DOE/IR-0035

Energy and Consumer Protection, Competition and Fraud

Official Transcript of
Public Briefing and Addendum
March 30, 1978
Washington, D.C.

October 1978

U.S. Department of Energy
Assistant Secretary for Intergovernmental
and Institutional Relations
Office of Consumer Affairs

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ENERGY AND CONSUMER PROTECTION,

COMPETITION AND FRAUD

Consumer Information Series

This meeting was the third in a series of Department of Energy public briefings. The meeting was open to the public and the public was invited to participate or make comments from 9:00 a.m. to 12:00 Noon, March 30, 1978. The meeting convened at 9:15 a.m. before:

SAM HUGHES, Assistant Secretary for Intergovernmental and Institutional Relations

ESTHER PETERSON, Special Assistant to the President for Consumer Affairs

TINA HOBSON, Director, Consumer Affairs, Department of Energy, Program Moderator

WILLIAM PEACOCK, Director, Intergovernmental Affairs, Department of Energy, Program Moderator

PANEL MEMBERS:

ALVIN ALM
Assistant Secretary for Policy and Evaluation, Department of Energy

ERIC FYGI
Acting General Counsel, Department of Energy

LINCOLN MOSES
Administrator, Energy Information Administration, Department of Energy

PANEL MEMBERS (Continued.)

RONALD SCOTT
Assistant Director, Heating and Cooling, Office of Assistant Secretary for Conservation and Solar Applications, Department of Energy

ROBERT REICH
Director, Office of Policy and Planning, Federal Trade Commission

RESOURCE MEMBERS:

ELLISON S. BURTON
Policy, Planning and Analysis Directorate, Office of Resource Applications

LYNDA T. CONNOR
Division of Solar Commercialization, Office of Conservation and Solar Applications

MARIAN HOLTON
Office of Inspector General, Department of Energy

HUGH KNOX
Acting Director, Regional Socioeconomic Environmental Analysis, Energy Information Administration, Department of Energy

RICHARD KOWALLIK
Procurement Advisor, Program Support Office, Procurement and Contract Management Directorate

STEVEN MARTIN
Deputy Director, Office of Competition, Office of Policy and Evaluation, Department of Energy

DAVID M. PELLISH
Solar Heating and Cooling, Office of Conservation and Solar Applications

RESOURCE MEMBERS (Continued.)

WAYNE PORTER
Director, Office of Enforcement Training, Economic Regulatory Administration

DAN C. QUIGLEY
Building Division, Office of Conservation and Advanced Energy Systems Policy, Office of Policy and Evaluation

SANDRA SHERMAN
Office of General Counsel, Department of Energy

SAMUEL A. SIMON
Program Advisor, Energy Program, Federal Trade Commission

SUSAN WELLS
Office of Institutional Liaison and Communication, Office of Energy Technology

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INDEX OF QUESTIONS

The following is an index of questions raised relative to the DOE public briefing on consumer protection, competition and fraud. Questions 1 through 31 were submitted by consumer and public interest groups prior to the briefing. THeir answers were prepared by the DOE program offices. Questions 1, 17, 22, 26, and 31 were also answered by the panel members.

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P R O C E E D I N G S

MR. HUGHES: Welcome to the fourth in our series of consumer information briefings. This one is on "Energy and Consumer Protection, Competition and Fraud."

The purpose of these briefings, as I am sure many of you are aware, is to respond to questions which consumer and public interest groups have about energy issues that are of the greatest concern to them.

The whole briefing is being video-taped for our regional offices in order to give as wide a distribution as possible to the views that are presented and discussed here.

I also would like to announce the fifth and sixth briefings in this series. The fifth will be Thursday, April 27th, at this same location, 9:00 to 12:00, Noon. The subject will be "Energy and Urban Policies and Programs." We are expecting to have Leon Sullivan, head of the OIC (Opportunities Industrialization Centers), with us at that time.

The sixth briefing will be May 25th, in this same auditorium and at the same time. The subject will be "Energy and Food."

Because our discussion today covers a rather wide jurisdictional area, going beyond the scope of the Department of Energy, our panel reflects a combination of responsibilities.

It is entirely possible, as has been the case before, even with Department of Energy representatives, that we will have some

differences among the viewpoints of the panel members. Hopefully, this will help to shed light on the subjects under discussion.

Among the greater pleasures of these sessions is the introduction of the guests that we have. It is a particular pleasure for me to introduce Esther Peterson in her current capacity as Special Assistant to the President for Consumer Affairs.

I think that most of you are aware that she is not a newcomer to that role. You will recall that she was in the same position in the Johnson administration; and she served President Kennedy as an Assistant Secretary of Labor.

My path and Esther's have crossed several times over perhaps more time than either one of us would like to recall.

As a child prodigy, back in the early 1940's, she was Assistant Director of Education of the Amalgamated Clothing Workers of America, and, in 1957, became Legislative Representative of the Industrial Union Department of the AFL-CIO.

Esther has been at a good many barricades over the years, and, as you can see, is still working some of the more difficult areas of government, and is doing a great deal of good on the side, because she is on a few Boards of Directors, including the Institute for Public Interest Representation, at Georgetown University Law Center, and the National Center for Resource Recovery. There are others too.

Esther, we are very glad to have you join us this morning.

MS. PETERSON: I think it is a particular pleasure for me, also, to be introduced by you, Sam. We won't go into the years; but, every time our paths cross, it is good.

I must say that, always, through all these times, he has been a friend and an ally that one could consult with and get help from.

In fact, this morning, I said, "Sam, I have got to pick your brain on what we are going to have -- what is your view on it?"

I appreciate this opportunity to be with you today. I am impressed with this title, "Energy and Consumer Protection, Competition, and Fraud."

I especially like the emphasis on the consumer, because, with more consumer participation, there will be more competition and less fraud.

The important thing is to have consumer representation in government and have consumer participation in decision making.

Many people have the impression that we, the Administration, now that we have lost the establishment of an Office of Consumer Representation, will play down the consumer issues for awhile.

My friends, that is not so. I want to dissuade any feeling at all that the consumer issue is still not front and center in this Administration.

There are many ways that one moves to accomplish what we are after. It would have been splendid to have had the office, and we will continue to work for the kinds of objectives that were to be there. I

think it is extremely important for you to know that we are moving ahead.

Actually, this movement is a response to our society's call for openness and for accountability. It is intresting to me that, throughout history, and in various areas where I have participated; in the labor movement, in the civil rights movement; in the women's movement -- progress comes in the efforts of people who want in; who want a voice in the decision making.

I feel very strongly that the consumer movement is the next big, coming movement in this country. It has just begun; we have just begun to feel the force of this.

It is a healthy thing, a good thing, for our society, because it will bring openness; it will help to bring accountability and participation.

I was impressed, from the time I began working in the consumer area, with the kinds of questions we got from society and from individual members of society.

Now the questions are far more sophisticated; far more asking "Why?". There is far more asking, "What can we do?" "How can we influence the decisions?" And, "How can we make our voices heard, as users and buyers of goods and services?"

The important thing is to set up an avenue for how this can be done. We are very much interested in a bill before Congress to enlarge citizen participation; because we have found that, although we all want

to participate, as citizens, in the decision-making process, very frequently we cannot afford to; the individual person cannot afford to.

We have to develop mechanisms to make this possible. We feel very strongly that, if we can get through the government a way of funding citizen participation in decision-making, it will help a great deal.

There is a strong feeling in our government of needing this and of wanting it.

As we have worked with citizen groups, we have found that, if there is not someone there representing the consumer, frequently decisions are made that are not in the consumer interest and are not balanced.

What we are after is a balancing act. We are trying to equalize. We are not saying that the groups that now have the inside track should not have a voice.

We are just saying, "Let's move over a little bit; let's bring the citizen in." This is one reason why I welcome the kinds of things that you are doing here. It is a genuine effort to bring the citizens in.

Actually, a lot is going on at the State and local levels, and in the Federal government, to open up more decision making.

We do know from our experience that, when we have not had someone there representing the consumers in rate cases, for example,

very frequently the decisions are based on data that should have been looked at carefully. It should have been examined. We have had that experience, certainly, at the State level.

We need this consumer representation now, particularly in the energy area. Suppose the Federal Energy Regulatory Commission would determine whether or not controls on gasoline should be lifted? I am told that a one-cent increase would be equal to $1 billion in additional costs for our consumers.

We need to be there; that is the thing I am saying, and I think that this event here today helps that process very much. I applaud your public briefings. I look forward to my participation in this one.

When the consumers say to me, "What food should I buy?", what do I tell them?

When consumers ask me, "What appliance should I buy?" "Which is the best for conservation?" "What will help me most to conserve?", what do I tell them?

The thing I like is that we are getting down to basic questions. Our people want to conserve; our people want to help in the energy program that the Administration is putting forward. We have to give them the tools.

We look to you and to the work you are doing to give them those tools.

Thank you.

MR. HUGHES: Thank you, Esther, for some words that send us on our way, not only this morning but in general, with respect to the worthiness of earnest efforts to communicate our problems to you and to listen to yours in a fashion that will enable us to integrate your thoughts and ours into a policy that will best serve the needs of the nation.

I don't think that I have introduced myself. I have been here often enough before so that some of you may know I am Sam Hughes. I am an Assistant Secretary in the Department of Energy, more or less in the external relations and outreach business.

I would like now to introduce the panel: Al Alm is Assistant Secretary for Policy and Evaluation in the Department of Energy. He is responsible for developing the Department's overall policy and direction and for coordinating the analysis of Department of Energy programs and the evaluation of them. He also is responsible for insuring competition in the energy industries under those portions of the Energy Act which established the competition area within DOE's organizational structure. He also is responsible for assuring the inclusion of consumer views in establishing Departmental policy.

Eric Fygi is our Acting General Counsel. He is responsible for the Department's legal services, except for those that involve the Federal Energy Regulatory Commission. He also is responsible for managing the Department's patent program and for insuring the consistency of the Department's regulations governing various energy sectors and activities.

Lincoln Moses is Administrator of the Energy Information Administration, with responsibility for collecting, processing and publishing data on energy reserves, the financial status of energy-producing companies and the production, demand, consumption and other data and analyzing this information, to assist both government and nongovernment users in understanding energy problems and trends.

Ronald Scott is the Assistant Director for Heating and Cooling, in the Office of Conservation and Solar Applications, and is responsible for the solar programs.

Bob Reich is with us from the Federal Trade Commission. He is the Director of the Office of Policy, Planning and Evaluation in that Commission and is responsible for FTC's policy formulation, planning and evaluation function.

This morning, we have two moderators. Bill Peacock is the Director of Intergovernmental Affairs in my office. He coordinates the Department's programs with State and local governments.

Tina Hobson, Director of the Office of Consumer Affairs, you have met before. She is responsible for these meetings and for helping to facilitate the communication between our Department and you, as consumers; helping us to better understand your needs and concerns and the viewpoints which you have with respect to our programs and policies and also, as is evident this morning, for bringing us together for dialogues of this sort.

I would like to now turn the program over to Tina, who will describe to you the format for this forum and proceed with the discussion.

MS. HOBSON: Thank you, Sam.

As some of you have been here before, I will just quickly run through the guidelines, or the groundrules, for the briefing.

You should have with you our handout copies of the 31 questions that were submitted prior to today.

Four of the 31 questions submitted in advance will be addressed during the next 25 minutes or so. We have selected the four because they appear generic to some of the issues.

The remaining 27 questions listed in the program will be answered in the transcript of this meeting, if you do not elect to raise those specific questions from the floor. It is up to you. The questions appear as submitted to us. They were not altered or rewritten.

In some cases, more than one group asked the same type of question; so, in those cases, we did combine them.

You should also have a 5-by-7 card. During the panel discussion period, please write your question on the card and indicate whether you represent consumer, environmental or industrial interests.

During the coffee break, you will go out into the hallway and get a number. We will begin calling on you, in order, after the break.

I would like to introduce now, Fern Spivy, who is our timer. As we have done before, panel members will be given no more than five

minutes to answer a question. When the five minutes are up, that card, "stop," will be raised and -- this is our own "Gong Show" -- we will ring the bell. That will be the end of that segment.

I am sorry to cram what I know will be all these very fine lines into only five minutes; but that is what we are going to do to keep things moving along.

To start the program this morning, I am going to call on Bill to ask the first question.

MR. PEACOCK: Thank you, Tina.

In order to demonstrate that the Department of Energy treats its guests well, the first question is going to Bob Reich, from the Federal Trade Commission.

Bob, what is the FTC doing in the energy area, and how does the Commission relate to the Department of Energy?

MR. REICH: I think, Bill, it would probably be easier if I simply sketched for you, very briefly, our main energy activities. Then, depending on what activities people want to talk about, I can talk about them later.

On the consumer protection side right now, for the last six months, in insulation areas, we have ordered manufacturers to substantiate energy-saving claims, and their "R" value claims for insulation, and to disclose latent safety hazards on labels. This applies to all forms of insulation.

We have a proposed rule governing disclosure on the labels of insulation of the "R" value. We also have ordered certain manufacturers to stop installing untreated cellulose.

On advertising, we have issued about a dozen subpoenaes over the last year, concerning energy claims in advertising.

We have also undertaken regional law enforcement conferences governing and scrutinizing consumer rip-offs in the various energy devices that are being marketed now.

We have developed proposed rules for appliance labeling for energy efficiency. This is under our EPCA responsibilities, and we expect that proposed rules will be promulgated by the Commission within the next month. Then, about nine or ten months from now, hopefully, they will be in the final form for labels.

We are also helping to develop proposed consumer protection and competition State standards. This is work we are doing in conjunction with the Department of Energy in anticipation of the proposed National Energy Act; the utility program.

On our competition side, we are, as many of you know, steeped in litigation with the major oil companies. We are also steeped in subpoena challenges.

We are also investigating the insulation industry for possible competition problems.

We are scrutinizing the incipient solar industry, also, for competition and consumer protection issues; we held a conference three months ago on the major competition issues in solar.

Then, we are preparing economic reports on the major energy sectors of the economy: on coal structure, uranium, natural gas.

We are doing other things, but those are the highlights.

I want to use the time remaining -- I guess that I do have a little time -- for a brief commercial. The Federal Trade Commission is a tiny agency as federal agencies go. It is really a pimple on the face of the federal government.

Our total professional staff of about 780 is approximately equal to the number of interoffice messengers used by the Department of Energy. The moral of the story is that we are not a replacement, by any means, for absolutely vigilant competition and consumer protection enforcement and concern within the Department of Energy.

We will supplement. We will try our dammedest; but we have to make sure that the Department of Energy is as concerned as we are with these issues.

By the same token, we need information that the Department of Energy is gleaning under its financial reporting system.

That information has to be of the quality necessary to make judgments about the competitive impacts of DOE activities on the economy, and we have to have access to that.

End of commercial.

MR. PEACOCK: I don't know where Fern's stopwatch was during your commercial; but that pimple may turn into a boil. We don't have that many messengers; but we are working on it.

MS. HOBSON: I would like to ask Lincoln to answer the next question, Question Number 22. I will read the first part of it: "During his campaign and in his presentation of the National Energy

Plan, President Carter declared that vertical accountability would be an important part of his energy program. Moreover, the DOE Act and previous energy legislation mandates the collection and dissemination of this energy data. Recently, however, the Department of Energy asked for comments in the 'Federal Register' on reasons why it should keep some of this assumed 'confidential information' within the confines of the Office of Energy Information and not share it with the Justice Department, the FTC and the SEC."

There are two sub-questions there. Maybe, Eric, you would like to add a note when Lincoln is finished. We will give you one minute for a sub-comment.

Those questions are: "Isn't the DOE violating the DOE Act and the Energy Supply and Environmental Coordination Act by even asking the question as to whether or not it should share energy information? If not, why not?"

The second part: "The objective of collecting the data was to provide the government with the information necessary to oversee the activities of the energy industry to insure competition and to protect consumers. How can these objectives of the DOE Act be met if the energy information and data collected are not shared with the key governmental enforcement agencies in these areas and with the public? Shouldn't the burden of proof for keeping energy data confidential be on the companies themselves?"

Lincoln, we thought that we would give you an easy question to start with.

MR. MOSES: I can hardly wait for the hard one.

The Department of Energy has two broad classes of obligations which are vested in EIA, that is, the Energy Information Administration. They are both fundamentally important to the country and to us as consumers.

One of these is to support regulatory and adjudicatory programs within the Department of Energy and elsewhere within the federal government.

Indeed, the sharpest embodiment of that obligation is found in that Act which was mentioned a moment ago and which I will abbreviate, in the usual way, as ESECA, which requires that any information collected under that authority must be shared with the Federal Trade Commission, with the Department of Justice and with other regulatory parts of the government outside of the Department of Energy.

The second class of obligation which we have, is to maintain a timely, comprehensive energy information system, to enable the Congress, the Department itself, and the public, and the many factions in the public, to have access to energy information that they can trust.

The two objectives are in some tension. To go to thousands of respondents and ask them sometimes to answer hundreds of questions effectively requires their cooperation. It is generally given.

I say, "effectively requires their cooperation," because the power to compel ultimately will be less effective in collecting the information than cooperation is.

I do not state this as a personal opinion. It is based on the experience of many statistical agencies.

I would like to bring two examples to bear on the fact that these are in tension. Neither should be subordinated to the other, so the job is: how do we meet both the obligations?

First I will draw from the Federal Trade Commission. It has two Bureaus. One is called the Bureau of Economics. It is very important in trying to understand the structure of industries and to ascertain whether they are becoming more or less competitive.

One of the essential tools here is the line of business reporting system, which enables you to see through the thicket of conglomerate operating statements to what the industries themselves are doing, to separate the ping-pong balls from the cantaloupes from the locomotives in the balance sheets.

A curious fact is that the Bureau of Economics is forbidden by law to share that information, except in aggregated form, with the FTC's Bureau of Competition. This has arisen from practical considerations. The alternative is many lawsuits, delay, and a lack of an effective "line of business" reporting, perhaps.

The second relates to the experience of the Federal Power Commission, a precursor of the Federal Energy Regulatory Commission of the Department of Energy. There, if I have my facts correct, the Form 40, calling upon gas producers to furnish information about their reserves and production; information which the country needs and which is also needed for regulatory purposes, was tied up for a period of years in five circuit courts of appeal. This means that the information was not being obtained for either purpose.

So, I bring these up to point out that there is a competition between the two purposes of having a comprehensive, useful policy-informing body of information available to the government and to the American public on the one hand, and maximally facilitating the task of regulation and adjudication on the other.

The Department is, at the present time, in the process of trying to reach a wise and effective solution for enabling both these purposes to go forward. That was the occasion for the "Federal Register" notice which has been referred to.

Thank you.

MS. HOBSON: Eric, do you want to comment on that?

MR. FYGI: Only to add, Tina, that the first subsection of the question raised the issue of whether the Department was violating some statutory requirement merely by raising the issue that Dr. Moses has just addressed.

There are several statutory authorities available to the Administrator of the EIA, as well as to the Secretary, to compel production of the information from the private sector.

Only one of these, Section 11 of the Energy Supply and Environmental Coordination Act of 1974, addresses specifically the issue of availability of this aggregated information to the Department of Justice and the Federal Trade Commission.

That statute clearly was designed to make that availability not a matter of agency discretion; but that statute is not the only one available to the EIA, and it does not compel the Department to use only that authority to acquire information.

The legislative history of the Department of Energy Organization Act, which established the EIA within the Department, makes it quite clear that the draftsmen of the Department of Energy Organization

Act contemplated a variety of existing authorities to be available to the Director of the Information Office within the Department and that each of those statutes would carry with it only the legal disabilities and abilities that had existed prior to the establishment of the Department.

So, the short answer is: no, we are not violating any statute by raising this issue nor, in our opinion, are we compelled to employ the one statutory authority that does direct sharing this aggregated data with other information and regulatory agencies.

MR. PEACOCK: Thank you.

The next question is for Al Alm. That is Question Number 26. The Department of Energy Organization Act contains a mandate to promote competition. How is this mandate being implemented overall within the Department? Who is responsible, and where do you see the greatest problems in implementing such a policy? What are these institutional constraints, and what resources will be allocated to this function in terms of staff and funds?

Now, for your wife-beating question; "Why so little?"

MR. ALM: Thank you, Bill.

Le me talk first about the Department's mandate in the area of competition. The language in the Department of Energy Act indicates that we have a responsibility to foster and ensure competition among parties engaged in the supply of energy and fuel.

I take that mandate at face value. Mainly, our job is to conduct a very aggressive program in the name of competition, to foster and ensure competition.

The Office that has been established would have ten professionals. There is a question of whether or not this is the right number. I would like to address that.

My personal opinion, in talking to a number of people, is that we will do better with a fairly lean office to begin with.

I have indicated, though, that, as we go along, I would continually review the resource requirements. If more resources were needed, we would ask for and make those resources available.

In terms of the Office, we have selected a Director. Secretary Schlesinger introduced him at a hearing with Mr. Kennedy. I think that many of you know Bill Lane, who will be heading up our Office of Competition.

Bill, do you want to stand?

(Mr. Lane complying.)

MR. ALM: The process of making a selection for the Office took some time; many of you felt it was an inappropriate amount of time.

I suspect that we could have pushed the system a little bit; but we went through a very aggressive search. We talked to a broad range of consumer groups and got a large list of names.

We did reference checks. We interviewed over 25 people initially. I interviewed seven. Secretary Schlesinger interviewed a smaller group before we made the final selection. Both the process and the selection, I think, are wise.

In terms of the responsibilities for the Office, I see three responsibilities as critical right now. One is our getting deeply involved with the Department's regulatory programs. The Office of Competition ought to not only review all new regulations for competitive impact but also review existing regulations.

In my opinion, there are some tremendous opportunities for promoting competition through review and changes in the Department's regulations.

Secondly, the Office of Competition will have responsibility for all DOE activities; for contracts, grants and other arrangements, with a wide variety of institutions.

I might add, at this juncture, that Secretary Schlesinger sent out a memorandum to all top Department of Energy management, indicating that competition was everybody's responsibility, not just the Office of Competition.

The Office of Competition, however, will have a role of monitoring the process, blowing the whistle and ensuring that our own internal operations promote competition.

Another major activity is in the area of industry structure. We will be getting analytical programs dealing with the broad issue of vertical and horizontal structure of the industry.

We will be looking at more specific issues, like pipelines, branded independence and the like.

Another area of activity -- I am going to get the hook in a minute, so I am talking faster -- is in the area of leasing.

Heretofore the Department, frankly, has not been involved, or has not gotten involved, with the competitive impacts of leasing. This is a high-priority activity.

I have been given the gong, so I may talk about this a little later.

MS. HOBSON: All right. Thank you. This is the most fun I have all day, gonging Assistant Secretaries.

Let's see, where are we?

Eric, we are asking you to answer Question 31; "International energy decisions have a major impact on competition. Why are all the IEA meetings closed? Why is there no consumer representative at these meetings, as provided for in the DOE Act? Why is there no information to the public as to the discussions and activities at these meetings? Why are transcripts of the proceedings censored?"

That is a rather clear question.

MR. FYGI: Thank you.

The answer is fairly clear as well. The purpose of those meetings, in almost every instance, is to prepare for what the country will do in the international area to contend with another embargo.

The meetings occur in the context of an international agency, not merely as an instrumentality of this country's government. It is fairly apparent that the nature of some of the matters discussed would be of substantial benefit to whatever nations might be considering imposing an embargo, so that the State Department imposes a security classification on some aspects of what transpires at these meetings.

The statutory authority under which these meetings occur, primarily the Energy Policy and Conservation Act, provides certain exemptions from the anti-trust laws. It is clear that these meetings are not subject to the Advisory Committee Act, so that there is no legal impediment to what the State Department has found necessary, in terms of classification of certain of the information developed during these meetings.

MS. HOBSON: Thank you.

MR. PEACOCK: The next is Question Number 1, for Ron Scott. It relates somewhat to solar energy. The sun may set by the time I finish reading it; but let me give it a try.

"In the next few years, many new energy technologies will be marketed to the public. A number are being marketed now, especially those related to solar energy and insulation. What plans and programs does the Department have to insure that consumers are protected from fraudulent firms, from firms which produce products of shoddy workmanship and from firms which might monopolize certain regional, state or local markets?"

"Will the Department work with the Federal Trade Commission and the Department of Justice in the above-mentioned area? In what way? What procedures will be set up?"

"Will the Department work with state and local governments to set up guidelines and enforcement policies and procedures in these areas mentioned? When will this be done? Who is responsible?"

"Who will provide DOE funds to help the states? Will DOE do that?"

"How will DOE assist the states to track and prosecute fraudulent energy contractors across state lines?"

MR. SCOTT: I am glad that Al has already provided the 20 percent that usually get gonged here. That takes the burden off of me.

Now, I will proceed to the question. I think that the question asked there really points out the overall considerations that one must address, both from the consumer and the government point of view here, as we try to bring a new technology, really, into the marketplace, if I can use solar as the model of discussion in answering the question.

I think, before I address the specific points, I ought to kind of provide a backdrop, as to what I see going on in the solar industry and infrastructure now as we try to bring a new technology into the marketplace.

We have many perceptions involved here. The consumer himself comes at the problem from a different angle, and he is the primary one that we are interested in. The manufacturer will come at things from a little different perspective, as will the installer, and what his role is going to be, the financial community, and, finally, the government at the federal, state and local levels.

Well, each one of these has a role to play as we bring a new product in, with the idea of consumer protection being one of the main criteria.

If you look at the product or the hardware, we see that the manufacturers really do want to produce a quality product. They want it to be reliable, and they would like to think that it could be fairly maintenance free. Performance is an overall thing that they look to, because they have got to compete with the other people in the industry.

If you look at what is going to cause consumer acceptance of this new technology, solar in particular, it involves several factors; but, again, they are not too much different from what the manufacturer wants to deliver.

Pricing of the product has to be one of them; performance is one of them; maintenance, of course. They will look for warranties, and for adaptability of this new technology. Then we have the building permits that are going to let them fit the solar into their houses, or if the inspector is going to give them problems. What are the codes really going to be? And, of course, we have the taxing policies, in terms of valuations and any tax incentives that may come along.

This framework is a backdrop that the solar program has tried to move forward. One of the cornerstones has been the standards and certification program that started very early on.

We have used the consensus process, which does involve all sectors of the society and the industry and government. It has worked very well in this country for several decades, and we believe that that is working quite well at this time.

For any industry to really flourish and be competitive in a reasonable way, it must establish a set of standards which really defines that box where industry is willing to compete with each other on the one hand and ensure a quality product to the consumer on the other. We see that process going on.

Now, to the extent that that is not responsive, of course, other considerations will have to be made in terms of the mandatory type standards. We would not like to see that happen.

Certification is a very key thing to give the consumer some degree of that warm puppy-dog feeling when he goes and buys a product.

We will have a program in place this year that we think will help stabilize the solar heating marketplace, mainly developing a rating system and labeling program, so the consumer can look at that and know that it has been tested to a specific set of criteria on the one hand; and the rating system will let him compare products on the other. We think that is very important.

The consumer will look for warranties. We have, very early in the program, made that a requirement for the government-type projects that we are supporting.

We think that the rest of the industry will follow that.

A model code is being developed. That will provide the umbrella for the state and localities to huddle under, if I can use that term, and make whatever adaptations they need to that for their local requirements.

So, in summary, I think that we will provide technical assistance to the states in any way that they need it in terms of education, training and other types of programs.

As far as the "blue-suede shoe salesman" is concerned, in terms of the fraud in a new industry like this, I think that he will

always be lurking around the corner. But, I think, through the FTC and their program, and the Department of Justice, that, as these instances arise, a fair policy will be pursued. We should not expect too many of those, especially with the certification programs in place. The consumer is our most important product.

MR. PEACOCK: Ron, we are going to take about a minute out of your next question, so that we can get, fully, a response on the portion about how the Department will work with state and local governments on these guidelines and how you will help provide, to the extent to which you will provide, funds to the states and track these malefactors across state lines.

Can you give us any comments on that area of the question?

MR. SCOTT: Well, we have a fairly extensive outreach type of program now; in terms of consumer education and training, working directly with the states through our regional energy centers which have just been recently established, we think that we can get the information out.

Now, as far as going into any formal thing, like developing the codes and so forth with the states and training their code officials, we will be going through the standard rule-making process, open hearings, and provide whatever technical and financial assistance needed to the states through the different states' grants programs.

MS. HOBSON: Thanks, Ron.

Because this is an important question to people, I wonder if, in the transcript, you could elaborate even more specifically. I know that circumstances don't permit it now; but, in the transcript, perhaps you could address the individual component parts more specifically.

MR. SCOTT: As far as the transcript is concerned, you will notice that the answer to the question does address each one of those.

MS. HOBSON: That is fine.

MR. SCOTT: I digressed a little bit this morning to give a backdrop of the program. For once, the question answers and what I said are not the same.

MS. HOBSON: Thank you.

You in the audience have 20 minutes to talk now with our panelists or with our resource people and with Esther.

I personally want to thank Esther for coming. She is a long-time friend of mine that I have had the privilege of working with on many occasions.

I think both she and Sam represent the kind of long-distance run that everybody would like to make.

MR. FLUG: Madam Chairman, before we break, could I raise a procedural question?

MS. HOBSON: Certainly.

MR. FLUG: I respectfully do this, with an apology for the interruption.

MS. HOBSON: That is all right. We are just waiting for coffee, Jim.

This is Jim Flug.*

* Energy Action.

MR. FLUG: May I ask Mr. Fygi whether, either prior to October 1st or since October 1st, he has been confirmed to any position requiring Senate confirmation?

MS. HOBSON: Jim, I am going to rule your question out of order.

You certainly can get an answer to it later.

I would like to thank everybody. Please be back in your seats by 10:20.

MR. FLUG: I cannot have the silence be acquiescence to his participation as Acting General Counsel if the answers to those questions is "no."

MS. HOBSON: I would suggest that we take that question as the first one after the break. Would that be all right, Jim?

MR. FLUG: Yes, it would.

MS. HOBSON: All right. Thank you.

Everybody get a cup of coffee; take your card outside and get a question number.

(A brief recess was taken....)

MS. HOBSON: I think we are ready to start, and, as you know, this session is videotaped; so, those of you who are asking questions, if you come forward to the podium here, to the lectern, we will get you on videotape.

If you don't care about that, please stand at the microphone, or you will not be picked up by the audio system.

Jim, I am wondering if you, because you are going to lead off the question, if you could stand at the microphone so we can pick you up.

MR. FLUG: This is not my question. This was a point of order.

MS. HOBSON: All right. We will take that into consideration. Would you like to come down here?

Now, what we do -- and I was told I did not make it clear before you left -- is we issue numbers out in the hall, and then we call on people in the same order as they signed up to ask a question.

What we are going to do is take those who signed up first, and then open in to all the participants. When you do ask your question, we run it like a presidential press conference. You have one follow-up, and that gives everybody a chance.

Then, after your one follow-up, we will call on the next person. We feel that this is a fair way to go about it. Everyone will have a chance to ask a question.

At the end, when time runs out at 12:00, those who have not had a chance to ask their question can read it into the record, and it will be answered as part of the transcript.

Okay, Jim, do you want to introduce yourself?

MR. FLUG: Yes. I am Jim Flug from Energy Action, and this is not my question. I think I am number three on the question list, and I will wait my turn for the question.

But, my point of order, Tina -- and I am sorry I have to raise this here; I thought it would be taken care of before this meeting -- is to ask Mr. Fygi whether, before October 1 or since October 1, he was confirmed to any position requiring Senate confirmation with the United States Government.

MR. FYGI: And the answer is no.

MR. FLUG: Then, I believe that he is unable, under Section 902 of the Department of Energy Act, to speak for the Department as Acting General Counsel, because he does not meet the requirements of the Act for that position.

MS. HOBSON: Eric, do you want to address that?

MR. FLUG: And, I believe he is disqualified from expressing the Department's position on that legal issue for sure.

MR. FYGI: Well, Jim, I certainly don't want to decide my own cause, so I think you are quite correct as to my not speaking to the merits.

As you know, Secretary Schlesinger did designate me Acting General Counsel to serve pending the consideration of the nomination of Mr. Coleman.

I look forward with great expectation to the day in the near future when that process will have been completed.

MS. HOBSON: Thank you; and if you care to make a further statement or get another person in the office involved, you can put it in the transcript, if you like.

MR. FYGI: Thank you.

MS. HOBSON: I am going to turn it over to you, Bill for the next question.

MR. PEACOCK: The first question will be from the list signed up under the title "Industry." The first question will be from Bill Phelan.

Bill, would you come down to the podium, or go to the microphone, whichever you prefer?

MS. HOBSON: All right. And, following Bill will be Steve Ferrey; just so you know, and we can save a little time walking.

MR. PHELAN: Thank you. My name is Bill Phelan. I am with Owens Corning Fiberglas Corporation, and I was discussing this with Paul London a little bit during the coffee break, so I might have had some of my question answered already.

My question is: a number of federal agencies have issued or will be issuing new insulation standards, and are recommended in with the mandatory conservation ideas.

Will the Department of Energy be issuing new insulation standards? And, if so, when will they be coming out? And, if they do come out, will these DOE standards take precedence over other agencies or other groups that are involved in the Federal Government?

MR. PEACOCK: That sounds like a Ron Scott question to me.

MR. SCOTT: Okay. We do have resource people here today: Paul London, who you have already mentioned, who is quite familiar with the program and carries the corporate memory on that, as well as Dan Quigley.

It is a situation where you never know how to anticipate the audience. We suspected that it would be solar-oriented, and I sit here;

and perhaps Paul should answer or someone else in Conservation.

So, Paul, why don't you continue the discussion with him that you started in the lobby, if you will?

MS. HOBSON: Paul, why don't you come over here to the lectern, please?

MR. LONDON: Bill, as you know, the National Energy Act, which is not yet law, probably will require the Department of Energy to develop standards for both safety and effectiveness.

The work that we have been doing in the standards area since early July (1977) or longer than that -- eight months now -- has been in preparation for the expected passage of the National Energy Act.

So, right now, our position in the standards area is that we expect to have significant jurisdiction, but that we don't have it now.

I think, going beyond that, it seems to me perfectly appropriate that other agencies, and I hope GSA and the Consumer Product Safety Commission, FTC, and the Commerce Department, would have a major role in this.

I don't think there really can be a question of preemption. I think everybody has a role. Everybody has a legitimate role.

We will, of course, try to coordinate and to develop as close a harmony on the standards and specifications as possibly we can.

But, I think it would be very difficult and probably counterproductive if we try to impose some sort of primacy of the Department of

Energy over all the other people who take an interest in this area.

MS. HOBSON: Do you want a follow-up question?

MR. PHELAN: That is all right. Thank you.

MS. HOBSON: I was asked by Liz to remind everyone that they have to sign a release if you use this lectern, so we can use your picture on the videotape.

All right, Steve.

MR. FERREY: I am Steve Ferrey, Staff Counsel for the Energy Project of the National Consumer Law Center. The prime thrust of the conservation and alternative energy elements of the Administration's energy effort has been to provide tax incentives for owners to weatherize, insulate, install solar devices, and for other such things.

My question is: What incentives will the Department undertake to ensure penetration of solar and conservation technologies to those segments of the consuming population which do not benefit from tax incentives?

Specifically, what action is DOE going to undertake to cause conservation and solar technologies to benefit consumers in rental housing?

MS. HOBSON: All right. Who would like to tackle that on the Panel? Al?

MR. ALM: I am not sure I want to, but I will. The problem of rental housing is a difficult one. The National Energy Act would provide tax incentives for apartment owners.

There is some question of how effective that incentive would actually be. Frankly, we have not been able to think of any good ways of dealing with apartment facilities in terms of incentives.

In terms of the other question about people who don't benefit from the tax code, the National Energy Act now provides low-interest

loans, as well as tax incentives, so that the full population would be covered by one or the other of those two programs.

MS. HOBSON: Any other Panelists?

MR. SCOTT: No. I think we have a few pilot programs going through the HUD to the different housing programs, but those are just not of a general-type nature.

MS. HOBSON: Steve, do you want to follow-up?

MR. FERREY: Yes. If it proves that solar and conservation technologies do not penetrate to low-income intercity or rental dwellings, is the Department now undertaking to assess provisions, such as mandatory time-of-transfer retrofit plans to fill the void if, in fact, it turns out that there is not a good penetration to these markets?

MR. ALM: The answer is the time-of-transfer. Possibilities are under review, as one alternative. I was going to make one comment about the low-income groups.

We also have a weatherization program, as you are probably aware, and a strong commitment to fund that at a fairly substantial and sustained level of effort.

So that, with the combination of the weatherization program and the low-interest loans, and the tax credits, we are fairly well covered in the conservation area. We are less well covered on solar, and that is something that we have got to give a lot more attention to; the kinds of solar facilities that might benefit low-income groups, either individuals or in a broader group. We have simply got to give that much more attention.

MS. HOBSON: Thank you, Steve.

MR. PEACOCK: In the next series, I would like to call out two names, and ask you to line up over here. It will probably save time, so we can move this a little more expeditiously.

The next question in order would be from the environmental side of the house, from Cynthia Figge. I assume no relation and no Senate confirmation.

Cynthia, would you come down?

Also, the second one would be from Frank Collins; and Frank indicates that he represents labor. Would you please also state your professional affiliation in each of these cases as you stand?

Thank you very much.

MS. FIGGE: I am Cynthia Figge, F-i-g-g-e, and I work with the Public Interest Economics Foundation, a group that covers consumer and environmental issues, as well as others.

My question is Number 17; "During his campaign, President Carter cited the need for horizontal divestiture of the major oil companies.

"Both Depty Secretary O'Leary and Interior Secretary Andrus made public their support of legislation in this area. Recently, however, Secretary Schlesinger stated that the Administration had no plans to break up the horizontal integration of major oil companies.

"The Secretary also recently said major oil companies need to get into coal and alternative energy production."

These are rather lengthy questions. "Can you explain in detail the reasons for this major policy shift, who was responsible for the shift, what economic and social policy theories have been used to justify the shift, and what data was relied upon to make this shift?

"Does the President stand by his original position, or does he agree with Secretary Schlesinger?"

MR. PEACOCK: It sounds like that is an Al Alm question.

MR. ALM: I am inclined to say: "Would you repeat the question?"

Let me start out by saying that, although I wasn't there, I understand that, before Senator Kennedy testified on another matter, the Secretary recently indicated that the issue is under study within the Department.

That is clearly the case. There will be hearings at some time in the future in front of Senator Kennedy's Subcommittee of the Senate Judiciary Committee.

The Administration, at that point in time, will be taking a position. There is no firm position at this time.

What the National Energy Plan indicated was that there is a need to collect and analyze information about the whole question of competition in the coal and uranium industries, and the impact of the increased purchases by oil and gas companies, and how they would affect competition.

We will be particularly focusing on regional competition issues in coal, as well as looking at uranium, which is a more generic issue.

MR. PEACOCK: Bob, would you care to comment further on that?

MR. REICH: Just one small comment. I think one of the critical issues here is what posture the Department of Energy, or the

government generally, is going to take in the interim, until we get more information.

The particularly critical issue is whether some form of moratorium on further investments by the oil companies in horizontal coal, uranium, and other energy sources is desirable, until more information is known.

I am of the view that some sort of moratorium is perfectly appropriate until we know more.

MR. PEACOCK: Cynthia, would you like one follow-up?

MS. FIGGE: Yes, I would. I welcome the appointment of Bill Lane to the Department of Energy, and I would like to know to what degree he would be acting independently of a statement by Secretary Schlesinger, that oil companies should get into coal and alternative energy production, if, in fact, he has come out with that statement and still supports it?

MR. ALM: I always find it difficult to speak for one's boss, if you don't know what he says, and where. All I can say is that in front of Senator Kennedy, he said he was open on the issue of potential of a horizontal moratorium, and that he would want to have the facts.

I look at Bill Lane's job and mine to pose the issues, and to reach out to groups that have information and interest in this area, and pursue a very aggressive program within the Department.

Clearly, the Office of Competition is not a "neutral body." It has a job of forecasting and promoting competition within the Department.

MS. HOBSON: Thank you, Cynthia.

All right. Frank Collins? And, then, the next person will be Allen Davis.

MR. COLLINS: I am here on behalf of the Oil, Chemical, and Atomic Workers' International Union. One of the things affecting consumers with relation to energy is the effect of energy prices on inflation. Therefore, I have the following question:

Why is it that the coal settlement, probably amounting to around ten percent in the cost of coal over three years, is regarded as strongly inflationary, while inflation is seldom mentioned in connection with natural gas price increases of two-fold or more expected in the same period?

Incidentally, I have just had a ten percent rent increase due to utility rate increases; gas and electricity.

MS. HOBSON: Frank, your question specifically?

MR. COLLINS: The question, I will read. "Why is the coal settlement inflationary, while with DOE policies that increase the price of natural gas by many times this amount, we seldom mention inflation?"

MS. HOBSON: Fine. Thank you.

MR. ALM: I think, in many respects, Charlie Schultz ought to answer that question, but I will have a go at it.

From an economic point of view, obviously both are inflationary. Any increase in the cost of fuel will be reported as an inflationary impact in the economy.

I suspect the general public concern about the settlement deals more generally with the cost towards inflationary factors in the hope by the economic policy people in the Administration.

But, in general, there will be some overall restraint on wages as well as prices in general. But, I think, really, that is more of a CEA question than a Department of Energy question.

MS. HOBSON: Any other Panelists?

(No response.)

MS. HOBSON: Would you like a follow-up?

MR. COLLINS: Yes, I would. It seems to me that the National Energy Plan is the largest inflationary policy at the present time.

Yet, whenever inflation is mentioned, the first thing they do is say that we will have to restrain wage increases for labor. For instance, the statement was made yesterday, or this morning, that there would have to be restraint on the wage increases for government employees. At the same time, there is no discussion about the large effect of increases in energy prices on the economy.

For example, the price of steel is going up $10.50. The Administration says, on the basis of the cost of wage increases, only $4.00 a ton is justified.

I cite that to indicate that the price of energy multiplies itself through the economy as it is finally passed on to the consumer.

MS. HOBSON: You want to know what we are doing about it?

MR. COLLINS: Yes. I want to know what the Department of Energy policy is regarding this sort of inflation.

MR. ALM: Well, first of all, when the National Energy Plan was developed, we tried to evaluate the inflationary impacts of the plan. Not only did we do so, but a number of private forecasters did.

I think the unanimous opinion of all can be characterized by saying that the plan is mildly inflationary, but something of no great significance.

But, we are concerned about energy prices. It is for these reasons that, in the natural gas area, the proposals made by the Administration were designed to keep natural gas prices at fair levels while

providing the incentives for production of gas.

In terms of home heating oil, we were concerned about the impacts on consumers. And, for that reason, the Administration proposed a refund of the funds collected out of the crude oil and equalization tax for home heating oil use.

We have been concerned about OPEC price increases, and have taken steps to insure moderation in OPEC prices. So, we understand the impacts of energy prices on the consumer, and are particularly concerned with changes in disposable income arising out of energy programs.

MS. HOBSON: Thank you.

MR. PEACOCK: Okay. Into the batter's box will go Allen Davis, and into the on-deck circle -- Gerald McDonald, please.

Allen, would you state your professional affiliation, please?

MR. DAVIS: Yes. I am an attorney with the National Consumer Law Center, Energy Project.

One of the major problems in manufacturing adequate amounts of safe insulating materials is the apparent shortage of boric acid.

Only three U.S. companies produce boric acid. I think one of those has a market share of about nine percent. And less than ten percent of U.S. boric acid production is devoted to the treatment of cellulose insulation.

The remainder is used in production of fiberglass yacht molds, over-proof cookware, and related products. If, as we are led to believe, residential conservation through insulation is a major Administration strategy to meet the energy crisis; and if it is also true, as is widely believed, that the shortage of boric acid availability has led to widespread unsafe conditions through the use of untreated or inadequately treated insulation, why doesn't DOE use its clear authority under the 1950 Defense Production Act, as amended by EPCA, to require the three producing companies to allocate a greater percentage of boric acid to be used in treating insulating materials?

MR. PEACOCK: Eric, do you want to take a shot at that?

MR. FYGI: The authority to allocate under the Defense Production Act customarily has been viewed as one designed to meet military needs first, and thereafter, to contend with the market disruptions that occur within the rest of the economy when you have created a shortage by meeting all of the military's needs.

There is a substantial amount of internal folklore among the agencies that have historically administered the Defense Production Act that suggest this point of view. The circumstances are rather rare in which the facts exist that would permit us to use the authority.

Now, I have not reflected previously on whether the Defense Production Act, as amended by the EPCA, would provide an added tool, and I would prefer to supplement my remarks for the record on that question.

SUPPLEMENTAL STATEMENT

DOE may "allocate" materials under the Defense Production Act, in the sense ordering distribution throughout the marketplace, in the interests of national defense. Clearly, such authority could not now be applied with respect to boric acid used in treating home insulation.

However, section 101(c) of the Defense Production Act also provides authority that might be available to assist particular insulation manufacturers, in need of boric acid, to acquire that material on a priority basis. That section states that:

"(1) Notwithstanding any other provisions of this Act, the President may, by rule or order, require the allocation

of, or the priority performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment in order to maximize domestic energy supplies if he makes the findings required by paragraph (3) of this subsection.

(2) The President shall report to the Congress within sixty days after the date of enactment of this subsection on the manner in which the authority contained in paragraph (1) will be administered. This report shall include the manner in which allocations will be made, the procedure for requests and appeals, the criteria for determining priorities as between competing requests, and the office or agency which will administer such authorities.

(3) The authority granted in this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials and equipment in the marketplace, unless the President finds that--

(A) such supplies are scarce, critical, and essential to maintain or further (i) exploration, production, refining, transportation or (ii) the conservation of energy supplies, or (iii) for the construction and maintenance of energy facilities; and

(B) maintenance or furtherance of exploration, production refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.

(4) During any period when the authority conferred by this subsection is being exercised, the President shall take such action as may be appropriate to assure that such authority is being exercised in a manner which assures the coordinated administration of such authority with any priorities or allocations established under subsection (a) of this section and in effect during the same period."

The President has delegated his authority under this section to DOE and the Department of Commerce. Under the procedures which these agencies apply (see Part 216 of DOE regulations, 10 CFR Part 216), any person seeking to obtain supplies from a producer on a priority basis, that is, ahead of that supplier's other customers, must file a petition with the agencies. DOE will then determine whether the applicant meets the test in paragraph (3)(A), and if the applicant does so qualify, Commerce will determine whther it meets the test in paragraph (3)(B). Where both tests are met, the applicant may be placed in certain priority rating systems maintained by the Department of Commerce.

Of course, whether persons utilizing boric acid in the treatment of insulation could qualify under the statute would have to be determined in each instance.

The section may also be applied to permit allocation of energy-related materials throughout the economy, but no action by DOE or Commerce has been taken in this regard.

MR. DAVIS: As a follow-up, I might add that, in thinking about that supplemental response you will be making for the record, I think you should take particular note of the fact that the EPCA amendment talks specifically about using that for the purposes of effecting national conservation, so that I wonder how the attitude that may have been reflected previously in the 1950 Defense Production Act might well have been changed by that amendment?

MR. FYGI: I think clearly it was in the context of conventional production-type activities that the balance of the thrust of the amended DPA provision addresses. So, I think your point is well taken.

MR. PEACOCK: Bob Reich and Ron Scott both may have some contributions to answering or further elucidating on this question.

MR. SCOTT: I don't want to get into what acts of authority we have. But, in terms of the overall problem and in terms of the availability of the resources, I think we can provide quite a bit of material for the record that we can look at, because we have looked at production capability in the country, and even what we might import, if you will, on the boric acid situation.

So, rather than dwell on it, I think we ought to just move on, and we can provide that for the record. Paul London is here to talk to anybody in the hall afterwards, if he wants to.

MR. PEACOCK: Bob, from the Federal Trade Commission.

MR. REICH: I can just add that your factual premises, I think, Allen, are correct. We have been getting increasing complaints about untreated cellulose. Whether that is attributable to the boric acid situation, or just fraud and rip-offs is debatable.

But, there have been some particularly egregious situations cropping up around the country.

MR. SCOTT: Paul wants to add to this. We have several test programs going on right now with respect to the different installation materials, and so forth.

So, maybe you can elaborate on that.

MR. LONDON: I will try to keep this quite short. We have looked into the possibility of allocation of additional boric acid to cellulose insulation, as a result of some meetings that we had in early August and again in December.

Without getting into the legal aspects of it, there are significant problems in trying to alloate boric acid to cellulose, which I think would be of interest.

First, we export a significant amount of boric acid; and as one might expect, a lot of it goes to Japan. So, we have a problem of taking materials away from a country -- export controls in the United States have been a problem in the past -- and reallocating them within the United States.

The list of other uses for boric acid is fairly long, but some of them are quite important and not at all trivial. Allocating boric acid away from the fireproofing of other types of materials would not be an easy thing to do. So, there are those problems.

As we mentioned before, there are at present no widespread Federal standards for cellulose. So, even if we could allocate boric acid to cellulose manufacturers, they are not really required to use it.

We think probably more of them would if we reallocated it. We have 300 or 400 manufacturers out there, and under the present circumstances, they are simply not required to use the boric acid. So, we might free it up from one user, and then find that we could pull on the string, but we couldn't push on it. We wouldn't be able to make people use the boric acid that we freed up.

This question, again, of there being so many potential users of boric acid out there is a very difficult one, because we would clearly have to allocate from many existing users to a great many potential users, some of whom, again, do not use boric acid at the present time.

There are some other reasons why this would be difficult, and we have looked into it at some length.

MS. HOBSON: All right. Paul's answer and some of the other answers here may have generated further questions on this issue.

So, if you don't have time, or we don't have time, to raise them, please enter them in the record so we can clarify this for you.

Mr. McDonald. Then, after Mr. McDonald will be Jim Flug.

MR. MC DONALD: I am Gerald McDonald, President of the National Association of Home Insulation Contractors. I would like to address this question to the Panel in general.

I don't know if there is a representative from GSA here, but I think, because of the time frame involved, this question should be asked.

I would like to know if someone could advise why the proposed GSA standard, 515(d), on the manufacture of cellulose now will permit inclusion of garbage, refuse, sludge from waste treatment plants, etcetera, to be used in home insulation materials.

As I understand it, 515(d) will eventually be the standard for the industry probably. 515(c) made no such reference.

I just wonder how that is designed to protect the consumer.

MS. HOBSON: All right, Ron?

MR. SCOTT: Okay, Tina. To the extent that we are going to deal with insulation rather than the solar component in the briefing here, I am going to have to refer to some of the experts on this particular standard.

I am not familiar with it on the insulation thing. Is Dan Quigley here?

MR. QUIGLEY: Yes.

MR. SCOTT: Dan, why don't you come up and address that one?

MR. QUIGLEY: I am not sure how fully I can answer that, because I am not aware that the 515(d) standard does, in fact, make reference to other materials.

We certainly have our ongoing research program for testing the 515(d) standard. There is a lot of controversy about the difference between the existing 515(c) standard and the 515(d); whether it is needed, whether it is necessary for the safety of insulation materials.

We have an activity going on at the Oak Ridge National Laboratory testing this standard to find out just exactly what properties it has, and about the costs that it is likely to incur on the industry.

I would be glad to investigate this specific question further, and look into it. I am not aware of the expansion of the standard in that way.

MS. HOBSON: All right, Dan. Thank you very much. Mr. McDonald, do you have any follow-up?

MR. MC DONALD: Well, I have a copy here of 515(d) and 515(c) which I would be glad to make available.

MS. HOBSON: All right. Why don't you give it to Dan?

MR. MC DONALD: There is, also, the fact that it is going to be further tested. I understand GSA is in the midst of announcing this procedure within the next month or so.

So, I think this needs to be addressed pretty quickly.

MS. HOBSON: Yes, we will. We will find out right away, and it will become part of the transcript. I'm sorry we couldn't answer it here.

MR. PEACOCK: Jim Flug, welcome back to the microphone. The next gentleman in the batter's box will be Ted Miller.

MR. FLUG: Al Alm spoke of a retrospective look, a current look, at the industry structure in terms of future Department policies, and there was a question about a moratorium in the meanwhile.

But, even before you get to a moratorium on private activity, there is a question of the contribution that Federal activity makes to the malstructuring of the industry; that is, Federal participation in the process of horizontal and vertical integration and other structural behavioral questions, and, I think particularly in the grants and contracts activity.

An example that comes to mind there was the first story in the Department's announcement in the "New York Times" of the energy plan, where the example given was $500 million to Gulf to extend its activities in the coal area.

I think of this week's sale in Savannah of off-shore oil and gas leases in the South Atlantic where, again, Exxon took the lion's share of the apparent high bids. Other bids were by joint ventures of Mobil on the one hand, and Gulf on the other hand, with companies that should have been even with them.

Then, I think of a "Federal Register" notice that appeared this week on the question of organization conflicts of interest, where to some extent the contractors that the Department uses will determine the future structure of the industry, both in terms of the Gulf-type thing and the evaluators that you use, and the policy advisors that you use, who may have other relationships.

MR. PEACOCK: Why don't you let Al comment on your statement to this point, Jim?

MR. ALM: All right. I was enjoying the question.

MR. FLUG: I guess the question is: what are you going to do right now, before the grant policy issues are decided, to make sure that the government isn't contributing towards a worsening of the situation?

MR. ALM: Well, one comment I made in my remarks was getting on top of the oil and gas leasing questions, and that is something that we will need to get on top of very quickly.

In terms of demonstration grants, you pose a very difficult

question. I say it is difficult in the sense that most of the processing, for example, in synthetic liquids have been developed by oil companies, and the question is in the interest of moving demonstrations forward.

At this point in time, I am not sure what the range of alternatives is, very frankly. Now, within those constraints, I think there are many things that the Department needs to give a great deal of attention to, if one goes ahead with the large demonstration.

We need to be assured that any of our investments would allow other firms to get into the synthetics commercialization effort on fair and reasonable terms.

So, I guess I am saying to you that you have raised a very important question. It is one we are going to have to give a lot of attention to.

But, at this point in time, any flat prohibition dealing with demonstrations in the oil and gas business would mean that we would literally have almost no proposals for leasing in terms of synthetic liquids.

MR. FLUG: So, you don't think it is part of your obligation under the competitive purpose of the DOE Act to go out and find--and you are providing the artificial incentives for this work to go on--to provide those incentives to people who will also, at the same time, be providing competition to the existing energy supply?

MR. ALM: No. I think it is our job. I guess I was addressing your particular reference to synthetic liquids.

I think in the future, we need to make sure that our programs from the beginning, through the pilot plant stage on up, provide that kind of diversity, so that when we are up at the next demonstration plant stage, we are not left with only a few alternatives.

MR. FLUG: I might take this opportunity to compliment you and your Department on the Schlesinger memo on competition. As I understand it, it only took from early December to early March to get that out and signed; and I think, by the standards of the Department, that's admirable. I hope that there will be some follow-up on it.

MR. ALM: This is the first public compliment I have gotten from you, Jim.

Thank you.

MS. HOBSON: Okay. Thank you. Do any other Panelists want to comment on what Jim said?

(No response.)

MS. HOBSON: All right. We will move on, then, to Ted Miller; and then, after Mr. Miller will be Ronald Lyr.

MR. MILLER: I am Ted Miller. I am with "Changing Times" Magazine, and having read the release that they want me to sign to stand up there (in front of the TV camera), I think I will stand back here, being without benefit of counsel.

I would also like to know how some of the other questioners fit their questions on these little cards.

MS. HOBSON: With difficulty.

MR. MILLER: Mine fits on the card, and it is very simple. It is directed, I guess, to Mr. Scott.

You mentioned that DOE was developing a solar product rating and certification system. I would like to know more specifically when you think that system will be operational, and exactly how it will work in the marketplace, what kinds of tests you will make on the product, and what kinds of products will be covered.

MR. SCOTT: Okay. It became clear to us very young that, with the tax incentives that would be coming along, we needed some method to try to apply to the tax credit.

It meant that certified hardware would be the best way to go about it. Now, we went out under contract with the solar energy industry's research foundation to develop a certification process, a rating method, and a labeling program.

All that says is that the contract would develop the procedures and so forth, once we could provide a data base; which we will supply to the accredited laboratories around the country that can test solar collectors; and it will be aimed at the major component of a solar system, namely the collector.

Now, with this data base, which we will receive from the collector testing around the country, and which will be according to the actuary consensus standards on performance, on the one hand, and durability testing on the other (to insure that they don't fall apart after long periods of non-use and very high temperatures) -- with these two sets of information, then, a rating system will aid the consumer in terms of what that collector can be used for, and in what climate regions, so that consumers can compare products.

The label, then, assures the consumer that the unit has been tested and rated by a qualified laboratory. We expect that system to be in place in the September-October time period of this coming year, or later this summer, and that it will be an industry-administered-type program, either by outfits like the ARI, the American Refrigeration Institute, which does that sort of thing for air conditioners in the country right now, or by any other independent test laboratories around the country.

MS. HOBSON: All right. Any follow-up question? Is that satisfactory?

(No response.)

MS. HOBSON: All right.

MR. PEACOCK: Mr. Lyr?

MR. LYR: My name is Ronald Lyr. I am with the CT&E in Stamford, Connecticut.

Efficiency labeling of major residential appliances, voluntarily under EPCA and soon to be mandatory under the National Energy Act, is designed to make possible intelligent consumer choices on appliances.

It now appears that labels on these appliances will state the average annual operating costs in dollars for typical use of these appliances.

Given the inaccuracy of such a measure for any particular individual consumer, what is the Department doing to make sure consumers will receive appliance efficiency information, expressed in units of energy rather than unnits of dollars, and relevant to energy prices in their localities?

Two, given that the Department of Energy projects domestic retail oil prices to double by 1985, and the cost of other sources of energy to increase correspondingly, what has the Department undertaken

or will undertake to make it known that consumers are the ones who face the likely escalation of energy costs, and how this impacts on their purchase decisions?

Three, what plan does the Department have to cause government procurement of major appliances to be based upon least-life cycle cost or other measures of efficiency, given that the Department has resisted now for one year any effort to procure more efficient appliances?

MR. PEACOCK: It is, indeed, a feat to get that on one of those cards.

MR. LYR: Yes, it is.

MR. PEACOCK: Ron?

MR. SCOTT: There are several pieces to that one; the one in the middle is a common policy one. The one around the two edges seems to be more directly aimed at what we are doing technically.

There is no question under the legislation you talked about; we do have to publish efficiency standards for all of the different appliances. I think there are some 11 or 12 of them.

That work is going on at the present time; and, of course, as you well know, it is difficult trying to find one parameter which most accurately measures the real value of the system. It is just like the solar question I just received; how do you come up with a rating system that adequately reflects the real efficiency and cost per Btu that you are getting out of the system on the one hand, and at the same time gives you a measure of the durability and the quality of the product on the other. That is not an easy thing.

To answer the question very specifically, you have to get into a lot of detail. I think we would like to provide that for the record.

Unless Mr. Quigley would like to make a few other comments, I would pass it at that point.

There are two other pieces to the question. There is no question on the third part; that DOE would definitely move, if it was procuring anything, to procure the type systems for which the standards have been set.

The second part, I would refer to Al.

MR. ALM: I might comment on the first question briefly. You raised a good question about how to provide consumers information on appliance use.

I remember years ago at CEQ trying to come up with a simple label to convey the information, and we were never successful.

For this and other reasons, the Administration recommended mandatory standards for major appliances. In terms of the higher price, the Department has not predicted a $25.00 a barrel price.

We have conducted a series of analyses that show you that if you take one range of assumptions about the way the world is going to look, you could see prices between $20.00 and $30.00 between 1985 and 1990.

But, you have to accept those assumptions. If you accept a given set of assumptions, you can even have a lower or higher price.

It is important, though, for us, as we develop standards in a whole range of Departmental programs, to, at least, think about the lifetime of these appliances or any other activity or structure, and put

into the analysis what the expected or potential prices would be; in other words, for developing a standard for houses that will last 30 to 50 years, one cannot assume $13.50 oil prices during the course of that period. If you do, then you are underdesigning the standards.

But, it is a difficult question to choose a number. It is something we are working on, and we will have to come to grips within the Department as we begin implementing the regulatory portions of the Naitonal Energy Plan.

MR. PEACOCK: Do you have any follow-up question?

MR. LYR: No.

MS. HOBSON: All right. Now, in terms of people signing up, we have come to the end of the list. Any people in the audience now who have a new question to ask, please stand at any of the microphones.

If you have another question, second questions are in order, also. Go ahead, and then we will just pass around the microphones.

So, if you will just stand and wait for your turns, please.

MR. CORBIN: I am Al Corbin, a consumer specialist, serving about 40,000 to 50,000 residents in the District of Columbia and the outlying areas.

My concern while sitting here listening to all the technical aspects of energy, skimming over a few questions and relating it to the consumers' interests, is: what policies will the Department of Energy gear towards conservation and education in terms of funding for the tools and manpower needed to educate the general public, especially the low and moderate-income families and the senior citizens who are on fixed incomes?

I think this is a very necessary concern which we should take under consideration and not look at very lightly.

I would like to know: what policies are the Department of Energy formulating in that area?

MS. HOBSON: All right; I am delighted with that question.

As you know, we have different subjects for each of these specific hearings. You are helping me with the next one on the urban energy policies; so we can address that, too.

Let me see if any member of the panel would like to take a whack at it.

Sam?

MR. HUGHES: Yes. I can talk briefly, and perhaps not as definitively as you would wish.

You address, I think, one of the fundamental problems of our times, not just in the energy business, but in a variety of areas of public and private activity. That is, how we get the word out, how we establish a pattern of communication which enables us to do what we should do. It is not easy, particularly when we are dealing with complex and somewhat new issues.

This meeting is a limited, but, I hope, an effective effort in that direction. You are here. You are in a position to spread the word.

We in the Department of Energy and in the Administration recognize that the job of outreach, of communication, with a range of people in all sorts of living circumstances and in all sorts of economic situations, can't be handled just by us and the Department.

We, therefore, take seriously our responsibility to communicate as widely as we can with groups like this, and with states and localities.

Mr. Peacock is head of our Intergovernmental Affairs Office. We have an education and business and labor group which, again, is attempting to communicate as fully as we can with those sectors; and so it goes.

The communciations task, though, isn't easy. It is never done perfectly, but we are tyring to do it better. We welcome your suggestions and support in achieving that. It is not easy to communicate cost and price information about a range of products in an effective manner.

MS. HOBSON: Do you have a follow up?

MR. CORBIN: Yes, I do have a follow-up question.

It still disturbs me. When it comes to the consumer, we can talk all day. But my question still remains: what policies are being formulated or have been formulated to make it an effective program in terms of reaching the people who it is going to affect the most?

MS. HOBSON: Any other comments here?

(No response.)

MS. HOBSON: We will address that a little more specifically in the transcript. You are talking about energy conservation in urban areas, right?

MR. CORBIN: Right.

MS. HOBSON: We will get the right person to do something for

our transcript, and we will take that up as an issue at the next meeting. Is that all right?

MR. CORBIN: Fine.

MS. HOBSON: Thank you.

MR. PEACOCK: We can take other questions from the audience now. We can use the left-hand microphone as the audience faces us.

MR. FERREY: Steve Ferrey, Energy Project, National Consumer Law Center.

I don't want to ask more than my share of questions, but I would like to follow up briefly on the last question that Al asked regarding appliance efficiency and appliance procurement.

As I heard that question, it wasn't directed solely toward DOE's procurement of appliances. Perhaps, this question should be directed to Mr. Peacock also. What actions will DOE undertake under the National Energy Act to cause other agencies which procure major appliances for the residential consumer market to undertake the least life-cycle cost procurement?

For example, the Department of Housing and Urban Development currently procures appliances -- for several million of the poorest families, handicapped persons, and elderly people in the country living in furnished public-housing units -- on the basis of least initial cost.

These appliances are extremely inefficient. They are not furthering national energy goals, nor the needs of the tenants.

I would like to redirect the question that was previously asked as to what will the Department do to foster interagency cooperation to ensure that other departments which are procuring major residential appliances will procure them on the basis of efficiency or, at least, life-cycle cost.

MR. PEACOCK: Let me just take a quick shot at answering your question on the interrelationship of other federal departments.

We have a very fine network with other departments in terms of communication, not only on the political and governmental-issue side,

but on the technical side, which is a result of some very strong emphases by the President, through one of his direct assistants, Jack Watson, on developing an intergovernmental network.

We have a day-to-day, weekly communication with HUD on these issues, and we will continue to do so. I think that is the good-news side of the question.

On the technical side, I am not an engineer or a scientist who could say how you get the specifications developed so that they accomplish the objective you are talking about.

Let me turn that one over to Ron.

MR. SCOTT: Okay; well, it is a situation where changes come very slowly, especially when you look into the procurement practices or the regulations under which the procurement office must operate.

The concept, even internal to the government or to the consumer himself in terms of life-cycle cost as a criteria for purchase, is a difficult one to get across.

However, I think we are making inroads and headway into this, especially with HUD, working with them in the solar program and the other conservation programs. I believe the concept of life-cycle costing and so forth will enter into the procurement process. I would expect results.

MR. FERREY: Can I interpret your answers to mean that if a petition were made to HUD to procure appliances on the basis of life-cycle costs, the Committee would intervene on behalf of that petition?

MR. SCOTT: That is a difficult question. I really couldn't speak for the policy of HUD today.

MR. ALM: Let met just comment.

You have raised a good point. Personally, I didn't realize HUD procured as many appliances as you indicated. I think we just need to take it up with them. I don't think we can come in and comment in advance on some petition we haven't seen. I think your ideas are worth pursuing.

MS. HOBSON: With no other comments, then we will turn to you over here on the left. I am sorry the TV lights keep us from seeing you very clearly.

MR. COLLINS: This is a question on behalf of the consumers of gas.

MS. HOBSON: Would you like to introduce yourself?

MR. COLLINS: Frank Collins, Oil, Chemical, and Atomic Workers' International Union.

MS. HOBSON: What is your question?

MR. COLLINS: The question is on behalf of the consumers of gas. The National Energy Plan, with respect to the crude oil equalization tax, called for a refund of the proceeds to the people.

I understand the Department is still supporting the crude oil equalization tax in this framework. The question is: why was not a similar policy applied to natural gas, whereby we would have a tax on natural gas which would be refunded to the consumers and other people of the United States in order to discourage the consumption of natural gas?

There is a curious dissymmetry in the National Energy Plan in this respect.

MS. HOBSON: That is a good question. We will let Al start.

MR. ALM: We looked into the same concept for natural gas in the development of the National Energy Plan. Let me just go back one step to indicate that the National Energy Plan has an oil and gas user tax for industry. At the time the plan was developed, it was a fairly broad-based tax.

Our feeling was if one looked at the gas industry -- first of all, you have a wide range of prices all over the country.

Secondly, the residential use is about half of the total.

Therefore, if you have an equalization tax, you would be collecting from the residential sector huge amounts of money and then refunding it to them in different amounts, and this raises a whole host of equity questions.

But the other issue really gets down to: what would you aim the tax against in terms of discouraging consumption? The answer is basically industrial operations, and they would have been attached anyway. Based on that line of reasoning, we opted for the asymmetry of the plan, although I think there is some logic and merit in the idea of having the equalization tax with refunds on both sides. But, on balance, we found both the administrative complexity and the equity issues outweighed the benefits.

MS. HOBSON: All right. Any other comments on that? Do you want to follow up?

MR. COLLINS: Yes, I do.

In the case of natural gas, the tendency to monopoly because of the physical structure of the industry, namely, a few gathering lines into a pipeline going to the consumers, is a little different from the case of crude oil, where you can put it in tankers and move it around. With gas, you are stuck with your arrangements.

Therefore, to tell the producers they can pocket the whole difference between the original price and the price that is to be, we expect, implemented in legislation seems to me to be an unfair reward of one type of producer as against another type of producer for products which are, in part, coming from the same wells.

MS. HOBSON: All right. Panel, comments on that?

MR. ALM: I think what you are probably questioning is the incentive structure in view of the Administration's bill or various compromises.

I don't know what to add to the argument that has already gone on. The original administration proposal was designed to balance the impacts on the consumer and equity considerations on the one hand and, on the other hand, stimulate production.

As the bill has gone through Congress, there has been a heavier emphasis on the production side. But the question about what is a fair amount of industry profit or cash flow is an issue of hot debate within the Congress. I don't know how much more I can add to that.

MS. HOBSON: All right; thank you.

MR. PEACOCK: Jim, I promise we will get to you. The other gentleman hasn't had his chance at the microphone.

Would you identify yourself?

MR. NELSON: Yes; my name is Jack Nelson. I work here in Washington with the Institute for Local Self-reliance.

My question is with regard to the certification of solar equipment and insulation in place.

As previously mentioned today, the Department of Energy is involved in a program for certification of equipment for both solar and insulation.

Unfortunately, many of the inherent dangers and consumer problems result from the installation of these devices. I would like to hear what the Department of Energy is going to do in terms of the certification or qualifications of installers, and whether that will be on a per-installer basis or whether it will involve checking installations in place.

MR. SCOTT: Let me start on that.

There is no question that the success of a solar energy system, even if you have excellent hardware, is affected. If it is installed improperly, obviously, you have a problem.

So we have instituted a program which is really installer education. It is a pilot program that we are developing, if you will; the manuals and things like that, so that we can expand it to other sections of the country. We have that pilot program going on in the Northeast right now, especially as it relates to hot water system installations.

Now, out of this, we had hoped to develop a certification process where, once an installer had gone through the course and the training curriculum, then he would be certified as an installer of good repute.

We think that would go a long way toward ensuring consumer confidence.

At the same time, though, we do believe that, once the manufacturer and the distributor and the installer chain is established, the

real structure will help the industry grow and continue to grow and be responsible. One will have to have a warranty from the manufacturer on the one hand and at least a one-year installation warranty from the installer on the other.

Of course, the way you get standards into the whole process right down to the state and local level is through the code. So the model code will include that.

Now, that means that we have also got to train the code officials at the local level. That is part of the state training program.

MR. PEACOCK: From the FTC, is there any further addition to the answer?

MR. REICH: Only to the extent that we are, at this point, scrutinizing the standards that may be put into place under the utility program if the National Energy Act should pass.

We are working with DOE staff to make sure that those standards, with regard to eligibility for tax credits and, also, with regard to minimum state standards under the utility program, adequately protect consumers.

MR. PEACOCK: One follow-up?

MR. NELSON: No, thank you.

MS. HOBSON: All right, Jim, you are going to be next. But I think this gentleman has not asked a question, so we'll let you go first.

MR. KOVARIK: I am Bill Kovarik. I am a reporter with "Business Publishers Newsletters."

What has become of Paul Craig's DOE-University of California study? Certainly, the striking conclusions of the report deserve attention and need to be raised. Why did DOE sit on the report? Why is it still unavailable? What considerations are being given to ensure a policy of candor and openness?

MS. HOBSON: Is this the Lawrence Livermore study?

MR. KOVARIK: This is the Lawrence Livermore, Berkeley, University of California DOE study.

MS. HOBSON: Right; the first draft of that came out.

MR. KOVARIK: In September.

MS. HOBSON: That is right. We will get a statement for the transcript on that. That question has been raised. We understand the problem. It relates to a renewable energy study that was released by the Lawrence Livermore Laboratory in draft form that is being revised. I think it is one that Ralph Nader mentioned.

MR. KOVARIK: It is.

MS. HOBSON: We will get a statement. I am sorry we don't have those people here. Would someone care to address that?

MR. ALM: I would.

I don't know where the draft report stands. I know that there was some concern about continued funding of that study. That probably has been taken care of. My office will be funding the study.

MS. HOBSON: All right. I am sorry we can't answer that clearly, but I assure you we will.

MR. KOVARIK: Thank you very much.

MR. PEACOCK: Okay, Jim.

MR. FLUG: First of all, I hope there is enough time for Mr. Reich to respond to Professor Moses' statement about the financial reporting statement.

What I heard him to be saying was that some other companies may be illegally refusing to provide information that they are required by law to provide. We shouldn't be asking them to provide it. I hope Mr. Reich will answer that.

My question is to Al Alm, as to whether -- because of the peculiar, unique status of the Office of Competition, that it represents a function assigned by statute to an Assistant Secretary -- you will see to it as Sam Hughes has seen to it in the other office with a similar situation, that of Tina Hobson, that the incumbent can sit in the highest councils of the Department, with direct access to the Secretary, to offer views as he sees them in compliance with the specific statutory mandate known to the other Presidential appointees and to the Secretary and will have direct access to them?

MR. ALM: That is one rason why we went through the selection process that we went through. But the Competition Office will have access to top officials, either alone or with myself.

MR. FLUG: And will sit in the highest policy councils?

MR. ALM: Yes.

MR. PEACOCK: Okay; let's go back. Bob, why don't you respond to the first part of the question. Then, Lincoln can comment on the comment.

MR. REICH: As a matter of law or strategy, I think it is absolutely wrong even to raise the issue at this juncture of whether or not these data, under the financial reporting system, should be released to other government agencies.

The oil companies can't have it both ways. They have been arguing for years that they are overburdened by duplicative, repetitive governmental requests for information.

They say, "Why don't you simplify? Why don't you get together with other government agencies? Why do you burden us so?"

Now, for them, implication to threaten to withhold their information from DOE on the grounds that DOE is going to turn over that information to the Federal Trade Commission, seems to me to be the height of hubris.

I think for the DOE, at this juncture, to raise that spectre and suggest that DOE may be willing to cave in can serve no purpose but to give the industry a signal that they should stonewall.

We are talking about legal obligations to provide information. Now, Congress has already made the determination that that information should be turned over to other government agencies under ESECA. The other statutes are silent, and therefore the decision is presumably discretionary.

The spirit of the Federal Reporting Act would comprehend giving that information over to other federal agencies.

I might add that if confidentiality has to be provided, then DOE should, perhaps, as an absolutely last resort, give the companies a ten-day notice period in which the companies can contest DOE's decision to turn the information over to another agency. That should satisfy any legitimate trade secret concern that industry might have.

I might add one final small point. Perhaps some of this information should be made public. Perhaps some of this information should not be subjected to a confidentiality agreement in the first place.

MR. PEACOCK: Lincoln, nobody promised you a rose garden. That is a thorny question.

MR. MOSES: Yes; that is a thorny question. That is why we are working so hard to try to arrive at a way of dealing with it so that we may effectively take into account the very legitimate necessities which have inherent tension between them.

I hesitate to remind my colleage, Mr. Reich, that the Federal Trade Commission, itself, in order to have an effective way of examining particular industrial sectors, will not yield information in its custody for prosecutorial purposes across the lines of two bureaus.

I don't know if that should be a model for us. That is not my point. My point is: the problems are hard.

I do believe a way can be found, probably, to meet both sets of needs.

The question as originally put was a little too neat. The fact that an amateur like me, or other amateurs, can read the law and conclude that the fact that the law has been passed makes it mandatory for a company to do something is a little bit facile, because it may not be until the Supreme Court has ruled once (or twice, or more) that we shall actually know what the company's obligation is.

It was the process of worrying about things like that which had the FPC Form 40 used in an effort to learn about gas reserves and production in the country for a period of years -- two, four, I don't know which -- in five circuit courts of appeal.

So the problem isn't easy, nor has the Energy Information Administration any desire to shirk from facing the issues.

MR. PEACOCK: Bob.

MR. REICH: Let me just make a point of clarification.

Congress has never, to my knowledge, determined, with regard to the financial reporting system, that the balance turns in favor of not disclosing that information.

In fact, to the contrary, in ESECA, where Congress did that weighing and balancing, Congress explicitly decided in favor of releasing that information.

If there is going to be a lawsuit, get it over with. Take it to the Supreme Court. Make sure you have the authority. But don't run from it at this point.

MR. FLUG: Bill, I think just for the record, for the people reading this; this is not just a fight between the Department of Energy on the one hand kand the FTC on the other.

If we had, for example, Administrator Bardin sitting here, he would be saying, perhaps, some of the same things that Bob has.

There is a question even within the Department in that ultimately -- I hope I am correct in this -- it will have to be a

Secretarial decision as to how to reconcile these arguments.

MR. PEACOCK: Lincoln.

MR. MOSES: I am glad that it has become quite plain to all parties that the Department of Energy has not arrived at a position on this.

I would like to say that before such an arrival occurs, Mr. Bardin, among others, will have a voice.

MR. ALM: I was going to make that point. The Secretary is going to get a broad spectrum of views from throughout the Department.

MR. FLUG: Thank you.

MS. HOBSON: May I ask when the decision is going to be made on this issue?.

MR. MOSES: We will try to include an answer on that in the record. The confidentiality issue is presently pending decision at the Secretarial level.

MS. HOBSON: Thank you. Thank you, Jim.

The gentleman on my left.

MR. MARTIN: My name is Bob Martin. I am with the Texas Electric Service Company, in Fort Worth. We serve the area around Fort Worth and in West Texas.

I would like to comment a little bit about this conservation business. We had a program in conjunction with the Edison Electric Institute where we worked with builders and we encouraged them to properly insulate homes, for the good of all consumers.

But it has occured to us; how about those people who are on low incomes, fixed incomes, the elderly?

So we have developed another program which has come to be called our "Operation Tighten-up." What we do is, we go into the neighborhood. We take some hammers, and we take some insulation. We take some weather stripping. We take caulking guns. We get on a stage similar to what you have here. Then we get the people in the audience to come with us. We say, "All right; come up here and put some weather stripping in. Here is how you do it. Now, come and do it yourself." They come and do it, and they find out that it is not that hard.

MS. HOBSON: We appreciate your comments.

While you are here, would you mind talking to PEPCO and VEPCO? That would be helpful.

Do you have a question?

MR. MARTIN: I was going to get into a discussion about the proper procedure; that is, what are we going to do for the low-income people, those on fixed incomes? If the gentleman that asked that question would give me his name and address, I would be glad to send him the details on our program.

MS. HOBSON: Thank you very much. I think you might send them to the other utility companies here.

All right; any further questions?

MS. MOORE: As a matter of fact, I have two.

MS. HOBSON: Please identify yourself.

MS. MOORE: Since there doesn't appear to be too many people waiting to ask questions, maybe I will be able to ask both of mine.

My name is Luana Moore. I am Vice President of the Solar Energy Institute of America. We are headquartered here in Washington, D.C.

Both of my questions will be to Ron Scott. These are more or less follow-up questions to some of the other points that have been raised here today.

The technical manuals and the training program originally planned for use in the HUD Hot Water Initiative has been since watered down to include consumer do-it-yourselfers and is not as highly technical as need be.

It appears HUD and DOE are trying to pat two dogs with one stroke by not holding two seminar training programs. It is unlikely this training is sufficient for technical programs for installers for professional certification.

Could you comment on this? If this has been watered down to include consumer do-it-yourselfers, how can this be a highly technical-oriented program?

MR. SCOTT: Okay; I know what you are talking about there.

I think it is hot-watered down. We didn't want to get leaks into these systems. Now, let me explain what you are really addressing here.

When we met with the Hot Water Initiative in the states in the Northeast and Florida, which made 11 states, we essentially went with a grant program where, hopefully, through some fair selection process, the homeowner then could select the type system he wanted to install and, through the normal manufacturer-installer relationship, get that installed.

We were also trying to help build an infrastructure, because hot water was ready to commercialize.

Now, what happened was: the homeowners, or a large proportion of them, decided they wanted to do it themselves. Well, I don't know how many homeowners really know how to sweat a joint on a pipe and everything; but we became quite concerned that we didn't want to repeat some of the problems we had with installation in the New England electric experiment a couple years ago that they undertook, where most of the problems and failures they ran into were associated with installation.

So we very quickly said we better do something. We pulled together a team of people, in the process of conducting some 40 or 50 training sessions directly for the grantees, the people who were going to receive the grants. Most of them were just men and women off the street, if I can describe it that way. So we did have to change the content of the training.

Also, since we were providing that free and it was their time that they had to come to do it, we had to minimize it into one or two day-type sessions.

So, you are right, the technical content of the program has been reduced.

Now, parallel with that, we still have the two week-type sessions going, if that helps to answer your question.

MS. MOORE: That helps, because I was concerned that this was going to be the basis for the certification of installers.

MR. SCOTT: No, that would not be. That was just to try to solve the immediate problem of a homeowner trying to install the hot water system he had received from the state through the grant. The states decided to let the individuals do that. We advised them againt it in terms of the overall quality of the overall experiment.

We think the consumer ought to get involved, and why not start right there? So that is what we did.

MS. HOBSON: All right; very good. Why don't we take your next question after this gentleman asks his.

MS. MOORE: Okay; fine. I was just going to commend Ron Scott for including the consumers. I was just a little anxious and concerned; I wasn't against it.

MS. HOBSON: Thank you.

MR. DAVIS: I am Allen Davis, National Consumer Law Center.

In a recent article in the "New Republic," it is documented that much of DOE's consulting money goes to firms which also consult exclusively and regularly with energy industries having direct financial interests in the outcome of DOE policies and studies.

We understand that DOE is now in the process of writing conflict of interest regulations which would require its consultants to disclose information relating to potential conflicts of interest.

In light of this, I have two questions: first, with such information in hand, that is, with such disclosures in hand, what specific criteria would DOE set up in order to prevent the presently gross conflicts of interest which exist? Secondly, why does DOE need such extensive consulting service from the outside? Why doesn't it have an in-house capability to perform much of the consulting services that go to these firms?

MS. HOBSON: Eric.

MR. FYGI: Perhaps, I can start with some background on the organizational conflict of interest regulations that recently were proposed.

In fact, these regulations are part of a trend that actually started some time ago. They involved not only consulting contracts, but a variety of other types of contractual arrangements that occur primarily in the technology side of the Department.

Your first question was: what kind of criteria would be used to make the disclosure meaningful?

I can't respond to that specifically right now; but, perhaps, I can give you an example that occurred in a slightly different context under the former ERDA regulations.

In that case and under those regulations, the disclosure of certain types of business plans was made a requirement for qualification for further competition.

In the contracting question, the competitor had too narrowly construed the requirements that were being placed upon him. Ultimately, although that competitor did win an award of a contract or a decision to win an award of a cotnrat before it became apparent that the requisite disclosure had not been made, because the disclosure was a threshold requirement, that contractor lost the award.

So that is the ultimate remedy. I think that remedy is what will be required to make any program like this meaningful.

With respect to the --

MR. DAVIS: Could I interrupt you right there before you go on to the second question? I guess I am more interested in not so much the threshold question of the disclosure itself, but once the disclosure has been made to the Department, how is the Department going to utilize that information in terms of setting up criteria by which to determine whether those consultants would be able to obtain consulting contracts from DOE?

MR. FYGI: Well, the ultimate question in every instance like that would be whether the other interests that are disclosed would be so likely to affect adversely the judgments that the contractor would have to make in carrying out the contract in question, that it would be fruitless to have that contractor continue.

Now, there might be -- and I can't speak to that today -- but there might be more precise criteria that would assist us in making that judgment.

But, in each instance, I would suspect that what I just described would be the ultimate decisions that would have to be made.

MR. DAVIS: The second part of the question goes to the use of outside consultants.

MR. FYGI: Well, perhaps, I can speak very briefly to that and then see if anyone else on the panel would like to add to it.

Outside consultants are frequently used in a variety of tasks, often in the policy development area, where the requirement for a certain type of skill or analysis is sufficiently intermittent that the Department cannot justify maintaining a full-time, continuous capability to carry out a given function with federal employees.

MR. DAVIS: If I may follow up on that, my question doesn't go to the propriety of hiring consultants, per se, for utilization by government agencies. I think every government agency does it. I think it is an accepted practice.

My question goes to the extent to which this particular department uses consultants who get involved in its policy-making work. That was specifically what the "New Republic" article referred to, the fact that a lot of the policy-making studies that were being made were the kinds of things that ordinarily ought to be done within the Department, rather than the fact that consulting services are used by government agencies.

My question goes to why this particular agency has seen fit to use so many consulting services with regard to its policy-making functions.

MR. ALM: I don't think you can answer that question, because you have got your two component agencies that have come in.

I looked over the prior contracts, and I would be willing to talk to you about this in more depth subsequent to the meeting. What surprised me is that an awful lot of the work really wasn't that relevant to policy development.

In looking to the future, you raise a good point. First of all, as Eric mentioned, contracts are used in areas where the government wouldn't specifically develop expertise, because the use is intermittent. We wouldn't have particular industry experts, for example, because our interest in these things would vary from time to time.

For example; the impact of an oil and gas user tax in the aluminum industry. We would not have an aluminum specialist.

Beyond that, obviously, you run into a trade-off question between personnel ceilings and contracts. For the last decade, there

has been pressure by each administration to keep the personnel ceilings down while the complexity of the work goes up.

I have found that the Congress and the public expect -- and they should expect -- better information from the government; quality information.

That information doesn't come easy; it takes a lot of work and analysis. When you have the trade-off between your staff members and contractors, I would say that probably, at least from my perspective, I would prefer to have a larger in-house staff and less contract funds.

But you have requirements, some statutory, some imposed merely by what I think is a good demand by the public and Congress for better information. We have got to get the work done.

MS. HOBSON: Okay; let's have on more follow-up.

Do you have anything else you want to add?

MR. DAVIS: No, not on that question.

MS. HOBSON: All right; thank you.

MS. MOORE: Okay; here we go again. This is mainly a question on DOE's outreach and delivery system to the proper solar channels. Perhaps, you can help in this part.

DOE's recent call, for flat-plate collectors to share in a half-and-half cost sharing and testing, was sent to approximately 200 manufacturers.

As of one week ago, no companies have responded to this. The original deadline was March 6th, and it was extended. Now, the newer deadline of March 28th has passed.

It is my understanding that this testing was to be the base line of the data for the SEREF labeling and certification program.

Does this imply that notification was not sent to the right parties? Was too little time allowed, approximately one month, to send it back in? Was it done through the right channels, etcetera? Does this also mean that the Polytechnic Institute program of last September for the HUD Initiative will be used? Were these tested previously with third-party accepted, accredited labs; or how was this done? Will this, then, be used for the base line of the program? Are the labs doing testing similar to Desert Sunshine or the Smithsonian Radiation Labs?

MR. SCOTT: Well, you described the mess that we have been in for the past year in terms of trying to bring a rational certification program in place on the one hand and a data base that is reliable on the other.

Let me state the following things. The laboratories which have come in with their proposals to do the testing are qualified laboratories around the country; independent test laboratories. I am sure Desert Sunshine will be one of them. I think there were some eight or ten coming in.

That mean that, if these laboratories are qualified, they must be able to test according to the 93-77 and the other standards, which are consensus standards.

They will also be accredited laboratories, meaning that the calibrations and things have been checked by a reputable group of people, so that the test data would be valid.

These laboratories, then, have to get the colllectors into them for tests. This is a solicitation that they make back to the industry, as part of the contract with us, if I can describe it that way.

We have a pass-through of funds from us to the laboratory to the manufacturer, so that we can relieve the burden on the small businessman, and so that he can send us a unit and we can get on with the test.

Now, up to this time, I understand there are around 90 or 100 or so collector manufacturers who are participating. It could be that that will increase very shortly over a period of time.

We would expect that very soon we can sign contracts with laboratories, and that is under negotiation. Then we can get on with the testing, and we can tie that into the certification program, which is another contract. Then, all this, through fantastic program management, will work out.

Now, if it doesn't, we will all get back together in a room similar to this with the parties involved and see how we can sort it out.

But the Polytechnic Institute in New York was a separate activity. It is not a certification-accreditation program. It was only to put a Band-Aid on the Hot Water Initiative problem in the Northeast, which was a year ago.

MS. MOORE: Okay; thank you.

MS. HOBSON: All right. At this time, as we close, I want to thank the participants who have asked such good questions, and to let you know that they are using these video tapes around the country -- at universities, from agency to agency, and elsewhere.

We appreciate the fact that the questions have been good and that the tapes, then, become more valuable as an educational component.

I also want to alert you that the questions are due today, but we will extend it through tomorrow, for "Urban Energy Policies and Programs," which will be the next briefing; on the 27th of next month.

If you have an interest in that topic, we would like you to submit those questions by the close of business tomorrow. The briefings are not better than the questions we receive from energy consumers.

We do appreciate your assistance. You do know that our consumer briefing summary goes to more than 22,000 consumer and public interest and other groups around the country. So this becomes a forum for the kinds of issues that consumers want to know about; therefore, we appreciate your help very much.

I will turn it over to Bill.

MR. PEACOCK: It looks like we have one more last question to slip in.

MS. FAUST: I am Charlene Faust. I am with the Georgia Office of Consumer Affairs. I have a question for Mr. Scott.

Given the possible serious ramifications of improper installation of flue dampers, I wonder if the Department has a position as to the effectiveness or advisability of their use as an energy conservation device and if you have any standards in development for their use?

MR. SCOTT: You have really got me on flue dampers. I am going to have to call on Dan Quigley. I know we have run into the same thing, though, in solar systems and the air systems, where we have had problems with the dampers and so forth.

So we are, in fact, beginning to develop a standard for that on the solar side of the house.

Now, I should look back to the furnace-heating side and see what we are doing on the existing dampers.

MR. QUIGLEY: I was breathing a sigh of relief. I thought we might go by without having to deal with this question, although, of course, we are looking at it.

The utility program that is in the National Energy Act requires or will require utilities to be involved in offering services for all kinds of furnace devices to their customers, and it specifically mentions flue dampers.

Part of our responsibility in that program, as you probably know, is the development of both a product standard and an installation standard for those devices.

A product standard has been certified in the private sector recently. There are laboratories that are testing devices. We are in the process now of taking the installation guidelines which are included in that standard and making them more complete for our purposes.

Now, of course, this leaves the question of the training and the development of adequate expertise in the private sector for installing these, because there are some safety hazards that are associated with this.

For the purposes of our program, we are looking at what training possibilities exist. The manufacturers have proposed to us

that we fund a training program through them. We have investigated the possibility of funding a training program through code officials, since building code people have an interest in this.

We are, at the moment, drafting and trying to develop a fact sheet for consumers that covers: "What is a vent damper? What are the safety hazads? How do I go about having mine installed?" That fact sheet; I don't have a deadline on it. It is in its final drafting stage at the moment. There are some decisions we have to make about just how to present that. So we do have a contract that is nearly signed to develop the adequate installation standards.

We are looking at training both for furnace installation of dampers and other things as well as other conservation devices such as insulation. This will be addressed.

MR. PEACOCK: Thank you, Dan.

MS. FAUST: What kind of communication system do you have with the code officials?

MR. QUIGLEY: In the conservation area, it is rather extensive with respect to new building standards. We have been funding the National Association of Code Officials to develop training materials for state and local code officials in the use of energy efficiency standards.

We are investigating the possibilities with the same organization to have them involved in furnace retrofit training.

Of course, we haven't gotten to the point of signing a contract; but that strikes us as a good vehicle to investigate.

MR. PEACOCK: Dan, we have about 90 seconds left on the tape. Thank you for your questions and thank you for your response.

I would like particularly to thank the panel for their excellent answers, their ability to withstand the heat not only of these lights, but of the questioning, and with particular reference to Bob Reich, who comes to us from the Federal Trade Commission. We really appreciate the panel's participation and the tremendous audience participation.

Without any further ado, I would like to turn it over to Sam Hughes, our leader, to say goodbye to all of you.

MR. HUGHES: I think it has all been said. Thank you. We will see as many of you as are interested in a month or so and, perhaps, again the month after that.

Thank you, again.

(Whereupon, the written question of Gwen Davis, CPSC, was added to the record.)

"What recourse does the energy-conscious consumer have to combat rising utility costs imposed by companies that monopolize the industry; gas, electric, et cetera?"

(Whereupon, at 12:00 noon, the hearing was closed.)

The following are questions submitted, prior to this public briefing, by consumer and public interest groups -- plus the answers as prepared by appropriate DOE program offices:

PROTECTING CONSUMERS -- PREVENTING FRAUD

Question #1

In the next few years, many new energy technologies will be marketed to the public. A number are being marketed now, especially those related to solar energy and insulation. What plans and programs does the Department have to insure that consumers are protected from fraudulent firms; from firms which produce products of shoddy workmanship and from firms which might monopolize certain regional, state or local markets?

- Will the Department work with the Federal Trade Commission and the Department of Justice in the above-mentioned areas? In what way? What procedures will be set up?
- Will the Department work with state and local governments to set up guidelines and enforcement policies and procedures in the areas mentioned? When will this be done? Who is responsible?
- Will DOE provide funds to help the states?
- How will DOE assist the states to track and prosecute fraudulent energy contractors across states' lines?

Answer:

DOE's most important existing programs for fraud prevention are consumer education programs, designed to inform buyers about what to expect from various products and how to judge the claims of retailers and installers. These programs are discussed more fully in response to Question #3.

With specific respect to conservation measures, the Department presently has only limited standard setting authority, for use in the Weatherization Assistance Program for low-income persons or as an outcome of the Energy Conservation and Production Act (ECPA) legislation

which authorized an energy measures list. The Energy Policy and Conservation Act (EPCA) program for Supplemental State Energy Plans provides DOE with discretionary authority, which it has not used to date, to require that a plan contain, as a condition for Federal financial assistance, "an adequate program within such State for the purpose of preventing any unfair or deceptive practices affecting commerce which relate to the implementation of energy conservation measures and renewable resource energy measures"; Sec. 376(b)(2)(B). Though this section would require states to take action it is unlikely that this provision calling for action by a State was intended to establish a program for setting national performance and quality standards.

Furthermore, before DOE employs a commercial standard in any program, such as appliance efficiency standards, the Department is required under existing law to make certain procedural determinations pertaining to due process and participation by a wide spectrum of interest groups, including groups representative of consumer and environmental interests. Moreover, the commercial standard must be submitted to FTC and the Department of Justice for review of whether or not the standard is anticompetitive in effect, in which case either agency may forbid its use. Procedures are set up for review of commercial standards by both agencies.

With respect to energy measures, FTC and Justice have participated in DOE's energy measure task force with particular emphasis on activities pertaining to residential insulation.

Our ability to promote fraud prevention will be greatly enhanced by the National Energy Act. Under the Residential Retrofit Program, we will develop, in close cooperation wtih the FTC, guidelines for State programs to set qualifications for suppliers of conservation materials, including adherence to material and installation standards. The guidelines will also require States to provide redress for consumer complaints arising in the program. The FTC has agreed to work with the program from the beginning to develop appropriate guidelines for State plans and utility programs.

The Office of Conservation and Solar Applications of DOE is currently working to identify and strengthen measures to handle consumer problems that may be associated with increased marketing of solar water heating, space heating, and cooling technologies for residential buildings. This effort includes:

- o Analysis of the experience of consumers who have purchased solar equipment in the private market in order to identify potential problem areas;
- o Working with consumer protection authorities of Federal, State and local government agencies, with trade and professional associations, consumer and other public interest groups, and industry to identify the most effective existing mechanisms and authorities for preventing and remedying solar consumer problems -- including false advertising, misrepresentation, and fraud; and

- Developing consumer protection strategies which can be undertaken in the near term at all levels of government and within the private sector to provide adequate protection for solar consumers while, at the same time, minimizing constraint on the development of a healthy, competitive solar industry.

The Bureaus of Competition and Consumer Protection of the Federal Trade Commission have been involved in this consumer protection work since its beginning, late last summer. The FTC reviewed and submitted additions to a major contract work statement before it was signed and is now reviewing a draft consumer experience survey questionnaire. The DOJ has been included in planning and is expected to be involved at a later date.

Other actions undertaken by the Office of Conservation and Solar Applications, DOE, include:

- Working with industry to develop consensus standards to ensure durability of solar equipment for its designated use.
- Working with industry to test solar collectors against existing consensus standards for measurement of performance so that ratings can be made and provided to allow informed consumer buying decisions.
- Assisting the States, localities and industry in developing a model building code governing solar heating and cooling for adoption by States and localities.
- Establishing local and regional technical assistance programs in cooperation with the states and localities;

o Transferring technology by programs to provide information and training materials to educate prospective buyers, installers and all other sectors in the solar technology field.

DOE has not established programs for enforcement of consumer interests by prosecution for deceptive practices. Such activities, which DOE believes vital, do not fall within the ambit of its authorities. However, DOE supports and will participate in efforts by the States or other Federal agencies to promote vigorous enforcement of consumer protection legislation. Presently, the Department is working closely with FTC concerning labeling, certification, warranties and related techniques for consumer protection. The FTC has also asked DOE to participate in a panel which FTC will use in taking actions to protect consumers. It should that ECPA specifically reads (Sec. 376(d)):

> The Federal Trade Commission shall (1) cooperate with and assist State agencies which have primary responsibillities for the protection of consumers in activities aimed at preventing unfair and deceptive acts or practices affecting commerce which relate to the implementation of measures likely to conserve, or improve efficiency in the use of energy, including energy conservation measures and renewable-resource energy measures, and (2) undertake its own program, pursuant to the Federal Trade Commission Act, to prevent unfair or deceptive acts or practices affecting commerce which relate to the implementation of any such measures.

Several additional possibilities for joint action with the FTC for consumer protection in solar energy have been discussed at the staff level. These include exercise of FTC legal enforcement authorities in

the area of false advertising; FTC promulgation of trade regulations; holding joint DOE/FTC workshops with state and local consumer protection officials around the country to provide them information on solar energy, related consumer problem identification, and available sources of technical assistance; and joint establishment of a national solar consumer information network through hook-ups with and among the states. Special care has been taken to work with the States and localities in the preparation of model documents and suggested guidelines for consumers. Funds available to the States under the State Energy Conservation Plans Program; which provides grants for either original or supplemental plans, can be used by the States for this purpose, with the approval of DOE.

Question #2

One obstacle to consumer use of available solar products is a lack of certainty in product performance. What policies and programs, if any, is the DOE considering to provide the consumer with some performance guarantee without placing an economically unbearable burden on the small manufacturers of residential solar products? How will DOE promote a broad based and competitive solar industry which will concurrently protect consumers from fraud?

Answer:

The need to provide consumers with assurance of performance is particularly great in solar energy due to the relatively unfamiliar character of the technology, the large number of small new firms in the business, the inexperience of many solar system installers and

the difficulty of identifying absence of, or poor performance, becuase back-up systems using traditional energy sources function automatically.

The most readily available way to give consumers some assurance of performance is to give them an easily identifiable means of knowing whether or not their solar system is operating at all. This could be done through educating consumers to request that devices such as thermometers, lights, or other overt indicators of performance be installed with their active solar systems. These devices are relatively inexpensive and are already being offered as standard features by several firms.

Another approach would strengthen Federal programs which provide support of State and local offices possessing the requisite legal authorities to undertake quick identification and prosecution of fradulent firms through transfer of information, technical assistance, and financial assistance to provide adequate State and local enforcement staff.

Question #3

To what extent does DOE believe that it has a major responsibility for consumer education to prevent energy fraud? What are the programs? What funding is available for such programs and how will they be implemented?

Answer:

The Department of Energy feels a strong sense of responsibility for consumer education and pursues this goal through many different programs and through the activities of the Assistant Secretary for Intergovernmental and Institutional Relations. The Education Programs Division of

IR is working toward this goal under a program titled Residential Energy Conservation Education for Consumers. Materials prepared under this program include slide presentations, consumer hand-outs and public service announcements for radio and television. The objective of this program is to enhance consumer knowledge about housing structure, heating and cooling systems, the conservation ethic, and the energy-related aspects of personal care and food preparation and storage.

There are also many examples of consumer education being carried out by specific energy program offices.

A. "Solocost" is a series of informational booklets which provide a simplified method of estimating solar system economics and system size for prospective solar users. The first booklet of the series, regarding solar hot water heating, is already available to homeowners, who simply provide facts about their residence and the system which they are considering in a booklet provided for such information. The homeowner then mails his forms to the Solar Environmental Engineering Company which computes answers based on the homeowners' input and returns these answers to the homeowner.

B. A consumer education mandate is built into a Federal appliance energy efficiency program designed to induce manufacturers to produce more efficient appliances. These include: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers and dryers, room air conditioners, home heating equipment, televisions, kitchen ranges and ovens, humidifiers and central air conditioners.

The Appliance Program being implemented by DOE involves the prescription of test procedures and energy efficiency improvement targets for each of these products. The targets are designed so as to identify the maximum improvement in the energy efficiency of appliances determined by DOE to be technologically and economically feasible by 1980. The test procedures will be used to monitor the progress of manufacturers toward meeting the targets. They will also be used by the FTC as a basis for product labeling rules designed to provide energy consumption information which will assist the consumer in making purchasing decisions. If DOE determines that a target for a product is not likely to be met, DOE is required to prescribe a mandatory energy efficiency standard for that product.

In order to help prepare consumers to use the new labels, the Office of Consumer Affairs currently monitors a contract to produce a series of seven resource booklets on seven groups of major home appliances covered under the EPCA legislation. Each booklet will describe the most energy efficient use, care and purchase of a particular appliance, as well as provide illustrations and text on how to use the label. Produced in cooperation with the National Bureau of Standards, the Federal Trade Commission, the American Home Economics Association and several major appliance trade associations, the booklets are scheduled for publication in late fall, 1978, just prior to the appearance of the labels, now slated to be ready in early 1979. Other consumer education efforts would be launched by the Department's Office of Consumer

Products under the Assistant Secretary for Conservation and Solar Applications.

C. The Energy Extension Program (EXT), while it was not set up to deal directly or solely with consumer education to prevent fraud, does indirectly benefit consumer education. The program currently is operating in ten "pilot" States and has as one major purpose to encourage individuals and small establishments to reduce energy consumption or convert to renewable-energy resources. The State programs are designed, managed and operated by the States themselves. Each of the 10 currently has a grant of about $1.1 million. All participating States have program activities for consumer education and by providing technical assistance and information to consumers at the grass roots level. To that end, most of the ten States are setting up hotlines.

Through these activities, the States (with backup assistance from DOE), are providing information to consumer groups to make them better equipped to judge reliability of energy-related advertising services and products. For example, with regard to insulation, DOE has provided ten States with reference services to collect and deliver existing information concerning cellulose and ureaformaldehyde foam. The DOE will continue to provide the States EXT offices with information useful for informing and educating the public about energy.

D. The Buildings and Community Systems Division is another example of what is on-going or planned within DOE. Division activities include:

1) the development of a manual and student workbook by the American Association of Vocational Instructional Materials on residential and small commercial conservation applications. The final product will be completed in summer 1978 and marketed to educational institutions nationally;

2) the development of a Home Buyers' Guide in cooperation with the Department of Housing and Urban Development. This guide should be available this summer for sale by GPO; it will address regional needs and allow for "comparative shopping" by home-buyers based on a building's energy needs. Document dissemination will be carried out with the help of an advisory board composed of representatives from the building, real estate, design and financial professions and consumer groups;

3) a currently-available Insulation fact sheet which describes types of insulation, regional requirements, installation tips, insulation selection factors and types of contractors. This is promoted by distribution through trade shows, energy fairs, the Technical Information Center, in response to direct requests, through Congressional District Offices and by the Energy Extension Service.

All of the Department's consumer education activities are based on the belief that an informed consumer is less subject to being defrauded than is one who is unaware of the advantages and disadvantages of alternatives.

Question #4

What is the DOE role in developing mandatory insulation standards? Mandatory solar technology standards?

Answer:

The key Federal agencies with authority to issue and enforce mandatory insulation standards are the Consumer Product Safety Commission, HUD, Farmers' Home Administration and the Federal Trade Commission. The CPSC may issue safety standards and prevent unsafe insulation from being manufactured or sold. The FTC has similar authority for labeling and advertising of insulation. The DOE has recently testified before Congress in support of legislation requiring CPSC to issue a mandatory safety standard for cellulose insulation. We have also testified before the FTC in favor of their proposed labeling rules.

The proposed National Energy Act will require DOE to develop standards for insulation and other materials to be used in the residential conservation programs to be run by utilities and in programs for schools and hospitals and local public buildings and public care institutions. In addition, the IRS has indicated that if the residential tax credit becomes law, they will rely on DOE for the product standards which they use.

DOE has not in the past done the primary development work on insulation standards of any kind. We have tested materials, however, and are currently analyzing the proposed specification for cellulose insulation of the General Services Administration. In anticipation

of the NEA, we are now developing standards for the installation of insulation and other conservation devices. Again, our authority under that law will extend only to our programs and will not allow us to enforce these standards for the entire market. Where we find that significant safety problems may develop beyond the scope of our authority, we will recommend action either to the CPSC or the FTC.

With respect to solar technology standards, the Office of Solar Applications recognizes that the administration and enforcement of such standards is the responsibility of the States and localities. Solar heating and cooling standards are being developed through the traditional building industry "consensus standards" process. (See OMB Circular, published January 3, 1978 in the Federal Register which enunciated draft guidelines). Presently DOE is working with the National Bureau of Standards, which coordinates with appropriate industrial trade groups, standard setting organizations and consumer groups. Pending the evolution of these consensus standards, manufacturers of solar heating and cooling systems being demonstrated in the national demonstration program must meet certain performance standards.

Question #5

DOE's solar standardization program of testing and certification is limited to flat-plate collectors. Why are there no programs for concentrating collectors, photovoltaics or hybrid systems?

Answer:

Standardized testing, rating, and certification programs must rely on standardized test procedures and uniform measurement criteria. These take a long time to develop if they are to be both meaningful with respect to performance and flexible enough to allow for variation in materials, design and mode of operation of new technologies.

In order to effectively enlist industry compliance and therefore provide a reliable basis for consumer buying decisions, DOE believes, at this time, these standards should be adopted voluntarily by the industry, through arrival at widespread consensus within the industry. Currently available information indicates that a Congressionally enacted mandatory program is not desirable. This process also is very time consuming.

The program has begun with flat plate collectors simply because that is the only technology which has reached a stage with enough meaningful common ground to allow standards for measurement to be devised. Programs for other technologies are now being planned and will be underway as soon as possible. Programs for the certification of systems are more difficult to establish, harder to impose and less meaningful to the consumer because system performance, reliability and durability depend not only on components but also installation. Therefore, although prototype systems can be tested and standardized system design and installation instructions can be certified, systems are unlikely to be mass produced and thus will vary from their tested pattern by the degree of customizing required for installation in unstandardized buildings.

DOE has not restricted its testing and certification program to flat-plate collectors. The technical basis for the DOE collector testing program is the standard developed by the American Society of Heating, Refrigeration, and Air-Conditioning Engineers, known as ASHRAE 93-77. This standard provides for testing other than flat-plate collectors. Where appropriate to available technologies and to the current state-of-the-art, DOE intends to include all types of solar collectors in its testing and certification programs.

Question #6

Since the Solar Energy Institute of America was involved in discrediting an advertisement of a major oil producer and thereby changed their misinformation to the point that the oil company admitted its involvement in solar -- will DOE become involved in truth in advertisement, and thereby prevent other energy concerns from painting an unrealistic or vastly more costly answer to our energy concerns?

Answer:

The Department of Energy will continue to combat deceptive advertising with consumer education. DOE will also work with the Federal Trade Commission to assist that agency's efforts to promote free and fair competition in interstate commerce.

Question #7

Why is there still no Solar Council in DOE and why must consumers wait until there is a problem to deal with before DOE starts looking for solutions? Why can't preventive programs be implemented?

Answer:

The effort of Conservation and Solar Applications to identify potential solar consumer problems, develop effective consumer protection

strategies, and lay the groundwork for near-term implementation are meant to provide well-planned preventative action. This program was initiated shortly after the President's Energy Plan was announced, and is proceeding as quickly as available personnel and resources will permit.

With respect to consumers, the Office of Solar Applications has consistently followed the policy of including consultations with consumers in all of its programs. Moreover, it has been providing for consumer participation in all phases of its standards, codes, testing and certification program. Consumer representatives are to be included in all technical committees responsible for implementing these programs.

Question #8

What steps is the Department taking to ensure that the Federal interagency task force (ITF) will coordinate various agencies' home insulation labeling requirements so they are consistent and readily understood by the consumer? Are similar labeling reviews occurring for the small scale renewable energy products?

Answer:

DOE presently is coordinating the insulation activities of various agencies under two separate task forces. One task force is responsible for monitoring the overall supply and demand for insulation and its raw materials by utilizing the expertise of various involved Federal agencies (Department of Commerce, Federal Trade Commission, General Services Adminsitration, Department of Housing and Urban Development, Bureau of

Mines, Council on Wage and Price Stability, Small Business Administration, etc.). The other task force, including representatives from FmHA, DOE, Hud, GSA and CPSC, is responsible for coordinating technical studies and development of insulation standards for materials and installation. One of the purposes of the interagency mode of operation is to facilitate interagency communications and coordination in developing labeling and other requirements. The issue of coordinating labelling requirements has been discussed specifically at several public meetings in which consumer groups participated. DOE believes that practical coordination in this area can be achieved.

We know of no similar effort to coordinate labelling activities for small scale renewable energy products, and no similar problem has been raised with us by manufacturers, but we are checking this further.

Question #9

What role does the DOE intend to play in advancing consumer protection and preventing fraud in the sale of home insulation?

Answer:

The Department of Enegy (DOE) supports the activities of those agencies such as the Federal Trade Commission, the Justice Department, the Consumer Product Safety Commission, and the Department of Commerce (through its voluntary labelling program) which currently have statutory authority to protect consumers against fraud and other abuses in connection with sales of insulation.

DOE expects to receive authority in this area under the proposed National Energy Act (NEA). The Residential Retrofit Program under the NEA will require utilities and allow fuel oil dealers to provide consumers with lists of competent contractors and lenders to assit consumers in residential retrofitting. The program also will require DOE to issue material and installation standards for all energy conservation measures approved for use in the program, including all types of insulation. In addition, the Department of Energy will, when the NEA is adopted, issue guidelines for the development of State plans. These guidelines will contain requirements to protect consumers against abuses by utilities, contractors or lenders. DOE is recommending to the Department of Treasury that the IRS regulations for items eligible for energy tax credits utilize the standards developed by DOE for energy measures such as home insulation.

The Department of Energy currently is developing standards which will be issued by the end of the summer for insulation materials under the authority of the Weatherization Assistance Program. As of mid-March, the technical review of the standards for seven types of insulation has been completed and the standards are being put into a standard format. Two others -- those for polystyrene thermal insulation board and formed in place ureaformaldehyde foam -- are being drafted and reviewed. Standards for the three remaining types of insulation -- loose-fill cellulose or wood fiber, mineral fiber blankets and mineral fiber

loose-fill -- await completion of fire retardancy tests that are being run at Oak Ridge National Laboratory.

Question #10

Please describe in detail the nature and scope of the working relationship between DOE, Justice, CPSC and the Federal Trade Commission in combating consumer energy fraud. How do the DOE, FTC, CPSC regional offices interrelate?

Answer:

DOE's relationship with the agencies cited has been largely informal thus far, although the FTC and the CPSC are active participants in the three work groups developing standards and guidelines for the Residential Retrofit Program which is called for under the pending National Energy Act. A representative of FTC chairs the sub-group concerned with Competition and Consumer Protection and has a representative on those subgroups developing material and installation standards. CPSC is represented on all these groups. Although informally invited to participate in the Competition and Consumer Protection group, the Department of Justice has not been represented at any of the group's meetings.

Question #11

What will DOE do to assist the States and localities to review building codes which inhibit the entry of new energy technologies or inhibit reintroduction of old technologies such as woodburning stoves in home and commercial applications?

Answer:

An intensive program was initiated in FY 1976 and is continuing to be expanded to provide assistance to States and localities relating to energy efficient buildings. This program has developed a model code for new buildings and a training program for building code officials. This effort is being expanded to include a model code and training materials for existing buildings; training and licensing of building code officials; and the establishment of regional advisory service centers for building code officials. The centers will provide training and dissemination of information on energy technologies and assist States and localities on code related items. These codes and standards are solely performance-related thus, encouraging introduction of innovative and more effective technologies.

Question #12

How does the Department of Energy plan to encourage Congress and the States to enact and create more uniform laws, relating to energy consumer protection? What will DOE do to encourage the local and state governments and Congress to impose and enforce stringent laws, regulations to protect consumers against energy fraud?

Answer:

Included within outreach services of DOE's Energy Extension Service is provision of information to consumers on specific consumer fraud problems. This service is currently available in 10 states and will be expanded nationwide in FY 79, with appropriate funding, to assure more uniform coverage.

In addition, the National Energy Act will require DOE to develop guidelines for consumer protection in the Utility Retrofit Program. States will be required to have adequate consumer protection procedures in conjunction with program activities. These guidelines will help provide some measure of uniformity among States, but leave flexibility for particular State problems.

With respect to solar systems, all of the consumer protection programs conducted by the Office of Solar Applications have been designed to promote the development and adoption of uniform regulations at all levels of government. Specific courses of action have already been discussed above.

DOE is working to create uniformity in Building codes, testing requirements, and product quality and performance standards, to provide consistency of information throughout the country. This information can then be used as a tool by States, localities, and the Federal government to address consumer fraud problems.

Question #13

Inaccurate meter readings are reported frequently. Can the DOE bring regulatory pressure to bear on utility companies, nationwide, to improve the meter reading system by demanding that utilities:

- Increase the frequency with which meter readings are made?
- Improve mechanical accuracy of the meters themselves?
- Devise a system to lessen the discrepancies between bill estimates and final bill totals which are often much higher than estimated bill and require payment on short notice to customer?

Answer:

The Department's regulation of electric and gas companies, administered by the Federal Energy Regulatory Commission, regulates only the for-resale (wholesale) sales of gas or electricity.

The State public utility commissions (51, including the District of Columbia) are responsible for the regulation of utility rates and utility practices, including quality of service, within a particular state. The accuracy of meter readings, the frequency of meter readings and problems related to bill estimation are regulated by the State public service commission, not at the Federal level.

It should be pointed out, however, that the accuracy of the typical single-phase, single-register residential meter is very high (99% +) and that increasing the frequency of meter readings would significantly increase the cost of service.

As for the problems of estimated billings, it is highly unlikely that the combined bill for 2 months, based on actual bimonthly meter readings, would be lower than the estimated bill for the first month. In short, the problem is essentially self-correcting.

Question #14

It has been recently reported that DOE is predicting (if not advocating) a price of $1.00 per gallon of gas at the pump before 1980. Does DOE feel that raising the price of gasoline is in the best interest of the consumer? What criteria are used to evaluate the socioeconomic effects of such price increases.

Answer:

Gasoline prices nationwide, as of December 1977, were 63.3 cents for leaded regular, 67.2 cents for uneladed and 69.1 cents for premium. Assuming general price increases of five to six percent annually for the next two years, those prices would be in the range of 73 cents to 82 cents for the various grades of gasoline. Thus it is highly unlikely that gas prices would reach $1 per gallon at the pump by 1980.

Whether or not DOE feels that raising the price of gasoline is in the best interest of the consumer depends entirely on the policy we want to pursue. If we wish to pursue a strong policy of conservation and a reduction in consumption, then prices would have to be considerably in excess of $1.00 per gallon. On the other hand, demand for gasoline has not been rising as fast as in the past. For example, for the four weeks ended 2/24/78, demand was up only .3 percent from the comparable period last year. If we wanted to discourage consumption by raising prices, the impact would obviously be greater on poor people than on the affluent.

The impact would also be greater on those in rural areas than on those in urban areas. The poor generally own older and less energy efficient vehicles; in addition, many have long commuter trips because employment opportunities are moving to the suburbs. Even if they relied on public transportation, such gas increases would probably eventually result in increased fares. The greatest impact would probably fall upon those commuters who live in isolated areas and have no alternative means to get to work. Part-time farm workers, coal miners, rural

people, inner-city poor and lower-income suburbanites who must commute long distances to work would fall in this category. It can be argued that such considerations necessitate equalizing differential impacts, which would be extraordinarily complicated.

There are several major socio-economic criteria which would have to be evaluated before a definitive decision is made to encourage price increases. These include:

1. Reduction in demand.
2. Expenditures on gasoline and the impact on the various economic sectors and on economic growth in general.
3. Expenditures by various socio-economic and income groups, including impacts in rural vs. urban areas.
4. Impact on farm prices and agriculture in general.
5. Impact on other consumer costs and consumption patterns.

One possible tool for evaluating socio-economic impacts is the Comprehensive Human Resource Data System (CHRDS). It is a model of household energy expenditures developed for DOE's Energy Information Adminsitration (EIA). The basic data base for CHRDS is a survey containing both socio-economic and energy-related information for a large number of households. CHRDS projects the energy expenditures of households to a year, other than the base year when the survey was taken, by updating the economic and energy-related characteristics of the households included in this survey. Expenditures by households on six energy

commodities -- electricity, piped-in natural gas, bottled natural gas, coal, fuel oil, and gasoline -- are then projected on the basis of these updated characteristics.

Household energy expenditures, or household energy expenditures as a percent of disposable income, cross-classified by socio-economic characteristics such as income, race, age, and sex can then be obtained. It must be noted that CHRDS is extremely complex. The projections and the analysis of these projections can take up to several weeks to complete, depending upon the complexity of the scenario.

Upon request from other parts of DOE, or other interested parties, CHRDS could be used to analyze the impact of a $1 per gallon price of gasoline on the energy expenditures of households. The analysis would be based on a hypothetical state of fact including as retail energy prices and income in the projection year, for both the "$1 per gallon" case as well as a comparative reference case not including the $1 gasoline price. The cross-tabulations of interest should also be specified. EIA would then use CHRDS to project the impacts of the $1 retail gasoline price.

Question #15

How is DOE ensuring, in the policymaking processes, that American citizens will be able to afford essential energy needs? How many people can't afford essential energy right now? How accurate are those estimates? Why? Isn't there something wrong if the policy is such that people cannot afford the energy they need?

Answer:

The Department of Energy is determined to temper or offset the effects of rising energy prices on families of all incomes, and especially to offset the disruptive effects of policies which are necessary for a stable energy future. These considerations enter into all energy policymaking in the Department affecting consumers. The following are specific examples:

1. Rebates on oil taxes - The Crude Oil Equalization Tax will raise prices for most oil-dependent products. The revenues from this tax are proposed to be rebated directly to consumers in two ways. First, all people would receive per capita rebates from the tax, either through withholding tax reductions or through existing public assistance programs. Second, those people who heat with oil would receive additional rebates in the form of offsetting oil price reductions. Eventually, each of these rebates would become part of comprehensive tax reform.

2. Weatherization assistance - The low-income weatherization program, which is being consolidated and expanded in DOE, is designed to improve the thermal efficiency of the dwelling sites of low-income families. The NEA would increase authorizations for this program to $200 million in both FY 1979 and 1980.

3. Emergency services - The Community Services Administration will continue to provide cash and other hardship assistance to low-income families unable to heat their dwelling units because of

severe weather. The Administration will continue to request funds for this program.

CHRDS, the data model described in answer #14 above, can be used to analyze equity-related energy policies. However, all the details of the policy must be specified by the party requesting the analysis. Upon request CHRDS can, for example, be used to analyze the household impacts of a program providing income rebates to all households that cannot afford "essential energy right now." Once the level of energy consumption that is "essential," and all other relevant details of the program are specified to EIA by the party requesting the analysis, CHRDS can be used to estimate the household impacts.

Question #16

The public judges government and government agencies on the basis of government's responsiveness to the needs the public has, or perceives. If DOE suppiled consumers with energy information which answered the energy worries and needs of consumers it would have more public support than any other Federal agency.

How does DOE handle consumer questions?

What mechanisms does DOE have for consumer complaint handling?

What kind of compliants does DOE get?

How many complaints are there?

How are complaints handled?

Do consumer complaints receive the same priority that Congressional inquiries receive? Why?

Who answers consumer complaints, GS-7s or Assistant Secretaries? Why?

What general information has been prepared to answer consumer complaints?

How much money is set aside in DOE's budget for consumer complaint handling and consumer information development?

Answer:

Consumer questions are received by saff and program offices throughout the Department and by individuals such as line managers. With respect to letters addressed to the Secretary, Deputy Secretary, Undersecretary, Special Assistant to the Secretary or Director of the Office of the Secretary, a Departmental tracking system is used to enforce a response target of ten working days. All letters from consumers addressed to those mentioned above are analyzed, controlled and referred to the appropriate office within DOE, depending on the nature of the complaint or question.

Slightly varying systems may be used by different offices, but generally, questions are routed to responsible program managers. When issues or questions are particularly popular, "hot lines" may be established for telephone responses. In early January, DOE published a nationwide toll free number as well as a mailing address to collect pricing data as an element of the Middle Distillate Monitoring System. A toll free number has been available for questions on solar heating and cooling systems and operation for some time. Certain consumer questions, regarding technical aspects of technology, are referred to the Technical Information Center in DOE's Oak Ridge Operations Office. The Office of

Consumer Affairs, DOE, publishes quarterly reports available for public inspection, showing in detail information regarding the subject matter and background, where available, of inquirers. This tabulation is based on inquiring OCA receives directly and the copies it is to receive of all consumer complaints answered by other offices.

The majority of consumer complaints addressed to the Secretary and his immediate office concern high energy prices for gasoline, heating oil or gas and electricity. The most recent quarterly report of the OCA (8-1-77 through 12-31-77) describes in detail the nature of the 373 letters received during that period. The majority of persons writing during that period were on fixed incomes, were elderly or disabled. One third of the letters requested information; 16% opposed the President's proposed graduated tax on automobiles. Others expressed difficulty in handing escalating utility bills (35 letters) interest in home insulation (21 letters) and interest in solar energy (20 letters). Extreme hardship cases were followed through DOE regional offices in concern with local community action agencies. Program offices receive policy questions and comments on their budgets, specific questions related to future activities and complaints related to the socio-economic aspects of certain energy production, (e.g., the pollution related to coal mining and burning).

Though not all offices keep formal tabulations of consumer letters and phone calls, the following information was available:

The Energy Regulatory Administration received a maximum of fifty phone calls during the heating season regarding heating oil pricing, supply problems and general complaints;

Conservation and Solar Applications averages between 450 and 500 inquiries per month--divided about equally between the two areas;

The Office of Consumer Affairs/Special Impact of the Federal Energy Administration (which preceded the present Office of Consumer Affairs, DOE) received and responded to 710 letters from June 1976 to July 1977.

Concerning the priority status accorded different inquiries, DOE responds in writing and in detail to all consumer inquiries. Expert consultants in addition to DOE technical staff are used to evaluate and respond to consumers' technical questions or suggestions. Congressional and White House backed inquiries do receive priority attention, but the same level of technical attention and detailed response is given to all inquiries. In the case of telephone requests, requestors are generally treated in an equally speedy manner.

DOE personnel responsible for replies to consumer questions vary according to the nature of the inquiry. Professional staff with specific knowledge of the program in question respond to the majority of inquiries. In the case of the Office of Consumer Affairs, a professional will coordinate by phone with the appropriate program offices or other Federal agencies. OCA, however, makes a conscious effort to force consumer inquiries out into the program and policy offices charged with developing policies and programs responsive to consumers' needs.

Some 15 to 20 publications are currently on file in the OCA for enclosure with response to consumer inquiries. These include material

published by FEA, ERDA, HUD, CSA, and DOE. Among those requested by consumers or enclosed in responses to them are the following:

Insulate your Hot Water Heater and Save Fuel
New Energy Saving Light Bulb
Energy Checklist for Builders and Home Buyers
Home Energy Savers' Workbook
Save Energy: Save Money!
1978 Gas Mileage Guide
How to Save Money by Insulating Your Home
Energy Conservation and Environment Publications
Project Retrotech: Instructor's Kit for Home Weatherization Course
In the Bank or Up the Chimney? A Dollars and Cents Guide to Energy-Saving Home Improvements
Winter Survival
Survey of Residential Utility Costs 1975-1977
Buying Solar
Tips for Energy Savers
Understanding Your Utility Bill
Directory of Federal State and Local Consumer Offices.

As almost every office within the Department plays some part in responding to consumer questions as a permanent part of their regular responsibilities, no budget figure is available to indicate DOE's expenditures on responding to consumers or man-hours spent in preparing responses.

Question #17

During his campaign President Carter cited the need for horizontal divestiture of the major oil companies. Both Deputy Secretary O'Leary and Interior Secretary Andrus made public their support of legislation in this area. Recently, however, Secretary Schlesinger stated that the Administration has no plans to break up the horizontal integration of major oil companies. The Secretary also recently said major oil companies need to get into coal and alternative energy production. Can you explain in detail the reasons for this major policy shift, who was responsible for the shift, what economic and social policy theories have been used to justify the shift, and what was relied upon to make this shift? Does the President stand by his original position or does he agree with Secretary Schlesinger?

Answer:

There are very real concerns which surround the issue of horizontal diversification which must be faced and resolved as rapidly as possible. Energy is a vital resource which serves as the underpinning of our economy. As a result some members of the public are concerned that if the oil and gas industry is not competitive, and that if oil and gas firms gain control of alternative energy industries, they will transfer market power to these industries and restrict production and raise prices. They are also concerned that where oil and gas firms control competing supplies of energy, they will suppress technology and development in one area in order to maximize profits in another.

On the other hand, there are competing concerns that alternative energy resources will not be develoepd in a timely fashion to meet the nation's needs if oil and gas companies are excluded or discouraged from investing in these areas.

We believe that further analysis is required before the issue of horizontal diversification can be fully resolved. Several key questions must be answered. For example:

- Is the oil and gas industry itself competitive?
- If not, can it transfer market power to other energy industries?
- Are oil, gas, coal, uranium, geothermal and solar substitute fuels in the energy market such that reduced supplies of one fuel may increase demand for one or more of the others?

- o To the extent of its present involvement, has the oil and gas industry produced its alternative resources as rapidly as possible?
- o What would be the impact of a limitation or prohibition on horizontal diversification on future energy supplies?

While many of these questions have been addressed in past studies, we do not believe they have been fully answered. The Department of Energy, through the Office of Competition, using data and analyses from the Energy Information Administration, will undertake the task of resolving these issues. Once that task is completed, we are prepared to face the results and take appropriate action as necessary.

Statements by the President and other Administration officials on this subject reflect their concerns with this problem. That concern is still present and is reflected in our commitment to resolve the remaining issues as rapidly as possible.

Secretary Schlesinger's recent comments reflect the view that until the results are in, we do not plan to restrict investment by the oil industry in alternative energy sources.

Question #18

Will the Department of Energy continue to allow major oil companies to buy up Federal coal, uranium, geothermal, oil shale, oil and gas and other energy mineral leases? Or will the Department set up procedures and guidelines to limit the extent to which oil companies increase their ownership of these competing resources? If such procedures and guidelines aren't being set up, who is responsible for the decisions not to set up such guidelines and why, since the Department of Energy Act specifically mandates that competition in the energy area should be encouraged and requires DOE to establish regulations in this area?

Answer:

As authorized by the Department of Energy Organization Act (DOEA), the Department of Energy now plays an important role in (1) developing new Federal energy leasing procedures, (2) conducting lease sales, and (3) monitoring the progress of exploration, development and production from leases after sale. A major objective--one emphasized by Congress in the DOEA--is expanding the opportunities for firms to bid for Federal leases and become active in all phases of energy production. Maintaining and improving competition in related energy activities, i.e., refining, distribution, marketing, etc., is an important consideration in developing new Federal leasing procedures and regulations. Currently, the Department of Energy and the Department of Justice are working to develop procedures and regulations under which competitive analyses of Federal leasing programs and sales will be conducted. These examinations will determine the extent to which (1) certain bidding arrangements (e.g., joint bidding by certain parties) could affect competition for Federal leases, or (2) the issuance of leases to certain parties could adversely affect the availability and cost of energy in relevant markets. The Secretary of the Interior will be empowered, once regulations are issued, to act as required to prevent non-competitive situations from developing in energy markets or as a result of Federal leasing programs.

Question #19

How will DOE help foster competition in its award of major contracts on coal technologies? What will its criteria be in the awarding of contracts? Will major oil companies receive massive funding to develop coal and alternative sources of energy?

Answer:

DOE fosters competition by using competitve Requests for Proposals (RFP) and evaluation of responses by a Source Evaluation Board. Ultimate selection is made by the Secretary, the Under Secretary, or the DOE official responsible for the relevant program area depending upon the dollar value of the contract.

Each competitive RFP spells out in great detail the evaluation criteria for the respective technologies or services. Such criteria might include industrial experience, technical expertise, and demonstrated commitment of resources (money, material and manpower).

Should a major oil company submit a proposal, and that proposal was technologically superior and its price was determined to be competitive, then the proposal would receive favorable consideration. Generally, it is not pro-competitive to exclude firms from eligibility to bid on a contract. However, particular situations might warrant such exclusion if, for example, adverse competitive impacts outweigh other policy objectives. At present, we are addressing the issue of whether DOE has the authority to exclude classes of firms should competitive conditions warrant doing so.

Question #20

Recent evidence indicates that the Federal Government does not even know the extent of oil, gas, coal, uranium, geothermal steam and other resources companies own and/or control on Federal lands, or the extent of resources in unleased areas. There is no centralized data collection system. How can the DOE interact with the Department of Interior on leasing policy when the most basic information is either unknown, difficult to produce or unreliable?

Answer

Measuring the extent of energy resources is, at best, an imprecise "science," particularly in areas with little history of exploration or production.

The Department of Energy (DOE) currently collects information on control of uranium resources and ownership of uranium mineral rights on all categories of lands including Federal lands. The DOE is also developing two systems that will significantly improve existing data on U.S. energy reserves and resources. These systems will indicate the extent of energy resources under Federal lease to private companies. The first is a reporting system to update the previous Federal Energy Administration report on oil and gas reserves they control. Second, the Financial Reporting system (FRS) is in the final development stages. It will provide, on a regular basis, data on company controlled energy reserves. Specifically, the FRS will provide data on company-controlled coal reserves located on Federal lands, and the geothermal steam, oil shale, and tar sands acreage under lease from the Federal Government. These data will augment existing information on reserves compiled and

maintained by the Bureau of Land Management and the U.S. Geological Survey, and should provide a better picture or exactly how Federal lands are being utilized.

The ability of the DOE and DOI to formulate sound pro-competitive leasing policies will depend to a considerable extent on our ability to ascertain what firms or classes of firms have obtained leases in the past. A continuing effort must, therefore, be made to upgrade our information base.

Question #21

In the recent weeks there have been newspaper reports on the Department of Energy's Phase II Energy Plan which in effect will call for taxpayer subsidization of synthetic fuel production. Leaving aside the merits of such a policy, what steps are being taken to review the competitive impact such a policy would have?

- What standards will be used to determine whether a company is eligible to receive taxpayer subsidies?
- Will these standards include competitive standards, i.e., impact on future structure of the energy industry and key segments of that industry?
- Will, for example, companies who have been found guilty of violating the antitrust laws, or who have violated the regulations of the Federal Power Commission (now FERC) or the Federal Energy Administration (now part of DOE) or the Securities and Exchange Commission be allowed to participate in the synthetic fuels program?
- If these standards are not being used or considered, what is the reasoning and justification for not using them?
- Will small companies utilizing renewable energy also get such tax breaks?

Answer

The second phase of the Department of Energy (DOE) Energy Plan is still in its formative stages. It is therefore impossible to know at this time what portion of the Plan will consist of direct taxpayer subsidies, or regulatory and other initiatives.

To the extent that the plan calls for taxpayer subsidies in the form of contracts with specific companies, the decisions as to which companies obtain such contracts will be made in accordance with the Federal Procurement Act and regulations.

Under this system a Competitive Request for Proposals (RFP) is made. Evaluation of responses is conducted by a DOE Source Evaluation Board. Ultimate selection is made by the Secretary, the Under Secretary, or DOE official responsible for the program area depending upon the dollar value of the contract.

Each competitive RFP spells out in great detail the evaluation criteria for the respective technologies or services. Such criteria might include industrial experience, technical expertise, and demonstrated commitment of resources (money, material and manpower).

The present or future competitive structure of the industry in question should also be a factor in determining which companies or classes of companies are eligible to bid on contracts. The DOE is determining whether it has the legal authority to exclude firms from the bidding process based on such competitive considerations.

The DOE does not exclude firms from bidding because of past violations of Federal laws or regulations.

Small companies receive special consideration under the procurement process by the Small Business Set Aside Program. In addition, every effort will be made to develop technologies of sufficiently small scale to attract small companies.

With regard to the Energy Plan in general, competition is an important factor at each stage of its development. The competitive impact of each alternative program will be assessed and the results incorporated into the process by which particular initiatives are selected.

Question No. 22

During his campaign and in his presentation of the National Energy Plan, President Carter declared that vertical accountability would be an important part of his energy program. Moreover, the DOE Act and previous energy legislation mandates the collection and dissemination of this energy data. Recently, however, the Department of Energy asked for comments in the Federal Register on reasons why it should keep some of this assumed "confidential information" within the confines of the Office of Energy Information and not share it with the Justice Department, the FTC and the SEC.

a. Isn't the DOE violating the DOE Act and the Energy Supply and Environmental Coordination Act by even asking the qeustion as to whether or not it should share energy information? If not, why not?

Answer

The Department of Energy Organization Act and previous energy legislation authorize and direct DOE to collect data concerning the

financial performance of vertical segments of energy producing companies. The Department presently is well advanced in the preparation of the Financial Reporting System designed to acquire this information and has started the technical test of the operation of this system with selected respondents.

The recent Federal Register notice, referred to, announced a public hearing and solicited comments on the broad question of the establishment of DOE policy on disclosure to other Federal agencies of DOE-held data determined to be confidential. The question of disclosure of data to the public was not the subject of the Federal Register notice. Disclosure of confidential information to the public is governed by both the Freedom of Information Act, which exempts from mandatory release secrets and other confidential information, and a criminal provision in the United States Code which prohibits the release of certain confidential data unless "authorized by law." These constraints upon disclosure of information to the public are specifically set forth in those provisions of the DOE Organization Act and other statutes which direct the DOE to make available to the public information obtained by the Department.

With regard to the Energy Supply and Environmental Coordination Act of 1974, Section 11(d) of that statute sets forth certain provisions concerning interagency disclosure of data obtained by the DOE. However, that section applies, by its own terms, only to "information obtained

under this section." Most of the information collected by the DOE and its predecessor organizations has not been collected under the authority of ESECA. The other statutes which have provided the authority for collection of data are silent on the subject of disclosure to other Federal agencies. The ESECA statute, as distinct from other data gathering authorities, is somwhat cumbersome administratively in that it requires a formal determination of the confidential status of any data to be collected under that statute. Most data collected by the FEA and now DOE has been collected under statutes other than ESECA. Where determined to be confidential, these data have not been released to other agencies and departments.

Under the DOE organization Act, the Energy Information Administration, the central data collection office within the Department, must provide to any other DOE office information in the possession of EIA which the requesting office determines relates to its functions.

b. The object of collecting the data was to provide the Government with the information necessary to oversee the activities of the energy industry: to insure competition and to protect consumers. How can these objectives of the DOE Act be met if the energy information and data collected are not shared with the key governmental enforcement agencies in these areas and with the public? Shouldn't the burden of proof for keeping energy data confidential be on the companies themselves?

Answer

As the National Energy Plan and the DOE Organization Act make clear, the Government has a strong interest in promoting competition

in the energy industry and in protecting the consuming public in the energy policymaking process. The statistical data being sought by the Financial Reporting System are intended in large part to enable the Government to make basic public policy decisions concerning the energy industry. To make these decisions properly and promptly, we must ensure that the Department's statistical data gathering operations function efficiently and with a high degree of technical precision. In determining a DOE policy on the dissemination of confidential data to other Federal agencies, we must carefully consider whether honoring requests from other agencies might serve to result in adverse effects which, notwithstanding the ample information gathering authorities available to DOE, could delay the DOE information gathering process so as to impair its statistical viability. This is one of the questions being studied as we review the comments received in response to the above mentioned Federal Register notice.

Question No. 23

How many billions of taxpayer dollars are dispersed by the Department of Energy for contracts and research and development grants? What steps are being taken to ensure that not only will these contracts and grants be offered in a way that does not further restrain energy markets where competition is at a minimum but also contributes positively to such competition?

Answer

It is projected that, for FY 1978, $11.6 billion will be dispersed in all forms of procurement and financial assistance. Of this, $3 billion

will be paid to state and local governments, and $8.6 billion to private industry.

DOE fosters competition in its procurement process by using competitive Requests for Proposals (RFP) and evaluation of responses by a Source Evaluation Board. Ultimate selection is made by the Secretary, the Under Secretary, or DOE official responsible for the relevant program area depending upon the dollar value of the contract.

Each competitive RFP spells out in great detail the evaluation criteria for the respective technologies or services. Such criteria might include industrial experience, technical expertise, and demonstrated commitment of resources (money, material and manpower).

The present and future competitive structure of the various energy industries should also be a factor in determining which companies or classes of companies are eligible to bid on contracts. The DOE is determining whether it has the legal authority to exclude firms from the bidding process based on such competitive considerations.

Question No. 24

The current contract awards program seems to favor large solar companies. Does DOE support competition among solar companies, large vs. small-not-necessarily-best vs. not-so-well-put-together-or efficient?

Answer

The Department of Energy places high priority on fostering competition among new technologies. As alternative sources of energy supply

such as solar energy are developed, it will be extremely important to maximize the degree of competition among prducers of such supplies. This can be done in two ways: First, by fostering the participation of as many firms as possible in any one area of proven technology; and secondly, and more importantly in the formative stages of an industry, by ensuring a diversified spectrum of competing technologies which can create healthy submarkets and draw even greater numbers of firms into competition.

The current contract and grant award program certainly does not favor solar companies. The solar program has a very favorable record for small business participation in their demonstration program. In one recent Request for Proposals for equipment testing laboratories, a small business target of 25 percent was set. In a second recent request, a Program Opportunity Notice for commercial building demonstrations, a goal was set to award 50 percent of available funds to proposers using systems manufactured or supplied by small business firms.

In addition, the $3 million appropriate technology program, now in its pilot phase under the Assistant Secretary for Conservation and Solar Applications, is specifically designed to assist individuals, small businesses and local communities in contributing their talents to energy technology development. Dispersed solar utilization is a major component of the appropriate technology effort.

Question No. 25

In the funding of new energy technology, which is so vital to the country's growth and development, what steps are being taken to monitor and prevent the buying up and acquisition of energy technology patents by major energy companies? How does the Department of Energy intend to protect inventors and small firms from larger companies seeking to acquire such energy patents and technologies? Are the offcials responsible for energy technology development being required to work with DOE officials responsible for competition? In what way?

Answer

Aside from specific contract relationships, the DOE does not have the authority to influence acquisitions or control energy technology. Technology which is created under DOE funding, patentable or otherwise, is made publicly available and patents issued on inventions arising out of the work performed are normally owned by DOE. In those cases where ownership of patents is waived to the contractor under statute, provisions are included in the agreement to ensure utilization of the technology, licensing of such technology to others when necessary, and withdrawal of ownership rights where anticompetitive effects develop as a result of the waiver. In addition, provisions are frequently included which ensure the availability of the contractor's background patents and the technology which the contractor builds upon in the work performed under government sponsorship. Where large energy companies are concerned, these provisions are normally tightened to eliminate exceptions and broadened so that a greater range of background patents and technologies are made available for licensing. Patent and

technical data regulations allow favorable treatment of small businesses in the negotiation of background rights and through favorable treatment in the waiver of patent rights.

In this manner, DOE has the ability to ensure that technologies created under our funding, or previously existing technologies enhanced by our funding, (1) will be available for licensing where necessary to utilize the technologies supported by DOE, (2) cannot be suppressed and/or kept from commercialization, and (3) cannot be utilized in an anticompetitive manner. The DOE patent and technical data regulations require that program, procurement and legal personnel jointly consider the competitive aspects of determinations made with respect to patent and data rights or the acquisition of or the requirement to license such rights.

The Office of Competition will exercise oversight over the competitive aspects of energy technology and patent policy to ensure that continuing efforts are made to foster competition.

Question No. 26

How is the mandate of the DOE Act to promote competition being implemented overall in the Department? Who is responsible? Where do you see the greatest problems in implementing such a policy? What are these institutional constraints? What resources will be allocated to this function staff and funds? Why so little?

Answer

In the Department of Energy Organization Act, Congress expressed that one of the purposes in creating the Department of Energy was "to

foster and assure competition among parties engaged in the supply of energy and fuel. . ." The Act directed the Secretary of Energy to assign the functions and duties of promoting competition to an Assistant Secretary. The assignment was made to Al Alm, the Assistant Secretary for Policy and Evaluation. He has estblished an Office of Competition, and after an exhaustive search, Willima C. Lane, Jr., has been named Director.

The Office of Competition will consist of a staff of 10 professionals. Initial candidates for these positions have been interviewed and screened, and we expect to rapidly staff up to a full working complement. The office will have adequate funds to support this staff and to contract for extensive consulting support.

The Office of Competition will be responsible for two major tasks: First, to ensure that departmental policies and decisions maximize competition; and second, to address the major competitive issues which confront us and make recommendations for legislative or administrative action where necessary.

The first task will be accomplished by providing a set of guidelines and establishing a procedural structure by which each Departmental office will be required to factor competition into its decision-making process. Rapid implementation of this process is extremely important, particularly in the areas where the Department grants subsidies to or regulates the industry. In these areas, Departmental decisions can have

a significant impact on present and future competition. For example, where new technologies are being subsidized, it is extremely important to ensure that a wide range of competing technologies and competing firms are given equal assistance to grow and survive as markets are developing. Where regulations are being written or are already in place, it will be incumbent upon the Department to evaluate their impact on competition, to make necessary modifications, and even eliminate regulations where the competitive harm outweighs potential benefits. Through the implementation of this method of self-policing, we expect to broaden the concern for competition throughout the Department, while at the same time focusing the resources on the Office of Competition on the major or technically more difficult issues.

The second task, longer term in nature will be to take a fresh look at the major issues which underlie the question of whether competitive markets exist in the energy industries, particularly in the oil and gas industry. These issues include the now familiar question of whether oil and gas companies should be restricted in their investment in nuclear, coal and other energy resources; and whether vertically integrated oil and gas companies should be required to divest themselves of all or part of their integrated functions. They further include such questions as whether major integrated U.S. oil firms contribute to the stability of the OPEC cartel; how to stimulate more exploration and production of oil and gas in non-OPEC countries; and the competitive

implications of joint venture activity in the industry. As these issues are resolved, we will make the necessary recommendations for administrative legislative action. Close liaison will be maintained with the Department of Justice and the Federal Trade Commission.

Question #27

Why was it decided not to have an Assistant Secretary for Competition and Consumer Affairs as Congress directed? Who made this decision? Is there a legal opinion supporting this decision and can it be made public? Will the person directly responsible for "Competition" be a member of the Senior Staff of the Department with direct access to all Presidential appointees delegated decisional power, and direct access to the Secretary?

Answer:

Congress did not direct that an Assistant Secretary be designated for Competition and Consumer Affairs in either the Department of Energy Organization Act, PL 95-91, or the legislative history for that Act. Section 203 (a) of the DOE Act provides, among other things, for the establishment of eight Assistant Secretaries. It also provides that the duties assigned to them shall include, but not be limited to, eleven specified areas of responsibility including competition and consumer affairs. The responsibility for consumer affairs has been assigned to the Assistant Secretary for Intergovernmental and Institutional Relations, while the responsibility for competition has been assigned to the Assistant Secretary for Policy and Evaluation. The

Office of Competition was located within Policy and Evaluation to ensure that the Office had early and complete access to the broad range of policy initiatives which involve the various parts of the DOE. No formal legal opinion regarding this assignment of responsibility was prepared at the time DOE was organized, although we believe that the current organization fully comports with all legal requirements. Legislation has been introduced in Congress to create a separate Assistant Secretary for Competition and Consumer Affairs. If that legislation is enacted, DOE organization will be restructured accordingly.

The Director of the Office of Competition, William C. Lane, Jr., will be an Energy Executive Service employee, and will have direct access to the Assistant Secretary for Policy and Evaluation and to the Secretary on matters requiring his attention.

Question #28:

How does DOE plan to fulfill the conference committee NEA requirement for a Coal Industry Performance and Competition Study. What sort of funding and personnel will be allocated to the study? In view of DOE's assumption that the coal industry is already "competitive," can DOE fulfill the Congressional intent of the study (which is to conduct a thorough investigation with the goal of giving consumers "the full benefit of a vigorously competitive coal industry")? Will there be some sort of intervenor or consumer participation funding?

Answer:

The DOE, in anticipation of the passage of all or part of the National Energy Act, has established the apparatus to carry out the Coal Industry Performance and Competition Study. A program office

within the Energy Information Administration will collect the necessary data and carry out the majority of the analyses required for the study. The Assistant Secretary for Policy and Evaluation and the Office of Competition will have the lead on the study, and in coordination with the other agencies and departments assigned to the task, will draw conclusions and make necessary recommendations.

It is not possible to given an overall manpower and funding level for the project at this time. The EIA program office will consist of approximately four persons and will have sufficient funds to carry out its task expeditiously.

The DOE does not assume the coal industry is competitive. This coal study will be part of an intensive effort over the next months and years to resolve this issue.

There are no specific funds available to consumer groups to participate in studies such as the coal study. However, each office in its discretion may issue a request for proposals and contract with consumer groups to provide their analysis. DOE will almost certainly hear the industry's point of view on important issues. The Office of Competition, therefore, plans to ask and pay for consumer analyses as well. We must, of course, set priorities to ensure that funds can be made available when consumer input is most needed. We invite consumers to assist us in establishing those priorities.

Question #29

In a meeting with consumer representatives in December, the DOE Inspector General indicated that he took directions from the Secretary and did not feel it was his role to act independently. On whom are consumers expected to rely to strictly investigate and enforce potential conflicts of interest in view of the thoroughly comprised position of the Inspector General? What specific directives or authority have been given to such an official to insure his or her independence and complete freedom to insulate the Department from the pressures to regulate in the interests of the regulated?

Answer:

The statement made by a representative of the OIG during a meeting with consumer representatives was not an official policy or position statement. The Inspector General reports to and is under the general supervision of, the Secretary, or to the extent such authority is delegated, the Deputy Secretary, but is not under the control of, or subject to supervision by any other officer of the Department.

Sections 203 (d) and (f) of the "Department of Energy Organization Act," PL 95-91, August 4, 1977, set out the relationship of OIG to the Secretary:

(d) The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and within, thirty days thereafter, to the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy

and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.

(f) Notwithstanding any other provision of law the reports, information, or documents required by or under this section shall be transmitted to the Secretary, to the Federal Energy Regulatory Commission, if applicable, and to the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide copies of the reports required under subsection (c) to the Secretary and the Commission, if applicable, sufficiently in advance of the due date for the submission to Congress to provide a reasonable opportunity for comments of the Secretary and the Commission to be appended to the reports when submitted to Congress.

In accordance with the above legislation, the Inspector General performs independently. He reports to the Secretary of DOE and to the Congress. Conflict of interest matters are referred to the Office of General Counsel (OGC). Where OGC determines that circumstances warrant, the necessary action is taken.

Question #30

There are certain processes for development of shale oil which have been funded by the public. Specifically, the Occidental Petroleum Company is being allowed to use a process developed with public money for its own private benefit. Why isn't this process available to companies other than Occidental?

Answer:

The particular process Occidental Petroleum Company is using to recover oil from shale has been developed by Occidental over a period of several years primarily at their own expense. Oxy spent about $40 million on development research before entering into a $60.5 million cost-shared cooperative agreement with DOE (DOE-71%, Oxy-29%) and has several patents on the process and the associated technology.

On the basis of Oxy's cost-sharing of about $17 million of the cooperative agreement and its past investment, DOE has waived to Oxy title to patent rights for inventions conceived or first actually reduced to practice in the course of or under the agreement, retaining a royalty free, irrevocable license to make, use and sell the invention throughout the world by or on behalf of the government. The waiver is also subject to a number of conditions, commonly called "march-in" rights, which are directed toward ensuring that Oxy takes effective steps to move the technology into the commercial marketplace, either itself or by licensing others. If Oxy does not demonstrate that such effective steps have been taken or will be taken within a reasonable time, DOE has the right to: 1) terminate the waiver; or 2) require Oxy to grant license to third parties.

In addition, broad background licensing provisions were negotiated whereby Oxy, solely at DOE's request, has agreed to license responsible third parties under patents to waived inventions and the Oxy background

patents and proprietary data rights that are necessary to practice the subject of the contract.

Question #31

International energy decisions have a major impact on competition. Why are all the IEA meetings closed? Why is there no consumer representative at these meetings as provided for in the DOE Act? Why is there no information to the public as to the discussions and activities at these meetings? Why are transcripts of the proceedings censored?

Answer:

There are two types of International Energy Agency (IEA) meetings. One type is intergovernmental meetings involving representatives from IEA member country governments. Like other international meetings such as those held by the OECD, these are not open to the public. The second type of IEA meeting involves meetings of industry members who have been requested to advise the IEA on specific subjects. Most of these meetings have concerned advisory work in structuring a system for the international allocation of oil should there be an oil supply disruption. These meetings are closed to the public principally because emergency reallocation plans should not be disclosed to those who might wish to initiate or take advantage of a supply disruption. If such meetings were open to the public, countries which might be involved in any future embargo could attend and design a supply disruptionn which would make IEA allocation contingency plans less viable or plan countermeasures to frustrate the IEA allocation plans.

With specific reference to the question of consumer representation, we are not aware of any provisions in the DOE Act which require consumer representation in IEA matters. Such meetings are not advisory committees within the meaning of Section 624 of the DOE Act and the U.S. Government does not select the committee membership. The industry groups do not advise the U.S. Government. Rather, they advise the IEA. Finally, section 252 of the Energy Policy and Conservation Act provides a limited antitrust defense for U.S. company participation in IEA advisory groups. Section 252 contains a number of specific requirements that all meetings be monitored by U.S. Government representatives and that a full and complete record be maintained. Both the Department of Justice and the Federal Trade Commission have been very active in monitoring IEA industry meetings. The requirements of section 252 strike a balance between the need to ensure an acceptable international cooperative effort and the need to ensure that industry activities are closely monitored.

Some information is made available to the public concerning the discussions and activities of the IEA, including partial transcripts of meetings involving industry representatives. For the reasons discussed above, and because of foreign company and country involvement, portions of such transcripts have been given a security classification by the Department of State. Such classification is based on the standards set forth in the Executive Order which deals with classification of documents.

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