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STATEMENT OF
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DEPUTY DIRECTOR, ENERGY AND MINERALS DIVISION

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BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
ON

— 2303

[DEPARTMENT OF ENERGY PROCUREMENT PRACTICES,
PERSONNEL MANAGEMENT, ADMINISTRATIVE LAW JUDGE
ACTIVITIES, AND ADVISORY COMMITTEE MANAGEMENT OPERATIONS]

— 912

Mr. Chairman and Members of the Subcommittee:

GAO welcomes the opportunity to be here today to discuss with you the results of our examinations of the Department of Energy's procurement practices, personnel management, Administrative Law Judge activities, and advisory committee management operations. We have been examining these areas at your request, Mr. Chairman, and have issued two reports to you this month on Administrative Law Judges and advisory committee management, copies of which are supplied for the record. Although our reviews of the Department's procurement practices and personnel management are still underway I will summarize the results of our work thus far. I will also briefly review the findings of our two recent reports.

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SELECTED ASPECTS OF DEPARTMENT
OF ENERGY PROCUREMENT

In the procurement area, we looked at management support service contracts and sole-source contracts for the Economic Regulatory Administration (ERA) and the Energy Information Administration (EIA). These subjects will be further developed as part of a larger review of Department of Energy (DOE) procurement. In that review we are looking at DOE's overall procurement policies and practices. However, our work to date indicates that ERA and EIA may be (1) contracting with outside sources to perform basic management functions, (2) establishing employer-employee relationships with contractors, and (3) making extensive use of sole-source contracts which, in some cases, appear inappropriate. To put the obligations in perspective, during fiscal year 1978, DOE obligated nearly \$8.5 billion for about 5,000 contracts, of which ERA and EIA each obligated about \$5.5 million. Nearly all ERA and EIA contracts were for management support services. Twelve percent of ERA's contracts and 31 percent of EIA's were sole-source.

Procurement of Management Support Services

DOE's written policy towards the procurement of management support services follows the guidelines set forth by the Office of Management and Budget (OMB), which is that agencies should not contract for services which are of a policy, decisionmaking, or managerial nature; are for long-term or permanent work; or are being used to bypass or undermine personnel ceilings.

Contractors performing
basic management functions

Management support service contracts for performance of basic management functions, such as setting policy, dilute the agency's ability to retain essential control over its programs and to assure that its programs are being carried out efficiently and economically. Thus far, we reviewed 15 ERA and 13 EIA contracts, of which 5 and 1, respectively, appear to be for performance of basic management functions.

ERA awarded one contract for a study to determine DOE's authority to control anticompetitive practices of common carrier petroleum pipelines. This has the appearance of allowing a decision on certain basic DOE responsibilities to be arrived at externally. ERA officials said this contract was awarded because (1) pipeline investigations were new to ERA and its staff was not familiar with the area, and (2) other DOE staff was not available. ERA officials said this study is the basic source document for making petroleum pipeline regulation policy decisions.

Another ERA contract involved work on the proposed gasoline rationing plan and regulations and provided DOE with materials for congressional testimony. It also established a recordkeeping system for the plan. The contractor appears to have had a direct impact on drafting and issuing the gas rationing plan and regulations. Additionally, this contractor

appears to have played a substantial role in developing the original plan and regulations under prior contracts with ERA. These prior contracts were not available; however, based on other information, the contractor appears to have been responsible for determining the basis for gasoline rationing allotments.

In these and other cases, it appears that ERA may be contracting for performance of basic management functions, including policy setting and general management planning. This conflicts with DOE's stated policy and could lessen ERA's control over the efficient and economical conduct of its programs.

Creation of employer-employee relationship with contractors

DOE guidelines also require that management support service contracts not create an employer-employee relationship between Government and contractor personnel. In these situations, the contractor would be performing work which should be done by DOE personnel. DOE has no guidelines which conclusively state when an employer-employee relationship exists. However, the guidelines list six criteria which, when one or more are met, may indicate an employer-employee relationship. These criteria are:

- The contractor performs the work at a Government facility.

- Comparable services are performed by Federal personnel.
- The principal tools and equipment are furnished by the Government.
- The services are applied directly to an integral effort of DOE in furtherance of an assigned function or mission.
- The service can be expected to last more than 1 year.
- The nature of the service requires Government direction or supervision of contractor employees.

Fourteen of the 28 ERA and EIA contracts we reviewed met at least one of the criteria. One ERA contract which met four of the six criteria is for a private firm to audit major refiners for compliance with allocation and price guidelines.

According to DOE guidelines, a contract which meets any of the six criteria does not necessarily signify that an employer-employee relationship exists between DOE and contractor personnel, but it does indicate that such a situation may occur. In some instances ERA and EIA may have created an employer-employee relationship with contractor personnel; and, by doing so, may be using contractors in place of their own personnel in conflict with DOE's own guidelines.

Sole-source procurement

Purchases of services should be competitive to the maximum extent practicable to assure that acceptable services are obtained at reasonable prices and to provide potential suppliers maximum opportunities to compete for Government contracts. However,

when time is critical or when there is only one firm with expertise in the area, it may be necessary to procure the services sole-source. Sole-source procurements must be justified and action should be taken to avoid subsequent noncompetitive procurements.

We reviewed 16 sole-source ERA and EIA contracts, and found two potential problem areas concerning sole-source contracting: (1) deadlines necessitating sole-source contracting appeared either artificial or due to improper planning and (2) certain firms were repeatedly awarded sole-source contracts.

Six sole-source contracts were justified on the basis that time constraints did not allow for competitive procurements. For example, a contractor received a sole-source contract to revise an energy emergency handbook. The original handbook prepared by the same contractor was never published, and was known by ERA officials to contain inadequacies. Yet delays occurred in deciding to revise the handbook; and, to be completed on time, the contract was awarded sole-source.

In another instance, a contractor received a sole-source contract to determine the extent of car owners substituting leaded for unleaded gasoline. The justification for this contract stated that it was needed as soon as possible due to the "emergency nature" of gasoline substitution. However, the justification did not demonstrate that an emergency situation existed, or that competition for this contract would cause a harmful delay.

Certain firms were repeatedly awarded sole-source contracts. We have not yet fully pursued this area because DOE officials could not locate a number of contract files. However, information was available on certain contracts awarded sole-source to three companies. Each company received follow-on sole-source contracts to continue work substantially similar to work they had been performing. The justification in each case was based on the companies' expertise, which was at least partially developed under prior contracts. One contractor received two consecutive contracts for developing a gas rationing plan. The justification for both contracts was past experience. The contractor then was competitively awarded a third contract to work on this plan. According to the file, although the contractor was not the low bidder, he received the contract because of his technical abilities developed in part under prior contracts.

Mr. Chairman, while we have not yet determined the extent of these problems beyond the contracts we reviewed, our work indicates that ERA and EIA repeatedly may be awarding sole-source contracts inappropriately to supplement staffing needs. Also, there appears to be a need for better procurement planning and improved controls over sole-source procurement.

PERSONNEL MANAGEMENT

Now I would like to turn to a discussion of DOE's personnel management relating to

- the impact of the Federal hiring freeze,
- the allocation of Supergrade positions, and ⁽¹³⁾
- the recent Civil Service Commission (CSC) report on DOE and Federal Energy Regulatory Commission (FERC) ^(?) personnel matters.

Hiring freeze

As of January 13, 1979, DOE's total on-board personnel decreased by 152 positions from 19,077 to 18,925 since the hiring freeze went into effect, while its headquarters staff increased by 9 positions from 7,690 to 7,699.

We contacted several DOE organizations and found that most had been given some form of staffing relief for high priority programs and had generally increased their on-board personnel since October 24, 1978, when the hiring freeze began. DOE officials generally told us that the hiring freeze has not had any serious impact on their organizations. ^(?)

DOE's Office of the Assistant Secretary, Conservation and Solar Applications (CS) was the only organization included in our review that indicated serious staffing problems as a result of the Federal hiring freeze. Although CS has major ongoing National Energy Act responsibilities, it has not yet been given any type of relief.

Total DOE personnel needs in FY 1979 and FY 1980 to deal with National Energy Act responsibilities were not available as of February 9, 1979. However, we did obtain personnel

needs for two organizations--ERA and FERC--which have major National Energy Act responsibilities.

An ERA official told us that ERA has allocated 238 positions in FY 1979 and 252 positions in FY 1980 to carry out National Energy Act responsibilities. An FERC official estimated that of 1,800 positions in FERC's FY 1979 supplemental budget, 400 to 500 will be devoted to these responsibilities.

Allocation of Supergrade positions

DOE is authorized a total of 511 Energy Executive Service and 198 Supergrade positions. In addition, FERC also has 23 Administrative Law Judges (Supergrades) which are from resources controlled by the Office of Personnel Management.

In December 1978, DOE initiated its first systematic review--except for FERC--of the allocation of Supergrade positions among its various organizations. The review is expected to be completed later this month.

Civil Service Commission Report

A Civil Service Commission (CSC) report dated September 25, 1978, identified two major DOE personnel management problems:

- DOE lacked a complete organization structure, including a lack of mission and functional statements.
- Numerous DOE positions were misclassified and overgraded.

CSC found that many major DOE organizational components did not have an approved organizational structure nor mission and functional statements below the primary organizational levels. CSC recommended that DOE take corrective action no later than March 1979. A DOE official informed us that DOE has now approved about 85 percent of its organization structures and mission and functional statements. All organizations should have DOE approval by the end of this month.

CSC randomly sampled about 40 of 1,876 DOE positions during its review and found 16 positions misclassified (11 overgraded). CSC estimated that about 515 of the 1,876 positions may be overgraded. Currently, DOE has classified over 9,000 positions and found a total of 390 misclassifications (50 overgraded). DOE officials anticipate that its departmentwide classification review will be about 75 percent complete by the end of March and about 95 percent complete by the end of June. DOE has not yet taken action on the overgraded positions because it is awaiting Office of Personnel Management guidelines on downgrading, which are expected by early March.

ADMINISTRATIVE LAW JUDGE ACTIVITIES

Now I would like to turn to a discussion of Administrative Law Judge (ALJ) activities and the hearing process at FERC.

At the request of the Chairman, we recently looked into specific areas of concern regarding the practices and procedures of ALJs as well as the extent and cause of delays in

the hearing process. This work is part of a broader ongoing review.

Of the 22 cases we reviewed, we interviewed the ALJs in 11 of the cases, most of which had taken over 2 years in the hearing process. The various stages of the hearing process consume varying amounts of time. The causes of these variances were many and not typically attributable to any one party or event. The applicant, the Commission staff, interveners, ALJs, and the Commission itself all have contributed to additional time consumed during the hearing process. Examples of delays include late preparation of testimony, late interventions, schedule conflicts, and suspensions of case progress pending Commission action. Some interruptions such as prehearing conferences, although time-consuming in themselves, frequently resulted in reductions in overall processing time.

During this review, we found that:

- No records are kept on, nor are any efforts being made to control how individual ALJs budget their time.
- The only incentives that ALJs have to expedite the hearing process is their own sense of professional pride, peer pressure, and informal advice by the Chief ALJ.
- Current procedures for ALJ assignment do not allow adequate time for ALJ advance preparation before the hearing process begins.

--No attempts are being made to evaluate ALJ productivity or performance.

Due to time constraints and as agreed with the Chairman's office, our report, which was issued this week, contains no recommendations; however, recommendations concerning these matters will be included in our overall report on FERC's entire regulatory process to be issued later this year.

ADVISORY COMMITTEE MANAGEMENT
NEEDS IMPROVEMENT

Finally, I would like to turn to DOE's advisory committee management. The good news is DOE has reduced and consolidated its advisory committees by about one-third since October 1977 and has received a good report card from the General Services Administration, the agency with oversight responsibility for Executive Branch advisory committees. The bad news is further improvements are needed.

--Many of DOE's committee charters are not specific in objectives and scope and do not contain specific timespans for the committees to accomplish their purposes.

--DOE does not have overall written membership selection guidelines.

--All applicable support costs have not been allocated to the individual committees.

We found that 12 of DOE's 20 committee charters, the

basic document defining the purpose of a committee, were overly broad. Further, 8 of the 12 charters used "canned" or similar language to set forth the committees' purposes. Eighteen of the 20 committee charters lacked specific timespans for performance.

DOE has developed some written guidelines on items such as consumer representation and trade association participation; however, several of DOE's selection factors such as geographic distribution and subject matter expertise are unwritten. We also found that DOE does not have criteria for determining how much weight to give to expertise in a subject area compared with the individual's ability to represent a particular group, nor is there general guidance to determine the proper number of committee members as it relates to the committee's function.

Your office was interested particularly in the membership of the National Petroleum Council and requested that we follow up on information in our report. A DOE official told us that the Council has been reduced from 146 to 93 members. Also, we were told that the reductions were directed at the Assistant Secretary level and that there were no written records.

At the time of our work, DOE had not clearly defined which costs were to be allocated to the committees. We found two cases where costs of about \$67,000 were not being charged to the appropriate committee. The Department has

recently taken some steps to provide for better cost allocations.

Our report, which I understand you are releasing today, makes recommendations to the DOE Secretary to alleviate these problems. In summary, we recommended that DOE (1) make its charters more specific, (2) establish overall written membership selection guidelines, and (3) assure all costs are properly allocated. We believe these recommendations, if implemented, will help DOE to further improve its advisory committee management.

That concludes my written statement, Mr. Chairman. I would be happy to respond to questions.