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Need For Improving The Regulation Of The Natural Gas Industry And Management Of Internal Operations

B-180228

Federal Power Commission

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

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Sept. 13, 1974

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-180228

The Honorable John E. Moss
House of Representatives

Dear Mr. Moss:

This is our report on the need for improving the regulation of the natural gas industry and management of internal operations, Federal Power Commission. Our review was undertaken in response to your request of October 10, 1973, and encompassed the specific issues raised in your letter as well as additional matters that came to our attention during our examination.

Copies of this report are being sent to the House and Senate Committees on Appropriations; House and Senate Committees on Government Operations; Subcommittee on Communications and Power, House Committee on Interstate and Foreign Commerce; the Director, Office of Management and Budget; the Chairman, Civil Service Commission; the Chief Judge, United States Court of Appeals for the District of Columbia; the Chairman, Federal Trade Commission; and the Chairman, Federal Power Commission.

We believe that this report would be of interest to other committees and Members of Congress. However, we do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

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ABBREVIATIONS

ALJ	administrative law judge
BCF	billion cubic feet
BNG	Bureau of Natural Gas
BTU	British thermal unit
CSC	Civil Service Commission
FPC	Federal Power Commission
FTC	Federal Trade Commission
GAO	General Accounting Office
LNG	liquefied natural gas
MCF	thousand cubic feet
OGC	Office of the General Counsel
OPP	Office of Personnel Programs
SNG	synthetic natural gas

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COMPTROLLER GENERAL'S REPORT
TO THE HONORABLE JOHN E. MOSS
HOUSE OF REPRESENTATIVES

NEED FOR IMPROVING THE
REGULATION OF THE NATURAL
GAS INDUSTRY AND MANAGEMENT
OF INTERNAL OPERATIONS
Federal Power Commission
B-180228

DIGEST

WHY THE REVIEW WAS MADE

GAO was asked to review aspects of Federal Power Commission (FPC) operations regulating the natural gas industry. (See app. I.)

The review was expanded to include additional problems discovered during the course of examination. These findings are included in the report although outside the scope of the original request.

Basic facts

In 1938 the Congress passed the Natural Gas Act giving FPC jurisdiction over companies which transport and sell natural gas in interstate commerce.

In 1954 the Supreme Court of the United States held that FPC must also regulate prices charged by gas producers to interstate pipelines.

Since then, FPC has worked to adapt the Natural Gas Act to regulation of gas producer sales, to insure that such sales are made at just and reasonable rates.

In recent years FPC issued various orders intended to alleviate natural gas shortages by encouraging greater dedications of natural gas to the interstate market.

These orders provided for emergency gas sales--short-term sales at unregulated rates--and an optional certificate procedure for use by producers for long-term sales of natural gas at rates higher than those previously permitted, if found to be in the public interest by FPC.

FINDINGS AND CONCLUSIONS

Extensions FPC granted to producers making 60-day emergency gas sales were improper

--because they were not authorized by FPC regulations and

--because they were contrary to FPC's stated intention to limit producer emergency sales to a single 60-day period. (See pp. 4 to 6.)

In addition, extensions granted by FPC during the Federal court's stay of FPC's order implementing 180-day emergency sales were particularly troublesome. GAO believes these extensions negated the effect of the court stay and raise serious questions as to the propriety of FPC's actions.

FPC maintains that when the court stayed its order implementing 180-day emergency sales, FPC was faced with the problem of either forcing interruptions in the flow of gas or granting extensions to 60-day emergency gas sales.

FPC was anticipating a gas shortage and believes that the extensions questioned were a legal and necessary exercise of its powers in the public interest. (See pp. 6 to 8.)

Tear Sheet. Upon removal, the report cover date should be noted hereon.

FPC needs to obtain complete and accurate data on the volume and price of natural gas brought to the interstate market.

Orders implementing emergency gas sales either were not enforced or required only submission of estimates when the sale began. As a result, FPC relied on incomplete and inaccurate data in its decisionmaking processes. (See pp. 14 to 20.)

Because FPC failed to take final action on applications made under FPC's optional certificate procedure within 6 months, customers paid higher prices for natural gas than may be just and reasonable.

In one case a producer received about twice as much for the gas he sold than he would have received under the prevailing area rate--about $828,000 more--because his application was not acted on within 6 months. His application was ultimately denied by FPC, and the higher amounts paid by gas customers cannot be recovered. (See pp. 28 to 30.)

GAO found widespread noncompliance by FPC officials with the agency's standards of conduct regulations intended to prevent conflicts of interest.

Most FPC officials, including officials responsible for obtaining and reviewing the reports, had failed to file required financial disclosure reports for several years.

In several cases, FPC officials had financial interests prohibited by FPC regulations; but, because of the breakdown in FPC's reporting and review procedures, timely corrective action could not be taken.

These facts demonstrate that the program had been ineffective in insuring that upper level FPC officials did not have financial interests that could conflict with their duties. (See pp. 31 to 37.)

The report also discusses public statements of FPC Commissioners (see pp. 44 to 46), FPC pricing policies and their effect on gas supply and price (see pp. 47 to 53), and FPC and the Federal Trade Commission (FTC) interaction during FTC's investigation of the natural gas industry (see pp. 54 to 62.)

RECOMMENDATIONS

GAO is making many recommendations to improve FPC's administration over the areas reviewed. The thrust of the recommendations to the Chairman, FPC, is to:

--Improve FPC's monitoring of interstate gas sales by imposing reporting requirements on regulated entities, establishing an adequate data and recordkeeping system, and requiring timely and complete reporting of gas sales data. (See p. 20.)

--Improve the processing of applications under the optional certificate procedure to insure that gas consumers are not charged rates which are higher than justified.

This may require that FPC (1) establish priority scheduling for those sales which begin before receiving final FPC approval, (2) require a refund for rates received above that determined to be just and reasonable, and (3) extend the time before which a producer can begin to charge the rate specified in the application. (See p. 29.)

--Improve FPC's procedures to insure that upper level officials do not own

financial securities which could result in a conflict of interest.

This will require FPC to establish adequate procedures for (1) identifying and notifying officials required to file financial disclosure reports, (2) promptly reviewing reports, (3) promptly notifying officials owning prohibited securities and require divestiture of the stocks, and (4) investigating all cases when officials have held securities that could conflict with their duties to determine if disciplinary action should be taken. (See pp. 37 to 39.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

In a letter dated July 19, 1974, the Chairman, FPC, generally agreed with GAO's recommendations and indicated action had been taken or was planned to implement many of them, while others were being actively considered.

Although the Chairman did not specifically address himself to each recommendation, the overall tenor of his comments was favorable. GAO plans to monitor the steps taken by FPC to improve its operations in line with the recommendations.

The Chairman disagreed with GAO's position that extensions of 60-day emergency sales granted gas producers were improper. The Chairman, relying on his General Counsel's opinion that FPC had plenary authority to waive the requirement that emergency sales be terminated after 60 days, said the granting of extensions was a legal and necessary exercise of FPC's powers and was in the public interest. (See pp. 73 to 76.)

To accept FPC's interpretation of its authority would, in GAO's view, make a sham of the regulatory process and render litigation by dissenting parties futile. Resolution of this matter, however, lies with the Congress and the courts.

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CHAPTER 1

INTRODUCTION

The Federal Power Commission (FPC) was established in 1920 by the Federal Water Power Act (16 U.S.C. 791). Initially, FPC, comprising three commissioners from the executive branch--the Secretaries of War, Agriculture, and the Interior--was given regulatory authority over water power projects on certain waterways and adjacent public lands. In 1930 the Congress transformed FPC into an independent regulatory agency comprising five commissioners, appointed by the President with the advice and consent of the Senate.

At present, the five commissioners are appointed for staggered 5-year terms with not more than three commissioners belonging to the same political party. The President designates one commissioner as Chairman, who is responsible for the day-to-day management of FPC.

Over the years, additional responsibilities have been given to FPC. The Public Utility Act of 1935 (16 U.S.C. 971) gave FPC jurisdiction over public utility companies engaged in the interstate sale and transmission of electricity, and consolidated previous legislation into what is known as the Federal Power Act. This act gave FPC responsibility for insuring that the United States has an abundant supply of electricity at reasonable rates and directed FPC to seek voluntary interconnection of generating and transmission facilities. A major expansion of FPC's responsibilities occurred in 1938 when the Congress passed the Natural Gas Act (15 U.S.C. 717). This act gave the FPC jurisdiction over companies which transport and sell natural gas in interstate commerce. These companies were required to obtain certificates of public convience and necessity from FPC before undertaking interstate operations and approval from FPC before terminating such operations.

In passing the Natural Gas Act, the Congress intended to insure that the ultimate consumer of natural gas received (1) the lowest reasonable rate, (2) protection from exploitation by natural gas companies, and (3) complete permanent, and effective protection against excessive rates and charge

Before 1954 FPC construed the Natural Gas Act as authorizing only the regulation of interstate gas sales by pipelines. In 1954 the Supreme Court in Phillips Petroleum Co. v. Wisconsin, held that FPC must also regulate prices charged by gas producers to interstate pipelines. Since that time FPC has been engaged in a continuing effort to adapt the Natural Gas Act to regulation of gas producer sales, to insure that such sales are made at just and reasonable rates.

Initially FPC attempted producer regulation through a company-by-company approach. Six years later--1960--when this approach had caused a serious backlog of producer rate cases, FPC established an area rate method for pricing natural gas. By this method, maximum prices were

established for natural gas produced in a specified geographic area and certificates of convenience and necessity were issued allowing producers to sell natural gas at a rate consistent with the appropriate area rate determination. This regulatory approach received Supreme Court approval in 1968.

In an attempt to bring more gas to the interstate market, FPC issued Order 455--optional certificate procedure--in August 1972. This order established a new certificate procedure for gas producers which could be used instead of the area rate method. Order 455 allowed a gas producer to submit for FPC approval a contract negotiated by the producer and the purchaser stipulating a natural gas rate exceeding the area rate ceiling.

A producer by following this optional procedure waives all rights to receive further rate increases for the gas being sold under the contract, except for any fixed periodic price escalations specified in the contract.

In recent years, when gas companies under FPC jurisdiction began curtailing gas deliveries to customers because of insufficient gas supplies, FPC issued various orders to help alleviate the problem by encouraging greater dedications of natural gas to the interstate market.

In 1970 FPC issued Orders 402 and 402-A, which were designed to encourage intrastate pipelines and distribution companies--which are exempt from FPC jurisdiction--to make short-term sales or deliveries of natural gas in interstate commerce without prior FPC review, in order to provide jurisdictional companies with emergency gas supplies for up to 60 days. In 1970 FPC also issued Order 418, which allowed gas producers, subject to FPC jurisdiction, to make emergency sales of gas to interstate pipelines without prior FPC authorization for periods up to 60 days. The intent of these orders was to permit short-term sales of gas at prices generally exceeding area rate ceilings, in hopes of attracting new gas to the interstate market.

FPC issued Orders 431 and 431-A in April 1971 and July 1972, respectively. These orders provided that certificates permitting interstate operations could be issued for a limited duration (usually less than 3 years) if FPC found that an emergency existed on the gas purchasers system and the rate to be charged was reasonable.

In September 1973 FPC issued Order 491, which extended emergency sales under Orders 402, 402-A, and 418 from 60 to 180 days to help alleviate the gas shortage anticipated for the 1973-74 heating season. In March 1974 FPC returned the duration of emergency sales to the original 60 days.

On June 21, 1974, FPC issued Opinion 699, which (1) terminated the producer emergency gas sales program under Order 418 and the limited-term certificate program under Orders 431 and 431-A and (2) established a uniform nationwide rate for natural gas producers in lieu of the several area rates previously used. The optional certificate procedure remained in effect.

FPC ORGANIZATION

FPC is organized into a headquarters and five regional offices. About 90 percent of FPC's staff is assigned to the several bureaus and offices comprising headquarters. The principal headquarters units and their responsibilities are:

--Bureau of Power--performs necessary staff work involving the regulation of non-Federal hydroelectric projects and interstate sales of electricity.

--Bureau of Natural Gas (BNG)--performs necessary staff work involving the regulation of interstate pipelines and interstate sales of natural gas by gas producers and pipelines.

--Office of Economics--prepares economic and statistical studies and makes economic policy recommendations to the Commission.

--Office of the General Counsel (OGC)--responsible for the legal phases of all FPC functions, including litigation in the courts.

--Executive Director--responsible for the effectiveness and efficiency of staff operations and reports to the Chairman on administrative and executive matters.

--Office of Environmental Quality--responsible for environmental reviews under the Federal Power Act, the Natural Gas Act, the National Environmental Policy Act, and related statutes.

--Chief Engineer--responsible for FPC's program for conservation of energy and the efficiency of energy systems of regulated public utilities and natural gas companies and their customers.

FPC was afforded an opportunity to comment on this report. By letter dated July 19, 1974, the Chairman, FPC furnished us with voluminous comments, exhibits, and other materials, including staff papers prepared by the principal offices involved in the matters discussed in the report. The Chairman's letter and pertinent excerpts of the remaining material are attached as appendix II. The substance of the comments and our evaluation of them are discussed in the sections to which they apply.

CHAPTER 2

IMPROPER EXTENSIONS OF EMERGENCY GAS SALES CONTRACTS

As of December 31, 1973, FPC had granted 96 1/ extensions to producers making 60-day emergency gas sales, without issuing regulations authorizing such extensions as required by the Natural Gas Act. Moreover, the circumstances surrounding the granting of certain of these extensions raise questions as to the propriety of FPC's actions.

FAILURE TO ISSUE NECESSARY REGULATIONS AUTHORIZING CONTRACT EXTENSIONS

Consistent with its aim of getting more natural gas into the interstate market, FPC issued Order 418 on December 10, 1970. Order 418 added a new dimension to FPC's efforts to deal with the gas shortage by amending the regulations to encourage independent natural gas producers to make emergency sales to interstate pipelines and to encourage emergency operations (e.g., exchanges) between pipelines. The order authorized emergency producer sales and emergency operations for up to 60 days without the need for prior FPC certification under the Natural Gas Act.

Section 7 (c) of this act (15 U.S.C. 717f(c)) provides that:

> "* * * the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest." (Underscoring supplied.)

In our view, the underscored portions were enacted because some circumstances (i.e., when the "public interest" so requires) are such that FPC should be able to authorize temporary natural gas transactions by persons and companies that are not applicants for permanent certificates and without the delay occasioned by the usual notice and hearing procedures. This is not to say, however, that such measures are not to be made a matter of public disclosure. Therefore, we interpret the statute to mean that FPC may, if in the interest of the general welfare, issue regulations to deal with the exigencies of a situation; that such regulation may exempt interstate natural gas transactions from the requirements of 7(c); but that

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1/ We used the records of the Secretary, FPC, in arriving at the 96 extensions to the 60-day producer emergency gas sales. BNG records, however, showed that about 130 extensions were granted. We could not reconcile these differences.

all such measures are, by the statute's terms, to be a matter of regulatory policy.

In the Natural Gas Act the Congress provided for regulation of natural gas in interstate commerce. And it is reasonable that in doing so, the Congress required FPC to exercise its emergency authority within the regulatory framework of the act and to take steps necessary to deal with emergencies "by regulation," that is, by orders issued pursuant to the act, specifying the temporary acts or operations to be exempted. Clearly a benefit of requiring FPC to deal in a regulatory framework with those temporary measures taken in the public interest is that the public is thus notified of FPC's actions. While in emergencies FPC can waive the usual requirements of notice and comments when promulgating regulations, interested persons would nevertheless learn of the FPC policy and be able to express their views of thereon to the Commission. We think the Congress recognized this benefit and, therefore, provided that, when the need presented itself, FPC could exempt temporary acts and operations, but only if it did so "by regulation."

In Order 418 FPC stated that several parties had suggested that the proposed 60-day period of emergency operation be extended to periods ranging from 3 to 6 months. FPC rejected these suggestions because to do so would be a drastic departure from its stated purpose. FPC deferred dispositon of the longer-term emergency sales issue "until such time as we may propose additional rules applicable to emergency transactions on a more extended basis."

Thus, Order 418 did not authorize extensions of emergency operations or sales initiated thereunder for additional periods. In fact, it specifically provided that emergency operations and emergency sales or transportation undertaken without certificate authorization were to be for a single 60-day period and "shall be discontinued upon the expiration of the 60-day period." (Underscoring supplied.)

As of December 31, 1973, FPC had approved 96 extensions to producers making 60-day emergency sales pursuant to Order 418, allowing the producers to charge the same rate as charged under the initial 60-day emergency sale.

We believe these extensions are objectionable because they represent a departure both from FPC's stated intentions and its regulations.

Clearly, FPC had the authority to include extension-of-sale provisions in Order 418 or to amend the order when FPC decided that extensions were desirable. Had it done so, the extension provisions would have been subject to scrutiny and comment by interested parties. FPC's failure to do so, coupled with the requirement in the order for discontinuance at the end of the 60 days, leads us to conclude that any extensions of temporary authority under Order 418 are of questionable legality since they were not contemplated by or granted pursuant to a duly promulgated FPC regulation.

FPC's General Counsel believes FPC had plenary authority to waive requirements in the regulations when it deemed it necessary, and the extension of the deadline when emergency operations must be terminated was within FPC's authority. We do not agree.

EXTENSIONS GRANTED TO PREVENT INTERRUPTIONS IN SERVICE

Extensions granted to companies applying for limited-term certificates

On June 20, 1973, the Commission, by memorandum, authorized the Secretary of FPC to grant extensions to those producers who were making 60-day emergency sales under Order 418 and who also had a pending application for a limited-term certificate under Orders 431 and 431-A. The delegation to the Secretary stated that, to prevent a forced interruption of service to pipelines with emergency needs, the Secretary was authorized to routinely grant an extension when a 60-day emergency sale had commenced under Order 418 and when action could not be taken on the pending application for a limited-term certificate before expiration of the sale.

In a joint memorandum to the Commission dated June 20, 1973, OGC and BNG responded to a question as to whether FPC should authorize an unconditioned grant of an extension. The memorandum stated that, since the central issue in limited-term certificate applications was the price sought by the producer, it would be inappropriate to permit the continued sale of gas at the emergency sale price without appropriate safeguards. The memorandum recommended that the extensions include a refund provision down to the price ultimately arrived at for sales under the limited-term certification, or, if the certificate application was withdrawn, down to the applicable area rate ceiling.

Under the Commission's written delegation of authority, the Secretary granted 86 1/ extensions to sales being made under Order 418, but only 1 extension contained the recommended refund provision.

In 26 of the 86 cases, after obtaining the extensions, the companies withdrew their applications before final action by FPC on their limited-term certificates. In 8 of these 26 cases the company, after withdrawing its application, sold gas to the same customer under Order 491 at rates generally higher than those permitted under limited-term certificates. Thus sales were made at unregulated rates for periods up to 300 days--a 60-day emergency sale, a 60-day extension, and a 180-day emergency gas sale under Order 491.

1/ In two cases the companies had withdrawn their limited-term certificate applications before seeking an extension. The Secretary inadvertently granted the extension sought.

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In the remaining 18 cases, the sales were terminated at the expiration of the extension. Thus the company sold gas at unregulated rates for more than 60 days and the intended benefits of the extensions--uninterrupted gas supplies--were not realized.

Extensions granted to cope with court stay of Order 491

On September 14, 1973, FPC issued Order 491 which essentially extended from 60 to 180 days the period in which emergency sales could be made under Orders 402, 402-A, and 418.

In issuing Order 491, FPC dispensed with public notice and comment on the new regulations because in FPC's view an impending gas shortage required action to enable gas consumers to obtain reliable service during the 1973-74 winter heating season. Order 491 was made effective on the date of issuance.

On September 20, 1973, the Consumer Federation of America and others applied to FPC for rehearing of Order 491 and stay of the order's effectiveness pending review.

On September 21, 1973, a suit was filed in Federal court by the Consumer Federation of America, et al, in opposition to Order 491 which claimed, in part, that such action was de facto deregulation of the natural gas industry and that FPC's procedures in issuing Order 491 failed to comply with the regulatory procedural requirements of the Administrative Procedure Act.

On September 25, 1973, FPC issued Order 491-A providing for public comment on the new regulation modifications, although the regulations were allowed to remain in effect. Order 491-A stated that the rehearing sought by the Consumer Federation of America was being treated as a motion for reconsideration and would be taken under advisement and deferred pending a further FPC order to be issued on or before November 13, 1973, after receiving any public comments on Order 491.

On September 26, 1973, FPC responded to the motion for stay of Order 491 filed with the court by the Consumer Federation of America, et al. In its response, the FPC presented data indicating what it believed to be an impending nationwide shortage of natural gas during the 1973-74 winter season. FPC stated that its previous rules limited emergency sales to 60 days only, and this period was too short to obtain sufficient gas commitments for the winter heating season, whereas gas commitments would be increased if the length of sales was extended to 180 days. FPC advised the court that FPC's action in meeting this emergency represented a clear case in which the fulfillment of FPC's statutory duties required the interest of private litigants to give way to the realization of public purposes and requested the court to deny the motion for stay.

On October 3, 1973, the court stayed implementation of Order 491 pending final FPC action on the motion for reconsideration made by the Consumer Federation of America. FPC did not appeal this ruling.

On November 2, 1973, FPC, after considering the opposition of the Consumer Federation of America and others, issued Order 491-B reaffirming Order 491.

From October 3 to November 2, 1973, FPC approved extensions to 21 emergency sales entered into pursuant to Order 418. As noted previously, extensions were not authorized by Order 418.

Furthermore, eight of the extensions granted were to companies that had no applications pending for limited-term certificates under Orders 431 and 431-A, which was the only basis for an extension in the written delegation of authority given by the Commission to the Secretary.

We asked the Secretary, FPC, why extensions were granted to companies engaged in 60-day emergency sales when there were no pending applications for limited-term certificates. The Secretary said the Commission orally authorized him to grant extensions, even when limited-term certificate applications were not pending. The Secretary could not tell us exactly when this oral delegation of authority was made.

Order 491 provided that producers making 60-day sales could begin a new 180-day sale when the 60-day sale expired. The Chief, BNG, told us that, when the court stayed implementation of Order 491, FPC was faced with the problem of either forcing interruptions in the flow of gas or granting extensions under the 60-day order. According to the Chief, FPC was anticipating a severe gas shortage for the 1973-74 winter and stated that extending the 60-day sales was the only way it could get the gas.

We reviewed the Secretary's records of Commission meetings but found no evidence that Order 491 was brought up at any Commission meeting and no record of Commission discussions of (1) the court stay of Order 491, (2) the need to grant extensions to companies selling under Order 418 but which had not filed for limited-term certificates, or (3) a delegation of authority to the Secretary.

CONCLUSIONS

The extensions granted to producers selling under Order 418 were improper because they were not authorized by a duly promulgated FPC regulation. Also the extensions run counter to FPC's stated intentions and clear commitment to limit the duration of emergency producer sales to 60 days until additional regulations were issued. While the Commission no doubt acted in accordance with what it viewed as the public interest, such actions must be conducted within the regulatory framework of the Natural Gas Act. In our opinion, this was not done.

The eight extensions granted producers whose 60-day emergency sales expired during the period of the court stay of Order 491 are particularly troublesome. It is clear these extensions were intended to carry out FPC's objective of maintaining an uninterrupted flow of gas during a period of perceived gas shortages. Equally clear is that FPC's actions in granting the extensions negated the effect of the court stay.

The dilemma FPC found itself in was of its own doing. Had FPC issued the appropriate regulations in February 1971 when it began to grant extensions to producers making 60-day emergency sales, the issues involved could have been settled by the time of the court imposed stay of Order 491 in September 1973.

In any event, when the court was not swayed by FPC's argument that the public interest required immediate authorization of emergency sales for longer than 60 days, it was incumbent on FPC to either appeal the court ruling imposing a stay of Order 491 or issue regulations permitting extensions of emergency producer sales. The granting of the eight extensions without exhausting other remedies, raises serious questions as to the propriety of FPC's actions.

We cannot agree with the FPC General Counsel's assertion that the Commission has plenary authority to waive regulations. Such authority would make a sham of the regulatory process.

When considering Order 418 the Commission specifically rejected the proposal that emergency producer sales be authorized for periods exceeding 60 days, deferring the question until additional regulations could be proposed. These additonal regulations were embodied in Order 491, which the court saw fit to stay.

If the Commission's plenary authority can then be used to accomplish what could not be accomplished through formal regulations, then litigation by dissenting parties is futile. However, final resolution of this matter lies with the Congress and the courts.

AGENCY COMMENTS AND OUR EVALUATION

Failure to issue regulations

In his July 19, 1974, letter, the Chairman, FPC, stated that our report:

> "* * * concludes that all extensions of emergency sales were improperly granted because the Commission did not undertake a public rulemaking proceeding with opportunity for the submission of data and views by interested parties before granting extensions to meet the emergency.
>
> "It is the opinion of the General Counsel that the Commission is not so restricted in meeting emergency situations. * * * The very idea

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of a public rulemaking proceeding to extend emergency procedures would seem antithetical to the existence of the emergency."

* * * * *

"The principal objection of the report to the Commission's granting extensions of emergency sales to avoid interruptions of service during the emergency appears to be that the practice was not a 'matter of regulatory policy.' This assertion is without foundation. All grants of extensions of emergency sales to avoid interruptions of service during the emergency were the result of a considered Commission regulatory policy consistent with the public interest in continuous gas service."

The Chairman disagreed with our conclusion that the extensions of 60-day emergency producer sales under Order 418 were improper. He added that:

"It is indeed relevant to observe that over the entire period since May 7, 1970, when Order No. 402 was issued, there has been no objection to the practice in spite of the fact that the Federal Power Commission is a closely supervised regulatory agency in terms of public examination and legislative oversight."

The Chairman has misstated our position on several points. First, it is not our principal objection that the extensions of emergency sales were not a matter of regulatory policy. We never doubted that the extensions were part of FPC's policy. Our objection is to the fact that FPC's policy was not embodied in nor carried out "by regulation" as required by the Natural Gas Act.

Secondly, GAO never maintained that the Commission could never act without first conducting a public rulemaking proceeding. However, we do maintain that the Commission's efforts to deal with emergencies must be carried out by regulation. In this connection the FPC General Counsel's memorandum is instructive. (See p. 85.) He correctly points out that the law permits the usual requirements of notice and comments to be bypassed when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. In issuing Order 491 FPC dispensed with its normal procedures of notice and comment because the emergency demanded immediate action. The regulations were made effective on the date of issuance. Nevertheless, FPC did provide for after-the-fact comment and the new 180-day emergency sale policy was embodied in a duly promulgated regulation. The extensions to sales made under Order 418 were not.

With respect to the Chairman's comment that a public rulemaking proceeding was antithetical to the existence of the emergency, it need only be remembered that extensions to 60-day emergency producer sales under Order 418 were made over a 32-month period, February 1971 to November 1973. Surely appropriate regulations could have been issued within that

time period, and especially since FPC could have waived the notice and comment requirements, had it found it necessary to do so.

Lastly, we do not object to "all extensions of emergency sales." Orders 402 and 402-A clearly authorized extensions of sales upon application by the parties involved. Equally as clear is the fact that Order 418 rejected the notion that producer emergency sales should be authorized for more than a single 60-day period.

We fail to see any relevance in the Chairman's observation that since Order 402 was issued there had been no objection to the emergency sales extensions. As previously noted, Orders 402 and 402-A provided for extensions of emergency sales and no objection could be expected. In view of (1) FPC s clear commitment to limit producer sales under Order 418 to 60 days and (2) the absence of any public announcement that the policy had changed and extensions were to be granted to producers, who had an opportunity to object? The Chairman is apparently placing great weight on the technicality that, had someone visited FPC's Office of Public Information and asked for and examined the right files, he could have discovered that extensions were being granted. We fail to see how the absence of a dissent in this situation could be considered a public endorsement of FPC's actions.

A clearer picture of the reaction of those who closely follow FPC actions can be discerned from what happened when FPC attempted to extend emergency p. cer sales to 180 days through the issuance of Order 491. As previously discussed, FPC's action was quickly challenged in the courts by the Consumer Federation of America, American Public Gas Association, American Public Power Association, and the National League of Cities-United States Conference of Mayors.

Extensions granted to offset effect of court stay of Order 491

In justifying the extensions granted during the court-imposed stay of Order 491, the Chairman cited the severe energy shortage confronting the Nation in September 1973 and stated that as a matter of public policy it would have been contrary to the public interest to cut off sales at that time. The Chairman expressed the opinion that FPC had responded to an emergency situation within its powers as delegated by the Congress. The Chairman stated that the eight extensions questioned by GAO were a legal and necessary exercise of its powers. He cited the General Counsel's opinion that:

> "* * * the GAO report states that some extensions of the 60-day emergency sales were granted 'to offset the effect of the court stay' of Order No. 491. This action was not improper since the 60-day procedure established by Order No. 418 was effectively reinstated and effective after the court stay."

The Chairman also stated that our report was misleading when it stated that the FPC Secretary's records contained no record of discussions

of the court stay of Order 491, the need to grant extensions to companies that had not filed for a limited-term certificate, or a delegation of authority. The Chairman said there were extended discussions of these subjects but that the Secretary maintains records only of actions taken by the Commission on each formal agenda item. The Chairman further advised us that there was an oral delegation of authority given the Secretary.

Our examination of the Secretary's records was undertaken for the purpose of obtaining insight into the Commission's thinking. What we found was:

--The Secretary had not prepared official minutes of Commission meetings for a period of one year.

--Orders 491 and the subsequent affirming orders were never placed on the Commission's agenda. The only explanation we were able to obtain from the Secretary was that these orders must have been acted upon in executive sessions, of which no records are maintained.

--The Secretary had no record of the Commission taking action delegating him authority to grant extensions to companies that had not filed applications for limited-term certificates.

We never doubted that the Secretary was told to do what he did. We were interested in learning why the Commission decided to grant extensions in the face of the court stay of its order extending the length of emergency sales. This we were unable to do.

FPC does not deny the fact that its action was intended to offset the effect of the court stay. It does maintain that its action was proper. We cannot agree.

The General Counsel's assertion that the court stay effectively reinstated Order 418 is entirely correct. As discussed earlier, however, Order 418 did not authorize emergency sales beyond the initial 60-day period. Order 491 was an attempt to extend the 60-day period to 180 days and the court saw fit to stay implementation of the order.

The General Counsel maintains that the extensions represent a waiver of the requirement that the sales be terminated after 60 days. He stated that:

> "* * * as in any other regulation, the Commission has authority to waive the provisions of the regulation in appropriate circumstances. Cf. Municipal Light Boards v. F.P.C., 450 F. 2d 1341 (D.C. Cir. 1972); Municipal Electric Utility Ass'n. of Ala. v. F.P.C., 485 F. 2d 967 (D.C. Cir. 1973)."

Our analysis of the cited cases showed that neither case involved the waiver of regulations affecting third parties. The aspects of both cases

pertinent to this discussion involved routine internal management and housekeeping functions. In our opinion neither case can be construed to authorize waiver of regulations as a means to implement substantive program or policy changes.

CHAPTER 3

EMERGENCY GAS SALES: NEED FOR COMPLETE AND ACCURATE DATA

FPC needs to obtain complete and accurate data on the volume and price of gas brought to the interstate market by its emergency gas sales program to adequately assess their effectiveness. The orders implementing emergency sales either were not enforced or required only submission of estimates when the sale began. As a result, FPC relied on incomplete and inaccurate data in its decisionmaking processes.

Steps have been taken or are planned by FPC to improve its data collection system.

FAILURE TO OBTAIN ACTUAL PRICE AND VOLUME DATA

In 1970 FPC issued Orders 402 and 402-A, which were designed to encourage intrastate pipelines and distribution companies--which are exempt from FPC jurisdiction--to make short-term sales or deliveries of natural gas in interstate commerce without prior FPC review. This was intended to provide jurisdictional companies with emergency gas supplies for up to 60 days. The effect of these orders was to permit short-term sales at prices generally exceeding area rate ceilings, thus hoping to attract new gas to the interstate market.

Orders 402 and 402-A require the seller or transporter, within 10 days after the emergency sale commences, to file with FPC a statement in writing and under oath briefly outlining the nature of the emergency. Within 10 days after the termination of the emergency, a sworn statement is to be filed with FPC stating the volumes of gas delivered and the total reimbursement received by the seller.

For the most part, companies entering into 60-day emergency sales under Orders 402 and 402-A provided FPC with estimates of the volumes of gas to be delivered and the price to be charged as part of their notification to FPC that an emergency sale had commenced. Few companies had complied with the requirement in Orders 402 and 402-A that actual price and volume data be provided to FPC after the sale was completed.

From May 1970 through December 1973, there were 143 60-day emergency gas sales and extensions under Orders 402 and 402-A. Of these sales, 142 had been terminated for more than 10 days as of December 31, 1973, and the seller should have reported to FPC the actual

volumes delivered and the reimbursement received. FPC records show, however, that this data had been received on only six sales. 1/

The Natural Gas Act in section 10 (b) states that:

> "It shall be unlawful for any natural-gas company willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed, or kept under this act or any rule, regulation, or order thereunder." (52 Stat. 826 (1938); 15 U.S.C. 717i)

Section 21 (b) of the act establishes the penalities for violating the reporting requirement and states:

> "Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this act, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding $500 for each and every day during which such offense occurs." (52 Stat. 833 (1938); 15 U.S.C. 717t)

FPC officials acknowledged that actual volume and price data had not been received from the seller in many cases and stated that, due to manpower limitations, a followup to obtain the data had not been made. As a result, the estimates submitted by the companies when the sales began have been used by the FPC staff in preparing summaries of these sales which have been reported to the Commissioners and the public.

The Chief, BNG, expressed doubt as to whether the penalty provisions of the Natural Gas Act could be effectively applied to firms selling under Orders 402 and 402-A because they were not normally subject to FPC jurisdiction. No enforcement action has been taken against any company failing to file the required report.

In view of the Chief's statement, it seems appropriate to clearly place the reporting requirements on the interstate company subject to FPC jurisdiction in the future.

1/ FPC did not use the actual figures reported for decisionmaking purposes. On the basis of the original explanation given to us of how emergency gas sales were recorded, FPC records snowed that actual data on only six sales had been received. We brought this to the attention of FPC officials in February 1974. FPC officials advised us in June 1974 that they think that, whenever their worksheets contain a number other than a round number, it represents the actual amount of gas delivered. On the basis of this criteria, the records show that FPC may have received actual data on as many as 75 sales. To clarify the situation, FPC is sending letters to all purchasers to obtain the actual amount of gas received and the price paid.

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INCOMPLETE DATA USED IN EVALUATING EMERGENCY SALES PROGRAMS

FPC Order 491 issued in September 1973 extended the length of emergency sales under Orders 402, 402-A, and 418 from 60 to 180 days. Order 491 stirred considerable controversy and resulted in petitions to FPC to reconsider its decision as well as court challenges of the order.

In November 1973 FPC reaffirmed its decision to permit 180-day emergency sales by issuing Order 491-B. In the text of this order, the Commission stated:

> "In the 12 working days immediately prior to Order No. 491, 20 new sales were initiated under the 60 day exemption dedicating 8,272,400 Mcf [thousand cubic feet] of gas to the interstate market at a weighted average cost of 50.82 cents per Mcf. During the next twelve working days during which the 180 day exemption was available, 26 new sales were initiated bringing 20,848,800 Mcf to the interstate market at a weighted average cost of 48.16 cents per Mcf."
>
> * * * * *
>
> "Thus, our 180 day exemption generated more than twice the amount of gas that was made available in a comparable period under the 60 day exemption. It is also noteworthy that the weighted price average decreased rather than increased, under the 180 day exemption. This evidence, reflecting a two-fold increase in supply with no increase in the weighted average cost lends support to our conclusion that Order No. 491 is required by the public interest." (Underscoring supplied.)

FPC files and records showed that the above statements were inaccurate because they were based on incomplete data. In the 12 working days before Order 491, FPC records show that 23--rather than 20--60-day emergency sales had been made under Order 418.

During the 12 working days following issuance of Order 491. 55 sales were made rather than the 26 sales cited by FPC. We could not fully resolve how and why incomplete sales data was used. In a few cases the reason apparently was that estimated price and/or volume data had not been provided to FPC for sales under Order 491.

The Chief, BNG, attributed the problem to a failure of his bureau to provide complete data to OGC for use in drafting the order.

Two sales made under Order 491 were apparently omitted because volume data was not available. These sales were made at 55 cents and 60 cents per thousand cubic feet (MCF). The weighted average price for the remaining 53 sales was 51.02 cents per MCF and would be higher if the volume data had been available for the two sales mentioned above.

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Nevertheless, the 51.02 cents per MCF is still higher than the 48.16 cents per MCF relied on by FPC.

The foregoing is not to suggest that FPC's decision would have been different had complete data been used. However, we believe it axiomatic that decisions should be based on as complete and accurate data as possible.

Even if FPC had received and used all the data concerning sales under Orders 418 and 491, it would still have been relying on estimated data. Order 418 issued in December, 1970, required that FPC be notified of the price to be charged for the gas and a statement as to the character of the sale. In most cases, the statements filed with FPC included an estimate of the volume of gas to be delivered. In contrast to Orders 402 and 402-A, Order 418 did not require that FPC be notified of the price charged or the actual volume delivered when the sale was completed. Had FPC enforced the reporting requirement under Orders 402 and 402-A and included a comparable reporting requirement in Order 418, it would have substantial actual price and volume data with which to assess these programs' effectiveness.

When Order 491 was issued--September 14, 1973--137 sales and extensions under Orders 402 and 402-A had been terminated and actual price and volume data should have been on file at FPC. Data on only six sales had been received by FPC. 1/ Similarly, 464 sales under Order 418 had been terminated by the time Order 491 was issued. Had FPC obtained actual price and volume data on these sales, it would have had better data on which to base its decision.

The limited evidence available suggests that the estimates of the volumes of gas to be delivered provided to FPC varied substantially from the volumes of gas actually delivered.

The table below compares the estimates received by FPC with the actual volumes delivered under the 180-day emergency sales program. In every case that data was available, the actual volume was less than what had been estimated, as follows:

Estimated volume reported to FPC (in MCF)	Actual volume delivered (in MCF)	Difference
1,080,000	716	1,079,284
54,000	4,300	49,700
5,400,000	900,000	4,500,000
54,000	25,000	29,000
270,000	90,000	180,000
540,000	78,242	461,758
270,000	9,149	260,851
7,668,000	1,107,407	6,560,593

Note: On the basis of the volumes presented above and the prices at which the gas was sold, the estimated weighted average price was 53.5 cents per MCF whereas the actual weighted average price was 54.4 cents per MCF.

1/ See note on page 15.

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In a memorandum transmitting emergency sales data--price, volumes, average weighted price--to the Commissioners in January 1974, BNG made the following clarifications: "Actual volumes have been used where available. Actual volumes are usually less than anticipated volumes." Since FPC did not obtain actual prices and volumes for most emergency sales, its reports on the results of these sales--in terms of additional gas brought to the interstate market and the price to the consumer--were based on estimates and not actual figures.

The data above show that significant differences exist between the reported estimated and actual volume of gas brought to the interstate market, with corresponding effects on the weighted average price of gas sold. We believe that actual prices and volumes for gas delivered under the emergency procedures is needed to insure that FPC and the public know the benefits and costs of these emergency sale procedures and that decisions on the efficacy of the procedures and their future worth are made on the basis of reliable information.

The Chief, BNG, acknowledged that the estimates were greater than the actual amount of gas delivered and agreed that FPC should obtain actual data for all sales. He indicated that all future FPC orders would require that actual data be submitted. The General Counsel, FPC, concurred.

The Chief, BNG, stated that the disparity between the estimates and the actual amount of gas delivered for the sales under Order 491 was not as great as indicated by the few cases in the table on page 17, although he did not have data to show what the disparity might be.

Under FPC's limited-term certificate program--a program to induce interstate sales for periods usually less than 3 years--the actual amount of gas delivered was about 60 percent of the estimates initially given FPC.

The need to obtain actual data is clear regardless of the amount that the actual and estimated amounts vary.

MONITORING OF THE 180-DAY EMERGENCY SALES PROGRAM

FPC Order 491 issued September 1973 which extended emergency gas sales from 60 to 180 days, stated:

> "* * * In addition to the existing reporting requirements, we will require that the pipeline purchaser report to the Secretary within ten (10) days after deliveries commence under the 180-day procedure, the estimated volumes and rate charged for the emergency sale."

The order also stated that before the program ended--March 15, 1974--FPC would review the emergency measures to determine their impact during the 1973-74 winter heating season and to determine what future emergency measures may be required.

Order 491-A, issued September 25, 1973, which reaffirmed Order No. 491, stated the following regarding monitoring prices and volumes:

> "* * * Because of our mandatory review prior to March 15, 1974, and through the advance reporting procedures prescribed in Order No. 491, we will closely monitor and review the results of these emergency procedures in fulfilling our Congressionally delegated mandate to assure adequate and safe service to the Nation's gas consumers during this emergency period and will determine whether any modification is necessary to serve the public interest."

Order 491-B, issued November 2, 1973, which also reaffirmed Order No. 491, stated the following regarding monitoring prices and volumes:

> "* * * we intended to monitor closely the volumes and prices which are to be reported to us for all emergency sales. Such monitoring will provide additional consumer protection in two major respects. First, it will permit us to evaluate continuously the efficacy of the 180-day exemption procedure. Should it appear that the public interest is not being served, we can, of course, eliminate the procedure. Secondly, through continuous monitoring, we will be able to initiate such action as may be required with respect to specific sales which appear to be inconsistent with the public interest." Underscoring supplied.)

Order 491-C, which was issued November 21, 1973, and which also reaffirmed Order 491, repeated this statement.

As part of its monitoring procedure, FPC recorded the estimated price and volume of emergency sales reported to it, from which a weighted average price for the gas sold was determined. This information was then regularly supplied to the Commissioners for their information and review.

Though FPC attempted to monitor the estimated prices and volumes of gas sales reported to it pursuant to the 180-day emergency procedures, FPC records of these sales contained gaps in estimated prices and volumes. The records show that from September 1973 through January 1974 there were 257 180-day emergency gas sales. For 17 percent of these, FPC had not received complete information. Reports on 12 sales were missing estimated price and volume data, and reports on 32 sales were missing either estimated price or volume data.

On February 21, 1974, we brought this matter, as well as general recordkeeping deficiencies, to the attention of BNG officials. We were advised on March 6, 1974, that corrective action would be taken. A followup review in June 1974 showed that all missing data for 180-day sales had been obtained and improvements had been made in the records maintained for these sales. We were advised that the records for 60-day emergency sales would be similarly improved in the near future.

RECOMMENDATIONS

To strengthen FPC's monitoring and decisionmaking, we recommend that the Chairman, FPC:

--Insure that all data required to be reported to FPC is done so promptly and that a followup is made when the data is incomplete.

--Require the reporting of actual volume and price data for interstate gas sales rather than continue to rely on estimates.

--Impose reporting requirements on regulated entities to insure that needed data can be obtained.

--Invoke the penalty provisions of the Natural Gas Act when required information cannot be obtained from regulated entities.

--Establish an adequate recordkeeping and filing system for interstate gas sales.

AGENCY COMMENTS AND OUR EVALUATION

FPC, in commenting on our report, said it is collecting complete volume and price data and appropriate action will be taken in the event of refusal to furnish required data by those making interstate gas sales.

In response to our recommendation that FPC establish an adequate record and filing system for interstate gas sales, FPC stated it has maintained such records for many years through annual reports submitted by pipelines (FPC Form 2). FPC agreed that more timely reporting of actual data during emergency periods is desirable and it instituted a procedure to secure actual price and volume data from the purchasing pipeline at the completion of the purchase.

We endorse the steps made by FPC to collect price and volume data. We believe, however, that FPC Form 2 provide neither the necessary data, nor data on a timely basis for use in FPC's decisionmaking processes.

BNG realized this when we recommended that actual data be collected for emergency gas sales. For example, in a memorandum from BNG to the Chairman, FPC, dated May 29, 1974, BNG made the following statement:

> "* * * Originally it had been thought that a comparison of the estimated and actual volumes could be determined from Form 2. However, in reviewing the Form 2's for 1973, we were unable to reach definite conclusions because the data reported is not comparable in most instances."

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CHAPTER 4

ACCOUNT OF PROCEEDINGS INVOLVING THE OPTIONAL CERTIFICATE AND 180-DAY EMERGENCY GAS SALE PROCEDURE

In the following section we are presenting a factual account of the optional certificate and 180-day emergency gas sale procedures and their status in the courts at the time our review was completed in June 1974. In addition, we address specific questions raised concerning these two FPC procedures.

THE OPTIONAL CERTIFICATE PROCEDURE

The optional certificate procedure is available to producers of natural gas in lieu of the area rate-certification procedure. Under this procedure, producers are offered the option to submit for FPC approval contracts with interstate pipelines that specify natural gas rates negotiated between the parties. A brief history of this procedure follows.

By publication dated April 6, 1972 (Docket No. R-441), 37 Fed. Reg. 7345, April 13, 1972, FPC gave notice that it was considering:

> "* * * adopting rules and regulations providing an alternate method under which it will consider the issuance of permanent certificates for, and will otherwise regulate, new sales of natural gas subject to the Commission's jurisdiction. * * *"

The proposed procedure, to be incorporated at 18 C.F.R. 2.75 et seq., was to provide that:

> "* * * applications for certification of future sales of natural gas * * * may, at the option of the signatory parties to sales contracts, be submitted [with the sales contracts, for FPC approval]." (id. 7346.) (Underscoring supplied.)

Subsequently, on August 3, 1972, FPC issued Order 455, "Statement of Policy Relating to Optional Procedure for Certificating New Producer Sales of Natural Gas," 37 Fed. Reg. 16189, Aug. 11, 1972. Order 455 was thereafter amended by Order 455-A, September 8, 1972, and September 15, 1972, which appeared at 37 Fed. Reg. 18721 and id. 20114, respectively. In explaining Order 455, FPC indicated that, since certain of its rate orders were under attack:

> "* * * at the present time a producer, even if he is willing to sell at the rates fixed in such opinions, does not know that those rates will be affirmed on appeal. Although in the Sunray DX case supra, 391 U.S. 9, the Supreme Court held that a producer cannot be required to refund below the permanently-certificated rate, the Supreme Court was not in that case ruling on the question of whether a certificated rate, based upon an area rate invalidated through court review, would necessarily be impregnable, and the certificates so indicate. Consequently

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there is no assurance at the present time that a producer may not ultimately have to refund some of an initial rate based on a just and reasonable determination and upon which the producer relied when it dedicated a new gas supply to the interstate market. In short, after some 18 years of producer regulation, the producer does not know how much it can lawfully charge for sales of natural gas in interstate commerce nor how much it will get if it develops and sells new gas to the interstate market. The producer knows for sure only that once it sells in interstate commerce it cannot stop deliveries." (37 Fed. Reg. 16191.)

At present, a natural gas producer has the option to

--follow the traditional approach; i.e., it may seek a certificate of convenience and necessity for the sale of natural gas at the level determined by the applicable FPC area rate order, or

--use the optional certificate procedure; i.e., it may submit for FPC approval a contract stipulating a natural gas rate entered into by the producer and its immediate buyer after negotiation by the parties.

Opponents of the new procedure have argued that it (1) represents deregulation of the pricing of natural gas because FPC has merely to rubberstamp the negotiated rate and (2) is inconsistent with the mandate of the Natural Gas Act and the court decisions on the act which require affirmative FPC regulation of natural gas rates.

The first application for the optional certificate procedure in which a full evidentiary proceeding was conducted was made by the Belco Petroleum Corporation, Agent (Belco), which filed on October 24, 1972, pursuant to 18 C.F.R. 2.75, seeking authorization to sell and deliver natural gas in interstate commerce to Tennessee Gas Pipeline Company (Tennessee). On November 8, 1972, Texaco Inc., (Texaco) and Tenneco Oil Company (Tenneco), also filed applications pursuant to section 2.75 for certificates authorizing sales and deliveries of natural gas in interstate commerce to Tennessee. By order issued December 26, 1972, FPC consolidated the applications for hearing and disposition.

Belco submitted to FPC a contract dated June 8, 1972, which provided for an initial sales price of 45 cents per MCF with annual rate escalations of 1.5 cents per MCF for the contract term of 10 years. Its application requested pregranted abandonment authorization, effective as of the date of expiration of the contract. The Belco contract dedicated approximately 60 BCF (billion cubic feet) of new gas reserves to Tennessee.

The terms and conditions of Texaco's and Tenneco's contracts with Tennessee were identical. The proposed initial price was 45 cents per MCF with annual escalations of 1 cent per MCF over a 20-year contract

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term. The Texaco and Tenneco contracts dedicated approximately 175 BCF in new gas reserves to Tennessee.

A prehearing conference was held on January 17, 1973. The hearing before the administrative law judge (ALJ) commenced on February 28, 1973, and concluded on March 27, 1973. Before the ALJ issued his findings and recommendations, FPC, on April 10, 1973, directed certification of the entire record from the ALJ to FPC.

FPC rendered its decision in the Belco and accompanying applications in Opinion 659, dated May 30, 1973, in which it made clear that 18 C.F.R. 2.75 was devised to respond to increasing demands for natural gas. FPC also stressed that this decision did not "set a producer rate of general, industrywide applicability, any more than we bind ourselves in a particular LNG [liquefied natural gas] case to make identical findings in all LNG cases," Belco, p. 5. The requested certificates of public convenience and necessity were granted authorizing Belco, Texaco, and Tenneco to sell natural gas in interstate commerce to Tennessee at the contract price, 45 cents per MCF, subject to BTU (British thermal unit) adjustment and annual escalation of 1 cent or 1.5 cents per MCF for the contract periods (10 and 20 years).

The controversy over this decision is whether the optional certificate procedure constitutes deregulation, since the contract rate of 45 cents, proposed by the parties and found by FPC to be "just and reasonable," exceeds by 73 percent the prevailing area rate (26 cents per MCF established in Opinion 598, issued 3 years ago (46 FPC 86, July 16, 1971) and affirmed by the Fifth Circuit (Placid Oil Co. v. FPC, slip opinion 71-2761 (Apr. 16, 1973)).

We were asked the following questions about the optional certificate procedure and the Belco decision:

> "Is the use of optional pricing effective de facto deregulation of the price of natural gas?
>
> "Is the FPC's conduct in adopting and actually administering the optional pricing procedure, especially in the Belco * * * [case] in compliance with the Natural Gas Act of 1938, as interpreted by the Supreme Court of the United States in the Phillips Petroleum case (347 U.S. 672(1954))?
>
> "Can this procedure be used constantly to raise gas prices with a minimum of adversary proceedings?
>
> "Are these actions and the entire optional pricing procedure not violations of both the Natural Gas Act of 1938 and the Administrative Procedures Act, especially 5 USC 553 Section (b)?"

The optional certificate procedure and the FPC decision in Belco are now being challenged in court. In John E. Moss, et al. v. Federal Power Commission, United States Court of Appeals for the District of Columbia Circuit, Civil Action No. 72-1837, petitioners raise, inter alia, the following issue:

> "* * * Whether the Federal Power Commission has power under the Natural Gas Act, to adopt a new substantive program that provides for the setting of interstate natural gas rates on the basis of unregulated market prices." (Petitioners' Brief, p. 1, filed January 4, 1973.)

John E. Moss, et al. v. Federal Power Commission

The question raised in this case is whether the optional certificate procedure and certain facets of it are consistent with the Natural Gas Act and with court decisions construing the act.

The petitioners allege that the procedure represents deregulation of natural gas prices by FPC and argue, inter alia, that, under the Supreme Court's holding in Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954), FPC must regulate the price of natural gas involved in interstate commerce.

The petitioners assert that, aside from the change in substantive standards for fixing rates, FPC:

> "* * * proposals to guarantee sellers of natural gas that the provisions of their privately negotiated long-term contracts would not be modified by regulatory action subsequent to initial Commission authorization to commence service are in conflict with the Commission's statutory responsibility to provide continuing regulation over interstate natural gas sales * * *." (Petitioner's Brief, p. 7.)

In support of this view, petitioners cite Texaco, Inc. et al. v. FPC, Action Nos. 71-1560, et al., slip opinion (D.C. Cir.; Dec. 12, 1972).

The petitioners also assert that there are no standards in Order 455 (the optional certificate procedure) which insure just and reasonable rates, relying upon the Texas Gulf Coast Area Natural Gas Rate Cases, District of Columbia Circuit, No. 71-1828, August 24, 1973. This case is cited as rejecting the proposition that jurisdiction to review an FPC Order is lacking when FPC states in the order that its action is consistent with the Natural Gas Act.

In its brief, FPC defended Order 455 on the following grounds:

1. Order 455 is not a deregulation measure. It is simply a change in the procedures through which rates are reviewed; rates must continue to be just and reasonable.

2. The optional certificate procedure is consistent with requirements of the Natural Gas Act.

3. FPC has prescribed adequate criteria for determining whether rates are just and reasonable under the optional certificate procedure.

4. FPC may properly rely upon noncost factors, as well as cost factors, in determining just and reasonable rates.

5. The optional certificate procedure is a reasonable means of dealing with the gas shortage.

Consumers Union of United States, Inc.
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The petitioners in this action seek judicial review of Opinion 659, the Belco decision, on the grounds that the approved rates were not reasonable and the costing methodology used in reaching the decision was erroneous, specifically:

> "* * * (A) the Commission's use of a single 'test-year' approach, rather than historic averages, to derive the crucial productivity figures, and (B) the use of a 'supply project' approach while excluding evidence of unit, producer, or even area costs relevant to these particular 'supply projects.'" (Petitioners' Brief, p. 19.)

The petitioners also argue that FPC:

> "* * * erred in relying excessively upon contract prices, intrastate sales prices, and other non-cost factors which it does not regulate and/or which derive solely from market prices, in arriving at the 45 cent rate." (id., 39.)

The relief requested is (1) a reversal of Opinion 659 and (2) a remand to FPC with instructions to certificate the subject sales at the 26-cent area rate established in Opinion 598, with appropriate upward adjustments.

On August 15, 1974, the United States Court of Appeals for the District of Columbia Circuit, in Civil Action No. 72-1837, decided that with the exception of the pregranted abandonment provision, FPC's optional certificate procedure--Order 455--was not a deregulation provision nor was it inconsistent with the Natural Gas Act.

180-day emergency gas sale procedure--
FPC Order 491

By Order 491, issued and effective September 14, 1973, 38 Fed. Reg. 26603, September 24, 1973, FPC announced it was taking further action to meet the perceived gas shortages for the 1973-74 winter

heating season. FPC indicated the moves were emergency measures designed to insure that adequate supplies of natural gas would be available to consumers during the cold season.

Therefore, FPC stated that for up to 180 days no FPC authorization was required in advance of emergency short-term purchases of natural gas by interstate pipelines. The cutoff date for applying Order 491 was March 15, 1974; e.g., an emergency purchase "initiated on February 1, 1974, may continue until July 31, 1974," 38 Fed. Reg. 26604 (1973).

In addition, FPC noted that the revisions to regulations made by Order 491 did not require notice or hearing under 5 U.S.C. 553 (the Administrative Procedure Act). Accordingly, Order 491 had been made effective the date of its issuance (Sept. 14, 1973).

Controversy has arisen concerning Order 491 on the basis that it represents "decontrol" of natural gas prices for 6 months.

We were requested to answer the following questions:

"If the action in question was in fact rulemaking by the Commission, does the statute then automatically apply?

"If the Commission action was not rulemaking, then has the FPC not acted in a totally arbitrary and illegal manner?

"If this is in fact an informal ratemaking process, can it be termed an evasion to avoid the formal ratemaking process?"

Similar to the questions discussed previously, the issues raised by the questions are, in our view, also subsumed in litigation.

In Consumer Federation of America et al. v. Federal Power Commission, United States Court of Appeals for the District of Columbia, Civil Action No. 73-2009, filed September 21, 1973, petitioners ask for review of Order 491, on the grounds that the FPC lacks authority:

> "* * * to issue the deregulation order and that, in any event, the procedures which it followed fail to comply with the basic requirements of the Administrative Procedure Act (5 U.S.C. 553) and the Natural Gas Act."

By Order of October 3, 1973, the court stayed FPC Order 491 pending final FPC action pursuant to section (F) of Order 491-A, September 25, 1973, 35 Fed. Reg. 27606.

In that section, FPC stated that the rehearing of Order 491 sought by Consumer Federation of America in Civil Action No. 73-2009 was being treated as a motion for reconsideration and would be taken under advisement and deferred pending a further FPC order on or before November 13, 1973, after its receipt of any comments on Order 491.

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On November 2, 1973, FPC issued Order 491-B, 38 Fed. Reg. 31289, November 13, 1973, stating that:

> "* * * an extension of the [existing] emergency purchase term from 60 days to 180 days is imperative to improve gas supply for the interstate market * * *." (id., 31290.)

FPC therefore affirmed its prior Orders 491 and 491-A.

Thereafter, on November 6, 1973, petitioners filed a motion for extension of stay of Order 491-B. FPC then issued Order 491-C on November 21, 1973, denying the petitioners' application for rehearing and stay. The petitioners then again appealed to the U.S. Court of Appeals for the District of Columbia Circuit. The court stayed Order 491-B by its Order of December 10, 1973, and directed the parties to file final briefs no later than January 28, 1974.

By Order of December 20, 1973, the Supreme Court granted FPC's December 14, 1973, application to vacate the lower court's stay of Order 491-B.

Subsequently, on March 1, 1974, FPC issued Order 491-D officially terminating on March 15, 1974, the procedures set forth in Order 491 and reinstating its prior regulation allowing emergency sales without certificate authorization for periods up to 60 days.

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CHAPTER 5

OPTIONAL CERTIFICATE PROCEDURE:

NEED FOR TIMELY ACTION ON APPLICATIONS FILED

FPC failed to take final action on applications made under its optional certificate procedure promptly, with the result that gas customers were subjected to prices which may not have been just and reasonable.

In August 1972 FPC adopted the optional certificate procedure (FPC Order 455), which authorizes natural gas sales by producers at prices exceeding area ceiling rates, if found by FPC to be in the public interest. The procedure allows the delivery of gas to begin before final FPC action on the application, as long as the deliveries are made at rates no higher than the prevailing area ceiling rate for 6 months. At the end of the 6 months, if FPC has not entered its final order on the application, the producer, after filing a notice of change in rates with FPC, can charge the rates specified in the contract until FPC acts on the application.

Order No. 455 stated that the 6-month period was reasonable and was:

> "* * * predicated on the assumption that the Commission will have acted by final order within that period of time."
>
> * * * * *
>
> "Six months is clearly an adequate period for preliminary Staff analysis and review of applications tendered under the optional procedure. Accordingly, by action to deny or condition certificates prior to the expiration of the six-month period, we can protect against the impact of a nonrefundable rate which is not just and reasonable." (Underscoring supplied.)

Between August 25, 1972, and March 5, 1974, 77 applications were filed by producers for gas sales under the optional certificate procedure. A breakdown of the 77 applications shows that as of March 5, 1974,

--24 had been approved by FPC,
--3 had been denied by FPC,
--39 were in various stages of FPC's review process and
--11 had been withdrawn by the applicant.

The time required for FPC to take final action on the applications ranged from 2.5 months to 15.6 months; the average time was about 8 months. As a result some producers have received higher prices for natural gas than may have been just and reasonable.

FPC records show that, for 17 of the 77 applications for sales under the optional procedure, FPC could not act on the application within 6 months and the producers received the contract price for gas before final FPC action on their applications. Of these 17 application, 9 were ultimately approved by FPC, 1 was denied, and 7 were still pending final resolution as of March 5, 1974.

The application denied involved a producer which received a contract price of 50 cents per MCF for about 6 months before FPC took final action on his application. The 50 cents per MCF contract price was 23.125 cents per MCF greater than the prevailing area ceiling rate. FPC records show that about 20,000 MCF of natural gas was delivered per day under the contract. On the basis of this data, we estimate that the producer received about $828,000 more for the gas sold than it would have under the prevailing area rate. The $828,000 is not refundable, and therefore the gas purchaser paid that much more for the gas than he would have under the area rate and has no chance of recovering the payment.

As of March 5, 1974, the cost of gas sold under the seven applications pending final FPC action was about $1.4 million more than the amount that would have been charged under the prevailing area rate.

As of March 5, 1974, two of the seven applications had received initial decisions by FPC ALJs; both applications were denied. Though all seven applications may ultimately be approved by FPC, some may be denied. If the application is denied, the contract price being charged by the producer may not be just or reasonable thereby resulting in an overcharge to the gas customers.

FPC needs to improve its procedures or revise its regulations to provide effective protection against excessive rates and charges. Generally, FPC's procedures resulted in applications' being worked on in the same sequence in which they were received--a first-in-first-out basis. However, some applications were for sales to begin in the future; others provided for sales to begin immediately. We discussed with FPC officials the need to act on applications providing for immediate sales before considering other applications. FPC officials acknowledged that a problem existed and indicated that consideration would be given to revising their procedures.

RECOMMENDATIONS TO THE CHAIRMAN, FPC

We recommend that, to protect natural gas customers from prices which are higher than may be just or reasonable, the Chairman, FPC, review its optional certificate procedures to insure that final action is taken on applications promptly. This may require that FPC: (1) extend the current 6-month period during which the area rate applies, since available data indicates an average of about 8 months is required for final action on applications, (2) establish priority scheduling for those applications which begin sales before final FPC order, or (3) require

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the rate received before final FPC order to be subject to refund if FPC determines the rate to be higher than necessary.

AGENCY COMMENTS AND OUR EVALUATION

FPC in its comments agreed with our recommendations and stated that:

> "We are reviewing our procedures to determine whether a notice of rulemaking should be issued to revise the procedure so as to compel refund of the difference between the sales price in effect after six months and the ultimate just and reasonable rate determined by the Commission."

FPC also stated that our computation of the additional cost to customers of gas sold at the end of the 6-month period at prices over the area rate is faulty, since:

> "* * * there can be no assumption or speculation as to what gas would have been provided had the area rate applied instead of the requested price."

We believe that our computation is accurate. It should be remembered that the producer had been selling gas at the area rate for 6-months prior to receiving the contract rate because of inaction on the part of FPC. FPC ultimately denied the producer's limited-term certificate. The $828,000 overcharge merely represents the difference between the area rate and the higher contract rate. FPC is considering revising its rules to make such overcharges refundable. Obviously FPC will have to make an assumption as to what effect a refund provision will have on the deliverability of gas.

CHAPTER 6

BREAKDOWN IN SAFEGUARDS TO PREVENT CONFLICTS OF INTEREST

There has been widespread noncompliance by FPC officials with the agency's standards of conduct regulations (18 C.F.R. 3.735) resulting from a breakdown in the reporting system intended to disclose financial holdings of officials that were actual or potential conflicts of interest. Most FPC officials had failed to file required financial disclosure forms for several years, including the officials responsible for obtaining and reviewing the disclosure forms. When officials made the required disclosures, no review was made to safeguard the agency and the officials from conflict of interest allegations.

The breakdown in procedures, including the failure to obtain statements of financial interests from officials in policy and decisionmaking positions, precludes FPC and other appropriate agencies from determining the extent to which FPC officials held financial interests over the years that could have caused conflicts of interest or the appearance of such conflicts. However, from the limited available information, we found that several FPC officials had financial interests that were prohibited by FPC regulations and, because of the breakdown in review procedures, this situation persisted for several years.

Though each official is individually responsible for adhering to FPC regulations, we believe the primary responsibility for the breakdown in safeguards against conflicts of interest rests with the Executive Director; the Office of Personnel Programs (OPP); and OGC which had responsibility for carrying out FPC orders. When we brought this situation to the attention of the Director, OPP, in November 1973, steps were taken to obtain the required financial information from upper level officials and to require officials to divest themselves of financial interests that could cause conflicts with their duties. Though we endorse the steps taken, more needs to be done to preclude this situation from recurring.

FINANCIAL DISCLOSURE REQUIREMENTS

FPC's standards of conduct regulations (18 C.F.R. 3.735) were issued in 1966, pursuant to Executive Order No. 11222 issued May 8, 1965, and CSC implementing regulations. FPC's regulations preclude employees from owning financial securities which could lead to conflicts of interest, as follows:

> "An employee or the spouse, minor child, or member of the immediate household of an employee shall not own, directly or indirectly, or participate in the purchase of any securities of any public utility, licensee, or natural gas company subject to the jurisdiction of the Commission or of any

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person engaged in the distribution or sale of electric energy or natural gas or of a parent corporation of any of the foregoing."

To prevent potential conflicts of interest the regulations require:

"(i) All employees, except Commissioners, who are:

"(a) Paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, U.S.C.; or

"(b) In Grade GS-13 or above and are the heads or deputy or assistant heads of bureaus and offices, hearing examiners, division chiefs or their deputies, section chiefs or heads, case managers, regional engineers, deputy regional engineers, engineers-in-charge in regional offices, technical assistants to the Commissioners or have contracting or procurement responsibilities; shall submit FPC Form 498 [Confidential Statement of Employment and Financial Interests] not later than:

"(c) Thirty days after entrance on duty; and

"(d) Shall also submit a supplemental report on FPC Form 498 on June 30 of each year for the purpose of annual review. Where there are no changes in or additions to the original information submitted a negative report shall be filed.

"(ii) Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that could result, in a violation of the conflicts-of-interest provisions * * *."

The purpose of the financial disclosure requirement is to insure that employees avoid any action which might result in, or create the appearance of (1) using public office for private gain, (2) giving preferential treatment to any organization or person, (3) losing complete independence or impartiality of action, and (4) affecting adversely the confidence of the public in the Government's integrity.

Officials violating the standards of conduct regulations are subject to disciplinary action, including removal, suspension, and reduction in grade. Other remedial actions provided for in the regulations are divestment of conflicting interests, changes in duties, and disqualification for a particular assignment.

FPC's standards state that the Director, OPP, is responsible for obtaining and reviewing the financial statements to insure that securities owned by FPC employees do not create a possible conflict

of interest. OGC decides whether a particular financial interest does create an actual or potential conflict of interest.

The Director, OPP, and the General Counsel are supposed to file their financial disclosure statements with the Executive Director for his review and determination as to potential conflicts in their financial interests.

Lower level employees are required to file FPC Form 247 at the time of their employment to disclose financial interests in companies under FPC jurisdiction.

Upper level officials described in FPC's regulations are required to disclose all financial interests within 30 days of initial employment and on June 30 of each year thereafter. These officials file an FPC Form 498 which requires that, for nonjurisdictional companies, the name of the company and the type of financial interests held be reported. If the holding is of a jurisdictional company, then the official must report the full name of the security, the date of maturity, the name of the broker and/or principal, the date of acquisition, and the number of shares or bonds owned.

Our examination primarily concerned procedures followed for upper level officials. However, from the available data and our discussions with OPP officials, it appears that existing procedures have worked well in obtaining financial disclosures from lower level employees.

A number of major deficiencies were noted in the program as it applied to upper level officials.

FAILURE TO OBTAIN AND REVIEW UPPER LEVEL OFFICIALS' FINANCIAL DATA

OPP had not been effective in obtaining financial disclosures from upper level officials, and the disclosures that had been made had not been reviewed to detect actual or potential conflicts of interest.

Initial filings

We examined the records of 125 FPC officials holding positions which, under FPC regulations, incumbents are required to file financial disclosure forms. At the time of initial employment, 55 officials did not file the required financial disclosures, 9 filed on the wrong form and thus made only the disclosures required of lower level employees, and 61 officials made the required disclosures.

When officials filed the required information, the content of the disclosures was never reviewed. The disclosure forms were merely filed in the employees' official personnel records.

In five instances ALJs filed the financial disclosure forms when initially required between 1966 and 1969. After we brought the program deficiencies to OPP's attention in November 1973, the five ALJs were ordered to divest themselves of holdings they had disclosed at the time of their initial reporting from 4 to 7 years earlier. No determination can be made as to the full extent that such potential conflicts of interest may have existed in the cases of the officials who failed to disclose their financial interests or who only partially complied with the regulations.

Due to the sensitivity of the disclosures, the Director, OPP, is responsible for reviewing the forms filed for potential conflicts of interest. It is clear that he did not personally involve himself in obtaining and reviewing the financial disclosures as he should. Rather he operated on the erroneous assumption that clerical personnel were performing the tasks assigned to him.

Annual filings

Widespread noncompliance with the requirement that annual updating of financial disclosures be made also existed. As of December 12, 1973, 125 upper level officials were required to file annual financial disclosure forms. Only seven had filed properly. Another 24 officials filed late but before our examination in November 1973. The remaining 94 had not filed when our review began.

We determined that in 1972, 111 of the 125 officials were required to file and only 12 did and in 1971, 101 were required to file and only 10 did. The disclosure forms filed in past years were not reviewed but merely placed in the officials' personnel records.

The extent to which the financial disclosure program had fallen into disuse is further evidenced by the fact that OPP had not identified those positions falling under the disclosure regulations. Thus, when we brought the problem to OPP's attention in November 1973, a memorandum was circulated requesting all officials required to file to do so. However, OPP did not know exactly who was required to file and followup action in connection with specific individuals could be taken only after a list of covered positions was prepared.

A preliminary list of positions required to file was prepared in December 1973; however, questions still remained regarding certain positions. On January 7, 1974, the Director, OPP, requested an interpretation of the regulations from the General Counsel.

On January 11, 1974, OPP sent followup letters to 43 officials telling them to file the required financial disclosure forms.

On Janaury 17, 1974, the General Counsel responded to OPP's request for interpretation of the regulation and informed the Director, OPP, that certain positions questioned were covered by the regulations

but that the Assistant General Counsel and attorney positions in OGC were not. The Director, OPP, did not fully agree with the General Counsel's determination and so advised him by letter dated April 22, 1974. This matter remained unresolved as of June 1, 1974.

As of March 5, 1974, 93 of the 94 officials who had not filed at the beginning of our investigation had filed the required disclosure form and the remaining official filed the wrong form. None of the officials charged with carrying out the program--the Executive Director, the General Counsel, and the Director, OPP--had filed disclosure forms for the 3 years we reviewed. All filed in November 1973 after we brought this matter to the attention of OPP.

FINANCIAL HOLDINGS OF FPC OFFICIALS RAISE POTENTIAL CONFLICT OF INTEREST

OPP's review of the financial disclosure forms filed by FPC officials as a result of our investigation initially resulted in 12 officials' being directed to divest themselves of financial interests that could conflict with their duties.

Seven more officials owned securities which had been identified as prohibited or which we believed should be prohibited under FPC's standards of conduct regulations but had not received letters from OPP to divest certain securities. Through our discussions with the Director, OPP, OGC officials and an official in the Office of the Executive Director, OPP subsequently notified these seven officials to divest themselves of certain securities which they owned.

The notices to the 19 officials were made from November 28, 1973, to April 30, 1974. As of June 3, 1974, 14 officials had either notified OPP that they had divested themselves of the prohibited financial interest or had otherwise satisfied OPP that the potential conflict had been resolved.

One of the officials originally notified on March 5, 1974, responded to OPP on April 4, 1974, and agreed to divest but requested 30 days extension in hopes that the stock market price of his holdings would increase. He informed OPP on May 13, 1974, that he divested his stock holdings. As of June 3, 1974, five officials had either not responded to OPP's letter directing them to divest or had asked for clarification of the letter.

The 19 officials who owned prohibited securities included: seven ALJs, two attorneys in the Office of Special Assistants to the Commission, two regional engineers, one engineer-in-charge of a regional office, three officials in the Bureau of Power, two officials in the Office of the Comptroller, and two officials in the Office of Economics. Securities held by these officials which had been identified as prohibited under FPC's standards of conduct were of the following companies:

--Exxon Corporation.
--Union Oil Company.
--Standard Oil Company of Indiana.
--Texaco Corporation.
--Ford Motor Company.
--United States Steel Corporation.
--Northern Pacific Railroad.
--Scott Paper Company.
--Pacific Power & Light Company.
--Central Telephone and Utility Company.
--Cities Service.
--Commonwealth Edison.
--Northern Illinois Gas.
--Occidental Petroleum.
--Monsanto Company.
--Washington Gas Light Company.
--Tennessee Valley Authority Bonds.
--Norfolk and Western Railroad. 1/
--Tenneco Oil Company.
--Atlantic Richfield Company.
--Potomac Electric Power Company.

Need to strengthen review procedures

Our discussions with the official in OGC in charge of reviewing stock ownership for potential conflicts, told us his review procedures generally involved (1) checking with other FPC offices to see if the company was under FPC jurisdiction and (2) using such standard reference works as "Moody's Industrial Manual" to detect any direct or indirect relationship of the company with FPC. The above list of prohibited stocks shows that the relationship of the company to FPC is not always readily apparent. Also OGC had initially informed OPP that ownership of Scott Paper Company and Monsanto Company securities did not violate FPC s standards of conduct regulations.

Records at FPC showed, however, that securities in these companies should be prohibited under FPC's standards of conduct regulations. For example, Escuhbia Oil Company of Alabama, a wholly owned subsidiary of Scott Paper Company, was authorized by the FPC in Opinion 686, issued February 1, 1974, to sell natural gas under FPC's optional certificate procedure. In addition, Scott Paper Company has a hydroelectric project under major license with FPC, on the Kennebec River in Maine.

Monsanto Company is an independent producer of natural gas regulated by FPC and, as recently as September 1973, had filed with FPC for a rate increase.

1/Subsequently determined by OGC not to be prohibited under FPC standards of conduct regulations because of corporate changes. Stock in this company was prohibited, however, during the time held by the individual.

Before OGC's February 19, 1974, decision on prohibited stock ownership, we expressed to OGC officials our opinion that financial interests in Scott and Monsanto should be prohibited. We expressed this opinion on several occasions after OGC's decision that ownership of stock in these two companies was permitted. On April 22, 1974, OGC advised OPP that financial interests in Scott and Monsanto were prohibited. One of the officials that regularly filed a financial disclosure form had reported in 6 of the last 8 years that he owned Scott Paper Company stock.

Though these forms were never reviewed, it is clear that, had they been reviewed, OGC would have mistakenly found, as it did initially in February 1974, that it was permissible to hold Scott Paper Company stock.

Also as much as 20 months were required for OGC to reach decisions on whether a lower level employee could have a financial interest in a given company. We did not review the overall timeliness of OGC's decision process since these procedures were employed on a regular basis only in connection with disclosures made by lower level employees. Nevertheless, the Scott Paper Company and Monsanto Company experience, coupled with the occasional long delays in reaching decisions on individual stocks, suggests that the review procedures in OGC need to be strengthened, both in terms of their content and the resources expended on them.

CONCLUSIONS

FPC's quasijudicial role, with the attendant need to avoid even the appearance of a conflict of interest, makes the breakdown in safeguards a serious matter. The widespread noncompliance with the standards of conduct regulations, coupled with the fact that the noncompliance extended to the officials charged with carrying out the program, demonstrates that the program has been ineffective in insuring that upper level officials do not have financial interests that could conflict with their duties.

RECOMMENDATIONS

We recommend that the Chairman, FPC, require the Director, OPP, to:

--Establish procedures to:

1. Notify all officials when they occupy a position covered by the standards of conduct regulations of their obligations under these regulations.

2. Annually notify, by May 31, each official required to file a financial disclosure form. The procedures established under (1) and (2) should provide for personal followup by the Director, OPP, when any official fails to file.

3. Promptly notify officials to divest themselves of financial interests determined by OGC to be potential conflicts of

interest. These procedures should provide for notifying OPP that the divestiture has taken place.

--Investigate with OGC any case where an official, while carrying out his duties, has had a financial interest that could be a conflict of interest.

--Report to the Commission the results of the annual review of financial holdings and the results of all investigations of potential conflicts of interest that have been disclosed. When appropriate, these reports should recommend the disciplinary action to be taken as provided in section 3.735-10 of FPC's standards of conduct regulations.

We recommend also that the Chairman require the General Counsel to:

--Review the procedures and resources used to determine whether specific financial interests create potential conflicts, with the view to insuring that (1) decisions on financial holdings are made promptly and communicated to the Director, OPP, and (2) that the content of the review made is adequate to disclose all potential conflicts.

--Prepare, keep current, and make available to all personnel a list of securities known to be potential conflicts of interest. Foreknowledge of prohibited securities should reduce the number of such securities acquired by FPC officials and should minimize individual official's exposure to disciplinary action, as well as both FPC's and the official's exposure to allegations of conflicts of interest.

--Investigate with the Director, OPP, all cases where potential conflicts of interest have been disclosed.

We also recommend that the Chairman:

--Require the Executive Director to establish procedures to insure that financial disclosure forms are obtained from the Director, OPP, and the General Counsel when due and reviewed promptly for compliance with the standards of conduct regulations.

--Investigate the circumstances surrounding the breakdown in administering these standards to determine whether disciplinary action should be taken against those failing to comply with them.

--Review the determinations that have been made as to which officials are required to file annual financial disclosure forms. This review should include a determination as to whether the Assistant General Counsel positions which the Director, OPP, and the General Counsel have disagreed on need to file disclosure statements.

--In view of the widespread confusion as to who was required to file, consider establishing a system that would require everyone above

a certain grade level to file a financial disclosure statement. Though this would undoubtedly increase the paperwork, the assurance it would provide FPC that all policy and decision-making officials were covered by the standards of conduct regulations would be well worth the added burden.

AGENCY COMMENTS AND OUR EVALUATION

In commenting on a draft of this report, FPC stated that corrective action had been taken and that FPC was implementing all of our recommendations to prevent further noncompliance with the standards of conduct regulations.

FPC stated also that OPP had initiated "remedial action to compel compliance" with FPC's standards of conduct regulations several months before our investigation. FPC also stated that OPP was in the process of preparing individual reminders to officials who failed to file the financial disclosure reports when the deficiency came to the attention of GAO.

For at least 3 years before our investigation, there had been a total breakdown in the financial reporting and review procedures. OPP's action in July 1973 consisted of a reminder to all employees in the FPC Staff Newsletter to file a financial disclosure report. We do not consider this to be remedial action to compel compliance with the agency's standards of conduct. When GAO became aware of the reporting deficiency, it met with the Director, OPP, to inform him of the problem and requested him to followup immediately, to obtain the required financial forms. Individual reminders could not be prepared at that time since OPP did not know who specifically was required to file. OPP's action after being informed of the deficiency by GAO was to circulate a general notice addressed to all officials required to file.

In response to our recommendation that FPC investigate any case where an FPC official had a financial interest that potentially could have been a conflict of interest, the Executive Director sought sworn affidavits from officials covered by the standards of conduct regulations.

In this regard the Chairman stated:

> "* * * every official of the Federal Power Commission who is required to file a Form 498, with the exception of three individuals who are now on extended leave, has on file a sworn affidavit affirming that at no time during his employment by the FPC has he participated in any decisional process directly involving a company in which he, his spouse, minor child, or member of his immediate household then had a financial interest."

This statement is inaccurate and misleading. While 144 officials are currently required to file financial disclosure statements, review

of the affidavits on file with the Executive Director on July 22, 1974, showed that only 122 officials had filed sworn affidavits. Of 18 ALJs only 11 had sworn affidavits on file. One ALJ, who had not filed a sworn affidavit, had in February 1974 presided over a natural gas curtailment case in which the General Motors Corporation was a major intervenor although the ALJ was a stockholder in General Motors. The ALJ did not make this fact known to participants in the proceeding until after the hearing was well underway.

Review of the affidavits on file showed that several ALJs apparently had financial interests in companies involved in proceedings over which they had presided. The ALJs were allowed to preside over the cases by the Chairman, FPC, who had determined that the ALJs' financial interests would not prevent participation in the cases.

The Executive Director told us that he did not know why all FPC officials had not been required to file sworn affidavits. Subsequently, on July 24, 1974, the Executive Director told us that all officials had filed the required affidavits, except for a few on leave.

The Chairman acknowledged that the General Counsel, the Executive Director, and the Director, OPP, failed to file the required financial forms for the 1971-73 period but added that none of these officials held any securities at any time during their FPC employment.

GAO believes that the fact that these officials may not have held any securities is not at issue; the important point is that these officials failed to comply with the standards of conduct regulations which require all officials to file financial disclosure forms annually.

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GAO was asked to determine how many people in top positions at FPC have been associated with the oil and gas industry before their Federal employment.

COMMISSIONERS WITH PREVIOUS ASSOCIATION WITH THE OIL AND GAS INDUSTRY

Three Commissioners had associations with the oil and gas industry before their appointments as Commissioners. These associations were disclosed during their confirmation hearings before the Senate Commerce Committee, and all three Commissioners stated that they would divest themselves of interests that could cause potential conflicts of interest.

The Federal Power Act precludes anyone from holding the position of Commissioner who is in the employ of, or has a financial interest in, any entity engaged in the generating, transmitting, distributing, or selling power. The Natural Gas Act is silent with respect to conflicts of interest; however, pursuant to FPC policy, Commissioners are subject to identical restrictions in their relations with natural gas companies.

Each Commissioner is required by Executive Order No. 11222 to report his employment and financial interests to the Chairman of CSC, within 30 days after entering on duty. Each statement is to be kept up to date by quarterly submission of any changes to the statement. A CSC official said (1) the three Commissioners had divested themselves of all interests they agreed to dispose of during their confirmation hearings and (2) CSC's review of the five Commissioners' financial disclosure statements had not disclosed any situation that would indicate a potential conflict of interest.

Details of the Commissioners' associations with the oil and gas industry follow.

Commissioner Rush Moody, Jr.

Commissioner Moody was appointed on November 19, 1971. Before his appointment, Commissioner Moody was a member in the law firm of Stubbeman, McRae, Sealy, Laughlin and Browder from 1960 to 1971. During the last 4 years with this firm, he represented and/or was retained by 26 oil or gas companies.

Commissioner Moody also owned securities in companies in the oil and gas industry as well as mineral rights to several tracts of land in Texas, New Mexico, and Montana. During confirmation hearings Commissioner Moody stated he would divest all holdings and interests which might create a possible conflict of interest.

Commissioner Don Smith

Commissioner Smith was appointed on December 13, 1973. Before joining FPC, he held group mineral rights and received royalties on several tracts of land in Arkansas which he had acquired by inheritance. Commissioner Smith, in a financial statement prepared for his confirmation hearings, stated that divestiture of all royalty and mineral rights would become effective upon his confirmation to FPC.

Chairman John N. Nassikas

Chairman Nassikas was appointed on August 1, 1969. Before his appointment, he had represented the Manchester Gas Company before the New Hampshire Public Utilities Commission while a partner in the law firm of Wiggin, Nourie, Sundeen, Nassikas and Pingree.

Chairman Nassikas also had financial interests in companies in the oil and gas industry. During the Senate confirmation hearings, Chairman Nassikas submitted a financial statement that stated he and/or his wife would divest themselves of financial interests in the oil and gas industry. He detailed for the Senate Commerce Committee the stocks that he and his wife intended to dispose of, if he was confirmed.

Among the securities that Chairman Nassikas indicated he and his wife would retain were 50 shares of common stock of United States Steel Corporation. In connection with our work on financial disclosures of top staff officials (see pp. 31 to 36), we noted that United States Steel Corporation owned 100 percent of Carnegie Natural Gas Company and that several staff officials had been required to dispose of their interest in United States Steel as a result.

Because the financial disclosures required to be made by top Government officials to CSC are obtained with the understanding that they will be confidential, CSC would not disclose to us the specifics of any financial disclosure made to it. We gave CSC information on companies whose securities FPC's General Counsel had determined could not be held by FPC officials.

According to a CSC official, one FPC Commissioner held securities in a company that the FPC General Counsel had determined was prohibited under FPC regulations. The CSC official indicated that the CSC would contact the Commissioner concerning this matter.

CSC officials indicated that an indirect interest--ownership of stock in a corporation whose subsidiary was a natural gas company--would not of itself cause CSC to seek divestiture or other action by the official involved. Other factors would be considered, including the size of the financial interest and the importance of the subsidiary to the total operation of the parent.

The thrust of FPC's standards of conduct regulations is that employees should avoid any action that would impair the confidence of citizens in the Government's integrity or have a financial interest that even appears to conflict substantially with their duties.

Though the small investment in United States Steel Corporation, coupled with the fact that the financial interest was disclosed at the Senate confirmation hearings, indicates that the failure to include the stock among those to be divested was due to an oversight, it appears to us that the same strict standards should apply.

In his response to our report, the Chairman, FPC, stated that he agreed that the same standards which apply to FPC employees should also apply to him; accordingly, on May 16, 1974, at his request, his wife ordered that their shares of United States Steel be disposed of.

PRIOR INDUSTRY ASSOCIATION OF TOP FPC OFFICIALS

Personnel files of several top FPC officials showed that none of the officials employed as of January 1, 1974, had prior association with the oil and gas industries.

We also reviewed the personnel files of two former officials employed when the optional certificate or 60-day emergency sale regulations were issued. These officials were Mr. Gordon Gooch, former General Counsel, and Mr. Thomas J. Joyce, former Chief, BNG.

Mr. Gooch, before joining FPC, was a member of the law firm of Baker, Botts, Shepard and Coates from 1962 to 1969. This law firm represented several oil and gas companies. Before FPC employment, Mr. Gooch also received dividend income from a trust fund comprising stocks, including those of many companies under FPC jurisdiction. Mr. Gooch's financial statement, filed when initially employed, showed that he no longer owned these securities. Mr. Gooch resigned from FPC on July 27, 1972, to accept employment with the Committee to Re-elect the President and later returned to the law firm of Baker, Botts, Shepard and Coates in its Washington, D.C., office.

Mr. Joyce was a vice president with the Institute of Gas Technology, Chicago, Illinois, before being employed in 1969 by FPC. In this position, he directed economic and market research studies for gas utilities, pipelines companies, gas producers, and equipment suppliers. Mr. Joyce resigned from FPC on September 1, 1973. He had no financial interests in the oil and gas industry.

CHAPTER 7

PUBLIC STATEMENTS OF FPC COMMISSIONERS

We were asked to determine whether the public statements of FPC Commissioners advocating action to deal with the natural gas shortage represented a departure from the Commission's traditional practice of maintaining a public posture of neutrality.

A review of the public statements by former and current Commissioners showed that Commissioners have not traditionally maintained a neutral position on issues affecting FPC. Though the position expressed by some FPC Commissioners on deregulating the price of natural gas may coincide with the industry's position, we found no evidence that in so doing the Commissioners have acted improperly or failed to act in what they believed to be the public interest.

Through a review of FPC's administrative procedures and discussions with FPC's Director, Office of Public Information, we found that no restrictions exist on the contents or subject matter of public statements of FPC Commissioners. An examination of 164 public statements given by Commissioners John N. Nassikas, Rush Moody, Albert B. Brooke, and William L. Springer and former Commissioners Pinkney C. Walker and Carl E. Bagge, from February 1969 to January 1974 showed that 119 of these statements discussed natural gas. These statements were delivered before the Congress, professional associations, and State and civic organizations. Twenty-nine of these statements supported the deregulation of the wellhead price of new natural gas in the belief that deregulation would be a step toward national self-sufficiency in energy and that it would be in the public interest by providing an adequate supply of natural gas at reasonable rates.

For example, Commission Moody, in a statement before the Senate Committee on Commerce on October 11, 1973, stated that adequacy of supply is as important as low price and based part of his support for deregulation on the following statement of the 5th Circuit Court of Appeals:

> "FPC has the statutory duty, not only to guard the consumers against super profits reaped from artificially inflated rates, but also to protect consumer interests by making sure that the rate schedule is high enough to elicit an adequate supply."

A review of 160 public statements discussing natural gas made by Commissioners from 1947 to 1964 reveals that former Commissioners have likewise not been neutral in their personal and official views pertaining to regulating the natural gas industry. For example, in 1947 when the Commission and the Congress began to actively consider whether the FPC had jurisdiction over independent producers of natural gas under the Natural Gas Act. Commission members publicly opposed independent producer regulation or FPC regulation of the wellhead price.

In a letter to the House Committee on Interstate and Foreign Commerce dated July 10, 1947, the full Commission stated that it favored specific legislation which would "* * * make it perfectly clear that independent producers and gatherers of natural gas are exempt from the provisions of the Natural Gas Act and the jurisdiction of this Commission."

On June 7, 1954, the Supreme Court reversed the FPC opinion in the Phillips Petroleum case in which the Commission had ruled that FPC had no jurisdiction over independent producers of natural gas. On March 21, 1955, a Commission majority, in a letter report to the Chairman, House Committee on Interstate and Foreign Commerce, urged the Congress to nullify the Supreme Court decision by passing legislation which would deregulate the wellhead price of natural gas, stating:

> "The question remains, however, whether the Supreme Court's decision in the Phillips case, supra., reflects the true public interest, or whether legislation amendatory to the Natural Gas Act is needed for that purpose. It is the considered opinion of the majority of this Commission that legislation should be enacted which will exempt from the operations of the Natural Gas Act independent producers and gatherers of natural gas * * *."

When such legislation was not passed by the Congress, certain Commissioners continued to publicly discuss the great administrative burden the Supreme Court had placed upon the FPC in the Phillips decision.

More recently Commissioners have stated that current methods used in determining natural gas prices have generally failed to elicit sufficient additional supplies of natural gas to meet increasing consumer demand. The Commissioners believe that market forces acting on deregulated natural gas prices would benefit the consumer by eliciting additional supplies of gas at reasonable rates as opposed to higher prices of natural gas resulting from increased reliance on higher priced supplements, such as LNG and synthetic gas under regulated market conditions. The Commission generally believes that, should the wellhead price of natural gas remain regulated, there will not be sufficient incentives for the needed investments in exploring for, developing, and producing natural gas and that ultimately the consumers' interests would be endangered.

The Chairman, FPC, in his July 19, 1974, letter commenting on our report elaborated by stating:

> "If the present Natural Gas Act provides the framework for regulating the wellhead price of natural gas and the Natural Gas Act is not amended to empower the Commission to prescribe rates on the basis of market values and economics rather than costs, there will not be sufficient incentives for investments in exploration, development and production of natural gas and ultimately the consumers' interests will be endangered.

However, in my opinion its is not regulation per se but rather the limitations in our powers to regulate based on the economics of the marketplace under the Natural Gas Act, as interpreted by the courts, that inhibits the magnitude of the commitment required to produce gas consistent with demand."

CHAPTER 8

FPC PRICING POLICIES AND THEIR EFFECT ON GAS SUPPLY AND PRICE

We were asked several questions dealing with FPC's pricing policies and their effect on the supply and price of natural gas. The questions and our responses follow.

Question 1: "Is there any finding at the FPC that failure to increase production is price related?"

FPC believes that the failure to increase the supply of natural gas is price related and that a positive relationship exists between increased prices and exploration for new gas.

The FPC Chairman, in testimony before the Subcommittee on Energy of the Senate Finance Committee, on January 24, 1974, reported that the failure to increase the supply of gas was price related and that FPC was partially to blame. The Chairman stated that:

> "It has been widely recognized that the present shortage of natural gas is due in part to the restrictive pricing policies of the past and the cost-based regulatory limitations inherent in the Natural Gas Act."

An FPC official said the price-supply relationship for natural gas has been demonstrated in an econometric model developed by Dr. Daniel J. Khazzoom for FPC's Office of Economics. The model basically attempts to quantify the precise amount of natural gas that would be forthcoming at various price levels. The model, based on past trends, predicted that higher area ceiling rates would increase discoveries of natural gas.

In considering and evaluating the Khazzoom model, FPC stated in Opinion 598 (Southern Louisiana Area Rate Proceeding) issued in July 1971, that "* * * no reliable quantitative forecasts may be made by increments of additional gas supply resulting from specific increased gas price * * *." However, on the basis of the model and other evidence presented, FPC concluded that "* * * there exists a positive relationship between gas contract price levels and exploratory effort * * *."

In the same proceeding, FPC discussed the great difficulty in quantifying the precise amount of gas resulting from a specific gas price increase, because of the large number of interrelated factors. The interaction of these factors affect the timelag of gas supply response to any given price level. These supply-response factors include: the responsiveness of drilling activity to any given price level, the level of reserve additions resulting from increased exploration and drilling, the location and depth of drilling, the availability and cost of sufficient drilling equipment, the availability of offshore lease acreage, tax treatment of the oil and gas

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industry, alternative investment opportunities, the availability of capital, monetary inflation, changes in industry technology, and domestic energy import policy.

FPC and other authorities consider the exact interplay between these variables, which affect business decisions, and their effect on gas supply to be complex and difficult to assess and quantify for any time period, short term or long term. In addition, the FPC Chairman has stated that the timelag of new gas supply, which may result from any appreciable price increase, could range from 3 to 6 years. FPC believes that price increases will provide the necessary incentives to elicit additional gas supply through developing proven and potential gas reserves.

From our review of FPC opinions, orders, testimony before congressional committees, staff documents, and discussions with FPC officials, we present the following FPC data and conclusions which indicate a relationship between price and the supply of natural gas.

--The higher prices permitted in the non-Federal regulated intrastate gas market divert new gas supplies away from the interstate market, thus creating geographical distortions in the supply of gas available to meet interstate demand.

--FPC's Office of Economics considers drilling activity a leading indicator of the industry response to changing economic conditions and regulatory policies. After a general downward trend in the number and footage of gas wells drilled from 1962 through 1971, drilling activity increased in 1972. Preliminary data for 1973 shows that the number of gas wells drilled increased by 29.3 percent over 1972, and exploratory gas well footage drilled increased by 33.4 percent. One FPC official said this increase in drilling activity may indicate that FPC price increases are achieving the desired result.

--Some FPC officials believe that regulatory lag, uncertainty of future prices, and the possibility of rate reductions has resulted in the industry's reluctance to heavily invest in developing gas reserves for the interstate market.

--An official in FPC's Office of Economics stated that monetary inflation beginning around 1968, combined with regulatory lag, had caused an "erosion" of FPC's area rate ceilings, because inflation had risen faster than FPC's ability to adjust rates to the new conditions.

In summary, FPC generally believes that the present shortage of natural gas is due in part to the restrictive FPC pricing policies in the past and the cost-based regulatory limitations inherent in the Natural Gas Act. It believes that a positive relationship exists between wellhead gas prices and exploration. However, the precise amount of gas brought forth and the time necessary to search for, find, and deliver new gas to

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the consumer is considered uncertain and dependent on numerous factors, other than price, which affect business decisions.

In his letter of July 19, 1974, the Chairman, FPC, elaborated on FPC's position that a positive relationship exists between increased prices and exploration activities by stating that the Commission's findings were approved by the United States Supreme Court in Mobil Oil Co. v. F.P.C., Nos. 73-437, et al. (June 10, 1974), ____ U.S. ____, 94 S. Ct. 2328, 2351.

Question 2: "How much have price rises initiated by the FPC in the last four years cost the American consumer?"

Question 3: "How much new natural gas has been in fact marketed through the interstate market as a result of such price hikes according to FPC figures?"

The preceding discussion demonstrates the difficulty in establishing a cause-effect relationship between price increases and increases in gas supplies. In this section, we confined our work to estimating the increased price which pipeline companies under FPC jurisdiction charged for natural gas for the 4-year period 1970 through 1973. Also we are providing an estimate of the increased amount of natural gas sold in the interstate market during the same period. Our estimates are based on an analysis of statistics collected and maintained by FPC and are not intended to show a cause-effect relationship between the price and supply of natural gas. These estimates show only the results of gas sales under FPC jurisdiction in terms of price charged and volume of gas sold to intrastate utilities during the period 1970-73.

On the basis of reports filed with FPC by major interstate pipelines, we estimate that intrastate gas companies purchasing gas from interstate pipelines paid increased prices amounting to about $3.3 billion during the period 1970-73 and received an additional 3.9 trillion cubic feet of gas. Of the $3.3 billion, about $1.1 billion was the result of increased wellhead prices paid to domestic producers and the remaining $2.2 billion was received by the major interstate pipelines. A full explanation of these estimates follows.

ANALYSIS OF PRICE AND SUPPLY ESTIMATES

FPC's jurisdiction is generally limited to interstate sales, and as a result FPC does not regulate or compile data on nationwide and final consumer gas sales. The Bureau of Mines, however, compiles nationwide data on the supply and price of natural gas delivered to final consumers. Gas sales made under FPC jurisdiction are included in this data but are not separately identifiable.

For calendar year 1972, the Bureau of Mines reported 19.9 trillion cubic feet of natural gas delivered to consumers. Of this, 25.8 percent went to residential customers, 11.5 percent to commercial customers, 41.1 percent to industrial customers, and 20.0 percent to electricity-generating plants; 1.6 percent was for miscellaneous use. The average

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delivered cost of this gas per MCF to the major customer categories was $1.21 for residential, $0.92 for commercial, $0.45 for industrial, and $0.34 for electricity-generating plants. The average price to all customers in 1972 was $0.68 per MCF.

As shown in the following table, the average delivered cost of natural gas continually increased from 1969 through 1972 in each of the major categories.

Average Delivered Cost of Natural Gas Per MCF by Major Customer Category

Year	Customer category: Residential	Commerical	Industrial	Electric utility	Average
1969	$1.05	$0.78	$0.35	$0.27	$0.57
1970	1.09	.82	.37	.29	.59
1971	1.15	.87	.41	.32	.63
1972	1.21	.92	.45	.34	.68

The number of residential customers grew from approximately 38 million in 1969 to about 40 million in 1972. These customers paid an average of $130 for an average consumption of 124 MCF of gas in 1969 rising to $156 to 129 MCF of gas in 1972, or a 15-percent increase in the cost per MCF.

Though Bureau of Mines data shows the increased price for natural gas which ultimate consumers have paid, it does not identify the causes for these price increases. Likewise, FPC did not have studies or reports to show how price increases allowed by FPC affected the ultimate consumer. FPC officials said these types of reports were not made since State regulatory groups, and not FPC, usually determine the price charged the ultimate consumer. Price increases allowed by FPC are assumed to be included in the price to the final consumer.

Using FPC Form 11 reports--Natural Gas Interstate Pipeline Company Monthly Statement--we estimated the effect that price increases allowed by FPC had on consumers, assuming price increases were passed on to consumers. Form 11 reports provide the volume and dollar amount of natural gas bought and sold by the 33 major interstate pipelines. These 33 pipelines account for about 93 percent of all purchases by interstate pipelines from producers and 98 percent of all gas sales by interstate pipelines to intrastate gas companies (local distributors).

Using 1969 as the base year, the following two tables show for the period 1970-73 (1) the increase in revenues received by major interstate pipelines due to price increases and (2) the additional volumes of gas sold by major interstate pipelines.

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Increase in Revenue
Received by Major Interstate
Pipelines Due to Price Increases
(1970-73)

Year	Average price charged (cents per MCF)	Increased in price over 1969 price (cents per MCF	Volume sold (trillion cu. ft.)	Increase in revenue due to price increases (billions)
1969	36.39	-	9.56	$ -
1970	38.56	2.17	10.14	0.22
1971	42.33	5.94	10.58	0.63
1972	46.07	9.68	10.93	1.06
1973	49.90	13.51	10.54	1.42
Total increase in revenue				$3.33

Gas Volume Sold
by Major Interstate Pipelines
(1970-73)

Year	Gas sold (trillion cu. ft.)	Increase in volume sold over 1969 sales level of 9.56 trillion cu. ft.
1970	10.14	.58
1971	10.58	1.02
1972	10.93	1.37
1973	10.54	.98
Total	42.19	3.95

From 1970 through 1973 the major interstate pipelines sold about 42.2 trillion cubic feet of gas to intrastate gas companies under FPC rate schedules, which includes a cumulative 4-year addition of about 3.9 trillion cubic feet of gas marketed above the 1969 sales volume. Assuming that intrastate gas companies pass on increased prices to customers, intrastate gas utilities paid increased prices amounting to about $3.3 billion during the period 1970-73 while receiving the additional 3.9 trillion cubic feet of gas.

In commenting on our estimates, an FPC official stated that there is no way to estimate the portion of the additional 3.9 trillion cubic feet that would have been lost to the nonregulated intrastate pipeline market if wellhead prices had been stabilized at the 1969 level.

We carried our analysis a step further to determine what portion of the $3.3 billion was the result of higher wellhead prices paid to domestic producers by the major interstate pipelines. FPC Form 11 reports show

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that the price per MCF paid at the wellhead increased from 17.62 cents in 1969 to 22.62 cents in 1973. This increase cost the major pipelines approximately $1.1 billion over the 4-year period. Consequently, of the $3.3 billion impact on consumers, about $1.1 billion went to domestic producers and $2.2 billion to the major pipelines.

An FPC official told us that a portion of the increased prices received by domestic producers represent reimbursements for increased State production taxes and periodic increases in producer-pipeline contracts which are usually automatic, provided they do not exceed the area ceiling rate set by FPC. They further stated that the increased rates granted to the interstate pipelines were justified because of the increased cost of capital, inflation, and increased depreciation rates.

Question 4: "Do the FPC facts justify further massive price hikes in terms of more gas being made available to the interstate market?"

Citing the current natural gas shortage as partially the result of restrictive pricing policies during the 1960s, FPC believes that greater incentives, including increased wellhead prices, are necessary to reverse the declining trend in gas reserve additions and the diversion of new gas supplies from the interstate market to the intrastate market. (See response to question 1.) Nevertheless, as discussed below, any rate increase granted by FPC must be determined to be just and reasonable in providing an adequate supply to the consumer at a reasonable price.

According to an FPC official, the justification for a natural gas producer or pipeline rate increase is based on Commission and staff analysis of facts or evidence presented by the parties in each rate proceeding. The Natural Gas Act states in section 4(e) that the natural gas company(s) involved must bear the burden of proof to show that any increase in rates is just and reasonable. Justification will vary from case to case depending on the circumstances and the evidence presented by the different parties. The opinion and order issued in each case sets forth in detail the rationale for accepting or rejecting the evidence.

FPC has stated that recent price increases granted under various regulatory and rulemaking procedures have been an attempt to increase the supply of gas available to the interstate market. The Supreme Court in the Permian Basin Area Rate Proceeding I decision, issued May 1, 1968, stated that "* * * price can meaningfully be employed by the Commission to encourage exploration and production." Thus, in determining just and reasonable rates in an area rate proceeding, the price granted by FPC may incorporate a system of incentives designed to stimulate exploration and encourage new dedications of gas to the interstate market. For example, in Opinion 662, Permian Basin Area Rate Proceeding II, issued August 7, 1973, FPC included a 3.5 cents per MCF increment for exploration and development. The justification for the increment was based on estimates that any gas discovered in the Permian Basin area would result from exploration at depths below 15,000 feet and thus at substantially greater costs. A comparison of drilling costs in 1969 showed that it cost $51.78

per foot drilled in the Permian Basin area versus an average of $19.71 per foot drilled for all wells.

However, though drilling activity has significantly increased in the past 2 years, FPC officials contend that it is premature, primarily due to long leadtimes, to determine if price increases granted in 1972 and 1973 have resulted in significant new gas reserve additions.

Some Commissioners and staff officials have stated that the cost of natural gas to the consumer is due to rise regardless of whether or not the wellhead price for interstate gas increases or remains stable. The principal factors cited for this are the current high interest rates, inflation, and the higher cost to the consumer of supplemental supplies, such as imported LNG, synthetic natural gas (SNG), coal gasification projects, Alaskan gas, and pipeline imports from Canada and Mexico. The estimated prices for these supplements (in cents per MCF) range from $0.84 to $1.25 for LNG, $1.10 to $1.80 for SNG, $1.00 to $1.25 for coal gas, $0.85 to $1.25 for Alaskan gas, and a 1973 average of 34.68 cents per MCF for gas from Canadian and Mexican sources. The average wellhead price of domestic gas dedicated to the interstate market in 1973 was 22.62 cents per MCF.

FPC believes that increased wellhead prices and other incentives to encourage the development of domestic natural gas reserves will be far less costly to the consumer in the long run than the increasing reliance on the more expensive supplemental supplies and imports currently necessary to meet demand. In addition, staff officials have expressed concern that the prospect of the legislation that would deregulate the prices charged by independent producers of natural gas had created expectations of higher gas prices in the future. They reasoned that gas producers prefer to speculate that probable or possible price increases will result in higher returns in the future than commitment of gas to the interstate market at current price levels. The FPC staff believed that this speculation would continue to affect the level of gas supply as long as the issue of regulation versus deregulation remained unresolved.

CHAPTER 9

FPC COOPERATION WITH THE FEDERAL TRADE COMMISSION (FTC) DURING ITS INVESTIGATION OF THE NATURAL GAS INDUSTRY

We were asked to investigate allegations that FPC failed to cooperate with FTC in its investigation of the natural gas industry. The interaction between the two agencies is detailed in the following sections, together with answers to the questions raised. We were also asked to determine the role Mr. William P. Diener played in the FTC investigation.

CHRONOLOGY OF FTC'S INVESTIGATION

FPC received 10 requests for information from FTC during its investigation of the natural gas industry. Five of these were for general information, and FPC usually responded to these requests in an average of about 9 calendar days. The other five requests were generally for more detailed information and usually took a longer time to respond--up to 77 days. They will be discussed in detail in the following chronology of FTC's investigation.

On September 1, 1970, FTC received a request from Senator Philip Hart, Chairman, Subcommittee on Antitrust and Monopoly, Senate Committee on the Judiciary, asking FTC to investigate the natural gas industry's reserve-reporting practices and the accuracy of the reported gas reserve.

The first contact that we identified between FTC and FPC during this investigation occurred on September 22, 1970, when FTC staff requested certain background information and sought interviews with FPC technical personnel. FPC's General Counsel responded by letter the following day providing the information requested and offering to help arrange interviews with FPC technical staff.

FTC replied to Senator Hart on October 13, 1970, stating that FTC was initiating a vigorous investigation. On October 20, 1970, the FTC Commissioners directed the Bureau of Competition, FTC, to begin the investigation.

On November 6, 1970, Mr. William P. Diener and two other FTC attorneys were assigned to the investigation. Mr. Diener did not have primary responsibility for the investigation but was assigned to assist. After an initial investigation, Mr. Diener, in an undated memorandum to the Assistant Director, Bureau of Competition, cited the available evidence indicating an absence of collusion in the gas industry and wrote:

> "It is this writer's belief that it would be a mistake to proceed further without either expanding the scope of this investigation or closing the present one. I question our expertise to go

further. Moreover, I feel the numerous allegations can be considered through our merger study or energy study, with a more e tive utilization of our limited resources."

FTC's Bureau of Competition took no action on Mr. Diener's recommendation and the investigation continued. On April 11, 1971, Mr. Diener resigned from FTC and was employed by FPC in its OGC.

On July 19, 1971, FTC staff members met with FPC officials to obtain information about natural gas reserve estimation techniques and detailed data on natural gas supplies submitted annually by interstate natural gas pipeline companies on FPC Form 15. By letter of July 22, 1971, FTC requested specific reserve information for the period 1965-69 which it believed was contained in the Forms 15. On August 9, 1971, FPC's General Counsel replied that not all of the requested information was on the forms and that:

> "The estimated cost for the manual portion to respond to your request is in the range of $25,000, exclusive of the cost of programming, computer time and related vertification."

FPC's General Counsel suggested that FTC copy the computer tapes and perform its own operations on them and offered to make technical staff available to the FTC, whatever FTC decided.

On December 21, 1971, FPC initiated its National Gas Survey, a major survey and analysis of the Nation's gas reserves designed to obtain an overview of prospective growth of the natural gas industry, its markets, and the gas supplies needed to meet them. The FPC order initiating the study stated that any nonpublic commercial information obtained during the survey on individual gas companies' reserves would be confidential unless otherwise directed by the Commission. FPC cited:

--A requirement of the Natural Gas Act which provides that information obtained by FPC staff members during an investigation cannot be divulged unless ordered by FPC or a court.

--Sections of the Freedom of Information Act which exempt from public disclosure trade secrets, commercial and financial information, geological and geophysical information, and data concerning wells.

From December 1971 to March 1973 no significant interaction between FTC and FPC took place.

On March 7, 1973, Senator Hart requested that data on uncommitted natural gas reserves of 79 producers FPC had obtained be made available to his Subcommittee and FTC. By letter of March 20, 1973, FPC provided part of this information to Senator Hart but declined to provide reserve data on specific gas producers.

On April 6, 1973, an FTC attorney met with the technical director of the National Gas Survey to obtain information on the survey. The technical director would not make any statements until an attorney from FPC's OGC was present. The FTC attorney asked for specific information about gas reserves in various gas fields included in FPC's survey. The FPC attorney requested the FTC attorney to put his request in writing and stated that it would then be considered.

The FTC attorney submitted his written request on April 17, 1973. The FPC attorney telephoned the FTC attorney on May 7, 1973, and gave him some of the information and informed him that the rest would be delayed. He also added that some of the information would be released as part of FPC's report on the National Gas Survey.

On June 5, 1973, the FTC attorney, in a written request to FPC's OGC, asked for gas reserve estimates for specific fields. FPC denied this request on June 29, 1973, in one letter to the FTC attorney and another from the FPC Chairman to the FTC Chairman. FPC based its denial on its order for confidential handling of survey data, the Natural Gas Act, the Freedom of Information Act, and certain policy considerations. In his letter, the FPC Chairman stated that:

> "The Federal Power Commission has received no request for disclosure of field-by-field reserve estimates conducted under this Commission's National Gas Survey from the Federal Trade Commission, as distinguished from a staff member of your Commission directing his inquiry to a member of our staff."

The FPC Chairman suggested that FTC file "an appropriate pleading" for FPC's consideration of the request and added that:

> "* * * such a procedure would avoid placing FPC employees * * * in the position of answering an FTC staff request that, if honored, would require * * * [staff member] to violate outstanding FPC orders."

The Natural Gas Act, section 8 (b), states that:

> "No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books, records, data, or accounts, except insofar as he may be directed by the Commission or by a court."

Failure to comply with the act could lead to a fine and/or imprisonment.

Senator Hart had requested uncommitted gas reserve information on March 7, 1973 (see p. 55), and had been denied on the basis of the Freedom of Information Act and the confidentiality section of the Natural Gas Act. Senator Hart's Subcommittee then requested FPC to appear with the gas reserve material at hearings scheduled for June 6 and 7, 1973, and later

postponed to June 26, 1973. On June 11, 1973, Senator Hart wrote to FPC noting the alleged attempted destruction of this material by an FPC employee and advising FPC of the start of an investigation by his Subcommittee:

> "* * * to interview privately all FPC personnel and members, and to examine all documents and files necessary or appropriate to ascertain all facts bearing on this question."

On June 21, 1973, Senator Hart, acting on behalf of the Subcommittee, issued a subpoena for FPC to furnish uncommitted gas reserve data. On June 22, 1973, FPC provided the subpoenaed information to Senator Hart by FPC order.

On July 30, 1973, FTC's Director, Bureau of Competition, formally applied to FPC for the reserve data denied by FPC on June 29, 1973. FPC, on July 31, 1973, initiated a proceeding and requested comments by interested parties on whether the reserve data should be retained on a confidential basis. FPC treated FTC's application for the data as a petition to intervene in the proceeding.

FPC received comments from 26 natural gas companies and FTC. After reviewing the comments, FPC in an order issued October 15, 1973, stated that it was convinced that no justification existed for modifying its December 21, 1971, order, as amended, which insured confidential treatment of the gas reserve data, but added that:

> "* * * the majority of comments demonstrate that public disclosure of the data at this juncture would severely harm the public interest."
>
> * * * * *
>
> "Nevertheless, we have concluded that permitting * * * [FTC's staff members] to examine and copy the estimates for all twenty-four fields would not be inconsistent with the public interest, provided that certain conditions of confidentiality are scrupulously observed."
>
> * * * * *
>
> "Finally, while we will permit examination of the estimates in question and copying by handwriting, we will not permit any reproduction and duplication of the documents in questions."

Response to questions raised by Congressman John E. Moss

> "Has the sequence of events between FPC and FTC in fact taken place?"

The chronology of events as previously presented is the best account of FPC-FTC interaction and sequence of events in FTC's investigation of

natural gas reserve data as could be determined from available records, files, and interviews with officials from both agencies.

"Is there a pattern of deliberate delay and denial of cooperation on the part of the FPC in regard to the FTC monopoly investigation in the oil and gas industry?"

We found no evidence of deliberate delay and denial of cooperation by FPC.

We did find instances, however, when FPC was not completely cooperative, as presented below. In a meeting on December 1, 1970, between FPC and FTC staff, the FPC General Counsel informed the FTC staff that, "* * * he must be informed in writing of the person sought to be interviewed and the date." An FTC staff memorandum of the meeting also stated that FPC's General Counsel:

> "* * * though formally cooperative, manifested a definite coolness toward the undersigned and their efforts to obtain information."

In hearings before the Senate Subcommittee on Antitrust and Monopoly on June 27, 1973, the Director, Bureau of Competition, FTC was asked and responded to the following question regarding FTC-FPC cooperation:

Question: "How about the fact that the FTC staff couldn't talk to FPC staff unless general counsel or a representative was present? Did that inhibit your investigation in any way?"

Answer: "Evidently that is FPC policy. It was the policy they stated to us. * * * I am told that they [FTC investigators] feel having General Counsel's staff present does have some inhibiting effect."

FPC's current General Counsel said there is no FPC policy requiring the presence of a representative from OGC when FPC employees are interviewed.

In response to a question by Senator Hart on whether any FPC personnel sought to curtail or close the investigation, FTC, in a letter to Senator Hart, dated September 14, 1973, stated that:

> "The Commission [FTC] is unaware of any attempt by the Federal Power Commission to close [FTC's] investigation."

During discussions with the FTC attorney in charge of FTC's investigation, he stated that FPC had shown greater cooperation with FTC inquiries.

"Has the FPC in fact sought to avoid making available its information on industry oil and gas reserves to the FTC?"

Except for FTC's request of June 5, 1973, for gas reserve estimates for specific fields, we found no other instance of FPC denial of gas reserve data. The data which FTC requested June 5 was provided to FTC in October 1973.

"Did FPC first deny and then ask for computer rental money and finally ask the FTC to file a formal request for the information?"

FPC did not deny FTC access to the data on the Forms 15, and did not ask FTC to file a formal request for the Form 15 information. FPC did, however, inform FTC that it did not have all the information needed to respond to its request for Form 15 data, that the information requested would require both computer and manual effort, and that:

> "The estimated cost for the manual portion, to respond to your request is in the range of $25,000, exclusive of the cost of programming, computer time and related verification. We would need appropriate assurances from your Executive Director that the Federal Trade Commission would reimburse us for all costs incident to the study before undertaking it."

* * * * *

> "If the Federal Trade Commission has it [sic] own computers, and computer personnel, you may prefer to purchase the tapes containing the Form 15 data and perform your own study. You also may prefer to do your own manual calculations, and we will be happy to show you how to do this * * *."

We explored the idea of FTC's copying the computer tapes containing the Form 15 data and performing its own analysis. The Chief, Computer Systems Branch, FPC, said FPC tapes could be used on FTC's computer system with only minor conversion and manipulation of the system and tapes. He estimated that it would have cost FTC about $250 for FPC to reproduce the tapes, about $150 for 15 tapes to hold the data, and the undetermined labor expense associated with manually extracting and interpreting the data.

FTC revised its request for the Form 15 data on August 24, 1971. FPC responded on August 25, 1971, stating that the information requested would be furnished and that it would be submitted shortly "* * * along with our fee for services rendered." We could not find any evidence that FPC actually charged FTC for services rendered.

"How much time did all these delays consume? Did it in fact obstruct the FTC investigation?"

Our analysis of the 10 different requests for information by FTC between September 1970 and July 1973 showed that the average time to respond was about 18 days per request; the time ranged from 1 to 77 days. We could not determine whether these delays hindered the FTC investigation.

"Were these informal contacts between high ranking FPC officials made to high ranking people at the FTC with a view to stifling the proposed oil and gas investigation?"

We identified only one informal contact between high-ranking FPC and FTC officials. This occurred on September 4, 1970, when FPC's General Counsel telephoned an FTC Assistant General Counsel concerning Senator Hart's letter to FTC requesting an investigation of natural gas reserve data. A memorandum of the conversation written by the FTC Assistant General Counsel stated:

> "* * * [FPC's General Counsel] advised me that * * * he was in process of preparing a staff response to it [Senator Hart's letter] * * * [FPC's General Counsel] stated that in his opinion the Power Commission has full authority to make an investigation of the sort here proposed and that it has a broad base of information with regard to the whole subject * * *."

The Washington Post on September 8, 1970, reported the conversation as an attempt by an FPC aide to halt the FTC study. According to the article, the FPC General Counsel told the FTC Assistant General Counsel "that the power commission didn't want the trade commission involved." Both individuals subsequently denied the newspaper account.

In a letter to Senator Hart on September 14, 1973, in reply to his request for information on the oral communications between FTC and FPC, FTC stated:

> "Various oral communications with the Federal Power Commission are documented in information already submitted to the Subcommittee. This information includes the June 1973 Staff Report, the various memoranda and interview reports submitted to the Subcommittee, and the testimony of [an FTC official]. Other than the oral communications reflected in the above, the staff advises that it has had no significant oral communications with the Federal Power Commission regarding this matter."

We reviewed the above reference to oral communications between FTC and FPC and found nothing indicating an FPC attempt to stifle the investigation.

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In his July 19, 1974, letter commenting on our report, the Chairman, FPC, stated:

> "As the report indicates, the Federal Power Commission staff cooperated with the Federal Trade Commission staff consistent with the limitations upon disclosure of confidential information under Commission orders issued pursuant to the Natural Gas Act."

Paul Rand Dixon, Acting Chairman, FTC, in his letter of July 17, 1974, commenting on the report, stated that the attorney currently in charge of the investigation informed him that the report appears to be accurate. The Acting Chairman also stated that the FTC staff involved in natural gas studies informed him "that employees of the Federal Power Commission are currently being most cooperative and helpful."

Mr. William P. Diener's progression within FPC

We were requested to review Mr. Diener's employment progression with the FPC and his role in FPC's relations with FTC and its investigation of the natural gas industry. Mr. Diener progressed in FPC from a grade GS-12 to a GS-17 within 2 years. Mr. Diener resigned from FPC in November 1973 to accept employment with a newly formed natural gas pipeline company in Utah.

Mr. William Diener began his Federal employment as a GS-12 trial attorney with the FTC in June 1970. Mr. Diener transferred to the FPC on April 11, 1971, as a trial attorney, GS-12, and was promoted to a GS-13 about 2 months later--June 27, 1971. From June 1971 to February 1973, he was granted two exceptions to the Whitten Amendment (Public Law 82-253, 5 U.S.C. 1071) by CSC. The first on January 23, 1972, for promotion to a GS-15 as Technical Assistant to the Chairman, FPC, schedule C, and the second on February 14, 1973, for promotion to a GS-17 as Assistant to the Chairman, FPC. The Whitten Amendment requires that a Federal employee remain in grade at least 1 year before promotion to the next higher grade.

In a letter dated January 18, 1974, CSC said it approved an exception to the Whitten Amendment to Mr. Diener, which allowed FPC to promote him to a GS-15 because of the:

> "* * * 'confidential relationship' to the Chairman, FPC, and the fact that had Mr. Diener not already been in the Federal service, he could have been appointed directly by FPC at this grade level. Under Schedule C authority, the head of the agency may select without regard to a competitive register."

CSC's January 18, 1974, letter also provided us with the following background and justification for granting Mr. Diener a second Whitten exception, which was needed for his promotion to a GS-17:

> "In June 1972, * * * [Chairman, FPC] requested another Whitten exception to fill a noncareer executive assignment

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vacancy as Assistant to the Chairman, GS-17. This request was denied at that time, because the agency did not justify that a hardship or inequity to either the agency or Mr. Diener would occur if he was not promoted to GS-17.

"In December 1972, * * * [Chairman, FPC] again requested an exception to the Whitten Amendment citing undue hardship to the agency. However, this request was returned without action because of the 'freeze' on promotions and appointments initiated by the President. After the hiring and promotion 'freeze' was lifted, * * * [Chairman, FPC] again submitted Mr. Diener for promotion to GS-17 citing undue hardship to the agency if Mr. Diener's services should be lost. Our records reflect that Mr. Diener had several job offers outside the Federal service at a salary in excess of the salary for GS-17. Based upon this fact, the position being a noncareer executive assignment, and * * * [Chairman, FPC] request citing undue hardship to the agency, an exception, as provided by law, was granted on February 14, 1973."

Records and files at FTC and FPC contained no evidence that Mr. Diener played a direct role in FPC's relations with the FTC during its investigation of the natural gas industry. Mr. Diener resigned from FPC on November 12, 1973, to accept employment with Northwest Pipeline Company in Salt Lake City.

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CHAPTER 10

SCOPE OF REVIEW

Our examination was conducted at the headquarters offices of the FPC and FTC in Washington, D. C.

At FPC we reviewed legislation, records, regulations, policies, and procedures pertaining to (1) 60 and 180-day emergency gas sales (2) the optional certificate procedure, and (3) staff financial disclosure.

At FTC we reviewed the records on FTC's interaction with the FPC during FTC's investigation of the natural gas industry.

Discussions were held with officials of both agencies.

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APPENDIX I

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GOVERNMENT OPERATIONS COMMITTEE:
RANKING MAJORITY MEMBER SUBCOMMITTEES ON
FOREIGN OPERATIONS & GOVERNMENT INFORMATION
CONSERVATION & NATURAL RESOURCES

INTERSTATE AND FOREIGN COMMERCE COMMITTEE
CHAIRMAN,
COMMERCE & FINANCE SUBCOMMITTEE

DEMOCRATIC STEERING AND POLICY COMMITTEE

October 10, 1973

Honorable Elmer Staats
Comptroller General of
the United States
General Accounting Office
Washington, D. C.

Dear Mr. Staats:

In recent months Congressional concern has mounted as a result of certain policies and actions on the part of the Federal Power Commission dealing with the price of domestic natural gas. Forty million households are affected by these activities which cumulatively are forcing heating fuel costs upwards drastically, guaranteeing windfall profits to a few major natural gas suppliers at vast consumer expense. As a Member of the House Committee on Interstate and Foreign Commerce, with jurisdictional responsibility over the Federal Power Commission, I am deeply concerned over this state of affairs and desire an investigation by your organization of several specific points at issue and in question.

My first concern is with a new, controversial method now being utilized by the FPC to set natural gas rates; the so-called "optional pricing procedure." Under its cover, natural gas producers may file applications for higher rates, even though such prices may substantially exceed a previous FPC established area ceiling rate, "if found to be in the public interest."

Outside access to meetings where these applications are considered has supposedly been arbitrarily limited by the Commission. Meanwhile, a steady stream of such applications have been filed by producers. Some, at least, have been granted, placing a significantly greater cost burden upon numbers of consumers in spite of strenuous protest by consumer groups.

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APPENDIX I

The best recent illustration of the effects of optional pricing is to be found in the Belco Petroleum Case. In a press release the FPC announced that under the procedure, now under legal challenge, permission had been granted by the agency to that company to charge 45¢ per thousand cubic feet, a 73% increase. This, of course, is a green light to all other suppliers to seek similar rates.

Potential cost to consumers would be astronomical. Presently the average price per thousand cubic feet of natural gas is approximately 20.5¢ If it rose to 45¢ the average household bill annually would rise by $25.27 by 1980. This reflects an increase of about 16.3% which does not take into consideration increases in consumption or inflation. Forty million households times $25 annually comes to at least $1 billion, according to industry projections, which can be expected to be understated. Cursory examination of FPC public statements indicate that far higher prices are either contemplated or already approved. Therefore, I would like GAO to obtain specific answers to the following questions:

Is the use of optional pricing effective de facto deregulation of the price of natural gas?

Is the FPC's conduct in adopting and actually administering the optional pricing procedure, especially in the Belco and George Mitchell cases, in compliance with the Natural Gas Act of 1938, as interpreted by the Supreme Court of the United States in the Phillips Petroleum Case?

Can this procedure be used constantly to raise gas prices with a minimum of adversary proceedings?

Are these actions and the entire optional pricing procedure not violations of both the Natural Gas Act of 1938 and the Administrative Procedures Act, especially 5 USC 553 Section (b)?

What effect is the use of this procedure having, as far as can be ascertained, on the utility bills Americans are paying? What projections can your agency make of how much future implementation of this procedure is going to cost consumers?

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As these developments have unfolded, the FPC and individual commissioners have been making a steady stream of public statements, which have the effect of conditioning consumers to eventual deregulation of natural gas prices. Such comments seem to have been orchestrated in conjunction with industry's campaign to gain governmental acquiescence in that policy.

This in turn sets the stage for what can only be termed one of the more astonishing performances in memory by a regulatory commission, seemingly in violation of the public interest. On Friday, September 14, 1973, without any public notice or allowing any interested parties to comment, the FPC effectively decontrolled natural gas prices for six months. The FPC order permits interstate pipelines to buy gas from producers for six months in purported "emergencies" without first obtaining permission or approval. Pipelines can then automatically pass price increases on to consumers. The order, resting on the assumption that there is adequate natural gas available, but that it has been withheld from market, forces consumers to pay any price a producer can extract for his gas. In light of the imminence of the heating season, the consequences for consumers are obvious and severe.

Once the order was promulgated, all responsible FPC personnel made themselves totally unavailable to any and all public media or Congressional questioning of the action. Here we have a repetition, method-wise, of the attempted destruction of public documents bearing upon FPC action in other oil and gas questions this year.

Compounding this, the FPC made its order effective the day of its adoption, simultaneously attempting to prevent consumer advocates from filing formal comments until January 15, 1974. The order contemplates evaluation of comments by the FPC commencing on March 15, 1974, when the order is scheduled to expire. In effect, this seems to mean that price control on natural gas this winter in the consumer interest has become a dead letter.

One question at issue concerns 5 USC 553 Section (b), which says:

> "General notice of proposed rulemaking shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include; 1) a statement of the time, place, and nature of the proposed rulemaking proceedings; 2) reference

> to the legal authority under which the rule is proposed; 3) either the terms or substance of the proposed rule or a description of the subjects and issues involved."

In Title 15 USC, Section 7170, we find an annotation to a U. S. Court of Appeals decision holding that in rulemaking, under the Natural Gas Act, the FPC must comply with procedural requirements imposed on rulemaking by the Administrative Procedures Act; Section 553 of Title 5. The case involved was Texaco, Inc., vs FPC; 412 F. 2d page 740 (3d Cir. 1969). Therefore, I would like to have the GAO seek answers to the following questions:

> If the action in question was in fact rulemaking by the Commission, does the statute then automatically apply?
>
> If the Commission action was not rulemaking, then has the FPC not acted in a totally arbitrary and illegal manner?
>
> If this is in fact an informal ratemaking process, can it be termed an evasion to avoid the formal ratemaking process?
>
> Do the strong pro-industry public statements of Commission members fly in the face of long accepted regulatory agency procedures of acting in the public interest, or at least of maintaining a public posture of neutrality? Do these public statements on behalf of an industry position on pricing not place FPC members in the position of acting as propagandists for private interests?
>
> How many people in top positions at the FPC have been associated with the oil and gas industry previous to their Federal employment, either through law firms or directly employed by various oil companies?

The public rationale for the consistent FPC policy of virtually unlimited price hikes to industry for natural gas has been that only in this manner can an incentive be provided to business to explore for, discover and make available adequate supplies of this fuel for the interstate market. This poses the following questions which I would like the GAO to seek answers for.

Is there any finding at the FPC that failure to increase production is price related?

How much have price rises initiated by the FPC in the last four years cost the American consumer?

How much new natural gas has been in fact marketed through the interstate market as a result of such price hikes according to FPC figures?

Do the FPC facts justify further massive price hikes in terms of more gas being made available to the interstate market?

One final area of national concern dealing with the FPC is included in my request. The Federal Trade Commission, over which I possess legislative oversight through the subcommittee I chair, has been trying to mount a major antitrust investigation of monopoly practices within the oil and gas industry. This is a matter of grave concern to every American, especially in light of the two year FTC study revealing that a serious monopoly situation is alleged to exist. To mount such an endeavor facts on oil and gas reserves are essential. Such information seems to be available only through the FPC. In seeking this information, a pattern of what may be deliberate delay and denial of cooperation has emerged on the part of the FPC towards the FTC.

The Federal Trade Commission has repeatedly sought facts from FPC on natural gas reserves, which the FPC possesses. Its initial request goes back at least to early 1972. At first the FPC simply denied the request. On another subsequent occasion, when the FTC sought facts, the FPC staff demanded $25,000 from FTC in payment for computer time allegedly required to compile the information. More recent attempts on the part of the FTC prompted FPC to ask FTC to file a formal application for the material. Following that, the FPC informed the FTC a formal proceeding would have to be held for the latter agency, as if they were any private applicant seeking information.

It is also my understanding that a number of informal contacts were initiated by the FPC to high-ranking FTC officials with a goal of preventing the FTC investigation of monopolistic practices by major oil companies and falsified figures on oil and gas reserves submitted by industry to the government.

Finally, I am most interested in the activities of Mr. William P. Diener who, when originally employed at FTC, was assigned the task of commencing the preliminary FTC investigation. After doing a significant amount of work on that inquiry, he recommended that the probe be ended and not pursued any further by the FTC. That recommendation was subsequently overruled within the FTC. At the time these events transpired, he held a GS 12 rating. Since that time, he has left FTC employ and gone to work at the FPC, originally with Commissioner Gooch. Presently, I have ascertained that he is working directly for Chairman Nassikas as an assistant, at a GS 17 level of salary. These employment changes and elevation of status have occurred within a two year period; a rather remarkable rate of progress.

The following questions arise and I would like to have GAO seek the answers:

Has the sequence of events between FPC and FTC in fact taken place?

Is there a pattern of deliberate delay and denial of cooperation on the part of the FPC in regard to the FTC monopoly investigation in the oil and gas industry?

Has the FPC in fact sought to avoid making available its information on industry oil and gas reserves to the FTC?

Did FPC first deny and then ask for computer rental money and finally ask the FTC to file a formal request for the information?

How much time did all these delays consume?

Did it in fact obstruct the FTC investigation?

Were these informal contacts between high ranking FPC officials made to high ranking people at the FTC with a view to stifling the proposed oil and gas investigation?

Is the employment progression of Mr. Diener accurate?

Is he playing any role in the FPC's relations with the FTC at the present time?

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Taken all together, these factors seem to compose an ominous picture for the consumer and taxpayer interest. I believe answers to these questions are vital as soon as possible. It is my hope, Mr. Comptroller General, that you will see fit to set an investigation afoot as soon as possible. I hope to hear from you shortly.

Sincerely,

John E. Moss
Member of Congress

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FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

JUL 19 1974

Mr. Victor L. Lowe
Director, General Government Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Lowe:

By letter of June 26, 1974, Mr. John D. Heller of your office sent to me a draft report to Congressman John E. Moss on selected aspects of the regulation of the natural gas industry and operations of the Federal Power Commission. This is to provide the requested comment on the draft report.

See GAO note 1, p. 112.

Chapter 1 describes briefly the establishment of the Commission, lists some of its staff units, and makes reference to a few of its actions in recent years designed to elicit greater supplies of natural gas in a seriously deteriorating supply situation. At the top of page 3 it characterizes the Commission's optional pricing procedure simply as an opportunity to producers to sell gas at contract prices in excess of the applicable area rate, without mentioning the forebearance to which a producer under the optional pricing procedure commits himself.

Under Order No. 455, optional pricing is an alternate procedure available if the producer is willing to forego certain benefits of area rate proceedings in exchange for certainty of the producer's certificated price, as determined at the certificate stage. Specifically, such producer, by accepting a certificate under that procedure,

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(1) waives all rights to seek future rate increases under section 4 of the Natural Gas Act with respect to the contract submitted, other than escalations, if any, as certificated, and (2) waives all rights to contingent adjustment of flowing gas rates in area rate decisions already decided, for all flowing gas which the seller-applicant produces in the same pricing area. Further, the seller-applicant agrees to receive the applicable area ceiling rate from the commencement of deliveries and for the first six months unless the Commission, before that time, issues a final decision in the matter.

On page 5, the principal FPC staff units are listed as the Bureau of Power, the Bureau of Natural Gas, the Office of Economics, the Office of General Counsel, and the Executive Director. Two other organizational elements certainly should be included in any such list, the Office of Environmental Quality and the Chief Engineer. The Office of Environmental Quality is responsible for environmental reviews under the Federal Power Act, the Natural Gas Act, the National Environmental Policy Act, and related statutes. The Chief Engineer is responsible currently for the Commission's program for conservation of energy and the efficiency of energy systems of regulated public utilities and natural gas companies and their customers.

Although Chapter 2 of the draft report acknowledges the Commission's authority under the Natural Gas Act to provide for temporary natural gas transactions by exempting such transactions from the certificate procedures (page 7), and concedes that the Commission clearly had authority to include in Order No. 418 provisions for extensions of 60-day emergency sales (page 9), the report concludes that all extensions of emergency sales were improperly granted because the Commission did not undertake a public rulemaking proceeding with opportunity for the submission of data and views by interested parties before granting extensions to meet the emergency.

It is the opinion of the General Counsel that the Commission is not so restricted in meeting emergency situations (see memorandum of the General Counsel dated July 12, 1974, attached). The very idea of a public rulemaking proceeding to extend emergency procedures would seem antithetical to the existence of the emergency. Further, as is noted in the attached General Counsel's memorandum, the Commission has authority in relation to emergency provisions, as in any other regulation, to waive requirements in appropriate circumstances.

The principal objection of the report to the Commission's granting extensions of emergency sales to avoid interruptions of service during the emergency appears to be that the practice was not a "matter of regulatory policy." This assertion is without foundation. All grants of extensions of emergency sales to avoid interruptions of service during the emergency were the result of a considered Commission regulatory policy consistent with the public interest in continuous gas service.

At page 13, the draft report states that a review of the "Secretary's records of Commission meetings" reveals no evidence of any Commission discussion of the court stay of Order No. 491, the need to grant extensions of 60-day sales to companies that had not filed for limited-term certificates, or any delegations to the Secretary. This is misleading in that what the GAO staff actually found from its examination of the Secretary's personal notes taken in Commission meetings and the minutes prepared therefrom was that the Secretary maintains no record of any discussions. Rather, the Secretary, and ultimately the Commission minutes, report only the actions taken by the Commission on each formal agenda item. Therefore, the fact that the GAO staff found no record of particular discussions in the minutes of the Commission meetings does not permit a conclusion that there were no such discussions. There were extended discussions relating to Order No. 491 resulting in a series of orders, namely, Order No. 491-A, issued September 25, 1973; 491-B, issued November 2, 1973; 491-C, issued November 21, 1973; and 491-D, issued March 1, 1974 (orders attached).

See GAO note 2, p. 112.

With reference to the need to grant extensions to companies selling under Order 418 but which had not filed for a limited-term certificate and with regard to the commentary that there were no delegation of authority to the Secretary, I would like to apprise you of the fact that there were Commission discussions and subsequent oral delegation of authority to the Secretary to grant extensions. The compelling national energy emergency confronting the Nation in September 1973, exacerbated by the imposition of the Arab embargo, resulted in emergency actions by the Congress of the United States, as well as the Administration, to respond with emergency measures to enable the Nation to survive the oncoming winter without drastic upheaval of the Nation's economy, and the health and welfare of its citizens.

Among the measures passed by the Congress were the Mandatory Fuel Allocation Act with authority to impose standby rationing of gasoline and other required fuels, extraordinary requests for voluntary conservation, authority to convert oil fired power plants to coal fired, the wheeling of power from the Midwest and Southeast from coal fired generation to the New England area which was largely reliant upon oil fired capacity. In my opinion, the Commission responded to an emergency situation within its powers as delegated by the Congress and consistent with a recognition of the imminent danger to the United States of inadequate natural gas production.

I must express my disagreement with your conclusions expressed at pages 14-15 of your report to the effect that extensions of 60-day sales were not an appropriate exercise of our regulatory authority. Your legal analysis is at odds with our General Counsel's legal opinion that the Commission's actions were consistent with applicable law. It is indeed relevant to observe that over the entire period since May 7, 1970, when Order No. 452 was issued, there has been no objection to the practice in spite of the fact that the Federal Power Commission is a closely supervised regulatory agency in terms of public examination and legislative oversight.

I might add that you should incorporate as part of your conclusions and recommendations on page 14 your recognition of the fact at page 36 of the report that by order of December 20, 1973, the United States Supreme Court granted the Commission's December 14, 1973 application to vacate the lower court's stay of Order 491-B. See Supreme Court Order No. A-608, entered December 20, 1973, Federal Power Commission v. Consumer Federation of America, American Public Gas Association, American Public Power Association, National League of Cities - United States Conference of Mayors.

With reference to the eight extensions referred to at page 13 of your report, your attention is invited to page 2 of General Counsel's memorandum dated July 12, 1974:

> At page 13, the GAO report states that some extensions of the 60-day emergency sales were granted 'to offset the effect of the court stay' of Order No. 491. This action was not improper since the 60-day procedure established by Order No. 418 was effectively reinstated and effective after the court stay.

See also the memorandum from the Deputy Chief, Bureau of Natural Gas dated July 12, 1974 (attached), pages 1 and 2. Here again, as a matter of public policy clearly it would have been contrary to the public interest to cut off sales at a time of national energy emergency. I submit that the Commission's action on the eight extensions was a legal and necessary exercise of its powers.

The Bureau of Natural Gas memorandum also provides a complete account of the data collection procedures concerning emergency sales which are the subject of Chapter 3 of the draft report. As it recommended in that chapter the Commission now is collecting complete volume and price data, and appropriate action will be taken in the event of refusal to furnish required data. The last recommendation of that chapter is that the FPC establish an adequate

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..ecord and filing system for interstate sales generally. We have for many years maintained such records. Interstate pipelines report on Form 2 all volumes of gas purchased and prices paid under certificated sales, which are identified by seller and rate schedule number. This data is presently collected on an annual basis. We agree that more timely reporting of data of this sort during emergency periods is desirable and have instituted a procedure to secure this information from the purchasing pipeline at the completion of the purchase in addition to the regular reporting on Form 2. In the near future all such data will be accessible more readily and usefully through the FPC Regulatory Information System, a comprehensive ADP development at the Federal Power Commission now nearing initial operation.

For comment on Chapter 4, attention is ·ected to page 3 of the attached General Counsel's me. ·dum. The draft report's reference to the Belco case (·cided by a majority comprised of Commissioners Moody an· Brooke) should mention that I filed a separate concurrence · d dissent in that case.

Chapter 5 is fully discussed in the attached July 12, 1974 memorandum of the Bureau of Natural Gas. On page 39, the draft report attempts to compute the additional cost of gas which became subject to the requested rate at the end of the six-month period at the area rate. The basis of the computation is faulty, since there can be no assumption or speculation as to what gas would have been provided had the area rate applied instead of the requested price.

At page 40 of the draft report you recommend revision of the optional procedure to assure timely action. We are reviewing our procedures to determine whether a notice of rulemaking should be issued to revise the procedure so as to compel refund of the difference between the sales price in effect after six months and the ultimate just and reasonable rate determined by the Commission. We are also reviewing other aspects of the optional procedure for comment under the proposed rulemaking.

At page 38, the draft report notes that of the 24 optional pricing applications approved by the Commission, the approved prices ranged from a low of 26.5 cents per Mcf to a high of 56.1 cents. It should be noted that

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Vice Chairman Springer and I dissented from the decision of the majority in Southern Natural Gas Company, Docket Nos. CP73-154, et al., which prescribed a price of 56.1 cents.

The matter of disclosure of financial interests and procedures to avoid conflicts of interest consistent with your recommendations at pages 52-53 of your draft report is described in a memorandum of the Director, Office of Personnel Programs, to me dated July 17, 1974, also attached.

It should be noted at the outset that the Office of Personnel Programs had initiated remedial action to compel compliance with the Federal Power Commission's standards of conduct several months before your pointing out deficiencies in the filing system to the Director, OPP, in November 1973 (see page 3 of the attached report of Claudius Fike, Director, Office of Personnel Programs, to me dated July 17, 1974). Immediately after your discussions with the Director, OPP, steps were taken to insure compliance with the regulations requiring the filing of FPC Form 498 by designated employees at the GS-13 and above level.

As is set forth in the attached memorandum dated July 17, 1974, from the Director, Office of Personnel Programs to me, every present employee of the Federal Power Commission, with the exception of one employee who has been on extended leave, now has on file a current statement of financial interests (FPC Form 498, required of all employees at the GS-13 level and above in decision-making positions) or a report of security ownership in gas or electric companies (required of all other employees). In addition, every official of the Federal Power Commission who is required to file a Form 498, with the exception of three individuals who are now on extended leave, has on file a sworn affidavit affirming that at no time during his employment by the FPC has he participated in any

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decisional process directly involving a company in which he, his spouse, minor child, or member of his immediate household then had a financial interest. We will secure appropriate affidavits from the three employees when they return to the FPC after completion of their extended leave. We will also secure the filing of Form 498 by the one employee when he returns from leave.

The memorandum from the General Counsel dated July 12, 1974, and the memorandum from Daniel C. Lamke to the General Counsel dated July 15, 1974 (attached) review procedures to determine whether specific financial interests create conflicts and procedures to insure compliance as recommended at page 54 of your report. The General Counsel will investigate with the Director, Office of Personnel Programs, all cases where potential conflicts of interest have been disclosed (Recommendation (3), page 54). The securities listed will be maintained on a current basis insofar as may be feasible as outlined in Daniel C. Lamke's memorandum of July 15, 1974. The current list of prohibited securities (attached) is in process of being circulated to all employees by memorandum of General Counsel dated July 19, 1974 (also attached).

See GAO note 2, p. 112.

At page 48 the draft report asserts that the three officials principally responsible for administration of the conflicts provisions (the General Counsel, the Executive Director, and the Director, Office of Personnel Programs) failed to file Form 498 for 1971 to 1973. None of these three officials has held any securities at any time during his employment with the Federal Power Commission. Your report should so state.

At page 55C it is stated that Commissioner Smith, the most recently appointed Commissioner, at the time of his confirmation hearing, "had made arrangements to divest himself of all royalty and mineral rights." In fact, Commissioner Smith attached to a financial statement prepared for his confirmation hearings an executed deed to all his mineral interests, along with an escrow agreement whereby the divestiture would become effective upon his confirmation to the FPC.

At page 55D you state "While the Chairman's relatively small investment in U. S. Steel coupled with the fact that the financial interest was disclosed at the Senate confirmation hearings indicate that the failure to include the stock among those to be divested was due to an oversight, it appears to us that the same strict standards should apply." The 50 shares of United States Steel were not owned by me, but rather by my wife, who has owned the shares since December 29, 1959. Secondly, it was not called to my attention until late April 1974 that United States Steel was a security which was determined to be the parent of Carnegie Natural Gas Pipeline Company, and accordingly any employee holding United States Steel stock was required to divest their ownership. Your report points out that Civil Service Commission officials indicated "than an indirect interest--ownership of stock in a corporation whose subsidiary was a natural gas company--would not of itself cause the CSC to seek divestiture or other action by the official involved. Other factors would be considered including the size of the financial interest and the importance of the subsidiary to the total operation of the parent." Even though divestiture of my wife's United States Steel stock would not be compelled by the Civil Service Commission, I believe that the same standard applying to employees of this Commission should also apply to its Chairman. Accordingly, on May 16, 1974 at my request, my wife ordered that the 50 shares of United States Steel be disposed of.

As of December 31, 1973, U. S. Steel Corporation had 54,169,462 shares outstanding with a book value of $3.9 billion. U. S. Steel reported revenues in 1973 of $6.9 billion and net income for that year was $326 million.

As of December 31, 1973, Carnegie Natural Gas Pipeline reported to the FPC book value outstanding of $16,118,030, annual revenues of $16.7 million and net income of $1.3 million.

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Carnegie Natural Gas Pipeline Company represents less than 0.4% of the book value of U. S. Steel common stock, less than 0.3% of the U. S. Steel's annual revenues and less than 0.4% of U. S. Steel's net income. Fifty shares of U. S. Steel represent less than 1/1,000,000 of the outstanding shares of U. S. Steel.

The last sentence on page 59, Chapter 7 of the report, requires clarification. If the present Natural Gas Act provides the framework for regulating the wellhead price of natural gas and the Natural Gas Act is not amended to empower the Commission to prescribe rates on the basis of market values and economics rather than costs, there will not be sufficient incentives for investments in exploration, development and production of natural gas and ultimately the consumers' interests will be endangered. However, in my opinion it is not regulation per se - but rather the limitations on our powers to regulate based on the economics of the marketplace under the Natural Gas Act, as interpreted by the courts, that inhibits the magnitude of the commitment required to produce gas consistent with demand.

I prefer deregulation of new gas prices as I have testified many times before Congressional committees. However, as an alternative to deregulation an amendment to the Natural Gas Act broadening our authority to regulate on the basis of commodity value and market conditions will greatly improve the present restricted structure of regulation.

Our latest Annual Report for Fiscal Year 1973 presented the Commission's position on the decontrol of wellhead prices of new gas with strict monitoring of the results in terms as follows:

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Deliverable gas supplies are now inadequate, and are projected to continue in short supply over the short term, with demand increasing. The price of natural gas at the wellhead has lagged behind the price changes in other fuels and the present price relationship to the energy market, on a Btu basis, presents a clear economic contradiction. After careful analysis we have concluded that workable competition exists in the natural gas production industry. Therefore we believe that controlled deregulation of the producer segment of this industry is the most important measure the Congress can take to alleviate present natural gas shortages.

With reference to Chapter 8, your attention is directed to page 4 of the General Counsel's memorandum of July 12, 1974 (attached) and the footnotes on that page. It is not only the Federal Power Commission which has found that a positive relationship exists between increased prices and exploration activities but also the Commission's finding was approved by the United States Supreme Court in Mobil Oil Co. v. F.P.C., Nos. 73-437, et al. (June 10, 1974), ___ U.S. ___, 94 S.Ct. 2328, 2351.

Your observation on page 63 that "most area rate cases are still pending court action" is inaccurate. With only two exceptions, all area rate opinions have

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been affirmed in full by the courts. 1/ There is affixed to the General Counsel's memorandum of July 12, 1974 (attached) an appendix outlining the current status of Commission area rate decisions.

See GAO note 2, p. 112.

At page 76, after referring to the Federal Power Commission's National Gas Survey, Chapter 9 of the draft report states that on March 7, 1973, Senator Hart requested that the data collected in the National Gas Reserves Study, a part of the National Gas Survey, be furnished to the Antitrust and Monopoly Subcommittee and to the Federal Trade Commission. This is in error. The material requested by Senator Hart at that time was uncommitted gas reserves data, i.e. data on proved reserves which the companies had not committed by contract to particular sales. This uncommitted gas, of course, is only a small fraction of the total proved reserves included in the National Gas Reserves Study for the year ending December 31, 1970. It was the National Gas Reserves Study data which the Federal Trade Commission attorney requested, as related in the next paragraph (bottom of page 76). The same confusion appears in the middle of page 78 in the reference to Senator Hart's request for "similar" data. It was not the National Gas Reserves Study data which was turned over to the Senator pursuant to subpoena. Rather, the uncommitted gas reserves data as of December 31, 1971 and June 30, 1972, was supplied to the Antitrust and Monopoly Subcommittee pursuant to the order of the Commission issued June 22, 1973, in Docket No. R-405.

1/ Opinion Nos. 662 and 662-A, establishing new rates for the Permian Basin Area is pending review sub nom. Chevron Oil Co. v. F.P.C., 9th Cir. Nos. 73-2861, et al. Opinion Nos. 595 and 595-A, establishing rates for the Texas Gulf Coast Area, were originally reversed and remanded by the D.C. Circuit sub nom. Public Service Commission of the State of New York, et al. v. F.P.C., 487 F.2d 1043 (D.C. Cir. 1973). The D.C. Circuit's decision, however, was vacated by the Supreme Court on June 17, 1974, and remanded for reconsideration in the light of Mobil Oil Corp. v. F.P.C., ____ U.S. ____ (decided June 10, 1974).

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APPENDIX II

As the report indicates, the Federal Power Commission staff cooperated with the Federal Trade Commission staff consistent with the limitations upon the disclosure of confidential information under Commission orders issued pursuant to the Natural Gas Act. You have appropriately recorded in Chapter IX that the Federal Trade Commission responded to my request to file an appropriate pleading specifying the information desired by the Federal Trade Commission so that a hearing could be held on the merits of their request. On October 15, 1973, the Commission issued its order concluding the show cause proceeding and authorizing the examination of certain records by an official of the Federal Trade Commission (Amerada Hess order, Docket No. RI74-15, Commissioner Moody dissenting). Because this order culminates complex legal proceedings in relation to the Federal Trade Commission's request for confidential information and addresses the public policy issues relating to generalized disclosure of such information, I have attached the Amerada Hess order for your information.

I request that this letter and all enclosures be incorporated as part of your report. If you should revise this report consistent with my letter, I will be pleased to review the report further before it is finalized.

I thank you for the opportunity of commenting on this report.

Sincerely,

John N. Nassikas

John N. Nassikas
Chairman

Enclosures

1. General Counsel memo dtd 7/12/74 with attachments (1) List of Current Status of Commission Area Rate Decisions, and (2) Memo from Daniel C. Lamke dtd 7/15/74 to the General Counsel
2. Orders 491, 491-A, 491-B, 491-C, 491-D
3. Deputy Chief, Bureau of Natural Gas memo dtd 7/12/74
4. Director, Office of Personnel Programs memo dtd 7/17/74
5. General Counsel memo to all employees concerning prohibited financial interests dtd 7/19/74 with attached list of prohibited securities
6. Amerada Hess Corporation Order, Docket No. RI74-15, dtd 10/15/73

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APPENDIX II

GENERAL COUNSEL
FEDERAL POWER COMMISSION

July 12, 1974

MEMORANDUM TO: The Chairman

FROM : General Counsel

SUBJECT : Proposed General Accounting Office Report on FPC Regulation of the Natural Gas Industry

I have the following comments with respect to the proposed report referred to above.

Chapter 1

On page 3, line 8, the legality of the Optional Pricing Procedure is pending before the United States Court of Appeals and not the Supreme Court.

Chapter 2

The proposed report concludes that all extensions of emergency sales were improperly granted. To support this conclusion, it is argued that extensions were never contemplated by Order No. 418, 44 FPC 1574, which established the 60-day emergency sales procedure. Particular reliance is placed upon language in Order No. 418 stating that emergency sales "shall be discontinued upon the expiration of the 60-day period." 44 FPC 1575.

Essentially the report suggests that irrespective of the nature of the emergency, the Commission is powerless to

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continue emergency sales for a limited period of time without requiring cessation of such sales while it issues a proposed regulation and receives comments thereon. In my view, the Commission is not so restricted in meeting these emergency situations. It should be noted that no party has questioned the validity of the sixty day sales or the extensions thereof. Furthermore, as in any other regulation, the Commission has authority to waive the provisions of the regulation in appropriate circumstances. Cf. Municipal Light Boards v. F.P.C., 450 F.2d 1341 (D.C. Cir. 1972); Municipal Electric Utility Ass'n. of Ala. v. F.P.C., 485 F.2d 967 (D.C. Cir. 1973).

On page 12, the GAO draft states that, in promulgating Order No. 491, "the FPC maintained that it was under no obligation to seek comments." This is true, of course, but it is misleading when read in isolation. We issued Order No. 491 without prior notice because the emergency shortage demanded immediate action in order to protect the consumer. In such situations the law certainly permits the usual requirements of notice and comments to be bypassed. The Administrative Procedure Act provides that these procedures are not required "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. §553(b)(A).

At page 13, the GAO report states that some extensions of the 60-day emergency sales were granted "to offset the effect of the court stay" of Order No. 491. This action was not improper since the 60-day procedure established by Order No. 418 was effectively reinstated and effective after the court stay.

Chapter 3

This chapter is devoted to the need for more complete and accurate data relating to emergency sales. First, it is impossible to have data as to actual volumes and prices until all emergency sales have been completed. In this regard, it

should be noted that the Commission indicated in Order No. 491-B that it would monitor results and take whatever future action is required by the public interest. Secondly, to the extent that actual deliveries fall below estimated deliveries, this may simply reflect the uncertainty created by pending litigation of Order No. 491, despite the fact that the Supreme Court vacated the Court of Appeals' stay of the Commission order.

Chapter 4

This chapter deals with the optional certification procedure.

At page 32, it is noted that petitioners in John E. Moss v. F.P.C., D.C. Cir. No. 72-1837, are relying upon Texaco, Inc. v. F.P.C., 474 F.2d 416 (D.C. Cir. 1972), to support their view that Order No. 455 is in conflict with the Commission's responsibility to regulate natural gas companies. In this regard, we should point out that in F.P.C. v. Texaco, Inc., ___ U.S. ___, No. 74-1490, 94 S.Ct. 2315, (decided June 10, 1974), the D.C. Circuit's decision was vacated and remanded by the Supreme Court. Once again, the Supreme Court reasoned that a change in the procedures by which producers are regulated is not necessarily an abandonment of regulation.

At page 32, it is noted that the petitioners also rely upon Texas Gulf Coast Area Natural Gas Cases, 487 F.2d 1043 (D.C. Cir. 1973). It should be pointed out that on June 17, 1974, in a case styled Shell Oil Co., et al. v. Public Service Commission of the State of New York, Nos. 73-976, et al., the Supreme Court vacated the decision and remanded the case to the D.C. Circuit for reconsideration in the light of Mobil Oil Corp. v. F.P.C., ___ U.S. ___ (decided June 10, 1974) 94 S.Ct. 2328. In Mobil, the Supreme Court reaffirmed the flexibility which must be afforded the Commission in the area of producer rate regulation.

On page 36, on the question of emergency sales, the GAO report notes that Order No. 491-D terminated 180-day sales as of March 15, 1974, and reinstated the 60-day procedure. For clarification, it should be pointed out that Opinion No. 699 terminates the 60-day emergency sales for producers.

Chapter 8

With respect to the comment on page 60 that the FPC has asserted that a positive relationship exists between increased prices and exploration activities, the Commission finding was quoted with approval by the Supreme Court. Mobil Oil Co. v. F.P.C., Nos. 73-437, et al. (June 10, 1974) ___ U.S. ___, 94 S.Ct. 2328, 2351.

On page 63, it is inaccurately stated that "most area rate cases are still pending court action." We should point out that, with only two exceptions, 1/ all area rate opinions have been affirmed in full by the courts. 2/

1/ Opinion Nos. 662 and 662-A, establishing new rates for the Permian Basin Area is pending review sub nom. Chevron Oil Co. v. F.P.C., 9th Cir. Nos. 73-2861, et al. Opinion Nos. 595 and 595-A, establishing rates for the Texas Gulf Coast Area, were originally reversed and remanded by the D.C. Circuit sub nom. Public Service Commission of the State of New York, et al. v. F.P.C., 487 F.2d 1043 (D.C. Cir. 1973). The D.C. Circuit's decision, however, was vacated by the Supreme Court on June 17, 1974, and remanded for reconsideration in the light of Mobil Oil Corp. v. F.P.C., ___ U.S. ___ (Decided June 10, 1974).

2/ An appendix reflecting the status of all area rate cases is attached hereto.

See GAO note 2, p. 112.

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The attached memorandum from Attorney Daniel Lamke sets forth our proposed future procedure with respect to the listing of companies in which stock ownership would constitute a conflict of interest. With respect to the filings required by the Assistant General Counsel referred to on page 48 of the report, all of these parties have made the required filings and will continue to do so.

Leo E. Forquer

Leo E. Forquer

Attachments:

Appendix Reflecting the Status of All Area Rate Cases

Memorandum from Daniel Lamke

See GAO note 2, p. 112.

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APPENDIX II

DATE: JULY 15, 1974

MEMORANDUM TO: LEO E. FORQUER, GENERAL COUNSEL

FROM: DANIEL C. LAMKE

SUBJECT: Current Procedures for Reviewing Employee Stock Holdings to Determine Conflicts of Interest

Citation: 18 CFR Chapter I, Subchapter A, Part 3, Subpart C, Sections 3.735-1 through 3.735-32.

The above citation is referred more generally to the Federal Power Commission Standards of Conduct for Employees. The purpose of the Commission's Standards of Conduct is stated in Section 3.735-1(a):

> "The Commission recognizes that the maintenance of high standards of honesty, integrity, impartiality, and conduct by Commissioners and Commission employees is essential to assure the proper performance of Commission business and the maintenance of confidence by citizens and the integrity of their government. The avoidance of misconduct and conflicts of interest on the part of Commissioners and Commission employees through informed judgement is indispensable to the maintenance of these standards. . ."

For the purpose of this memo, only the procedures relating to the review of FPC Form 247 and FPC Form 498 will be discussed.

Section 3.735-7(c) -- Employees Required to Submit; Time of Submission - (1) FPC Form 247 - Report of Security Ownership in Jurisdictional Companies and Distributors.

In essence, this Section provides that all employees except Commissioners and employees required to submit Form 498 will submit a Form 247 at the time of their entrance on duty or

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within 30 days of the date of acquisition by the employee, employee's spouse, minor child, or member of the employee's immediate household of any security required to be reported under Section 3.735-5(b)(5).

Section 3.735-7(4) FPC Form 498 - Statement of Employment and Financial Interests.

(i) All employees, except Commissioners who are: paid at a level of the Executive Schedule and Subchapter II of Chapter 53 of Title 5 U.S.C. or, if an employee is a Grade 13 or above and is the head or deputy or assistant head of a bureau or office, a hearing examiner, division chief, or their deputies, a section chief, case manager, regional engineer, deputy regional engineer, engineer in charge in regional offices, technical assistant to the Commissioners or, having contracting or procurement responsibilities. The above described employees are required to file a Form 498 not later than 30 days after their entrance on duty and shall also submit a supplemental Form 498 on June 30th of each year.

Regulations Defining Conflicts of Interest

In general, Section 3.375-5(5)(i) of the Federal Power Commission's Standards of Conduct for Employees provides an employee, or the spouse, minor child, or member of the immediate household of the employee shall not own directly or indirectly or participate in the purchase of any securities of any public utility, licensee or natural gas company subject to the jurisdiction of the Commission or of any person engaged in the distribution or sale of electric energy or natural gas or of a parent of any of the foregoing.

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The Forms 247 and 498 provide a listing of each individual employee's ownership in order that upon review it can be determined whether or not the continued holding of such security interest could constitute a conflict of interest under the Standards of Conduct.

Current Review Procedures

The review of Form 247 and Form 498 proceeds as follows:

(1) An employee, through the Office of Personnel Programs, submits either his Form 247 or Form 498;

(2) The Office of Personnel Programs, through its Director, lists the security holdings in memo form;

(3) The Director of Personnel Programs transmits his memo to the Office of General Counsel requesting that Office to review the security holdings and advise him as to whether such holdings would constitute a conflict of interest as set forth in the Standards of Conduct; Note: In many instances in the past, the memos directed from the Director of Personnel were not directed to the General Counsel but went directly to a division in the General Counsel's Office for review. This procedure has now been corrected and all Director of Personnel requests for review are transmitted directly to the General Counsel's Office.

(4) The General Counsel's Office reviews the listing of securities as set forth in the memo from the Director of Personnel. The Director of Personnel's memo lists only the securities and does not identify the employee holder of the securities nor does the memo indicate whether one or more employees would be the holders of the listed securities.

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The review of the listed securities within the General Counsel's Office generally proceeds as follows:

(a) Checking the name of the security against OPI publications listing Class A, B and C electric utilities and A, B and C gas companies and pipelines;

(b) Checking the security name with previously reviewed securities;

In the event that the name of the security did not appear on either list identified in Sections (a) and (b); the named security is checked through such standard sources as Standard and Poors or Moody's Services to determine the nature of the company issuing the securities which review would include their subsidiaries and the nature of the business in which they were engaged. If this review indicated any potential involvement with the jurisdictional aspects of the electric or gas business, the following procedure was instituted;

(c) Oral requests to either the Bureau of Power or the Bureau of Natural Gas to determine whether the company in question was the holder of an outstanding hydroelectric license or the holder of a gas certificate, or in any other regard jurisdictional to this Commission.

(5) The General Counsel's Office prepared a response memo to the Director of Personnel, indicating which of the listed securities were subject to the jurisdiction of the Commission and which securities were not subject to the jurisdiction of the Commission; Until recently, most of the OGC transmittal memos to the Director of Personnel were not directed through the General Counsel but were signed by a Staff member. All OGC memos are directed to the General Counsel for his review and signature before being transmitted to the Director of Personnel. In addition, past Director of Personnel

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memos seeking OGC advise were not reviewed immediately upon receipt but were held in suspense until the attorney reviewing the securities in his discretion set aside the time to review the accumulated memos. Transmitted memos from the Director of Personnel to the Office of General Counsel are now reviewed on a much more current basis.

(6) General Counsel memos were transmitted to the Director of Personnel advising him as to which securities would violate the Standards of Conduct and which would not.

(7) The Director of Personnel based upon the advise of the General Counsel's Office would institute procedures directed toward notifying an employee holding any prohibited security that he must divest himeelf of that security.

While the above stated procedure in form would appear to be sufficient to determine whether a security would violate the FPC Standards of Conduct, several problems still exist. For instance, OPI publications listing Class A, B and C gas and electric companies may be outdated by as much as a year or more. Therefore, any new companies becoming jurisdictional to this Commission from the time of publication until the time of review of a Director of Personnel memo, would not appear. In addition, I have been informed that as many as 2,000 companies or individuals fall into the category of small producers holding certificates under the Natural Gas Act. There is no list of small producer certificate holders that is printed and in addition, such a list is very volatile and subject to change inasmuch as certificates may expire or be abandoned or new certificates may be granted on a regular basis.

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In order to correct the problem of working with an outdated or insufficient prohibited securities list, the Office of General Counsel will coordinate with other FPC divisions in preparing an updated master list of prohibited securities. It is intended that this master list be updated annually in May to provide employees with an opportunity to review the list before filing their Form 498 on June 30th of each year. Because of fluctuations in this list, it can serve only as a guide for employees and any questions or appeals by employees must still be individually reviewed by OPP and OGC.

In addition to an incomplete list problem, the process is largely subject to human error of the attorney reviewing the submitted list. It can not be determined from the General Counsel memos to the Office of Personnel as to what form the reviewer used in his determination of jurisdictional status. The form of the memo might be revised to indicate what sources the reviewer actually reviewed in his determination of jurisdictional or non-jurisdictional status.

Dan Lamke

Dan Lamke

OGC
Lamke, D.:sap
7/15/74

APPENDIX II

July 12, 1974

MEMORANDUM TO: Chairman Nassikas

FROM : Deputy Chief
Bureau of Natural Gas

SUBJECT : GAO Draft Report dated June 24, 1974 to Congressman John E. Moss on Selected Aspects of the Regulation of the Natural Gas Industry and Operations of the Federal Power Commission

Pursuant to your request, the following are our comments pertaining to the subject report:

Reference	Comments
Chapter 2	GAO Position In summary, GAO contends that extensions granted to producers pursuant to Orders No. 418 and 491 were not conducted within the framework of the Natural Gas Act. BNG Comments While this is primarily a matter for the General Counsel, we should point out that the eight extensions which GAO found "particularly troublesome" (page 14) were granted during the stay of Order No. 491 and the Commission had reverted back to those procedures followed under Order No. 418. The sellers in these cases would have been relying on the Commission's Order No. 491 in assuming that they could sell their gas for 180 days and would not have entered into longer term contracts. If they had entered into such contracts the sudden stay of Order No. 491 would not have afforded enough time to prepare, file and receive Commission approval of their applications. We do not believe that it would have been in the public interest to cause supplies of gas to be shut off during the ensuing cold season particularly considering that the buyers in all of these

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Reference	Comments
	cases have been found by the Commission to be in an emergency situation.
Chapter 3	GAO Position
	The thrust of this chapter is that GAO believes that our data gathering and monitoring procedures of emergency sales needs improvement. More specifically they cite:
Page 16	1. Failure to obtain actual price and volume data.
Page 19	2. Incomplete data used in evaluating emergency sales producers.
Page 23	3. Monitoring of the 180-day emergency sales program.
	BNG Position
	There is no doubt that the record keeping and filing of data pertaining to emergency sales needed improvement and did not provide a good audit trail. As the report states (page 24A), as soon as this matter was brought to our attention, immediate steps were taken to improve the situation. In fact, pursuant to your request a formal report pertaining to all 180-day sales was sent to each Commissioner on May 29, 1974. * The files pertaining to these sales are now in good condition and could be easily audited.
	The files pertaining to the 60-day emergency sales are currently being improved and this work will be completed as soon as we receive additional file supplies. As you have requested, we will prepare an up-to-date report as soon as possible.
Pages 16-19	GAO Position
	GAO contends that we failed to obtain actual price and volume data of the 60-day emergency sales made under Orders No. 402 and 402-A.

See GAO note 2, p. 112.

* See Attachment A

Reference	Comments
	BNG Position As GAO notes (page 17): "For the most part, companies entering into 60-day emergency sales under Orders 402, 402A provided the Commission with estimates of the volumes of gas to be delivered and the price to be charged as part of their notification to the Commission that an emergency sale had commenced." This statement is true and as stated we reviewed the actual prices for reasonableness when we were notified that an emergency sale had commenced. The prices reported were not estimates - they were actual prices. Secondly, the volume initially reported must by necessity be estimates. Actual volumes can be obtained only after the sales have been completed. As the GAO report indicates approximately 50% of the actual volumes were reported to us and pursuant to my discussion with you on March 27, 1974,* we commenced a program to obtain actual volumes on all emergency sales (See Attachment C for a sample letter sent to all pipelines). Finally, we should point out that under the emergency conditions that have existed, we have been primarily concerned with obtaining sufficient gas supplies to meet the emergency. We may not have been as timely in our follow up procedures; however, we did alleviate the emergencies.
Pages 19-23	GAO Position GAO alleges that the Commission used incomplete data in evaluating the emergency sales programs. BNG Comments In supporting these allegations, GAO specifically challenges the use of data in

See GAO note 2, p. 112.

* See Attachment B

Reference	Comments
	preparing a summary of the number of sales in the 12 working day period prior to the issuance of Order No. 491 and the same period after the issuance of Order No. 491. While BNG concedes that there was some confusion as to the data used in the order, the following summarizes the facts: For the period September 14, 1973 through October 2, 1973 (12 working days after issuance of Order No. 491), 63 sales were made for an estimated 45.6 million Mcf at an average cost of 50.80¢ per Mcf rather than the 26 sales(used in the Order 491-B) for an estimated 20.8 million Mcf at an average cost of 48.16¢. For the period August 28, 1973 through September 13, 1973 (12 working days prior to Order No. 491), 23 sales were made for an estimated 4.8 million Mcf at an average cost of 52.97¢ per Mcf as compared to the 20 sales (used in Order 491-B) for an estimated 8.2 million Mcf at an average cost of 50.82¢. Part of the difference is caused by a change in the method of counting the 12 day period. Accordingly, the facts show that the Commission was not misguided despite some errors in the original data.
Page 22	The GAO report also lists 7 sales which it uses as a demonstration that actual volumes are considerably lower than estimated volumes. However, GAO did not make any investigation as to why the volumes in these selected sales fell short. It should be noted that in one case the well did not produce as expected, in 2 cases the sales were converted from an emergency sale status to sales under limited-term certificates and in the 4 other cases the sales ceased after 60 days because they were initiated in the time period when stays of Order No. 491 were a threat and the sellers were reluctant to sell under the uncertain circumstances. GAO also fails to point out that their table is a demonstration that the estimates for these sales are adjusted constantly as new information is received and as more current summaries are made the

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Reference	Comments
	revised estimates are included. This very procedure is what made their table possible.
Page 25	GAO Position On this page, GAO made 5 specific recommendations. BNG Comments Several of these recommendations have been discussed in the preceding pages and we have already implemented most of the suggestions. However, we wish to point out the interstate pipeline companies are required to report in Form 2 all volumes of gas purchased and prices paid under certificated sales during the previous calendar year which are identified by seller and rate schedule number. Pursuant to your request, we will notify you if any companies fail to provide the requested data. Furthermore, as you know, the emergency sales programs pertaining to producers were terminated with issuance of Opinion No. 699.

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Reference	Comments
Chapter 5	

GAO Position

In this chapter, GAO states that "FPC's implementation of its optional pricing procedure indicates that consumers are paying higher prices for natural gas than may be justified because applications for the optional procedure are not receiving final action by the FPC within 6 months.

BNG Comments

Attached hereto as Attachment D is a summary of the status of all optional pricing cases from inception of this procedure through July 11, 1974. As of this date the following is a summary of the status of the pending cases: See attachment E for list.

Files less than 6 months	7
Remanded by Commission for further evidence	15
Reopened by ALJ	2
Applicant requested no action be taken until further notice	3
Cases --	
Awaiting ALJ decision	1
Awaiting Commission action	7
	35

As is evident from this data, it is true that some of the undecided cases are over 6 months old and that the sellers have been collecting rates that may exceed a just and reasonable rate. However, none of these rates appear unreasonable considering the emergency gas supply conditions and the prices found to be just and reasonable by the Commission in Opinion 699 and other cases. Nevertheless, we suggest that the Commission consider amending Order No. 455 (Docket No. R-441) to provide for refund obligations.

APPENDIX II

Reference	Comments
	We should also point out that one of the reasons for delays in Commission action in these cases is the fact that from June 8, 1973 through December 13, 1973 the Commission consisted of but 4 members who had differences of opinion regarding these cases and were deadlocked in a 2-2 position. A new Commissioner, of course, is entitled to a reasonable amount of time to review and familarize himself with the evidence in these cases. In concluding, we should also note the Commission's task of eliciting an adequate gas supply at the lowest reasonable cost - a simple task - there is no magic formula. Russell D. Thorell

APPENDIX II

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

July 17, 1974

MEMORANDUM TO: Chairman Nassikas

FROM : Director, Office of Personnel Programs

SUBJECT : Employees' Financial Interests

As requested, I am providing in this memorandum the details of the breakdown of the Commission's system for ensuring that no FPC employee holds prohibited securities under Section 3.735 of our rules, "Standards of Conduct for Employees," 18 CFR 3.735.

I was appointed Director, Office of Personnel Programs, in October, 1971. From my review of the records and procedures adopted by my predecessors, it is my considered judgment that adequate procedures to enforce the regulations adopted by the Commission on March 9, 1966, relating to prohibited securities were not established. Insofar as my administration of the program is concerned, I recognized in the first instance that the responsibility for compliance with the disclosure requirements and the prohibition against holding securities in jurisdictional companies rests on the individual employee. However, my coordination of the program proved to be inadequate, which required action to implement the enforcement of the regulations.

It is my view that officials required to report their financial interests did not file the required report on time because they knew they had not been involved in any conflicts of interest. From my standpoint, I was involved with a large workload of other seemingly more important matters and therefore did not take the time to determine the status of compliance with the June 30, 1973 filing requirement

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until the middle of July 1973, at which time I began the necessary follow-up to assure necessary compliance as hereinafter set forth. Over the past several months the Executive Director, the General Counsel, and I have devoted substantial time to reestablishing the program. In spite of many hours devoted to the details of the matter, we have yet to find any evidence of willful non-disclosure or any suggestion that any prohibited holding by any employee resulted in any improper influence upon any matter pending before the Commission.

I recognize that the breakdown of this program is a serious matter and that I could have avoided the problem if the deficiencies in its administration had become apparent earlier. This memorandum also describes the present program as it has been established by the Executive Director, the General Counsel, and the Director, Office of Personnel Programs, to ensure against any future deficiency in the program. The procedures described herein are now in place and are fully operational. I will report promptly through the Executive Director to you in the event I need assistance to assure that the program from this point forward is administered consistent with the Commission's regulations.

18 CFR 3.735-7(c)(4) requires a statement of financial interests (FPC Form 498) from every employee in GS-13 and above who occupies any of several positions listed in the rule. The positions listed are those which have decisional responsibilities.

Under the regulation, the employee is to file the required form upon appointment to the position and on each June 30 thereafter.

As of June 30, 1973, a total of 122 employees in grades GS-13 or above occupied positions described in 18 CFR 3.735-7(c)(4) and therefore were required to have on file an updated Form 498. Relying upon the employee's obligation to file as set forth in Section 3.735-7(c)(4) of the Commission's rules and reprinted in the pamphlet copy of the FPC Standards of Conduct furnished to every employee, OPP did not issue any reminder or other special instruction prior to June 30, 1973, and only 11 of the 122 employees made the required filing.

Accordingly, on July 17, 1973, OPP had printed in the FPC Staff Newsletter a notice of the requirement, directing attention to the pamphlet copy of the Standards of Conduct for FPC Employees, March 9, 1966. Unfortunately, the pamphlet was not up to date and did not include a November 1967 amendment which broadened the requirement by changing the grade level of those required to file the Form 498 from GS-15 or above to GS-13 or above.

An additional 22 employees responded to the reminder by filing the required form. A total of 89 employees required to file a Form 498 still had not filed, and OPP was in the process of preparing individual reminders to these officials when the deficiency came to the attention of the GAO investigative staff.

On November 15, 1973, OPP sent a memorandum to each FPC employee who was required to file Form 498 but who had not done so (copy attached), and an additional 46 employees complied with the requirement. By December 1, 1973, only 79 of the 122 required to file had done so. Accordingly, on January 11, 1974, a further memorandum was sent to each of those still delinquent advising of the possibility of disciplinary action. The remaining 43 promptly made the required filing, so that by the end of January, everyone required to file a statement of financial interests had done so.

OPP furnished the Office of General Counsel lists of the securities thus reported, and OGC provided determinations as to which securities were prohibited holdings under Section 3.735-5(b)(5). It was thereby determined that 13 of the 122 employees required to

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file the Form 498 held securities which OGC found to be prohibited holdings. Notices requiring these employees to sell the prohibited holdings were prepared and, after verification by OGC of its initial determinations, were served on the 13 employees. These notices gave the employees 30 days in which to comply. On April 23, 1974, I reported the situation to you and was instructed to prepare for your signature a letter to any employee who failed to comply within the time allowed.

18 CFR 3.735-7(c)(4)(d) requires each employee who is subject to the Form 498 disclosure requirement to file a supplemental Form 498 on June 30 of each year for purposes of annual review. As a result of various staffing changes and additions since June 30, 1973, there now are a total of 144 employees on board required to file the form. All but one,

See GAO note 2, p. 112.

is on extended leave, and an updated form will be obtained from him immediately upon his return on July 22, 1974. He did file last year, on November 23, 1973, reporting that he held stock in seven companies. None are electric or gas companies or parents of the same prohibited by the Standards of Conduct.

All of the securities reported as being held by employees, either in the Forms 498 filed in June 1973 and thereafter or pursuant to the June 1974 filing requirement (totalling some 374 different companies) were referred to the General Counsel for determination as to which are proscribed securities under 18 CFR 3.735-5(b)(5)(i). The General Counsel, after investigation, reported that the securities of the following 25 companies referred to him are prohibited securities:

Arizona Public Service Corporation
Atlantic Richfield Company
Baltimore Gas & Electric Company
British Petroleum
Central Telephone & Utility Company
Cities Service
Commonwealth Edison
Exxon Corporation
Ford Motor Company
Great Lakes Natural Gas
Helmerick & Payne Corporation
Monsanto
Northern Illinois Gas

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Occidental Petroleum
Pacific Power & Light Company
Potomac Electric Power Company
Standard Oil Company of California
Sunray DX Oil Company
Tenneco Oil Company
Texaco Corporation
Texas Eastern Transmission Company
TVA Bonds
Union Electric
Union Oil Company
U. S. Steel

These securities were held by 19 employees, all of whom disposed of their prohibited securities except as follows:

See GAO note 4, p. 112.

See GAO note 4, p. 112.

To provide assurance that there have been no conflicts of interest involving any of the 19 employees who held prohibited holdings or involving any other official subject to the Form 498 disclosure requirement who may not have filed in previous years or may have filed but not disposed of prohibited holdings, each of the employees subject to the Form 498 requirement was required on July 10, 1974, to file a sworn affidavit affirming that at no time during his employment by this agency had he participated in any decisional process directly involving any company in which he, his spouse, minor child, or member of his immediate household then had a financial interest.

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Affidavits now are on file from all of these employees except . mentioned above, two other employees, Messrs. who are on leave until July 22 and August 2, respectively, and four officials in the regional offices whose affidavits are in the mail.

See GAO note 3, p. 112.

To ensure complete compliance with the rules in the future, the following procedures have been established. The classification staff of OPP is revising all position descriptions of jobs where the incumbent must file FPC Form 498, to display prominently on the top of the position description form a statement to that affect. All incumbents will be notified of that action. In the future all requests for personnel actions from bureaus and offices involving these positions will be noted as to the requirement for completion of a Form 498, and a suspense file will be maintained to assure the necessary follow-up to be sure the required filing is made by all appointees to these positions.

The standard OPP appointment letter to be used for outside appointments to these positions already has been revised to specify compliance with the Form 498 requirement for new appointees.

By the first week in May each year, all officials occupying positions described in Section 3.735-7(c)(4)(b), the Form 498 provision, will receive individual notice of the June 30 filing requirement, together with blank forms and a list of prohibited securities. In every case where an employee has not filed on time, the Executive Director will be notified in writing by the Director, OPP, and the Executive Director promptly will take whatever actions are necessary to effect complete compliance.

All securities holdings reported on the forms filed will be referred to the General Counsel for his determination as to whether any prohibited securities are included. The Executive Director will receive a copy of these referrals. The General Counsel will respond in writing, stating the basis in every case in which he determines that a security held is a prohibited security. The Executive Director will receive a copy of the General Counsel's written responses to the Director, OPP.

Any employee who holds forbidden securities immediately will be given notice in writing by the Director, OPP, that he has 30 days in which to dispose of the securities. OPP will attach a copy of the OGC determination, and a copy of

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the 30-day letter will be furnished to the Executive Director, as well as any subsequent correspondence.

18 CFR 3.735-7(c)(1) requires all employees except Commissioners and employees who are required to submit Form 498, to file FPC Form 247, Report of Security Ownership in Jurisdictional Companies and Distributors, at the time of entry upon duty and thereafter within 30 days of the date of acquisition of any prohibited security. Whereas the Form 498 requires the disclosure of all financial interests, the Form 247 requires only the disclosure of prohibited holdings. The problems associated with the two therefore differ. In the case of the Form 498, the determination of whether a company is jurisdictional or the parent of a jurisdictional company is the responsibility of the General Counsel. In the case of Form 247, the responsibility rests with the employee and the problem is one, first, of assuring that the employee is adequately informed as to what securities are prohibited holdings, and second, that the employee makes the required disclosure upon acquisition of a prohibited security. The latter is particularly difficult since the requirement is in effect a requirement that the employee announce that he is violating the Commission's rules. If any employee holds forbidden securities, the agency has no alternative but to require divestiture under Section 3.735-5(b)(5)(i).

The problem in connection with the Form 247 makes circulation of a list of prohibited securities absolutely essential, and the present procedure contemplates the issuance periodically of such list, revised and expanded as the General Counsel investigates the companies referred to him by OFP.

In every case in which a prohibited holding is reported on Form 247, the employee promptly will receive a letter affording him 30 days in which to dispose of the holding, together with a statement by the General Counsel of the basis for determining that the security is a prohibited security. The Executive Director will receive copies of all correspondence relating to Form 247 disclosures and will issue, in writing, any directions necessary relative to the work assignments of the employee involved pending disposition of the prohibited holding.

The procedures described above have been established by the General Counsel and by me and now are in operation. They will assure that every official who occupies a position described in Section 3.735-7(c)(4)(b) as a position subject to the Form 498 requirement is notified of the requirements when he is appointed to such position and annually thereafter in the first week of May. The procedures now established also provide the necessary follow-up to ensure compliance with the filing requirements, and prompt direction to dispose of all prohibited holdings, whether reported on Form 498 or Form 247.

The maintenance by the Office of General Counsel of a list of prohibited securities, its periodic revision and circulation, and the requirement that the General Counsel state the basis for additions to the list, together with the Executive Director's overview of the OPP-OGC referral and response process, now provide assurance both against errors in the General Counsel's determinations, as in the case of Scott Paper Company and Monsanto, which were first determined to be permitted securities, and later prohibited securities, and administrative errors in OPP, as in the cases of Judges referred to above.

See GAO note 3, p. 112.

Upon completion of the actions directed as described above in the cases of a complete report will be made of the results of the 1974 annual review, and such report will be made each year hereafter. By memorandum of this date to me and the General Counsel, you have directed that we investigate all cases in which FPC employees have reported prohibited holdings. The results of these investigations will be included in the 1974 report, together with any recommendation which we find appropriate.

The Executive Director has established the necessary procedure to ensure that Forms 498 are timely filed by him and promptly reviewed by the General Counsel and that the Executive Director receives and reviews the Forms 498 of the Director, Office of Personnel Programs, and General Counsel on a timely basis. These reviews will be specially reported in the report of the annual review. None of the three incumbents of these positions has held any securities during his employment with the Federal Power Commission.

All questions as to whether a particular position should be subject to the Form 498 disclosure requirements have been resolved in favor of inclusion in the list of positions described in Section 3.735-7(c)(4)(b). As a result, there now are 167 positions subject to the Form 498 requirements, 144 of which currently are filled positions.

As a part of the report of the 1974 annual review, the Executive Director, the General Counsel, and the Director, Office of Personnel Programs, will submit recommendations concerning changes in the FPC Standards of Conduct which will accord with the system now established to provide maximum assurance against conflicts of interest.

C. Fike

Claudius L. Fike
Director, Office of
Personnel Programs

Attachments
- 7/17/73 Employee Newsletter item
- 11/15/73 Reminder of 498 filing requirement
- Sample OPP letter of 1/11/74 reminding employees of 498 requirement

GAO notes: 1. Page references in the appendix refer to the draft report.

2. This material is not included in this report.

3. Names of FPC employees deleted.

4. Names of FPC employees and personal data deleted.

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FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF
THE CHAIRMAN

July 17, 1974

Mr. John D Heller
Acting Director
United States General
Accounting Office
Washington, D. C. 20548

Dear Mr. Heller:

The section of your proposed "Report on Selected Aspects of the Regulation of the Natural Gas Industry and the Operations of the Federal Power Commission" (Report) relating to cooperation extended by the Federal Power Commission during the Federal Trade Commission's investigation of alleged under-reporting of natural gas reserves has been examined. Although the attorney currently in charge of the investigation was not with the Commission for the full time period covered by the Report, he states that based upon the documentation appearing in our files, the Report appears to be accurate.

I might add, however, that the attorney in charge of this particular case and the other attorneys involved in this case or involved in our more general natural gas study have indicated that employees of the Federal Power Commission are currently being most cooperative and helpful.

Sincerely,

Paul Rand Dixon
Acting Chairman

APPENDIX IV

PRINCIPAL OFFICIALS OF FPC AND FTC RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office From	Tenure of office To
FEDERAL POWER COMMISSION		
CHAIRMAN:		
John N. Nassikas	Aug. 1969	Present
Lee C. White	Mar. 1966	Aug. 1969
EXECUTIVE DIRECTOR:		
Webster P. Maxson	Oct. 1969	Present
Marsh H. Moy (acting)	May 1969	Oct. 1969
Murray Commarow	June 1966	May 1969
GENERAL COUNSEL:		
Leo E. Forquer	Nov. 1972	Present
Leo E. Forquer (acting)	July 1972	Nov. 1972
Gordon Gooch	Nov. 1969	July 1972
Richard A. Solomon	Apr. 1962	Nov. 1969
CHIEF, BUREAU OF NATURAL GAS:		
Frank C. Allen	Dec. 1973	Present
Frank C. Allen (acting)	Sept. 1973	Dec. 1973
Thomas J. Joyce	Dec. 1969	Sept. 1973
Joseph Curry (acting)	Oct. 1969	Dec. 1969
John F. O'Leary	Jan. 1968	Oct. 1969
SECRETARY, FPC:		
Kenneth F. Plumb	June 1971	Present
Gordon Grant	May 1967	June 1971
CHIEF, OFFICE OF ECONOMICS		
Haskell P. Wald	July 1963	Present
DIRECTOR, OFFICE OF PERSONNEL PROGRAMS:		
Claudius L. Fike	Oct. 1971	Present
William N. Campbell	Dec. 1961	Oct. 1971

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FEDERAL TRADE COMMISSION

	Tenure of office From	Tenure of office To
CHAIRMAN:		
Lewis A. Engman	Feb. 1973	Present
Miles W. Kirkpatrick	Sept. 1970	Feb. 1973
A. Everette MacIntyre (acting)	Aug. 1970	Sept. 1970
DIRECTOR, BUREAU OF COMPETITION: (note a)		
James T. Halverson	July 1972	Present
Alan S. Ward	Nov. 1970	July 1972
Cecil G. Miles	July 1968	Nov. 1970

[a] On July 1, 1970, the title of this office was changed from Bureau of Restraint of Trade to Bureau of Competition.

GPO 879-914