be preserved as separate and distinct organizational entities within the Department of Energy.

Despite the clear legislative directive in the DOE Act, there have been indications that the Department is attempting to centralize control of the power marketing administrations in Washington, D.C. Recent directives issued here require DOE approval of labor contracts, require clearance through Washington of power marketing administration notices to be published in the Federal Register, and rescind the authority of power marketing agencies to approve actions on rights-of-way acquisitions and condemnations for transmission line construction.

These actions thwart the power marketing agencies' ability to operate in an efficient, businesslike manner. We urge this Committee in its report to insist that DOE preserve the administrations as separate and distinct organizations pursuant to previously expressed Congressional intent.

We are pleased to support the recommendations of the Committee on Energy and Natural Resources to the Senate Budget Committee to restore to the Bonneville Power Administration the 71 personnel slots lost to the Department as a result of action by the DOE.

In the case of the Western Area Power Administration, NRECA believes that agency must have additional funds in fiscal year 1979 to take care of the administrative, management, legal support and operating personnel. Much of this service is being provided by the Bureau of Reclamation on an interim basis. DOE is mindful of this problem and has initiated steps to remedy it. At the time of the transfer, WAPA lost 225 to 250 positions vital to its functioning as an independent agency. We requested the Appropritions Committee to grant additional funding to provide about 240 positions needed to enable WAPA to carry out its mission. WAPA provides electric service in 15 western states, has more than 16,000 miles of transmission lines, and supplies almost 10 million kilowatts of hydroelectric capacity to hundreds of public power systems and rural electric cooperatives.

We also concur with the recommendations of the Senate Committee on Energy and Natural Resources to the Committee on Budget which says that "at its formation, 1,039 positions were transferred to WAPA. Sixty openings also were transferred from the Bureau of Reclamation. However, the DOE chose to reduce the personnel level to its current 940 positions. It is estimated by WAPA representatives that an additional 236 slots are required, mostly to staff the headquarters office. These slots are not provided for in the 1979 budget. The Committee recommends an increase of $8.4 million for such personnel".

In my presentation I have tried to cover the essential elements for a constructive federal power policy, adherence to the preference principles in the sale of power, the need for autonomy in the administration and control of the marketing agencies, establishing the lowest possible rates to recover costs, the need for adequate staffing—particularly for the Western Area Power Administration, and the need for continued development of federal hydroelectric resources.

NRECA is pleased to appear here today. With your help, we can solve the problems and face the future with confidence. We pledge our support to the Congress and the Department of Energy in furthering the programs of the federal power marketing agencies.

We thank you for the opportunity to present our views on these important matters.

Attachment.

Southeastern Power Resources Committee[1] Recommendations for Certain Principles to be Honored With Respect to Development and Implementation of Federal Power Policy

FOREWORD

It is only natural and right that the Carter administration, as is automatically the case with any new administration, will review and in some respects revise or even bandon existing policy in all of the major areas of federal activity, including federal power policy. The Committee does not purport to suggest hereby a comprehensive federal power policy. The Committee is concerned, however, that certain principles be honored as the Department of Energy (DOE) undertakes its review and consideration of possible changes in existing federal power policy. Many of the Committee members' representatives and their professional consultants have been involved with, and fairly profoundly activist with respect to, federal power policy for some thirty years. This involvement and activity have had primary concern for federal hydroelectric power development and the proper interpretation and implementation of federal preference laws, particularly Section 5 of the Flood Control Act of 1944. We cite this background of participation in the subject of these recommendations so as, hopefully, to enhance our earnest plea that DOE give due and careful consideration to the following draft—

PRINCIPLES

Hydroelectric power development

1. Multi-purpose development of the nation's river basins, including the purpose of generating hydroelectric power, should continue as a cardinal objective of water resources policy.

2. Where determined to be economically feasible, hydroelcitric power usually affords the lowest-cost and most environmentally acceptable source of energy available to the nation.

3. The continuously increasing cost of other forms of energy—such as coal, oil, gas and nuclear—will probably establish economic feasibility for an increasing nomber of hydroelectric developments, including both conventional and pumped storage projects. As such feasibility is determined, the federal government should proceed as rapidly as possible with authorization, construction and operation of the projects.

4. Existing hydroelectric projects should be studied to determine whether, in the light of an augmenting energy problem, they may be feasibly modified so as to increase their productivity.

5. Many existing federal water impoundments, such as the Bluestone Project in West Virginia, which are of substantial magnitude do not have installed facilities for the generation of electric power but do have one or more penstocks, incorporated into their original design in anticipation of the possibility that power generation might at some time in the future become a feasible purpose and function of such impoundments. These should be restudied and power generation facilities installed and put into operation where found feasible.

Preference

1. The nation's several statutory preference provisions, whereby preference in purchasing federally generated electric power and energy is accorded to cooperatives and municipalities and other public bodies, should be retained, protected and, wherever possible, given fuller implementation in favor of such preference entities.

2. Section 5 of the Flood Control Act of 1944 (16 USC 825s, 58 Stat. 890) should, in particular, be so retained, protected and extended in its application in favor of preference entities. This should be done for, among other reasons, the fact that it has, in legal effect, been interpreted and applied by DOE's predecessor in this field, the Department of the Interior, as setting forth the essential criteria by which other preference laws, i.e., Bonneville's and the Bureau of Reclamation's, should be interpreted and implemented.

3. We need not here reiterate the several elements set forth in Section 5 which represent positive criteria and limitations which must be honored to give effect

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[1] The Committee is comprised of representatives of rural electric cooperatives and their subsidiary and affiliated organizations from the States of Virginia, North and South Carolina, Georgia, Alabama and Mississippi.

to that particular preference provision. We deem it appropriate, however, to emphasize the meaning and importance of certain elements not contained therein:

A. It indicates no priority of preference right as between or among cooperatives or municipalities or other public bodies.

B. It contains no standard or restriction which those who administer it must heed with respect to the geographic delimitation of a power marketing area; DOE's Secretary and his several marketing agencies, such as Southeastern Power Administration (SEPA), have and should retain discretionary authority to make such decisions, especially since, from project to project and from river basin to river basin, there exist and will continue to exist such a wide variety of considerations which must wisely be taken into account in this decision-making process. See *Arizona Power Authority, et al.* v. *C. B. Morton and Ellis L. Armstrong*, 549 F. 2d 1231 (1977); cert. denied, ——— U.S. ——— (Fall, 1977).

4. Section 5 accords to the named preference entities a preference to all of the power, and to all of the energy, except such as may be required by the Army in the operation of the subject federal hydroelectric projects. These are perpetual rights. Out of these rights emerge certain fundamental premises:

A. The entitlement to the power and energy cannot be legally satisfied by selling it to a middleman, non-preference vendee, even though that vendee commits in turn to resell such power and energy to the preference customers at the subject project's rates.

B. If the preference entities desire to purchase such power and energy at the bus bar—where the federal government ultimately lacks facilities of its own or access to facilities otherwise to deliver the power to their load centers—they must be given the right so to acquire and purchase such power and energy, in lieu of the government's selling the power and energy to a middleman, non-preference entity.

C. The requirement that power shall be so marketed as "to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principle" prohibit the allotment or reallotment of power and energy so thinly among so many preference entities that the consequence is (1) to make it impossible to effect a sound business arrangement for the power's use in an integrated power pool, or (2) that each preference entity's share thereof is so small that there will be no favorable effect upon such entity's rates to its consumers. (With respect to A and B foregoing, as well as to the first two sentences of this paragraph 4, see Attorney General Herbert Brownell's opinion in 1955. 41 Op. Atty. Gen. 236.)

5. DOE should use its best efforts to ensure that the preference entities acquire as much of the subject federal power and energy as they propose to purchase and utilize, including their recapturing of all of it that may have been contracted for a term to non-preference entities.

6. "Preference" does not mean that any sale of federal hydroelectric power and energy to a non-preference entity is illegal; such a sale may indeed be legal if it is a vital element in a viable business arrangement whereby meaningful amounts of power and energy are supplied to preference entities in a given marketing area and if, otherwise, such meaningful amounts of power and energy could not be so supplied or supplied at as low a cost. However, if it will maximize beneficially usable power to the preference customers, in the future, upon the expiration of any existing contracts, we believe every effort should be exerted to effectively fit all available power and energy from federal projects upon preference customer (composite) load curves or the load curves of any power pool in which such preference customers participate in a given marketing area on a reasonably acceptable and agreed-upon basis, with the Government, where necessary, purchasing such support energy as may be required. In determining the method of fitting such power and energy upon such load curves and the amount of support energy to purchase, the Government should endeavor to maximize the economic benefit to preference customers vis-a-vis alternative sources of supply. This will ensure the "lowest rates to consumers consistent with sound business principles."

7. Federal power and energy has been, and should be, so priced as to meet and reconcile the essential criteria laid down in Section 5 of the Flood Control Act of 1944: (a) "* * * delivered to the Secretary of the Interior, who shall transmit and dispose of such power and energy in such manner as to encourage the most widespread use thereof"; (b) "* * * at the lowest possible rate to consumers consistent with sound business principles"; and (c) "Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of

such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years."

The fixing of rates by the Southeastern Power Administration has, in the past, adhered to these principles and effectively achieved the purposes of Section 5 as dictated by the rate criteria, especially with regard to recovery of reasonable cost to the Federal Government of project ownership and for producing and transmitting such power and energy.

We strongly urge that the pricing policies of DOE be such as to result in a continuation of the previous practices of SEPA. The rate structure, as it relates to the component parts applying to capacity and energy, is a necessary adjunct to the marketing arrangement. The overall purposes and intent of Section 5 of the Flood Control Act of 1944 can be achieved only if all of the elements of rate making are taken together in conjunction with the particular marketing arrangement achieved by the marketing agency.

MISCELLANEOUS

1. We believe that the several marketing agencies of DOE, such as SEPA, Southwestern Power Administration, Bonneville Power Administration and the Bureau of Reclamation, should have regional offices located in the several areas of the nation where the power they are marketing is generated. For the convenience not only of the preference customers, but of those officials who are indeed doing the marketing job, such an arrangement, which has generally characterized the marketing agencies in the past, is most conducive to good business activities on a day-to-day basis.

2. We are mindful that the Bonneville Power Administration has already published a proposed procedure whereby preference entities and other representatives of the public will be given an opportunity to be heard with respect to any proposed new or revised power marketing policies. We think such due process procedures are necessary and helpful. We respectfully submit, however, that in considering the adoption of policy, and especially in the day-to-day functions that are required for implementing policy, it is essential that preference entities not be foreclosed from conferring with appropriate DOE officials and other interested parties "across the table" and in direct dialogue. Such conferences will serve not only to expedite the making and implementation of decisions but to assure to the greatest extent practicable that all interested parties have come to an agreement that is clearly known to each of them and, hopefully, is not objectionable to any of them.

CONCLUDING STATEMENT

While perhaps stated in somewhat different ways, or amplified in ways not heretofore done, we believe the foregoing Principles merely reflect what the related laws of the land already are and as already contained in federal policy, indeed as implemented and applied in existing federal power marketing contracts and certain procedures. We do not presume that the foregoing represent all of the principles that should be considered when federal power policy is being reviewed. We do deem them, however, of particular importance as we view the context of federal power marketing in the southeastern region of the United States.

Senator HASKELL. I think things seem to be proceeding very nicely. I think the hearing has been productive. I think there were a considerable number of fears. A great many of them have been allayed, maybe not all, but we will continue to give oversight to this matter. I assure you of that.

Senator Melcher, do you have anything?

Senator MELCHER. Morgan, these extra slots you want for WAPA, isn't there some possibility you are going to take them out of the Bureau, just stripping the Bureau?

Mr. DUBROW. I did not mean to create—if I gave that impression, the point I was trying to make is WAPA is going to need, in my view, somewhere between 175 and 225 positions. By the time they get staffed

up, by the time—these are additional positions, by the time they get staffed up to do the job they want to do.

Senator MELCHER. I know how this works. I don't want to see the Bureau stripped down to nothing.

Mr. DUBROW. I quite agree with that.

Senator HASKELL. Thank you very much. I assume the organization chart for WAPA will be submitted within a seven day period. Will that be satisfactory? I understand from Secretary McIsaac that will be satisfactory. The police on rate appeal will be submitted by May 10 in ratemaking so the hearing record will stay open until May 10.

I appreciate your being here. The hearing is adjourned.

[Whereupon, at 11:07 a.m., the hearing was adjourned.]

[Subsequent to the hearing the subcommittee received the following statement:]

STATEMENT OF NORM JACOX, GENERAL MANAGER, NORTHWEST PUBLIC POWER ASSOCIATION

My name is Norm Jacox. I am the General Manager of the Northwest Public Power Association, a regional organization representing more than 185 publicly owned electric utility systems in the states of Alaska, Idaho, Montana, Nevada, Oregon, Washington, Wyoming, and the provinces of British Columbia and Yukon Territory in Canada.

NWPPA's member systems have a preference in the marketing of electric power in three of the five federal power marketing administrations: the Bonneville Power Administration (BPA); the Western Area Power Administration (WAPA); and the Alaska Power Administration (APA). For this reason, NWPPA has carefully monitored activities of the federal marketing administrations following their transfer to the Department of Energy upon enactment last year of the Department of Energy Organization Act (Public Law 95-91).

NWPPA appreciates the courtesy of the Chairman in inviting us to comment at this hearing on S. 2692, a bill to authorize appropriations for the civilian programs of the Department of Energy for fiscal year 1979.

NWPPA member systems purchasing power from the various power marketing administrations have been particularly concerned with two major issues: first, the continued existence of the federal power marketing agencies as separate and distinct entities within the DOE, with sufficient autonomy from departmental control to permit them in the future, as they have in the past, to make most administrative, legal and technical decisions to fulfill their power marketing mission subject only to broad policy guidance of the Secretary of DOE; and second, adherence by DOE to traditional ratemaking policies of existing law.

When the Congress considered the DOE Organization Act as submitted by the Administration, it noted a potential deficiency in the manner in which the Administration proposed to treat the federal power marketing agencies once they were transferred from the Department of the Interior. To insure that power marketing and ratemaking activities were simply transferred, not altered, the Congress specifically provided that the various federal power marketing agencies should be preserved as separate and distinct organizational entities within the Department, headed by individual administrators who were to maintain their principal offices in the regions served. The power marketing functions transferred to DOE, under the provisions of the Organization Act, are to be "exercised by the Secretary, acting by and through" the individual administrators. With respect to the multipurpose water projects under the jurisdiction of the Bureau of Reclamation, the Congress, in transferring the power marketing aspects of those projects, provided that the transfer should not be deemed to change the cost allocation and project evaluation standards. Under the terms of the Act, such changes cannot be made without Congressional approval. NWPPA supports these Congressional modifications.

Since it commenced operation on October 1, 1977, there have been some disturbing indications that the Department, notwithstanding the clear expression of Congressional intent, is attempting to control many of the Federal Power Marketing Administration functions from Washington or from DOE regional offices. There have also been indications that various persons or offices within the De-

partment would like to restructure the ratemaking policies of the federal power marketing agencies in ways which may not be supported by Congressional enactments.

The Western Area Power Administration is a major concern in connection with the Departmental attitude toward the federal power marketing agencies and the Department's efforts to centralize control over the power administrations.

WAPA was created to assume jurisdiction over the power marketing functions of the Bureau of Reclamation which were transferred to DOE. In transferring staff to WAPA, the Bureau employed what might be referred to as a 50 percent rule. Rather than determining the overall percentage of time spent by the various Bureau offices on power marketing functions and transferring the equivalent proportion of individuals from such offices to WAPA, the Bureau transferred only those individuals who actually spent more than 50 percent of their time on power marketing activities. As a result, individuals performing support functions, such as administrative and personnel activities, were not transferred. The inequity of the transfer scheme employed is evident from the fact that WAPA now contracts for the performance of such support functions from the Bureau. We believe that WAPA should have the capability to perform these functions in-house.

The transfer, of course, has been accomplished, and WAPA must proceed from that point. To do so, it must have an organizational chart which is a prerequisite for the justification of its personnel needs. We understand that a functional organizational chart of the headquarters office has been approved. However, WAPA does not as yet have a complete organizational chart, clearly delineating the chains of command and the personnel required to perform the functions necessary to market power in the most efficient manner. At present, WAPA has no safety officer, no deputy administrator, no division chiefs, and all the area managers are serving in an acting capacity. Without a complete chart, it is difficult for the Congress accurately to assess the personnel needs of WAPA in acting on the Administration's authorization and appropriation requests. We hope that once the skeleton of the organization is in place under the functional organizational chart, the DOE will move expeditiously toward fleshing in the total organization.

One of the more troubling aspects of WAPA's operation is the continuing failure of DOE to appoint an administrator. Robert McPhail is currently the acting administrator, but has yet to be formally appointed. Such long delays in appointing an individual so central to the effective operation of the power marketing administrative functions are incomplete with efficient administration. We urge prompt action by DOE in resolving this matter. It seems clear to me that DOE delay with respect to the issues of organization and personnel appointments significantly reduces the effectiveness of the power marketing operation.

In addition to these organizational issues, administrative actions have been taken by DOE which reduce the authority of the various administrators to perform functions which have historically been within their prerogative. For example, directives have been issued which take away authority formerly delegated to the Administrators to approve labor contracts. The Director of Administration is currently the only person authorized within the DOE to file notices in the Federal Register. Not only is this a break from past practice, but it also causes unnecessary delays with respect to federal actions. I believe, and I think the Congress in adopting the DOE Act intended, that such activities should be performed by the Administrators.

Similar problems are facing the Bonneville Power Administration. NWPPA is concerned with what appears to be an attempt by DOE to centralize in Washington, D.C., significant authorities of the marketing agencies. Specifically, we have heard that ratemaking, contract administration and personnel issues are matters which will be handled in Washington rather than by regional officials.

With respect to ratemaking activities, NWPPA is concerned that the Department not diverge from traditional, statutory ratemaking concepts. Specifically, rates must be established to encourage the most widespread use of federally generated power at the lowest possible rates consistent with sound business principles. Such rates should be set to recover the costs of producing and transmitting the power, together with the amortization of capital investment allocated to power over a reasonable period of years.

In the past, some departmental representatives have indicated that they would like to utilize the federal power marketing agencies as testing grounds for different rate techniques. We believe such action would not be permissible under existing law and would be inconsistent with the Congressional intent expressed in the Department of Energy Organization Act.

An article in the April 10, 1978, issue of "Inside D.O.E.," appears to me to indicate that individuals within the Department have come to the realization that existing law leaves little latitude for experimentation with rates for sale of federal power. The article suggests that traditional rates and ratemaking procedures will be employed by DOE. NWPPA will continue to monitor DOE activities in this area.

Regardless of the rates proposed for the various power marketing administrations, NWPPA is anxious to insure that preference customers of the federal power marketing agencies are afforded reasonable due process protections in the ratemaking proceedings. NWPPA believes that ratemaking should from the beginning be open to all involved and interested persons, and that the process should begin in the field. not in Washington.

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