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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

ENERGY AND MINERALS
DIVISION

Title on form #115

B-202812

APRIL 28, 1981

The Honorable James B. Edwards
Secretary of Energy



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Dear Mr. Secretary:

Subject: The Department of Energy Needs to Improve
the Timeliness of the Third Annual Reports
on Title I of the Public Utility Regulatory
Policies Act (EMD-81-56)

[Title I of the Public Utility Regulatory Policies Act
(PURPA, Nov. 9, 1978) establishes three purposes: end-use
conservation, utility efficiency, and equitable rates. To
achieve the purposes, State regulatory authorities] 1/ (States)
and nonregulated electric utilities] 2/ (must consider five
regulatory standards and determine] by November 9, 1980, 3/
[if such standards should be adopted for each electric util-
ity for which it has ratemaking authority. States and non-
regulated electric utilities must also begin considering six
ratemaking standards] by November 9, 1980, [and determine] by
November 9, 1981, [if such ratemaking standards should be im-
plemented.]

1/ PURPA defines "State regulatory authority" as any State
agency which has ratemaking authority with respect to
the sale of electric energy by any electric utility
(other than such State agency), and in the case of an
electric utility with respect to which the Tennessee
Valley Authority has ratemaking authority, such term
means the Tennessee Valley Authority.

2/ PURPA defines "nonregulated electric utility" as any
electric utility other than a State regulated electric
utility.

3/ The Nov. 9, 1980, consideration and determination status
for the regulatory standards will be reported by DOE in
its third annual report due in 1982.

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Section 116 requires [States and nonregulated electric utilities to report to the Department of Energy (DOE) "not later than 1 year after the date of enactment of the Act and annually thereafter for 10 years" on their consideration and determination progress of the 11 standards. The law also requires that DOE prepare a report to the President and the Congress "not later than 18 months after the date of enactment of this Act and annually thereafter for 10 years" containing a summary and analysis of the reports submitted by States and nonregulated utilities, and recommendations for Federal actions to carry out the purposes of title I.]

According to the Conference Report, [the annual reports are expected to be a vehicle for accurately measuring the progress of these entities in order to provide a basis for legislative oversight by the Congress.] However, [our review of reports issued so far disclosed that information contained in the reports is

--4 months old when submitted from States and nonregulated electric utilities to DOE,

--10 months old when reported from DOE to the President and the Congress, and

--18 months old when reporting if the statutory completion dates for the consideration process for the ratemaking and regulatory standards have been met.]

[Out-of-date information can hinder the Congress' legislative oversight responsibilities and delay possible needed amendments to the legislation. The noncurrent information has caused confusion and concern about the progress in implementing title I.]

DOE initially interpreted PURPA as requiring that States and nonregulated utilities submit annual reports to DOE by each November 9 for 1979-1989 and that DOE annually report to the President and the Congress by each May 9 for 1980-1990. The cut-off date for information in each report was the previous June 30. States and nonregulated utilities submitted two reports, due on November 9, 1979, and November 9, 1980, and DOE submitted one report, on May 9, 1980.

[Because DOE's initial interpretation of PURPA resulted in submission of out-of-date information, we evaluated two options for making the information more timely: use of an abbreviated interim report from States and nonregulated

utilities, and advancing the cut-off date for the information in the reports from States and nonregulated utilities. We found that DOE, States and nonregulated utilities were opposed to the idea of an interim report, generally because it would require too many resources and would raise questions regarding the need for the longer and more detailed annual report. We also found that the cut-off date for information in the annual reports from States and nonregulated utilities could be advanced to be closer in time to when the reports are submitted to DOE, and not result in more cost or work to the reporting entities.

DOE is aware of the problem of out-of-date information and has just recently taken steps toward minimizing the timeliness problem for the third annual reports.

DOE, on February 6, 1981, requested reporting date clarification from its Office of General Counsel for the third annual PURPA reports. The clarification request recommended that PURPA be interpreted broadly to allow for "the reporting date to be in harmony with the State determination deadline under PURPA," in order for DOE to provide a better and more timely picture of progress in the critical third and final year of the determination process.

DOE's Office of General Counsel responded on February 19, 1981, that section 116 of PURPA is "ambiguous with regard to the due date of the reports. . .," but "should be construed to allow the reports by State authorities and nonregulated utilities to be submitted by the end of the relevant calendar year." In other words, DOE can require States and nonregulated utilities to submit their third annual report by December 31, 1981, addressing all actions occurring through November 9, 1981, the final mandated completion date. In addition, the Office of General Counsel stated "the due date for submitting DOE's report to the Congress could be established as the date occurring 6 months after the date of the submission" of the reports from States and nonregulated utilities. In other words, if States and nonregulated utilities report to DOE by December 31, 1981, then DOE must submit its third annual report to the President and Congress by June 30, 1982.

According to DOE officials responsible for title I activities, DOE is planning to require that information be submitted to them by December 31, 1981, on all activities through November 9, 1981, and DOE will then issue its third annual report by June 30, 1982. By doing so, the information would be

--less than 2 months old when submitted from
States and nonregulated utilities to DOE,

--less than 8 months old when submitted from DOE to the President and the Congress, and

--less than 8 months old when reporting if the statutory completion date for the ratemaking standards is met.

DOE has not formally notified States and utilities of the new reporting time frames, and has not yet taken formal steps to implement its planned reporting requirements. To accomplish the above improvements these steps must be taken.

[The Administration budget proposals for fiscal years 1981 and 1982 severely reduce the DOE staff responsible for PURPA title I work.] The most recent information, [according to DOE officials,] indicates that [only 5 staff years will be available in fiscal year 1982 to close out various grant programs and prepare legislated reports, including the PURPA report.]

CONCLUSIONS AND RECOMMENDATIONS

DOE's annual reports serve as the official information base to the Congress. By implementing the revised reporting time frames, DOE's third annual report could provide the President and the Congress a better and more timely picture of progress in the critical and final third year of the determination process. The proposed time frames would reduce some of the timelag problems we identified.

R We therefore recommend that you

--require States and nonregulated electric utilities to submit their third annual report to DOE by December 31, 1981, with status information through November 9, 1981. We recognize that DOE will have limited staff to prepare the third annual report which will serve as the official source on the status by States and nonregulated utilities through the completion of the mandated time frames. Because of this, DOE should monitor the development of the report and the staffing level to assure that the report is issued by June 30, 1982.

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate

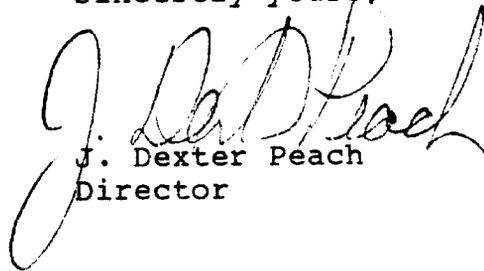
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Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. We would appreciate receiving a copy of your statement when it is provided to the congressional committees and being informed of any action taken on our recommendations.

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We are sending copies of this report to the Director, Office of Management and Budget, and the House and Senate Committees having oversight and appropriation responsibilities for DOE.

Sincerely yours,



J. Dexter Peach
Director