REPORT OF THE COMMITTEE ON COAL CONVERSION

I. LEGISLATIVE DEVELOPMENTS

In 1980, the Carter Administration proposed a so-called "oil blackout" program to provide incentives for electric utilities to convert their facilities from burning oil and natural gas to burning coal. The Administration proposal consisted of two parts. During Phase I, 107 identified utilities would be required to reduce their oil use by 50% during the 1980-1985 period and would be eligible for the lesser of 50% of the capital costs of that conversion or $4 per barrel of oil displaced. During Phase II, grants and "forgivable loans" would be available as incentives for utilities not identified in Phase I to reduce their oil use by 50% during the 1980-1990 period. The Administration's proposal was introduced in the Senate by Wendell Ford as S. 2470 and in the House by Harley Staggers as H.R. 6930.

The Senate Energy Committee held hearings on S. 2470 and approved a bill which was subsequently amended and passed by the full Senate by a vote of 86-7 on June 24. The Senate measure provided a plan to make utilities owning 80 identified powerplants eligible for grants and loans of up to 75% of the cost of conversion from oil and gas to coal. Those 80 plants would be eligible for an initial 25% grant, provided that those companies which proved a need for assistance beyond the 25% grant would be eligible for an additional 25% grant and a loan covering 25% of the cost of conversion. The bill also contained a Phase II voluntary program similar to the Administration's proposal.

The House Interstate and Foreign Commerce Committee also held hearings on the Administration proposal. Subsequent to those hearings, at which environmentalists expressed concern about increased acid rain problems resulting from conversion to coal, Representative Dingell introduced H.R. 7809. The Dingell bill differed both from the Administration proposal and from the Senate-passed bill. Dingell's bill proposed to provide the 80 designated plants grants and loans of 70% of the cost of conversion only if the plants met stringent air quality standards. Otherwise, the 80 plants would be eligible for assistance covering 30% of their costs only if they installed sulfur emission controls. Phase II of the Dingell bill also required air quality controls before companies which voluntarily converted would be eligible for assistance. No hearings were held on the Dingell bill, and the House Committee failed to report a utility coal conversion measure.

Other legislation was introduced in 1980 to provide oil backout measures and to amend the Powerplant and Industrial Fuel Use Act of 1978, but none was enacted.[1]

II. AGENCY ACTIONS

The Powerplant and Industrial Fuel Use Act of 1978 ("the FUA") prohibits after May 8, 1979 new powerplant and major fuel burning installation ("MFBI") boilers from using oil or natural gas as a primary energy source without an

[1]H.R. 7341, 2428, 4434, 5669, 6627, 6807, 7449, 6999, 7500.

exemption from the Economic Regulatory Administration ("ERA"). It further authorizes the ERA to prohibit oil and natural gas from being used in existing powerplants, existing MFBI's and new non-boiler MFBI's.

A. Rulemakings

Following more than two years of protracted and often bitterly contested rulemaking proceedings, ERA has now adopted final FUA regulations covering most elements of its regulatory program. On June 6, 1980, ERA published final regulations regarding general definitions, administrative procedures and sanctions and, with the exception of the cost and cogeneration exemptions, exemptions for new facilities.[2] On August 12, 1980, it published final existing facilities regulations.[3] On December 24, 1980, final regulations implementing the FUA "cost" exemption were issued.[4]

The final regulations relax many of the regulatory restrictions contained in the interim regulations on the use of natural gas and petroleum for emergency purposes or uses which are excluded from the definition of primary energy source. Further, the final regulations substantially reduce the barriers to the use of natural gas and petroleum during temporary emergency conditions and unanticipated outages. ERA has also removed the ceiling limiting the amount of gas and oil that could be used for start-up, ignition, and similar uses in a unit to no more than 5% of the total Btu heat input of the unit. In lieu of the ceiling imposed in the interim regulations, ERA now allows companies to use whatever volumes are required for those purposes, subject to the requirement that they file a report with ERA justifying any consumption in excess of 15% of the total annual heat input of the unit. ERA has altogether eliminated filing fees in the final regulations and has provided truncated filing requirements for various so-called "limited use" exemptions (*e.g.*, the exemptions for peakload powerplants and mixtures containing 25% or less oil or natural gas).

The changes made in the final existing facilities regulations were less sweeping. ERA did, however, modify the "substantial derating" finding. In order to issue a prohibition order, the FUA requires ERA to find, among other things, that the use of coal or alternate fuels would not cause a substantial reduction in the rated capacity of the unit. ERA originally proposed to disregard deratings of less than 25%, with deratings above that considered on a case-by-case basis. The final regulations reverse that approach. Any derating of 25% or more will now automatically be deemed substantial. Smaller deratings will be considered on a case-by-case basis.

The final cost test regulations generally allow greater use of firm specific data in calculating the cost of using coal or other alternate fuels, although the exemption criteria still make it extremely difficult to obtain a cost exemption in most cases. Contrary to the position of many commentators, ERA still insists on applying this cost test as part of its determination whether to issue final prohibition orders to existing facilities.

While the structure of the final regulations was for the most part in place at the end of 1980, several discrete elements of the regulations have not yet been

[2] 45 Fed. Reg. 38275 (June 6, 1980).
[3] 45 Fed. Reg. 53861 (Aug. 12, 1980).
[4] 45 Fed. Reg. 84967 (Dec. 24, 1980).

finalized. Most importantly, ERA's proposed amendments to its interim cogeneration exemptions are still pending.[5] Also outstanding at the end of the year were proposed revisions to ERA's National Environmental Policy Act regulations as they relate to certain FUA exemptions[6] and a Notice of Inquiry which requested public comment on whether ERA should establish formal guidelines on the fuels, technologies, mixtures and conservation measures to be considered in applications for exemptions.[7]

B. Prohibition and Exemption Proceedings

ERA's prohibition activities in 1980 continued to focus primarily on electric utilities. ERA issued a number of additional proposed prohibition orders to electric utilities during the year while continuing to process the proposed electric utility prohibition orders issued in 1979. The one proposed prohibition order issued by ERA to an industrial major fuel-burning installation was later withdrawn because of the company's agreement to switch to coal.[8] ERA still has not made any proposed prohibition order final.

III. JUDICIAL PROCEEDINGS

The petitions for review originally filed by various industrial and electric utility companies of the interim FUA regulations were held in abeyance throughout 1980, pending issuance of the final FUA rules. Each of the final regulations issued last year has now been appealed and is before the United States Court of Appeals for the Fourth Circuit. With the issuance of the final cost test regulations, the parties have proposed to the court that the cases be reactivated with briefing to be completed this summer. The court has not yet acted on those recommendations. Among the major issues likely to be raised in the appeal are ERA's criteria for issuance of prohibition orders, the scope of ERA's authority to regulate non-MFBI equipment through its power to make exemptions conditional, and ERA's treatment of the mixtures exemption.

IV. MISCELLANEOUS ACTIONS AFFECTING COAL UTILIZATION

A. Synthetic Fuels From Coal

There was renewed emphasis in 1980 on expanding coal utilization by providing federal financial assistance to the development of synthetic fuels from coal. On June 30, 1980, President Carter signed into law the Energy Security Act. Title I of that omnibus energy act creates the United States Synthetic Fuels Corporation ("the Corporation") and establishes national goals for the domestic production of synthetic fuels.

The Corporation is an independent Federal entity that will function as a financial enterprise empowered to provide the following types of assistance to private industry for commercial synthetic fuel projects:

[5] 45 Fed. Reg. 53367 (Aug. 11, 1980).
[6] 45 Fed. Reg. 53199 (Aug. 11, 1980).
[7] 45 Fed. Reg. 62525 (Sept. 19, 1980).
[8] J.P. Stevens and Co., Inc., 45 Fed. Reg. 47096 (July 17, 1980); 46 Fed. Reg. 3040 (Jan. 13, 1981).

- purchase agreements, price guarantees and loan guarantees up to 75% of the project costs
- direct loans up to 40% of initial estimates of project costs, or if such limits would prevent the financial viability of the proposed project, up to 75% could be authorized
- an equity interest in a joint venture (where the Government could provide up to 60% of project costs) for commercial modules prior to approval of the comprehensive strategy for synthetic fuels development

The powers of the Corporation are vested in a Board of Directors comprised of 7 members appointed by the President and confirmed by the Senate for staggered terms. Financial resources are to be made available to the Corporation for a 12-year period. The Corporation's authority to obligate funds ceases after September 30, 1992, and its operations must be terminated by September 30, 1997.

The national goals established by Congress in the Energy Security Act include the domestic production of synthetic fuels equivalent to 500,000 barrels per day of crude oil by the year 1987, increasing to 2 million barrels per day by the year 1992. To attain these goals, the Corporation has an initial authorization of $20 billion. The Corporation is required within four years to submit for Congressional approval a comprehensive strategy for achievement of the national goals. Contingent upon such Congressional approval, the Corporation may then receive further budget authority up to an additional $68 billion.

Two financial programs were created to fund synthetic fuel development until the Corporation's operations were underway. One of those programs, administered by the Department of Energy under the Federal Nonnuclear Energy Research and Development Act of 1974, was funded by P.L. 96-126 for up to $2.208 billion. The second program, under the Defense Production Act, Title I (A) of the Energy Security Act, was funded by P.L. 96-304 for $3 billion. If these funds are uncommitted when the Corporation becomes operational, they will be transferred to the Corporation.

B. Great Plains Coal Gasification Project

On December 8, 1980, the U.S. Court of Appeals for the D.C. Circuit ruled that the Federal Energy Regulatory Commission ("FERC") lacked jurisdiction to issue a certificate of public convenience and necessity to Great Plains Gasification Associates to facilitate the construction and operation of a coal gasification plant.[9] In striking down FERC's attempt to use its certification and rate setting powers to make possible financing for the construction of a non-jurisdictional plant, the court ruled that FERC exceeded its statutory authority under the Natural Gas Act by creating a ratepayer-based financing package for the construction of such a demonstration project and by purporting to regulate the construction and preoperation period of the plant. In the words of the court, ". . . the Natural Gas Act does not vest FERC with authority to promote commercial coal gasification plants. . . ." (Slip Op. at 33).

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[9]Office of Consumers' Counsel v. FERC (No. 80-1303), General Motors Corporation v. FERC (No. 80-1316), Public Service Commission of the State of New York v. FERC (No. 80-1321), and State of Michigan v. FERC (No.-18326).

C. Coal Transportation

Coal transportation issues were dominated by enactment of the Staggers Rail Act, P.L. No. 96-448. This law made major changes in the availability of the Interstate Commerce Commission ("ICC") to review the maximum reasonable level of rates. The ICC is barred from reviewing any rate whose "revenue-to-variable cost ratio" is less than 160 percent; in succeeding years, this jurisdictional figure will rise under a schedule set in the Act.

The Act also provided authority for carriers and shippers to enter into rail transportation contracts.

Two major court decisions were issued at the end of the year. In *Central Power & Light Co. v. Icc*, Nos. 80-1068, 1172 (5th Cir. Dec. 15, 1980), the court rejected the ICC's determination that a coal rate for utility coal was not subject to ICC review; and in *Celanese Chemical Co. v. U.S.*, No. 78-3651 (5th Cir. Dec. 11, 1980), the same court held that the ICC's calculation of a reasonable rate was wrong because it failed to consider adequately the effect of the national energy policy and the importance of coal to that policy.

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