The original documents are located in Box 12, folder "Energy (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Corporate Accountability Research Group

THE WHITE HOUSE OFFICE

REFERRAL

To: Honorable Rogers C. B. Morton
Chairman, Energy Resources Council
cc: Philip Buchen

Date: November 1, 1974

ACTION REQUESTED

_____ Draft reply for:
_____ President's signature.
_____ Undersigned's signature.

_____ Memorandum for use as enclosure to reply.

__xx__ Direct reply.
* __xx__ Furnish information copy.

_____ Suitable acknowledgment or other appropriate handling.
_____ Furnish copy of reply, if any.

_____ For your information.

_____ For comment.

NOTE

Prompt action is essential.

If more than 72 hours' delay is encountered, please telephone the undersigned immediately, Code 1450.

Basic correspondence should be returned when draft reply, memorandum, or comment is requested.

REMARKS:

* please also furnish info copy to Philip Buchen

Description:

__xx__ Letter: _____ Telegram: Other:

To: The President
From: Corporate Accountability Research Group, 1832 M St., N.W., Wash. DC 20036
Date: October 29, 1974
Subject: Protesting exclusion of public and press at 10/29 meeting of Energy Resources Council and auto industry executives

By direction of the President:

Glenn R. Schleede
Domestic Council

CORPORATE ACCOUNTABILITY RESEARCH GROUP
1832 M STREET, N.W. - SUITE 101
WASHINGTON, D.C. 20036
(202) 833-3931

October 29, 1974

President Gerald R. Ford
The White House
Washington, D.C.

Dear President Ford:

RE

We are writing to protest the exclusion of the public and the press from the October 29 meeting between your Energy Resources Council and auto industry executives to discuss ways to improve the fuel efficiency of automobiles and possible tradeoffs between fuel efficiency, emissions control, and auto safety. We would like to know how the Energy Resources Council's closed meeting policy can be reconciled with your promise to run an "open Administration." It appears to us that your Administration is making energy policy in the same closed door environment which characterized the Nixon Administration. At a time when public confidence in government is waning, it is especially inappropriate that major Ford Administration officials should meet behind closed doors with representatives of an industry which they regulate.

The issues discussed at this meeting were not mere technical esoterica. They were issues which will profoundly impact the pocketbooks, health, and safety of most Americans. Nonetheless, the press and citizen experts in auto engine fuel economy, emission controls, air pollution, and auto safety were refused admission.

The legality of excluding the press and public from today's meeting will be decided in the courts in a lawsuit under the Federal Advisory Committee Act (see attached letters). But the larger issue is the propriety of such a policy. Even if the courts decide that the closed meeting policy is legal, that doesn't make it proper.

We trust that you will agree that it is improper for government policy makers to shield themselves and the industries they regulate from public scrutiny by transacting the public's business behind closed doors. We urge you to order that such meetings be opened to the press and public in the future.

Sincerely,

Garry DeLoss
Corporate Accountability
Rrsearch Group

Theodore H. Hoppock
Center for Auto Safety

Clarence M. Ditlow III
Public Interest Research Group

Ken Bossong
Center for Science in the
Public Interest

Lee C. White
Chairman, Energy Policy Task Fo
Consumer Federation of America

CORPORATE ACCOUNTABILITY RESEARCH GROUP
1832 M STREET, N.W. - SUITE 101
WASHINGTON, D.C. 20036
(202) 833-3931

October 24, 1974

Mr. Rogers C. B. Morton, Chairman
Energy Resources Council
Washington, D.C.

Dear Mr. Morton:

We have recently learned that the Energy Resources Council plans to hold a closed meeting with major domestic and foreign auto manufacturers on Tuesday, October 29, 1974, to discuss potential improvements in the efficiency of automobile fuel consumption and the tradeoffs between this goal and the goals of reducing automobile engine emissions and enhancing the safety of automobiles during collisions.

Although we recognize that this forthcoming conference is an informal gathering rather than a meeting of an official advisory committee to the Energy Resources Council, it constitutes precisely the kind of meeting of federal government regulatory officials to give and receive advice on government regulatory policies which the Federal Advisory Committee Act was designed to open to public scrutiny and participation. A recent federal court decision has declared that such meetings constitute meetings of ad hoc advisory committees and therefore are subject to the requirements of FACA (see final order in Food Chemical News, Inc. v. Davis, Cong. Rec., July 25, 1974, p. E5026). These requirements include opening the meeting to the public, preparing a transcript of the meeting, permitting any member of the public to file a written statement with the committee and to address the committee with permission of its chairman, and giving 30 days advance notice of the meeting by publication in the Federal Register (see final order in Gates v. Schlesinger, Cong. Rec., July 25, 1974, p. E5026).

The October 29 meeting should be delayed to provide proper notice in the Federal Register and invitations to interested members of the public, who will, after all, be affected by decisions regarding fuel economy, air pollution, and auto safety. Of course, the meeting must also be opened to the public and the press. If you decide not to postpone the meeting, you should at a minimum invite the undersigned persons and others who express an interest between now and October 29 to participate in the meeting and open the meeting to the public and the press.

If these minimum concessions to the requirements of FACA are not satisfied, we will regard your meeting as a violation of that Act. Given the few days remaining before the meeting date, it is necessary to request your response by 3:00 p.m., Friday, October 25. If we receive no response by that time, we will assume that our request has been denied and proceed accordingly.

Sincerely,

Garry W. DeLoss
Corporate Accountability
Research Group
1832 M St., N.W.
Suite 101
Washington, D.C. 20036

Ken Bossong
Center for Science in the
Public Interest
1779 Church St., N.W.
Washington, D.C. 20036

Peter H. Schuck
Director, Washington Office
of Consumers Union
1714 Massachusetts Ave., N.W.
Washington, D.C. 20036

Chairman, Energy Policy Tas
Force
Consumer Federation of Amer
1012 - 14th St. N. W.
Washington, D. C. 20005

PUBLIC INTEREST RESEARCH GROUP
2000 P STREET, N.W.
SUITE 711
WASHINGTON, D.C. 20036
(202) 833-9700

October 23, 1974

Honorable Rogers C.B. Morton, Chairman
Energy Resources Council
Washington, D. C.

Dear Mr. Morton:

We are writing on behalf of the Center for Auto Safety and the Public Interest Research Group to protest your plans to meet in secret with the Big Four automobile manufacturers and the foreign manufacturers, to the exclusion of any representatives of the public. We understand that virtually the entire upper echelon of the Executive Branch, including Secretary of Transportation Brinegar, Secretary of Commerce Dent, Federal Energy Administration Administrator Sawhill and Environmental Protection Agency Administrator Train will attend this meeting on Tuesday, October 29, 1974, to discuss how a 40 percent gain in fuel economy of automobiles can be attained within a tight development timetable. We are outraged that this discussion which will consider possible tradeoffs between pollution control, safety and fuel economy includes no representatives of the driving and breathing public which will be vitally affected by action from this meeting for decades to come.

The Federal Advisory Committee Act directs that "Each advisory committee meeting shall be open to the public." 5 U.S.C. App. I § 10(a)(1). The definition of an advisory committee is "any committee, board, commission, council, conference, panel, task force, or other similar group . . . which is established or utilized by the President, or established or utilized by one or more agencies . . ." 5 U.S.C. App. I § 3.

When, as is the case here, an agency calls in a group of industry people to discuss proposed policy and regulations, that meeting is subject to the requirements of the Federal Advisory Committee Act. These requirements, in addition to open access, require adequate notice in the Federal Register as to all meetings and the existence of a charter and other documents.

If you continue with your plans to hold the October 29, 1974, with the auto industry in secret and without proper notice being made, this clearly violates the Federal Advisory Committee Act.

We wish to have a member of each of our respective staffs attend the October 29, 1974, meeting with the auto industry. We also request that responsible members of the public be invited as participants in the meeting to express the public interest viewpoint. Finally, we request adequate notice as to all similar meetings held in the future.

If we do not receive a response to this letter by 3:00 p.m. Friday, October 25, 1974, we will deem that we and other members of the public have been denied access to the meeting.

Sincerely,

Stanton R. Koppel
Center for Auto Safety
1223 DuPont Circle Building
Washington, D. C. 20036
(202) 659-1126

Clarence M. Ditlow III
Public Interest Research Group
2000 P Street, N.W.
Washington, D. C. 20036
(202) 833-9700

CC: President Gerald R. Ford
Senator Warren G. Magnuson
Senator Edmund S. Muskie

THE WHITE HOUSE

WASHINGTON

January 10, 1975

MEMORANDUM FOR: JUDY JOHNSTON

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: Executive Order Activating ERDA and NRC

The Executive Order should be revised as per the attached.

EXECUTIVE ORDER

ACTIVATION OF THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION AND THE NUCLEAR REGULATORY COMMISSION

By virtue of the authority vested in me by the Energy Reorganization Act of 1974 (Public Law 93-438; 88 Stat. 1233), Section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered:

Section 1. Pursuant to Section 312(a) of the Energy Reorganization Act of 1974 I hereby prescribe January 19, 1975, as the effective date of that Act. This action shall not impair in any way the activation of the Energy Resources Council by Executive Order No. 11814 of October 11, 1974.

Section 2. The Director of the Office of Management and Budget shall take all steps necessary or appropriate to ensure or effectuate the transfers provided for in the Energy Reorganization Act of 1974, the Solar Heating and Cooling Demonstration Act of 1974 (Public Law 93-409; 88 Stat. 1069), the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-410; 88 Stat. 1079), the Solar Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-473; 88 Stat. 1431), to the extent required or permitted by law, including transfers of funds, personnel and positions, assets, liabilities, contracts, property, records, and other items related to the transfer of functions, programs, or authorities.

Section 3. As required by the Energy Reorganization Act of 1974, this Order shall be published in the Federal Register.

THE WHITE HOUSE
WASHINGTON

January 23, 1975

In the senior staff meeting this morning, I mentioned a letter from Governor Noel of Rhode Island. His letter seems to summarize the attitude of these Northeast leaders, and how they view both the energy situation and the President's plan.

Jack Marsh

State of Rhode Island and Providence Plantations
EXECUTIVE CHAMBER, PROVIDENCE

Philip W. Noel
Governor

January 17, 1975

The President
The White House
Washington, D. C.

Dear Mr. President:

I would first like to offer my compliments to you for the courage and foresight that you have displayed in the development and announcement of your program to address our nation's severe economic and energy needs. Although I am not in total accord with your basic approach to the solution of these vexing problems, I share your sense of urgency, and I do feel that your overall program is both necessary and worthwhile. I would like very much to be able to give my total support to your effort. Unfortunately, I feel compelled to stand in total opposition.

I cannot support your effort because of the tremendous inequities inherent in the proposed energy program and the devastation that would result to the Northeast, and perhaps other states, should that program be implemented. My concern is not totally provincial for I can foresee serious long term consequences that will weaken our nation.

In your remarks on Thursday afternoon in the East Room you said, "I have been assured by my advisers that this program will not result in any regional discrimination." You further singled out Secretary Morton and Federal Energy Administrator Zarb as being the two persons responsible for the accomplishment of that goal within the total program. These were, indeed, encouraging words to long suffering New Englanders. Immediately after the meeting adjourned, in discussions with Mr. Zarb, I learned that what you really meant was, that there would be no further additional discrimination as a result of the new tax and tariff system. This revelation casts an entirely different light upon your remarks, and I predict a tremendous wave of discontent and opposition in the Northeast.

I was present at the White House when former President Nixon announced his program for "Project Independence 1980". I applauded the announcement of such a vital goal and pledged my full cooperation. I find that your target year of 1985 is more realistic, and once again I applaud this goal as being absolutely necessary to the continuing strength of our nation.

In my opinion, in order to achieve a national goal of such importance, the sacrifice and burden required to succeed must fall equally upon the shoulders of every American. I believe that every major goal that we have achieved as a nation, and there have been many, was achieved as a result of equal sacrifice and dedication on the part of all Americans. In formulating national energy policy and goals, the requirement for a shared burden becomes readily apparent. The program that you have announced does not meet that essential test of fairness and equity.

A VERY BRIEF ANALYSIS:

1. For many years New England's energy cost has substantially exceeded the national average. There are many documented reasons that led to this inequity and that kept that inequity in place for so long. In the absence of national energy policy there was no realistic way to address and resolve that problem. New Englanders suffered quietly over many years.

2. The disparate price that New England paid for energy quickly rose to intolerable levels as a result of oil price fluctuation attendant to the Arab embargo and subsequent pricing policies both here and abroad.

3. An example of this energy price disparity is evidenced by the following comparative cost of energy for utilities:

Per Million BTU's

New England ----------	$1.81
National Average -------	$ .84
West North Central -----	$ .44

The validity of these and other meaningful statistics as well as the cause of this great disparity is well documented in studies that we have had professionally prepared under my direction as the State Co-Chairman of the New England Regional Commission. We have presented these studies and data to members of President Nixon's staff, to members of your staff, to the staff of the New England

caucus, the National Governors' Conference and to many other interested parties.

Your assurance of no regional discrimination as further defined by members of your Cabinet is, therefore, totally unacceptable. In essence, your program will continue the fantastic energy price disparity that now exists and simply give assurance that the disparity will not become further distorted.

MR. PRESIDENT, THE SACRIFICE AND BURDEN REQUIRED TO IMPLEMENT THE CRITICAL GOAL OF ENERGY INDEPENDENCE WILL NOT FALL EVENLY ON THE SHOULDERS OF ALL AMERICANS.

The lack of parity in this program is more than adequate justification for total resistance from the Northeast. I would like to share with you some of my apprehension should we fail to attain energy price equalization.

1. The Northeast will not be able to retain its industrial productivity. In the six month period immediately following the oil embargo, industrial production in New England declined 11.4%, while the decline nationally averaged 3.8%. The pace of industrial out-migration will quicken once energy price distortion becomes accepted as part of our national energy policy.

2. Unemployment, now at 9.1% in Rhode Island (highest in the nation), will escalate rapidly.

3. The cost of heating fuel and electricity is now beyond the reach of some and will go beyond the reach of the average wage earner. The Rhode Island average factory wage is currently $26.00 per week below the national average.

4. The Federal and State costs of supporting our social welfare systems will rise dramatically. New England states are prohibited by constitution from engaging in deficit financing and therefore state and local taxes will escalate significantly.

I would point out that the statistics for other New England states are comparable to those that I cite for Rhode Island. Rather than continue to list further foreseeable consequences, I would simply conclude by offering the observation that the people of New England are among the least able financially, to sustain further economic burden.

My concern for the future of the nation is based upon my opinion that such an energy policy will result in a shift of land use patterns. I have heard a lot about the free enterprise system in recent months. I believe in the free enterprise system, and I have knowledge as to how it works. Stated simply--industry will go where they have the best chance to make a buck. In a free enterprise system, we should not tell industry where to locate, but I submit that we should not have an energy pricing policy that will be an inducement for them to utilize our natural resources in the least efficient patterns.

Food production is one of our greatest concerns, and the Northeast is not well suited to contribute significantly to that need. The relocation of industry on the basis of energy costs could conceivably result in a reduction in our ability to maximize the use of our land resource. New England is best suited for industrial production.

In closing, I offer my assurance that I am willing to meet with members of your Administration at their convenience, if you, Mr. President, feel that there is some possibility to make this program more effective and more acceptable to New England. We have long been prepared for such a meeting and I appreciate the good will of the people in your Cabinet. However, our message has gone so long unanswered, that I believe your personal attention to these matters has become critical.

Very respectfully yours,

Philip W. Noel

Philip W. Noel
GOVERNOR

Energy

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

JAN 31 1975

Mr. Leslie Peyton
1303 SW 16th Ave.
Portland, Oregon 97201

Dear Mr. Peyton:

The International Energy Affairs Office of FEA recently received for reply your letter to Philip Buchen, President Ford's legal adviser.

President Ford is most aware of the effect of high oil prices on the U.S. and indeed on the world economy. He has accordingly initiated the levying of a $3.00 per barrel tariff on imported oil to force consumers to use less petroleum and thereby reduce the nation's dependence on expensive, imported oil. While consumers may have to pay more in the short term for petroleum products, in the long term our government believes this reduced demand in addition to new domestic sources of energy will provide the economic independence we desire.

You suggest the formation of an organization of oil importing nations (OPIC) to counter OPEC. Last November, oil importers formed the International Energy Agency, headquartered in Paris. While its initial function has been to develop contingency plans to share oil among members in the event of another embargo, it is also coordinating international programs on other energy related matters.

You are no doubt aware that the United States, France and several other importing nations have agreed to the idea of a joint conference with representatives of oil exporting nations. This consumer-producer conference is intended to be a forum to discuss the issues you raise on oil prices and petrodollar recycling.

I hope these remarks address your concerns and thank you for your interest.

Sinserely yours,

/S/

Melvin A. Conant
Assistant Administrator
International Energy Affairs

copy to Philip Buchen

THE WHITE HOUSE

WASHINGTON

January 27, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS

SUBJECT: Public Utilities Consultant

You asked me to consider the advisability of retaining the services (as a consultant) of Richard Gillette, a member of the board of a Michigan utility, on a short-term basis in order to assist FEA in the development of policies which may impact on the public utility industry in a general and fairly uniform way.

I have concluded that such an appointment would be ill-advised. The analysis underlying this conclusion may be summarized as follows:

1. The desire is to retain the services of Mr. Gillette for a period of perhaps only a month. Therefore, it would be impractical to consider creating a committee to which he could be appointed in a representative capacity and to which the provisions of the Federal Advisory Committee Act would pertain.

2. Assuming Mr. Gillette were careful to limit his activities to matters which involved the public utilities industry in general and to disqualify himself from matters which could have a particular impact on the Michigan corporation, no actual conflict would be raised.

3. In these circumstances, the appearance of a conflict simply cannot be totally eliminated. The problem is two-fold. First, the appointment could be attacked as basically incestuous, i.e. reflective of industry control over public policy in a segment of the market. Secondly, there is the appearance that private gain is being derived from public position.

4. Secretary Simon's earlier appointment of a Phillips Petroleum executive provides us with some precedent in terms of the anticipated reaction to the retention of Mr. Gillette. This appointment was also defensible on a technical level, but it redounded to the ultimate detriment of the Administration. Despite the fact that the utilities industry does not hold the same potential for mischief as the petroleum industry, the lesson should not be lost.

Energy

They need
your OK
as soon as
possible.

CLEARANCE FORM FOR PRESIDENTIAL SPEECH MATERIAL

TO: THE PRESIDENT

VIA: ROBERT HARTMANN

FROM: PAUL A. THEIS

SUBJECT: Proposed Presidential Message to the Congress on the Energy Bill

TIME, DATE AND PLACE OF PRESIDENTIAL USE:

Tuesday, March 4, 1975

SPEECHWRITER: Friedman

EDITED BY: Theis

BASIC RESEARCH/SPEECH MATERIAL SUPPLIED BY:

FEA and CEA

CLEARED BY (Please initial):

(X) OPERATIONS (Rumsfeld)
(X) CONGRESSIONAL/PUBLIC LIAISON (Marsh)
(X) PRESS (Nessen)
(X) LEGAL (Buchen) RNB, but see corrections on pp 6, 7 + 8
( ) ECONOMIC POLICY BOARD (Seidman)
(X) OFFICE OF MANAGEMENT AND BUDGET (Lynn)
(X) DOMESTIC COUNCIL (Cole)
( ) NATIONAL SECURITY COUNCIL (Scowcroft)
(X) RESEARCH (Waldron)
(X) JERRY WARREN (FYI)
(X) Alan Greenspan
(X) Frank Zarb

(Friedman) March 4, 1975

VETO MESSAGE TO THE HOUSE OF REPRESENTATIVES -- H.R. 1767

I am returning without my approval H.R. 1767. The purposes of this Act were to suspend for a ninety-day period the authority of the President under section 232 of the Trade Expansion Act of 1962 or any other provision of law to increase tariffs, or to take any other import adjustment action, with respect to petroleum or products derived therefrom; to negate any such action which may be taken by the President after January 15, 1975, and before the beginning of such ninety-day period.

I was deeply disappointed that the first action by the Congress on my comprehensive energy and economic programs did nothing to meet America's serious problems. Nor did it deal with the hard questions that must be resolved if we are to carry out our responsibilities to the American people. The dangerous precedent that would be set by this Act is the clear signal to the American people that their Congress, when faced with hard decisions, acted negatively rather than positively.

That course is unacceptable. Recent history has demonstrated the threat to America's security caused by our significant and growing reliance on imported petroleum.

Some understandable ~~concerns~~ questions have been voiced since my program was announced in January. I am now convinced that it is possible to achieve my import goals while reducing the problems of adjustment to higher energy prices. Accordingly:

-- I have directed the Administrator of the Federal Energy Administration to use existing legal authorities to adjust the price increases for petroleum products so that the added costs of the import fees will equitably balance gasoline prices and the prices for other petroleum products, such as heating oil. These adjustments for gasoline will not be permanent, and will be phased out.

-- I am proposing a further tax measure that will rebate all of the increased fuel costs from the new import fees for off-road farm use. This particular rebate program will also be phased out. This proposal, which would be

retroactive to the date of the new import fee schedule, will substantially lessen the adverse economic impact on agricultural production, and will reduce price increases in agricultural products.

These actions will ease the adjustment to my conservation program in critical sectors of the Nation while still achieving the necessary savings in petroleum imports.

Some have criticized the impact of my program and called for delay. But the higher costs of the added import fees would be more than offset for most families and businesses if Congress acted on the tax cuts and rebates I proposed as part of my comprehensive energy program.

The costs of failure to act can be profound. Delaying enactment of my comprehensive program will result in spending nearly $2.5 billion more on petroleum imports this year alone.

If we do nothing, in two or three years we may have doubled our vulnerability to a future oil embargo. The effects of a future oil embargo by foreign suppliers would be infinitely more drastic

than the one we experience last winter. And rising imports will continue to export jobs that are sorely needed at home, will drain our dollars into foreign hands and will lead to ~~even~~ much worse economic troubles than we have now.

Our present economic difficulty demands action. But it is no excuse for delaying an energy program. Our economic troubles came about ~~mainly~~ partly because we have had no energy program to lessen our dependence on expensive foreign oil.

The Nation deserves better than this. I will do all within my power to work with the Congress so the people may have a solution and not merely a delay.

In my State of the Union Message, I told the Congress that this country required an immediate Federal income tax cut to revive the economy and reduce unemployment.

I requested a comprehensive program of legislative action against recession, inflation and energy dependence. I asked the Congress to act by April 1st.

In that context, I also used the stand-by authority the Congress had provided to apply an additional dollar-a-barrel tariff on most foreign oil coming into the United States, starting February 1 and increasing in March and April.

I wanted an immediate first step toward energy conservation -- the only step so far to reduce oil imports and the loss of American dollars. I also wanted to prompt action by Congress on the broad program I requested.

The Congress initially responded by adopting H. R. 1767 to take away Presidential authority to impose tariffs on foreign oil for 90 days.

Although I am vetoing H. R. 1767 for the reasons stated, I meant what I said about cooperation and ~~conciliation~~ compromise. The Congress now pledges action, I offer the Congress reasonable time for such action, ~~letus~~ I want to avoid a futile confrontation which helps neither ~~the~~ unemployed nor ~~any~~ employed ~~of the~~ American ~~people~~.

The most important business before us after 50 days of debate remains the simple tax refund I requested for individuals and job-creating credits to farmers and businessmen.

Last Friday the majority leadership of the Senate and House asked me to delay the scheduled increase in the tariff on foreign oil for 60 days while they work out the specifics of an energy policy they have jointly produced. Their policy blueprint differs considerably from my energy program as well as from the energy legislation now being considered by the House Committee on Ways and Means.

I welcome this movement in the Congress and ~~have~~

agree~~d to a delay until May 1, 1975. I am, therefore,~~ deferral

amending ~~my tariff proclamation to defer~~ postpone the scheduled

increases for the two more months ~~requested by the Congress,~~

while holding firm to the principles I have stated. It is

also my intention not to sub~~mit~~ a plan for de/control of

old/oil before May 1. domestic

By May 1, ~~hopefully,~~ I hope the House and Senate will have

agreed to a workable and comprehensive national/energy program.

But we must use every day of those two months to develop

and adopt an energy program. Also I seek a legislative

climate for immediate action on the tax reductions I have

requested. It is my fervent wish that we can now move

from points of conflict to areas of agreement.

No arbitrary stand of the President should delay even

for a day the speedy enactment by the Congress of ~~the~~ simple income

tax cuts ~~which I want~~ and credits by the end of this month.

Under present conditions, any delay in rebating dollars

to consumers and letting businessmen and farmers expand, modernize and create more jobs is intolerable.

I do not believe the Congress will endanger the future of all Americans. I am confident that the legislative branch will work with me in the Nation's highest interests.

What we need now is a simple tax cut and then a comprehensive energy plan to end our dependence on foreign oil sources.

What we don't need is a time-wasting test of strength between the Congress and the President. What we do need is a show of strength that the United States government can act decisively and with dispatch.

FOR IMMEDIATE RELEASE MARCH 4, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

The President today announced his intention to nominate James L. Liverman, of Rockville, Maryland, to be Assistant Administrator of Energy Research and Development for Environment and Safety. This is a new position in the Energy Research and Development Administration created by Public Law 93-438 of October 11, 1974.

Upon the creation of the Energy Research and Development Administration, in February of 1975, Dr. Liverman became the Director of the Division of Biomedical and Environment Research and Acting Deputy Assistant Administrator for Environment and Safety. From 1972 to 1974, he was Director of the Division of Biomedical and Environmental Research and Assistant General Manager for Biomedical and Environmental Research and Safety Programs for the Atomic Energy Commission. In 1964, he joined the Oak Ridge National Laboratory as Associate Director for Biomedical and Environmental Sciences, serving until 1972. He was Chief of the Biology Branch of the Division of Biology and Medicine for the Atomic Energy Commission from 1958 to 1964. He held the positions of Assistant Professor, Associate Professor and Professor at Texas A & M University from 1953 to 1960.

Dr. Liverman was born on August 17, 1921, in Brady, Texas. He received his B.S. degree from Texas A & M University in 1949 and his Ph.D. degree from the California Institute of Technology in 1952. He was a Post-Doctoral Fellow from July, 1952, to November, 1953, at the California Institute of Technology. He served in the United States Army Air Force from March, 1942, to December, 1945.

Dr. Liverman is married to the former Mary Jane Creech and they have five children.

# # #

FOR IMMEDIATE RELEASE MARCH 4, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

The President today announced his intention to nominate Robert W. Fri, of Sumner, Maryland, to be Deputy Administrator of Energy Research and Development. This is a new position in the Energy Research and Development Administration created by Public Law 93-438 of October 11, 1974.

Since June 1971, Mr. Fri has been Deputy Administrator of the Environmental Protection Agency. During this period he was Acting Administrator of the Agency from April to August 1973. He has been a Principal in the firm of McKinsey and Company, a management consulting firm, since 1968. He joined the firm in 1963 and later came to the Washington office in 1965.

Mr. Fri was born on November 16, 1935, in Kansas City, Kansas. He received his B.S. degree Phi Beta Kappa from Rice University in 1957 and his M.B.A. degree from Harvard University in 1959. He graduated from Navy Officers Candidate School in 1959 and served in the United States Navy until 1962.

Mr. Fri is married to the former Jill Landon of Wheeling, West Virginia, and they have three children.

# # #

FOR IMMEDIATE RELEASE MARCH 4, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

The President today announced his intention to nominate John M. Teem of Greenwich, Connecticut, to be Assistant Administrator of Energy and Research and Development for Solar, Geothermal and Advanced Energy Systems. This is a new position in the Energy Research and Development Administration created by Public Law 93-438 of October 11, 1974.

From May, 1973, until the creation of the Energy Research and Development Administration, Dr. Teem was Assistant General Manager for Physical Research and Laboratory Coordination and Director, Division of Physical Research, for the Atomic Energy Commission. During 1972, he took social service leave while with the Xerox Corporation. He joined the Xerox Corporation in 1967 as Manager of the Strategic Analysis Department for the Corporate Development Office in Los Angeles. He later became the Director of the Technical Staff for Corporate Research/Development for Xerox in 1969 in Stamford, Connecticut. From March, 1963, to June, 1967, he was Vice President of Electro-Optical Systems, Inc., after having been the Division Manager from 1960 to 1963.

Dr. Teem was born on July 23, 1925, in Springfield, Missouri. He received his A. B. degree in 1949 and his M. A. degree in 1951 from Harvard University. He was awarded a Ph. D. degree from Harvard in 1954. He was a Senior Research Fellow from 1954 to 1960 at the California Institute of Technology.

Dr. Teem is married to the former Sylvia Konvicka and they have two children. They reside in Potomac, Maryland.

# # #

FOR IMMEDIATE RELEASE April 30, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF LETTERS FROM THE PRESIDENT TO THE
SPEAKER OF THE HOUSE OF REPRESENTATIVES
AND THE PRESIDENT OF THE SENATE

Dear Mr. Speaker: (Dear Mr. President:)

Three and one-half months have passed since I presented the Nation and the Congress with a comprehensive program to achieve energy independence by 1985. Although the policy I put forth was not an easy solution, it was, and remains today, the only comprehensive and workable national energy program. Because of the seriousness of the problem, I also moved to cut energy demand and increase supply to the maximum extent within my administrative discretion by announcing a three step increase in the fees on imported petroleum starting last February 1 and complete decontrol of old oil prices by April 1.

After imposition of the first dollar of the additional import fees, the majority leadership in the Congress requested that I delay further actions to provide time to evaluate my proposals, to formulate an alternative comprehensive energy plan and to enact legislation. I granted a 60 day delay in the spirit of compromise, in spite of the fact that we had already waited much too long to make the hard decisions our country needs.

In the 60 days that followed, a number of Congressional energy programs were introduced and considered. Little progress has been made though. Thus, I am forced to again make a difficult administrative decision.

Since my State of the Union Message last January, there has been no improvement in the situation in the Middle East. The existing tensions only heighten my belief that we must do everything possible to avoid increasing our dependence on imported oil in the months ahead.

The recession is coming to an end. But the pending upturn will result in greater demand for imported oil. At the same time, however, it will put us in a better position to absorb the adjustments that greater energy conservation will require.

There are some encouraging signs in the Congress. Chairmen Ullman and Dingell and ranking minority members Schneebeli and Brown have been working diligently in their respective committees to formulate a comprehensive energy program. After extensive hearings and discussions, their efforts to date embody some elements of the energy proposals which I sent to the Congress as well as several which could be potentially disastrous.

more

The Senate has also conducted many hearings. Yet the only legislation which has passed is a bill that would impose mandatory restrictions within 60 days on recreational and leisure travel, hours of business operation, and commercial lighting. This bill is ineffective and unrealistic. It would result in unwarranted government control of personal freedoms, and would cause unforeseen economic consequences.

I am hopeful that the weeks ahead can result in agreement between the Congress and the Administration. I believe it can if we are willing to work diligently, honestly, and more rapidly. But I am concerned about the possibility of the Congress passing politically popular legislation which will not only fail to meet our energy needs but which could create serious economic problems for the Nation. From my many years in the Congress, I know how easy it is to become embroiled in endless debate over tough decisions. I also know how easy it is for the Congress to enact legislation full of rhetoric and high sounding purpose, but short of substance. That must not happen in this case.

Neither the House nor the Senate has passed one significant energy measure acceptable to the Administration in these past few months. Hence, I must be a realist -- since the time before final legislation will be on my desk is very long. I understand that in many ways the timing and substance is beyond the control of the individual committee chairmen. Yet, postponement of action on my part is not the answer. I am, therefore, taking these administration actions at this time:

-- First, I have directed the Federal Energy Administrator to implement a program to steadily phase out price controls on old oil over two years, starting June 1, 1975. This program will not proceed until public hearings are completed and a plan is submitted for Congressional review, as required by statute. While I intend to work with the Congress, and have compromised on my original decision to proceed with immediate decontrol, the nation cannot afford to wait indefinitely for this much needed action. I intend to accompany this action with a redoubling of my efforts to achieve an appropriate windfall profits tax on crude oil production with strong incentives to encourage maximum domestic exploration and production.

-- Second, I will again defer the second dollar import fee on crude oil and the $.60 per barrel fee on imported petroleum products in order to continue the spirit of compromise with the Congress. However, I will be forced to impose the higher fees in 30 days, or sooner, if the House and Senate fail to move rapidly on the type of comprehensive legislation which is necessary to resolve our critical energy situation. Such legislation must not embody punitive tax measures or mandated, artificial shortages, which could have significant economic impact and be an unwarranted intrusion on individual freedom of choice.

more

The administrative action that I have set in motion will help achieve energy self-sufficiency by 1985, stem increasing vulnerability during the next few critical years, and accomplish this without significant economic impact. Nevertheless, my actions alone are not enough. The Congress must move rapidly on a more comprehensive energy program which includes broader energy conservation and actions to expand supply. Action now is essential to develop domestic supplies and protect American jobs. It is my utmost desire in announcing these executive initiatives to balance our overwhelming need to move ahead with an equally important need not to force outright confrontation between the Administration and the Congress.

I pledge to work with the Congress in this endeavor. To the extent comprehensive and effective legislation is passed by the Congress, I stand ready to approve it. What I cannot do is stand by as more time passes and our import vulnerability grows. If this happens, I will not hesitate to impose the higher import fees. Meantime, my administrative actions must fill the gap in this endeavor. The country can afford no less.

Sincerely,

GERALD R. FORD

# # # #

FOR IMMEDIATE RELEASE MAY 1, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

MEMBERSHIP OF THE ENERGY RESOURCES COUNCIL

By virtue of the authority vested in me as President of the United States of America, by the Constitution and laws of the United States, particularly Section 108 of the Energy Reorganization Act of 1974, Section 2 of Executive Order No. 11814 of October 11, 1974, as amended, is hereby amended to read as follows:

Sec. 2. The Council shall consist of the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Health, Education, and Welfare, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, the Chairman of the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, the Director of the National Science Foundation, the Administrator of General Services, the Chairman of the Federal Power Commission, the Assistant to the President for National security affairs, the Assistant to the President for Economic Affairs, the Assistant to the President for Domestic Affairs, the Special Assistant to the President for Consumer Affairs, and such other members as the President may, from time to time, designate. The Chairman shall be designated by the President.

GERALD R. FORD

THE WHITE HOUSE,
May 1, 1975

# # # #

THE WHITE HOUSE

WASHINGTON

May 26, 1975

MEMORANDUM FOR: MR. BUCHEN

FROM: PAUL THEIS

SUBJECT: President's Television Address to the Nation on Energy

Attached is a proposed draft for the President to use for his address to the Nation on energy on Tuesday, May 27.

May we have your comments and suggestions, as well as your initials on the attached clearance form, by close of business today?

Many thanks.

Atta

Return attached

T.

CLEARANCE FORM FOR PRESIDENTIAL SPEECH MATERIAL

TO: THE PRESIDENT

VIA: ROBERT HARTMANN

FROM: PAUL A. THEIS

SUBJECT: Television Address on Energy

TIME, DATE AND PLACE OF PRESIDENTIAL USE:

8:30 p.m., Tuesday, May 27, 1975

SPEECHWRITER: Hartmann

EDITED BY:

BASIC RESEARCH/SPEECH MATERIAL SUPPLIED BY:

Federal Energy Administration

CLEARED BY (Please initial):

(X) OPERATIONS (Rumsfeld)
(X) CONGRESSIONAL/PUBLIC LIAISON (Marsh)
(X) PRESS (Nessen)
(X) LEGAL (Buchen) T.W.B
(X) ECONOMIC POLICY BOARD (Seidman)
(X) OFFICE OF MANAGEMENT AND BUDGET (Lynn)
(X) DOMESTIC COUNCIL (Cannon)
(X) NATIONAL SECURITY COUNCIL (Scowcroft)
(X) RESEARCH (Waldron)
(X) JERRY WARREN (FYI)
(X) ENERGY RESOURCES COUNCIL (Zarb)
X) Alan Greenspan
( )

(Hartmann) May 26, 1975

TELEVISED ADDRESS TO THE NATION ON ENERGY, MAY 27, 1975

Last January 15, I went before your Senators and Representatives in Congress with a comprehensive program to make our country independent of foreign sources of energy by 1985. Such a program was long overdue. We have become increasingly at the mercy of others for the fuel on which our entire economy runs.

These are the facts and figures that will not go away:

The United States is dependent on foreign sources for about 37% of its present petroleum needs. In 10 years, if we do nothing, we will be importing more than half our oil, at prices fixed by others, if they will sell it to us.

In two and a half years we will be twice as vulnerable to a Middle East oil embargo as we were two winters ago.

We are now paying out $25 billion a year for foreign oil. Five years ago it cost only $3 billion. Five years from now, who knows how many oil dollars will be flowin

out of the United States? These are not just American dollars, these are American jobs.

Four and a half months ago I sent the Congress this 167 pages of detailed draft legislation, plus tax proposals designed to conserve the energy we now have while at the same time speeding up the development and production of new domestic energy resources. This would somewhat increase the cost of energy until new supplies were fully tapped, but those dollars would remain in this country and would be returned to our own economy so as to mitigate any hardship.

I asked the Congress to enact this urgent 10-year program for energy independence within 90 days -- that is, by mid-April.

In the meantime, to get things going, I said I would use the emergency Presidential authority given by Congress to reduce our use of foreign oil by raising import fees on each barrel of crude by $1 a month on February 1, March 1 and April 1.

As soon as Congress acted on a comprehensive energy program, I promised to take these import fees off.

I imposed the first $1 on oil imports February 1, (making due exemptions for hardship areas such as New England).

Now, what did Congress do in February about energy?

Congress did nothing.

Nothing, that is, except rush through a bill suspending for 90 days my authority to impose any import fees on foreign oil. Congress needed time, they said.

At the end of February, the Democratic leaders of the House and Senate and committee chairmen concerned with energy came to the White House. They gave me this pamphlet and promised to come up with a better energy program than mine by the end of April. They asked me to delay imposing another $1 import fee for March and April because their own energy program would make such steps unnecessary.

That stretched my original deadline by a couple of weeks, but I wanted to show my good faith. I vetoed the bill

suspending my authority to impose higher fees, but I did not impose them for the time being.

What did Congress do in March and April about energy?

Congress did nothing.

In fairness I must say there were diligent efforts by some Members, Democrats as well as Republicans, to fashion meaningful energy legislation in their subcommittees and committees. My Administration worked very hard with them to bring a real energy independence bill to a vote. At the end of April, the deadline the leaders of the two-thirds majority in Congress set for themselves, I deferred for another 30 days imposing the second $1 fee on imported oil. I still hoped for positive action.

So what did Congress do in May about energy?

Congress did nothing and went home for a 10-day recess.

January, February, March, April, May -- as of now, the Congress has done nothing positive about energy. It has

taken only two negative actions, the first to prevent the President from doing anything on his own, the second to pass a strip mining bill which would have reduced domestic coal production instead of increasing it; put thousands of people out of work; increased the cost of energy to consumers; and compelled us to import more foreign oil, not less.

If Congress had produced a comprehensive energy program that would stimulate development of all domestic sources -- including coal, our most abundant energy resource -- it could have imposed reasonable rules to protect the environment from strip mining excesses as I proposed in my January package. But I was forced to veto this lone anti-energy bill last week because I will not be responsible for taking one step backward in energy when the Congress will not take one step forward.

Congress has concentrated most of its attention on conservation measures such as a gasoline tax. Congress has done nothing as of now to stimulate production of new energy sources here at home. At Elk Hills in California I saw oil

wells waiting to produce 300,000 barrels a day if Congress would change the law to permit it. There are untold millions of barrels more in our Alaskan petroleum reserves, and under the outer continental shelf. We could save 300,000 barrels a day if only Congress would allow electric power plants to substitute American coal for foreign oil. Peaceful atomic power, which we pioneered, is advancing faster abroad than at home.

Still the Congress does nothing about energy.

We are today worse off than we were in January. Domestic oil production is going down, down down. Natural gas production is starting to dwindle and we face severe shortages next winter in many areas. Coal production is still at the levels of the 1940s. Foreign oil suppliers are considering another price increase. I could go on and on, but you know the facts better than your representatives in Congress, judging from their performance -- or lack of it.

We do not have an energy shortage but we could have one very quickly. We do not have an energy crisis but we may have

next winter. We do have an energy problem -- a very grave problem but one we can still manage and solve -- if we are lucky internationally and can act decisively domestically. Five months are already lost.

Since Congress has acted only negatively I must do what I can do by myself.

-- First, I will impose an additional $1 import fee on foreign oil, effective June 1. I have given Congress 60 days and yet another 30 days to do something -- but nothing has been done. Higher fees will further discourage the consumption of imported fuel and may generate some action when Congress comes back from its holiday.

-- Second, as I directed on April 30, the Federal Energy Administration has completed public hearings on the decontrol of old domestic oil. I will submit a decontrol plan to Congress shortly after it returns. Along

it, I will urge Congress to pass a windfall profits tax to prevent any unfair gains from decontrolled prices. This will furnish an incentive to increase domestic energy production.

When I talk about energy I am talking about jobs. Our American economy runs on energy. No energy, no jobs. In the long run it is just that simple.

The sudden fourfold increase in foreign oil prices helped throw us into this recession. Another such hike could throw us back. We cannot continue to depend on the price and supply whims of others. The Congress cannot drift, dawdle and dilly-dally forever with America's future.

I need your help to energize the Congress into comprehensive action. I will continue to press for this program -- which is still the only energy program in existence.

I will not sit here idly while the United States of America runs out of gas.

# # # # #

THE WHITE HOUSE
WASHINGTON

Make copy for
Jack Marsh a
Walk it over.
T.

has been done

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

August 8, 1975

MEMORANDUM FOR PHILLIP BUCHEN
Counsel to the President

Re: The effect of a Congressional vote to override Presidential veto of S. 1849

This is in response to your request for the opinion of this Office concerning the legal effect of a possible belated Congressional override should the President veto S. 1849, Title I of which extends the Emergency Petroleum Allocation Act, 15 U.S.C. 751-756 (the Act). Under Section 4(g)(1) of the Act, as amended, Pub. L. No. 93-511, 88 Stat. 1608, any regulation promulgated under section 4(a) of the Act is scheduled to terminate on August 31, 1975. 15 U.S.C. 753(g)(1). Section 102 of S. 1849, the extension of the Act passed by Congress on July 31, 1975, states simply,

> Section 4(g)(1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "August 31, 1975," wherever it appears and inserting in lieu thereof "March 1, 1976."

Since Congress has recessed until September 3, 1975, the possibility has arisen that should the President veto the extension, the veto may be overridden subsequent to the Act's expiration on August 31, 1975.

For the reasons set forth in this memorandum, we conclude that, as a theoretical legal matter, most of the harm that could occur during a hiatus between a veto and veto override could be undone by subsequent retroactive revival of the Act and regulations issued thereunder. Penalties could not be assessed, however, for conduct occurring during such a hiatus and this absence of enforcement power during that period may serve as an incentive for some, particularly small suppliers

and local retailers, to "make a killing." Moreover, the problems involved in retroactively restoring controls and enforcing such a restoration may be enormous. The resources do not exist in either FEA or this Department to seek out and undo each and every action taking advantage of temporary decontrol. Further, the nature of the products subject to regulation is such that sales consummated, shipments made or fuel actually used cannot be reallocated or redirected in all instances.

These practical problems cannot be avoided if a hiatus occurs. The hiatus can be avoided, of course, by signing the bill, under protest, or by congressional action prior to August 31, 1975. With respect to the latter course, Congress could be reconvened either at the call of the President or at the call of the Speaker and President pro tempore pursuant to the terms of the adjournment resolution of July 19, 1975, a copy of which is attached.

REVIVAL

Should an override occur after August 31, it is our view that S. 1849, which would then become law, would revive the Act and the regulatory authority thereunder. As stated in Kersten v. United States, 161 F.2d 337 (10th Cir. 1947), which dealt with revival of the Emergency Price Control Act of 1942,

> Congress may revive or extend an Act by any form of words which makes clear its intention so to do.

161 F.2d at 338. See also, Woods v. Cobleigh, 75 F. Supp. 125 (D. N.H. 1947). Congress' language in this case and its passage of the bill prior to the date of expiration of the Act render unmistakeable its intent to continue the Act's effectiveness until March of 1976. 1/ It appears equally clear that the regulation in effect on August 31, 1975, was intended to continue. Thus both the Act and its regulations would be revived by operation of the Congressional override.

RETROACTIVITY

From the nature of the extension provision (amendment

1/ Section 1 of the Price Control Extension Act of 1946 discussed in Kersten, supra, the section effecting revival, was in exactly the same form as the provision here at issue.

of the termination date which was still in the future at the time the Act was passed) and from the legislative history concerning the intended interpretation of the Act should a late override be necessary, see 121 Cong. Rec. H. 7953-H. 7958 (daily ed.), it is evident that Congress intended no hiatus in regulatory authority. Continuity, in the case of a post expiration override, would require retroactivity. Thus the following colloquy occurred on the floor of the House on July 31, 1975:

> Mr. Dingell. Mr. Speaker, I have a question I would like to direct to the Chairman of the Committee in light of the comments I have raised.
>
> There is a possibility of a veto of this extension. If a veto of this legislation does occur, there is a possibility that there would be a hiatus or a brief period during which there would be no authority to enforce the allocation and price control regulations relating to petroleum products, to supply relationships, to allocations and to entitlements.
>
> Mr. Speaker I am satisfied on the basis of reading the language of S. 1849 that it is the intent of the Congress that the extension of the allocation Act included in S. 1849 take effect immediately and retroactively in the event of a veto and an override of that veto and that there be no hiatus or gap during which violations of these regulations would not be subject to civil sanctions. Am I correct?
>
> Mr. Staggers. Mr. Speaker, the gentleman is correct.

121 Cong. Rec. H. 7954. (daily ed.) 2/

2/ Manifestations of legislative intent at the time of the override, of course, may have a significant bearing on this question.

EX POST FACTO CLAUSE

In our opinion the courts will endeavor to implement the Congressional intent that the extension be retroactive to the extent that such intent can be carried out without repugnancy to the Constitution. Irrespective of the intent of Congress, full retroactivity is not constitutionally possible. Since Article I, section 9, Clause 3 prohibits passage of ex post facto laws, criminal sanctions subsequently imposed for conduct occurring within the hiatus would be barred. Calder v. Bull, 3 U.S. 386 (1798). Furthermore despite express congressional intent to the contrary, see 121 Cong. Rec. H. 7984 (daily ed. July 31, 1975) (remarks of Mr. Dingell), H. 7955 (remarks of Mr. Eckhardt), imposition of civil penalties would also be barred. Ex parte Garland, 71 U.S. 333, 373 (1966); Burgess v. Salmon, 97 U.S. 381 (1878) Cummings v. Missouri, 71 U.S. 277, 320 (1866); Hiss v. Hampton, 338 F. Supp. 1141 (D.D.C. 1972). 3/ In our view, the private treble damage action provided in Section 210(b) of the Economic Stabilization Act of 1970, as amended, 12 U.S.C. 1904, note (incorporated by 15 U.S.C. 754) would not be available.

The ex post facto clause, however, is limited in its application to retroactive imposition of punishment, see Calder v. Bull, supra, and retroactive regulatory legislation is controlled by the substantially more flexible standard of the due process clause of the fifth amendment. Retroactive regulatory legislation controlled by the fifth amendment may take two forms:

3/ Congress may impose disabilities for prior conduct if "the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession." De Veau v. Braisted, 363 U.S. 144, 160 (1960). Thus if the disability has a future regulatory effect its imposition for prior conduct excapes ex post facto clause condemnation. However there can be no future regulatory effect inherent in the imposition of treble damages for conduct occurring in a unique situation such as the potential hiatus under discussion. Retroactive punishment, civil or otherwise, for conduct occurring during the hiatus has no reasonable bearing upon regulation of conduct once the regulatory scheme has been reestablished.

(1) Attachment of new legal rights, duties or non-penal, civil liabilities to already completed transactions and

(2) Prospective redefinition of preexisting obligations, e.g., declaration that prior contracts are henceforth unenforceable.

See Hochman, "The Supreme Court and the Constitutionality of Retroactive Legislation," 73 Harv. L. Rev. 692 (1960). 4/

IMPAIRMENT OF CONTRACTS

There is now little question concerning Congressional power to abrogate or redefine contractual obligations entered into prior to the passage of the legislation. As stated in Norman v. B&O R.R., 294 U.S. 240, 307-10 (1935)

> Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them. *** The principle is not limited to the incidential effect of the exercise by the Congress of its constitutional authority. There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt. Id. at 307-310. 5/

4/ The specific constitutional prohibition against impairment of contract rights, Art. I, Section 10, applies only to the states, not the federal government.

5/ In reaching this decision, however, the Court recognized that "[t]he Government's own contracts -- the obligations of the United States -- are in a distinct category and demand separate consideration." Id. at 306. See Lynch v. United States, 292 U.S. 571 (1934).

The Supreme Court has on numerous occasions upheld the authority of the government to enact legislation affecting previously acquired contract rights of individuals. Thus, in Louisville & N.R.R. v. Mottley, 219 U.S. 467 (1911), the Court held that a lifetime pass for transportation issued in settlement of a tort claim was no longer valid in light of subsequent legislation which prohibited the furnishing of railroad transportation for other than the regular rate paid in cash. The Court reasoned:

> The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations, is inconceivable. The framers of the Constitution never intended any such state of things to exist. [219 U.S. at 482.]

In Fleming v. Rhodes, 331 U.S. 100 (1947), the Court upheld a post revival injunction against enforcement of eviction orders secured in state courts after the expiration of the Emergency Price Control Act of 1942 and prior to the Price Control Extension Act of 1946, stating:

> Federal regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution. So long as the Constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with previously acquired rights does not condemn it. Immunity from federal regulation is not gained through forehanded contracts. Were it otherwise the paramount powers of Congress could be nullified by "prophetic discernment." [331 U.S. at 107.]

Another line of cases, upholding the renegotiation of excessive profits under war contracts and sub-contracts, is also apposite here. In Lichter v. United States, 334 U.S. 742 (1948), the Supreme Court held that Congress could apply the renegotiation process to private contracts between a government contractor and its sub-contractors that had been entered into prior to the passage of the legislation. In many lower court cases, subsequent to that decision, the right of Congress to recover excessive profits on the government's own contracts was also upheld as to pre-existing contracts against claims that such retroactive application was a deprivation of due process under the Fifth Amendment. See Blanchard Machine Co. v. Reconstruction Finance Corporation, 177 F. 2d 727, 729 (D.C. Cir. 1949); Ring Construction Corp. v. Secretary of War, 178 F. 2d 714, 716 (D.C. Cir. 1949), cert denied, 339 U.S. 943. The Sixth Circuit, in arriving at this conclusion stated, "It is settled law that the retroactive reach of a statute may constitutionally cover property rights that have vested *** and also may cover payments already received." Howell Electric Motors Co. v. United States, 172 F. 2d 953, 954 (6th Cir. 1949).

LEGAL LIABILITY FOR PRE-OVERRIDE CONDUCT

Completed preenactment transactions can also be constitutionally reordered. Cf. Howell Electric Motor Co., supra. While each case must be judged on its own facts to determine whether retroactive liability for previously uncontrolled conduct would be so harsh and oppressive as to transgress the constitutional limitation, preenactment notice of the intended retroactive effect of pending legislation has been held to be an important factor. See First National Bank in Dallas v. United States, 420 F.2d 725 (Ct. Cl. 1970). As there stated, widespread and effective notice is not the "stuff of which denial of due process cases are made." In the legislative history cited above, Congress has made clear its intention that there should be no hiatus in regulatory enforcement of the Emergency Petroleum Allocation Act and that should a late override be necessary it is the intent of the Congress that the revived statute be retroactively applied. Notice could be heightened by inclusion in the President's veto message of his understanding that should an override occur the Act would be revived retroactively and of his intention to act under it to undo any improper transactions occurring in the hiatus. A similar statement by the Federal Energy Administration would have a comparable effect.

Furthermore, retroactivity of S. 1849, far from being a mere unreasonable embellishment, is necessary in the Congressional scheme for the same reasons which motivated retroactivity of the interest equalization tax in First National Bank, supra, i.e., were the bill to become law without retroactive effect, a premium would be placed upon consummation of "covered" transactions during the hiatus. See First National Bank, supra, 420 F.2d at 730-31. In light of the factual circumstances which would surround enactment of retroactive controls by means of a late Congressional override and if adequate notice of retroactivity is on the public record prior to enactment, it would appear that unfairness to and surprise of private parties in this case would be at a minimum and that Congress' constitutional power would consequently be maximized.

PRACTICAL DIFFICULTIES POSED BY A HIATUS

The regulations under the Emergency Petroleum Allocation Act constitute a complex of allocation, pricing, and equalization mechanisms designed simultaneously to hold down economy-wide inflation, increase production, and ensure equitable individual allocation and pricing. See attached affidavit. Examples of major potential distortions which could arise as the result of interim decontrol include disposal of supplies at uncontrolled prices leaving no supplies remaining to be allocated when controls resume, (it is not a violation of the regulations not to have a product to allocate), quick sales at greatly inflated prices, particularly of products such as propane where increased price will not have a great effect on demand, and the forming of new supply relationships.

While it may be in the perceived interest of the larger oil companies to refrain from egregious practices which, if reported, could influence congressional override votes, it is unlikely that such pressures will influence small independents. Furthermore, the situation is complicated for all companies by the possibility of stockholder derivative suits should the companies fail to legally maximize profits. 6/

Given (1) the broad constitutional power of Congress both to impair contracts and to regulate present conduct and obligations on the basis of prior conduct (sales or receipts) discussed above, (2) the context in which enactment of S. 1849 would occur, indicating congressional intent to make the President's regulatory power retroactive to the full extent of its power and, (3) the extremely broad regulatory authority which has been given to the President by the Act, it is our view, based on our research in the time available, that, in theory, the Act if revived would probably provide power largely equal to the prior

6/ Certain existing contractual arrangements may call for changes to be triggered by decontrol.

mischief which it would confront, i.e., wrongs occurring during the hiatus could, on a theoretical level at least, probably be set right. To the extent that new supply relationships have been acquired by contract, those contracts could be abrogated and pre-hiatus relationships could be restored by regulations. To the extent that completed transactions during the hiatus resulted in misallocations, and to the extent that these misallocations were traceable, it appears that the FEA either has present authority or could by new regulation be given authority to order the recipient to become a supplier of those who were supposed to receive the allocations. Alternatively, in theory, supplies otherwise to be allocated to the recipient of the misallocation might be able to be diverted to those to whom the original oil should have gone, future intake by the improper recipient might be restricted, or an adjustment in the inventory of the seller might be ordered. With regard to pricing violations, under the theory advanced in First National Bank, supra, and Howell Electric Motor Co., supra, the private cause of action otherwise available under the Act might retroactively become available for compensation for excessive charges during the hiatus. Alternatively a refund apparently could be ordered or a reduced price to the harmed customer could be ordered until the excessive charge is returned.

Such theoretical legal power, however, is by no means the same thing as the ability to apply that power in the myriad of complex and discrete transactions which potentially could take place during the hiatus. In fact, many transactions may not be able to be traced; marginal service stations could be irreparably injured; oil could be transferred and burned. While FEA could endeavor to resolve ad hoc individual situations, the magnitude of the problem will be simply overwhelming. Furthermore, even if every interim transaction were traced and solutions were found which fit the transaction involved, there is some danger that compliance would be litigated every step of the way. In sum, for any individual case it appears to us a solution could in time be found, but in light of the magnitude of the problem which will arise and the time lag which will be

involved in remedying it, it appears that FEA will simply not be equal to the task and that by and large harm done in the hiatus will go largely unremedied.

Mary C. Lawton
Acting Assistant Attorney General
Office of Legal Counsel

Energy

THE WHITE HOUSE

WASHINGTON

August 21, 1975

Dear Vol:

After receiving your letter of August 12 regarding Mr. Pohl's idea, it occurred to me that the idea should be further developed before trying to get the reaction of officials in the government.

For example, I should think that Mr. Pohl should explain why the problem he is trying to solve is not more efficiently solved through storage of electricity in batteries than through breaking down water into its components.

If Mr. Pohl has a way of presenting his proposal in a convincing fashion, I suggest he write to:

Mr. Robert C. Seamans, Jr.
Administrator,
Energy Research and Development
Administration
20 Massachusetts Avenue, N. W.
Washington, D. C. 20545

Both Bunny and I were delighted to see Fred and Heidi while they were here and to have David here for the summer. We were only sorry that we did not have the opportunity to see more of them.

Sincerely,

Philip W. Buchen
Counsel to the President

Mr. Volney F. Morin
Volney F. Morin, Inc.
1341 Cahuenga Boulevard
Los Angeles, California 90028

UNITED STATES ASSOCIATES
HARLEAN M. CARROLL
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VOLNEY F. MORIN, JR.
JAMES B. RIVES
SANDRA S. SAWYER

OF COUNSEL
HAROLD A. SHIRCLIFFE

VOLNEY F. MORIN, INC.

LAW CORPORATION

INTERNATIONAL OFFICES
LONDON
MELBOURNE
MEXICO CITY
TOKYO

August 12, 1975

Mr. Philip W. Buchen
Counsel to the President
The White House
Washington, D. C.

AIRMAIL

Re: Variable Power = Constant Energy

Dear Phil:

The purpose of this letter is to acquaint you with Mr. Wadsworth E. Pohl, a long time friend and client of our offices. And an idea that he has.

Wadsworth is an inventor of considerable practical stature, having been, among other things, Technical Director of Technicolor Motion Picture Corporation. Wadsworth was the man who invented the complicated process which made it possible for Gene Kelly to dance with a cartoon mouse in the Metro-Goldwyn-Mayer color production, "Anchors Aweigh."

Wadsworth also designed the instrument lighting system in the 747 cockpit and instrument panel to produce uniform illumination of any desired intensity.

With his practical, inventive turn of mind. Wadsworth has come forth with an idea relating to the development of energy.

In what follows in this letter, I shall set forth my understanding of his latest and suggest to you that if you believe, as I do, the idea has potential merit, that it be passed along to somebody in Mr. Zarb's office for further consideration and valuation.

In brief, wind is a variable source of power. For centuries man has used this variable power in situations that did not require constant energy, as in pumping water or grinding grain.

It is common knowledge that there is sufficient wind at certain times and in certain areas of the world to drive a windmill connected to a small electrical generator. The problem is what happens to the electricity thus generated?

Wadsworth's thought is that the electricity generated from

windpower could be used immediately to break water into its components of hydrogen and oxygen. Hydrogen is easily stored and represents a source of potential energy, similar to methane gas. It can be burned when needed, and when so burned, it can be used as methane is used as a constant source of energy to produce electricity when needed.

What is now required, is to have this idea evaluated by those in the energy business. If it is believed this has merit, a small pilot program should be undertaken.

Kindest personal regards.

Sincerely,

Volney F. Morin

VFM:bem/mp

cc: Wadsworth E. Pohl

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THE WHITE HOUSE

WASHINGTON

November 4, 1975

MEMO FOR: JIM CONNOR

THROUGH: PHIL BUCHEN P.

FROM: KEN LAZARUS

SUBJECT: Location of COALCON Project

Counsel's Office agrees with the recommendation of Dr. Seamans and recommends that the White House not become involved in the selection of the COALCON site.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: November 3, 1975 Time:

FOR ACTION: cc (for information):

Phil Buchen
Jack Marsh
Max Friedersdorf
Frank Zarb

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, November 4 Time: 2 P.M.

SUBJECT:

Jim Cannon memo 11/1/75 re
Location of ERDA's COALCON Project --
Of Interest to Senator Robert Byrd and Others

ACTION REQUESTED:

____ For Necessary Action ___X___ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

___X___ For Your Comments ____ Draft Remarks

REMARKS:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

ACTION

November 1, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Location of ERDA's COALCON Project--Of Interest to Senator Robert Byrd and Others

Background

The Energy Research and Development Administration is now in the final stages of evaluating possible sites for a $150 million demonstration plant using the COALCON process which involves the conversion of coal to pipeline quality gas and a liquid that could be used under industrial and utility boilers. It will be ERDA's first large demonstration project.

The controversial proposal now before ERDA resulted from a request issued by the Office of Coal Research (now a part of ERDA) in early 1974 for proposals for converting coal into clean boiler fuel. Many proposals were expected, but COALCON was the only one received that was considered responsive to the request.

The COALCON process is owned by Union Carbide, which has brought other firms (e.g., Ashland Oil, American Electric Power Co., General Tire) into a joint venture for production based on the process.

The ERDA program involves three stages:

I. Plant design. 100% of costs will be paid by ERDA.
II. Engineering and construction. Costs will be shared 50-50 by ERDA and COALCON.
III. Operations. 100% of costs and responsibility will be carried by COALCON.

Status

ERDA's current task is to select a site from among those nominated by the joint venture. Sixteen were initially

nominated, but these have been narrowed down to eight sites--two in West Virginia, two in Ohio, one each in Illinois, Kentucky, Pennsylvania, and Indiana.

Proposed sites are now being evaluated by a board appointed by Dr. Seamans. The board will give its evaluation to Dr. Seamans within the next few days and Dr. Seamans will make and announce his selection sometime after November 4. ERDA will then have to issue an Environmental Impact Statement before work can proceed.

Sites Still Under Consideration

According to ERDA officials, the remaining sites being evaluated are:

· Leading Candidates	Congressional District
- New Athens, Ill. (near East St. Louis)	23rd (Price)
- Haverhill, Ohio (near Portsmouth)	6th (Harsha)
- Ravenswood, W. Va. (near Parkersburg)	3rd (Slack)
- Baskett, Ky. (near Evansville, Ind.)	1st (Hubbard)
· Other Candidates	
- Morgantown, W. Va.	2nd (Staggers)
- Clinton, Pa. (Northeast of Pittsburgh)	12th (Murtha)
- Mt. Vernon, Ind. (Near Evansville)	8th (Zion)
- Belmont, Ohio (Near Wheeling, W. Va.)	18th (Hays)

Interest Expressed by Congressional Delegations and Others

Senator Robert Byrd has been forceful in voicing his support for selection of a site in West Virginia. He chairs the Subcommittee that handles a large share of ERDA's appropriations. Dr. Seamans has told Senator Byrd that he has not yet made his decision and that he would consider all appropriate factors and base his decision on what is best in the overall national interest. Seamans expects his decision to be challenged no matter which site he selects. He is concerned that he will be charged with giving in to Senator Byrd's pressure if he selects a West Virginia site.

Senator Jennings Randolph, Harley Staggers and Ken Hechler also support a West Virginia site.

Governor Rhodes has written you in behalf of Ohio, pointing out that he helped get the consortium together (Tab A). Wayne Hays has talked to Max Friedersdorf in behalf of the Belmont, Ohio, site.

Senator Percy and Mel Price have expressed strong support for the Illinois site.

Dr. Seamans' Decision

Dr. Seamans does not plan to discuss his selection in advance with the White House unless asked to do so. He indicates that he could discuss it but that:

- He believes that advance discussion might unnecessarily involve the White House and the President in a decision that will undoubtedly make many losers unhappy.

- He received assurances before taking the ERDA Administrator job that decisions such as this would be his to make.

Unless we inform him otherwise, Dr. Seamans will proceed with the decision.

DECISION

___Dr. Seamans to brief the President on COALCON

___Dr. Seamans to select the COALCON site

OFFICE OF THE GOVERNOR
COLUMBUS, OHIO 43215

October 6, 1975

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D. C.

Dear Mr. President:

The federal government through a contract with Coalcon, a subsidiary of Union Carbide Corporation and a division of the General Tire Company, plans to construct and operate a coal conversion plant in the Ohio River Valley. The project began when the Office of Coal Research was part of the U. S. Department of Interior under Secretary Rogers Morton, but the $237 million contract was actually signed with the U. S. Energy Research and Development Administration after the federal re-organization.

Attracting this facility to the State of Ohio and working with Coalcon and the industrial consortium supporting Coalcon has been a personal effort of mine both before and after returning to this office. Half of the members of the consortium were attracted to the venture by me and my associates. This includes Y. & O. Coal, Ashland Oil, American Electric Power and Consolidated Gas. This is half of the consortium members, excluding the political entities.

At my request also, the Ohio General Assembly has enacted into law a specific tax moratorium bill which eliminates the following taxes: personal property, franchise, income tax, sales tax and payroll tax. In addition, the same legislation authorizes and directs the State to buy the land for the establishment and to deed it to Coalcon at no cost to the consortium and further the State shall issue the industrial bonds necessary to construct the facility, thus reducing the interest cost. In addition to the above, if the initiative petition issues on the State ballot are affirmed in November, the State will build all necessary dock facilities for the establishment at no cost to the consortium.

The Ohio coal which has been pledged as feeder for this facility is of the high sulphur type specified by the federal government. From all points of view, Mr. President, Ohio is prepared to co-venture with the federal government the costs

of establishing and operating this coal conversion facility. The purpose of this letter is to gain the support of your administration in locating the facility within Ohio.

Very truly yours,

James A. Rhodes
Governor