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REPORT BY THE U.S.

General Accounting Office

Federal Energy Regulatory Commission Makes Progress Toward Expanding User Fee Program

The Federal Energy Regulatory Commission is committed to become as self-sustaining as possible over the next several years. To accomplish this, it is expanding the amounts of fees collected from oil pipeline, electric, and natural gas companies which use FERC's services. These fees, which FERC estimates could reach \$58 million annually, are known as "user fees."

While FERC is aggressively developing and implementing this program, GAO believes that its methods and systems for cost estimating and allocation could be strengthened. FERC has agreed and has initiated corrective actions.



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

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

B-207549

The Honorable Charles Butler, III
Chairman, Federal Energy Regulatory
Commission

Dear Mr. Chairman:

We examined the Federal Energy Regulatory Commission's (FERC's) efforts to develop a user fee system which would include licensing and filing fees 1/ and annual charges 2/ collected from the oil pipeline, electric, and natural gas companies which use FERC's services. The objective of the Commission's user fee system is to allow FERC to become as self-sustaining as possible. To achieve this goal, the Commission wants to assess fees that best reflect its costs of rendering services and which are defensible in court.

FERC recognizes that user fees are a controversial subject and that a successful program will depend on the most accurate cost capturing and allocation systems available within its budget resources. As such, the Commission has taken actions to develop a strong user fee program. We found, however, that FERC could further strengthen the program by

- implementing procedures to periodically test the accuracy of its staff time reporting system;
- developing written criteria as to which costs should be included or excluded in the calculation of the average cost for one employee, a key ingredient in the fee determination process;
- preparing a user requirements analysis of its new accounting system; and

1/Licensing and filing fees are "user fees" which an agency may impose, under the Independent Offices Appropriation Act of 1952 or other specific authority available to the agency, on a person for a particular service or benefit provided that person.

2/In this report, annual charges refer to assessments made against members of an industry to recoup an agency's total costs for regulating that industry; such charges would have to be authorized by specific legislation.

--proceeding with creation of one specific office to centralize management over all user fee program activities.

During our review FERC began to aggressively address our findings and agreed that our recommendations would further enhance its user fee program.

We undertook this review because of the House and Senate Appropriations Committees' increased interest in user fees as an additional source of revenue. Our objective was to determine whether FERC had fully considered and developed the framework for an effective user fee program. Our review was based on interviews with FERC officials involved in all aspects of the user fee program.

We also analyzed FERC memoranda and other documentation. We examined FERC's December 22, 1981, User Fee Task Force report and interviewed several of the task force members. We also utilized information contained in past Department of Energy (DOE) Inspector General and our audit reports. We interviewed Nuclear Regulatory Commission (NRC) officials and obtained information on NRC's user fee system but did not analyze its operations. We included NRC in our study because it is a Federal regulatory agency and has a user fee system which withstood challenges in the courts.

We did not examine the appropriateness or equity of FERC charging a fee for a particular service(s) nor did we examine for which services FERC should charge fees. We did, however, examine the overall fee program policy and procedures to determine how FERC could enhance the quality of information used to estimate costs. We performed our review in accordance with generally accepted government audit standards.

On December 3, 1982, we received comments on a draft of this report from FERC's Executive Director and considered his views in finalizing this report. The details of our review are provided in appendix I.

As in most agencies, FERC's user fees are collected based on authority contained in the Independent Offices Appropriation Act of 1952 (IOAA). The IOAA has been the subject of court cases. Courts have held that an agency's fees may include only those direct and indirect costs incurred in conferring a special benefit on the recipient. The courts have said that exact calculations are not required, but that the fee should reasonably reflect the costs the agency incurred to provide necessary services. Government-wide user fee criteria are found in the Office of Management and Budget Circular A-25, "User Charges." This circular requires that agencies apply accepted cost accounting principles in determining costs.

Because the user fee is, according to the IOAA, "* * * to be fair and equitable taking into consideration direct and indirect

costs to the government * * *," accurate cost information is needed for an equitable user fee system. In our past work dealing with the Federal Communications Commission's fee system, we pointed out that cost information can also be used as a common financial denominator for the measurement and evaluation of efficiency and economy in the use of resources. ^{1/} Our Policy and Procedures Manual for Guidance of Federal Agencies states that adequate cost accounting is required where full recovery from users of services is a statutory requirement.

The Commission has taken several actions to develop a user fee system. From September through December 1981 its User Fee Task Force identified almost \$58 million in potential fees. In March 1982, the Commission submitted proposed legislation to the Congress ^{2/} requesting authority to collect annual charges from the oil pipeline, electric, and natural gas companies. Currently, the Commission is developing several rulemakings aimed at instituting new fees by March 1983.

As set forth in the proposed rulemakings, calculation of the fees proposed by the Commission involved three steps:

- Determination of the number of workmonths ^{3/} FERC required to complete an activity, e.g., the determination of an electric rate.
- Determination of an average workmonth cost based on the direct and indirect dollar costs incurred to support the average FERC employee annually.
- Multiplication of the average cost per workmonth by the average number of workmonths required to complete the activity.

Although FERC's proposed rulemakings set forth the framework for an effective fee system, we believe further actions are needed

^{1/}"Comments on H.R. 3239 and H.R. 3240" to the Honorable Timothy E. Wirth, Chairman, Subcommittee on Telecommunications, Consumer Protection and Finance, House Committee on Energy and Commerce; June 9, 1981.

^{2/}In this report, we do not address the merits of this bill, which appears to levy taxes against oil pipeline, electric, and natural gas companies to be collected by FERC.

^{3/}A "workmonth" is the unit of work represented by one employee's devotion of 100 percent of his or her time for 1 month.

to make the proposed user fee system as sound as possible. Specifically, FERC needs (1) more precise systems for capturing and allocating staffday expenditures and associated costs, (2) written criteria for determining which costs are to be included or excluded in the calculation of the average cost per employee, and (3) a centralized organization to manage all FERC user fee activities.

The Commission has sought to address these needs as it proceeds with its proposed rulemakings for the new fees. For example, an automated Time Distribution Reporting System (TDRS) is being installed to provide more accurate staffday information. Also, because DOE and FERC had agreed to work toward termination of their Common Support Agreement, FERC is working to adopt, for its own use, an existing DOE accounting system, the Field Office Reporting System (FORS). This system should enable the Commission to better capture the detailed cost information on its financial activities. 1/ In addition, on May 12, 1982, FERC's Executive Director approved the concept of a separate user fee management branch and directed that preliminary steps be taken to develop such an office.

These are significant steps. However, we believe that more can be done to further strengthen FERC's user fee program. For example, although the TDRS is an important step toward getting more precise time charges, FERC should plan to periodically test the data for accuracy. It should also formalize the criteria used to decide which costs were included and excluded in the development of the average cost per employee.

Also, although the Commission will definitely benefit from having its own accounting system, it needs to better assure that the FORS will provide the level of detailed program data needed to support its user fee system. Our particular concern in this area stems from our recent audit of DOE's accounting systems which revealed that the Commission did not prepare a user requirements study prior to installing the system. 2/ Furthermore, we agree with FERC's plans for creation of a separate user fee management branch. We believe FERC should establish this office so that it can be fully operational before the user fee rulemakings are finalized.

1/We did not examine the adequacy of this accounting system. We believe, however, that by having its own system the Commission would be better able to collect the types of cost information needed to support its fee program.

2/"Major Financial Improvements Needed at the Department of Energy," GAO/OCG-82-1, Sept. 15, 1982.

The Commission has taken steps to strengthen its user fee program. We believe, however, that more can be done and accordingly recommend that the Chairman, FERC, direct that:

- Procedures be established for periodically testing the accuracy of the data generated by the Commission's TDRS.
- Criteria be developed to specify and explain which costs are to be included and excluded in determining the average cost for an employee.
- A user requirements analysis be prepared for the proposed accounting system, giving special consideration to the requirements for the user fee system and a possible future tie-in with the TDRS.
- Overall responsibility for managing and directing the operations of the user fee program be assigned to one office.

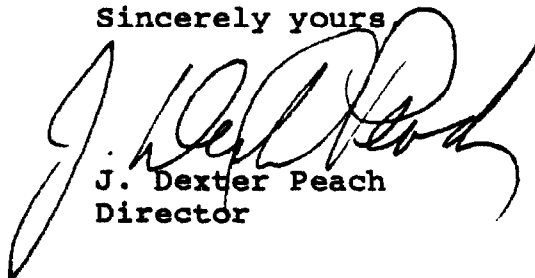
The Executive Director, FERC, provided comments in a letter dated December 3, 1982. (See app. II.) He said that our report was a very useful critique of FERC's proposed fee program. Although he did not agree with all aspects of the report, he did find the recommendations constructive and has taken steps to implement them.

As you know, 31 U.S.C. §720 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 the Senate Committee on Governmental Affairs within 60 days after the date of the report; a like statement to the House and Senate Committees on Appropriations should accompany the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Director, Office of Management and Budget; and the congressional committees identified above.

We appreciate your cooperation extended during our review.

Sincerely yours



J. Dexter Peach
Director



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ABBREVIATIONS

DOE	Department of Energy
FERC	Federal Energy Regulatory Commission
FCC	Federal Communications Commission
FORS	Field Office Reporting System
FPC	Federal Power Commission
GAO	General Accounting Office
IOAA	Independent Offices Appropriation Act
MIS	Management Information System
NRC	Nuclear Regulatory Commission
OGC	Office of General Counsel
OMB	Office of Management and Budget
TDRS	Time Distribution Reporting System

CERTAIN ASPECTS OF FERC'S USER FEEPROGRAM COULD BE STRENGTHENEDBACKGROUND

FERC has the authority to collect (1) annual charges from hydropower licensees and (2) user fees from electric, oil pipeline, and natural gas companies by charging fees for such things as filings and license applications. The annual charges are assessed based on criteria set forth in the Federal Power Act (16 U.S.C. 803 (e)), and the user fees are assessed in accordance with criteria contained in the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a).

In fiscal year 1979, the Commission's user fee program contributed \$22 million to the U.S. Treasury, an amount equal to 40 percent of the Commission's total budget. In fiscal year 1982, the contribution had increased to about 47 percent of the budget. 1/

In the summer of 1981, Chairman Butler made a commitment to the Director of OMB that FERC would seek to implement a full cost recovery system, and he took steps to identify ways to increase the levels of fee collections. In September 1981, the Chairman directed that a task force be formed to (1) analyze FERC's present fee structure, (2) review possible expansions to all areas of Commission operations, and (3) ultimately devise a fee structure which would achieve full cost recovery.

The task force's final report to the Commission's Chairman and Executive Director on December 22, 1981, had as its foremost recommendation that the Commission submit legislation enabling FERC to collect annual charges from all oil pipeline, electric, and natural gas companies in addition to the annual charges now collected from hydroelectric licensees. 2/ The report also had a secondary recommendation that fees currently being assessed under the Independent Offices Appropriation Act (IOAA) of 1952 be greatly expanded. The report recommended many new areas where fees could be assessed. The net result would be to eventually increase annual collections to about \$58 million.

1/The amount collected in fiscal year 1982 amounted to \$49.5 million; however, according to a FERC official \$14 million of that amount should have been collected in a previous year.

2/Part I, section 10 of the Federal Power Act permits FERC to charge and collect annual charges from hydropower licensees.

On March 10, 1982, the Chairman, FERC, sent the Congress a draft bill that would authorize FERC to assess its customers annual charges to recover the Commission's costs of operating its oil, natural gas, and electric power offices. The legislation would allow FERC to assess each company a specific annual charge based on a particular formula. For example, the annual charge for each natural gas company would be computed based on

"* * * its proportional share of the total jurisdictional gas deliveries during the previous fiscal year or on a method for apportioning the adjusted costs that the Commission determines to be fair and equitable."

No action was taken on this bill by the 97th Congress.

In addition to forwarding the proposed legislation, which was introduced in the Senate as S.2358, FERC's Office of General Counsel began to develop eight separate rulemakings to establish or increase fees under the authority of the IOAA. According to a FERC official, if the legislation were passed, there would be no need for the individual rulemakings; however, FERC decided to take this action in the event that the legislation did not pass. As of December 15, 1982, OGC had issued the following six Notices of Proposed Rulemaking.

<u>Notice of proposed rulemaking</u>	<u>Issued</u>
Fees Applicable to Producer Matters under the Natural Gas Act (RM82-25-000)	5/06/82
Fees Applicable to the Natural Gas Policy Act (NGPA)(RM 82-30-000)	6/02/82
Fees Applicable to General Activities (RM82-35-000)	6/15/82
Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers (RM82-38-000)	9/01/82
Fees Applicable to Natural Gas Pipelines (RM82-31-000)	9/10/82
Fees Applicable to Natural Gas Pipeline Tariff Filings (RM83-2-000)	12/15/82

OGC will also be issuing Notices of Proposed Rulemaking in the following areas:

- Oil Pipelines.
- Hydroelectric.

BASIS FOR USER FEE SYSTEM

In the absence of their own individual legislative authority, most agencies, including FERC, use the Independent Offices Appropriation Act of 1952 as the basis for their fee assessments. This act provides in part that:

"[a]ny work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency * * * to or for any person * * * shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation * * * to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts * * *."

A series of court decisions have established standards agencies must apply in assessing fees under this statute. In 1974, the Federal Power Commission (FPC) 1/ used this statute as authority to impose annual charges on electric utility and natural gas companies; the Federal Communications Commission (FCC) used this statute to impose annual charges on cable television systems. In National Cable Television Association Inc. v. U.S. 2/ and in FPC v. New England Power Co., 3/ the Supreme Court ruled that these fees were in fact taxes and that the user fee statute did not authorize agencies to levy taxes. In these decisions, the Court distinguished between fees and taxes. A fee is a charge an agency

1/Most of the Federal Power Commission functions were transferred to the Federal Energy Regulatory Commission in 1977, under the terms of the Department of Energy Organization Act.

2/415 U.S. 336 (1974).

3/415 U.S. 345 (1974).

may exact in exchange for a benefit that is not shared by the public. A fee may be charged only to specific identifiable recipients of a special government benefit. Also, an agency may not charge more than the value of the benefit conferred on the recipient. A tax, on the other hand, need not be related to any specific benefit. The Court found that FCC and FPC assessments were calculated to reimburse the agencies' total costs of regulating particular industries, regardless of whether each individual company received any special benefit. The Court ruled the assessments were taxes, which the user fee statute does not authorize.

In subsequent cases, the U.S. Court of Appeals for the District of Columbia Circuit refined the standards to be applied by an agency in assessing fees. In National Cable Television Association, Inc. v. FCC ^{1/} and Electronic Industries Association v. FCC, ^{2/} the court ruled that an agency may include in its fees only those direct and indirect costs it incurs in conferring a special benefit on the recipient. It may not charge the recipient for expenses incurred in serving an independent public purpose. Further, the agency may not calculate its fees on the basis of the return on investment or profit to be derived by the recipient as a result of the benefit. If such factors are included, the agency is unlawfully attempting to levy a tax rather than charging a fee.

In these cases, the court established the following procedure for FCC in reviewing its fee schedule:

- Justify the assessment of a fee by a clear statement of the particular service or benefit that the fee is expected to reimburse.
- Calculate the cost basis for each fee to be assessed by identifying the specific direct and indirect expenses that form the cost basis for the fee and allocating them to the smallest practical unit, excluding expenses incurred to serve an independent public interest, and explaining the criteria used to include or exclude particular costs.
- Set a fee calculated to return this cost basis at a rate that reasonably reflects the cost of the services performed and value conferred upon the payor.

Although the court did not require exact calculations, it did require that the fee reasonably reflect the costs the agency incurred

^{1/}554 F.2d 1094 (D.C. Cir. 1976).

^{2/}554 F.2d 1109 (D.C. Cir. 1976).

to provide necessary services. In a recent case, the Fifth Circuit Court of Appeals found the Nuclear Regulatory Commission's formula, based on a detailed manpower reporting system, to be a reasonable method of estimating fees. ^{1/} NRC's manpower system enables it to provide companies with itemized listings of total costs expended on each individual case.

Governmentwide user fee criteria are found in OMB Circular A-25, "User Charges." For example, it requires that the agency "* * * apply accepted cost accounting principles in determining costs." At the same time, Circular A-25 notes that new cost accounting systems are not to be established solely to provide user fee cost information, and costs are to be determined or estimated from the best available records in the agency.

"The cost computation shall cover the direct and indirect costs to the Government of carrying out the activity including but not limited to (1) Salaries, employee leave, travel expense, rent, cost of fee collection, postage, maintenance, operation and depreciation of buildings and equipment, and personnel costs other than direct salaries (e.g., retirement and employee insurance); (2) A proportionate share of the agency's management and supervisory costs; (3) A proportionate share of military pay and allowances, where applicable; and (4) The costs of enforcement, research, establishing standards, and regulation, to the extent they are determined by the agency head to be properly chargeable to the activity."

FERC in its proposed rulemakings has stated that

"In accordance with the IOAA and authoritative interpretations of that statute, the Commission, in establishing any fee, must:

- A. Identify the service for which the fee is to be assessed;
- B. Explain why that particular service benefits an identifiable recipient more than it benefits the general public;
- C. Base the fee on as small a category of service as possible; and

^{1/}Mississippi Power and Light v. NRC, 601 F.2d 223 (5th Cir. 1979).

- D. Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show those costs are incurred in connection with the service rendered the beneficiary."

The methodology FERC used in its proposed rulemakings to calculate its user fees involved three steps:

- Determination of the average number of workmonths 1/ FERC required to complete an activity, e.g., the determination of an electric rate.
- Determination of an average workmonth cost based on the direct and indirect dollar costs incurred to support the average FERC employee annually.
- Multiplication of the average cost per workmonth by the average number of workmonths required to complete the activity.

MORE PRECISE COST AND TIME
INFORMATION NEEDED

The information FERC used to develop and support its user fees could be more precise. The Commission depends on its Management Information System (MIS) to provide estimates of work expended in broad-case categories. The MIS, however, was not designed to capture specific time charges by each employee nor to report actual dollar expenditures. In addition, Commission estimates of the direct and indirect costs for its various offices could be improved. As it is now, FERC has neither (1) specific criteria as to what costs should be included and excluded in the calculation of the average cost per workmonth nor (2) its own cost accounting system.

In 1978 it was recognized that FERC needed better accounting and management records to capture and allocate the costs of providing services. For example, in a May 1978 meeting of FERC personnel they noted that to assure proper capture of administrative costs, the Commission should develop its own administrative accounting system independent from DOE's. 2/ In April 1980, the

1/A "workmonth" is the unit of work represented by one employee's devotion of 100 percent of his or her time for 1 month.

2/Under the Common Support Agreement established between DOE and FERC in 1978, DOE was to provide the accounting and payroll support for FERC.

Commission's Executive Director recommended to the FERC Chairman that FERC adopt a detailed manpower reporting system fee structure like that operated by NRC. Finally, as recently as March 1982, a FERC Office of General Counsel official stressed the need for more accurate cost information and improved methods or systems to allocate these costs.

Because the user fee is, according to the IOAA, " * * * to be fair and equitable taking into consideration direct and indirect cost to the Government * * *," accurate cost information is needed for an equitable user fee system. In a report dealing with the Federal Communications Commission's fee system, we pointed out that cost information can also be used as a common financial denominator for the measurement and evaluation of efficiency and economy in the use of resources. ^{1/} In our "Policy and Procedures Manual For Guidance of Federal Agencies" Section 16.4 "Accounting for Costs," we stated that:

"Accounting for costs is essential for implementing cost-based budgets. It is required where reimbursement of services performed is to be at cost or where sales prices are primarily based on cost. Adequate cost accounting is also required where full recovery of cost from customers or users of services is a statutory requirement."

Efforts to improve time reporting system underway but greater accuracy should be assured

One of the major elements FERC used to calculate its user fees was the workmonths devoted to a specific task, which was obtained from its MIS. The MIS, however, was not originally developed to provide data to support user fees but to provide data on the progress and status of regulatory cases under FERC's review. As such, the system does not contain the staffday costs for each FERC activity. In fact, FERC's 1,575 employees do not periodically record time charges. Rather, the MIS contains supervisory personnel estimates of the time spent by their employees on the Commission's 80 regulatory activities. The accuracy of these estimates has not been tested by the Program Management Office, which has responsibility for managing and coordinating the MIS.

^{1/}"Comments on H.R. 3239 and H.R. 3240" to the Honorable Timothy E. Wirth, Chairman, Subcommittee on Telecommunications, Consumer Protection and Finance, House Committee on Energy and Commerce; B-203297, June 9, 1981.

To improve staffday reporting, FERC is developing a Time Distribution Reporting System (TDRS) to supplement its MIS. Development of the TDRS began in 1981, and it is projected to be fully operational by the middle of 1983. The TDRS will automate the collection of data on time expenditures for the variety of activities performed by Commission staff and thus, directly support the MIS. 1/ The time will be recorded by each employee instead of supervisor estimates. However, according to a FERC official the TDRS will only provide a record of hours spent on the general work categories, not costs incurred.

Past audit work in work measurement 2/ has shown that for time recording systems to be accurate, they need to be tied to the time and attendance records or some existing periodic time reporting system or at a minimum periodically tested for accuracy. Periodic testing would help to identify cases where employees were reporting inaccurate data. For example, such a detailed test could be made every quarter, rotating between FERC's various offices.

Preciseness of fee calculation
could be improved by more specific
criteria and better cost data

Another of the major elements FERC used to calculate the proposed fees was the development of an agencywide fiscal year 1982 average cost for one employee. This agencywide average would be more accurate if FERC (1) had specific criteria as to which costs should be included or excluded and (2) had its own detailed cost accounting system.

As an example of the lack of specific criteria, we found that a FERC budget analyst was tasked with developing a rough estimate of the average cost of one employee for use in estimating general fees. He developed this estimate on October 30, 1981, but was unable to provide us with detailed backup for his cost estimate or with any written criteria for including or excluding categories of cost. He told us that management did not require him to provide any detailed explanation of his cost estimate. This estimate, however, was used in FERC's proposed user fee rulemakings to

1/According to a FERC official the Commission has made changes to the various work categories as depicted in the MIS to make them compatible with those reported in the TDRS. For example, several MIS categories have been expanded to provide more detailed information.

2/Joint Financial Management Improvement Program, Annual Report for 1975, April 1976, pgs. 3-7.

calculate each individual fee. We believe FERC needs to provide a clear, precise explanation of the criteria used in eliminating certain costs and retaining others. 1/

Cost accounting system needed

Another factor complicating FERC's ability to precisely calculate average costs is that FERC does not have its own cost accounting system. Instead, FERC must depend on DOE for most of its accounting data. According to FERC, DOE's accounting system is unable to give FERC the level of detail or timely information needed to fully oversee its financial activities. The lack of timely account information prompted FERC to establish its own in-house microcomputer system to track fund availability. FERC officials told us that, on at least two occasions, DOE expressed concern that FERC might have exceeded its authorized funding levels. While these concerns proved to be unfounded, FERC decided to establish its own automated funds tracking system, to better account for their available funds.

DOE's accounting system cannot provide the degree of detail FERC needs to precisely allocate costs to its various regulatory functions. According to FERC, DOE's accounting system is structured primarily to serve programs with large contracts; it is not geared toward the specific needs of FERC, which has a salary and expense appropriation. A FERC official told us that one example of the problems FERC has encountered is DOE's inability to provide FERC with a cost breakdown, by program office, of the detailed costs incurred for such areas as training or travel. Furthermore, DOE could only provide broad-based cost estimates of how much DOE expended to support FERC. According to an October 9, 1981, memorandum from DOE's Assistant Secretary for Management and Administration, the staffyears of effort and associated costs his office provides to FERC are merely a best guess because DOE does not maintain financial accounts or records which identify administrative support to FERC.

In September 1981, because of the planned termination of the Common Support Agreement, FERC began to consider what was needed for it to have its own accounting system. More specifically, FERC contracted with a firm to provide among other things, "a long-range plan which identifies the steps necessary to establish an integrated accounting, budget, and financial management, and reporting system." In the spring of 1982, FERC decided to adopt DOE's Field

1/"Establishing A Proper Fee Schedule Under the Independent Offices Appropriation Act, 1952," CED-77-70, May 6, 1977, p. 24.

Office Reporting System (FORS) for its own use, in order to save money and expedite the Commission's ability to have a system in place by October 1, 1982.

In August 1982 FERC officials involved with phasing in the FORS told us that they planned to ensure that the system provided the proper support for the user fee system. However, on September 8, 1982, these same FERC officials told us that the ability of the accounting system to support user fees is not a major concern, and that they were more concerned with getting the new system operational. At that time, they also told us that FERC had no plans to integrate the TDRS with the accounting system. FERC officials said they had sufficient information in their planned accounting system, and it would be too complicated to tie the accounting system to the TDRS work categories. However, on September 9, 1982, a FERC official informed us that FERC would not be assuming the accounting function on October 1, 1982, as initially planned. The delay was attributed to the uncertainties of the fiscal year 1983 appropriation and the current lack of funds to consummate the transfer of functions from DOE. When the transfer will occur is uncertain, possibly as early as March 1983, but more likely in October 1983.

Therefore, given the extra time before the new system comes on line, we believe FERC should more fully analyze the particular fee cost elements needed and consider tying the TDRS to the accounting system at some future date. As previously discussed, our Policy and Procedures Manual For Guidance of Federal Agencies, Title 2, Section 16 addresses the subject of cost accounting for Federal agencies. Section 16.4 states that accounting for costs is required where reimbursement for services performed is to be at cost or when sales prices are primarily based on cost. Adequate cost accounting is also required when full recovery of costs from customers or users of services is a statutory requirement. 1/

The key questions become (1) how much detail is needed to support the fee system and (2) what are the costs versus benefits of the various alternatives. In our September 1982 report on DOE's accounting system, 2/ we stated that in developing its own accounting system, FERC had obtained the FORS system and was modifying it for implementation; however, it did not perform a current user

1/"Establishing A Proper Fee Schedule Under the Independent Offices Appropriation Act, 1952," CED-77-70, May 6, 1977.

2/"Major Financial Improvements Needed at the Department of Energy," GAO/OCG-82-1, Sept. 15, 1982.

requirements analysis--a fundamental step for a successful system development effort. Such an analysis would define the needs to be fulfilled and objectives to be met by the proposed system. This is critical to the developmental effort because it directly impacts subsequent activities, such as conceptual system design; feasibility study; cost-benefit analysis; systems analysis, design, programming, and testing; and procedures preparation. This analysis should result in a functional requirements document as described in the Federal Information Processing Standards Publication No. 38, "Guidelines For Documentation of Computer Programs and Automated Data Systems."

CENTRAL ORGANIZATIONAL FOCUS
NEEDED FOR USER FEE PROGRAM

Presently, FERC does not have one office which has overall responsibility for its user fee program. Responsibility for the program is spread among several different offices. For example, the Office of Hydropower Licensing is responsible for computing hydroelectric fees, the Office of General Counsel is responsible for rulemaking, and the Program Management Office's Budget and Finance Office provides financial control while another of its offices monitors the MIS and TDRS. Furthermore, a separate team is developing the new accounting system.

The value of a central user fee office is evident from not only the volume of activity the proposed user fee system would generate but also the importance of user fees in making FERC self-sustaining. The Commission's proposed user fee rules will probably increase the number of filings requiring a fee from about 2,000 to 55,000 a year. With such an increase and considering the importance of the user fee program in making FERC self-sufficient, we believe that the responsibility for FERC's user fee program should be centralized in one office.

FERC recognizes the value of a central user fee office. On May 12, 1982, FERC's Executive Director agreed with a proposal by the Director of the Program Management Office that a separate user fee branch be established. We agree with this proposal since a central office would not only help to coordinate the various fee activities but also help to centralize policy and procedural development. As previously highlighted, such an office should help FERC effectively address the problems with the TDRS and the accounting system. Therefore, we believe FERC should establish this office so that it can be fully operational before the user fee rulemakings are finalized.

In commenting on a draft of this report the Executive Director, FERC, noted that he has authorized the establishment of a separate User Fee Branch. However, because of budgetary constraints in fiscal year 1982 and the uncertainty of breaking of

the Common Support Agreement with DOE, this has not been one of their highest priorities. Furthermore, the fiscal year 1983 budget situation continues to be uncertain. According to the Deputy Executive Director, FERC is still operating under a Continuing Resolution and is therefore limited to its fiscal year 1982 funding level. Even with these tight budget constraints, the Executive Director has authorized the Director, Office of Program Management one priority position for the Branch Chief for the proposed User Fee Branch. On January 19, 1983, the announcement for this position was posted.

CONCLUSIONS

We agree with the Commission's efforts to expand its user fee program. To be accurate and equitable, however, such a program should be based on effective cost capturing and allocation systems. FERC recognizes that its present methods of estimating and allocating costs can be improved and has taken actions to improve them.

Its development of the TDRS is an example of such actions. We believe, however, that FERC needs to ensure that this system will accurately collect the information needed to support its user fee system. The TDRS may capture time charges, but FERC has no plans to periodically test the data for accuracy.

Along the same lines, the fee determination would be enhanced if FERC provided a clear, precise written explanation of the criteria it used to determine the average cost of one employee. Such an explanation would permit FERC management to decide the appropriateness of the cost items included and/or excluded and to identify the specific cost elements that the cost accounting system must capture.

FERC acknowledges its need for a fully designed and operating cost accounting system. However, our recent report on DOE's accounting systems showed that FERC did not prepare a user requirements study on the FORS system. This study is critical to both the successful operation of the overall system and its ability to supply the types of detailed program data needed to support its user fee system. As a part of the user requirements study, FERC could also examine the potential for tying the TDRS to the accounting system at some later date. Such a tie-in would allow the major cost elements such as travel, training, and employee benefits to be allocated to the appropriate office or work category.

FERC also recognizes the benefits of a central user fee office to oversee and monitor its user fee system. We believe this is needed as soon as possible so that it can be fully operational prior to the finalization of the user fee rulemakings.

RECOMMENDATIONS

We recommend that the Chairman, FERC, direct that:

- Procedures be established for periodically testing the accuracy of the data generated by the Commission's TDRS.
- Criteria be developed to specify and explain which costs are to be included and excluded in determining the average cost for an employee.
- A user requirements analysis be prepared for the proposed accounting system, giving special consideration to the requirements for the user fee system and a possible future tie-in with the TDRS.
- Overall responsibility for managing and directing the operations of the user fee program be assigned to one office.

AGENCY COMMENTS

In his December 3, 1982, comments on our draft report, the Executive Director, FERC agreed with all of our recommendations (see app. II) and has initiated steps to implement them.

Time to start... [unclear]

WASHINGTON 20426

IN REPLY REFER TO:

DEC 3 1982

Mr. J. Dexter Peach
Director, Energy and Minerals
Division
U.S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Peach:

I appreciate the opportunity to comment on your draft report about the Federal Energy Regulatory Commission's (FERC) proposed User Fee Program. At the outset I would like to thank you and your staff for what I feel is a very useful critique of the FERC's proposed program. Although I do not agree entirely with all aspects of your draft report and feel several areas need clarification, I find that the recommendations are worthy of consideration and could possibly enhance the implementation of our User Fee Program. My comments on each recommendation appear below.

Recommendation 1.

Procedures be established for periodically testing the accuracy of the data generated by the Commission's Time Distribution Reporting System (TDRS).

Response:

The FERC will implement procedures to test the TDRS data for accuracy on a quarterly basis. However, I must make it clear that the FERC's highest priority for the TDRS is to ensure that it is implemented Commission-wide. To date, three major offices 1/ of the Commission are reporting their time expenditures in the TDRS. Additionally, the Office of the General Counsel is scheduled to begin reporting January 1, 1983, with the remainder

1/ The Offices of Pipeline and Producer Regulation, Electric Power Regulation, and Program Management are currently reporting in the TDRS.

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of the Commission reporting by April 30, 1983. Because of the TDRS schedule and current budget and personnel restraints, any testing of TDRS data will not occur until the TDRS is fully implemented in the Commission.

Recommendation 2.

Criteria be developed which specify and explain which costs are to be included and excluded in determining the average cost for an employee.

Response:

The FERC is in the process of preparing a set of guidelines for this purpose. The guidelines will specify every cost that is utilized in determining the average cost for a Commission employee. They will also list all excluded costs and the reason for their exclusion.

It is our hope that these guidelines will become the model for future Commission fee calculations. However, because of the advanced stages of the Notices of Proposed Rulemaking (NOPR's) that have been issued concerning fees, introducing these guidelines as part of the public record at this time would delay implementation of fee collection.

Recommendation 3.

A user requirements analysis be prepared for the proposed accounting system, giving special consideration to the requirements for the user fee system and a possible future tie-in with the TDRS.

Response:

The FERC has requested a copy of the user requirements document from the Department of Energy's San Francisco Regional Office. This document will be reviewed and used as a model for the preparation of a requirements document for the FERC. During development of the FERC requirements document, an evaluation will be made to determine compatibility of the TDRS and the Field Office Reporting System (FORS).

Recommendation 4.

Overall responsibility for managing and directing the operations of the user fee program be assigned to one office, and that the establishment of this office be expedited.

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Response:

As pointed out in GAO's draft report (page 11), on May 12, 1982, I authorized the Director, Office of Program Management, to establish a separate User Fee Branch which will coordinate the legal and accounting functions necessary to establish fees. Because of budgetary constraints in FY 1982 and the uncertainty of breaking of the Common Support Agreement with the Department of Energy, this has not been one of our highest priorities. As you know, in FY 1983 we are still operating under a Continuing Resolution; however, I have authorized the Director, Office of Program Management, one priority position in order to hire the Branch Chief for the proposed User Fee's Branch. This individual will become familiar with the Commission User Fee Program and will prepare position descriptions in order to hire additional staff when our budget is finally approved.

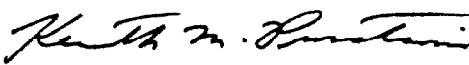
Additional Comments: (See GAO note.)

On page 1 of your draft report you pointed out that the FERC contributed \$22 million, or 40 percent of the Commission's budget in FY 1979, and \$23 million, or 30 percent in FY 1981, to the U.S. Treasury. However, the report failed to mention that in FY 1982 the Commission collected \$49.5 million, or approximately 65 percent of the Commission's budget. I feel these figures should be stated in your final report.

Additionally, your draft report points out (page 7) that the MIS was not originally developed to provide data to support user fees. You are correct in this statement; however, you do not mention that numerous changes are now being made to coordinate the MIS with the TDRS as we progress with the NOPR's for the fee categories. When the User Fee Program is in place, both the MIS and the TDRS will support the fee calculation methodology.

If you require additional information on any of my responses, please do not hesitate to contact me.

Sincerely,


William G. McDonald
Executive Director

GAO note: The Commission's comments suggesting clarifications were considered and the report was revised where appropriate. Page references in this Appendix have been changed to conform to page references in the final report.

24227

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