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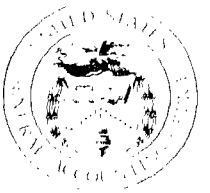
Report to the Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives

August 1990

ENERGY REGULATION

Factors Relating to Oil Overcharge Settlements Need Better Documentation



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United States
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Resources, Community, and
Economic Development Division

B-238736.1

August 23, 1990

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

As requested, we are providing information on several aspects of the Department of Energy's (DOE) Economic Regulatory Administration's (ERA) handling of the proposed settlement of the Cities Service oil overcharge litigation, including (1) the decision to allow extended payments for the settlement; (2) the analysis of the agency's risks in pursuing the Cities litigation, which ERA used in formulating the settlement; and (3) the role of ERA's litigating attorneys in the proposed settlement.[1] In addition, we assessed the adequacy of compliance with internal control standards relating to documentation on certain aspects of the proposed settlement.

The proposed settlement, which ERA announced on May 24, 1989, was intended to resolve alleged violations by Cities Service of oil price and allocation regulations totaling $713.8 million, including interest. During the period when the proposed settlement of this case was being negotiated, it was ERA's largest remaining oil overcharge case. As of July 3, 1990, the proposed settlement had not been finalized by DOE.

Results in Brief

ERA has little or no documentation for many of the significant events that led to the proposed settlement, including the basis for the decision to allow extended payments and the litigation risk analysis prepared by ERA. Specifically, we determined the following:

- ERA had no documented basis to allow Occidental's subsidiary, OXY USA (formerly Cities Service), an 8-year period in which to pay the proposed settlement amount, as required by ERA's policy and the Office of Management and Budget's (OMB) and GAO's standards. In July 1989, 1-1/2 months after the proposed settlement was announced and subsequent to GAO's request for copies, ERA obtained data on OXY USA's cash flow. ERA

[1] As agreed with your office, other issues related to ERA's handling of the Cities case, raised in your letter and in subsequent discussions with your staff, are being reviewed separately.

determined that OXY USA appeared capable of paying the settlement amount in a significantly shorter period and reopened settlement negotiations.

- ERA's analysis of the agency's risks associated with pursuing the Cities case through continued litigation, which served, in part, as the basis for the proposed settlement, was not well documented. The documentation consisted of one typewritten page, which contained two sentences discussing the basis for the risk factors included in the analysis. Another one-page document, specifying possible financial remedies in the case, was prepared and supports the risk analysis. The documented analysis was not updated to reflect a decision on the case by DOE's Office of Hearings and Appeals (OHA) that affected the results of the analysis. In our view, additional documentation of such analyses is necessary to support ERA's decisions to settle oil overcharge cases and comply with the internal control standards for documentation.

In addition, ERA had little documentation regarding its negotiating sessions with Occidental and no documentation of the review of the proposed settlement by DOE's Office of General Counsel (OGC). ERA also did not maintain settlement-related documents in a central, readily accessible location, as required by OMB's and GAO's standards.

Documentation of significant settlement-related events, such as those described above, is crucial to assure the Secretary of Energy and the Congress that oil overcharge cases are being settled in the government's and public's best interest and is required to comply with the internal control standards of the Comptroller General and OMB. Such documentation is particularly important given the discretionary nature of oil overcharge settlements and their potential vulnerability to waste, fraud, and abuse.

Regarding the role of ERA's litigating attorneys, the attorneys responsible for presenting this case before OHA, we found that the Director of ERA's Administrative Litigation Division, Office of Enforcement Litigation, was, according to ERA records, the only litigating attorney who participated in negotiating the settlement. Further, while she participated in internal discussions pertaining to the negotiations, her role in the discussions with Occidental was very limited. The settlement negotiations were primarily handled by the Administrator of ERA and the Chief Counsel of ERA's Office of Enforcement Litigation, the two top ERA officials.

Background

Cities Service Oil and Gas Corporation, now called OXY USA, Inc., a wholly owned subsidiary of the Occidental Petroleum Corporation, was an oil "refiner," "producer," and "reseller" under the oil price and allocation regulations. As such, Cities was subject to the jurisdiction of DOE. Through ERA, DOE issued a proposed order in March 1985 alleging that Cities violated the regulations. The alleged violations totaled about $264 million in principal, plus interest totaling about $450 million as of May 19, 1989. ERA, under authority delegated by the Secretary of Energy, is responsible for resolving oil overcharge cases under the Emergency Petroleum Allocation Act of 1973.[2]

On May 24, 1989, ERA announced in the Federal Register a proposed settlement between DOE and Occidental of the Cities Service litigation. Under the proposed settlement, Occidental tentatively agreed to pay DOE about $205 million over 8 years.[3] The notice also requested public comment on the proposed settlement. On August 25, 1989, after reviewing the comments filed, ERA published a second Federal Register notice seeking additional public comment on certain issues relating to the proposed settlement. In addition, on September 27, 1989, ERA held a public hearing on the proposed settlement.

ERA informed us on February 23, 1990, that it was reopening negotiations on the proposed settlement with Occidental. According to ERA, this decision was based, in part, on the nature and volume of adverse comments ERA received on the proposed settlement. Also a factor was ERA's conclusion that OXY USA appeared capable of paying the proposed settlement amount in significantly less time than the 8 years called for in the proposed settlement.

Internal Control Standards Call for Documentation

Compliance with internal control standards are especially important for discretionary decisions. The Comptroller General and OMB require that executive branch agencies develop and maintain an adequate system of management controls. One of the purposes of such a system, according to OMB Circular A-123, is to provide management with reasonable assurance that assets are safeguarded against waste, loss, unauthorized use, and misappropriation. The adequacy of ERA's system of internal controls

[2]App. I provides background information on ERA's responsibilities for identifying and collecting oil overcharges and on the Cities oil overcharge case.

[3]According to ERA's calculations, the present value of the proposed settlement amount was about $150 million as of May 1989.

is especially important because of the discretionary nature of the enforcement decisions ERA is responsible for making.

One of the specific internal control standards prescribed by the Comptroller General and listed in Circular A-123 states that "all transactions are to be clearly documented, and the documentation is to be readily available for examination." Another standard states that "transactions and other significant events are to be promptly recorded and properly classified." This second standard further states that "the standard applies to the entire process or life cycle of a transaction or event and includes the initiation and authorization, all aspects of the transaction while in process, and its final classification and summary records." [Emphasis added.]

These standards are especially important to the operations of ERA because many of its decisions are discretionary and because, in some cases, these decisions result in the settlement of oil overcharge cases for amounts considerably less than the alleged violation. We emphasized the vulnerability of ERA's enforcement program in a 1985 report to the Secretary of Energy on DOE's second-year implementation of the Federal Manager's Financial Integrity Act.[4] In that report, we noted that ERA's enforcement program may be more susceptible to external pressures that circumvent internal controls than some other programs are because of the significant financial impact enforcement activities can have on oil companies.

GAO and the DOE Office of Inspector General have repeatedly found problems regarding the documentation ERA maintains on oil overcharge cases.[5] For example, in an April 1984 report, we found that ERA did not maintain audit and compliance histories on each major oil refiner and thus could not provide complete histories showing the disposition of billions of dollars in alleged oil overcharge violations by those refiners.[6] The DOE Special Counsel at the time told us that the disposition process was too fast-paced to require complete documentation on all issues affecting refiners. More recently, our December 16, 1988, letter to you

[4]Department of Energy's Second-Year Implementation of the Federal Manager's Financial Integrity Act (GAO/RCED-86-14, Oct. 17, 1985).

[5]Supporting Documentation and Control Over Economic Regulatory Administration Cases, U.S. Department of Energy, Office of Inspector General (DOE/IG-0222, Nov. 19, 1985).

[6]Improvements Needed in the Department of Energy's Petroleum Pricing and Allocation Compliance Program (GAO/RCED-84-51, Apr. 18, 1984).

noted that ERA dropped a case alleging violations of well over $300 million without fully documenting its rationale for doing so.[7]

Significant Aspects of the Process Leading to the Proposed Settlement Not Well Documented

ERA has little or no documentation for many of the significant events and decisions leading to the proposed settlement with Occidental. ERA did not document the basis for its preliminary decision to allow an 8-year period for payment of the proposed settlement amount. ERA had little documentation to support its written litigation risk analysis and did not update the written risk analysis after a decision by OHA that affected the results of the analysis. Documentation was lacking for many of the negotiating sessions between Occidental and ERA. ERA and OGC did not document the results of OGC's review of the proposed settlement. Finally, ERA does not maintain settlement-related documents in a central, readily accessible location. We believe that this lack of documentation constitutes noncompliance with OMB's and GAO's standards because it was not sufficient to allow us to trace and analyze these events.

Basis for Allowing Extended Payments Not Documented

In the proposed settlement, ERA agreed to allow Occidental an 8-year period to pay the proposed settlement amount without documenting its reason for doing so. ERA now cites OXY USA's ability to pay the proposed settlement amount in significantly less time as a reason for its reopening negotiations with Occidental.

The proposed consent order between ERA and Occidental provides for Occidental's paying the settlement amount, plus interest, over an 8-year period. The proposed consent order does not address the basis for this provision. However, based on our review of documentation relating to the proposed settlement, the time payment provision in the proposed settlement was permitted as a result of financial considerations related to OXY USA, against whom DOE's cause of action is legally directed. According to the documentation, OXY USA did not have sufficient cash reserves to immediately pay $150 million, but could reasonably meet such payment obligations over a period of time. ERA sought to reduce the risks associated with payments over time by seeking and obtaining a guarantee of payment from OXY USA's parent company, Occidental. In a July 21, 1989, meeting, ERA's Chief Counsel confirmed that OXY USA's inability to pay the settlement amount immediately was the basis for allowing extended payments. Occidental, in its response to DOE's

[7]Letter to the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, Comptroller General of the United States (B-228982, Dec. 16, 1988).

August 25, 1989, request for public comments on the proposed settlement, stated that it was willing to enter into the proposed settlement only if it could satisfy the payment obligations from the estimated future earnings of OXY USA, necessitating, in its view, the 8-year payment provision of the proposed settlement.

Even though ERA cited financial considerations as the basis for allowing the extended payments, ERA did not require Occidental to submit OXY USA's financial statements and tax returns for ERA's analysis before agreeing to the proposed settlement. Such an analysis is required by a June 30, 1986, internal memorandum on long-term settlements. The memorandum contains guidance on factors that should be considered in determining the efficacy of long-term payment provisions in proposed oil overcharge settlements.

ERA's Chief Counsel told us ERA assumed that the cash-flow information put forth verbally by Occidental during the negotiations was accurate. However, he said that after the proposed settlement was announced, ERA asked Occidental to provide financial data on OXY USA's cash flow. Occidental provided this information to ERA in July 1989, 1-1/2 months after the proposed settlement was announced and subsequent to GAO's request for copies of any financial analysis of OXY USA conducted by ERA. In January 1990, the Chief Counsel told us that the data indicated OXY USA could reasonably pay the settlement in a significantly shorter period than the 8 years provided for in the proposed settlement. As a result, ERA is renegotiating the extended payment provision with Occidental.

ERA's Risk Analysis Not Well Documented

ERA's litigation risk analysis was not well documented. In addition, the written analysis was not updated following a decision by OHA on the case, even though the decision was issued several months before the proposed settlement was reached, and the decision affected the analysis results. The written litigation risk analysis, which served, in part, as the basis for the proposed settlement, consisted of one typewritten page and contained little narrative to support its calculations. For example, only two sentences discussed the basis for the litigation risks attributed to pursuing violations. According to ERA's Chief Counsel, one other document was prepared that supports his analysis. This was a one-page document specifying possible financial remedies in the case. The Chief Counsel said that the reason no additional documentation was prepared was that he did not intend for the assessment to be the primary support for the proposed settlement. Instead, he intended it to be for his own use

in confirming an approximate reasonable settlement amount and in assessing how various courses OHA might take in its remedial order might affect ERA's chances of ultimately winning the case. In this regard, ERA's Administrator noted there is no requirement he is aware of that written litigation risk analyses be prepared prior to settling oil overcharge cases. Such analyses are typically done at ERA, he said, only when cases are referred to outside agencies, such as the Department of Justice, for action.

While the litigation risk analysis was not signed or dated, ERA's Chief Counsel told us that he prepared it in June 1988, several months before the September 1988 decision by OHA in the case. The risk analysis reflected his assessment of the probabilities of ERA's winning the case under several scenarios, depending on the results of OHA's decision. The analysis estimated for the scenarios the likelihood (expressed as a percentage) that ERA's March 1985 order would be upheld at each of the four levels at which the case would be subject to a hearing and review—at OHA, the Federal Energy Regulatory Commission, the federal district court, and the Temporary Emergency Court of Appeals. These percentages were totaled and used to calculate the settlement value of the Cities case.

ERA did not prepare a written update of its risk analysis following OHA's decision even though the decision affected the analysis. However, both the Chief Counsel and ERA's Administrator said that the impact of OHA's decision on their perceived litigation risks was discussed on various occasions. After the proposed settlement was agreed to, ERA did develop a more detailed narrative discussion of the risks associated with litigating the case, which was included in the May 24, 1989, Federal Register notice containing the proposed consent order.

Other Aspects of Proposed Settlement Not Documented

We identified three other aspects of ERA's handling of the Cities Service case that also did not comply with internal control standards on documentation. Specifically, ERA did not (1) document many of its key negotiating sessions with Occidental, (2) document the review of the proposed settlement by DOE's OGC, and (3) maintain files of settlement-related documents at a central location, where they would be easily available for examination.

A chronology of settlement-related discussions provided to us by ERA shows that there were at least 24 meetings or telephone conversations on the proposed settlement from March 24, 1988, to January 31, 1989,

when agreement was reached. Twenty of these meetings and telephone contacts involved Occidental representatives while four were internal ERA meetings. ERA was able to provide documentation for 10 (7 meetings and 3 telephone conversations) of the 20 contacts (9 meetings and 11 telephone conversations) between Occidental's representatives and ERA that were listed in the chronology provided by ERA. ERA officials said that some meetings were not documented because they did not appear to be serious steps toward reaching a settlement or were only incidental. However, we noted that there was no documentation for any of the seven meetings or telephone conversations with Occidental's representatives that took place between December 14, 1988, and January 23, 1989. Based on our review of available documentation and discussions with ERA officials, it is clear that ERA and Occidental officials reached an agreement in principle on the settlement in one of the discussions during this period.

While DOE's OGC reviewed the proposed settlement and ERA's basis for entering into it, neither ERA nor OGC could furnish documentation showing the review of the proposed settlement and the resolution of any comments or concerns. According to ERA officials, OGC's review of the proposed settlement was not documented because the review was informal in nature and OGC presented its comments orally at a meeting. The ERA Administrator told us that he asked OGC to review the proposed settlement because he wanted an independent assessment of its reasonableness.

ERA does not maintain central files of settlement-related documents. In response to the Chairman's and our requests for documents related to the settlement negotiations, ERA had to question the individual ERA staff involved and have them review their personal files for documents. Such procedures are not sufficient to ensure that a complete and lasting record of the basis for a settlement is maintained, especially given the fact that ERA is winding down its operations. ERA does maintain central case files of documents related to ongoing litigation but does not maintain files of settlement-related documents at a central location because, according to the Chief Counsel and Director, Administrative Litigation Division, ERA has never found such files useful or necessary. ERA officials also said that maintaining all settlement-related documents in a central location would be inconvenient because of the volume of such documentation and because ERA staff are located throughout the DOE headquarters building.

The Role of ERA's Litigating Attorneys in the Proposed Settlement

ERA's litigating attorneys' participation in the negotiations leading to the proposed consent order was very limited. Rather, the settlement was primarily handled by ERA's Administrator and ERA's Chief Counsel, the two top ERA officials.

The chronology of settlement-related discussions provided to us by ERA identified 24 discussions during the negotiations of the proposed settlement, of which 20 were meetings or telephone conversations between officials of DOE or ERA and Cities representatives. Our review of the chronology and our discussions with ERA officials disclosed that one of the two principal litigating attorneys assigned to the case, the Director, Administrative Litigation Division, Office of Enforcement Litigation—the attorney primarily responsible for litigating the case—participated in the negotiations.

According to the chronology, the Director attended meetings with Cities representatives on three occasions between March and June 1988. According to the Director and the chronology, she did not participate in any meetings with Cities representatives after June 1988, although she was informed of the results of the settlement negotiations and participated in internal discussions within ERA relating to negotiations of the proposed settlement. According to the chronology, there were a total of nine meetings between ERA and Occidental representatives, six of which occurred after June 1988. The Director told us that she did not know why she was not actively involved in settlement negotiations after the June 1988 meetings, although she did not think it is unusual for the principal litigating attorney not to be involved in every negotiating session, especially when some of the sessions involved telephone discussions with higher-level ERA officials. The Chief Counsel and the ERA Administrator told us that there was little or no dialogue at the later meetings concerning the litigation issues or merits and that they were quite aware of the allegations and defenses in the Cities case. Further, they said, in such circumstances, the litigating attorneys typically do not attend negotiation sessions.

Conclusions

Documentation of significant events relating to the settlement of oil overcharge cases is necessary both to provide assurance that these cases are being settled in the government's and the public's best interest and to comply with the internal control standards of the Comptroller General and OMB. Such documentation is especially crucial given the size of the alleged violations, the discretionary nature of the settlements, and

the oft-stated concerns regarding the vulnerability of ERA's enforcement activities to fraud and abuse.

We found that ERA lacks sufficient documentation for many of the major events relating to the proposed settlement of the Cities case. Events for which there was little or no documentation include the decision to allow OXY USA an extended payment period, ERA's analysis of the agency's litigation risks, 10 of the 20 negotiating sessions between ERA and Occidental, and the DOE General Counsel's review of the proposed settlement. Additional documentation of these events, prepared as they occurred, would have, in our view, provided a clearer understanding of ERA's rationale for agreeing to the proposed settlement of the case, which would have reduced concerns and forestalled some questions regarding the proposed settlement.

Recommendations

We recommend that the Secretary of Energy instruct the Administrator, ERA, to develop and implement explicit requirements for documenting significant events relating to the settlement of oil overcharge cases, including (1) settlement negotiations, (2) the factors considered in litigation risk analyses, (3) reviews of and comments on proposed settlements by other DOE officials, and (4) the bases for agreeing to allow long-term payments of proposed settlement amounts. A requirement should be included that all documentation be maintained at a central location, where it is readily available for examination.

In reviewing the three issues raised in your letter, we examined available documentation from ERA and OHA and interviewed agency personnel who were responsible for the matters discussed in this report. We attended the September 27, 1989, public hearing held on the proposed consent order and obtained and reviewed a copy of the hearing record. We also reviewed DOE's Federal Manager's Financial Integrity Act reports for fiscal years 1986 through 1989 and observed that the internal control problems found through this review were not identified as material weaknesses. See appendix II for further details on our methodology.

We discussed factual information contained in this report with ERA officials. These officials generally agreed with the information presented although they did provide additional information and clarification on issues discussed in this report, which we have incorporated where appropriate. Further, ERA officials raised a number of concerns

regarding the sensitivity of some of the factual information we intended to include in our report. We have revised the draft report in response to these concerns to omit information that we believe could be considered sensitive. As agreed with your office, we did not obtain formal agency comments. We performed our review between July 1989 and June 1990 in accordance with generally accepted government auditing standards.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time we will send copies to the Secretary of Energy and make copies available to others upon request. This work was performed under the direction of Victor S. Rezendes, Director, Energy Issues, who may be reached at (202) 275-1441. Major contributors to this report are listed in appendix III.

Sincerely yours,

J. Dexter Peach
Assistant Comptroller General

Contents

Abbreviations

DOE	Department of Energy
ERA	Economic Regulatory Administration
FERC	Federal Energy Regulatory Commission
GAO	General Accounting Office
OGC	Office of General Counsel
OHA	Office of Hearings and Appeals
OMB	Office of Management and Budget
PRO	Proposed Remedial Order

Background

The Cities Service oil overcharge case resulted from Cities' alleged violation of petroleum pricing and allocation regulations. The Department of Energy's (DOE) Economic Regulatory Administration (ERA) is responsible for identifying and resolving violations of these regulations.

ERA's Handling of Oil Overcharge Cases

In late 1973 and early 1974, the Organization of Petroleum Exporting Countries embargoed crude oil exports to the United States and substantially increased its crude oil prices. To minimize adverse repercussions from these actions, the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 751 et seq.) was enacted. The act was intended to, among other things,

- prevent price gouging by domestic crude oil producers and
- ensure fair allocation of crude oil supplies and petroleum products to all in the marketing chain.

Regulations applicable to the sale of petroleum products covered under the act were originally issued in August 1973 and expired in January 1981. DOE, and its predecessor agencies, enforced the act's controls on oil companies' allocation and pricing of crude oil and refined petroleum products.

DOE has authority and responsibility for (1) identifying violations of the petroleum pricing and allocation regulations, (2) recovering overcharges, and (3) obtaining restitution for injured parties. DOE's ERA is responsible for pursuing violations of the pricing/allocation regulations subject to the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986. When ERA, through audits of oil company records, alleges violations of the allocation and/or pricing regulations, it may negotiate a settlement with the oil company; initiate administrative action separate from, or concurrent with, the settlement negotiations; or recommend initiation of judicial action to resolve the alleged violations.

Subject to the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, in cases where ERA finds that a company may have violated petroleum pricing/allocation regulations, ERA can issue a proposed remedial order (PRO) specifying the violations and recommending remedial action. The company may then file a statement of objections with DOE's Office of Hearings and Appeals (OHA) describing its position regarding DOE's allegations, thereby initiating administrative litigation of the alleged violations.

If OHA concludes that a violation occurred, it issues a final remedial order to the company, which can appeal the order to the Federal Energy Regulatory Commission (FERC). The Commission can wholly or partially affirm or dismiss the remedial order issued by OHA. If either OHA or the Commission finds in favor of the company, ERA may not further appeal such an adverse determination. If the Commission affirms the remedial order, the company may appeal to the appropriate federal district court. A district court decision unfavorable to either party may be appealed to the Temporary Emergency Court of Appeals.

The Cities Service Case

On March 5, 1985, ERA issued a PRO to Cities Service contending that Cities' practices relating to 91 transactions violated provisions of the oil pricing regulations. According to ERA, this resulted in overcharges of about $264 million, plus interest. The Cities case involves 91 reciprocal crude oil transactions between Cities and 13 crude oil resellers in which Cities sold price-controlled crude oil to resellers and concurrently purchased discounted exempt-certified crude oil from those resellers.[1] ERA alleges that the discounts Cities received on the crude oil it purchased are extra consideration to be added to the price Cities received for the crude oil it sold and, as such, should be considered in determining whether the price Cities received exceeded the allowable price under the regulations.

ERA sought a remedial order from OHA requiring Cities to make restitution in the amount of the alleged overcharges, plus interest. Cities Service objected to the PRO on several grounds. After holding evidentiary hearings, OHA issued, on September 30, 1988, a remedial order, which found that Cities Service had violated petroleum price regulations and, accordingly, owed the government $263.8 million, plus interest, as restitution for the overcharges. As of May 19, 1989, the interest totaled approximately $450 million.

In April 1988, before the remedial order was issued, ERA moved to amend the PRO to also allege that Cities had violated a provision of the regulations relating to the reporting of information on crude oil under

[1]DOE's oil pricing regulations set price rules applicable to the "first sale" of domestically produced crude oil. The rules were generally based on three tiers of crude oil—old crude oil, new crude oil, and exempt crude oil. Old and new crude oil were subject to separate ceiling price rules, while exempt crude oil was exempt from the ceiling price rules.

the Entitlements Program.[2] In the remedial order, OHA cited evidence that Cities had violated the petroleum allocation regulations. OHA remanded the portion of the PRO relating to such violations to ERA so that ERA could specify a remedy with respect to the violations and Cities could fully litigate the relevant issues through a new PRO proceeding. Cities subsequently appealed OHA's decision to FERC.

On May 24, 1989, while the case was pending at FERC, ERA gave notice in the Federal Register of a proposed consent order between DOE and Occidental Petroleum Corporation, including its wholly owned subsidiary OXY USA, Inc., which was formerly Cities Service Oil and Gas Corporation, to settle the case. The proposed settlement agreement would require Occidental to pay DOE $205.08 million, which includes interest, over 8 years to resolve matters relating to Occidental's compliance with the federal petroleum price and allocation regulations from October 1, 1979, through January 27, 1981. Action on Cities' appeal at FERC has been stayed pending resolution of the proposed consent order.

[2]The purpose of the Entitlements Program was to generally equalize the benefits to refiners of access to price-controlled crude oil. The program was based on the premise that all refiners should be including an equal proportionate share of price-controlled oil in their refinery runs each month. The program required refiners with a greater-than-average number of barrels of price-controlled crude oil to purchase entitlements from those refiners with a less-than-average number of barrels of price-controlled crude oil. The program was terminated in December 1980.

Scope and Methodology

To determine the basis for ERA's agreeing to allow extended payments for the proposed settlement, we reviewed ERA's guidance on allowing extended payments; interviewed ERA's Administrator and Chief Counsel, both of whom were directly involved in negotiating and drafting the proposed settlement; and attended and reviewed the transcript of a September 27, 1989, public hearing, where an attorney for Occidental who was directly involved in negotiating the proposed settlement spoke on this issue.

With regard to ERA's litigation risk analysis, we examined draft and final versions of the analysis; examined a related document; interviewed ERA's Chief Counsel, the author of the analysis; and interviewed the Director of ERA's Office of Administrative Litigation, who reviewed the analysis.

To determine the role of ERA's litigating attorneys in the proposed settlement, we interviewed the Director of ERA's Office of Administrative Litigation, Enforcement Litigation Division, who was the principal litigating attorney for the Cities case. We also interviewed an attorney, formerly with ERA, who was assigned to the Cities case; the ERA Chief Counsel, Enforcement Litigation Division; and the ERA Administrator. In addition, we reviewed all available documentation of negotiating sessions involving officials of ERA and Occidental in order to determine the roles of the participants.

In addition, we interviewed cognizant officials in DOE's Office of Hearings and Appeals (OHA). We reviewed the formal record of the litigation between Cities and ERA, including the transcripts of OHA's hearings on the case, the remedial order issued by OHA, the proposed consent order published by ERA, and public comments on the proposed consent order between ERA and Occidental. We also interviewed representatives for Occidental Petroleum. We reviewed GAO's and the Office of Management and Budget's standards and guidance on internal control systems and applied them to certain aspects of ERA's handling of the proposed settlement. Finally, we reviewed DOE's Federal Manager's Financial Integrity Act reports for fiscal years 1986 through 1989 and observed that the internal control problems found through this review were not identified as material weaknesses.

As discussed with the requester's office, we excluded from our report certain information that ERA believes is sensitive. According to ERA, the public disclosure of this information could adversely affect its ability to

litigate or settle this and other similar oil overcharge cases. The information we have excluded includes

- the deliberative content of ERA's written litigation risk assessment, including information on ERA's estimates of the probabilities of prevailing in continued litigation of the Cities case under different scenarios based on OHA's decision in the case and ERA's estimate of the settlement value of the case;
- the conclusions reached by DOE's Office of General Counsel after reviewing the proposed settlement;
- information on Occidental's representations during confidential settlement negotiations and DOE's internal deliberations concerning payment terms under the proposed consent order; and
- information on the specific factors considered by ERA in determining when a company entering into a financial settlement with ERA should be allowed an extended period in which to pay the settlement amount, as they relate to settlement strategies employed by ERA.

Major Contributors to This Report

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