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THE WHITE HOUSE

WASHINGTON

August 19, 1978

MEMORANDUM FOR THE PRESIDENT

FROM: STU EIZENSTAT

SUBJECT: Federal Energy Regulatory Commission Memorandum

Attached is a front page article in The Washington Post about which you are likely to be asked when you make your calls to the Senators and Congressmen this weekend as suggested by Secretary Schlesinger and Congressional Liaison. These calls are important to lock people in at an early stage.

The thrust of this article is that the Federal Energy Regulatory Commission (FERC) feels that the bill is so complex and contradictory that it cannot be administered by them.

You can actually use this article to your advantage because it points out the lengths to which the opponents to our compromise will go to try to beat the bill.

This memorandum was written weeks ago about an earlier draft. Based on the memorandum the FERC staff participated with the Department of Energy staff and the staffs on the Hill to correct the problems in the draft legislation pointed out in the memorandum.

The necessary changes have now been made in the gas bill cleared by the conferees and the FERC is satisfied that they can enforce the bill with the changes that have been made, in part at their direction.

There is no reason to raise this issue if it is not brought up but, as I suspect will be the case, if some raise it the above should provide a completely adequate counter-argument. The Department of Energy people have told me that Senator Metzenbaum leaked this memorandum about the old draft to create confusion.

The Problems With Enforcement

By William Greider
Washington Post Staff Writer

President Carter's federal regulators have prepared an analysis of his natural-gas bill which says the proposal is "so complex, ambiguous and contradictory" that it will be impossible to enforce.

The 26-page memorandum, invoking unusually strong language, was written a week ago by Sheila S. Hollis, enforcement director of the Federal Energy Regulatory Commission, which must implement the gas-pricing measure if Congress enacts it.

"The bill is not necessarily a 'good' bill or a 'bad' bill," Hollis wrote to FERC Chairman Charles B. Curtis. "It is merely impossible to administer conscientiously."

Since Hollis wrote her critique, the legislation has been revised extensively, in part to eliminate the technical problem about which she raised questions. However, some congressional analysts said yesterday that other revisions will extend some of the problems cited in her memo.

Hollis said she will stand by her analysis until she can study the many revisions privately drafted this week by congressional leaders, who were trying to round up support for the House-Senate compromise. "I think there have been changes, some of which are in our favor, some of which I don't know," she said. "Part of the problem is that one word can make a lot of difference."

In her general statements on the measure, Hollis emphasized its great complexity, which includes by some counts at least 17 different categories of natural gas prices, and questioned whether the federal regulatory commission could keep up with it.

"The enforcement problems are compounded by the opaque quality of many of the pricing provisions," Hollis said. She predicted years of litigation, including the likelihood of numerous Supreme Court cases,

See ENFORCE, A6, Col. 1

Problems With Enforcing Bill Cited

ENFORCE, From A1

before the federal commission and the state regulatory commissions will be able to settle all of the ambiguities of prices.

This echoes the complaint voiced by many small independent producers in the gas industry, but Hollis also pointed out that the complicated price mechanisms might give producers a chance to overcharge for their natural gas without getting caught.

"The potential for abuse is thus enormous," she wrote, "particularly in view of the fact that each producer is responsible for designating the pricing categories into which production from each source falls. Because of the economic incentives to classify production in the highest-priced category, every ambiguity will become an obstacle to fair and effective enforcement of the pricing structure."

Hollis noted that natural-gas drilling is on the upturn, with 11,000 wells completed in 1977 and more expected this year. "Even if only a tiny percentage of these decisions are contested at the commission level," she wrote, "effective administration will be made extremely difficult, if not impossible."

Leslie Goldman, a key planner and legislative draftsman at the Department of Energy, said the final draft eliminates "all of the principal concerns in that memo" and he expressed confidence that FERC officials will agree when they have restudied it.

FERC Chairman Curtis, in a letter to Sen. Howard Metzenbaum (D-Ohio), said that he "remained hopeful" that the latest revisions have solved the problems. Curtis, however, said he must reserve judgment until the new draft is analyzed.

According to several congressional staffers who have studied the new version of this 171-page bill, it now incorporates many of Hollis' suggestions—clarifying FERC's authority to oversee the price decisions of state commissions, authorizing FERC to order refunds for overcharges and maintaining authority over pipeline contracts until most natural gas is deregulated in 1985.

However, in other areas, the new version reportedly deepens some problems. One of the major and potentially costly issues is the freedom that gas producers in states like Louisiana and Texas will have to switch their production from the price-controlled interstate market to the higher prices of the uncontrolled markets within their states, without getting permission from Washington.

The new draft effectively reverses a May Supreme Court decision, which held that all gas acreage once committed to the interstate pipelines must continue to sell its production to interstate users, even if the land changes owners and contracts expire.

The new bill would erase that Supreme Court ruling and also give the same freedom to three price categories of production—the newly discovered gas, the high-cost gas drilled at greater depths and "special development" gas, which comprises new wells drilled on old reservoirs. No one at this point seems able to estimate reliably the cost of this concession to the producer states.

In her memo, Hollis complained that the commitment of gas production to interstate sales should be maintained in the law "to assure a constant and dependable supply of natural gas to the interstate market at the appropriate, lawful price."

In general, Hollis said the measure is so complex that nobody can make an authentic estimate of its impact on the nation's use of natural gas and its increased cost.

"The provisions are so involved," she wrote, "that the Office of Enforcement fails to understand how any reasonably accurate assessment of the price and revenue impact could be made."