

**DOCUMENT RESUME**

07098 - [B2567584]

[Department of Energy Expenditures in Connection with Solar Energy Programs]. EMD-78-107; B-178726. September 7, 1978. 10 pp.

Report to Rep. Tom Bevill, Chairman, House Committee on Appropriations; Public Works Subcommittee; Rep. John T. Myers, Ranking Minority Member; by Elmer B. Staats, Comptroller General.

Issue Area: Prospects for Transition to Essentially Inexhaustible Energy Resources. (1612).

Contact: Energy and Minerals Div.

Budget Function: Natural Resources, Environment, and Energy: Energy (305).

Organization Concerned: Department of Energy.

Congressional Relevance: House Committee on Interior and Insular Affairs; Senate Committee on Environment and Public Works. Rep. Tom Bevill; Rep. John T. Myers.

Authority: Treasury, Postal Service and General Government Appropriation Act (P.L. 95-81; 91 Stat. 355). Department of Energy Organization Act (P.L. 95-91). (P.L. 95-253; 92 Stat. 186). 42 U.S.C. 5813. 42 U.S.C. 5903. 15 U.S.C. 779. 42 U.S.C. 5555(b). 31 U.S.C. 628. 31 U.S.C. 673. 18 U.S.C. 1913. H.J. Res. 715 (95th Cong.).

Concern was expressed about the appropriateness of Department of Energy (DOE) expenditures which were reportedly made to influence national policy and legislation. These expenditures related to \$187,000 granted to the organizer of Sun Day and for travel by advocacy groups to meetings held in Washington on August 4-6 and 8-9, 1978. The purpose of the grant was to obtain for each State public interest group views on solar energy potential, barriers to the realization of that potential, and methods for eliminating those barriers. There was no basis for concluding that the expenditures violated any legislation with regard to appropriated funds with the exception of payment of per diem for part of August 6. DOE questioned the activities carried out during that portion of the meeting because they may not have been directly relevant to the grant and may have involved preparations for a new group using lobbying as part of its functions. (RRS)



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

7584

B-178726

September 7, 1978

The Honorable Tom Bevill, Chairman  
The Honorable John T. Myers, Ranking  
Minority Member  
Subcommittee on Public Works  
Committee on Appropriations  
House of Representatives

In your joint letter dated August 9, 1978, you expressed concern about the appropriateness of Department of Energy (DOE) expenditures which reportedly were made to influence national policy and legislation. The expenditures in question related to a \$187,000 grant to the organizer of Sun Day <sup>1/</sup> and to travel by advocacy groups to two separate meetings held in Washington on August 4-6 and 8-9, 1978. You asked us to determine whether the expenditures were made and if they were appropriate in relation to certain legislation governing the expenditure of funds appropriated to support solar energy programs. You also asked whether DOE has made similar expenditures in other areas.

Because of your request to have our report by September 5, 1978, it was necessary for us to limit our review in certain areas. At your request, we obtained only oral comments from DOE on this report. These comments have been incorporated where appropriate.

Our review showed that expenditures for the grant and for travel relating to the August 4-6 and 8-9 meetings were made. With one possible exception these expenditures did not appear to violate the legislative criteria you cited. The exception relates to a question which DOE raised as to the allowability of per diem paid for part of August 6. Background on the expenditures, our analysis of their appropriateness, and examples

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<sup>1/</sup>The President, on March 27, 1978, proclaimed Sun Day, May 3, 1978, in Proclamation 4558 at the direction of Congress (Public Law 95-253, March 27, 1978, 92 Stat. 186). It consisted of a day of nationwide activities promoting solar energy.

of other DOE expenditures for public participation in DOE sponsored events follow.

FACTUAL CIRCUMSTANCES  
SURROUNDING EXPENDITURES

The expenditures in question involve the activities of four organizations, namely:

- DOE's Office of Consumer Affairs (OCA);
- DOE's Office of Solar, Geothermal, Electric, and Storage Systems (ETS);
- The Solar Energy Research Institute (SERI), a Government-owned, contractor-operated Federal laboratory; and
- Solar Action Incorporated, a private grantee and organizer of Sun Day.

Our discussions with representatives of these organizations, together with a review of related documents, show that expenditures were made in connection with the meetings in question. The grant and the August 4-6 meeting were related and will be discussed first. The August 8-9 meeting was a separate activity and will be discussed second.

August 4-6 meeting

In response to an unsolicited proposal from Solar Action, OCA gave that organization a \$187,000 grant on March 29, 1978, to run for 6 months, terminating on September 30, 1978. The grant's purpose was to obtain for each State public interest group views on solar energy potential, barriers to the realization of that potential, and methods for eliminating barriers at the local, State, and national levels.

OCA officials said they wanted public interest views because DOE is putting increasing emphasis on obtaining a wider spectrum of input to its policy formulation and because they believed House Joint Resolution 715, which the House passed on March 6, 1978, proclaiming Sun Day, and a January 25, 1978, memorandum from the Secretary of Energy directing DOE support for Sun Day, clearly intended that the public interest generated by Sun Day should be kept alive with follow-on actions. OCA thought the grant was such an action.

According to OCA officials, identifying the barriers preventing solar energy's full use was an important part of their responsibility to promote solar energy. They said the

uniqueness of the barriers existing throughout the United States required that a study be done addressing the barriers over a wide geographic area.

OCA officials further said they approved Solar Action's grant application because (1) the grant objective was viewed as a follow-on to Sun Day which Solar Action was organizing, (2) Solar Action has established a nationwide network of contacts which could cover each State, and (3) Solar Action's activities had given it a national reputation as the lead organization for activities related to Sun Day.

The grant called for Solar Action to develop one report from each State and an overview report. Solar Action set up an organization consisting of a four-person Washington staff, coordinating groups in each of 10 geographic regions, and 1 group in each State.

The grant proposal outlined a schedule in which one person from each regional sponsoring group would meet with Solar Action staff in April to help identify the State groups and plan the program. The regional sponsors were then to convene regional meetings in May, with State meetings to be held in June. A Washington meeting of one representative from each State was scheduled for July to (1) acquaint the members with each other, the Solar Action staff, and representatives of various national organizations, (2) review and critique program plans, and (3) review progress under the grant. Documentation dating as early as May 26, 1978, indicates the planned July meeting had slipped to August 4-6. The grant provided for DOE funds to pay travel and per diem costs to all these meetings.

Solar Action gave us a list of 41 State representatives and regional coordinators who claimed travel and per diem for the August 4-6 Washington meeting. Some attendees served as both State and regional representatives. DOE officials told us per diem was paid through lunch of the third day of the meeting, August 5. However, DOE and Solar Action are discussing disallowing per diem for part of August 6 because there are questions concerning the applicability of some of that day's activities to the grant. According to DOE officials part of August 6 may have been spent on activities aimed at creating an organization which might have lobbying as part of its purpose.

Solar Action selected as regional sponsors persons who had broad contacts with solar interest groups in their respective States. Solar Action and the regional sponsors selected State sponsors who were actively involved in promoting solar energy and who could involve a broad range of participants

within their States. Solar Action's project leader said that although he initially selected State representatives, some State groups which the State representatives organized selected different representatives to attend the Washington meeting. Our very limited contacts with State groups showed that criteria such as availability and interest were among those used to decide who came to Washington. OCA officials said they played no part in selecting any of the representatives Solar Action brought to Washington.

Solar Action told us that as of August 24, it had received almost all of the State reports and is in the process of editing them and preparing the overview report.

#### August 8-9 meeting

On August 8-9, 1978, ETS, in conjunction with SERI, held a public meeting in Washington, D.C. Its purpose was to examine the solar technologies for which DOE's Assistant Secretary for Energy Technology is responsible, and make recommendations to him on the present and future emphasis, direction, and budget in the DOE solar program. As an additional purpose, the July 13, 1978, Federal Register announcement of these meetings said that they were designed as a pilot project for future meetings on other ETS technologies.

ETS and SERI officials said they separately began planning for meetings to elicit public comment on their solar programs with ETS planning beginning in March 1978 and SERI's beginning in May. The SERI official responsible for the project said that in mid-July SERI and ETS agreed to sponsor the meeting jointly. ETS documents show that the meeting was originally scheduled for mid-July but slipped to August 8-9. A June 30 document provides the earliest record establishing the meeting for August 8-9.

The 2-day exercise consisted of 6 panels with 7 to 12 members each and public observers who were encouraged to participate in discussions. The panels dealt with solar thermal, photovoltaics, wind energy, ocean systems, biomass, and solar systems (across the board solar needs and external interfaces such as storage).

The ETS Program Director, with help from Worldwatch Institute, an independent nonprofit, research organization, the Office of Technology Assessment, SERI, and others selected the panelists. They constructed the panels to have representation from public interest groups, industry, universities, and State and local Governments.

The general criterion for selection applicable to all panelists was that they expressed or demonstrated an interest in solar technology. The criteria used to select the groups on each panel were as follows:

- Public interest panelists were selected for their demonstrated interest in solar energy. They were supposed to provide consumer-oriented views as a balance to the often large-scale proposals engineers tend to favor.
- Industry representatives were selected for their technical competence.
- University panelists were chosen for their technical competence and for their willingness to propose unique, unconventional approaches.
- State and local Government panelists were selected from States with a strong interest in renewable energy technology to tap their knowledge of what it takes to put solar energy into use.

Of the 57 panelists, SERI offered to pay travel and per diem, but not salary, to the 44 non-Federal employees living outside the Washington area. A SERI representative said that in response to a July 12, 1978, request from ETS, SERI agreed to pay travel expenses for panelists. Expenses were offered because the organizers felt that participation from public interest groups would not be forthcoming unless DOE paid their travel costs. As of August 23, about 16 people had applied for travel funds. Public observers were offered no compensation.

On August 15, 1978, ETS sent a draft paper containing the six panel reports to panel members and other interested parties, including the group responsible for the domestic policy review of solar energy which was established on May 3, 1978. ETS expects a final report around the end of August.

APPROPRIATENESS-OF-EXPENDITURES  
IN-RELATION-TO-LEGISLATIVE  
RESTRICTIONS

We have reviewed the above discussed expenditures in relation to the specific criteria mentioned in your letter namely:

- legislation requiring funds to be spent for their appropriated purpose;
- legislation dealing with solar energy programs;

- legislation dealing with paying expenses for commissions, boards, etc.; and
- legislation governing expenditure of funds for lobbying.

With one possible exception, we found no basis for concluding that the expenditures violated any of the legislation you mentioned. The exception relates to payment of per diem for part of August 6 and is being questioned by DOE. Specific comments on each criterion follow.

Were funds used for their appropriated purpose?

Pursuant to 31 U.S.C. 628, funds must be used for their appropriated purpose. In applying this statute we have consistently held that appropriated funds may be used for purposes not specifically set forth in an appropriation act. There must only be a direct connection between the expenditure's purpose and the purpose for which the appropriations were made. In addition, the expenditure's purpose must be necessary to carry out the appropriation's purpose. Our review of the expenditures made relevant to the grant and the intent of the applicable appropriation legislation, shows that with one possible exception the DOE conference expenditures were in accord with DOE's responsibility to promote and develop solar energy technology and there was a direct connection between these expenditures and the appropriations for this purpose. As discussed on page 3, the exception deals with per diem paid for part of August 6.

Were payments appropriate to solar energy programs Congress authorized?

DOE has broad statutory authority <sup>1/</sup> to confer with, and advise, State and local Government officials and private persons regarding solar heating and cooling technology. The August 4-6 and 8-9 meetings appear to have purposes consistent with that authority. Therefore, the OCA and ETS sponsored conferences appear to be appropriate uses of funds which the Congress authorized for solar energy programs.

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<sup>1/</sup>This statutory authority is contained in 42 U.S.C. 5813 (5)-(7); 42 U.S.C. 5903 (c) and (d) (1976); 15 U.S.C. 779 (b)(2); and 42 U.S.C. 5555 (b)(2).

Does legislation dealing with  
paying expenses apply?

Pursuant to 31 U.S.C. 673, commissions, councils, boards or similar bodies must be authorized by law before appropriated funds may be used to pay compensation and expenses. In applying this statute we have consistently held that this language is satisfied if the official or agency creating the body has general authority to perform the functions or duties of the body itself and if it is generally accepted that such duties can best be performed by such body. Since DOE had sufficient statutory authority to arrange both August meetings, the statute does not restrict the use of appropriated funds to support them.

Did expenditures violate anti-  
lobbying statutes?

In your letter you asked us to determine whether DOE's expenditures under the grant and travel costs for the two August meetings violated two anti-lobbying laws. The first law, 18 U.S.C. 1913 is a criminal penal statute prohibiting the use of appropriated funds to lobby Congress. Because enforcement of penal statutes rests primarily with the Department of Justice, we would have no authority to make binding determinations under them. We have thus limited our role in this area, for the most part, to determining whether appropriated funds were used in any given instance. We found that appropriated funds were spent for the grant and for travel related to the meetings on August 4-6 and 8-9. The expenditures were described on pages 1-5.

The second law, section 607(a) of Public Law 95-81, July 31, 1977, 91 Stat. 355, Treasury, Postal Service and General Government Appropriations Act, 1978, does restrict DOE's use of appropriations for lobbying activities. It provides as follows:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."

The prohibition in this section, in our view, applies primarily to expenditures involving direct appeals addressed to the public suggesting that they contact their elected representatives and indicate their support of or opposition to pending legislation.



We have no indication that DOE used either of the two meetings to encourage participants to directly lobby legislators. Furthermore, participants in both meetings were brought to Washington to perform specific functions, namely advising DOE on various aspects of solar energy through written reports. These functions appear reasonable and within DOE's authority. The advance scheduling of the Washington meetings and their role in developing the desired reports do not provide a basis for determining that they were held to bring lobbyists to Washington to influence any particular legislation which Congress might have been considering during the time the meetings were in progress.

DOE officials responsible for both activities said that although it was possible that some of the people brought to Washington at DOE expense did lobby Congressmen, DOE could not control what these people did while not working for DOE. An OCA official said it was common for people brought to Washington at Government expense to visit Congressmen over lunch or at other times while not engaged in providing the services for which they were brought to Washington.

The Director, OCA, said she read the description of the August 4-6 meeting contained in the "Environmental Studies Conference Weekly Bulletin" of July 31, 1978, before the meeting began. She said that in her opening address to the meeting she cautioned those brought to Washington at Government expense that they should not even appear to be lobbying while working on the report.

In addition, SERI sent the panel members a letter explaining the contractual arrangement under which SERI would pay their expenses to the August 8-9 meeting. In the letter SERI emphasized that those panelists claiming travel were expected to perform 2 full days of work for DOE.

DOE, however, may have indirectly promoted lobbying activities by paying per diem for part of August 6 which according to DOE may have been used to organize a group likely to lobby in the future. DOE, at its own initiative, is examining whether these activities occurred during a time it was paying per diem.

OTHER PROGRAMS IN WHICH DOE MAY  
BE SPONSORING SIMILAR ACTIVITIES

According to a DOE official, DOE is seeking to involve the public more in its decisionmaking process. This is required by

legislation 1/ which gives DOE responsibility to provide for, encourage, and assist public participation in the development and enforcement of national energy programs. Also, according to this official, DOE believes it should encourage participation by all parties who have an interest and wish to provide input into its programs. Toward that end, DOE has been paying travel expenses and per diem for selected individuals--who are financially unable on their own--to attend various meetings and seminars.

During our review, we made a limited number of contacts with officials within several DOE offices to determine whether the practice of paying travel costs to obtain public input is widespread. We identified two other examples. One dealt with nuclear waste management and the other with the domestic policy review of solar energy.

In an effort to develop a national program on nuclear waste management, the President created an interagency task force to study waste management programs and submit a report with recommendations by October 1, 1978. This task force, which is chaired by DOE, has held a series of meetings across the country to get the public's views on the issue of nuclear waste management. According to a DOE official, approximately 30 persons at a cost of about \$4,800 have been assisted to attend the meetings.

In order for solar energy to gain increased acceptance and use in the United States, the President established a domestic policy review group to begin work on a national solar energy strategy and submit a report with recommendations for the President's attention by September 1, 1978. This group, chaired by the Secretary of Energy, has held 13 public meetings to obtain views on solar energy. According to a DOE official approximately 45 persons at a cost of about \$8,100 have been assisted to attend these meetings.

A DOE official told us DOE is currently preparing a policy statement and a public participation handbook which will further explain the basis for this practice. The official told us the handbook should be available in January 1979 and the policy statement should be available sooner.

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1/Section 102 of the Department of Energy Organization Act, Public Law 95-91, August 4, 1977.

CONCLUSIONS

With one possible exception, the DOE expenditures referred to in your letter did not appear to violate the legislative criteria you cited. The exception relates to the allowability of per diem paid for the August 6 portion of the August 4-6 meeting. In this regard, DOE is questioning the activities carried out during that portion of the meeting from the standpoint that such activities (1) were not directly relevant to the grant and (2) may have involved preparations for creating a new group having lobbying as part of its functions. We plan to followup on this matter to ensure that DOE resolves this question in an expeditious and satisfactory manner.

Furthermore, the two instances of DOE payments to obtain private input to agency policy which your letter identified, the two other instances of similar payments which our brief review uncovered, and the statements of the Director, OCA, and the Director, ETS, that they plan to increase their use of public input, lead us to conclude that DOE's practice of paying travel expenses for public input to agency policy formulation is becoming an established practice which will become more frequent.

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We trust that this background and analyses satisfactorily meet your needs. As arranged with your office we are making this report available to other interested committees and Members of the Congress. Also, copies will be available to the public. We would be pleased to meet with you to discuss this material should you so desire.



Comptroller General  
of the United States