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Of the various remedies that are available to close the gaps in the energy decisionmaking process, the recommended remedy is to create a Department of Energy and Natural Resources (DENR). The creation of a separate administration having statutory jurisdiction for energy data is advisable. Congress should utilize the Professional Audit Review Team (PART) in order to gather vital information on energy data. The proposed DENR should have the responsibility for automobile fuel economy standards and energy conservation performance standards. An energy health and safety regulatory organization will be needed, which will be either completely independent of the DENR or, if included within the Department, will be carefully insulated from its promotional activities. A clarification of the administration's proposed treatment of the relationship between Federal land management policy and energy policy would be helpful. A high-level council, headed by the Secretary of the DENR, should be formed to coordinate all Federal activities related to energy. The General Accounting Office should carefully monitor the activities of the DENR to provide Congress with information for assessing its performance. (LDM)

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Statement of
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before the
Senate Committee on Governmental Affairs
on
Energy Reorganization Legislation

The General Accounting Office has had a long-standing interest in reorganization of Federal energy activities, and I am pleased to be here today to discuss energy reorganization legislation. Yesterday we issued a report, pursuant to the request of the Committee Chairman and the ranking minority member, on energy policy decisionmaking, organization, and national energy goals. Since it is directly relevant to the subject of this hearing, I would ask the Chairman to include it in the record. That report identified gaps and issues in energy decisionmaking which support the need for reorganization of Federal energy activities. It also includes an analysis of several major energy reorganization proposals, including S.591 and S.826, and contains our recommendations to the Congress regarding energy reorganization.

In my statement I will briefly focus on some of the gaps we identified in attempting to relate current energy decisionmaking to national goals and discuss our views and recommendations

00193

for energy reorganization in the context of the administration's proposal. In general, we support the creation of a Department of Energy along the lines recommended by the President. But, we believe there are a number of matters which require further consideration by the Congress. While I will not focus specifically on S.591 in my statement, we do comment in detail on that proposal in our report.

I should point out that we continue to believe that the long-term national interest would be best served by creation of a Department of Energy and Natural Resources. Creation of a Department of Energy is a step in that direction.

GAPS AND ISSUES IN RELATING
ENERGY DECISIONMAKING TO
NATIONAL GOALS

In carrying out their separate missions, the existing Federal energy agencies do not always take actions or make decisions that are fully compatible with overall national energy goals even though the actions are usually consistent with agency missions. Moreover, because responsibility for these decisions is not centralized, it is possible that various trade-offs and compromises between and among individual energy goals are not given full consideration in the decision-making process.

We looked at Federal agency actions in three broad areas--energy conservation, nonrenewable resource development

and energy price regulation. We identified a number of gaps in the energy policy decisionmaking process. Many of these gaps pointed to the need for better coordination among agencies carrying out energy functions and the establishment of a system of priorities among energy goals.

I will briefly touch on each of these areas.

Energy conservation

Many Federal agencies carry out energy conservation programs. However, most of these are indirectly involved, only to the extent that their primary mission--such as transportation or housing--has energy conservation implications. There are serious gaps in Federal efforts for maximizing energy conservation. For example:

- There is not sufficient public concern with the need to conserve energy because in the public view there has been, until this winter, an adequate energy supply.
- There is a general lack of incentives and/or disincentives to encourage adoption of energy conservation measures.
- There has been an imbalance in the funding level between programs designed to conserve energy and programs designed to increase energy supplies.
- There is a conflict between the regulated price of energy and energy conservation. Regulatory policies

have tended to work against conservation by holding prices lower than they would be otherwise.

Nonrenewable energy resource development

Most Federal energy resource development efforts deal with conventional nonrenewable energy sources--coal, oil, and natural gas. Nonrenewable energy resources will be relied on heavily in the short term to meet domestic supply needs, while new technologies (both renewable and nonrenewable) will have to be developed to meet the Nation's mid- and long-term needs. Federal energy resource development efforts will require effective coordination. However, we found these efforts not sufficiently coordinated. Specifically:

- There is a lack of energy production targets or goals.
- There are no estimates or forecasts of the needed energy resource mixes to meet future energy needs.
- There is a lack of an effective mechanism to bridge the gap between energy technology research and development and commercialization of the technology.

Energy price regulation

Current price regulation policy can be viewed as incompatible with certain energy conservation and resource development goals. With respect to energy conservation, when the price of energy is held lower than it would be otherwise it discourages conservation. With respect to resource development, the same action can have a negative effect on the accumulation of capital

for future energy development. There are essentially two options available--creation of a more stable regulatory environment which clearly signals the Government's regulatory intentions to industry, or deregulation of the price of natural gas and oil.

With continued regulation, there are steps the Government can take to provide a more stable environment and lessen any adverse impact that current regulatory policy may have on energy conservation and resource development. These include:

- Developing a better recognition of the relationship between the regulated price of energy and energy conservation, including an assessment of additional price incentives or disincentives to encourage conservation actions.
- Changing the current price regulatory policies with respect to conventional petroleum and natural gas production. There is a general consensus that higher prices for these products would result in at least some increase of supplies above what would otherwise be available and also increase industry's ability to recover capital investment costs through future selling prices. There is concern whether economic and social impacts of deregulation outweigh the benefits of increased supply, and these factors must be carefully considered in the decisionmaking process.

--Using tax and regulatory policies to stimulate development of difficult to recover resources and resources requiring new technology.

ENERGY REORGANIZATION

Overall, there are a number of remedies which are available to close the gaps in the energy-decisionmaking process. Many of the remedies can be accomplished with existing Executive branch authority, but some require additional legislation.

The one remedy common to most of the gaps is a reorganization of Federal energy functions.

As I stated at the outset of my statement, the issue of Federal energy organization has been of interest to us for some time. We believe that a Department of Energy and Natural Resources (DENR) is the best long-term organization approach to solving complex energy and natural resource problems. We most recently expressed this view in testimony before this Committee on the extension of the Federal Energy Administration in April 1976.

The focus now is on a Department of Energy as proposed by the administration's bill, S.826. That legislation is consistent with the movement toward the establishment of a DENR, and is clearly a step in the right direction.

While we recommend that the Congress enact legislation to establish a Department of Energy, there are several issues

which we believe this Committee and the Congress should address. These issues relate to data, conservation, regulation, leasing, coordination, and GAO oversight of the activities of the Department of Energy.

Energy data

Regarding energy data, S.826 recognizes the need to insulate energy data collection and analysis functions from energy policy formulation and development, through the creation of a separate Administration with statutory jurisdiction for energy data. In the past, Mr. Chairman, you have expressed considerable concern over the need to statutorily insulate energy data activities from policy influence. We are pleased to see that S.826 would transfer existing statutory provisions designed to provide that insulation.

There is, however, one aspect of the data question that we feel obliged to comment on. This relates to the functions of the Professional Audit Review Team (PART), which was established for the purpose of monitoring and reporting on the operations of FEA's Office of Energy Information and Analysis. PART consists of at least six professionally qualified persons from other Federal statistical agencies, and a chairman designated by myself. Under S. 826, the status of PART is unclear, since the bill has no specific discussion of it.

Before PART was established, we argued that such a function could be done by GAO in the course of our normal auditing

and review activities. PART now exists, however, and it can be an effective mechanism for providing the Congress vital information. The Congress may want to make clear its view on the continued existence of PART.

Energy conservation

Another area that causes us some concern is the bill's treatment of energy conservation responsibilities as they relate to the Departments of Transportation and Housing and Urban Development. Under the bill, the Secretary of the Department of Energy would have only an advisory role in recommending goals for the automobile fuel economy standards program which would continue to be the responsibility of the Department of Transportation. However, the bill would also transfer to the Department of Energy the existing statutory authorities for energy conservation performance standards for new buildings now vested in the Secretary of the Department of Housing and Urban Development. According to fact sheets accompanying the administration's proposal, actual implementation of the program would be redelegated to the Department of Housing and Urban Development; with the goal-setting responsibilities retained in the Department of Energy.

To be consistent, we believe that the Department of Energy should also have responsibility for automobile fuel economy standards, in the same way that it would have such responsibility for the performance standards for new buildings.

We believe that it is desirable to have all energy functions in an agency having energy responsibility. However, we recognize that the implementation of both the automobile fuel economy standards program and the energy conservation performance standards program could be carried out by the other Departments, if policy responsibility for these programs were kept within the Department of Energy. Therefore, we would not object to the administration's proposal subject to the responsibility for automobile fuel economy standards being included in the Department of Energy. Even so, the Congress should closely monitor whether the actual implementation of the programs might later also be transferred.

Energy regulation

The treatment of regulatory functions--both economic and health and safety related--is one of the most difficult areas to decide in arriving at a viable energy reorganization.

Our earlier position on this matter had been to keep all regulatory functions separate from the policy and promotional aspects of energy.

The administration's proposal has taken a different tack. It would place all economic regulatory functions in the Department of Energy and leave out the health and safety functions of the Nuclear Regulatory Commission, the Department of the Interior and other agencies.

Within the Department of Energy, an Administrator of the Energy Regulatory Administration would supervise overall regulatory policy, and a somewhat insulated Board of Hearings and Appeals would conduct the quasi-judicial work in the economic regulatory area. Such an arrangement could possibly provide an adequate degree of independence.

The key argument for including economic regulatory functions in the new Department of Energy revolves around the importance of establishing energy price regulatory policies which are consistent with energy conservation and resource development goals.

As to health and safety regulation, we are skeptical that such regulation can any longer be construed as truly "non-economic" in nature. For example, recent citizen pressures and court rulings requiring the Nuclear Regulatory Commission to give greater consideration to energy conservation and long-term concerns of nuclear waste management in its regulatory actions indicate that it will have to reassess its appropriate role in the Nation's energy policy. More than anything else, the regulatory decisions of the Nuclear Regulatory Commission are likely to pace nuclear development in the years ahead.

Some other examples of how health and safety regulatory decisions affect economic decisions include:

--In the nuclear area, the costs of nuclear power plants do not currently include any of the costs of closing

the backend of the fuel cycle, such as plutonium reprocessing or nuclear waste disposal, nor do they include the ultimate costs of decontaminating and decommissioning nuclear power plants. All of these areas will require health and safety regulatory decisions which will have significant implications for the economics of nuclear power on a societal and a plant-by-plant basis.

--In the natural gas area, decisions will be required on the safety of liquefied natural gas facilities as we move to increased imports of liquefied natural gas. These include such problems as the need for specialized tankers and receiving terminals.

--Along with other factors, it is generally agreed, that the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) had some impact on the significant decline in underground mine productivity in the last 6 years. In addition, this law has had some impact on raising the price of coal produced from underground mines.

We believe the Congress should consider creating an energy health and safety regulatory organization which combines all energy health and safety regulation. In addition to the Nuclear Regulatory Commission, such an agency could include the Mining Enforcement Safety Administration of the

Department of the Interior, the pipeline safety functions of the Department of Transportation and certain noneconomic responsibilities regarding the licensing of liquefied natural gas facilities now carried out by the Federal Power Commission.

This new organization could be a regulatory body completely independent of the new department. Or, it could be included within the Department of Energy with strong statutory provisions to insure its insulation from the promotional activities of the department. In any case, the Environmental Protection Agency should still retain the responsibilities for setting air and water quality standards which affect and influence various forms of energy development.

In summary, we believe it is increasingly difficult to separate economic energy regulation issues from health and safety regulation issues. It seems clear to us that the health and safety regulation of energy--particularly nuclear energy--will be a key to the pace of energy development. Therefore, the problems which the regulators perceive must be taken into consideration in planning for future energy supply mixes. Conversely, the regulators must have a policy perspective against which they can measure the implications of regulatory decisions.

In deciding the ultimate composition of a new energy department, the Congress must carefully examine the implications of

the inclusion of energy regulatory functions within an energy department and the degree to which statutory provisions and congressional oversight can assure the insulation of regulatory decisions from the policy process.

Since we last stated our views on energy regulatory organization, we have given much additional thought to the matter and believe that there are three options available to the Congress in dealing with the issue of how to treat energy regulatory functions.

Two of the three options which we believe are available to the Congress include placing regulatory functions within the Department of Energy. These are:

--Include energy regulatory functions--both economic and health and safety related--in the Department of Energy. Under this approach, economic and health and safety regulation could be separate entities but both would fall under a single Assistant Secretary. Statutory provisions should be included to assure maximum insulation of regulatory decisions from the promotional aspects of the Department. Provisions could also be included regarding GAO monitoring and reporting as appropriate on the relationship of regulatory decisionmaking to the promotional aspects of the Department of Energy.

--Include only economic regulation in the Department of Energy because of the perceived importance of establishing energy price regulatory policies which are consistent with other energy goals. Statutory provisions should be included to assure maximum insulation of economic regulation from the promotional aspects of the Department. Consolidate health and safety regulation of energy in an independent Energy Health and Safety Regulatory Agency. Provisions could also be included regarding GAO monitoring and reporting as appropriate on the relationship of regulatory decisionmaking to the policy process in the Department of Energy.

I want to strongly emphasize that if any regulatory functions are located within a new Department of Energy, there must be clear statutory provisions to properly insulate them from the promotional aspects of the Department. We are including as an attachment to our statement a listing of the types of statutory provisions that we believe could effectively insulate energy regulatory functions.

The third option is:

--Continue to separate energy regulation--both economic and health and safety related--from energy policy

formulation. Should this be done, we believe that creation of a single energy regulatory agency is desirable. Such an agency could provide a forum for more carefully considering the trade-offs among problems involved in different forms of energy development.

Energy leasing

The relationship between Federal land management policy and energy policy is one that we have struggled with for many years. We have issued a series of reports, the latest on March 7, 1977, 1/ which clearly indicate that the present system is inadequate. We have recommended a series of actions to the Department of the Interior to strengthen its system of leasing and producing from the public lands. We have had remarkably little success in changing the Department's leasing policy. However, very recent statements by the Secretary of the Interior indicate a new outlook on these issues. 2/

Given the previous lack of agreement with our findings by the Department of the Interior, our initial reaction to any move towards consolidating energy functions favored total

1/Outer Continental Shelf Sale #35 -- Problems Selecting and Evaluating Land to Lease. EMD-77-19, Mar. 7, 1977.

2/Statement of Cecil D. Andrus, Secretary of the Interior, before Hearings of Ad Hoc Select Committee on the Outer Continental Shelf, House of Representatives. Mar. 3, 1977.

removal of all leasing functions from that Department. Our thoughts were to leave the Secretary of the Interior with the decision on whether to lease specific areas when he determines that leasing would not be the highest and best use of the public lands for the particular area.

The administration's proposal is not as clear on this issue as we would like. The proposal does not explicitly state that the Secretary has such power, but that appears to be its intent. Clarifying the language of the proposal would help in that respect.

The administration's proposal on public lands leasing is complex and much of the detail of how it would work is left to Executive orders, agreements, and regulations which are yet to be worked out. However, we believe the thrust is in the right direction. Accordingly, we do not object to the administration's proposal, subject to close congressional scrutiny as to its actual operation. Again, we will monitor such actions closely to provide the Congress with information to assist it in assessing performance.

Energy coordination

We believe there is a need for a high-level coordinating council in the Executive Office of the President. The administration's proposal abolishes the existing Energy Resources Council. There will always remain energy and energy-related issues which are not within any new Department of Energy.

Energy is such a pervasive issue that no organizational structure could capture all of its parts. A high-level council could coordinate all Federal activities related to energy. It should be headed by the Secretary of the Department of Energy.

Even more important than coordinating energy issues, however, is the simple fact that, as a Nation, we have many multiple goals, and each is sought to be reached simultaneously. Providing a strong, visible interface at the highest level to air differences of opinion and arrive at a consensus on the reconciliation of those goals with energy goals seems to us to be a high order of priority on the Nation's agenda. We believe, therefore, that the Congress should statutorily provide for such a council in any legislation which would create a Department of Energy.

GAO oversight

Whatever its final form, S. 826 is likely to provide for a number of interfaces both within the Department of Energy and between other Federal agencies. These relate to the implementation of the energy conservation performance standards program for new buildings, implementation of the automobile fuel economy standards program, the relationship of energy regulatory decisionmaking to energy policy formulation and development, and operation of the public lands leasing program. They will require close congressional oversight.

GAO will monitor the activities of the Department of Energy closely to provide the Congress with information for assessing performance. Because of the importance of energy as a national issue, the Congress may find it useful to reaffirm GAO's existing authority and restate in this legislation GAO's responsibility to continuously monitor, evaluate, and report as it deems appropriate on the policies, plans, and programs of the Department of Energy, including access to all data and information within the possession or control of the Department.

The Nation needs a cohesive national energy policy. It needs a strong cohesive organization to administer that policy. Subject to our comments in this testimony and as expressed in the report we issued yesterday on this subject, we support enactment of S. 826.

Mr. Chairman, we are working on technical comments on the bill and will furnish them for the record.

Mr. Chairman, this concludes my statement. We will be glad to respond to questions.

SUGGESTED ACTIONS TO

INSULATE ENERGY REGULATORY

FUNCTIONS FROM ENERGY POLICY FUNCTIONS

- Give the head of the regulatory activities (who would be appointed by the President and confirmed by the Senate) a specified term of office. The term of office should exceed that of the Secretary of the department within which the regulatory administration is located.
- Give the deputy head of the regulatory activities the same term of office as the head of the regulatory activities.
- Require that the head of the regulatory activities report directly to the Secretary of the department within which the regulatory activities are located.
- Stipulate by specific legislative provisions the responsibilities of the regulatory administration emphasizing its independence from energy policy formulation and development. In this regard, provide through legislative history the intent of the Congress that the head of the regulatory activities be able to speak independently on matters relative to energy regulation, including testimony before the Congress.
- Provide for close congressional monitoring and oversight of the regulatory administration's activities.
- While providing a basis for relating the overall thrust of regulatory actions with broad energy policy guidance, do not provide the regulatory administration with any energy policy functions.
- Vest the regulatory responsibilities directly in the head of the regulatory activities.
- Require that any request for appropriations for the department within which the regulatory administration is located identify the portion of the request intended for the support of the regulatory activities and a statement of the differences, if any, between the amounts requested and the head of the regulatory activities assessment of the budgetary needs of the administration.
- Stipulate by specific legislative provisions the responsibilities and authorities of the Board of Hearings and Appeals, emphasizing its independence from the head of the department within which the regulatory administration is located.

- Provide the Board of Hearings and Appeals with authority to collect whatever data and information may be necessary to effectively carry out its functions.
- Provide that neither the head of the regulatory activities or the deputy head could be removed from office for purposes other than being permanently incapacitated, guilty of neglect of duty, malfeasance in office, guilty of a felony, or conduct of moral turpitude.