The original documents are located in Box 13, folder "Energy - Meeting on reorganization of energy activities, November 22, 1976" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

ENERGY MEETING
Monday, November 22, 1976
5:15 p.m.
Roosevelt Room
(Principals Only)

11/22
Hold for next energy mtg.

DOMESTIC COUNCIL STAFF MEETING
Thursday, April 8, 1976
9:30 a.m.

Situation Room

11/17/76

Mr. Cannon:

You are invited to a meeting on Monday, November 22 at 5:15 in the Roosevelt Room. This is being set up by Sec. Richardson and Jim Lynn. The subject is: to discuss the Administration's proposals for re-organization of energy and energy-related activities. This is for PRINCIPALS ONLY. A separate package of materials will be sent to you.

I WILL ATTEND ✓

I WILL NOT ATTEND _____

OTHER _____

(Other invitees are: Zarb, Seamans, ~~Kleppe~~, ~~Greenspan~~, ~~McAvoy~~, Dunham, Kasputys, Richardson and Mitchell)
Malkiel, Lynn

Jim - I am checking on this material - have not seen it yet. kb

k

Gina 377-4951 (Kasputys' office)

ORGANIZATION OF

FEDERAL ENERGY FUNCTIONS

FEDERAL ROLE IN ENERGY: EXPANDED - BUT STILL SECONDARY

- HISTORICALLY, THE PRIVATE SECTOR HAS BEEN THE PRIME ACTOR IN MEETING THE NATION'S ENERGY NEEDS.
- FEDERAL ROLE IS EXPANDED AND MORE PROMINENT THAN PRIOR TO EMBARGO:
  - THREATENED CURTAILMENT OF IMPORTS PUTS ENERGY ON WORLD STAGE -- CREATING A NEW ENERGY ROLE FOR NATIONAL GOVERNMENT.
  - MASSIVE INVESTMENT AND HIGH VENTURE RISK IN DEVELOPING NEW ENERGY TECHNOLOGY AND FRONTIER RESOURCES CALLS FOR FEDERAL FINANCIAL INDUCEMENTS.
  - CRITICALITY OF ENERGY FORCES NEED FOR NATIONAL ENERGY POLICY.
- NEVERTHELESS, PROPER FEDERAL ROLE IN ENERGY REMAINS SUPPLEMENTAL TO THAT OF PRIVATE SECTOR.

FEDERAL ROLE CAN BE EXERCISED IN VARYING DEGREE BUT GENERALLY INCLUDES THE GOVERNMENT AS:

- PLANNER AND FORMULATOR OF NATIONAL ENERGY POLICY
- COLLECTOR AND PUBLISHER OF DATA
- ECONOMIC REGULATOR
- HEALTH, SAFETY AND ENVIRONMENTAL REGULATOR
- FINANCIER
- OWNER OR MANAGER OF ENERGY RESOURCES
- TECHNOLOGY PROMOTER AND INNOVATOR
- ENERGY PRODUCER - UNDER SPECIAL CIRCUMSTANCES
- REPRESENTATIVE OF NATIONAL INTERESTS IN WORLD ENERGY NEGOTIATIONS

AS A MATTER OF POLICY, THE ADMINISTRATION FAVORS THE MINIMUM NECESSARY LEVEL OF FEDERAL INTERVENTION AND INVOLVEMENT IN ENERGY AFFAIRS AND A CORRESPONDING MAXIMUM RELIANCE ON PRIVATE INITIATIVE, INVESTMENT AND DECISION-MAKING IN BOTH THE SUPPLY AND DEMAND SIDES OF ENERGY.

HOWEVER, THIS POLICY IS ONLY PARTIALLY DETERMINANT. THE FEDERAL ROLE ACTUALLY IN EFFECT AT ANY GIVEN TIME, IS THAT WHICH IS PRESCRIBED BY LAW.

AGREE OR NOT, THE PRESIDENT IS OBLIGED TO SEE THAT THE LAWS ARE FAITHFULLY EXECUTED -- AND, THEREFORE, MUST PROVIDE EFFECTIVE ORGANIZATION FOR ALL ENERGY FUNCTIONS PRESCRIBED BY LAW.

THOSE FUNCTIONS WHICH ARE SUB-MARGINAL IN THE LIGHT OF A POLICY OF MINIMUM NECESSARY FEDERAL INVOLVEMENT SHOULD NOT BE ORGANIZED IN A WAY THAT EFFECTIVELY INSULATES THEM FROM EXECUTIVE REAPPRAISAL.

WHAT IS THE OBJECTIVE IN CONSIDERING ENERGY REORGANIZATION?

- To assure that the Federal energy functions are effectively organized in the light of the expanded and altered Federal role. That is: ---
  - Component functions are coordinated with each other to form a coherent Federal role in energy.
  - Confusion and waste due to duplication is avoided.
  - The Federal impact on energy is consistent with legislative intent and responsive to Presidential direction.
  - Energy goals are properly balanced with national goals in other fields.

THE IMPACT OF ENERGY IN OUR SOCIETY SAYS SOMETHING ABOUT HOW WE SHOULD ORGANIZE TO PERFORM THE FEDERAL ENERGY ROLE

ENERGY IS:

- CRITICAL TO: THE ECONOMY, NATIONAL SECURITY, OUR LIFE-STYLE -- TO OUR SURVIVAL
- PERVASIVE : HOUSING, TRANSPORTATION, FARMING, DEFENSE, INDUSTRIAL PRODUCTION, RECREATION
- COMPRISED OF COMPETING SECTORS : PETROLEUM, GAS, COAL, NUCLEAR, HYDRO, SOLAR, OTHER
- OFTEN IN CONFLICT WITH OTHER NATIONAL GOALS : ENVIRONMENT, HEALTH AND SAFETY, RESOURCE CONSERVATION, PRICE STABILITY, FOREIGN POLICY
- A BLEND OF : PRIVATE ENTERPRISE AND PUBLIC RESPONSIBILITY

#-#

IN SHORT, ENERGY IS A COMPLEX AND INTERRELATED SUBJECT AND THE FEDERAL INVOLVEMENT REQUIRES CAREFULLY COORDINATED POLICIES AND DISCIPLINED IMPLEMENTATION IN MEETING VITAL NATIONAL GOALS.

OUR PRESENT FEDERAL ENERGY ORGANIZATION INHIBITS COHERENT AND EFFECTIVE ACCOMPLISHMENT OF THE FEDERAL ROLE IN ENERGY

- No one -- under the President -- is clearly "in charge" and accountable.
  - ERC lacks staff or authority
  - FEA has policy role, but is operational, sub-cabinet, and temporary
- Primary Federal energy programs are fragmented among FEA, ERDA and others.
  - Complicates task of Presidential control
  - Difficult to achieve concerted action toward supply development, demand reduction or other broad goals
  - Separate energy agencies result in differing energy projections -- produces confusion
  - Resource trade-offs among Federal programs are less likely.
- Policy development is disconnected from program implementation and evaluation

- Agencies tend to enlarge their roles causing increasing duplication and confusion
  - Commercialization of new technology - FEA, ERDA (EIA)
  - Conservation - FEA, ERDA and DOT, Commerce, HUD
  - Mine technology research and development - Interior and ERDA
  - Data collection and analysis - FEA, FPC, Interior, ERDA and others
  - Supply/demand projections - FEA, ERDA, Interior
- Regulatory powers of FPC and NRC are substantial influences -- but not rationalized with national energy goals

TWO ISSUES, IN PARTICULAR, ARE COMPLEX AND CENTRAL TO ENERGY ORGANIZATION:

ISSUE 1 - ENERGY REGULATION: A. - BALANCE BETWEEN INDEPENDENCE AND RESPONSIVENESS
B. - POTENTIAL CONFLICT BETWEEN REGULATION AND PROMOTION

A. INDEPENDENCE VS. RESPONSIVENESS - THE SIGNIFICANT IMPACT OF REGULATION SHOULD BE CONSISTENT WITH NATIONAL ENERGY NEEDS AND POLICY -- BUT ACTIONS MUST BE IMPARTIAL AND CREDIBLE.

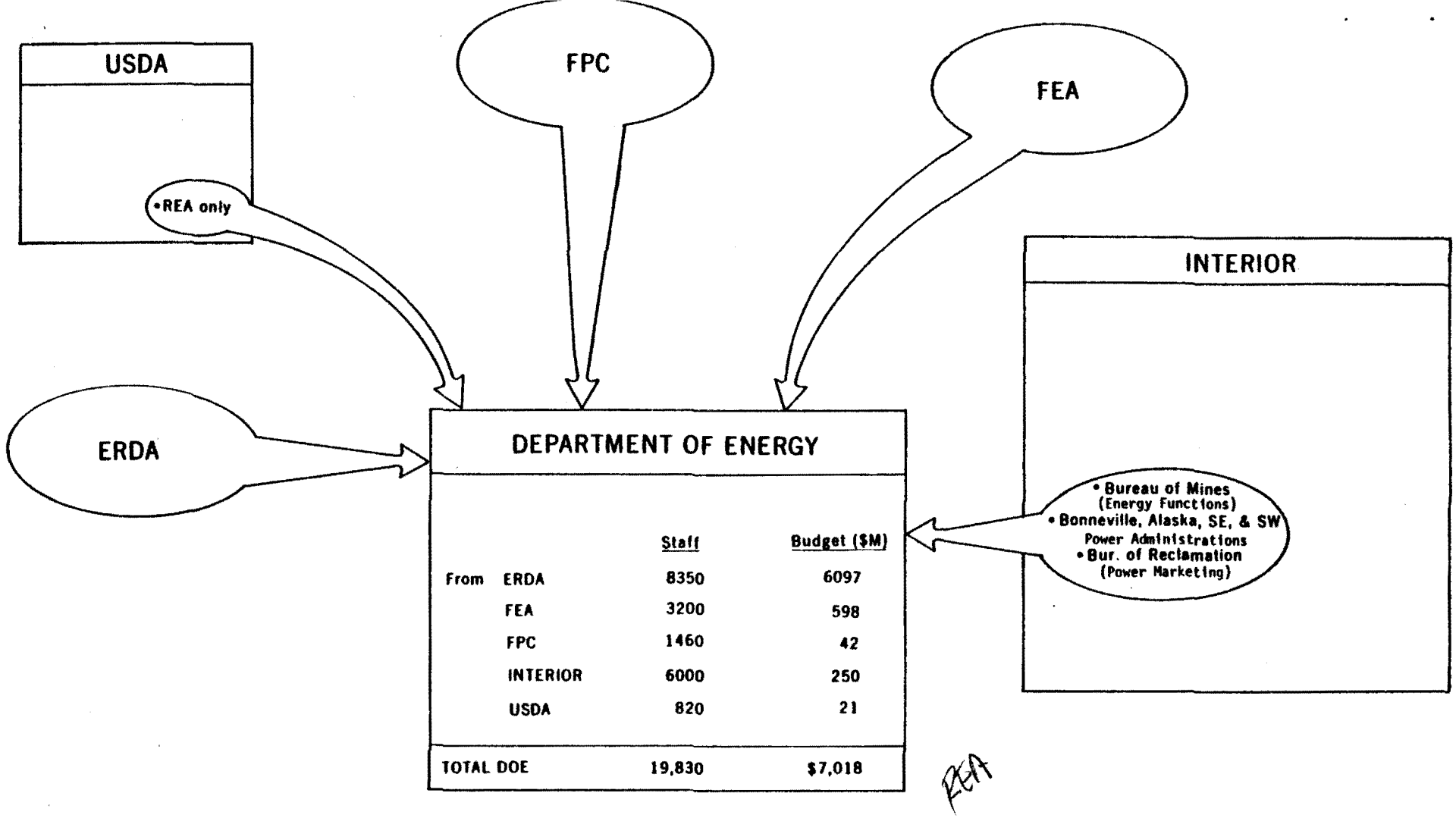
RESOLUTION - KEY IS DISCTINCTION BETWEEN RULE-MAKING AND CASE ADJUDICATIONS. ATTEMPT TO MAXIMIZE RULE-MAKING. PLACE ECONOMIC REGULATORY PROGRAMS IN ENERGY AGENCY TO ASSURE RESPONSIVENESS IN RULE-MAKING. INTERNALLY ISOLATE ADJUDICATIONS - ALJ'S AND INDEPENDENT APPEALS BOARD.

B. REGULATION VS. PROMOTION - ENERGY DEVELOPMENT CAN CONFLICT WITH HEALTH, SAFETY AND ENVIRONMENT. PROGRAMS LIKE NRC AND MESA NOT SUITABLE FOR INCLUSION IN ENERGY AGENCY. ENERGY VIEWPOINT CAN BE COMMUNICATED OPENLY TO REGULATORS AND SHOULD INFLUENCE DECISIONS. ECONOMIC REGULATION NOT IN CONFLICT TO SAME DEGREE -- CAN BE INCORPORATED AND SHOULD BE FOR RESPONSIVENESS.

ISSUE 2 - ENERGY ADVOCACY AND LAND MANAGEMENT

OUR SHORT TO MID-TERM ENERGY NEEDS REQUIRE NEW AND ACCELERATED RECOVERY FROM PUBLIC LANDS -- ESPECIALLY ALASKA AND OCS. MANAGING THESE ASSETS INVOLVES JUDGMENTS BY INTERIOR BETWEEN COMPETING CLAIMS. HOW IS THE PUBLIC INTEREST IN ENERGY DEVELOPMENT TO BE REPRESENTED IN THIS PROCESS? WHAT ORGANIZATIONAL ARRANGEMENT IS NEEDED.

RESOLUTION - BROAD POLICY RE ENERGY AND OTHER USES OF NATURAL RESOURCES INVOLVES INTERIOR AND OTHER AGENCIES AND, USUALLY, PRESIDENT AND CONGRESS. ENERGY REPRESENTED IN THESE BROAD DECISIONS BY FEA (OR PROSPECTIVE DoE) AS AN ADVOCATE. SPECIFIC SITE DECISIONS HANDLED WITHIN INTERIOR WITH ENERGY AS WELL AS ALL OTHER VIEWS CONSIDERED IN BALANCED WAY. CONCLUSION IS THAT ENERGY ADVOCACY AND LAND MANAGEMENT NEED NOT BE ORGANIZED TOGETHER, AND -- IN FACT -- CREDIBILITY IS GREATER IF KEPT SEPARATE.



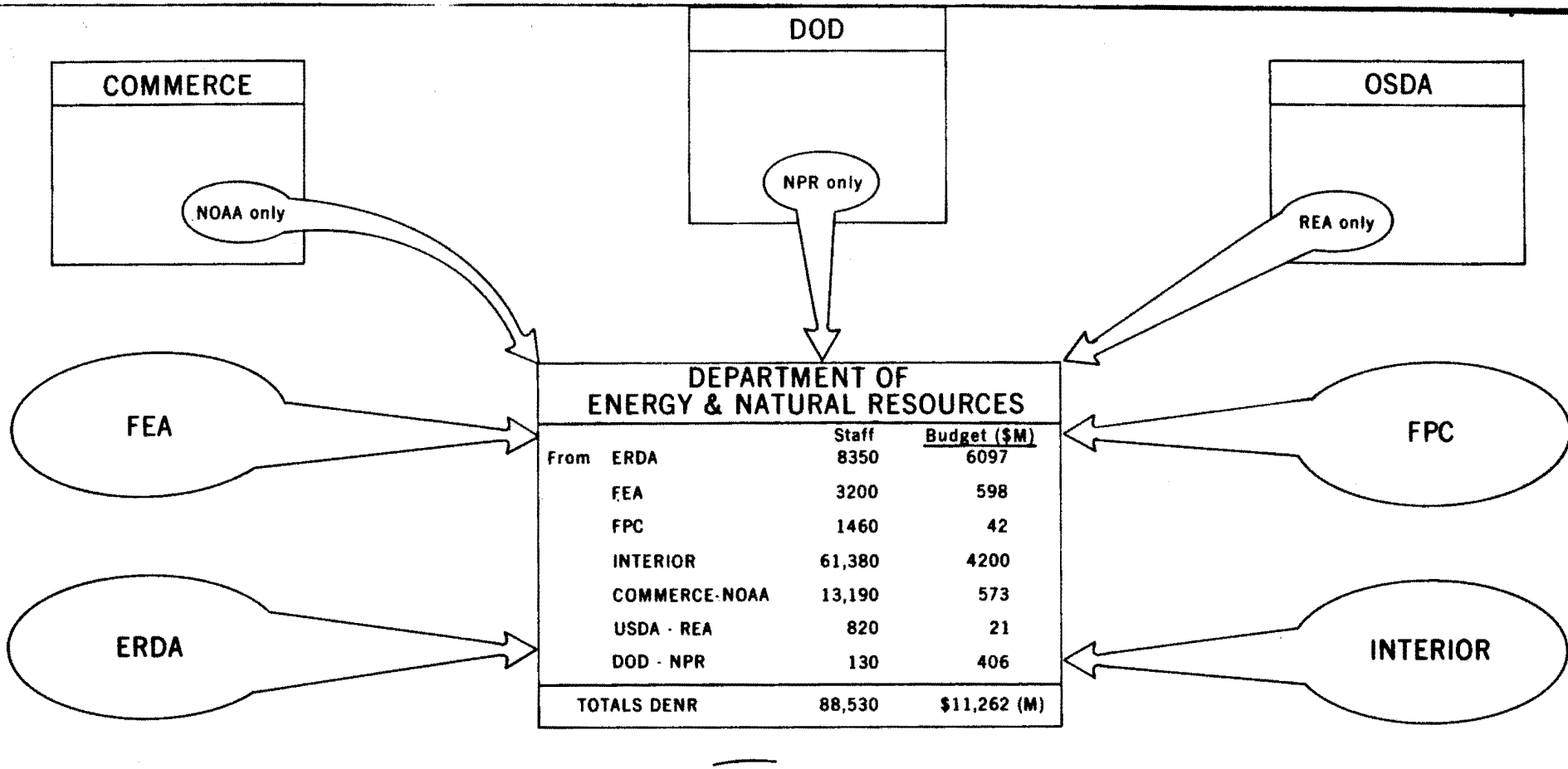
DEPARTMENT OF ENERGY - A Special Purpose Department Comprised of Primary Federal Energy Functions.

PROS

- Consolidates fragmented energy functions and fosters a more coherent Federal energy role.
- Highlights energy as a long-term national issue by assigning it department status and a cabinet level accountable spokesperson.
- Resolves FEA/ERDA jurisdiction issue.
- Appropriately raises major energy policy tradeoffs to Presidential level.

CONS

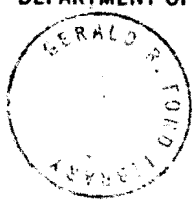
- Energy advocacy role of DOE requires extensive balance at the Presidential level.
- Oil/gas leasing activities remain separate; continue to require interagency coordination.
- Departmental status could be marginal based on small size and narrow focus.
- Special internal arrangements required to assure autonomy and integrity of regulatory, data R&D, and weapons functions.



DEPARTMENT OF ENERGY & NATURAL RESOURCES

		Staff	Budget ($M)
From	ERDA	8350	6097
	FEA	3200	598
	FPC	1460	42
	INTERIOR	61,380	4200
	COMMERCE-NOAA	13,190	573
	USDA - REA	820	21
	DOD - NPR	130	406
TOTALS DENR		88,530	$11,262 (M)

DEPARTMENT OF ENERGY & NATIONAL RESOURCES - A Multi-Purpose Department Comprised of Primary Federal Energy Functions Together with Functions of the Department of Interior.

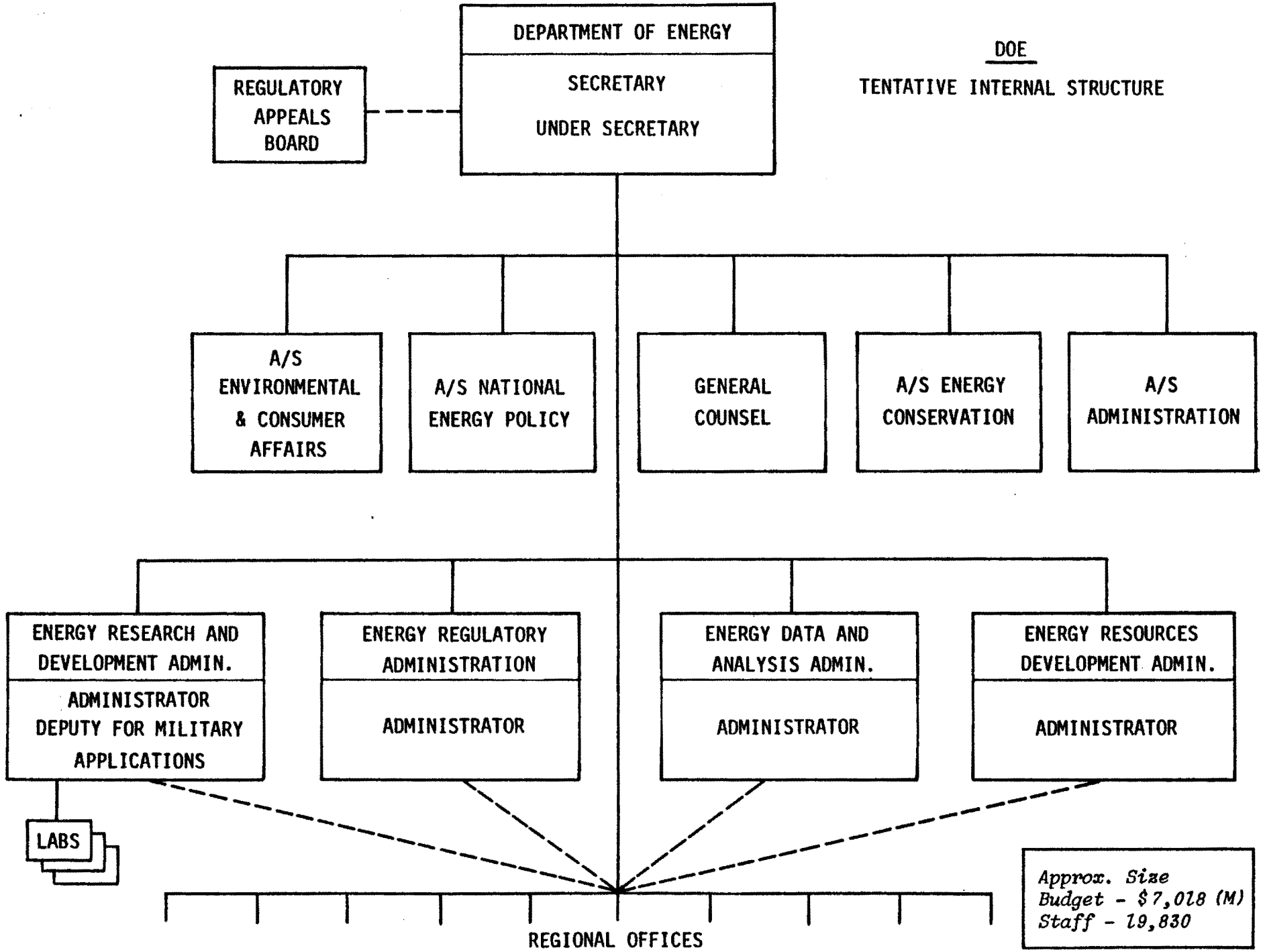


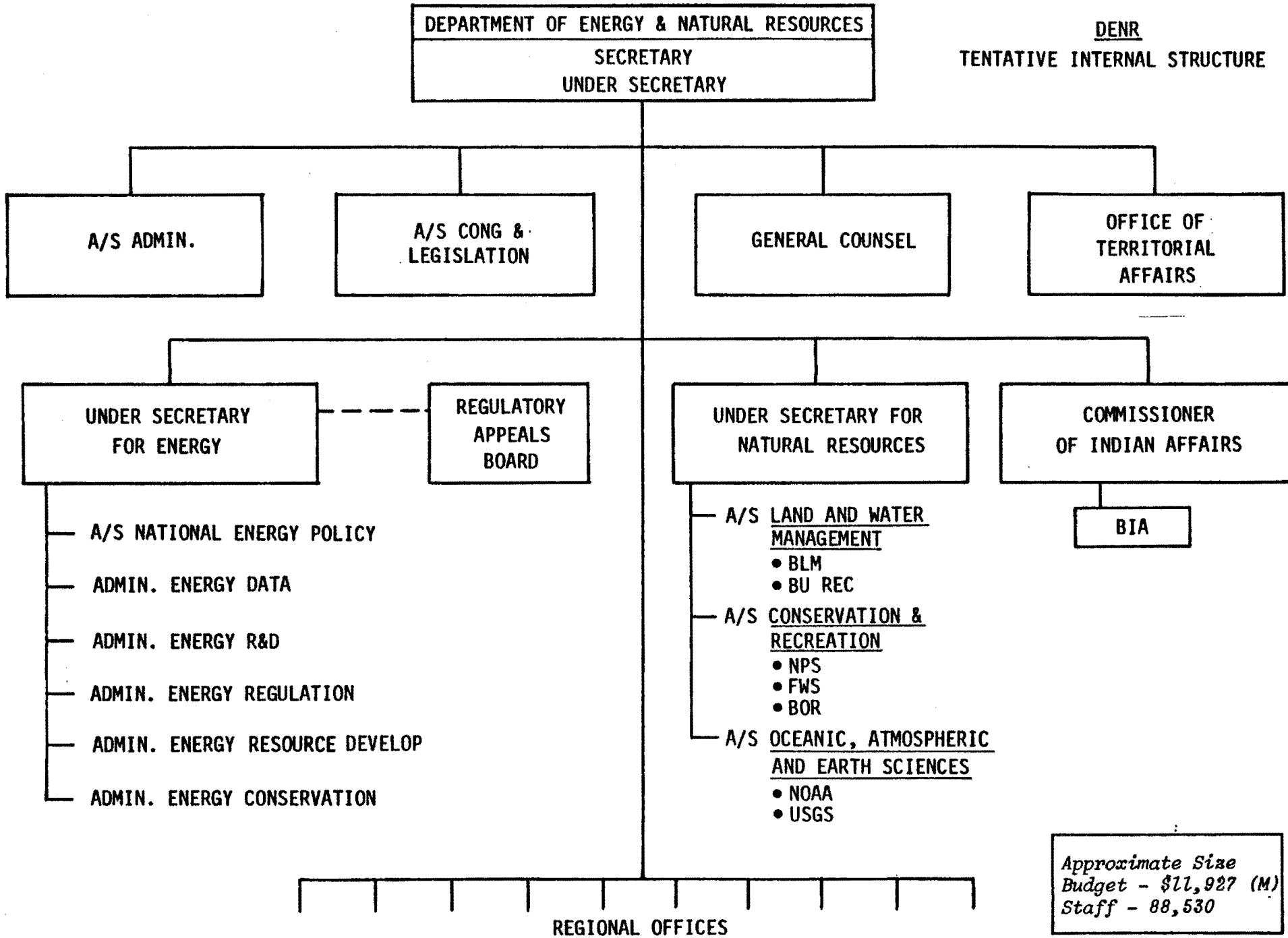
PROS

- Consolidates fragmented energy functions and fosters a more coherent Federal energy role.
- Cabinet level representation for energy (with some natural and other functions).
- Resolves FEA/ERDA jurisdiction disputes.
- Permits resolution of many competing claims for resources within a single Department.
- Permits integration of related NOAA/USGS functions.

CONS

- Dilutes top level representation and accountability for energy.
- Energy objectives could dominate other natural resource and land use requirements (or vise-versa).
- Difficulty of managing large conglomate type Department.
- Buries major and critical programs (e.g. Energy R&D, Nuclear Weapons, NOAA, NPS, etc.)
- A large conglomerate - but still fails to consolidate major natural resource functions (e.g. Corps, SCS, Forest Service).


DEPARTMENT OF ENERGY
SECRETARY
UNDER SECRETARY
REGULATORY APPEALS BOARD
DOE
TENTATIVE INTERNAL STRUCTURE
A/S ENVIRONMENTAL & CONSUMER AFFAIRS
A/S NATIONAL ENERGY POLICY
GENERAL COUNSEL
A/S ENERGY CONSERVATION
A/S ADMINISTRATION
ENERGY RESEARCH AND DEVELOPMENT ADMIN.
ADMINISTRATOR
DEPUTY FOR MILITARY APPLICATIONS
ENERGY REGULATORY ADMINISTRATION
ADMINISTRATOR
ENERGY DATA AND ANALYSIS ADMIN.
ADMINISTRATOR
ENERGY RESOURCES DEVELOPMENT ADMIN.
ADMINISTRATOR
LABS
REGIONAL OFFICES
Approx. Size
Budget - $7,018 (M)
Staff - 19,830


DEPARTMENT OF ENERGY & NATURAL RESOURCES
SECRETARY
UNDER SECRETARY
DENR
TENTATIVE INTERNAL STRUCTURE
A/S ADMIN.
A/S CONG & LEGISLATION
GENERAL COUNSEL
OFFICE OF TERRITORIAL AFFAIRS
UNDER SECRETARY FOR ENERGY
REGULATORY APPEALS BOARD
UNDER SECRETARY FOR NATURAL RESOURCES
COMMISSIONER OF INDIAN AFFAIRS
BIA
A/S NATIONAL ENERGY POLICY
ADMIN. ENERGY DATA
ADMIN. ENERGY R&D
ADMIN. ENERGY REGULATION
ADMIN. ENERGY RESOURCE DEVELOP
ADMIN. ENERGY CONSERVATION
A/S LAND AND WATER MANAGEMENT
• BLM
• BU REC
A/S CONSERVATION & RECREATION
• NPS
• FWS
• BOR
A/S OCEANIC, ATMOSPHERIC AND EARTH SCIENCES
• NOAA
• USGS
REGIONAL OFFICES
Approximate Size
Budget - $11,927 (M)
Staff - 88,530

WHAT ARE THE EXISTING ENERGY FUNCTIONS IN THE FEDERAL GOVERNMENT?

DRAFT

	Staffing	Budget ($1000's)
ERC	0	0
FEA		
. Develop Energy Policy (Policy)	46	1,300
. Collect and Analyze Energy Data (Data)	356	27,300
. Regulate Petroleum Prices (Econ. Reg.)	1,395	34,000
. Promote Energy Conservation Practices (Mixed roles)	287	51,800
. Expand Domestic Energy Production (Mixed roles)	294	12,700
. Participate in International Energy Affairs (International)	46	1,700
. Manage Strategic Petroleum Reserves (Production)	42	313,600
Other FEA	734	155,700
FEA SUBTOTAL	3,200	598,100
FPC		
. License Non-Federal Hydroelectric Projects (Econ.& Environ.Reg.)	220	6,470
. Regulate Interstate Electricity Rates (Econ. Reg.)	320	9,220
. Certify Natural Gas Facilities (Econ. & Environ. Reg.)	360	11,570
. Regulate Interstate Natural Gas Rates (Econ. Reg.)	290	7,720
Other FPC	268	6,620
FPC SUBTOTAL	1,458	41,600

DRAFT

ERDA

. Develop Energy R&D Policy (Policy)	167	11,000
. Conduct Fossil, Solar, Nuclear, & Geothermal Energy R&D (Technology)	1,487	2,687.190
. Conduct Environmental, Health & Safety R&D (Technology)	271	21,500
. Disseminate Energy R&D Information (Data)	80	500
. Conduct Energy Conservation R&D (Technology)	182	91,000
. Encourage International Energy R&D (Technology)	80	7,770
. Sponsor Energy R&D Training (Technology)	9	16,540
. Perform Uranium Enrichment Fuel Reprocessing (Production)	100	574,000
. Encourage private development of geothermal resources (Financier)	36	4,400
. Conduct research, development, test, and production of nuclear weapons and materials (Production)	319	1,599,300
. Develop naval nuclear propulsion plants (Production)	82	220,500
. Develop nuclear power sources for space program (Production)	17	32,300
Other ERDA including field contract administration and procurement activities	5,520	831,300
ERDA SUBTOTAL	8,350	6,097,300

DRAFT

NRC

. Regulate construction and operation of nuclear reactors (Safety regulator)	1,012	50,025
. Regulate handling of nuclear materials (Safety regulator)	405	22,880
. Conduct research to support license and regulatory functions (Mixed roles)	135	121,550
. Develop emergency preparedness plans (Planner)	128	5,015
. Collect nuclear reactor safety data (Data)	2	20
. Regulate import and export of nuclear materials/ facilities (Mixed role)	3	205
Other NRC	844	49,735
NRC SUBTOTAL	2,529	249,430

Department of Interior

. Leasing and Management of Federal Energy Resources (Owner/Manager)	2,490	170,000
. Management of Alaskan Petroleum Reserve (Production)	105	106,700
. Collect and Analyze Energy Resources Data (Data)	1,240	56,500
. Research and Develop Energy Mining Technology (Technology promoter)	950	98,000
. Regulate Health & Safety Aspects of Coal Mining (Health & Safety regulations)	3,440	90,148
. Generation & Marketing of Electricity (Energy Producer)	6,160	269,600

DRAFT

DEPARTMENT OF AGRICULTURE		
. FINANCE RURAL ENERGY DEVELOPMENT AND MARKETING (FINANCIER)	820	21,600
DEPARTMENT OF DEFENSE		
. MANAGE OIL AND OIL SHALE RESERVES IN NPR (OWNER/MANAGER)	130	406,000
EPA		
. RESEARCH TO IMPROVE COAL COMBUSTION (MIXED ROLES)	32	21,800
DEPARTMENT OF TRANSPORTATION		
. REGULATE AUTO FUEL ECONOMY STANDARDS (ECONOMIC & ENVIRON.REG.)	40	4,500
. REGULATE OIL AND NATURAL GAS PIPELINE SAFETY (HEALTH AND SAFETY REGULATOR)	40	4,000
DEPARTMENT OF TREASURY		
. CONDUCT FINANCIAL AND POLICY ANALYSIS OF DOMESTIC AND INTERNATIONAL ISSUES (POLICY)	14	300
DEPARTMENT OF STATE		
. FORMULATE INTERNATIONAL ENERGY POLICY (POLICY)	34	800
DEPARTMENT OF COMMERCE		
. FOSTER IMPROVED ENERGY UTILIZATION (ECONOMIC REGULATOR)	60	2,244
. ADMINISTER COASTAL ZONE ENERGY IMPACT AID (FINANCIER)	20	146,500

DRAFT

CEA

. PARTICIPATE IN FORMULATING NATIONAL ENERGY POLICY (POLICY)	2	40
TOTAL DIRECT INVESTMENT IN FEDERAL ENERGY ROLE 1/ 2/	31,114	$8,385,162 ($1000)

1/ TVA'S POWER PROGRAM IS ESTIMATED AT $1.6 BILLION IN FY 77 AND WILL REQUIRE A STAFF OF SEVERAL THOUSAND. THIS PROGRAM WILL BE FINANCED FROM PROCEEDS FROM CURRENT POWER OPERATIONS AND BORROWINGS, RATHER THAN APPROPRIATION AND ARE THEREFORE EXCLUDED FROM THESE TOTALS.

2/ THERE ARE A NUMBER OF SMALL ENERGY ACTIVITIES (DATA, REGULATORY, RESEARCH, ETC.) THAT ARE INCORPORATED IN PROGRAMS WITH NON-ENERGY PURPOSES WHICH ARE NOT READILY IDENTIFIABLE AND HAVE BEEN EXCLUDED FROM THESE TOTALS.

DRAFT

SUMMARY - DOE

	Staffing	Funding (M)
. Total direct Federal investment	31,114	$ 8,385
. Proposed for consolidation in DoE Option	19,830	7,018
. Not proposed for consolidation		
- NRC	2,529	249
- Interior Energy	8,385	541
- Other	370	577
. Percent of total Federal energy functions consolidated in a DoE	64%	84%

DRAFT

SUMMARY - DENR

		Staffing	Funding (M)
. Total direct Federal investment		31,114	$ 8,385
. Energy functions not in a DENR Option			
	NRC	2,529	249
	Other	222	34
. Energy functions in a DENR Option		28,363	8,102
. Percent of total Federal energy functions consolidated in a DENR		91%	97%
. Proposed for consolidation in DENR option		88,530	11,262
. Percent non-energy functions in DENR		68%	28%

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

EYES ONLY

NOV 17 1976

MEMORANDUM FOR: SEE DISTRIBUTION LIST

FROM: James T. Mitchell / Joseph E. Kasputys
Co-Directors of Energy and Energy-Related Organization Study

SUBJECT: Energy Organization

This memo forwards for your personal review selected key papers in draft form relating to a decision on energy organization. The enclosed papers and basic content of each are:

TAB A - Draft Presidential Decision Memorandum

- States major assumptions underlying this study, summarizes present energy organization, identifies and describes primary energy organization alternatives, evaluates each alternative in terms of its pros and cons, indicates the recommended alternative, and provides for showing the President the position taken by each affected agency head and other relevant Administration policy officials.

- Attached to the Presidential Decision Memorandum (TAB A) is an identification of some major sub-issues regarding the exact composition of each organizational alternative.

TAB B - Analysis of Organization for Energy Policy Formulation Coordination and Monitoring

A staff analysis covering (1) the factors inherent in the energy policy task which bear on the proper design of organization to perform energy policy responsibilities; (2) relationship of energy policy formulation to other energy functions; (3) evaluation of the existing policy process; (4) comparison of the major alternatives for energy organization in terms of their ability to effectively perform the energy policy task, and (5) the relative need for special Executive Office machinery for energy policy versus reliance on general purpose units such as OMB, Domestic Council, CEA or other.

TAB C - Staff Paper on Organization of Energy Regulatory Functions

An analysis of organizational issues in the field of energy regulation generally and with particular attention to the functions of FPC including the relative merits of continuing the FPC functions in the independent commission mode versus incorporating them in an executive energy agency.

Several other staff papers which have been developed as parts of the overall analysis of energy organization were sent on November 10, 1976 to your respective representatives for energy organization for their review and any comment. These papers are descriptive and analytical pieces rather than issue papers designed for decision-making. While they all relate to the energy organizational question, they are less sensitive than the papers forwarded by this memo for your attention. Obviously, they are available to you if you wish to see them. These analyses, sent to your representatives are summarized below for your information:

Energy Data Collection and Analysis. Numerous agencies play a direct or collateral role in energy data collection and analysis especially FEA, Interior (Mines), FPC and ERDA. This has caused some problems, but duplication is becoming progressively better controlled via interagency coordination. Elimination of duplication should therefore not be viewed as a compelling reason for consolidation; however, consolidation could enhance the development of a more integrated data system. Consolidation will also help unify the voice of the Administration in energy supply and demand projections. Credibility of energy data is enhanced by separation of the data function from the policy function, as prescribed within FEA by the recent extension act. This principle of separating data and policy analysis should continue in any reorganization planning.

Energy Resource Development. Assuming the policy objective of increasing the domestic energy supply, this paper identifies the numerous activities which play a part in implementing that policy. Included are direct governmental operations such as strategic petroleum reserve, uranium enrichment, and power generation and marketing as well as indirect methods such as financial incentives and assistance, resource leasing, facility siting and technology transfer. These activities are widely distributed among agencies and are susceptible to influence by other factors such as tax policy, and regulatory

actions both economic and safety or environmental. It is difficult to achieve concerted action by the many programs affecting the supply of energy in view of their degree of fragmentation among agencies.

Energy Research, Development & Demonstration. The Federal role in developing new and improved energy technology is supplementary to that of the private sector and involves establishment of a favorable climate, providing incentives and sponsoring selected R&D work. Governmental regulatory policy and action can also directly affect the rate of technology introduction. Because of these public/private interactions in the energy technology field, the Federal energy R&D work should be integrated with other aspects of our total energy efforts, there are some special considerations for assuring its optimum productivity - e.g., long-term perspective, continuity in funding, support and direction and, at times, a controlled amount of duplication among competing ideas.

Interior Energy Functions. This paper related only to a prospective Department of Energy as one organization alternative. Specifically, it addresses the question: "Assuming a DoE, what energy functions from Department of Interior should it include?" The analysis identifies and describes the energy functions of Interior and determines which are separable without serious disruption to the DOI mission or damage to the function itself and, conversely, which are not separable. Findings: Readily separable energy functions are power marketing and energy related emergency responsibilities. In contrast, energy leasing by BLM and assessment of physical availability of energy resources by USGS are deeply integral to DOI land-management and geological missions and not feasibly separable. Separable with only moderate and acceptable disruption are the fossil fuel mining research and data programs of Bureau of Mines.

Energy Conservation. Activities in this field are fragmented among a number of agencies although FEA and ERDA together have 80% of conservation funding. There is no clear lead agency for conservation and it is difficult to pull together a coherent and coordinated policy for conservation and relate it effectively to energy supply policy and programs. Some of the fragmentation takes advantage of clientele relationships and is therefore logical, i.e., DOT, HUD, Commerce. There is a potential for growing overlap and conflicting jurisdiction between ERDA and FEA stemming from legislative assignments to each. This is difficult to prevent or reconcile in the absence of common direction over both programs.

Energy Advocacy and Decision-Making in Federal Land-Management. This paper reviews the organizational roles and the decision-making process involved in developing energy resources located on Federal lands. It was found that the need for energy development is adequately represented or advocated in both broad policy decisions at Presidential level (especially by FEA as an energy advocate) and in site specific decisions (by internal processes within Interior). Interior's total mission incorporates pressures for energy development, for other uses, and for conservation, all of which are balanced in specific cases in a reasonably open and impartial way. While there is adequate responsiveness within BLM and Interior to national energy goals, other competing interests are assured of being represented as well by influences such as environmental impact statements, openness, and the prospect of court review.

Following your review of the enclosed papers, we anticipate a final decision memorandum going to the President toward the end of this month. Based on the President's decision, we will proceed to complete the report to the Congress and any related legislative proposal by December 31, 1976 as required by the FEA extension act. The final report as we visualize it will cover:

- A brief introductory discussion of the general energy situation, our major policy positions and, in particular, the Federal role in energy.
- a summary description and evaluation of the present structure and assignment of energy functions among Federal agencies;
- an identification of alternatives considered and an evaluation of each;
- summary analysis of pertinent issues, and
- conclusions and a statement of the President's proposed energy organization.

We will be in touch with each of you personally to confirm arrangements for next steps leading to a Presidential decision.

EYES ONLY

DISTRIBUTION LIST

CEA Chairman - Mr. Alan Greenspan
Assistant to the President for Domestic Affairs - Mr. James Cannon
FEA Administrator - Mr. Frank Zarb
ERDA Administrator - Dr. Robert E. Seamans
Secretary of Interior - Mr. Thomas Kleppe
FPC Chairman - Mr. Richard L. Dunham

Enclosures:

TAB A - Draft Presidential Decision Memorandum
TAB B - Analysis of Energy Policy Organization
TAB C - Staff paper on Organization of Energy Regulatory Functions

cc:
Elliot L. Richardson
James T. Lynn

EYES ONLY

TAB A

THE SECRETARY OF COMMERCE

WASHINGTON, D.C. 20230

DRAFT

MEMORANDUM FOR THE PRESIDENT

FROM: Elliot L. Richardson, Chairman, ERC
James T. Lynn, Director, OMB

SUBJECT: Organization For Federal Energy And Energy-Related Functions

I. Purpose

The purpose of this memorandum is to obtain your decision on the results of the ERC/OMB study on reorganizing the Federal Government to perform energy and energy-related functions.

A joint ERC/OMB study was initiated in May to determine the most effective organizational arrangement for performing Federal energy and energy-related functions. The study was first proposed by the Chairman, ERC, to the Senate Government Operations Committee to counter the Committee's intention not to recommend an extension of the Federal Energy Administration beyond June 30, 1976. The Committee not only accepted the study proposal, but, in an amendment to the FEA extension which has been enacted into law (P.L. 94-385), required that the President transmit a reorganization plan covering energy and natural resources to the Congress by December 31, 1976. The ERC/OMB study was performed to fulfill this requirement. More details on the circumstances giving rise to this study are outlined in Tab A.

While the study report has not been put in final form, the supporting analyses, which have been prepared with the assistance of the affected agencies, are complete and have been reviewed by the principals involved. The final report should be available for distribution at the same time as the reorganization plan is transmitted to the Congress. The balance of this memorandum contains

the following sections:

II - Assumptions
III - Methodology
IV - Present Organization for Energy and Energy-Related Functions
V - Organizational Problems
VI - Alternatives
VII - Conclusions and Recommendations

II. Assumptions

Major assumptions regarding broad energy policy and particularly the Federal role in energy include:

- Continued maximum possible reliance on private sector decisions and actions;
- reliance on a system of Federally created incentives and disincentives to influence and stimulate private decisions regarding both energy supply and demand toward the achievement of national energy goals of lowered demand as well as assured and adequate energy supply at a reasonable price;
- minimum necessary direct Federal involvement in areas such as regulation, new technology development, data collection and energy resource development; and
- assurance that energy development actions are properly balanced with other goals such as environment, health and safety, national security and economic stability.

For the purposes of organizational planning, it was assumed that the recommended structure should facilitate the implementation of proposed legislative initiatives of the Administration, while still accommodating the execution of existing programs.

III. Methodology

The study began by collecting descriptive data on all energy, energy-related and natural resource

functions, including mission, programs, resources and critical interactions. This permitted the identification of related programs, together with any duplication and overlaps. Extensive interviews were conducted at several levels in affected organizations to identify operating problems. Outside advice was obtained through a three-day seminar on energy organization conducted by the Congressional Research Service at the request of Senator Percy and through a survey of the literature. As a result, seven broad organizational alternatives were developed. These were reviewed by the ERC and narrowed to the three options presented later in this paper.

Once the three final options were identified, a series of individual studies were performed to examine how selected critical functions would be performed under each option. These studies were in the areas of:

- Policy Formulation and Coordination
- Data Collection and Analysis
- Energy Resource Development
- Research Development and Demonstration
- Energy Conservation
- Energy Regulation
- Nuclear Weapons Production

In addition, several special studies were performed on the functions of the Department of the Interior, an in-depth review was made of the FPC and analyses were completed on the appropriateness of including selected agencies, e.g., NOAA, in certain options. The results of the efforts have been synthesized into this options paper and will be included in the final study report.

IV. Present Energy Organization

Practically all Federal agencies play some part in energy matters, due to the pervasive nature of energy issues. However, there are several agencies which are solely related to energy and which may be regarded as central to Federal energy involvement--the ERC, FEA, ERDA and, taking in regulatory commissions, the NRC and FPC.

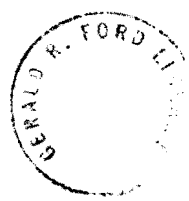
Certain functions of the Interior Department are equally critical even though the Department is not solely concerned with energy. Specifically, the increase of domestic energy supply over the near and mid-term depends heavily on accelerated recovery of oil, gas, coal and uranium from the public lands--especially frontier areas such as Alaska and Outer Continental Shelf.

Beyond the principal energy agencies, many other organizational entities have a collateral energy role, at times quite significant, especially in formulation of energy policy--examples--Treasury, CEA, State, Justice and EPA. Tab B is an organization chart showing the considerable number of agencies involved with energy, energy-related and natural resource functions. Much of this fragmentation is rational and desirable as in the case of Justice representing the U.S. in energy-related litigation or State participating in energy policy formulation from the point of view of foreign relations.

In addition to energy responsibilities being divided among many agencies, most of the component energy functions are dispersed, i.e., data collection, regulation, energy supply development and energy conservation. The major exception is energy research and development, which is consolidated in ERDA except for mine technology R&D in Interior.

IV. Organizational Problems

There is evidence that organizational problems are interfering with the execution of energy programs and the accomplishment of energy objectives, or at least are not facilitating positive results to the degree possible. The following are among the more significant problems identified during the course of the study:



A. Lack of a fully effective mechanism to develop and oversee the implementation of energy policy. The ERC has been reasonably successful in developing a balanced Administration position on the major energy

issues. However, it has no staff and therefore no independent analytical capability. What staff support does exist is chiefly provided by the FEA, which itself is one of the participants in the policy development process. There is no mechanism to direct action, to assure implementation of policy decisions or to evaluate results. With the development of an independent ERDA, the research and development planning process has not received the attention it should from the operational agencies and has tended to form its own goals. Finally, because of the composition of the ERC, more issues tend to be forced to the President for resolution.

B. Lack of an effective structure to facilitate resource trade-offs among competing energy programs. While resource allocation to energy programs is done by OMB within the ERC-developed policy framework, energy programs are highly fragmented throughout the Federal Government. Therefore, within the various Federal agencies, these programs must frequently compete for scarce resources with nonenergy programs and not with each other. A more rational structure would permit resource allocation to be made among similar programs at a lower organizational level, facilitating the assignment of resources to the more effective programs.

C. Need for the regulatory function to be responsive to needed policy direction while maintaining independence. Energy regulation is carried out across a spectrum of mechanisms, from the independent regulatory commissions of FPC and NRC to the executive actions of FEA and Interior. The independent regulatory commissions emphasize the mandates of their enabling legislation and are often inhibited by these statutes from revising their interpretation of the national interest, regardless of the views of the Executive Branch on current needs evolving from a changing international or domestic situation. Energy regulation should be responsive to overall policy direction. At the same time, individual regulatory decisions made under this policy direction should be fair, objective and free from outside influence. This has often caused regulatory activities to be separated from promotional activities, which is not the case with FEA. Improvements need to be made in the

regulatory structure to strengthen objectivity and independence while at the same time strengthening the responsiveness to policy input. Finally, energy regulation itself is fragmented among agencies, e.g., FPC, NRC, FEA, which makes the use of regulatory power to optimize the use of various energy sources very difficult.

D. There are duplicating and overlapping agency responsibilities because of the fragmentation of energy functions. Some duplication is legislatively sanctioned, e.g., FEA and EPA in converting utilities from oil to coal; FPC and Office of Pipeline Safety (DOT) in LNG safety standards. Beyond specific legislative problems, FEA has responsibility for energy planning and development, while specific energy sources are the responsibility of other agencies. The overlap has become significant in conservation programs between FEA and ERDA. While fragmentation does contribute to the examples of duplication that have been cited, it also can lead to difficulty in developing well-coordinated broad programs, such as an emergency preparedness program that can effectively respond to supply interruption.

E. There is the potential for greater duplication between FEA and ERDA. Both FEA and ERDA originally were founded with distinct missions, but both are collecting functions, by legislation and otherwise, and expanding into general purpose energy agencies. In this evolution, both interact with the private sector and have a growing number of incentives that can be applied to business and industry to achieve energy goals. These incentives should be directed through a single channel to maximize their effectiveness and to avoid undesirable effects on the private sector.

The present structure for energy functions is not without some assets. For example, the ERC has provided a useful forum for top-policy level dialogue across agency lines concerning major policy issues; the separate status of ERDA helps assure a stable environment and the long-term continuity needed to manage a program which is intended to emphasize long-range technology development; the independent commission status of FPC and NRC permits a separation

of promotional and regulatory functions and thereby helps allay any public concern that regulatory decisions could be politicized. However, these benefits can be preserved under alternative structures so long as they are properly designed.

IV. Alternatives

While a wide range of feasible alternative structures was considered, they were narrowed to the three most promising options. Basically, these options represent varying degrees to which the fragmented energy and energy-related functions might advantageously be consolidated. Each alternative has been presented in the configuration judged to be best by the study team. However, determining the exact composition of each of the alternatives poses some controversial decisions. The most significant and sensitive of these decisions to include or exclude functions in the alternative structures are listed below for your information. More detail is contained in Tab C on each item together with provision for you to make the decision on each if you wish to do so.

- o Nuclear Regulatory Commission (NRC) - exclude
- o Federal Power Commission (FPC) - include
- o Rural Electrification Administration (REA) - include
- o Naval Petroleum Reserve (NPR) - include (DENR only)
- o National Oceanic & Atmospheric Administration (NOAA) - include (DENR only)

Under all options the ERC has been retained. Even if a Department of Energy were formed with a strong policy operation, the ERC would be a valuable vehicle to coordinate with EPA, State, Treasury and other agencies.

A. Department of Energy and Natural Resources (DENR)

Description

A grouping together into a new multi-purpose department all primary energy functions together with selected natural resource programs. Composition of the DENR would

include:

- o Interior
- o FEA
- o ERDA
- o FPC
- o REA (Agriculture)
- o NOAA (Commerce)
- o Naval Petroleum Reserves (DOD)

Advantages

- o Maximum feasible consolidation of presently fragmented energy functions.
- o Permits resolution of unclear jurisdiction between FEA and ERDA in areas such as energy forecasting, conservation and technology commercialization.
- o Cabinet-level representation for energy--together with some, but not all, natural resource functions.
- o Provide resolution within one Cabinet Department of many competing claims in the management of public lands between energy development and resource preservation or other land uses.
- o Provides a stronger base for subsequent, more complete, consolidation of natural resource programs - e.g., Forest Service, Army Corps of Engineers Civil Works, etc.
- o Permit closer integration of earth sciences of geological survey with atmospheric and oceanic sciences of NOAA.

Disadvantages

- o Grouping energy with natural resources in a large multi-purpose department fails to put highest possible focus on energy and does not provide a top level dedicated energy advocate.

- Results in a very large conglomerate-type Department with a wide span of concerns from energy and natural resources to Indian and Territorial Affairs. Experience indicates these conglomerate arrangements are hard to manage and hold accountable.

- Energy objectives could dominate land management decisions at the expense of other land use requirements.

- Grouping of so many diverse programs could result in an internal DENR structure that "layers in" some functions excessively, e.g., the nuclear weapons work performed by ERDA could be relegated to third echelon status prompting strong pressure to transfer it to DoD despite recognized benefits of associating nuclear power with nuclear weapons work.

- Despite broad span represented by this alternative, it would still not encompass all relevant concerns in energy policy formulation (foreign affairs, environment and others) necessitating Executive Office balancing; nor would it incorporate all major natural resource programs, (Corps of Engineers, Forest Service, and others) with the resulting prospect of still great future consolidation.

B. Department of Energy (DoE)

Description

A consolidation of primary Federal energy functions which are not integral and inseparable aspects of the mission of other agencies to form an advocate or special purpose type of department. This consolidation would include:

FEA
ERDA
FPC
REA (Agriculture)

Power Marketing (DOI)
Energy Functions of the Bureau of Mines (DOI)

Other important energy functions of Interior, e.g., oil and gas leasing by BLM and energy resource assessment by USGS were found to be deeply integral to the land management and geological missions of Interior and not susceptible to excision.

Advantages

- Provides feasible consolidation of energy functions thereby facilitating a unified and coherent Federal role in the national energy system with component parts subject to common policy direction.

- Permits resolution of unclear jurisdictions between FEA and ERDA as in the case of DENR.

- Highlights energy as a difficult, major and long-term national issue area and gives it a Cabinet-level spokesman and point of contact who is "in charge" of energy in dealings with other agencies, Congress, Governors, industry and the public in keeping with this status.

- Provides that national energy policy will be formulated by a single spokesman who has his own policy analytical staff, direct authority over major energy programs and Cabinet status. The ERC will continue to be used for interagency energy policy coordination.

- Narrower focus than DENR alternative would make this alternative disturbing to fewer interest groups and Congressional committees, thus enhancing prospect for enactment.

Disadvantages

- Would not take in some major Federal energy functions, notably oil and gas leasing on

public lands, and as a result, continued cross-agency coordination would be necessary in important areas.

- Concentrated focus on energy and consequent advocacy orientation would mean that some check and balance mechanism would be needed especially in energy policy formulation to assure that the President gets objective advice and that conflicting interests are represented.

- Several of the projected components of the DoE are very controversial and vulnerable to being trimmed out in the legislative process-most particularly FPC and REA. Were this to occur, the proposed DoE would be little more than a merged FEA and ERDA giving rise to serious question of whether Department status is warranted.

- Several of the energy functions to be incorporated in DoE would require a measure of autonomy in order to avoid being overpowered, submerged or lose credibility - these include:

  energy regulation, data, R&D, weapons--special internal arrangements would be necessary to assure the integrity or visibility of these functions within the DoE/energy advocacy climate.

An alternative within this option would consolidate the same functions as DoE, but they would be organized at sub-cabinet level in an expanded energy agency.

Advantages

- This alternative would retain many of the program cross-coordination advantages of the DoE concept and provides a fall-back means of achieving these advantages if the DoE consolidation becomes marginal because too many of the potential program consolidations, i.e., FPC, REA, energy functions of the

Bureau of Mines, fail to materialize.

Disadvantages

- o Would continue the present problem of no Cabinet rank energy policy spokesman. Consequently, the energy policy formulation machinery would continue to have some of the institutional weakness of the present ERC/FEA system, although to a lesser degree.

C. Retain the present structure - with improvements

Some of the problems inherent in the present fragmented placement of energy functions can be mitigated by relatively modest actions such as improved coordination of policy formulation by strengthening the ERC, recognizing FEA as a permanent agency which has been expanded beyond its original emergency role, and clarifying some jurisdictional issues. The disruption which comes from any organizational change would be generally avoided. However, most of the serious weaknesses inherent in the fragmented and uncoordinated system described earlier would not be addressed by this alternative. Energy as a major problem area would continue to lack a top level spokesman and there would continue to be no one with direct authority over most energy functions. Moreover, any action to strengthen ERC in terms of staff or authority can engender problems of its own, i.e., an advocate in the Executive Office without operational responsibility as in the case of the CEQ.

V. Conclusions and Recommendations

Based upon the findings of the study, reorganization of Federal energy functions is well-warranted and, on balance, the Department of Energy alternative will provide the most effective long-term arrangement for coordinating and performing Federal functions in this area. The significance and difficulty of the energy situation will persist well into the future and the coherency and continuity needed to accomplish the Federal role can best be provided by a Department dedicated to that purpose.

The critical need for balanced and credible conflict resolution in the management of the public lands can best be met by an arrangement which separates energy advocacy from the responsibility for managing the nation's natural resource assets - i.e., a DoE separate from the Department of Interior (or ultimately a Department of Natural Resources). This arrangement will permit continued accelerated development of coal, oil, gas and uranium resources while other values such as environmental safeguarding, preservation and alternate land uses are fully and fairly represented as well. Retention of the CEQ/EPA system will also force critical trade-offs between energy and environment to the Presidential level, which is appropriate for issues of this magnitude.

Careful consideration of all alternatives indicates that:

- The present fragmented structure is seriously inadequate for the task and that any administrative improvements of it will not basically alter its ineffectiveness for the long-haul.

- The disadvantages cited for the DoE plan can be offset by proper design of its structure and other management actions. For example, existing regulatory functions can be divided into two categories--general rulemaking and adjudicatory responsibilities associated with individual case decisions. The rulemaking can become part of the policy office of a new Department of Energy, where this function can be effectively coordinated with other policy decisions. The adjudicatory decisions, e.g., granting of licenses, etc., can be made in a quasi-independent component of DoE, headed by a Presidential appointee subject to Senate confirmation. While this process would operate within the overall policy framework established by the Secretary, individual decisions could be insulated by having them made by Administrative Law Judges, with final review by an Appeals Board. Subsequent challenge would be in the courts, with no appeal to the Secretary.

- Conversely, the disadvantages of the DENR plan,

i.e., size and diversity and internal conflict, appear to be more intractable with no effective way to offset them.

Presidential Decision

_____ Approve the Department of Energy (DOE).

_____ Approve the DoE concept, but create as an agency in lieu of a cabinet department.

_____ Approve the Department of Energy and Natural Resources (DENR).

_____ Continue with the present structure--develop specific ways to improve performance.

_____ Other

(Note: The recommendations of administration officials will be shown under the applicable alternative in the final paper that is delivered to the President.)

Circumstances Leading to Current Study of Energy Organization and Its Relationship to Recent (1974) Changes in Energy Organization

When the Arab oil embargo struck in November of 1973 precipitating the energy crisis, the Administration had energy organization legislation pending before Congress. I.e., Split the former AEC into R&D work (ERDA) and regulatory work (NRC) and establish a Department of Energy and Natural Resources (DENR).

In view of the crisis, the Administration agreed to forego the controversial DENR in order to expedite Congressional consideration of ERDA and NRC. They were enacted in October 1974 together with the Energy Resources Council (ERC).

Meanwhile, also in response to the energy crisis, the Federal Energy Administration had been created first by Executive order and then by law in June 1974. FEA

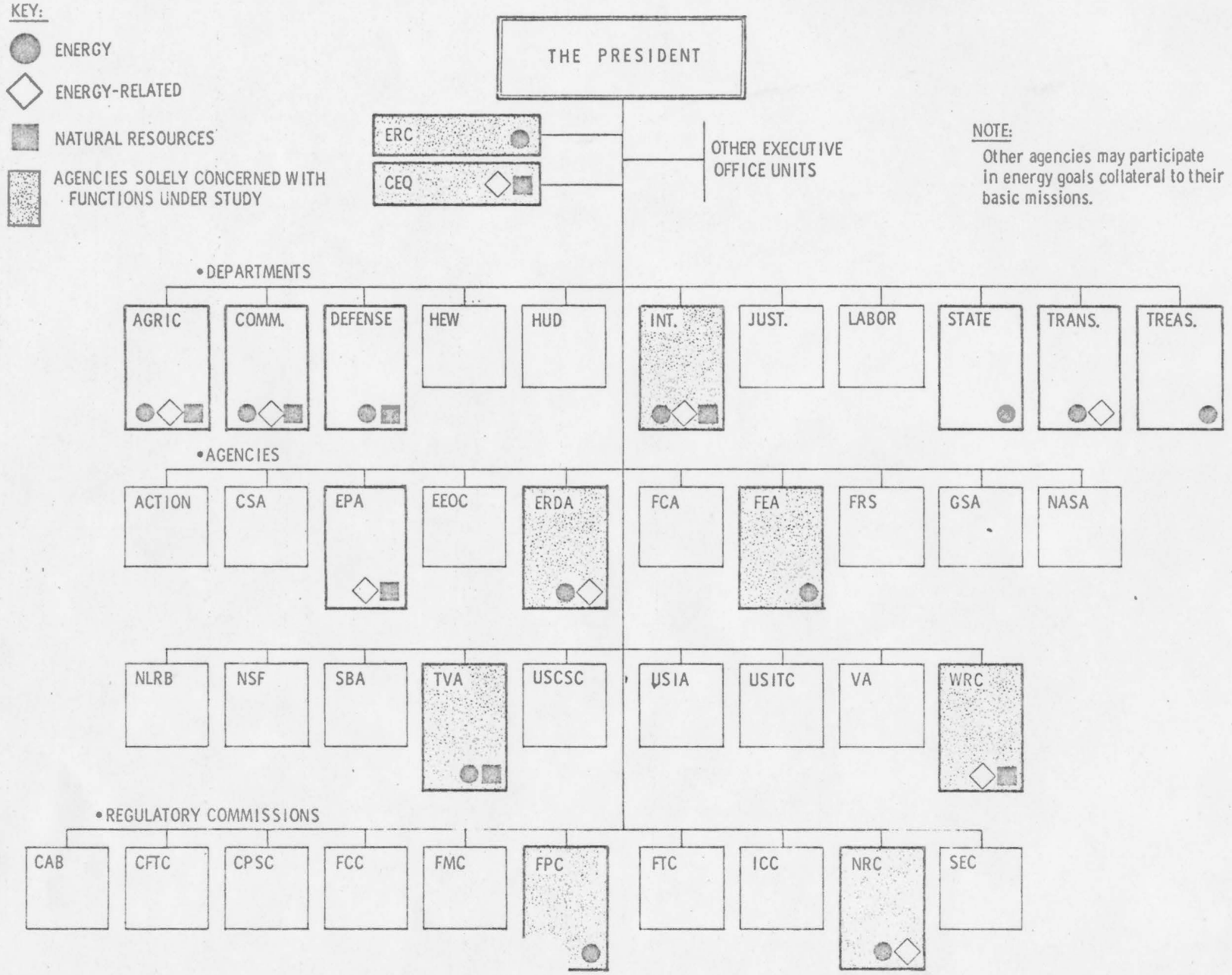
These changes in energy organization soon after imposition of the embargo were generally regarded both by the Administration and Congress as only partial (ERDA and NRC) and short-term (FEA and ERC) treatment of overall energy organization.

However, the early time period following the embargo was also a time of major reappraisal of national energy policy including a reassessment of the Federal role in relation to the private sector role. During this period of fundamental reappraisal, it was untimely to determine the most effective long-term organization for Federal energy activities which clearly should rest on a well-developed concept of the Federal policy and role. We now have these concepts in hand, if not necessarily universally agreed upon.

It is, therefore, now timely to make this fundamental organizational review and we have been so engaged for several months working with the heads of affected agencies and their staffs.

After this study was initiated and well underway, a requirement was inserted, with our concurrence, in the FEA extension legislation, which you recently signed, that the President shall direct a comprehensive study of energy and natural resources and forward a report with his recommendations and proposed legislation by December 31, 1976.

LOCATION OF ENERGY, ENERGY-RELATED, AND NATURAL RESOURCE FUNCTIONS IN THE EXECUTIVE BRANCH



Major Inclusion or Exclusion Issues in Possible Consolidated Energy Reorganizations

In determining the functional composition of either the Department of Energy (DoE) alternative or the Department of Energy and Natural Resources (DENR) a number of sub-issues occur as to whether various existing programs should be included or excluded from one or both concepts. Some of these are fairly small issues or non-controversial -- others are more significant questions deserving your attention.

The major inclusion or exclusion issues are described and evaluated below with provision for an indication of your guidance.

I. The Nuclear Regulatory Commission

A. Background

The NRC was established by the Energy Reorganization Act of 1974. It is responsible for all the regulatory and licensing functions of the former Atomic Energy Commission which was abolished by the 1974 legislation, and is the Federal agency responsible for the regulation of nuclear power generation.

B. Major NRC Program Functions are as Follows

Nuclear Reactor Regulation - Assures adequate safety, environmental protection, and safeguards in the issuance of reactor licenses.

Standards Development - Produces engineering standards for siting, fuel cycle facilities, safeguards, transportation and product safety standard development.

Inspection and Enforcement - Conducts nuclear powerplant safety inspections including the issuance of construction permits and operating licenses. Also conducts safety inspections of fuel cycle facilities and nuclear materials.

Nuclear Material Safety & Safeguards - Performs a safeguard licensing program devoted to waste management and the development of generic environmental impact statements for consumer products which contain nuclear material.

- May be difficult to demonstrate in advance that abolishing NRC would improve the executive branch capacity to achieve coordinated management of national energy programs. Thus, in view of the opposition which such a proposal would confront, the inclusion would be hard to win and could jeopardize the whole energy reorganization package.

Agency Position

Chairman Rowden has not been consulted on this issue.

Conclusion - Retain Functions in NRC

The disadvantage relating to further accelerating public concern for nuclear safety and the consequent difficulty in winning public acceptance of nuclear power overwhelms the potential advantages. The real advantage relating to bringing nuclear export licensing under Presidential control can just as well, or better, be achieved through a change in law authorizing the President to make the final decision in these cases, in keeping with his responsibility for the conduct of foreign affairs (as with CAB ruling on overseas route awards).

Presidential Decision

/_____/ Agree to functions remaining in NRC

/_____/ Disagree. Revise planning to include NRC functions in energy agency.

II. The Federal Power Commission (FPC)

A. Background

The FPC's regulatory authority extends over portions of the natural gas and electric power industries. The FPC exercises its regulatory powers in four program areas: (1) licensing of hydroelectric projects; (2) setting rates for interstate wholesale sales of electric energy; (3) certification of pipeline facilities for the transportation of natural gas; and (4) setting rates for interstate wholesale sales of natural gas. The purposes of these programs are broader than economic or rate setting. They aim also at conservation of energy resources, promotion of hydroelectric development, safety, environmental protection, assuring an abundant supply of electric energy and emergency preparedness. Pursuit of these objectives necessitates extensive coordination between FPC and other agencies including particularly Interior and EPA.

B. Advantages and Disadvantages of Inclusion

Advantages

Advantages apply generally to either the DoE or the DENR alternative energy organization.

- Inclusion of the FPC programs would help assure their sensitivity to overall national energy policy as formulated and coordinated by the Energy Agency.

- Regulatory actions regarding natural gas and electric power could be developed over time in relation to regulation of petroleum resulting in a more rational and even-handed treatment among these competing energy sectors.

- Inclusion would facilitate improvements and simplification in Federal energy data gathering and use, as well as better emergency preparedness coordination across energy sectors. The DENR alternative affords an added advantage over the DoE alternative since the FPC functions would be housed with related natural resource programs now in Interior.

- Natural resource coordination would be significantly improved and expedited.

Disadvantages

° The independent commission form, while not very responsive to national policy or changing conditions, does have the merit of stability and avoidance of undue political pressure, at least as a common perception.

° Abolishing FPC as an independent commission and inclusion of its functions in an energy agency could alarm the regulated industries as well as conservation and environmental groups.

° Congress would probably react very negatively to disestablishing this, or any, independent commission apart from the merits of the case because of an implied threat to this "arm of Congress" mode of governance.

If In DoE

° The case would be weaker because inclusion in DoE would fail to significantly mitigate present natural resource coordination problems which would still require cross-agency contacts.

C. Conclusion

A convincing case can be presented for abolishing FPC and incorporating its functions in an energy agency. This is particularly true if the DENR alternative is selected.

The concern for the credibility and objectivity of regulatory decisions, if placed in an executive agency, can be mitigated by having adjudicatory proceedings heard by an Administrative Law Judge, subject or review by an Appeals Board, the members of which serve fixed terms, and by having regulation functions insulated from development functions. Therefore, on balance, we feel the FPC functions should be incorporated in the DoE or DENR planning since the objections can be partially offset and in spite of anticipated strong Congressional opposition.

D. FPC Chairman Position

Variation in Disposition of FPC's Hydroelectric Licensing Program if DoE is Selected as Alternative for Energy Organization.

The siting of proposed hydroelectric facilities deeply involves land and water planning and use. The hydroelectric licensing work of FPC, of all its programs, is therefore the most intimately associated with Interior's

mission and capabilities. Conversely, this FPC program has less to gain by grouping it with DoE programs. Consequently, if FPC is abolished, hydroelectric licensing could be excluded from DoE even though such an action would split Federal electric energy regulation between two programs.

° Hydroelectric licensing may be split off from the other FPC programs and stay in the independent regulatory commission structure.

° Hydroelectric licensing can be transferred to an executive agency (Interior) with natural resource programs if the hydroelectric program is sufficiently insulated to assure necessary independence of regulatory actions.

Including hydroelectric licensing together with other FPC programs in a DENR would be the most satisfactory disposition for this function. In the event of a DoE selection, hydroelectric licensing should be transferred to Interior, or next best, left as an independent Commission.

E. Agency Position

" ... on the subject of including the Federal Power Commission ... our minds are open to any proposal which would place all of the Federal government's energy policy-management in one agency." (Excerpt from a letter to James L. Mitchell from Richard L. Dunham, dated September 16, 1976.)

F. Presidential Decision

/_____/ Agree that functions of FPC be transferred to either DoE or DENR, whichever is selected. and that FPC be abolished.

/_____/ Disagree. Leave FPC as is.

/_____/ Agree to abolishing FPC but if DoE is selected, hydroelectric regulation is to go to Interior Department with other functions going to DoE.

/_____/ Agree to abolishing FPC but if DoE is selected, hydroelectric regulation disposition should be studied further.

III. Rural Electrification Administration (REA)

A. Background

The Rural Electrification Administration (REA) in the Department of Agriculture was created in 1935 to make low cost loans to finance electric and telephone service in rural areas and thereby expedite rural electrification and phone service.

REA makes loans to qualified borrowers, with preference to non-profit and cooperative associations and to public bodies, normally at 5 percent interest. REA borrowers can also finance their capital needs from non-REA sources with the aid of REA loan guarantees.

In 1975, approximately 25 million Americans were being provided service from electrical systems financed by REA. Also in 1975, borrowers from the telephone loan program provided service to 9 million people in 42 States. REA does not own or operate facilities in either the electric or telephone program.

While originally established to provide electricity for America's farms, this job has been essentially completed. Nearly 99% of all farms are electrified and virtually all of the new customers are non-farm. Since 1961, more than 8,000 commercial, industrial, and community facility projects have been assisted by REA borrowers.

B. Advantages and Disadvantages of Inclusion

Advantages

REA electric programs are no longer agricultural in nature, but are directly related energy development and marketing. Consolidation of these programs with other similar programs relating to power marketing and development would greatly improve overall coordination and administration of these efforts. Additionally, it would reduce significantly the amount of energy organizational fragmentation which now exists.

Disadvantages

The associations of REA borrowers constitute a broad base and highly organized interest group which can be expected to strongly oppose any change in status because the loan programs have fared very well under the Agriculture Committees of both Houses. The major concern of the REA constituency would be that inclusion in an Energy Agency would highlight the REA loan policies as out of date, no longer needed, and perhaps even counter-productive from an energy policy point of view. It could signal to them, the beginning of the end of very favored treatment.

C. Conclusions

The REA electric programs clearly have their primary impact in the energy area with secondary rural development impacts. As such, these programs properly belong in a consolidated energy organization where they can be rationalized with other programs realting to power marketing and general energy policy. The telephone loan programs are not directly energy related and could, from a programmatic viewpoint, just as well be left in USDA. However, the total administrative costs of both programs would probably increase if they were separated.

Organizationally, REA divides cleanly and evenly between the electric and telephone programs. Consolidation could therefore be accomplished with little administrative difficulty. This would result in about 400 REA employees associated with the electric programs being transferred to the proposed Energy Department and an equal number of REA employees remaining with the telephone programs in USDA.

In summary, there is no sound reason to leave REA out of the energy consolidation planning other than the strong prospect of losing the case on political grounds. It is recommended that it be included therefore. If it subsequently is ruled out and retained in USDA, it would not be a crucial loss to the viability of an energy consolidation.

D. Department of Agriculture Position

The Department of Agriculture prefers not to take an official position concerning the potential consolidation of REA into an Energy Agency.

E. Presidential Decision

/_____/ Agree to inclusion of REA in either a DoE or DENR proposal

/_____/ Agree to inclusion of REA electrification programs in either a DoE or DENR proposal, but rural telephone programs to remain in USDA.

/_____/ Disagree. Leave in USDA.

IV. Naval Petroleum Reserves Program

A. Program Description

The Naval Petroleum Reserves (NPS) were originally established, in the early 1900's, to insure an adequate supply of petroleum for national security purposes in the event of wartime interruption of the supply of petroleum. However, P.L. 94-258, enacted at the instigation and support of the Administration in response to the energy crisis altered the concept and status of the original NPS by providing for the transfer of NRP No. 4 (Alaska) to the Department of Interior in 1977 and by authorizing production of NPR's Nos. 1, 2, and 3 (in continental U.S.) through 1982 by the Navy to facilitate the development of the Strategic Petroleum Reserve authorized by the Energy Policy and Conservation Act of 1975, P.L. 94-163.

In effect, P.L. 94-258 assumes that all national needs for petroleum, military and civilian, can be critical in time of emergency and all sources of petroleum are to be pooled without prior earmarking. Similarly the strategic storage of petroleum would be set aside for emergency circumstances, but without prior earmarking as to end use.

In addition to the four petroleum reserve sites, the Navy presently has administrative responsibility for three oil shale reserves which are currently undeveloped.

B. Issue Relates to DENR only

The transfer of NPR responsibility from DoD as part of a general energy reorganization relates to the DENR alternative because of its comparable functions of fossil fuel leasing on public lands. The DoE alternative would not assume these functions from Interior where they are now performed, and, consequently, NPR would not be a candidate for transfer to a DoE.

However, if Interior remains in being because the DoE alternative is chosen rather than DENR, serious consideration should be given to transferring all of NPR to Interior. Finally, if it is decided to retain the present structure rather than other DoE or DENR, serious consideration still should be given to transferring all of NPR to Interior. These actions would be consistent with the change in concept of the NPR from a military-only emergency supply.

C. Advantages and Disadvantages of Inclusion in DENR

Advantages

To find an economically viable, yet environmentally acceptable process to extract petroleum from oil shale in the near future is going to require a coordinated energy resource development effort by both private and government concerns. To date, this has largely been a fragmented effort which requires extensive, time consuming interagency coordination. It makes sense, both programmatically and administratively to consolidate these oil shale resource development programs within a single department or agency whose primary mission involves energy resource management and leasing. Navy oil shale reserves are only a small portion of the total national reserves and, therefore, transferring the administration of these reserves to a DENR could be accomplished with relative ease.

DoD and Navy recently initiated an oil shale RD&D program jointly with ERDA and a private company. Consolidation of this oil shale program with other similar civilian energy agency programs would provide a more distinct separation of civilian and military functions.

With respect to the petroleum portion of the NPR, there are several benefits that would be derived from consolidation into the agency responsible for energy leasing and Federal land management.

- It provides a single clear cut picture of the total national petroleum reserves, both in the ground and in strategic storage.

- It facilitates tradeoff analysis to determine how much reserves should be maintained in each account (i.e., military vs. civilian), as well as provide a mechanism for shifting resource reserves from one account to another as needed.

- It simplifies total program administration.

In summary, our Nation's security includes not only a strong national defense, but also a sound and stable economic base. Obviously, the administration of our national petroleum and oil shale reserve programs affects both the country's defense and economic well-being. Inasmuch as these programs are clearly energy oriented, they could be best administered by a department or agency with responsibility for energy resources development on public lands. NPR programs also could more

readily obtain support in DENR than in DoD because of closer affiliation with expertise of Geological Survey, Bureau of Land Management, Bureau of Mines, and others.

Disadvantages

Strong political resistance is likely from the Armed Services Committees of both Houses.

D. Conclusion

Conceptually and for practical administrative efficiency, all of NPR - not just the Alaskan portion - should be in DENR if that alternative is selected.

Management of the NPR, both petroleum and shale, is now, by law, viewed in a different light from its historic concept of a military-only set aside. It is now part of a more integrated energy approach for both military and civil uses. Also, the management of these resources is administratively closely related and analogous to the Interior energy leasing and lease management functions which would be in the DENR if that alternative is chosen. These points seem compelling in judging the best placement for NPR.

E. DoD Position

DoD opposes transfer of both oil shale and petroleum reserves to a civilian Energy Agency, primarily on the basis that further commercialization of NPR for non-DoD purposes is unwarranted.

F. Presidential Decision

/_____/ Agree that all of NPR 9both shale and petroleum) should be included in the DENR concept, if that alternative is chosen.

/_____/ If basic energy organization decision is for either DoE or the present structure, pursue the transfer of all NPR (shale and petroleum) to Interior.

/_____/ Disagree. Leave NPR in Navy.

V. National Oceanic & Atmospheric Administration (NOAA)

A. Background

NOAA, located in the Department of Commerce, has responsibility for a wide range of scientific programs in oceanic and atmospheric services and research, in coastal zone management and in fisheries resource management. The interaction of NOAA programs with natural resource and, to a lesser degree, energy matters, is considerable.

B. NOAA Relationship to DENR and DoE

NOAA, in total, would be a candidate for inclusion in DENR but not in DoE. IF the DoE alternative is chosen, NOAA functions should be studied further to determine their best disposition including some possibly to the DoE (e.g., impact aid), others possibly to Interior or to remain in Commerce.

The following advantages and disadvantages relate only to the inclusion of NOAA in DENR.

C. Advantages and Disadvantages of Inclusion in DENR

Advantages

1. It would facilitate the coordination of those services which NOAA currently provides in support of energy and energy-related programs in FEA, ERDA, and Interior, particularly those related to Coastal Zone Management (CZM) programs and CZM energy impact funding.

2. It would consolidate almost all of the Federal Government's knowledge, expertise and facilities for the conduct of surveys, assessments and investigations of the physical, chemical and biological characteristics of the oceans and the lakes as well as the geological and geophysical processes of the solid earth and its resources.

3. It would consolidate all Federal programs relating to the conservation, restoration and management of marine mammals and marine, fresh water and anadromous fishery resources.

4. It would consolidate the Federal Government's expertise and capability for monitoring streamflow

and water quality, determining the distribution and character of sub-surface water, and assessing the Nation's water supply. This centralized capability would be particularly valuable in developing plans for western coal development and for identifying suitable sites for locating nuclear power plants.

5. It would consolidate, and make more effective and responsive, those Federal programs which were designed to reduce loss of life and property from a broad spectrum of natural disasters, including floods, tornadoes, severe storms, earthquakes, tsunamis, volcanic eruptions and landslides.

6. It would provide a central source of almost all of the environmental data essential for making comprehensive assessments of the environmental impact of various energy and natural resource development activities.

7. It would consolidate much of the civilian production of maps and charts for the earth, the oceans and the national air space.

Disadvantages

From a program operational standpoint, there are a few disadvantages to including NOAA in a Department of Energy and Natural Resources. The disadvantages to such inclusion basically focus on the reaction of outside organizations.

1. NOAA is perceived as an environmental organization not biased by resource utilization and development interests. Placing NOAA in the department that is charged with resource development could jeopardize this relationship and the reaction of the environmental community to consolidating NOAA into DENR will probably be negative.

2. NOAA joining DENR runs contrary to other study recommendations on how the Federal effort in ocean and atmospheric affairs should be organized, i.e., that NOAA should be the central element in a separate ocean organization at Cabinet level.

D. Conclusions

In the event the decision is to form a Department of Energy and Natural Resources, NOAA should be included as a major and integral part of this Department, primarily for natural resource management reasons.

On the other hand, if the DoE option is selected, further study should be given to whether or not NOAA

functions should be dispersed to Interior, DoE, Commerce, and other Federal agencies.

E. Department of Commerce Position

NOAA programs in the fiscal 1977 budget comprise approximately 30% of the Department's funds and approximately 40% of its full time permanent employees. Under these circumstances, it would be difficult to say that the transfer of NOAA from Commerce to DENR would be without impact. From an operational standpoint, however, such a transfer would result in few actual disadvantages. Although the Department would have to make a greater effort to assure continued coordination with the Economic Development Administration and Maritime Administration programs.

The Department of Commerce may actually benefit from transferring NOAA to DENR because such a transfer may allow overall Departmental program managers and policymakers to focus more of their time and attention on those programs which bear a more direct relationship to the economic growth and development orientation of the Department.

F. Presidential Decision

/_____/ Agree to inclusion of NOAA in the DENR, if that alternative is chosen.

/_____/ If DoE is selected, perform further analysis to determine feasibility of transferring parts of NOAA to DoE, Interior, and other Federal agencies.

/_____/ Disagree, leave in Department of Commerce regardless of energy organization decision.

TAB B

Organization For
Energy Policy Formulation, Coordination and Monitoring

Executive Summary

The question addressed in the attached paper is: Assuming each of the major alternative organizations being considered for Federal energy and energy-related functions -- what kind of organization or system would be needed to formulate and coordinate national energy policy and see that it is implemented? The scope of the question takes in a composite energy policy system comprised of:

- The role of the lead energy agency or agencies;
- input from other line agencies including such "non-energy" agencies as State and Treasury, and
- the coordinative function of Executive Office units including those which are either general purpose or special purpose.

This subject is not easily susceptible to analysis and clearcut answers. The issue involves an interplay of numerous factors all of which are judgmental in character and some of which require a future projection of the energy situation and Federal organization for energy matters. The balance of this summary itemizes and describes briefly the governing factors in determining the mechanism needed for national energy policy.

1. Understanding the nature of the energy policy task is basic in determining how to organize for it.

   - Focus is on national policy from the perspective of the President.
   - The whole policy cycle is involved: formulation, coordination, decisionmaking, implementation monitoring, evaluation and reformulation.
   - In many important areas of energy policy the course has been charted and substantial progress made in achieving agreement on basic directions. Some implementation decisions have been reached as well. But others remain unresolved. In succeeding years, some new fundamental decisions will be required and some already made will require reexamination. Even when the energy agencies have themselves shifted into a monitoring and implementation phase, the

broad variety of interfaces (i.e., international, environmental, etc.) characteristic of energy issues will require interagency policymaking.

- Energy policy is a compound of domestic and international considerations. The energy policy group should have an international expertise.

- Energy policy decisions must be balanced with other goals which are often the province of non-energy agencies; e.g., general economy, environment, resource management, foreign affairs, national security and others.

- Energy decisions and actions may have short or long-term consequences, but since these interact, they must be analyzed as one.

2. The function of energy policy formulation and coordination has recognizable organizational relationships with other energy functions.

   - Data collection and analysis. Credibility of data is seen by many including Congress, to be threatened if the data process is organized as a subordinate unit of the policy group or directly reporting to the same individual. Yet, the data system must respond to needs of the policy formulation process.

   - Research and development. R&D planning should be sensitive to technology needs identified outside itself including those surfaced as a product of the policy process. At the same time, R&D is a long-term investment requiring stability to reach maximum productivity, and it should not be directly governed by the dynamics of the policy process.

   - Energy regulation. Regulatory actions, especially rulemaking should be compatible with carefully constructed and widely debated energy policy, so as not to be counter-productive in terms of meeting national objectives. On the other hand, regulatory decisions, especially case actions, must be sufficiently free of policy pressure to be seen and accepted as credible and as satisfying due process requirements.

   - Energy development and conservation operations. Should clearly be governed by program policies which are specifically reconciled with overall energy policy.

3. It is instructive, with cautions, to evaluate the existing policy process in determining how to best organize for policy functions in the future.

° The ERC/FEA system for energy policy formulation and coordination has several structural flaws which might be avoided with a DENR or DoE arrangement. These include:

- In the absence of a Cabinet-level energy agency, ERC is chaired by a Secretary who does not otherwise have a basic energy mission. This arrangement fragments the already difuse energy policy process. There is no single energy spokesman. Consolidation of energy organization would clarify the energy perspective.

- ERC must rely on FEA for backup. Some other agencies tend to view the ERC/FEA system as an FEA vehicle regardless of the quality of the ERC's analysis. Consequently, they take up energy policy issues through other channels.

- Energy policy formulation is not comprehensive: ERC/FEA concentrates on short range and legislative; other agencies have other primary interests, i.e.: ERDA - long-range; State/NSC - foreign aspects; Treasury/CEA/EPB - economic aspects.

- In some cases ERC/FEA duplicates the general purpose coordinative bodies of the Executive Office, especially OMB's legislative review process.

° On the positive side, the ERC/FEA system has provided a forum for high level interagency discussion of urgent energy issues over a tumultous period. This forum might not have been available through strictly convential mechanisms.

- More senior level attention has been given to confronting problems than might otherwise have been the case.

4. The major energy organization alternatives - i.e., DENR, DoE, and the present structure - have differing capabilities and limitations in performing the energy policy making task.

   - DENR and DoE would provide a Cabinet-level capability to formulate policy. DENR would have a relatively wider span of relevant concerns than DoE. Both would have a Secretary to serve as a top level interagency spokesman who is directly concerned and who has the policy capability directly at this command.

   - The DoE alternative, unlike DENR, would result in an energy spokesman at Cabinet-level who is basically a single-minded energy advocate. As the chief formulator of energy policy, it would be necessary for the system to provide some check and balance so that the necessary reconciliation of energy with other concerns takes place.

   - An energy agency EA would be less able to clarify the energy policy perspective in an interagency context.

   - A limitation is that neither DENR nor DoE would cover all pertinent concerns such as economic, foreign affairs, general environment, and others.

   - Either DENR or DoE would offer a more established policy formulation and coordination capability than the present ERC/FEA systems which has the limitations described earlier. Providing the ERC with its own policy analysis staff would retain some of the existing coordination problems and either duplicate or replace existing policy coordination capability.

5. Assuming DENR or DoE, the "normal" or conventional arrangements for policy formulation and coordination could be utilized, but also might be supplemented with more exceptional policy coordination arrangements as needed to perform the energy policy job.

   The "normal" procedure would include staff analysis and initial formulation of policy in the energy department. Interagency consultation as appropriate would be performed.

   Coordination of draft positions of the Department, such as legislative material or Presidential decision papers would go through usual Executive Office units including OMB's legislative review process which formally involves all affected agencies.

   To supplement these usual processes, it may be useful to have a top-level interagency forum to resolve the many implications of energy policy. If so, as a first

increment of "exceptional" arrangements, an interagency committee such as the ERC could be continued. It could be chaired by the Secretary of the energy agency who would utilize his regular policy staff. Several of the structural flaws in the present ERC/FEA system might be remedied by such an institutional arrangement. Any agency head not satisfied with the product of coordination through this interagency committee process would be free to carry his views forward to the President if necessary. This would check any tendency for the Energy Secretary from pushing unbalanced positions to the President.

Some further escalations could be considered - but do not appear to be useful at this time. For example, a more elaborate staffing mechanism could be established in the Executive Office even if there were a consolidation of energy functions. A general purpose Executive Office agency such as the Domestic Council or OMB could be given special responsibility for energy policy leadership. Alternatively, a new organization such as the CEQ could be created for the purpose of establishing an institutional coordinating point. These forms of exceptional escalation might be considered, if needed, at a later point.

6. Assuming no Cabinet consolidation of energy functions and establishment of an Energy Agency or a continuation of present organizations, more formal coordination of policy should be considered.

Structural flaws in the present ERC arrangement suggest that more comprehensive coordination of energy policy issues should be established if there is no reorganization of energy functions. A more "neutral" coordinating arrangement might also be useful in reducing the concern of some agencies that FEA dominates the policy process.

- In the case of an establishment of an Energy Agency where there would not be the same level of energy advocate as in a Cabinet-level energy department, it may be useful to have a formal and full-time Energy Advisor in the Executive Office chair the interagency committee.

- In the case where the present organizational arrangements are continued, it may be useful to establish an even stronger policy coordination mechanism in the Executive Office than the present ERC/FEA system. A long-term need for an energy policy forum capable of integrating points of view across agency lines is evident. The ERC can do this. However, the addition

of a small staff could help make the continuing ERC more "neutral" with respect to FEA activities and an improved forum for the full range of energy policy matters as it affects all agencies. Once the energy policy issues have been thrased out in a broad way at the top policy and interagency basis, the bulk of any legislative coordination should be processed through the normal OMB legislative review process.

Analysis of
Organization to Perform

Energy Policy Formulation and Coordination

I. Scope and Purpose of Paper

This analysis is a component part of the overall organization study of Federal energy and energy-related functions. Its purpose is to address the question of effective organizational arrangements for formulation and coordinating national energy policy, subsequent monitoring to assure implementation and, as necessary, reformulating policy. The scope covers all national energy policy and the part played by all affected agencies, existing or potential, and any Executive Office role.

The focus of this paper is on the institutional arrangements needed to perform the energy policy task. It does not reexamine policy content as such, nor the process by which policy issues are publicly debated or negotiated with Congress.

Since this paper is part of a larger study, it is not intended to recommend final answers but instead, to analyze what is needed and derive guidelines regarding policy-making arrangements which should be considered in overall energy organization planning.

In terms of overall energy organization planning, this paper assumes three alternative organizations as leading contenders following Phase I of the general study:

- consolidation of prime energy programs together with some natural resource programs to form a-Department of Energy and Natural Resources.
- Consolidation of prime energy programs to form a - Department of Energy or an Energy Agency.
- Continuation of essentially the present agency structure for energy and related functions.

This first two cases above involve a question of whether or not an ERC or similar Executive Office mechanism would still be required, and if so, what form it should take. The third case involves the question of whether or not the ERC should be strengthened, and, if so, how.

The remainder of this paper is sub-divided as follows:

- II. Analysis as to the nature of the energy policy task -- especially in the foreseeable future.
- III. Relationship of the policy function, to other energy functions -- especially data, regulation, and research and development.
- IV. Description and evaluation of the existing energy policy system.
- V. The capability and limitation of each major alternative energy organization in performing energy policy formulation and coordination.
- VI. Options for energy policy formulation and coordination.

II. Nature of the Energy Policy Task

The task of formulating and coordinating national policy and assuring its implementation differs among the various fields of public affairs. This section of the report identifies the major characteristics of the policy task in the energy field in order to help assure that the energy policy machinery is tailored to the task. Some of the characteristics of the energy policy task cited in this section are peculiar to the energy subject, others are not.

A. National Policy Requiring Presidential Perspective.

Primary concern is with the major and overriding policy issues which transcend specific programs or agencies and can be thought of as national in character. Decisions at this level clearly require Presidential involvement and the integration of many points of view. Broad energy policy at this level -- e.g., continued major reliance on private sector and

minimum feasible intervention in free market decisionmaking -- sets directions for subordinate and more program specific policy decisions -- e.g., transfer of uranium enrichment to private sector and natural gas deregulation.

The policy machinery must serve the President's need for balanced and objective advice which integrates many points of view on the broad policy issues and major subordinate level issues which, while they may be program or energy-sector specific, are instrumental in achieving national energy objectives. In short, the energy policy mechanism should be geared to serve the top-down perspective of the President comprehending the broadest possible issues and reaching down to such levels of greater specificity as is needed to assure that major goals are being achieved.

B. Must Cover the Full Policy Cycle.

The energy policy task involves the full policy cycle -- formulation, coordination, decisionmaking and, subsequently, monitoring implementation, evaluation and reformulation as necessary. Again the emphasis is on the Presidential or national perspective.

Both the steps leading up to decision (formulation and coordination), and the post-decision steps (monitoring and evaluation) contemplate a central staff capability which has an established and recognized relationship with major energy program officials wherever they may be organizationally placed.

C. Future Mix of Policy Issues as to Formulation and Implementation

The type of policy formulation and coordination machinery needed in the years ahead should be governed in large part by future trends that can be anticipated in the energy policy task. There is some reasons to believe that the unstructured nature of energy policymaking over the last three years will not continue to the same degree in the future and has

already changed somewhat from that which prevailed in the early post-embargo period. The key question might be stated, - will future policy issues continue to cover novel and uncharted ground, or, will they increasingly fit within the guidance offered by established, broad policy? Another view of this same question is whether or not energy policy issues in the years to come will continue, in many cases, to demand Presidential attention or can be resolved at lower levels.

The picture is mixed. In many areas, decisions have now been made. Policies have been set in motion. In these situations, the energy policy task is to monitor implementation of these agreements rather than to formulate new policy. But the picture also includes other areas in which disagreement on the course that the government should follow continues to persist. In these instances, formulation of basic policy will still be required.

1. Increasing focus on policy implementation

Many close observers of energy matters feel that much of the policy ferment of recent years has been resolved. Broad outlines of consensus are beginning to emerge in important policy areas. For the first time, key Congressional and executive policy makers are in essential agreement on many oil issues. There has emerged some semblance of agreement on the role of regulations governing most fuel products and the broad goal of national energy policy -- self sufficiency and reducing dependence. Some of the broad general principles by which energy is to be developed and conserved have been established. The central role of private enterprise has been confirmed. The limited use to which coersive regulations will be used to enforce conservation has also emerged as an element of consensus. Even the role of price in inducing supply and limiting demand is becoming more widely accepted.

Major policy decisions have been made as well at the level of more specific programs or energy sectors. For example, an oil pricing policy has largely been established. The decision has been made to construct a strategic storage system. Decisions have been made to produce the naval petroleum reserves; to build an Alaskan oil pipeline; to develop off-shore oil reserves; to provide major new sources of energy efficiency information to consumers in order to encourage conservation; and to employ a variety of means to encourage conservation in residential structures.

The energy policy task in these areas is to monitor the implementation of the policy decisions, and assess any need for modification to the policy.

2. Major policy formulation issues still remain

In important areas of energy policy, there is no full consensus.

-- Natural gas is still regulated at artificially low levels. Supplies are decreasing. Each winter the prospect of shortages becomes a more pressing concern.

-- Nuclear issues are becoming more intensely debated. Following the Nuclear Regulatory Commission's recent ruling on waste disposal, nuclear plant construction has, in effect, been suspended. Major investments will be required in the nuclear industry in order to sustain growth. In the meantime, estimates are cut back each year on the role that nuclear power can play in generating electricity. Since Project Independence was heavily dependent on nuclear power playing a major role, these cutbacks could require major policy reevaluations.

-- Coal production has increased since the embargo. But Clean Air Act restrictions continue to limit coal use. Proposed amendments tightening restrictions may even increase future difficulties in burning coal.

-- Developmentof synthetic fuels and other important substitutes for conventional fuel will require government commitment to protecting early investors. But, without Congressional agreement on the merits of such guarantees, major legislative development work will have to take place.

In addition to these clear policy issues left unresolved by years of debate, there are two other kinds of problems. The first is that big issues exist even in seemingly settled policy areas. Although the essential policy framework may have been established, the implementation of the major decisions may require significant policy coordination on an interagency basis. In other words, some issues of implementation such as controversies over the Alaskan pipeline, or the production of the naval petroleum reserves have major interagency significance necessitating Executive Office and very likely Presidential level attention in the coming years.

The second kind of energy policy problem is the fundamental problem of issues which were not considered or resolved in the past. For example, United States policy toward OPEC has never been clearly articulated. OPEC investment in the United States (particularly in energy facilities) is another issue area in which there has been little attention to date. Finally, the government will some day have to cope with the fundamental short term issues of environmental and energy significance concerning the continuing national reliance on the automobile.

D. Careful blend of domestic and international considerations

It is, by now, well recognized that national energy policy must take into consideration both domestic and world-wide factors. The stage for projecting energy supply and demand is global. Because of its significance on world stability, energy - especially oil - is a matter of high concern in conducting our foreign affairs. Actions to strengthen our domestic position must be weighed in the light of their effects on other nations whose viability is important to us.

This intertwining of foreign and domestic energy issues and policies says something further about the kind of energy policy machinery we need. For one thing, the State Department and the National Security Council are, and will continue to be, vitally concerned and will, therefore, want to continue to have staff capability or expertise in energy matters.

The State Department and NSC, however, are not, and will not be, centrally charged with the development or implementation of national energy policy. They are participants and should have a clear voice, selectively, in energy policy debates.

There is no way, however, of segregating energy policy issues which are "domestic" from those which are "international." As a consequence, the agency and the group which has central responsibility for energy matters must have a sufficient staff capability which is well-informed and participating in international energy matters. The close coordination needed for domestic and foreign aspects of energy cannot be left to a "pass-over" system, but requires mutual involvement of both kinds of agencies even at the cost of some apparent overlap.

E. Energy policy decisions will continue to involve heavy trade-offs with competing objectives and values

Both at the level of broad course charting policy and, even more so, at subordinate or implementing decisions, energy objectives tend to collide with other values and objectives. The most apparent are environmental, health, safety, conservation, national security, consumer and national or regional economic stability. Less evident but of potential great concern are the impacts that energy decisions can have on citizen life styles, freedom from excessive regulation, privacy, and others.

If energy policy decisions involve a balancing of so wide a range of considerations, the question occurs as to how these points of view are to be represented in the decisionmaking process or in the advice coming

to the President where the decision is at that level. A part of the answer related to the span of responsibilities of the principal energy agency. The wider the span, the less the need to externally counterbalance the energy agency. However, no matter how comprehensively the energy mission is structured to include moderating responsibilities -- natural resources for example -- it will not include all pertinent points of view such as overall functioning of the economy or protection of air and water quality.

The consequence of this is that the total energy policy making apparatus will need to provide for hearing from and reconciling points of view which are not primarily focussed on energy. The relative ability or shortfall of the several alternatives for energy organization to take in the whole range of pertinent factors is discussed further in Section V.

F. Short-term and Long-term considerations must be viewed together

Some policy issues in the energy field have a very immediate time factor. Others involve gradually evolving problems and solutions which are long-term in paying off. The analysis of short-term actions and long-term investments must be carefully integrated for maximum results.

III. Organizational Relationship of the Policy Function to other Energy Functions

The organizational placement, authority and structure of the energy policy function can be defined in part by looking at other energy functions and seeing their relationship with policy-making.

Data collection and analysis. Obviously, data is needed to formulate and analyze policy options. The data system, therefore, has an obligation to respond with data that is valid and pertinent to real policy issues. However, if the relationship is too close in a hierarchial sense, there is a problem of credibility in the data gathered or analyses made. The concern is that the data system will be more motivated to produce answers that are hoped for

rather than those which are objectively straightforward. Data which is lacking in credibility is of limited value to anyone.

To counteract this concern, the data system should not be subordinate to the policy analysis function. It should support the data needs of the policy group, but not its policy positions. This relationship is analyzed further in the critical issue paper on Data Collection and Analysis including treatment of the newly legislated "separate" office in FEA.

Research, Development and Demonstration. To what degree should the RD&D program address technology needs identified by the policy-makers versus independently assess what is needed? This relationship of policy-maker and scientist is very critical in the long-range productivity from the R&D investment. A simple answer categorically supporting an extreme position either way is not indicated. In any case, the team which prepared the critical-issue paper on RD&D concluded, among other things, that the R&D capability should be governed in part by technology needs identified external to themselves with certain cautions to assure the continuity, integrity, and flexibility of the R&D function and its constituent projects.

Regulation. A fundamental question to be worked out in the planning of energy organization is the proper relationship between policy formulation and implementation on the one hand, and regulation on the other. Many feel that they are inherently conflicting and that they should, therefore, not be located together lest one - presumably regulation - be compromised in the conflict with the other. Conversely, others point out that it can be counter-productive for the regulatory power to be applied in complete isolation from balanced and rational policy objectives. This matter is extensively addressed in the critical issue paper on Energy Regulation. There is some validity in both points of view, but it is felt that the integrity of regulatory decisionmaking does not compel complete separateness, and the achievement of regulatory responsiveness does not depend upon its specific sub-ordination to policy-making.

Resource development and conservation operations. A number of Federal activities are underway in pursuit of the policy goals of increasing domestic energy supply and limiting energy demand. The operating programs for these purposes are not now consolidated and, as indicated in critical issue papers on each of these subjects, are not likely to be entirely consolidated in any possible alternative. Regardless of where they may be located, the energy policy function should have a continuing relationship with them to obtain policy decisions, when applicable, and to monitor their continued operation to assure that basic policy is being adhered to.

IV. Description and Evaluation of the Present Energy Policy System.

A. Description

The central unit in the development and coordination of energy policy under present arrangements is the ERC. To describe the ERC further, it is a statutory, interagency body comprised of the heads of Departments, agencies and Executive Office units which are concerned with energy matters. The ERC is chaired by the Secretary of Commerce, although the Department of Commerce, as such, does not have major energy functions. The Federal Energy Administration plays the leading role in ERC affairs other than serving as Chairman. For example, the FEA Administrator serves as Executive Director of ERC, and the FEA policy staff is, in effect, the principal analytical staff for the ERC. FEA also provides the ERC Secretariat role of keeping records, preparing agenda items, etc. Frequently the ERC functions through its Executive Committee rather than the entire body. This Executive Committee includes, in addition to the ERC Chairman and Executive Director, the heads of Treasury, Interior, OMB, ERDA, CEA, EPA, the Assistant to the President for Economic Affairs and the Undersecretary of State. Over the past eight months, 23 of 26 meetings of the ERC have actually been of the Executive Committee, not the full ERC. The full ERC generally meets bi-monthly for informational presentations, but not generally to debate policy issues.

Energy issues and economic issues inevitably converge. Consequently, the Executive Committee of ERC and the Economic Policy Board frequently meet jointly. In fact, the membership of these two groups tends to be the same persons in any case.

The ERC initially provided the vehicle for the comprhensive Cabinet-level review of detailed energy policy options which led to the President's 1974 Energy Message. More recently, the ERC has reviewed and analyzed discrete policy proposals such as those involving LNG imports and Alaskan natural gas transport. The ERC also has assessed major issues which relate more to implementation of existing policies (at least in the sense that new legislation is not required). Examples include review of EPCA implementation, and natural gas curtailments.

In these cases, the ERC typically has reviewed papers prepared by the lead agency on a given issue, has formed a task force or study group to analyze the issue, has used a permanent ERC subcommittee, or has formed a new one. Temporary task forces have been formed on the Federal energy organization, west coast oil transport, synthetic fuels commercialization, and other issues. Ongoing subcommittees include (a) the Intergovernmental Coordinating Committee (ICC), which in turn has established subcommittees on conservation, synthetic fuels, impact assistance, and coal programs; (b) the Task Force on Thermal Standards; (c) the Task Force on Motor Vehicle Goals Beyond 1980; (d) the Nuclear Subcommittee and (e) the International Subgroup, among others.

The ERC also serves as a forum to update positions on pending legislation resulting from Administration policy proposals and at times to discuss tactics relating to such legislation. Again, the ERC relies primarily on lead agencies (e.g., Clear Air Act Amendments Task Force) for its analysis. The ERC employs the same process to develop Administration positions on and tack other energy-related legislation, such as that on oil company divestiture or the Kennedy conservation bill.

With the exception of the initial efforts leading to the President's Energy Message, the ERC, which

has no permanent staff, has acted more as a policy coordination body than as an organization which initiates the formulation of policy. On the other hand, there are obvious exceptions (e.g., Alaskan gas transport and LNG import policy). Since the FEA has initiated many recommendations which the ERC then has taken up, the ERC Executive Director, who is also the Administrator of FEA, in fact, has been able to initiate policy development.

As a coordinating body, the ERC, besides producing discrete outputs such as decision memoranda, also provides a forum for top-level decision-makers to meet periodically to discuss energy policy.

B. Evaluation

Since its creation in 1974, the ERC mechanism has been confronted with a situation of major policy innovations going to such basics as a reexamination of the relative role of the public and private sectors. Policy issues have been large in number as well as often fundamental in character. The fact of having an exceptional mechanism such as ERC has served us well in the light of these events, especially in the absence of a Cabinet-level Department and Secretary with a clear lead role. In situations where there were fundamental disagreements, even within the Administration, the ERC provided a point of focus for senior policy makers with a broad interest in energy topics. These individuals might otherwise have been too disassociated with the day-to-day energy issues to be well informed and see the need for dramatic steps. Without being informed, such senior officials might have been more likely to oppose controversial energy actions which impacted on their areas. The ERC became a vehicle for permitting positive action. But there have been criticisms of the ERC as well which should not be overlooked.

An analysis was made of ERC actions taken on agenda items over a year's time indicating the subject matter, the lead responsibility, and the action taken. (See Attachment A). Summary is then given of issues handled by lead agency with FEA predominating by a substantial margin. Over the year, policy/legislative items occurred 35 times, while implementation issues came up for discussion 13 times.

While much good work has been performed under intense pressure, the structural arrangements for energy policy formulation and coordination as described above is not well suited to all aspects of the continuing energy policy task.

A critical evaluation of ERC/FEA policy mechanism includes the following points:

1. Comprehensive overview is missing. FEA has a short-term view, ERDA concentrates on policy decisions that would pay off in the long-term. State Department takes a foreign-policy oriented look at energy while the FPC and the NRC quite independently regulate their respective sectors. The ERC has not performed the role of integrating these fragmented views.

2. May be duplicative of normal coordinative machinery. The ERC at times represents an alternative track for policy development which duplicates the more conventional staffing process of OMB budget and legislative review and the Domestic Council's coordination role.

3. ERC as an FEA device. Some feel that the analysis developed by the ERC has been limited in value. In some cases, the critics charge, the ERC has played an advocacy role. In others, it has represented FEA's point of view to such an extent that some agencies try not to bring issues to the ERC. Agencies tend to use ERC if it is likely to be to their advantage, but can easily go an alternate route if the chance for controlling the action appears better - i.e., OMB, NSC, EPB, etc.

4. Implementation monitoring is weak. The ERC can engage in secondary policy issues to the degree that time permits, but this is not the same as systematically following major decisions to see that they are being implemented. ERC, as noted, has no analytical capability of its own. The FEA staff is a non-Cabinet agency and has direct jurisdiction itself over only a fraction of the implementation actions of the government. Its ability to track broad decisions to the implementation and feed-back stage is limited.

V. Energy Policy Capability and Limitations of Major Energy Organization Alternatives

The major alternatives to the present energy and related structure are (1) a Department of Energy and Natural Resources, (2) a Department of Energy or (3) an Energy Agency as described in the interim report on Energy Organization. The possible consolidations are not equal to each other in terms of their respective ability to handle the energy policy task or their limitations in doing so.

The machinery for formulating, coordinating, and monitoring implementation of energy (or any other kind) policy includes, in fact begins with, one or more line agencies and includes whatever Executive Office role may be necessary to assure balanced and objective support to the President. At present there is no one agency that has clear lead responsibility for energy. FEA perhaps comes closest, but it has clearly less than a full range and it is non-Cabinet in rank. Consequently, a heavy share of the load falls on the Executive Office including ERC.

In contrast, the possible alternatives of DENR and DoE would be in a much more comprehensive position, especially DENR, than is FEA. In addition, they would be at Cabinet-level. The dependence on Executive Office machinery would be less.

DENR would constitute a Department and a Secretary charged with energy and also with conservation and management of natural resources and, therby, would take into its sights one of the major continuing energy trade-offs. Energy policy initially formulated in such a Department would be expected to incorporate some balance in this regard.

DoE, especially if it did not have Interior's energy-related land management functions, would have a lesser span of concerns than DENR, and energy policy formulated in such a Department might need more extensive coordination above departmental level before it was ready for Presidential attention.

Either DENR or DoE, however, would require external coordination to assure other considerations were adequately given -- national economy, national security and foreign affairs and environmental protection.

The prospect of an Energy Agency in lieu of a Department of Energy would result in the same span as the DoE, but the agency would have a serious handicap in effecting interagency coordination by virtue of being sub-Cabinet.

VI. Alternative Arrangements for Energy Policy Formulation, Coordination and Monitoring - Normal or Exceptional

Under the conditions of the last several years, i.e., turmoil in the energy policy field together with the lack of a Cabinet-level spokesman with wide-ranging energy responsibilities - exceptional arrangements for formulation and coordination of energy policy has been warranted, i.e., the ERC/FEA arrangement.

A. Assuming a DENR or a DoE

The prospect of a consolidation of most prime energy functions in a Cabinet Department together with a more stabilized energy policy framework raises the question of whether exceptional arrangements would continue to be warranted or whether more normal arrangements would be sufficient.

Normal in this context would include:

- formulation of national energy policy in the energy department based on analysis by a properly staffed policy group. Consultation across agency lines at staff level would take place as necessary.

- Interagency formal coordination under the auspices of the lead agency itself - or -

- Interagency coordination through regular Executive Office processes such as legislative review by OMB or staffing of Presidential decision papers with general purpose Executive Office and White House units such as CEA, OMB and Domestic Council.

Exceptional

If it appears that exceptional arrangements are still warranted to cope with the energy policy task and to assure adequate coordination and balancing of views,

the first level of escalation might be a formally established interagency committee or council similar to the ERC - but chaired by the energy department secretary and utilizing policy analysis support from his own department. Energy policy making involves many points of view and consequently there is an important need for checks and balances so that the energy secretary will not be in a position to completely stifle dissenting views. Any other member on such an interagency committee who felt that his view was not adequately reflected in a policy position could make his dissent known to the President through normal channels.

A second possible exceptional arrangement for energy might be to follow the normal channels of involving regular Executive Office units such as OMB, CEA and Domestic Council but to augment the staffing of one or more of these to deepen their expertise and workload handling capacity in energy matters.

A final and more extreme exceptional arrangement would be a separate Executive Office body for energy chaired by a separate Assistant to the President and with a policy analysis staff separate from that of the Secretary. This would be along the lines of the CEQ or the NSC.

Again, assuming a consolidation of energy functions under a Cabinet Department and Secretary, it seems logical to unify the energy task there to the greatest extent possible and to go up the scale of supplementary and exceptional policy coordinating machinery only as needed.

B. Assuming consolidation of energy functions in a non-Cabinet Energy Agency

The chief difference here is the lesser ability of the top energy official to coordinate his agency's policy initiatives with the concerns of Cabinet officials representing foreign affairs, natural resources, tax policy, etc., or Executive Office officials representing budgetary concerns, economic policy or, national security. Correspondingly, if this alternative for general energy organization were adopted, it would require a higher degree of exceptional arrangement outside of the agency to coordinate energy policy

probably along the lines of the present ERC without staff or even possibly with some small staff. Such a body might be chaired by a Cabinet Secretary, as at present, or by an Executive Office Energy official.

C. Assuming the present structure for energy functions

Actually, the weakness and illogic in the energy policy system is one of the primary faults with the present energy organization. Nevertheless, if we assume no change in organization for energy functions, the present system of an unstaffed ERC would probably be required as a minimum to elevate the ERC to a level that it provide formal leadership at the Executive Office level for energy matters.

The alternatives would be to (a) augment OMB's staff in the energy field and thus unify the development of energy legislation with its interagnecy coordination - or - (b) to provide the ERC with a portion of the policy staff now vested in FEA and thereby continue to provide an interagency and top policy level forum for shaping energy policy. As a variation of the present arrangement, it might be desirable to have a full-time Executive Office official to chair the continuing ERC. In any case, once policy decisions have been reached, any legislative coordination that results should be processed through the established OMB legislative review procedure.

Analysis of ERC Action on Agenda Items

ABBREVIATIONS/CODES IN SUMMARY OF ERC AGENDA ITEMS

Group Meeting

EC	ERC Executive Committee
ERC	Full ERC
EPB/EC	Economic Policy Board/Energy Resources Council Executive Committee
GOVS	Governors on Energy Subcommittee of the National Governors Conference

Type of Actions

DM	Decision Memo for the President
IM	Information Memo for the President
RP/RC	Statutory Report to the President/Congress
R	Report for a future ERC meeting
TF	Task Force formed (long term)
L	Legislative liaison action
C	Interagency coordination (ad hoc, short term task force, interagency issue paper, or comments to specific lead agency)
B	Briefing/status report
O	Other
--	No action

SUMMARY OF ERC AGENDA ITEMS

Date	Group Meeting	Issue	Lead Agency	Action
7/20/76	EC,ERC	Alaska pipeline welds study	DOT,DOI	IM
7/14/76	EC,EPB/EC	Clean Air Act amendments	OMB,FEA,EPA	DM
		Energy Organization Study--status	OMB,DOC	R
		EPCA Implementation--6-month review	FEA	RP
		Draft Presidential Energy Brief	FEA	B
		FEA Extension--status	FEA	B
		Position on Mineral Leasing Act	DOI	--
7/14/76	EC,ERC	Clean Air Act amendments	OMB,FEA,EPA	C
		Natural gas curtailments--FPC draft paper	FPC	C
		Bailey powerplant decision	DOI,NRC	--
7/8/76	EC,ERC	Alaska pipeline welds--status	DOC,DOI	R
		Post-1980 auto efficency standards--ERC task force status report	DOI	R
7/7/76	EC,EPB,EC	LNG import policy--options paper	FEA	DM
		Alaskan gas (S.3521).	FEA	C
6/25/76	EC,ERC	Coastal Zone Management Bill	OMB	C
		FEA Act Extension	FEA	B
		Mineral Leasing Act amendment	OMB,DOI	C
6/9/76	EC,ERC	Scrubber technology options	EPA	R
		Synthetic fuels commercialization legislative status	ERDA	B

Date	Group Meeting	Issue	Lead Agency	Action
5/28/76	EC,ERC	Proposed ERC statement on uranium reserves	ERC	C
		Kennedy Conservation Bill (S.3422)	ERC	TF/L
		Randolph Coal Bill (S.1777)	FEA	L
		Senate Natural Gas Bill	FEA	L
5/19/76	EC,EPB/EC	Federal Energy Organization Study Outline and Work Plan	DOC,OMB	TF
		Legislation to protect retail gasoline dealers	FEA	C
		Natural Gas Bill (S.3422)	FEA	C
5/18/76	ERC	National Energy Outlook discussion	FEA	B
5/12/76	EC,ERC	Private sector technology role	ERDA	B/R
		Federal Energy Organization	DOC,OMB	R
		Legislation to protect retail gasoline dealers	FEA	C
5/4/76	EC,EPB/EC	Nuclear Waste Management Statement	ERC	C
		Federal Energy Organization request to start	DOC,OMB	TF
		OCS Leasing (H.R. 6218)	DOI	DM
4/26/76	EC,EPB/EC	Clean Air Act amendments	EPB	C
4/19/76	EC,EPB/EC	Clean Air Act amendments	ERC	C
4/13/76	EC,EPB/EC	Conservation Contingency Plans	FEA	C
		International Energy Negotiations-- Status Report	State	B/C
		OCS Lands Act amendments (H.R. 6218)	DOI,DOC	C
		Strategic Storage briefing	FEA	B

Date	Group Meeting	Issue	Lead Agency	Action
4/7/76	EC,EPB/EC	Clean Air Act amendments	EPB	TF
		Vertical divestiture bill	ERC	O
		Natural gas--legislative alternatives	FEA	C
3/16/76	EC,EPB/EC	Surface Mining Legislation (H.R. 9725)	DOI	L
		Divestiture Legislation	FEA	TF
		West-East oil transport	FEA	TF
		FEMP--whether to raise again to President	FEA,OMB,GSA	DM
		Misc. legislative update	ERC	B
3/2/76	EC,EPB/EC	Surface Mining Legislation	DOI	C
		Impact Aid Legislation	DOC	C/L
2/23/76	EC,ERC/GOVS	Impact Air Legislative Proposal	DOI	O
		State Energy Conservation Programs	FEA	B
		Synthetic Fuels (and other issues)	ERDA	O
2/10/76	EC,EPB/EC	Alaskan OCS	DOI	L
		Clean Air Act amendments	FEA	L
		Project Independence Update	FEA	B
1/21/76	ERC	Status of Energy Program	FEA	B/C
		Agency responsibilities under EPCA	FEA	C
1/13/76	EC,EPB/EC	Agency EPCA responsibilities	FEA	C
		Alaskan Gas	FEA	DM
		LNGS Import POlicy	FEA	DM
		Review of Administration Energy Policy Positions	FEA	B
1/5/76	EC,EPB/EC	Alaskan Gas Transport	FEA	C
		LNG Import Policy	FEA	C

Date	Group Meeting	Issue	Lead Agency	Action
12/12/75	EC,ERC	EPCA status	FEA	B
		IEA Long-term Cooperative Program	State	B
12/4/75	EC,ERC	Alaskan Gas	DOI	B/O
		Synthetic Fuels/Governors	ERDA,FEA	O
11/14/75	EC,ERC	Current Status of Congressional Omnibus Energy Bill	FEA	B
11/14/75	ERC	EIA	ERC	B
11/3/75	EC,ERC	Coal Mining and Leasing	DOI	B
		Uranium Enrichment (Administration legislative proposal)	ERDA	B
10/23/75	ER,ERC/GOVS	Synthetic Fuels Commericialization Program	ERC	C/O
10/9/75	EC,ERC	Outer Continental Shelf Leasing	FEA,OMB,DOI	DM
		LNG Import Policy		C
9/29/75	EC,ERC	OCS Legislation	FEA,OMB,DOI	C
		Legislative Update	FEA	B
9/10/75	EC,ERC	FEMP Multi-year Action Plan	FEA	C
8/26/75	EC,ERC	OCS Development	(no summary of meeting was prepared)	
		Decontrol Strategy		
7/22/75	EC,ERC	Indexation	Treasury	O
		Synthetic Fuels Commercialization	ERC	C
		Sharing U.S. energy resources with other countries	State	B

Date	Group Meeting	Issue	Lead Agency	Action
7/16/75	EC,ERC	President's Decontrol Action	FEA	B
		Canadian Natural Gas Situation	FEA,State	--
7/9/75	EC,ERC	IEA Negotiations	State	B
		Legislative Update	FEA	B
6/26/75	EC,ERC	Chapter V, IEA Negotiations	FEA,State	--
		Strip Mining Follow-up	FEA,DOI	IM
		Natural Gas Deregulation	FEA	--
		House Commerce Committee Energy Bill	FEA	O
		Uranium Enrichment	Domestic Council	O
		ERDA Report to Congress, Vol. I	ERDA	C
		Gasoline Shortages	FEA	B
		Consumer Advisory Committees	ERC	C
6/20/75	EC,ERC	IEA Negotiations Objectives	FEA,State	DM
		ERDA R&D Plan	ERDA,OMB	C
		Legislative Status	ERC	B
5/21/75	ERC	Natural Gas Policy and Contingency Task Force Participation	FEA	O
5/8/75	EC,ERC	Auto emissions/fuel economy	OMB	C
		Electric Utility financing	FEA	DM
		Energy Legislation Status	FEA	B
4/17/75	EC,ERC	Deepwater Port Licensing Policy	DOT	O
		Electric Utilities Policy	FEA	O
		International Agreements	State	C
		Auto Emission Standards	FEA,DOT,EPA	C/O
		Auto Fuel Efficiency Tax	Treasury,FEA	C/DM
		Rebates to Fishing Industry	FEA	C
		Rebates to Nonprofit Institutions	OMB	O
		Utilities Policy Development	FEA	C
		Airlines Situation	Domestic Council	C
		Congressional Tax Package	FEA	C/IM

ERC ISSUES, BY LEAD AGENCY

	1975	1976	Total
FEA	29 (54%)	30 (37%)	59
ERC	6 (11%)	12 (15%)	18
DOI	4 (7%)	13 (16%)	17
OMB	3	6	9
ERDA	4	4	8
DOC	0	5	5
STATE	3	1	4
TREASURY	3	1	4
DOT	1	2	3
EPA	0	3	3
DOC	0	2	2
NRC	1	1	2
FPC	0	1	1
	54	81	135

Totals differ from other computations and text because some issues involve more than one Agency and some issues, where lead Agency was not clear, have been omitted.

ERC ISSUES, 1976 (January to mid-July)

PROGRAM IMPLEMENTATION ISSUES

1. Alaska pipeline welds
2. EPCA implementation issues
3. Natural gas curtailments
4. Nuclear waste management

POLICY/LEGISLATIVE ISSUES

1. Clear Air Act amendments
2. FEA Act Extension
3. Post-1980 auto efficiency standards
4. LNG import policy
5. Alaskan gas transport
6. OCS/coastal zone management bills
7. Mineral Leasing Act amendments
8. Synthetic fuels commercialization
9. Administration position on minimum wage legislation
10. Kennedy Conservation Bill
11. Randolph Coal Bill
12. Senate Natural Gas Bill
13. Legislation to protect retail gasoline dealers
14. Private sector role in energy technology development
15. Vertical divestiture bill
16. Surface minining legislation
17. International energy policy issues
18. West-East oil transport

ERC ISSUES, 1975

PROGRAM IMPLEMENTATION ISSUES

1. FEMP Multi-Year Action Plan
2. Petroleum and natural gas shortage issues
3. Strip mining regulations
4. Coal mining and leasing
5. Gasoline shortages
6. Consumer Advisory Committees
7. Conservation public education
8. DOT fuel economy improvement program
9. NRC order to inspect 23 nuclear powerplants

POLICY/LEGISLATIVE ISSUES

1. EPCA/Omnibus energy bills
2. International energy policy issues
3. Alaskan gas
4. Synthetic fuels legislation
5. EIA legislation
6. Uranium enrichment legislation
7. OCS legislation
8. Oil decontrol strategy
9. Indeflation
10. Natural gas deregulation
11. Auto emission/fuel economy policies
12. Electric utility financing
13. Energy rebates policy
14. Congressional tax package
15. Socioeconomic impacts
16. LNG policy
17. Oil import floor price

TAB C

ORGANIZATION OF

ENERGY REGULATORY

FUNCTIONS

Prepared as part of the
larger study of organization
for Federal energy functions

October 1976

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Analysis of the Organization of Energy Regulatory Functions

Introduction

This report, within the context of the larger study of energy organization, deals with the energy regulatory functions of the Federal government and how they can be most effectively organized. It was prepared in recognition that energy regulatory organization is a complex matter in its own right as well as being a critical factor in total energy organization decisions. As a subsidiary part of the overall energy organization study, this report does not develop final recommendations on organization of regulatory functions. It does, however, analyze and reach numerous conclusions about regulatory organization to be fitted into total energy organiztion recommendations

General Findings and Conclusions

An overriding issue was identified that permeates energy regulatory functions regardless of what agency currently performs it or the private sector activity to which it relates. That is, how to resolve the dilemma of achieving adequate coordination or responsiveness of regulatory decisions with national energy goals, without improperly compromising the impartiality of regulatory decisions. A corollary question is to examine the validity and applicability of the prevalent injunction that "regulatory responsibility shall not be combined with promotional responsibilities" because they inherently conflict. In organizational terms this overriding issue can be expressed as one of finding the proper balance between independence and accountability of energy regulation in relation to political leadership.

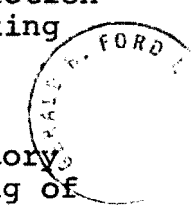
The study concludes that it is both possible and proper to distinguish those aspects of energy regulatory programs which inherently need to be sensitive to and reconciled with broad national policy and goals, from those aspects which require apolitical impartiality. Specifically, the rulemaking aspect is closely related to policy and, within the tolerance of legislative mandates, should be subject to coordination by political leadership (as well as developed with full observance of openness requirements of due notice, public hearings, etc.) In contrast, the regulatory aspect of adjudicative decisions concerns the determination of property rights or privileges in specific cases, and should be decided in an impartial due process context free of political influence or even the possible appearance thereof. The functioning of this distinction of what to coordinate and what to isolate works

best when in actual practice reasonably comprehensive and detailed rulemaking is relied upon and case adjudications, therefore, need not become de facto policymaking in the absence of sufficient established policy in the form of publically debated and openly arrived at rules.

While rulemaking and adjudication can and should be distinguished, they are dynamically related within a single regulatory program and not readily susceptible to splitting apart into totally separate agencies. (viz.-one independent and the other accountable). The report concludes that any regulatory program which directly impacts major national energy goals, such as those of FPC and FEA, should be politically accountable but should also provide internal arrangements to assure independence of adjudicative actions. The converse does not work. That is, to assign such a regulatory program to an independent commission, and expect that its rulemaking can be held accountable.

The report finds that there is valid reason, at this time, to treat NRC as an exception. That is, while it is an energy regulatory program significantly impacting national energy goals, it should not be incorporated into an executive accountable framework, at this time, because such an action could exacerbate, justly or not, the public concern for nuclear safety, and its willingness to accept nuclear power as a major energy alternative.

While speaking of NRC, it may be timely here to return to the collateral injunction about joining regulation and promotion under the same administrative hierarchy. The leading example of such a conflict was the old AEC. The conflict in that situation was the chief rationale for separating NRC from ERDA. However, this study finds that AEC was a peculiarly, perhaps uniquely, severe instance of conflict in which a single agency had both roles with respect to a single industry and without balancing responsibility for other matters. Where a wider range of responsibilities is present in terms of competing industries and functions other than regulation, this injunction is far less compelling. In fact, when regulation (rulemaking aspect) is viewed as a tool for implementing broad policy goals, the value of its cross-coordination is evident.



On another plane, this review surveyed all Federal regulatory programs which strongly affect the production and marketing of energy, to determine which of them should be considered for organizational consolidation. It was found, partly by reference to an earlier study of energy regulation in 1973, that there are a large number of regulatory programs which affect the energy industry. They range in organizational format from independent commissions (FPC, NRC), to discrete units within

executive agencies (MESA, Pipeline Safety) to incidental concerns of programs whose mission is not directly energy-related per se, (EPA, OSHA, BLM/Interior, ICC). In general, it was concluded that regulatory programs which are alligned directly with a sector of the energy industry as their purpose-for-being should be considered for consolidation in order to permit a less parochial treatment; among other reasons (FPC-gas and electric, FEA-petroleum and NRC-nuclear). Conversely, regulatory programs which are aimed at such non-energy purposes as environment, health and safety and are concerned with energy together with other industries should not be seriously considered for consolidation.

Federal Power Commission (FPC)

Finally, major attention was given in this study to the question of whether or not the functions of FPC should be incorporated in any prospective consolidated energy agency. Treatment of this issue obviously drew heavily on the analyses reported above. In addition, it is recognized that the issue of continuing or abolishing FPC transcends the field of energy regulation as such, and enters into the historical debate in the American governmental system concerning the role and status of independent regulatory commissions. Any proposal to abolish FPC would inevitably be viewed in this historical and institutional perspective over and above the narrower particulars of the Federal role in energy.

It is implicit that the prospect of reassigning FPC's functions (or their residue following deregulation) assumes as a pre-requisite the establishment of some form of consolidated energy agency or Department to which they would be assigned.

The report discusses the FPC organizational issue in terms of four propositions as follows:

- Can FPC be abolished without serious harm? No compelling reason was found, legally or operationally, to preclude its disestablishment. The commission form lends some stability and predictability to the regulated areas, but to the extent these are virtues, they can be achieved without reliance on the commission form, while at the same time, getting away from the well documented difficulties associated with it.

- Are there positive gains to be achieved by reassigning FPC's functions to an energy agency? It would be difficult to draw up an indictment showing tangible harm to the public interest resulting from FPC's independent status. Too many variables would enter into such a calculation as well as ambiguity in defining the public interest. However, a case can be made as to how actions

and decisions of FPC interact with other Federal energy activities and impact on national goals. Under the present isolated and non-accountable arrangement it is difficult to effect coordination or trade-off assessments where they are legitimately needed.

There are also some administrative advantages to incorporating FPC such as the facilitation of a more integrated, non-duplicative Federal energy data system.

° Are there real alternatives to organizational change in achieving needed improvements? There are possibilities for process improvements within the present arrangement of an independent FPC. Some improvement can be done by administrative action, and others would require legislation. An example is the expediting of actions in process by setting time limits for comments by Executive agencies, or, through legislation, from State and private bodies. However, all these system improvements have only limited potential if, indeed, they can be achieved at all under the present structure. They should be viewed as supplements to organizational change and not as an alternative.

° If FPC's functions are to be incorporated, how would it be arranged to avoid loss of impartiality where this is important? A separate Administration under a Presidentially appointed, Senate confirmed, Administrator to administer energy regulation and coordinate with related functions and goals. This Administrator would promulgate rules which would be developed to a reasonably comprehensive and detailed state. Case adjudications, however, would be decided initially by Administrative Law Judges who are independent by law. Appeals for administrative relief could be heard by an Appeals panel which similarly is insulated.

The foregoing summarizes the main findings and conclusions of this study. Considerably more detailed information and rationale is contained in the full report which follows.

Analysis of the Organization of Energy-Regulatory Functions

I. SCOPE & PURPOSE OF STUDY

This study and staff paper is a sub-part of the general study of the organization of Federal energy and energy-related functions. More specifically, it examines the placement and organizational relationships of energy regulatory functions within the framework of current and major alternative organization for energy and related functions.

It was recognized, based in part on earlier analyses, that many Federal programs exercise a regulatory impact on energy actions and decisions by the private sector. For purposes of this study an inventory of all energy regulatory programs was compiled and is shown at TAB A. For convenience, this inventory has been divided into the following three categories:

- energy regulation performed by independent regulatory commissions;
- energy regulation performed as a major mission of an executive agency;
- energy regulation performed as an incident to a mission other than energy.

Section II of this paper identifies and briefly describes the principal issues identified and examined in this study of organization for energy regulation.

Section III relates energy regulation to the other chief energy functions and describes their mutual interactions in order to identify any pertinent organizational guidelines for energy regulatory functions vis a vis the other functions. The other functions discussed in relation to regulation are policy formulation, data collection and analysis, energy resource development, and research and development.

Sections IV and V take up the regulatory functions of FPC and FEA respectively. The issue of whether or not FPC should be incorporated in any proposed energy agency is a particularly complex and controversial subject. For this

reason, an in-depth separate study of FPC was done and its findings and conclusions are incorporated in summary form in this general paper on energy regulatory organization.

Section VI surveys the numerous Federal programs which impact private sector energy actions as an incident to a mission which is not primarily energy-oriented. The purpose of doing so is to determine whether these programs might be affected by change in energy organization.

Finally, Section VII draws from the preceeding sections and recaps any organizational guidelines which may be applicable to the energy regulatory functions. This section is, in general, a response to the issues raised in Section II.

II. ISSUES IN THE ORGANIZATION OF ENERGY REGULATION

The overriding issue in the analysis of energy regulatory organization is the problem of rationalizing the impact of energy regulatory decisions with national energy goals, while, at the same time, avoiding compromise to the real and apparent impartiality and objectivity of regulatory decisions where this is a valid requirement. In other terms, this issue can be expressed as a search for the proper degree of regulatory independence on the one hand versus regulatory responsiveness to external coordination on the other hand.

Total independence and consequent lack of accountability of regulators who are making significant decisions regarding our energy future is not good government. Conversely, complete subservience of regulatory decisionmaking to elective or appointed officials -- legislative or executive -- is also unsound at least in terms of public credibility. The art form is to find that balance or combination in the structural arrangements for energy regulation which will provide accountability and rationalization with general energy goals where that is important and also assure apolitical impartiality where that is important.

Numerous subsidiary issues and findings go into the analysis of the overriding issue described above. Some of these component issues which are addressed in the remainder of this paper are:

1. Fragmented placement of energy regulation in very different types of organizational settings including: sole purpose of an independent commission, (FPC and NRC) limited part of an independent commission (ICC, SEC), major purpose of an executive agency (EPA, FEA), separate unit within an executive agency (Pipeline Safety in DOT, MESA in Interior) and incident to a major mission other than energy (BLM in Interior). Is there a rational basis for this variety of organizational placements? Is there validity in bringing some or even all energy regulatory programs together.

2. Is regulation inherently and invariably incompatible with promotion, prompting a need for organizational separation? If so, what degree of separation is called for? Conversely, is this injunction to "separate" regulation and promotion a situational thing that has validity or not depending on circumstances? This issue immediately invokes the old AEC situation in which a single Federal agency was charged with fostering and, at the same time, regulating a single industry. Both the President and Congress recognized that this was unsound, and it has been changed with the creation of ERDA and NRC. In the process the regulate/promote conflict of interest within one agency received very prominent attention and has achieved status as a virtual principle of governmental organization. The findings, however, tend to reveal this "principle" as an over-simplification which has validity only when applied selectively.

3. It is striking to note the unevenness with which sectors of the energy industry are subject to regulation. Gas, hydro-electric generation, interstate electric transmission are all subject to rate regulation and to licensing and permitting of facilities (and, therefore, to health, environment and land-use prior approvals). Nuclear power is subject to Federal permitting of sites and other restraints with major concern given to health, safety and environmental factors, but is not subject to rate regulation. Petroleum is subject to price control and some control of the internal structure of the industry but is not subject to Federal prior approval of facility siting, except as it may affect public lands. Coal is subject to neither price control nor facility siting approvals, again except as it involves public lands.

These varying levels or degrees of regulation among competing energy industries is governed in the first instance, of course, by statutes. However, it does not appear to be rational. Whether or not this disparity is a problem, in fact, and the relationship to deregulation is touched on later although this tends to go beyond the scope of this study. Of more direct interest is whether or not this "unevenness" of regulation among the energy sectors which is charged to a range of separated agencies has a clear organizational implication.

4. Regulatory programs, like any other Federal program, should meet the highest possible standard of efficiency and effectiveness. While the system has factors built in which complicate this objective, e.g., openness, due process, impact statements, etc., these factors are part of the process for good reasons and must be accommodated. Efficient and timely regulatory actions are important beyond the internal bureaucracy because they affect the willingness and ability of the private sector to play its role in the national energy system. For example, excessively long processing time for completing action on an application adds to the cost of industry performance and increases the risk of capital investment.

This paper cannot thoroughly address the problem of regulatory efficiency, but that subject is viewed generally to ascertain what, if any, organizational implications it may contain. There is some question, for example, whether management process improvements as an alternative to organizational change can rectify problems in energy regulation. Conversely, it may be that present organizational arrangements make real process improvements very unlikely to occur.

5. Both the efficiency aspect and the lack of jurisdiction of any one regulator in the present arrangement to look across competing energy sectors give rise to the concept of a single energy regulatory body. Such a body has been thought of by various observers as either, in the executive mode or, organized as an independent regulatory commission. This super energy regulator concept was analyzed quite thoroughly in 1973 and found to be neither feasible, desirable nor politically saleable. However, in the light of the current analysis of overall energy organization, this concept is again explored.

6. Should the FPC be continued as an independent commission or should its functions be reassigned to an executive agency responsible for Federal energy programs in order to assure greater consistency of gas and electric regulation with other Federal energy objectives. The same question

applies also to the NRC. This issue unavoidably invokes historical and theoretical questions of general government organization and legislative/executive relationships that go beyond the specifics of FPC, NRC and their functions.

However, while general historical and theoretical issues become involved, the answer with respect to FPC and NRC must ultimately be resolved in terms of those respective programs and the energy situation to which they relate. Lessons learned in reviewing the alternatives of continuing or discontinuing FPC and NRC cannot be directly transposed to other regulatory program areas such as communications or transportation.

In resolving the FPC and NRC issue, there are a number of sub-issues to examine:

- Are there any tangible needs in the regulation of natural gas, electricity, or nuclear power which intrinsically require the commission form with its multi-member, fixed-term, bi-partisan form?

- Do FPC or NRC actions impact on the attainment of the nation's energy goals and, if so, is this impact adequately weighed?

- What actions or decisions do FPC and NRC take which, by their nature, require independent judgment which is uninfluenced by political factors and is seen as such by the public?

  Are there any clear instances in which serious damage to the public interest has occurred because decisions of the FPC or NRC were either contrary to openly and responsibly arrived at nation policy or goals - or were inappropriately influenced by partisan politics, or special interests.

- Are there any activities performed by FPC or NRC which are essentially executive functions and which relate closely to or duplicate comparable activities in executive agencies? Possible examples: the FPC data collection work and the NRC radiation standards work.

- If the FPC functions were reassigned to an executive agency it would tend to increase coordination between regulatory actions and national energy policy. What steps could be taken to offset the possible disadvantage of such a transfer and particularly the prospect of politicizing regulatory decisions improperly? These steps would relate, among other things, to organizational placement, authority delegation patterns, appointmen t and removal of regulatory decision-makers, and the separation of rulemaking and adjudication.

III. REGULATION IN RELATION TO OTHER ENERGY FUNCTIONS

Regulation of the energy industry affects, and is affected by, other governmental approaches to energy matters such as energy policy formulation, data collection and analysis, energy resource development, research and technology development, and energy conservation. In some cases, these mutual effects of regulation and other functional approaches to the Federal energy role are supplementary and may go toward the same objectives. In other cases, the effect of regulation may be in conflict with other governmental efforts. Either way, whether regulatory actions are compatible or incompatible with other Federal energy policies and actions, these mutual effects tend to be somewhat obscure or not self-evident. For this reason and because they are often not subject to common direction or guidance, these important interactions are not fully recognized and addressed. This is particularly true when the regulatory power is vested in an independent commission.

Many observers would state that this isolation of regulation from interacting programs is normal and proper - i.e., that the regulatory power should be exercised independent of any coordinative hierarchy and that only in this way can regulators be free to evaluate equities and impartially decide issues in a due process atmosphere.

Without commenting for the moment on this issue of the need and desirability of regulatory independence, the purposes of this section of the report are to reveal in summary form the ways in which energy regulation can and does mutually interact with other energy functions, and to identify any organizational consequences which follow from these interactions.

Regulation in relation to policy formulation and coordination

The power to regulate is, de facto, the power to make, or at least strongly influence policy. This applies both to regulatory rulemaking and to the aggregate effect of regulatory adjudications which are made in an area ungoverned or little governed by general rules. Examples in the energy field include the power of the NRC to influence the rate of introduction of nuclear power generation based on the standards they set or their handling of specific plant siting applications. Again, the FPC influences the rate of exploration and development of natural gas by the energy industry through the rulings they make on gas prices under their jurisdiction.

Thus the power to make policy through regulation coupled with the idea of regulatory independence constitutes an organizational dilemma. From the point of view of Presidential leadership and accountability, there is a strong motivation to reduce the independence barrier so that regulatory impacts on overall trends in the production and distribution of energy are compatible with national policy goals and non-regulatory program actions of the incumbent Administration.

At the same time, there is a well-recognized need to assure and to visibly demonstrate that regulatory actions, especially case adjudications, are not unduly influenced by the political process even in the general sense and certainly in the partisan sense. It is largely for this reason that regulatory powers, as in the case of NRC and FPC, have often been assigned to independent bi-partisan commissions.

There may well be some organizational arrangement that can better serve the need to integrate regulatory effects which are de facto policy with politically responsible policy-making (Congressional and executive) without impairing the impartiality needed in specific regulatory actions which center on determination of equities and assurance of due process.

This dilemma - i.e., reconciling the need for regulatory independence with the need for consistent governmental policy is examined further elsewhere in this paper as a major issue.

Regulation in relation to data collection and analysis

Regulators need data on two levels. First, they need broad data and analyses to understand as well as possible the industry segment they relate to, and its place in the total economy both currently and as projected. FPC regulators in the natural gas field and FEA regulators in the petroleum field, for example, must understand the dynamics of their respective industries, how each can contribute now and in the future to our total energy needs, and how alternative actions on their part are likely to effect the picture. This involves a need for both basic data and analyses.

Secondly, on a different level, regulators often need more company-specific data as one of their principal tools of enforcement. Regulatory programs, such as the FEA petroleum programs, which are enforcement-oriented and are deeply involved in the internal functioning of the petroleum industry have a major need for data at the level of transactions occurring within specific companies.

Organizationally, the broad analytical data needed by regulators including information on the nation's energy system and the general economy clearly should be shared, with major parts of it provided through an integrated, if not consolidated, data system outside of the regulatory structure. This avoids duplication, excessive reporting burden and promotes consistency and comparability of data.

The more specific enforcement related data, where needed, is an area in which regulatory managers, as in FEA, express a need to have close contact with the data collection process and to participate in its planning so that their needs will be understood and served. However, it would appear logical that the data collection planning and operation should not be directly under control of the regulators since their assessment of need could easily become excessive. It would appear that placement of data collection and regulation in the same agency, but under separate direction would serve both needs, i.e., close access to assure responsiveness of the data system but separation to avoid having the regulators (or other users) dominate data collection decisions.

Regulation in relation to research, development and demonstration

The Federal role in energy RD&D is essentially catalytic. That is, the Federal effort is aimed at perceiving the need for new or improved energy technology and assuring that it is developed and introduced into the market-place by private initiative. The role is to do what must be done and will not occur through natural forces, but to leave off as early as possible in favor of the private sector with technical assistance and financial incentives as needed to help effect the hand-off.

The regulatory process can be quite influential in this RD&D stimulation by affecting the point at which private sector initiative "takes over." This is true most particularly in regard to price setting which can have a depressing affect on the introduction of new technology. Excessively tight limits on price, for example, can reduce the incentive for private risk taking in the form of investing in unproven technology. Another way of looking at regulatory powers in relation to technology development and commercialization is to see the price mechanism as an alternative to either tax policy or direct financial assistance. These theoretical alternatives cannot be realistically evaluated against each other unless there is some coordinative authority which spans all of them.

Another relationship between regulation and R&D became clear in the course of this analysis. That is, R&D managers in the government energy programs attribute great importance to the fostering of cooperative relations with their private sector counterparts. This is consistent with the idea of pooling information and diffusion of emerging technology subject to the usual rules of competition. The R&D managers fear that any organizational merging of regulatory responsibilities with technology development responsibilities will cause their private counterparts to withdraw from the mutual cooperation mode. They do not want to participate in the development of something which will be used against them. This injunction probably has most meaning in relation to regulatory programs which are aimed at protecting health, safety and the environment rather than at economic regulation. The historical association of nuclear development and nuclear regulation in the old AEC is an example and the one that occurs most frequently and strongly to the R&D managers.

Regulation in relation to energy resource development

This is an important relationship in which opposing interests are likely to occur, and the effects of these programs can be mutually contrary. The goal of energy resource development is clear -- increasing the domestic supply of energy. Regulatory power applied to the energy industry is usually aimed at other purposes such as restraining prices, controlling entry, protecting health, safety or the environment. These other purposes quite consistently have the effect of holding down increases in energy supply. (Coal conversion by regulatory order is an exception - it shifts demand from petroleum to coal and thus has the effect of increasing domestic supply.)

It is not the purpose of this paper to choose between the conflicting goals of energy supply development and those of FPC, NRC, EPA, MESA or others. Each of these regulatory programs have statutory mandates to be observed. The point is to show how pursuit of narrow mandates, especially if done in the relative isolation of independent status, can make it difficult to balance regulatory decisions aimed in that particular direction with all of its collateral effect on other goals, including energy supply development.

The fact of basic conflict between energy supply development and the several purposes of energy regulatory programs lead some observers to conclude that these responsibilities should not be assigned to the same agency for fear the regulatory purposes will be given short shrift (or perhaps the drive to increased energy supply will be muted). Certainly both cannot be merged into a single program. There is, however, a credible possibility of assigning both to the same agency but separated therein for individual attention to each. This would require that the balancing be performed at some higher level, most likely the agency head. Each would be modified by the other and regulatory actions would be more sensitive to energy supply considerations without being dominated by them.

Whether or not the regulatory functions are in the same agency as supply development, several actions can be taken to narrow the gap.

- The ERD staff can appear as intervenors in selected proceedings of the FPC, NRC, ICC and State regulators to introduce views on how the pending action affects energy supply for the

nation, region, or a particular market area -- and how the decision relates to other specific Federal actions.

° Submit comment on proposed regulatory rule-makings from the point of view of supply development.

IV. FEDERAL POWER COMMISSION

This section of the report describes briefly the functions and programs assigned to FPC and discusses the merits of their alternative possible organizational placement in an executive agency. Since this issue is of unusual importance and complexity, a separate in-depth report on FPC has been developed. This section draws upon that report substantially and adds other considerations particularly bearing on the organizational status of FPC and its functions.

1. Description of FPC programs

FPC's responsibilities under the Natural Gas Act give it important influence over natural gas production, distribution and pricing. Its responsibilities under the Federal Power Act give it important influence over the generation of hydro-electric power (non-Federal) and the interstate distribution and pricing of wholesale electric power. FPC's responsibilities in both natural gas and electric power has distinct limits as described below, but its position at the national level tends to give its action influence beyond its formal charter.

For information purposes, the FPC programs are divided into three areas and described below: (1) hydro-electric licensing, (2) interstate wholesale electric rate setting, and (3) natural gas regulation.

A. Hydro-electric Licensing

1. Program

The Federal Power Act requires the FPC to issue preliminary permits to study and grant licenses to construct, operate and maintain non-Federal hydro-electric projects on waters or lands of the United States or otherwise subject to the Commission's jurisdiction. (Federal hydro-electric projects are not licensed by FPC: - e.g., TVA, Corps of Engineers, Bureau of Reclamation.)

The Federal Power Act prescribes a maximum license term of 50 years, at which time a new license must be issued, possibly to a competing applicant, or the project may be taken over by a Federal agency other than the FPC, such as Bureau of Reclamation or Corps of Engineers.

During the entire physical life of the project, the FPC is required to continue to exercise jurisdiction over proposed changes in project facilities, project operations, project land holdings, project land and water uses, public access, transfers of licenses, surrenders of licenses, collection of headwater benefits payments, and inspection of projects for safety and adequacy.

- The ultimate decision includes making a final decision in areas where the Commission has requested comments from other Federal, State and local agencies, generally relative to siting, emissions, and effluents, and safety. Interior, EPA, and Agriculture are major Federal coordinants.

- The FPC decides if a proposed project is the best adapted (use) for the portion of the waterway proposed to be affected.

- The FPC decides if the development should be made by the Federal government, i.e., Bureau of Reclamation or Corps of Engineers.

- The FPC must find that the applicant is able to finance the project, that there is an existing market for the power, that the applicant's (utility) system needs the type of generation being proposed, and that the project is economically feasible (will recover its costs). These findings require consideration of continued economic viability of the applicant; limitation of costs to those necessary, thereby giving the consumer the best available service at the lowest possible price; the need for the use of the resource; and the use of the resource in the most efficient and effective manner.

- The FPC must decide whether the mechanical and structural proposals are engineeringly sound and safe.

- The FPC must find provision for sufficient public recreational use of project lands and waters.

- The FPC must find sufficient mitigation for environmental damage done by construction, maintenance and operation of the project, thereby balancing environmental concerns and the need for power.

- The findings or determinations of the Commission are a prerequisite to the location, entry or selection of lands of the United States which have been withdrawn for water power purposes.

2. Status

The hydro-electric licensing program (Part I of the Federal Power Act) is staffed by 200 people. This number includes all support staff Commission-wide such as technical experts, attorneys, clerks, administrative programs staff, etc. The total direct cost of the program in 1975 was $5,360,134. The FY 1975 on hand applications covering all areas of jurisdiction under this program were 520; 118 applications were received during the year and 143 completed, leaving 495 pending at year end including a mix of problems including incomplete applications, applications awaiting comments from other agencies, applications assigned a low processing priority due to staff limitations, and cases in which it became necessary to order a hearing.

Reviews and comments by other agencies along with applicant reluctance, legislative requirements imposed by statutes other than the Commission's enabling legislation (e.g., Endangered Species Act, the various Rivers and Harbors Acts, Environmental Policy Act), and, in some instances, substantial resistance to the proposal by intervenors representing special interest groups, combine to create extensive delays on may applications. This is partly because there is an absence of legislation or regulations which place a time limit on reviews by agencies other than the licensing agency.

3. Federal and State Relationship

The Commission has extensive coordination mechanisms with Federal, State and local agencies. This coordination has come about due to requirements of the statute FPC Regulations under the Federal Power Act, or informal coordination agreement at the staff level. It has been the FPC experience that processing of applications is often slowed due to delays by commenting agencies.

It should be noted that even if not required to obtain agency comments, the FPC is desirous of receiving comments from the agencies as to how the particular proposal may affect their overall program. This information, representing part of the public interest, is then balanced against information from other agencies managing other programs. FPC technical staff gives the Commission its independent technical assessment of the application and the views of the commenting agencies and then the Commission makes its decision based on full and complete information as to how all the aspects of the proposal interact.

B. Interstate Wholesale Electric Rates and Corporation Regulation

1. Program Description

The Federal Power Act requires the FPC to regulate rates and services of public utilities selling electricity in interstate commerce at wholesale. The FPC prescribes accounting systems and reporting procedures for interstate power companies. The FPC impacts 15-20 percent of the interstate electric sales. (The other 80-85 percent includes retail and statutorily exempt sales, which may be in whole or in part regulated by a State agency, depending upon the State agency's legislative mandate.)

The FPC impacts State ratemaking bodies through its having been recognized as a leader in the area by the National Association of Regulatory Utility Commissioners, an association of national (FPC, FCC, ICC, etc.) and State ratemaking bodies.

The FPC coordinates with the Department of Justice and as applicable the Nuclear Regulatory Commission in matters of anti-trust.

The FPC regulates certain issuances and sales of securities by electric public utilities and the merger or consolidation of such utilities. In this connection, it coordinates with the Securities and Exchange Commission.

The FPC regulates the holding of interlocking directorates between electric public utilities and electric supply companies or companies authorized to underwrite securities.

The FPC, in coordination with the Department of State and Department of Defense, authorizes exportation of electricity into a foreign country and issues permits for maintaining facilities at international borders for transmission of electric energy between the United States and a foreign country.

2. Status

The regulation of interstate wholesale electric sales and corporate regulation program required 289 people in FY 1975. This number includes all support staff Commission-wide such as field auditors, technical experts, attorneys, and supporting personnel. The total direct cost of the program in 1975 was $8,194,444.

FY 1975 on-hand applications covering all areas of jurisdiction under this program were 1,027; 3,580 applications were received during the year, and 3,848 completed, leaving 759 pending at year end. The cases pending at year end include a mix of problems including incomplete applications, applications assigned a low processing priority due to staff limitations, cases in which it became necessary to order a hearing, etc.

3. Federal and State Relationships

Under this program, the FPC coordinates with the Department of Justice and NRC on questions of anti-trust. Further, the FPC's expertise is heavily relied on by the State ratemaking bodies both in the individual cases and through its leadership in the National Association of Regulatory Utility Commissioners.

C. Natural Gas Regulation

1. Program Description

Contrary to the common perception, FPC is responsible, under the Natural Gas Act, for more than rate setting for natural gas. The FPC is required to issue certificates of public convenience and necessity for the construction and operation of interstate pipelines and storage facilities including Liquified Natural Gas and Synthetic Natural Gas. The FPC passes on proposals for allocation of limited supplies of natural gas, for both curtailment of service and special relief to a particular user or group of users. The FPC's permission must be obtained before service through a certificated pipeline can be discontinued and the facilities can be discontinued and the facilities abandoned.

The Natural Gas Act also requires the FPC to regulate the price of gas bought and sold in interstate commerce. The FPC, through certificate and price regulation, regulates sales of natural gas from the producers to the interstate pipeline companies to local distributors. The FPC may direct interstate pipeline companies to sell gas to local distributors.

The FPC authorizes the import and export of natural gas and issues permits for maintaining facilities at international borders for import and export.

2. Status

(1). The certification activities of the Commission under the Natural Gas Act required 330 people in FY 1975. This number includes all staff such as field auditors, gas supply analysts, attorneys, and supporting personnel. The total cost of the program in 1975 was $8,851,924.

FY 1975 on-hand applications were 3,484. 2,453 were received during the year, and 1,217 completed, leaving 4,720 pending at year end.

The cases pending at year end include a mix of problems including incomplete applications, applications assigned a low processing priority due to staff limitations, and cases in which it became necessary to order a hearing.

(2). The regulation of interstate wholesale gas rates program required 265 people in FY 1975. This number includes Commission-wise support staff such as field auditors, attorneys, clerical, etc. The total direct cost of the program in 1975 was $6,378,709.

FY 1975 on-hand applications in this area were 5,017, 14,722 applications were received during the year, and 15,292 completed leaving 4,447 pending at year end. The cases pending at year end include a mix of problems including incomplete applications, applications assigned a low processing priority due to staff limitations, and cases in which it became necessary to order a hearing.

3. Federal and State Relationships

The gas facility certification responsibilities of the FPC, like the hydro-electric cases, require coordination with other Federal agencies. Primary agencies are Interior, Forest Service, and DOT. Those contacts are generally related to siting, emissions and effluents, and public safety. As the agency with certification responsibility, the FPC may accept or make more stringent the recommendations of DOT/Pipeline Safety with regard to a particular natural gas pipeline.

The rate regulation portion of the FPC's jurisdiction under the Natural Gas Act does not require coordination with Federal or State agencies, although State ratemaking bodies are notified of a proposed rate increase affecting their State, and the FPC is a leader in the National Association of Regulatory Utility Commissioners.

V. REGULATION BY FEDERAL ENERGY ADMINISTRATION

FEA was born out of the oil embargo -- energy crisis of 1973, and largely involved the exercise of regulatory power on an emergency basis, to cope with the sudden curtailment in the supply of crude oil and petroleum products. In effect, FEA started as a regulatory agency. While regulatory programs are still important functions, they have been supplemented by numerous other energy functions assigned by law and aimed at longer-term objectives.

The FEA regulatory programs in the area of petroleum were hastily implemented at the time of the shortage in order to (a) assure equitable and priority distribution of the limited available supply; (b) control inflation and prevent excessive profit, and (c) assure the continued competitiveness and economic viability of small and independent refiners and suppliers.

FEA regulatory programs for petroleum price control and allocation is sub-divided into the following programs:

1. Mandatory Petroleum Price Controls

   ° Producers: The first-sale price of all domestically produced crude oil (except crude oil from stripper wells) is computed in accordance with FEA regulations. This sale price cannot exceed the maximum allowable price per barrel of crude, that was established in the authorizing legislation.

   ° Refiners: FEA regulates the unit prices refiners charge their customers for certain petroleum products to assure it does not exceed the lawful May 15, 1973 unit price levels (except for certain allowable pass-through cost increases, such as rent, insurance, etc.).

   ° Resellers/Retailers: This program is essentially the same as described above for refiners, except of course at a different level in the petroleum distribution chain.

   ° Natural Gas Liquids (Propane, Butane, and Natural Gasoline): This program is designed to reduce the disparity between the controlled prices of natural gas liquids derived from petroleum. FEA authorized a price increase for propane, butane, and natural gasoline produced from natural gas thereby encouraging greater production of these products from non-petroleum sources.

2. Mandatory Petroleum Allocation

   ° Buy-Sell: Small and independent refiners, which historically depended on the large oil companies for crude oil feedstocks, are assured access to a supply of crude oil through the requirement that each month specified quantities of crude oil must be made available by the major oil companies for sale to non-majors.

- Domestic Crude Oil Entitlements: As a direct result of the embargo and subsequent price increases for imported oil, certain refiners (usually majors) gained a competitive advantage by having access to large quantities of lower cost (price controlled) domestic crude. Rather than the physical redistribution of crude among refiners, the program requires payment of money from those refiners with the domestic feedstock advantage to the small, independent firms who are heavily dependent on imported supplies.

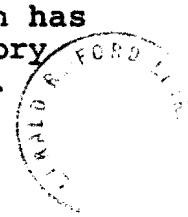
- Refined Products: This program is designed to assure equitable distribution of decreasing supplies of refined products between wholesale purchaser resellers. wholesale purchaser consumer, and users. The pro rata distribution share is based on the quantity of such products historically purchased from suppliers.

- Canadian Crude Oil: Domestic refiners heavily or totally dependent on the decreasing quantities of crude oil being exported to the United States by Canada are allocated an amount of such crude oil determined by evaluating the refiner's capability to replace the oil and the extent of his dependence on this oil as a source of supply. (Full phase-out of crude oil exports by Canada is expected around 1981.)

None of FEA's enabling petroleum regulatory legislation requires on-the-record formal rulemaking or adjudicatory proceedings, as such proceedings would be at variance with the emergency nature of FEA's regulatory programs. Its regulations are promulgated after informal rulemakings are administered.

A variety of orders can be issued under the petroleum regulations, but most of the orders are in response to applications for exception to the regulations. The exceptions process is FEA's primary instrument for administering the mandatory, self-enforcing petroleum price and allocation regulations. However, none of FEA's orders are issued through formal adjudicatory proceedings.

The petroleum programs, as noted, were instituted to help the nation and the petroleum industry cope with the oil shortage suddenly imposed in 1973. However we no longer have this situation and the Administration has attempted to end these controls ahead of the statutory schedule by which they become non-mandatory in 1979.



In spite of the transition from a condition of product shortage to one of surplus, Congress has blocked most amendments proposed by FEA to decontrol petroleum and petroleum products.

In addition to the above emergency-oriented regulatory programs dealing with petroleum pricing and allocation, FEA now has some other regulatory programs which are broader in purpose and longer-term. These are:

- Mandatory Oil Imports: This program was implemented in 1959 by the Department of Interior to promote domestic exploration and refinement of petroleum. It requires that any person importing petroleum or petroleum products purchase a license and pay fees of 21 cents per barrel for crude oil and 63 cents per barrel for finished or unfinished petroleum products to the U.S. Treasury.

- Strategic Petroleum Reserve: The purpsoe of this program, which is not truly a regulatory program at this stage, is to minimize the economic impact of curtailed oil imports, and also to deter the use of such curtailments as political weapons in the future. An initial reserve of 150 million barrels by December 1978 is scheduled, with longer range plans for stockpiling up to 1 billion barrels. Although the program presently is not regulatory, it would become regulatory under an embargo or other shortage situation which would require emergency distribution of the reserve.

- Coal Utilization (Coal Conversion): This program has long term implications, associated with both energy resource development and energy resource conservation matters. The program will conserve natural gas and petroleum products by prohibiting certain existing and proposed powerplants/major fuel burning installations from using such products as their primary energy source. Instead, these powerplants and facilities will be modified (existing) or designed (proposed) to utilize coal. The resulting increase in the demand for domestic coal supplies will help accelerate development of domestic coal reserves.

Finally, FEA employs regulatory power to a degree in some of its energy conservation. These programs are discussed in the issue paper dealing with Federal conservation of energy programs.

Organizational Placement of FEA Regulatory Programs

FEA's regulatory programs can be seen as means to achieve energy goals much more so than activities aimed at assuring equity, due process, and non-partisan objectivity in the awarding of rights and privileges or imposing of conditions on the exercise of those rights. They are tools for the achievement of policy objectives, and attempts to move the industry in certain directions (or prevent movement in undesired directions) more so than efforts to restrain the industry from producing side effects such as unacceptable pollution or health and safety hazards. These perceptions of the FEA regulatory programs argue for their placement in a way that enhances their responsiveness to overall energy goals.

The informal, non-adjudicatory approach of FEA regulatory programs, as well as their placement in an executive agency concerned with overall energy policy, allows for them to be more readily adjusted (within the omits allowed by law) to meet ever changing energy supply and demand shifts. Whether these fluctuations are the result of changes in technology, the general economy, international affairs, new statutes or other causes, the regulatory aspect of Federal energy programs must have the flexibility to adjust accordingly, and to do so in harmony with overall policy assessments.

VI. OTHER ENERGY REGULATORY PROGRAMS

Many other Federal programs and agencies exercise a regulatory impact on the energy industry besides FPC and FEA which was dealt with in the preceding chapters. Some of these have an explicit and obvious energy relationship such as the NRC. Others are less evident, but may have a considerable influence on energy matters. Examples of less evident regulatory impacts on energy are those exercised by EPA in pursuing its responsibilities for clean air, or Bureau of Land Management/ Interior as an incident to administering the public lands.

Nuclear Regulatory Commission

The NRC was established by the Energy Reorganization Act of 1974. It is responsible for all the regulatory and licensing functions of the former Atomic Energy Commission which was abolished by the 1974 legislation, and is the Federal agency responsible for the regulation of nuclear power generation.

Major NRC Program Functions are as Follows:

Nuclear Reactor Regulation. Assures adequate safety, environmental protection, and safeguards in the issuance of reactor licenses.

Standards Development. Produces engineering standards for siting, fuel cycle facilities, safeguards, transportation and product safety standard development.

Inspection and Enforcement. Conducts nuclear powerplant safety inspections including the issuance of construction permits and operating licenses. Also conducts safety inspections of fuel cycle facilities and nuclear materials.

Nuclear Material Safety & Safeguards. Performs a safeguard licensing program devoted to waste management and the development of generic environmental impact statements for consumer products which contain nuclear material.

Nuclear Regulatory Research.. Conducts research on reactor technology and in nuclear related health, environment, fuel cycle and safeguard areas.

There are some significant reasons to consider incorporating the NRC functions in an executive branch energy agency if such an entity is formed. Doing so would broaden the basis for nuclear regulatory decisions by permitting them to be weighed competitively with fossil fuel, hydro-electric or other energy forms. In addition, nuclear export decisions with their strong international implications would be appropriately subject to Presidential control.

On the other hand, there are very compelling reasons for leaving NRC in its present status as an independent commission at this time, regardless of any consolidation of energy functions that may take place. Public concern over nuclear safety is so great that tampering with the independence of nuclear regulatory decisions would seriously undermine public acceptance of nuclear power at this time. Transfer to an executive agency advocating energy development would be perceived by many as a deliberate attempt to weaken governmental concern for nuclear health and safety in favor of energy development, thus potentially eroding public confidence in nuclear power and further exacerbating anti-nuclear sentiment.

The critical need to have Presidential control of export decisions for nuclear material and hardware as part of his constitutional responsibility need not depend on organizational merger of NRC. Instead, it can be achieved by change in the existing law in any of several ways such as giving the President ultimate authority to approve or disapprove of nuclear export decisions similar to his authority over CAB decision on overseas air routes.

A number of other regulatory programs which have an influence on energy are inherent parts of other missions. Examples are: (1) pipeline safety which is related to the transportation safety mission of DOT, (2) worker safety at OCS drilling sites which are part of the OSHA mission within Labor Department, (3) miner safety as part of MESA, (4) pipeline rates set by ICC as part of its rate regulation of interstate commerce and (5) right-of-way permits for electric transmission lines across public lands as an incident to BLM's trust management responsibility, and (6) environmental review of energy facilities by EPA.

It is difficult to see how these regulatory tasks which are aspects of non-energy missions, but which affect energy in part, can be excised from their present placement to any advantage. This conclusion is reinforced when the program in question has an objective which may operate contrary to energy development, as in the case of programs aimed at safeguarding health, safety and the environment.

VII. ORGANIZATIONAL GUIDELINES AND CONCLUSIONS

This section attempts to respond to the issues in energy regulatory organization which were identified in Section II. To do so, it draws on information developed and summarized in Sections III, IV, V, and VI.

A. Can Regulation and Promotion be Placed in the Same Agency?

Yes. If the right circumstances exist, it is not only acceptable, but positively desirable to do so.

Undoubtedly, serious internal conflict existed in the assignment of nuclear safety regulation as well as nuclear development and promotion in the old AEC. If that arrangement had not been broken up in 1974, it would be even

more urgent business today in the light of heightened public concern for nuclear safety.

However, the same combination of ingredients which existed with AEC is by no means present in each current or potential combination of regulation and development within a single agency. The AEC combination or circumstances involved the following features:

- A single agency relating to
- a single industry which was and is trying to become competitive with other energy industries.
- The single agency for nuclear affairs had no offsetting concern for other subjects or industries thus creating an unmitigated advocacy relationship between the regulator and the regulated industry.
- The agency in this narrowly focussed advocacy relationship was subject to minimal accountability in view of its multi-member, bi-partisan, fixed term format. (Although it is true that AEC was less independent than other regulatory commissions then and now.)
- The aim of the regulatory program, i.e., assurance of nuclear safety, tended to conflict with the aim of the development program, i.e., make nuclear power competitive as rapidly as possible.
- While the two major purposes of AEC were internally organized quite discretely from each other, both were governed by the same decision-makers. In the case of the regulatory program, this applied to both rule-making and major adjudications.

In contrast to the AEC situation in which naturally conflicting interests were unlikely to receive balanced consideration, other potential combinations of regulatory power with developmental responsibilities can be fully acceptable and, in fact, highly desirable. This would apply when:

- They are placed in an agency which has responsibilities ranging over several or all energy sectors thus removing the potential bias over any one, i.e., not a one-for-one relationship.

- The agency has a range of responsibilities in the energy and perhaps natural resources fields going beyond regulation and development. Data, policy, R&D, conservation, etc. In this way, top management of the agency has a multiple perspective on the energy subject, can see the interations among these approaches and can provide balance in their usage toward achievement of national goals.

- The regulatory responsibilities themselves are not directly in conflict with development goals. Generally, as noted earlier, regulatory power aimed at health safety and environmental safeguarding conflicts with development and can appear to outside observers to be biased. Other regulatory programs, however, can involve a use of regulatory power in ways that are compatible with energy goals. To do this effectively requires coordination not separation.

- The regulatory program is internally placed within the agency in such a way that the adjudicative decisions are protected from undue influences while the regulators are brought into the overall policy formulation and implementation process. How this can best be done is discussed further in the subsection dealing with FPC.

B. <u>To What Extent Should the Many Programs that Regulate Energy be Consolidated?</u>

The fagmentation of energy regulation and the uneveness with which the various energy sectors are subject to regulation suggests the desirability of organizationally merging some or all such programs. Doing so would permit a better opportunity to deal equitably across all sectors and remove any tendency for regulators over a single sector to favor that sector. Of course, this leveling effect would require changes in the present laws in order to be fully effective, but the need for legislation could be analyzed better and presented more convincingly if the various sectors were subject to the same regulatory program. This unification of regulation, according to Administration policy, would be in the direction of deregulation so that regulation of oil, gas, hydro, coal, etc. would be subject to an equitable but lower common denominator of regulation.

The potential advantage in bringing together regulatory programs applicable to the various energy sectors does not involve what were described earlier as mission-related regulatory programs. These latter are not set up to relate to a given energy sector, but pursue other objectives such as minor safety, environmental protection, or interstate transportation.

Taking those regulatory programs which are directly related to energy industries as such, there is strong reason to consider consolidation of oil regulation - FEA, gas - FPC, and hydro - FPC. Coal is subject to very little direct regulation. While there is significant reasons to include nuclear regulation, the countervailing reasons to leave NRC undisturbed at the present time is very compelling as discussed in Section VI.

C. To the Extent Energy Regulation is Consolidated, How Should it Placed Organizationally

The prime energy regulatory programs, if they were to be consolidated, could theoretically be organized any of several ways. (1) as an independent energy regulatory commission essentially outside the Executive Branch, (2) as an Executive Branch, single administrator energy regulatory agency, or (3) as an energy regulatory unit within an overall energy department or agency.

Overall it appears that the last of these has the greatest merit if done properly. The independent commission approach would have all the difficulties inherent in the multiple-headed commission format which are well documented. In addition, the independence feature is a weakness to the extent that regulation of energy needs to be effectively coordinated with other federal approaches to the same subject. This factor is discussed in various ways elsewhere in this report.

The separate energy regulatory agency within the Executive Branch and with a single administrator would avoid the major weakenesses of the independent commission format. However, it would appear logical that coordination can be most effectively realized if energy regulation is performed within the same agency and subject to common policy review by the same agency head. Appropriate steps should be taken in such an event to protect the objectivity of adjudicative actions as discussed in the forthcoming sub-section relating to FPC.

D. Relating Energy Regulation to Other Federal Activities in the Energy Field

Section III of this report pointed out some of the many interactions between Federal programs which regulate the energy industry and those which effect energy in other ways. Their impacts can be supplementary, or, at times, contrary and perhaps counterproductive. e.g. prices held to a regulated level which inhibits the commerical introduction of new technology because of lack of margin for risk taking.

These interrelationships of the regulatory function can be surfaced and consciously dealt with if both functions are located in the same agency as in the case of petroleum regulation by FEA. However, when regulation is separated in a separate agency, especially where there is little accountability as in the case of FPC or NRC, there is little prospect that these interactions will be recognized or dealt with.

This analysis, therefore, supports the conclusion that it is disadvantageous for energy regulatory functions to be completely disconnected from other functions in the energy field.

E. Should FPC be Disestablished and its Functions Reassigned to a Consolidated Energy Agency such as the Department of Energy or Department of Energy and Natural Resources Concept?

This very important question can be rephrased for analytical purposes into four questions:

- Can FPC be abolished without giving up too much?
- Is there real gain in doing so?
- Are there any reasonable alternatives that would be better than reorganization?
- How could functions best be organized if FPC were abolished?

Note: The discussion of transferring FPC functions and abolishing FPC assumes an organization to which they would be sent. While present day FEA could be a recipient agency, a stronger base would be the prospective energy agency represented by either the DoE or DENR alternative.

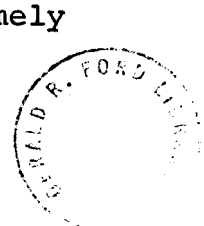
Can FPC be Abolished Without Harm?

No compelling reason, either legally or operationally, was identified for continuing the FPC as an institution. Assignment of functions to FPC, beginning in 1921 with the hydroelectric work, has been more historical than rational. The multi-member leadership feature helps provide a degree of stability which, from another perspective, might be described as rigidity. It is probably true that the commission form lends something to the adjudicative decisions, if not the rule-making, of FPC. However, other arrangements can be made for adjudications with minimum loss in balancing and with substantial gain in expediting decisions. Moreover, use of the adjudicative method can and probably should be reduced through a higher degree of reliance on rule-making to implement policy (subject to deregulation). In doing this, there would be fewer adjudications and those which occur would deal with narrower issues within the framework of more fully developed rules. In this way any validity in the use of the commission form would be diminished.

Is there Potential for Real Gain?

It would be difficult to prove in specific terms any harm done to the public interest as a result of the FPC's commission form. For one thing, observers would not agree on how to define the public interest, whether prior decisions were good or bad or what would have ensued from another decision. In any case, this analysis has not come up with a documentation of positive harm attributable to the present organizational form.

However, the answer to this question of net gain is more of a management issue than a case in the Court of Claims where one has to show damage. There is a very credible case as to the inability to balance FPC's regulatory decisions with overall energy considerations under its present independent status. Cases also are slowed down as a result of difficulty in getting prompt comment and assistance from other Federal agencies, State governments or even from applicants in some instances. An executive agency would have more means available to it in applying leverage to get timely responses.



The data needs of FPC are not fully integrated with comparable needs of other agencies. While cross-agency coordination can in time perhaps overcome much of the resulting duplication, it is harder to resolve these matters when an independent commission is involved since they are not subject to OMB's clearance function under the Federal Reports Act.

Are there Non-Organizational Alternatives?

No doubt FPC's performance can be improved by some process changes short of abolishing FPC and reassigning its functions. Improved performance might involve more timely actions and greater sensitivity in the substance of decisions to the nations total energy needs. They might be within FPC itself or--more usefully--they might involve FPC in relation to others. Improvements might include:

° Expediting of actions in process by establishing a production management system to assure more timely response by Federal agencies or others. This may require legislative backing.

° A stronger intervenor role by FEA or the energy agency, if created, in taking a position or furnishing on-the-record information in formal proceedings. The purpose would be to help assure that the FPC considers pending actions in the light of its impact on national or regional energy situations.

° Abolishing the exemption of FPC (and other regulatory commissions) from the OMB review under the Federal Reports Act.

° Relatively greater use of rule-making rather than adjudications.

A final judgement is necessary as to whether these process improvements, fully realized, would preclude the need for major reorganization in the form of abolishing FPC. In this connection, it appears that the several process changes listed above are either unlikely to occur or of limited effect. Accordingly, while they are worth pursuing on their various merits, they should be viewed as supplementary to any possible reorganization rather than in lieu of it. In other words, the soundness of abolishing FPC should be weighed and

decided up or down without strong reference to the propsect for major improvement under the present arrangement. Any improvement within the existing structure would be marginal and does not strongly impact the decision of seeking to abolish FPC or not.

If FPC's Functions are to be Incorporated in an Energy Agency How Should They be Organized and Managed?

This question of "how" goes to the heart of the dilemma in organizing energy regulation between achieving responsiveness to policy goals, where needed, and avoiding politization where that is important. The resolution to this dilemma gives the ultimate meaning to the earlier questions of "can FPC be abolished" and "is there advantage in doing so."

The key to resolving this issue is to distinguish general rule-making from adjudication. The former involves rules of general application which implement broad policy. They may be developed to the point of comprehensive and quite detailed coverage of the area under regulation, or they may be broad expressions of policy. The latter, adjudication, involves the application of governing rules to the specifics of a particular case. There is a dynamic relationship between the two in which the more detailed and comprehensive the general rules, the more narrowly confined the adjudicative decisions will be. Conversely, in the event that only broad rules exist, the greater the reliance which must be placed on de facto policy-making by case law in which the body of precedents set by the aggregate of case decisions becomes the expression of policy.

General rule-making is very closely parallel to policy. It is, in effect, policy formulation in the regulatory context. Consequently, it is the rule-making aspect of regulation that should be sensitive to overall energy policy and should be mutually related. Adjudication, on the other hand, involves determination of property rights and equities in specific situations. This aspect of regulation should be insulated from politization and coordination of these decisions with policy objectives is not appropriate or completely relevant usually.

A problem of conflict develops when a regulatory area is characterized by little specificity in its general rules and, consequently, by de facto policy-making through case decisions. In such a case the objective of harmonizing regulation with overall policy can only

occur through an effort to coordinate or influence specific case adjudication which are intended to be judicially impartial.

The solution, in the event of transferring FPC's functions to an energy agency where they would be joined by FEA's regulatory functions, would contain the features listed below in order to obtain policy coordination where necessary and a political impartiality where necessary.

- Separate Regulatory Administration within the Department to perform all primary energy regulatory responsibilities assigned to the Department. This Administration to be headed by a single Regulatory Administrator appointed by the President, subject to Senate confirmation, and serving at the pleasure of the President. This Administrator would be clearly and openly a member of the Secretary's team and would participate fully in policy dialogues and issue resolution.

- Rule-making by this Administration would be consciously related to national policy and would have the benefit of all information developed by the Department. At the same time, rule-making would be performed with maximum feasible openness including advance notice, issuance of proposed rule for comment, hearings, and publication of the basis for the final decision.

- Rule-making would be maximized in order to enlarge the extent to which the direction and thrust of the regulatory programs are compatible with energy policy without risk of compromise in individual case decisions which would be correspondingly narrowed in scope if not reduced in number. (It should be noted that highly developed general rules can result in an apparent higher degree of Federal intervention in day-to-day business operations. Rules can become voluminous and detailed and thereby onerous. A further advantage, however, to rule-making is the greater degree to which regulated firms can predict the impact of regulation on their decisions.)

- Cases would be adjudicated, within the rules, by Administrative Law Judges (ALJ's) who, by law, are not subject to agency direction. The ALJ's would have little or no need to create law in any significant way because of the availability of sufficiently specific rules for them to apply.

- Possibly, there would be a value in having an Appeals Board or panel to hear appeals and consider relief from initial rulings of the ALJ's short of a court appeal. Such an Appeals Board, if established, would be appointed and structured in a way to assure its impartiality and invulnerability to pressure. This is consistent with its non-policy character and its emphasis on assurance of procedural due process in property decisions. The need for such a Board should be studied further, if it becomes relevant to do so, including its composition, appointment, and tenure of members, and its operating rules.

INVENTORY OF FEDERAL ENERGY, AND NON-ENERGY-RELATED REGULATORY PROGRAMS

I. Energy Agency

AGENCY	PROGRAM	PURPOSE	ENERGY SECTOR AFFECTED
NRC	License nuclear materials and technology exports	Health and safety	Nuclear power
	License and regulate use and transportation of all nuclear materials	Health and safety	Nuclear power
	Licensing of construction and operations of all facilities using or producing radioactive materials	Health and safety	Nuclear power
FPC	Regulate private hydroelectric power on navigable rivers	Economic	Electricity (hydro)
	Regulate rates for interstate wholesale electric power	Economic	Electricity
	Set rates for interstate sales of natural gas	Economic	Natural gas
	Regulate construction and operation of interstate natural gas pipeline and storage facilities	Economic	Natural gas
	Regulate natural gas allocation during shortages (stand-by)	Emergency preparedness	Natural gas
Department of Interior			
BLM	Issues licenses and permits for exploration and development of oil, gas, oil shale, coal, geothermal and other resources on Federal lands	Public land management	All sectors

INVENTORY OF FEDERAL ENERGY, AND NON-ENERGY-RELATED REGULATORY PROGRAMS

I. ENERGY AGENCIES

AGENCY	PROGRAM	PURPOSE	ENERGY SECTOR AFFECTED
Sport Fisheries & Wildlife	Reviews license or permit for exploration for non-Federal hydroelectric projects	Environmental protection	Various sectors
MESA	Mine health and safety promotion and regulation	Health and safety	Coal (other minerals)
FEA	Regulate price of petroleum	Economic	Petroleum
	Regulate distribution of crude oil and petroleum products	Economic	Petroleum and petroleum products
	Stategic Petroleum Reserve	Economic	Petroleum
	Coal conversion	Conservation	Coal, petroleum and gas
	Industrial efficiency standards	Conservation	All sectors
	Appliance efficiency standards	Conservation	All sectors

INVENTORY OF FEDERAL ENERGY, AND NON-ENERGY-RELATED REGULATORY PROGRAMS

II. NON-ENERGY AGENCIES

AGENCY	PROGRAM	PURPOSE	ENERGY SECTOR AFFECTED
Agriculture			
Forest Service	Permits or easements for electric transmission lines, oil or gas pipelines or other energy facilities across National Forest lands	Public land management	All oil, gas, coal and electricity
Commerce	Industry efficiency standards	Energy conservation	All sectors
(DIBA) Export Control Office	Export controls for energy, energy-related equipment/products/materials	National security	All sectors
	Appliance efficiency standards	Energy conservation	All sectors
NOAA	Reviews license permit requests for floating power plants, offshore oil and gas facilities	Environmental protection	Various sectors
DOD Corps of Engineers	Issues regulations, permits, enforces standards for construction of various facilities on or near navigable waters; discharge of dredged or fill material	Economic	Various sectors
Labor (OSHA)	Develops, promulgates and enforces occupational health and safety standards and regulations of all energy facilities except those situations where health and safety vested in all other Federal agencies	Health and safety	Various sectors including oil and gas drilling facilities
ICC	Issues permits for RR's or abandon service	Economic	Coal and petroleum

INVENTORY OF FEDERAL ENERGY, AND NON-ENERGY-RELATED REGULATORY PROGRAMS

II. NON-ENERGY AGENCIES

AGENCY	PROGRAM	PURPOSE	ENERGY SECTOR AFFECTED
HUD	Building conservation standards	Conservation	All sectors
JUSTICE	Enforces anti-trust laws	Economic	All sectors
DOT			
Hazardous Materials Board	Issues regulations concerned with loading, handling, transportation and storage of hazardous materials including energy-related	Health and safety	All sectors
	Auto fuel company	Conservation	Petroleum
	Natural gas and liquid pipeline safety	Health and safety	Natural gas and petroleum
Coast Guard	Establishes and enforces regulations pertaining to the safety of vessels and port facilities; including design, construction and maintenance of vessels transporting petroleum and other potentially hazardous material	Health and safety	Various sectors
EPA	Air quality standards -auto emissions -performance standards on major fuel burning installations	Health and environment	All sectors
	Water quality standards -Thermal efficiency guidelines -treatment requirements for major fuel burning sources	Health and environment	Various sectors

INVENTORY OF FEDERAL ENERGY, AND NON-ENERGY-RELATED REGULATORY PROGRAMS

II. NON-ENERGY AGENCIES

AGENCY	PROGRAM	PURPOSE	ENERGY SECTOR AFFECTED
FTC	Appliance efficiency standards	Conservation	All sectors
SEC	Insures acquisitions or mergers of electric and/or gas companies produce economies and are not anti-competitive also regulates issuance of securities holding co-systems and assures that no single holding company owns more than one gas or electric company	Economic	Gas and electric