



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

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March 29, 1983

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

B-208038



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The Honorable Charles M. Butler III
Chairman, Federal Energy Regulatory
Commission
Washington, D.C.

Dear Mr. Chairman:

Subject: Some Small Purchase Procurements at the Federal
Energy Regulatory Commission Were Not Well
Managed (GAO/RCED-83-95)

Our review of small purchase procurements related to the Federal Energy Regulatory Commission's (FERC's) participation in the Trans-Alaska Pipeline System (TAPS) rate case showed that unrecorded accounts receivables and payables had been outstanding since 1980 and that several deficiencies existed in FERC's small purchase procurement practices. During our review, the unrecorded accounts receivables were collected and procurement procedures were changed to correct some of the noted deficiencies. Further action needs to be taken, however, to

- collect the interest accrued on the accounts receivables that had been outstanding, provided FERC can properly document notice of debt to the involved parties;
- appropriately justify unauthorized procurements made during the TAPS discovery process or take steps to recover the amount expended; and
- settle the unpaid liability to the Business Archives and Record Storage Company (BARSCO).

OBJECTIVES, SCOPE,
AND METHODOLOGY

We undertook the review as part of our basic legislative responsibility to examine Federal agency expenditures and in response to concerns expressed by the Subcommittee on Energy and Water Development, House Appropriations Committee, about FERC expenditures in the TAPS case. Our objective was to assess the adequacy of the procurement and accounting procedures used by FERC in its effort to obtain cost documentation for the TAPS case.

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During our review, we obtained and analyzed invoices and other documentation for all 96 procurement actions relating to the expenditure of nearly \$180,000 for TAPS discovery costs during the period September 1979 through June 1981. We discussed procurement procedures with FERC and Department of Energy (DOE) officials and interviewed Alyeska Pipeline Service Company (the oil pipeline owners' representative) and State of Alaska attorneys involved in the TAPS case. We also reviewed Federal and DOE procurement regulations and contacted a major supplier used by FERC to provide goods and services. Our review was performed in accordance with generally accepted government audit standards.

FERC SPENT OVER \$179,000
IN DOCUMENTING TAPS COSTS

On October 1, 1977, FERC assumed ratemaking responsibility for oil pipeline companies under the authority of the Department of Energy Organization Act (Public Law 95-91). This responsibility had been within the purview of the Interstate Commerce Commission (ICC), and at the time of the transfer, TAPS was ICC's major oil company rate case.

The TAPS project had been estimated to cost about \$1 billion and ended up costing about \$9.4 billion. One of the major issues to be developed in the rate case was whether the TAPS expenditures for the pipeline represented a prudent investment that the TAPS owners should be allowed to recover in future transportation rates. The principal participants in the TAPS case were the pipeline companies' owners (represented by Alyeska), who wanted the rates high enough to collect the full cost of building and operating the pipeline system, and the State of Alaska, whose royalty fee and severance tax receipts would increase as the transportation rates decreased. ^{1/} FERC staff said they also became heavily involved in the case to ensure the completeness of the hearing record and because of the rate-setting precedents that were expected to emerge.

A FERC official said that under ICC regulations, the oil pipeline companies did not have to provide supporting documentation for their proposed transportation tariffs when they filed for their initial rate. As a consequence, the Administrative Law Judge (ALJ) granted a discovery period to the TAPS participants so they could

^{1/}The royalty fee and severance tax are based on a percentage of the wellhead price of the oil. The wellhead price is equal to the delivered price of the oil (set by the world price) less the transportation rate allowed by FERC.

- obtain from TAPS contractors the voluminous construction planning and cost documentation that were needed to assess the prudence of the pipeline companies' expenditures. 1/ This construction cost discovery period extended from mid-1979 until June 30, 1981, and was carried out at various contractor locations scattered across the lower 48 States and Alaska. In granting access to contractors' records, the ALJ generally limited the TAPS participants to one visit at each contractor location where relatively large volumes of records are stored and required that the participants make the visits at the same time to minimize the inconvenience to the contractors.

FERC reported spending \$179,681.53 during the period from September 1979 through June 1981 for document production services for its own use and for the use of Alyeska and the State of Alaska representatives during the discovery process. Most of these expenditures were for microfilming and other reproduction costs, with the balance used for temporary clerical help and mailing costs.

LACK OF MANAGEMENT CONTROLS OVER TAPS
DISCOVERY EFFORT LED TO CONTRACTUAL
AND ACCOUNTING DEFICIENCIES

Two-thirds of FERC's expenditures for TAPS-related purchases were incurred to meet the discovery documentation needs of Alyeska and the State of Alaska pursuant to the terms of joint document production agreements among Alyeska, the State of Alaska, and FERC. Under the terms of the agreements, the three parties were to conduct a joint records examination at each TAPS contractor's location and share the costs of each visit on a one-third-each basis.

These agreements were negotiated by representatives of FERC's Office of General Counsel (OGC) and Office of Pipeline and Producer Regulation (OPPR). They were signed by FERC's designated OGC lead counsel for the TAPS case although he had no authority to commit FERC to the payment of funds for goods and services. Neither OGC nor OPPR representatives forwarded these agreements to FERC's Executive Director for his review and approval, and he said that he had been unaware of the agreements until we brought them to his attention on September 29, 1982. Furthermore, although the agreements stipulated a cost-sharing arrangement, they made no provisions for (1) how or when costs incurred were to be billed

1/In mid-1979, during the early stages of discovery, it was initially estimated that 75 million documents would have to be reproduced at a potential cost of \$1.7 million.

or how payments were to be made to suppliers, (2) a settlement of accounts if one party paid more than its prorated share for services rendered, or (3) procurement procedures to be followed to ensure the lowest possible cost commensurate with the quality of work required for documenting evidence.

Because the TAPS discovery effort lacked the appropriate management oversight, implementing guidelines for the parties to follow in conducting the necessary procurement and accounting activities were never developed to correct the deficiencies in the agreements. Consequently, when the joint discovery effort started in September 1979, FERC initially paid nearly all of the costs associated with the early trips with no reimbursement by either Alyeska or the State of Alaska for their one-third-each share. Alyeska and the State of Alaska did pick up some of the incurred costs at later dates. By the time the discovery effort ended on June 30, 1981, however, FERC reported paying out \$179,681.53, or about 58 percent of all purchase commitments made by the three parties.

Furthermore, because FERC did not request DOE to establish appropriate accounts to record the financial transactions related to the discovery costs, varying amounts of accounts receivables from Alyeska and the State of Alaska went unrecorded from about January 1980 until they were paid in December 1982. ^{1/} During part of this same period, FERC was also liable to Alyeska and the State of Alaska for its share of their expenditures for TAPS costs, but these FERC liabilities were also never recorded. These unrecorded assets and liabilities resulted in DOE erroneously certifying the status of its appropriated funds in fiscal years 1980, 1981, and 1982.

On July 1, 1981, the legal firm representing the State of Alaska reconciled the costs incurred to date by each of the three parties and sent its calculated payments shares to both Alyeska attorneys and FERC's lead counsel. Based on the reported expenditures made by each of the three parties, the attorney for the State calculated that both FERC and the State had paid out more than their equitable shares, and that Alyeska--having paid out a total of only \$23,140.62 for State and FERC duplicating services--owed the State of Alaska \$1,366.94 and FERC \$71,801.83. The transmittal letters to Alyeska and FERC stated that supporting invoices to substantiate the amounts due would be provided for review.

^{1/}FERC was established as part of DOE on October 1, 1977, under the DOE Organization Act of 1977 (Public Law 95-91). All of FERC's accounting functions were handled by DOE's Office of the Controller.

Our analysis of documentation provided by the three parties and responses to the State's calculations brought out several problems. Using the reported total expenditures as of June 30, 1981, we calculated that the actual shared costs were as follows:

	<u>FERC</u>	<u>Alaska</u>	<u>Alyeska</u>
Total reported expenditures	\$179,681.53	\$109,246.64	\$23,140.62
Pro-rated share:			
FERC	59,893.85	59,893.84	59,893.84
Alaska	36,415.55	36,415.54	36,415.55
Alyeska	<u>a/11,570.31</u>	<u>a/11,570.31</u>	-
Net amounts owed to:			
FERC by Alaska			
(\$59,893.85-\$36,415.55)	23,478.30		
FERC by Alyeska			
(\$59,893.84-\$11,570.31)	48,323.53		
Alaska by Alyeska			
(\$36,415.54-\$11,570.31)		24,845.23	

a/These costs were incurred by Alyeska for reproducing copies of its own records for Alaska and FERC for which it received no benefit.

Instead of directly paying FERC the \$23,478.30 owed by the State of Alaska, the Alaska attorney unilaterally added that amount to the \$48,323.53 owed to FERC by Alyeska. This transfer presumably cleared Alaska's account with FERC and reduced Alyeska's payable to the State of Alaska to a minimal amount. However, it increased Alyeska's bill to FERC to \$71,801.83--the amount which subsequently remained outstanding, and still unrecorded, until final settlement was made in December 1982.

By agreeing to the State's calculated reconciliation, FERC, in essence, accepted the State's and Alyeska's billings for the goods and services they paid for and agreed to the "payments" of amounts owed with no review of supporting invoices or other documentation to assure itself that the charges were reasonable. This lack of assurance was exacerbated because no specific procurement procedures to ensure the lowest possible cost were provided in the agreements. FERC's approval of the "payments" was a clear violation

of DOE's general principles and procedures to be followed in paying its liabilities. 1/ In accepting the State's transfer of its FERC liability to Alyeska, FERC also accepted the responsibility of collecting the State's share of incurred costs from Alyeska-- a process that required 18 months to accomplish. 2/

The long period of time that the accounts receivables from Alyeska and the State of Alaska remained unpaid represents an interest cost to the Government. It is clear that the Government has a right to assess and collect interest on all debts owed to it. 3/ Further, neither statutory authority nor a specific contract provision is required. We have estimated that FERC's failure to exercise the appropriate management control over the TAPS discovery effort resulted in interest costs of over \$27,000 to the Government on the outstanding accounts receivables. This amount reflects Alyeska's and Alaska's share of FERC's incurred costs computed at the U.S. Treasury's 3-month T-bill rate. The amount that can be collected, however, will depend on FERC's ability to document proper notice of debt to the parties.

The lack of management controls and accounting procedures for TAPS procurements has also resulted in unrecorded invoices amounting to \$5,730.99 from BARSCO remaining unpaid since October 30, 1980. FERC's liability to BARSCO, however, was apparently recognized by FERC's lead counsel as of March 17, 1982, when he suggested to Alyeska that it should pay the BARSCO claim

1/DOE's Accounting Practices and Procedures Handbook, Chapter VIII, 2(a)(2), states "Prior to the payment of a liability, responsibility for payment shall be established by obtaining an original invoice or statement of the debt payable under applicable laws and regulations. The invoice (or bill) must be supported where appropriate by documentary reports of inspection and acceptance."

2/During this period, FERC made at least one attempt to collect the outstanding balance but did not respond to Alyeska's requests for supporting documentation. In compliance with GAO's recommendation to the Chairman in our letter report dated September 29, 1982 (GAO/EMD-82-132), FERC submitted the requested invoices to Alyeska on October 20, 1982, to support the \$71,801.83 payment due. Alyeska responded with a check for \$61,734.31 on November 3, 1982, and a second payment of \$9,972.77 on December 22, 1982. The remaining balance--\$94.75--was determined by FERC to be a non-reimbursable cost.

3/Agencies are now required to charge interest under the provisions of Public Law 97-365 ("Debt Collection Act of 1982"), signed October 25, 1982.

and reduce its accounts receivable to FERC by the same amount. As of March 3, 1983, this claim had not been paid. However, FERC was preparing the necessary documentation to settle the account.

FERC'S PROCUREMENT PRACTICES DEVIATED
FROM ESTABLISHED PROCEDURES

FERC maintains its own contracting and procurement staff and, according to the Executive Director, attempts to ensure compliance with Federal procurement regulations. Since October 1, 1977, FERC has been subject to DOE's procurement regulations as well.

Standard purchase procedures normally require an approved purchase requisition and an authorized purchase order for specific goods and services prior to making a purchase commitment to a vendor. Procurement of goods and services for the TAPS discovery effort, however, was carried out under a call number system. This system allowed FERC's program staff in OPR to make purchase commitments to vendors before any authorizing documentation was prepared by calling the procurement office and requesting a call number. The requesting staff was to have previously contacted a number of vendors to obtain price quotations, and the procurement office would then assign the call number to the lowest qualified bidder. The vendor's invoice requesting payment for the goods or services was to show the call number as evidence of FERC's authorization for the purchase. The invoice would also serve as the initiating document for the subsequent preparation of the purchase requisition and purchase order. The invoice, purchase requisition, and purchase order would then be sent to FERC's contracting officer for review and approval. After the purchase order was signed, the package would be sent to DOE for payment.

FERC's procurement staff said that the call number system was the one used by DOE. However, our discussions with DOE procurement officials and our review of DOE procurement regulations indicated that FERC's call number system deviated from DOE's standards. For example, DOE regulations provide for the use of a call number system but only to obtain recurring, but intermittent, services from a single vendor and only after a previously authorized blanket purchase authorization has been issued for that vendor. In FERC's case, although some recurring services were obtained from single vendors, no blanket purchase authorizations were ever prepared.

FERC officials also justified the use of the call number system based on the emergency nature of the procurement. According to the officials, FERC was usually given only a few days' advance notice that TAPS records would be available for copying at a contractor's location. Arrangements for microfilming, clerical support, and other services would have to be arranged on short notice.

DOE regulations also include procedures for making emergency purchases. However, to use this procedure a written determination of need for each case is required from the contracting officer and the requestor is required to submit, among other data, the estimated dollar amount, product and/or service required, and suggested source. After the procurement office approves the request, a purchase order number is issued and the requestor proceeds with the procurement action. Within 2 working days, however, the requestor must initiate a funded purchase request referencing the purchase order number, have it approved, and submit it to procurement for processing.

Although FERC's call number system parallels DOE's emergency procedures in some respects, there are differences. While all of FERC's procurements for TAPS were made under the call number system, not all were of an emergency nature. FERC's lead counsel at the time the procurements were made said that only about 30 percent to 40 percent of the visits were made on short notice. Further, no written determinations by FERC's contracting officer were made to support procurement actions that might have been considered as an emergency. Finally, purchase requisitions for the procurements were not prepared by the requestor until the vendor's invoice was received--in some cases as long as several months after the procurement action occurred.

FERC officials sanctioned the use of the call number system for all TAPS purchases but provided few management controls over its use and no guidelines for the staff to follow. This lack of control and guidelines was particularly detrimental because the TAPS discovery effort was conducted principally by a FERC staff member with little or no procurement experience. As a result, the call number system procedures were not always complied with, standard procurement regulations that should have been followed were violated, and FERC's management review and approval process did not detect the deficiencies.

Our analyses of the 96 procurement actions taken under the joint production agreements showed that the following improper procurement actions occurred.

1. Seventeen invoices totaling \$22,202.38 were not supported by a call number pre-authorizing the procurement and there was no documentation in the payment package at DOE to indicate that the unauthorized actions had been ratified by the appropriate procurement officials prior to payment.
2. In 13 cases, the date the vendor services were provided preceded the recorded call number issue date. Staff delays in obtaining the required authorizations ranged from 4 to 41 days after the vendors began providing the services.

3. FERC staff frequently used the same call number to support multiple purchases. We found that 19 call numbers supported 63 separate vendors' invoices. In 10 of the 19 cases, the actual costs per the multiple invoices were greater than the estimated cost given to procurement when the call number was requested. In one case, a single call number was used for three invoices and the actual cost was nearly four times the estimated cost.
4. Nine of the procurement actions were for amounts over \$5,000, but no written cost estimates from potential suppliers were obtained as required by the procurement regulations (41 CFR 1-3.603-1(d)) and no justifications for deviating from the regulations were furnished with the payment packages. The OPRR staff responsible for initiating the procurements certified that vendors were contacted for each purchase to ensure the lowest price. Notations to this action that we found in some of the payment packages indicated that these contacts were by telephone only--a proper procedure for purchases costing less than \$5,000 but not for those exceeding \$5,000.
5. Six of the 12 discovery trips included in our review generated costs in excess of \$10,000. Our analyses of the call numbers assigned and the invoices submitted by vendors at each location indicated that the purchases were split into two or more segments to keep each invoice under the \$10,000 limitation for small purchases. This was an apparent attempt to avoid the statutory requirement (41 U.S.C. 252) that all procurements over \$10,000 be formally advertised. In one case, correspondence from a vendor to FERC noted that purchases were being split to keep each invoice under \$10,000.

CORRECTIVE ACTIONS TAKEN BY FERC

During our review, we found that FERC had taken certain corrective actions to remedy some of the deficiencies noted. The use of the call number system, for example, has been discontinued, and FERC staff are now required to have approved purchase requisitions and purchase orders before making any small purchases. A procedure for making emergency purchases has been established and instructions for its use sent to all FERC staff. The Executive Director has also sent letters to all FERC staff prohibiting them from making any unauthorized commitments. Further, the outstanding accounts receivable has been collected from Alyeska as noted on page 6.

CONCLUSIONS

FERC's lack of management control over the procurement and accounting aspects of the TAPS discovery effort resulted in (1) erroneous certification as to the status of appropriated funds, (2) unauthorized payments, (3) additional interest costs to the Government, (4) violations of both Federal and DOE procurement regulations and DOE accounting procedures, and (5) frequent deviations from FERC's own small purchase procedures. We agree with FERC officials that the conditions and circumstances surrounding the TAPS discovery effort warranted special procurement procedures. We believe, however, that had management given adequate attention to developing and documenting these procedures needed for the discovery effort and supplementing them with implementing guidelines and management and accounting controls, the adverse results that occurred could have been avoided. We also believe that too much responsibility was placed on OGC's lead counsel for negotiating accounting and financial transactions with Alyeska and State of Alaska representatives. Such transactions should have been handled by FERC's financial experts.

The termination of the procurement activities under the joint document production agreements and management actions taken to improve procurement procedures appear to have resolved the major causes of the problems identified during our review, although deficiencies can still occur if inadequate document reviews are not also corrected. We believe, however, that the delayed payments on the outstanding accounts receivables represent a cost to the Government that FERC should make every effort to collect.

We also believe that two actions are still required to resolve procurement and accounting deficiencies. In our opinion, the 17 purchases made without prior approval or subsequent ratification represent unauthorized expenditures of appropriated funds, and appropriate action needs to be taken to correct this deficiency. The BARSCO liability continues to remain an open item with respect to TAPS purchases. We believe, however, that FERC's current actions on this claim will satisfactorily resolve this deficiency.

RECOMMENDATIONS

We recommend that the Chairman, FERC:

- Determine whether a proper basis for interest collection was established through adequate notification procedures and, if so, pursue the collection of any interest that accrued during the period the accounts receivables were outstanding.
- Satisfactorily establish that the 17 procurement actions were authorized and the payments were therefore legal or

take the appropriate steps to recover the unauthorized expenditures.

--Continue the current efforts underway to satisfactorily resolve the BARSCO liability so that the Government's obligation can be liquidated.

AGENCY COMMENTS

FERC commented on our draft report by letter dated March 7, 1983 (enclosure I). FERC also included a copy of its Executive Director's response to our October 20, 1982, Notice of Inquiry. FERC believes that many of the findings and opinions in the report were addressed in the Executive Director's response and requested that it be incorporated in the final report. We believe that we have given appropriate recognition to the corrective actions taken by FERC and therefore have not included the text of the Executive Director's response in this report.

FERC disagreed with our recommendation that it pursue the collection of interest charges on the outstanding balances of the accounts receivable. FERC has concluded its effort to collect such payments because (1) the terms of the cost-sharing agreement did not stipulate a requirement for payment of interest and (2) the Debt Collection Act of 1982 cited in our report does not apply. FERC believes that for these reasons the expenditure of additional funds to pursue a claim to such interest through the court system would be imprudent considering the amount (\$27,000) of the interest in question. We do not agree with FERC's rationale for dropping the interest collection issue. As we pointed out in the report, a specific contract provision is not required for the Government to collect interest on debts it is owed. Further, the fact that the Debt Collection Act of 1982 does not apply in this case has no bearing on FERC's authority to pursue the collection of interest. (Our reference to the act was in a footnote and we did not state that it applied in this case.) Rather, as we pointed out in the report, FERC had a discretionary right to collect interest prior to the Debt Collection Act of 1982.

We also indicated that collection would depend on FERC's compliance with proper notification procedures. FERC did not address this point in its comments. Because FERC chose not to comment, it is unclear to us whether a proper basis for interest collection has been established under the Federal Claims Collection Standards (4 C.F.R. Parts 101-105). Therefore, we have amended our previous recommendation to require FERC to make this determination.

FERC agreed to review the 17 purchases that we believe were made without authorization and requested us to identify the pertinent invoices so that appropriate action could be taken. These invoices have been sent under separate cover to FERC.

In response to our recommendation concerning the outstanding liability to BARSCO, FERC has determined the claim is valid and has initiated action to settle the claim.

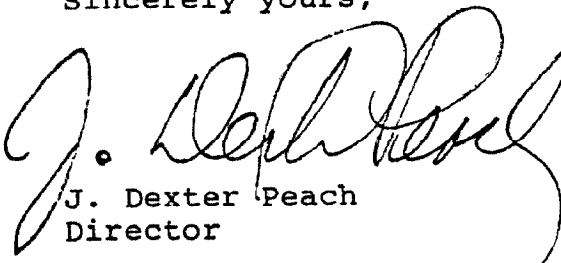
The last two paragraphs of FERC's letter relate to criticisms of our conduct of the audit. We have responded to these criticisms in a letter to the Chairman, FERC, dated March 21, 1983 (enclosure II).

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As you know, 31 U.S.C. 720 requires the head of a Federal agency to submit a written statement on activities taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

Copies of this report are being sent to the Subcommittee on Energy and Water Development and Subcommittee on Legislation, House Committee on Appropriations; Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce; Subcommittee on Energy and Water Development, Senate Committee on Appropriations; Senate Committee on Governmental Affairs; Director, Office of Management and Budget; and other interested parties.

Sincerely yours,



J. Dexter Peach
Director

Enclosures-2

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

MAR 7 1983

Mr. J. Dexter Peach
Director
Resources, Community, and
Economic Development Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Peach:

This letter responds to your request for comments on the proposed General Accounting Office (GAO) report entitled "Some Small Purchase Procurements at the Federal Energy Regulatory Commission Were Not Well Managed."

First let me state that the title of the report should be modified since the scope of your review and findings was limited to the small purchases in support of the Trans Alaska Pipeline System (TAPS) case. I feel this is an important distinction to make because of the unprecedented nature of the TAPS case and the unique processing problems forced upon this Commission.

In reviewing this draft report, I found that many of the findings and opinions offered by the GAO staff have been addressed by the Federal Energy Regulatory Commission (FERC) in previous correspondence to GAO. Since it is important to ensure that the record is complete on this matter, I request that the FERC correspondence to GAO be incorporated in the final report (Enclosures 1 and 2).

In its report, the GAO recommends that I take the following actions:

- Actively pursue the collection of appropriate interest charges that accrued on the outstanding balances of the unrecorded accounts receivables.
- Satisfactorily establish that the 17 procurement actions were authorized and the payments were therefore legal or take the appropriate steps to recover the unauthorized expenditures.
- Make a determination as to the appropriateness of the BARSCO liability and either pay BARSCO or refer the claim to GAO for settlement.

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The recommendation to pursue the collection of appropriate interest charges raises several problems. First, the Phase II Discovery Order which established the terms of the cost-sharing agreement among the FERC, Alyeska, and the State of Alaska does not stipulate the requirement for the payment of interest. This point has been emphasized by Alyeska's counsel in response to our past requests for an interest payment.

Second, the Debt Collection Act of 1982 cited by GAO does not cover contracts entered into before October 1982. Since the three-party cost-sharing agreement was signed in mid-1979 and the outstanding balance from Alyeska and the State of Alaska has been paid, I do not believe that the provisions of the Debt Collection Act can be invoked in this matter. Under these circumstances, the expenditure of additional funds to process any alleged claim to interest through the court system would be imprudent considering the amount of interest (\$27,000) in question. Therefore, the Commission has concluded its efforts to assess and collect interest payments from Alyeska and the State of Alaska under this cost-sharing arrangement.

In its second recommendation, the GAO asks the FERC to establish the authenticity of 17 small purchase actions totaling \$22,000 during 1979 and 1980. If the GAO can identify the 17 small purchase actions in question, the Executive Director of the Commission will review each invoice. Provided that the services were required in the performance of Commission business for the TAPS case, the appropriate ratification letter will be issued for the file. Conversely, any expenditures not meeting the above criteria will be recovered.

In response to the third recommendation, after reviewing the documents, the Commission has determined that an outstanding liability of \$5,730.88 does exist for TAPS discovery work performed by BARSCO. The Executive Director of the Commission will ensure that the appropriate procurement documents are prepared to expedite payment of this liability.

As Chairman of this Commission, I would be remiss if I failed to bring to your attention my concerns over how the GAO conducted the TAPS investigation. While I fully understand GAO's desire to conduct thorough audit work, common sense would indicate that a 30-month investigation goes beyond all definition of reasonableness. At some point, a cost/benefit threshold should be established by GAO management to prevent the unproductive use of GAO, FERC, and DOE resources. Judging by the content of this draft report, one could question whether the results were worth the expense of this 30-month review effort.

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I am even more disturbed about the reports from all areas of the Commission concerning the conduct of the GAO team during this audit. For example, I fail to see any valid reason for reviewing the Official Personnel Files of selected FERC employees. Assignment to a GAO audit does not give an auditor the right to violate the privacy of federal employees without justifiable cause. I also question the authority of a GAO examiner who advised a FERC employee to retain an attorney, implying some sort of criminal conduct. Fear tactics such as these are despicable and only serve to create animosity between the GAO and FERC staff.

In summary, I sincerely hope that both FERC and GAO management can benefit from the lessons learned during the TAPS investigation.

Sincerely,



C. M. Butler III
Chairman

2 Enclosures



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

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

21 MAR 1983

The Honorable C. M. Butler III
Chairman, Federal Energy
Regulatory Commission
825 N. Capitol Street
Washington, D.C. 20426

Dear Mr. Chairman:

We have received your March 7, 1983, comments on our draft report "Some Small Purchase Procurements at the Federal Energy Regulatory Commission Were Not Well Managed" (GAO/RCED-83-95). We will consider these comments in finalizing the report which we expect to issue in the near future.

In addition to commenting on the report recommendations, you expressed several concerns over the cost effectiveness of our review and the conduct of our audit staff. These included:

- the time and resources required to conduct the audit,
- our audit staff's review of FERC employee personnel records, and
- our auditor's authority to advise a FERC employee to retain an attorney, thus implying some sort of criminal action.

We have reviewed the facts relative to your concerns. We believe that, while pointing up important areas that we should continually be aware of in our audit work, the concerns appear to be based on an incomplete knowledge of the scope and results of our work and a misinterpretation of how the subject report fits into our overall Trans Alaska Pipeline System (TAPS) work. Before we address your specific concerns, we would like to briefly discuss the origin of our TAPS work, the effort expended, and the results to date.

We started work in the TAPS area because of interest expressed by two House subcommittees concerning FERC's involvement in the TAPS rate case and because information brought to our attention indicated possible deficiencies in FERC contracting, procurement, and travel activities. As is our normal practice when initiating work at FERC, we notified FERC's Executive Director by letter dated April 9, 1981, that we were starting a survey of FERC's

roles and responsibilities in TAPS. This survey continued into July 1981 and included a limited overview of FERC's involvement in the TAPS rate case, a review of selected TAPS contracts, and an examination of selected vouchers for travel costs related to the TAPS case. During the course of this work, we briefed FERC's Acting General Counsel on May 21, 1981, on the Office of General Counsel (OGC) staffs' travel voucher discrepancies noted. The Acting General Counsel took immediate action to require compliance with current travel procedures by OGC staff. In addition, certain overcharges were collected by DOE. Also, on June 3, 1981, we wrote to the Executive Director expressing our concerns about unauthorized and unpaid contracts that were waiting to be ratified.

Based on information we provided to the Subcommittee on Energy and Water Development, House Committee on Appropriations, in April and June 1981, the committee requested FERC to report to it on FERC's involvement in the TAPS rate case and on the time and funds expended to date. In July 1981, we suspended our audit work pending FERC's response to the committee.

In February 1982, FERC responded to the committee's request. As agreed with the subcommittee staff and after officially notifying the Executive Director by letter dated April 19, 1982, we resumed our work on TAPS matters, concentrating our efforts on the subcommittee's interest in FERC's fiscal year 1983 TAPS budget and FERC's procurement activities. Subsequently, we received a request from a member of Congress for our opinion on the relationship between TAPS oil prices and gasoline prices. Our report on the TAPS budget was issued to the subcommittee in September 1982. 1/ Our report on the other request was issued in June 1982. 2/ Our current work on TAPS procurement activities was essentially completed in February 1983 when we sent you our draft report for comment.

In summary, although our TAPS work has spanned a 23-month calendar time period--April 9, 1981 to February 15, 1983--it was inactive for 9 months resulting in actual calendar time of 14 months involving a total of 224 staff days. In addition to the nearly \$72,000 recovered from Alyeska, and the services provided to the Congress, our audit work has resulted in non-quantifiable savings through improved controls over travel at FERC, improved procurement practices, and better accountability for TAPS documents.

1/"FERC's Proposed 1983 Budget for the Trans Alaska Pipeline System Case" (GAO/EMD-82-130, September 30, 1982).

2/Letter to Congressman Robert J. Lagomarsino, dated June 28, 1982.

LENGTH OF TIME AND RESOURCES
REQUIRED FOR THE TAPS AUDIT

You state that common sense would indicate that a "30-month" investigation goes beyond all definition of reasonableness. You also questioned, judging by the content of the draft report, whether the results justified the resources expended by GAO, FERC, and DOE.

In view of our earlier comments, I hope it is now clear that the draft report represents only one of a series of efforts undertaken over the 23 month period, with actual audit effort underway only part of the time--a total of 14 months. The audit of TAPS procurement practices was in progress for 10 of the 14 months--from April 19, 1982, the date we notified FERC, to February 15, 1983, when we transmitted the draft report to you for comment.

We would like to point out that some of the 10 months spent on the TAPS procurement audit resulted from difficulties in obtaining procurement records and related documents. Our records show, for example, that it took 7 calendar days to obtain authorizing documents for FERC certifying officials and 28 calendar days to compile a complete set of documents supporting the costs of gathering documentation for the rate case hearing. It also took 8 calendar days to obtain access to one document from the Office of General Counsel.

You also suggested that we establish a cost/benefit threshold to prevent the unproductive use of GAO, FERC, and DOE resources. We believe that the TAPS work was cost effective, because our work not only has responded to congressional needs but has been a positive factor in FERC improving its procurement functions and recovering nearly \$72,000 in unrecorded accounts receivable.

With respect to your concern that our work resulted in the unproductive use of FERC and DOE resources, our records show that our work at DOE was minimal, involving limited interviews and some research effort by DOE to obtain for us copies of TAPS payment files. We realize FERC's staff efforts were more extensive. To our knowledge, however, the largest block of work required of the FERC staff was undertaken, partly at their initiative, to provide both GAO and FERC a complete set of records relating to the TAPS discovery trips and related invoices. Before this time, FERC staff had been unable to provide the supporting documentation, and we had little success in accounting for all of the TAPS costs under the three-party agreement with Alyeska and the State of Alaska. When FERC managers realized this shortcoming in their recordkeeping, they not only sought to comply with our request for specified documents, but expanded their effort to meet FERC's needs to account for the microfilms and other documents produced during the TAPS discovery effort.

REVIEW OF PERSONNEL RECORDS

We reviewed 13 personnel files of FERC employees. During our work, we noted that contracts had been entered into by

unauthorized FERC staff and were being ratified with minimal justification. We also found what appeared to be serious deficiencies in small purchase procurements for TAPS that indicated a lack of understanding of procurement regulations. Because we could find no satisfactory reasons for these questionable contract and procurement actions, we believed it necessary to examine the files of personnel involved to determine that no conflict-of-interest problems existed and to determine the background and qualifications of the individuals.

In examining these files we followed FERC's prescribed procedures by notifying our FERC-designated liaison that, among other documents, we would need access to the personnel files of FERC employees involved in these contracts and expenditures. The FERC liaison prepared a memorandum for the record of our request and provided copies to cognizant FERC officials, including the Executive Director and General Counsel. We received no subsequent indication that this request posed a problem to FERC. In addition, we made prior arrangements with the FERC personnel officer for staff files, with the cognizant DOE official for SES officials' files, and with the FERC-designated Office of General Counsel attorney for access to financial disclosure records.

Our review of the files did not disclose any apparent conflict-of-interest problems or any particular reason why contracts were being ratified with little justification. We did find, however, that the FERC staff member responsible for obtaining microfilming and clerical support services for the TAPS discovery had no procurement background. This was brought to the attention of the Director, DOE Headquarters Personnel Operations Division. ¹/ He reviewed the case and informed us that FERC management had assured him that FERC employees will be given only appropriate assignments and that only properly qualified personnel would be assigned procurement contracting functions.

ADVICE TO A FERC EMPLOYEE
TO CONSULT COUNSEL

From the information we have, the following sequence of events occurred with regard to a GAO auditor suggesting that a FERC employee might wish to consult legal counsel. Our auditor arranged for a meeting with the FERC staff member responsible for TAPS small purchase procurement activities to (1) verify the receipt of microfilming products for which invoices had been received by FERC and (2) trace other documents related

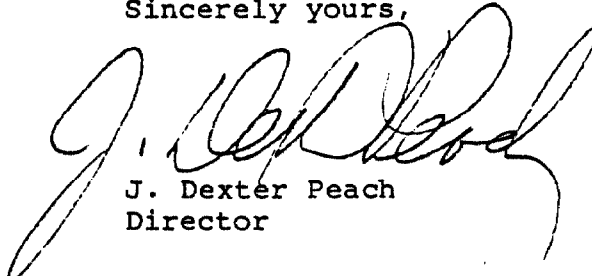
¹/DOE's Headquarters Personnel Operations Division has responsibility for FERC personnel matters.

to TAPS purchases. Our auditor showed the FERC staff some invoices for microfilming services and asked if the receiving reports were available to verify that the products had been received. The FERC staff member replied that he had thrown the receiving reports away. When he learned this, our auditor explained the seriousness of the action to the FERC staff member and terminated the interview. Before he left, he indicated that a followup meeting might be necessary and suggested the employee might wish to seek legal counsel on this matter.

The FERC employee may have perceived the auditor's questions and statements to be accusatory. We have thoroughly discussed the matter with the GAO auditor and can state unequivocally that it was not his intent to accuse. We hope you will understand it was only in light of the implications associated with document destruction that the auditor felt a responsibility to suggest that the FERC employee would be advised to seek counsel.

In conclusion, we agree with you that both FERC and GAO can benefit from lessons learned during the TAPS review. We trust that this, additional information will be useful in further refining our future working relationships. Our office is committed to minimizing any burdens placed on an agency because of our audit activities and to maintaining professional standards at all times. We look forward to continued constructive and cooperative relationships with you and your staff.

Sincerely yours,



J. Dexter Peach
Director