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The Honorable Olin E. Teague Chairman, Committee on Science and Technology House of Representatives

Dear Mr. Chairman:

This is in response to your March 1, 1977, request for our views on H.R. 36, H.R. 37, H.R. 38, and H.R. 1142. All of these bills would amend the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901) to provide the Energy Research and Development Administration (ERDA) with various loan guarantee authority for the advancement of nonnuclear energy research, development, and demonstration.

--H.R. 36 would add "generic" loan guarantee authority to the array of incentives provided in the Federal Nonnuclear Energy Research and Development Act of 1974.

--H.R. 37 would add a new section to the act to provide ERDA with loan guarantee authority for biomass demonstration facilities. Specific provisions applying to biomass loan guarantees would also be added to the act.

--H.R. 38 and H.R. 1142 are similar bills which would give ERDA loan guarantee authority for the demonstration of synthetic fuels, oil shale, and geothermal and other, renewable resources. These two bills wou1d add to the act specific provisions applying only to loan guarantees.

Our views on the use of loan guarantees to encourage the development of emerging energy technologies remain the same as those expressed in our August 24, 1976, report to the Congress entitled "An Evaluation of Proposed Federal Assistance for Financing Commercialization of Emerging Energy Technologies" (EMD-76-10). We continue to believe that--in lieu of providing Federal loan guarantees for commercial-size plants--efforts should be directed to researching and developing improved emerging energy technologies until their technical, economic, environmental, socioeconomic, and regulatory problems are resolved. We continue to believe also that information on these problems can and should first be obtained from smaller than commercial-size plants. In addition, as a general premise, we would prefer to see legislation designed to demonstrate emerging energy technologies which resulted from an overall assessment of the various alternative technologies based on criteria discussed below.

However, if the Congress wishes to enact one or more of the above bills, we believe it should at least assure itself that the technology has been shown to

work and is marginally economical, and the party wanting to make the investment cannot do so primarily because of financial constraints. We also believe that the Congress should amend the legislation to (l) establish criteria for making choices among energy technologies and among financing mechanisms to stimulate development of particular technologies, (2) precisely define the type of "demonstration" projects which would be eligible for Federal assistance, and (3) provide for close congressional oversight of the programs, including affirmative action to approve or disapprove individual large projects before financial arrangements would be finalized. In addition, we believe the Congress should consider very carefully the need for the social impact assistance provided in H.R. 37, H,R. 38, and H.R. 1142. Our detailed comments on these matters, along with technical and other comments, are discussed below.

CRITERIA NEEDED FOR CHOOSING ENERGY TECHNOLOGIES AND FINANCING MECHANISMS

None of the above bills would establish criteria for making choices among energy technologies or for determining the best mechanism for stimulating particular technologies. Unless such criteria is established, piecemeal decisions may result thereby hampering the achievement of energy goals.

Our earlier report discussed criteria for making the right choices among energy technologies. We said that making these choices requires consideration of three factors.

--The contribution that each technology can make in meeting the Nation's energy needs within a specified time frame either through reducing demand or increasing energy supply.

--The total cost of making the technology commercial including costs of plant construction, costs of alleviating adverse socioeconomic impacts caused by the energy development, and the costs of price supports or further subsidies which may be required.

--The price at which energy produced by the technology would have to be sold and the means by which the price would be assimilated by our economic system.

The decision to use Federal incentives to assist in the commercialization of energy technologies and the determination of which incentives would be most appropriate requires, in our view, interrelated analysis of at least three factors.

--The technology's state of development. Is the technology developed to the extent that it can be deployed on a broad basis? Have the environmental and socioeconomic questions been answered?

--The technology's economic feasibility. Will the energy produced as a result of deploying the technology be economically competitive with competing energy sources?

--The target group whose actions will be influenced. Are they large industrial firms or diverse and widely dispersed groups such as homeowners?

Interrelated analysis of these three factors should precede the decision to choose the most appropriate financing mechanism or other Government activity to stimulate a particular energy technology.

For example, loan guarantees have received much attention as a potential way of encouraging a variety of energy technologies. In general, loan guarantees would seem to best fit those circumstances where the technology has been known to work and is marginally economical, and the party wanting to invest in the technology cannot do so primarily because of financial constraints. By transferring some of the risk, loan guarantees tend to marginally reduce the interest costs of a loan and to assure the availability of financing which otherwise may not be available. This is the basic logic, for example, for making Federal loan guarantees available for housing. Conversely, the decision to authorize loan guarantees should be carefully examined and other options considered when there are questions regarding the viability of the technology or the economic competitiveness of the product.

Any loan guarantee legislation should require ERDA to evaluate potential projects on the basis of criteria which would include those listed above and report to the Congress on the specific results of the evaluations. Such evaluations would better enable the Congress to determine if loan guarantees are warranted for specific emerging energy technologies.

ELIGIBLE PROJECTS NEED TO BE PRECISELY DEFINED.

H.R. 37, H.R. 38, and H.R. 1142 would grant ERDA authority to issue loan guarantees for "demonstration" projects. H.R. 36 does not specify or limit the size or type of eligible project. All of the bills need to define what size plant or generation of technology would be eligible. The bills, as now written, would enable ERDA to guarantee loans for very large, so called "commercial-size" demonstration projects using technologies where economic, environmental, socioeconomic, and other issues have not been resolved.

This would be inconsistent with our view that (1) efforts should be directed to researching and developing improved emerging energy technologies until their technical, economic, environmental, socioeconomic, and regulatory problems are resolved and (2) information on these problems can and should first be obtained from smaller than commercial-size plants.

CLOSE CONGRESSIONAL OVERSIGHT OF PROGRAMS IS NEEDED

In view of the high potential Government liability under each of the bills, we believe it desirable for the Congress to maintain close oversight of the programs. Under H.R. 37, H.R. 38, and H.R. 1142, large projects would proceed unless both Houses of Congress pass resolutions to the contrary within a 90-day period. We believe it would be preferable for H.R. 37, H.R. 38, and H.R. 1142 to require that the Congress take affirmative action to approve or disapprove each large project, as specified in the legislation, before financial arrangements would be finalized. Such a provision would provide the Congress with an opportunity to evaluate the costly proposals considering the economics, energy potential, and feasibility of the project's technology.

We are concerned also that ERDA would not be required, under any of the bills, to show the total amount of loan guarantees in its annual budget.

Section 3(a)(2) of the Congressional Budget Act of 1974, 31 U.S.C. 1302(a) (2), expressly exempts the authority to guarantee loans from the definition Of budget authority. Thus, budget authority is not created when loan guarantee authority is granted nor when the guarantees are made, and the total amount of loan

guarantees is not required to be included in the Federal budget or the budget resolutions passed pursuant to the Budget Act.

Under this treatment, budget authority is created only when funds are appropriated to enable the agency to disburse funds pursuant to the guarantees, that is, after defaults have occurred. By the time the transaction is reflected in the budget, i.e., when the agency needs an appropriation to liquidate its liability on defaults, a binding obligation has already been created,

However, one must look beyond the language of the Congressional Budget Act and consider that one of its fundamental objectives was to establish a process through which the Congress could systematically consider the total Federal budget and determine priorities for the allocation of budget resources. We believe this process achieves its maximum effectiveness when the budget represents as complete as possible a picture of the financial activities of Federal agencies.

We further believe it is vital to maximizing the effectiveness of the process that Federal financial resources be measured as accurately as possible because priorities are actually established through decisions on the conferring of the authority to enter into obligations which will result in immediate or future outlays of Government funds.

From this standpoint, therefore, the budget should (1) include all actions which confer authority to spend money, (2) reflect as accurately as possible the amount of such authority which is conferred, and (3) recognize the point at which control over the spending of the money passes from the Congress to the administering agency. The consequence of excluding loan guarantees and their associated contingent liabilities from the budget is to thwart Congress' achieving the maximum effectiveness of the process it established to review the Federal budget and determine priorities.

In the case of Federal loan guarantees for housing and other programs, historical experience permits the default rate to be estimated with a reasonable accuracy and included in the budget. However, if the Congress enacts any of the subject loan guarantee legislation, or similar legislation, authorizing a relatively small number of very large loan guarantees, we believe it would be difficult, if not impossible to accurately edict the extent of default. We, therefore, believe it would be preferable these bills provided that the total amount approved for these loan guarantees be deemed budget authority, notwithstanding section 3(a)(2) of Congressional Budget Act of 1974; and that such amount be included in the budget authority totals for the appropriate functional category as established by budget resolutions passed pursuant to the act. A footnote might be used to indicate that the amount is a contingent liability.

H.R. 36 presents an additional problem with respect to congressional oversight. The bill would add loan guarantees to the list of authorized forms of Federal assistance contained in section 7(a) of the Federal Non- nuclear Energy Research and Development Act of 1974, 42 U.S.C. 5906(a), with the proviso that "all of the other provisions of this Act apply to such guarantees in the same manner and to the same extent as they apply to demonstrations under this Act." This is identical to section 101 of 37, 95th Congress, which was passed by the Senate on March 31, 1977, and title VII of H.R. 13350, 94th Congress, the 1977 authorization bill which was not enacted. It is not clear what requirements the

proviso is intended to incorporate. The problem will vary depending on whether H.R. 36 enacted alone or in conjunction with either H.R. 37 or 38.

If H.R. 36 is enacted together with H.R. 37, it would be possible to read the proviso as incorporating pertinent requirements contained in R. 37, such as the congressional review provisions of section 19(m) and the requirement for appropriation action in section l9(v). However, it would also be possible to read the proviso as incorporating only those provisions of the Nonnuclear Act which apply to demonstrations generally, such as section 8. Under the latter interpretation, assuming sections 8(e) and (f) of the Nonnuclear Act are viewed as applicable to loan guarantees, where would be no statutory requirement for affirmative congressional action approve or disapprove proposed projects (other than biomass) between 25 million and $50 million, nor would there be any requirement even for prior notification to Congress of proposed projects (other than biomass) less than $25 million. Also, there would be no requirement in the Nonnuclear Act for loan guarantee authority other than biomass to be provided in annual appropriation acts. These problems would, of course, exist equally if R. 36 is enacted alone. The problems would be somewhat less significant H.R. 38 is enacted because of its broader coverage, although a degree of ambiguity would nevertheless remain.

Because of the potential problems of interpretation, we believe H.R. 36 should be emended to clearly specify the intended requirements for congressional review and for the desired authorization and appropriation action.

NEED SOCIAL IMPACT ASSISTANCE

Social impact assistance is provided for in H.R, 37, H.R. 38, and H.R. 1142. This assistance would be in the form of guaranteed obligations (up to 25 million in H.R. 37 and up to $150 million in H.R. 38 and H.R. 114214 direct loans, and grants to affected States, political subdivisions, or Indian tribes to mitigate socioeconomic impacts resulting from the demonstration facilities. We believe that careful consideration should be given to the need for this type of assistance and the basis for the amounts included in the bills.

The Congress has recently acted to greatly increase Federal assistance to State and local communities which can be used to mitigate socioeconomic impacts resulting from energy resource development. Specifically:

--The August 1976 amendments to the Mineral Leasing Act of 1920 substantially increased the States' share of royalties from mineral leases on Federal lands from 37.5 percent to 50 percent and increased the royalty on Federal coal from a cents per ton to not less than 12.5 percent of the selling price.

--The Federal Land Policy and Management Act of 1976, enacted in October 1976, enables the royalties to be used as the legislatures of the States direct, such as for planning,, construction, and maintenance of public facilities, and $ provision of public services. The act also provided for loans to States and political subdivisions for the same purposes. Loans can be made up to the anticipated mineral royalties to be received by the recipients for any prospective 10-year period."

--Public Law 94-565, also enacted in October 1976, provided for annual payments to be made directly to local governments based on the amount of Federal lands within their jurisdiction.

All of these funds will be available prior to and concurrent with energy resource development and can be used to mitigate the socioeconomic of that development. It is for this reason that we believe the committee should consider carefully the need for this type of assistance.

Additionally, as we stated above with regard to loan guarantees for demonstration projects, we are concerned that guarantees are presently exempted from the discipline of the budget review process established by he Congressional Budget Act of 1974. As in the case of loan guarantees or demonstration projects, we believe that it would be difficult, if not Impossible, to predict the extent of default on guaranteed obligations for octal impact assistance. Therefore, if the Congress judges such guarantees to be appropriate in this case, we recommend that these bills provide that he total amount approved for the guarantees be deemed budget authority; and that such amount be included in the budget authority totals for the appropriate functional category as established by budget resolutions pursuant to the Congressional Budget Act of 1974.

If the Congress decides that a special assistance program is warranted, we would prefer the direct loan approach set forth in these bills.

TECHNICAL AND OTHER COMMENTS

We noted that, in addition to the need for the above amendments, H.R. 36 does not contain any specific provisions for carrying out a loan guarantee program. We believe it would be preferable for any loan guarantee Legislation enacted by the Congress to contain provisions--as was done in R. 37, H.R. 38, and H.R. 1142--which would set forth congressional intent or carrying out the loan guarantee program.

H.R. 37, H.R. 38, and H.R. 1142 contain language authorizing the General Accounting Office access to records of recipients of financial assistance. In addition, section l9(y)(1)(B) of H.R. 37 and H.R. 38 would require that the Comptroller General make an audit of recipients of financial assistance provided by these bills within 6 months of enactment of the bills ad at 6-month intervals thereafter. We prefer to see language such as the following in place of sections 19(y)(1)(A) and (B) of H.R. 37 and H.R. 38 and section l9(z)(1) of H.R. 1142.

(a) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans or other arrangements, entered into under other than by formal advertising and which are otherwise authorized by this Act, shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of 3 years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers and records of such recipients which in the opinion of the Administrator or the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, sub- grants, loans, or other arrangements referred to in section (a).

H.R. 36 does not contain language authorizing the General Accounting office access to records of recipients of financial assistance. Rather, access to records authority would be under section 3(b)(2) of the Federal Nonnuclear Energy Research and Development Act of 1974 and section 306(a) of the Energy Reorganization Act of 1974 (42 U.S.C. 5876). However, the authority only applies to recipients of Federal assistance pursuant to contracts entered into under other than by formal advertising. We believe that a new section should be added to H.R. 36 containing language such as the above authorizing the General Accounting Office access to records of recipients of financial assistance.

Section 19(k)(9)(B) of H.R. 1142 authorizes funding for fiscal year 1976 and the transition quarter. Also, section l9(n)(2) contains similar language. Both sections require revision to show the appropriate fiscal years.

Sincerely yours,

PAUL G. DEMBLING: Acting Comptroller General of the United States