

The original documents are located in Box 5, folder “Energy Resources Finance Corporation (2)” of the Richard B. Cheney Files at the Gerald R. Ford Presidential Library.

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THE VICE PRESIDENT
WASHINGTON

May 23, 1975

Dear Mr. President:

I have discussed fully the proposals relating to enriched uranium with Jim Cannon.

While there are strong feelings on both the private and the public sides of this issue, in my judgment there should not be any conflict between them. It is terribly important that we pursue both approaches.

Our leadership in this field requires that both the government and the private sectors work together in the national interest on this important issue.

If the ultimate decision should be to create something like the energy financing group, it would provide the vehicle for either the government approach or the private approach, or both -- without having to go back to the Congress for funds. Indeed, in my judgment I don't see how the capital can be raised for either approach unless there is a vehicle such as the proposed financing group.

Sincerely,

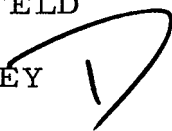
A handwritten signature in cursive script, likely belonging to the Vice President mentioned in the text.

The President
The White House

THE WHITE HOUSE
WASHINGTON

May 24, 1975

*P. has. mem.
5/27/75*

MEMORANDUM FOR: DON RUMSFELD
FROM: DICK CHENEY 
SUBJECT: The Vice President's Energy Resources
Finance Corporation (ERFC)

With your approval, I have reviewed the book prepared by the Vice President and his staff. It is impressively packaged, but I have strong reservations about both the substance of the proposal and the manner in which the entire matter has been handled.

I have not discussed my views of the proposal with the Vice President or anyone on his staff. I specifically did not want to give anyone the impression that I was somehow on my own or on your behalf trying to scuttle the Vice President's project.

The Proposal

In essence, the Vice President wants to set up a government corporation which would have some \$20 billion in appropriated funds plus authority to make loans and loan guarantees for as much as \$200 billion over the course of the next five years.

It is argued that some such mechanism is required to solve our national energy problem and also that it offers a "positive initiative" which could be helpful politically, and would help reduce unemployment.

Finally, it is described as promoting free enterprise rather than government control.



Substantive Problems

In my opinion, the proposal is seriously deficient. Contrary to the rhetoric with which it is described, it would constitute substantial government interference into the private economy. It offers no evidence to support the claim that it would reduce unemployment significantly. It would involve the government in massive credit allocations, distort the capital markets adding another large government bureaucracy, further confuse and complicate the relationship between government and the private sector, and is inconsistent with what I believe to be the President's philosophy.

I must also add, however, that the proposal does not contain sufficient information to make judgements on many of these points. It does not appear to be based upon any quantitative analysis. I think it can be argued that they have developed a solution for what may be a non-existent problem.

The underlining assumption is that the major problem in the field of energy is our inability to attract capital to the development of alternative energy sources. I simply do not believe that is true. Each of the various alternative sources are not now feasible for all kinds of reasons: misguided government regulations, inadequate technology and environmental constraints, as well as the lack of available financing. In other words, I am not at all certain that their statement of the problem, which the proposal allegedly would solve, is valid.

Without having more information and because there has been no careful analysis of the proposal, I am reluctant to spend much time criticizing the idea.

Procedural Problems

I am concerned that the entire proposal has not been given the rigorous scrutiny that it deserves.



I am aware that the Vice President has held meetings on the subject involving people such as Alan Greenspan, Jim Lynn and Frank Zarb, but anything as complex and important as this should be forced to withstand the test of criticism. The Vice President, however, has not submitted the proposal through the staffing mechanism so that other agencies and departments and White House staff members could comment and criticize. His natural tendency is to discuss it with an individual, to express his own unbounded enthusiasm, but not to debate the substantive merits of the proposal.

In my opinion, this proposal should be subjected to the same kind of careful, hard-hitting analysis that preceded the President's energy proposals submitted last January. We spent months developing and refining the proposal, involving hundreds of people in the process. The President spent several hours a day for many weeks on the energy package, listening to the debates, asking for information and making decisions on each aspect of the program. That procedure, although it may occasionally be frustrating, also guarantees that we avoid mistakes and that the President has all the available information before he makes a final decision.

Such a process is also important from the standpoint of morale. People are much more willing to accept and support a decision with which they disagree, if they have at least been heard. To my knowledge, no one has discussed this proposal with the President, except the Vice President. More importantly perhaps, the proposal has not been carefully considered by the Energy Resources Council or by the Economic Policy Board. Some of the members of those decision making groups have been consulted in meetings with the Vice President, but they have not made known their views directly to the President.

I do not believe the Vice President is deliberately trying to end-run the system. I think he simply does not understand why it is necessary to have an orderly decision-making process. I do, however, think it is crucial that the President insist that the Vice President's proposal be subjected to the same scrutiny as any other proposal from any other member of the President's staff.



The Vice President tends to discuss the proposal in terms of who supports it. The President, however, has to decide whether or not to proceed, based on the merits. When he consults with the Economic Policy Board, he solicits everyone's opinion, but then he makes the decision. To do otherwise would, in effect, be governing by committee. Within the confines of the Oval Office, there is no such thing as majority rule. Indeed, the President often times will, for very good reasons, make decisions with which a majority of his advisers disagree.

The Vice President appears to assume the whole idea is sound, and then focuses only on how to implement it. He thus avoids the question of whether or not the idea itself has merit.

I am also concerned that a number of people on the staff may not have been as direct as they should have been in voicing their concerns to the Vice President. As is often the case, people are awed by the Vice President and reluctant to disagree with him. This may in turn lead the Vice President to mistakenly assume that they agree with the substance of his proposals.

Additional Considerations

A number of factors should be kept in mind as we move toward resolution of this issue:

1. It is important that we try to avoid a confrontation between the Vice President and the White House Staff.
2. It is important that the President's decision be consistent with the principles of his previously stated policies. It would be harmful for the President to propose a major new spending program as large as this one after we have finally begun to make progress in holding down the size of the deficit.
3. I would hope that this President can avoid the trap that most previous Presidents have fallen into. There are always enormous pressures to let so-called political pressures generate action and to consider action and initiative more important than the sub-



stance of a decision. I think Presidents Kennedy, Johnson and Nixon all fell into the trap sooner or later. President Nixon's decision with respect to price controls in retrospect was extremely harmful. Although controls helped him politically at the time, George Shultz was right, and we should never have embarked on that course of action.

If good government is indeed the best politics, then the President must not make the mistake of proposing something merely for the sake of proposing something. He must be certain that action is required, and that his proposed solution is substantively the correct one.

Recommendations

I would strongly urge that you communicate these concerns to the President. I would hope that in his meeting on Monday at 9:15 AM with the Vice President and Secretary Kissinger that he give directives that the proposal be thoroughly staffed and carefully considered both by the Economic Policy Board and the Energy Resources Council. If the decision on Uranium Enrichment, which we discussed this morning, is as important as stated by Alan Greenspan (and I believe it is), then this decision with respect to total energy development is even more significant and certainly requires as much deliberation. It is not the kind of decision which can be made until the President has discussed it directly with Greenspan, Lynn, Simon, Burns and others.

Finally, the Vice President's enthusiasm, which is one of his greatest assets, often leads him to mis-read politeness and a lack of direct opposition, as approval. It is important the President be direct and precise in telling him to submit the proposal for consideration and analysis, and that it will be given a fair hearing by the President at a joint meeting of the EPB and the ERC executive committees.



MEMORANDUM

SUBJECT: Immediate Action on Employment and Energy-
Substantive and Political Considerations.

1. The successful, decisive handling of the Mayaguez incident has given you and the Administration a new look and a new leadership posture with the American public.
2. But the unemployment projections for the ensuing year, which are to be released by June 1, will present a dismal domestic outlook and a serious threat to public confidence in the Administration and your leadership here at home.
3. From the point of view of both public confidence and good politics, it is urgent that these negative employment figures be used to launch a program to stimulate the economy, to increase employment and to give the people a reasonable basis for hope that economic conditions can be basically improved going into 1976. You and your Administration can make a basic contribution to economic recovery and importantly seize the political initiative by moving on such a program now. Failure to move will give the Democrats and other critics a field day. Senator Lloyd Bentsen is already talking privately about a new "RFC" for energy. George Meany has spoken of a \$100 billion deficit to make more jobs.
4. The program should be one that combines the nation's energy and employment needs. It should be one that encourages private enterprise and employment in basic industries. It should be such as to strengthen



our free enterprise system and not another "make work" public job program or dole. The three basic elements for such a program are:

1. Your energy program with its call for new sources, new plants, new and improved transport, new energy conserving materials and the like. The program is now stalled.
 2. A financing vehicle to stimulate, buttress and reassure private industry to undertake the energy program - The Energy Resources Finance Corporation, which we have been discussing.
 3. A comprehensive Administration-wide review and action plan, directed at the Federal regulatory agencies, their rules, regulations and administrative procedures, designed to simplify or eliminate the collective maze of "red tape" which currently threatens to paralyze the free enterprise system's ability to respond to your energy and related raw materials and transportation goals.
5. By announcing this bold, comprehensive program at the same time as the unemployment projection figures are released, you will command public attention for positive action. You will have seized the initiative and placed the political monkey on the back of the Democratic Congress. It will enable you to revive your energy independence program by a major new initiative -- and will provide a direct positive response to the employment situation.
6. The employment-energy combination should also encompass the environment. You can say and it needs to be said, that for a wholesome environment for all Americans, we need energy, employment, and economic opportunity. The provision of ample energy, which may involve certain short term negative environmental



trade offs, is critical to our long term broad gauge environmental goals. It will take energy to clean up the environment.

7. You have a unique opportunity here and now to act on the domestic front as you acted on the foreign front with the Mayaguez incident. There will be critics but their complaints will be nothing as compared with the public dismay over inaction on your part in the light of the unemployment prospects.

To the critics there are already answers:

For conservatives it is a step to buttress and help preserve the free enterprise system -- it is not socialism;

For those concerned over its financial magnitude, it is not spending but extension of credit; it will not lead to immediate inflationary spending because costs will be incurred over a period of years. However, by assuring financing it will encourage starts of plant construction, well-drilling, railroad rehabilitation, etc.

For those opposed to Federal financing of employment, it is not a dole, not public jobs, but real jobs; private enterprise jobs for people who will not be government employees and who will be paying their taxes at all levels of government.

8. The opportunity is one that should not be missed. You can tell the people "like it is." You can say that such conditions must not be permitted to come to pass. You can call for action. Importantly -- even though the program will bring forth some controversy and debate -- the agenda will be your program and the attention will be focused on your leadership.



9. The timing for a public announcement is particularly opportune. A national speech shortly after you return from Europe would add to the momentum of recent weeks. Alternatively, you might consider such a speech before you leave, perhaps in conjunction with the spirit of the Memorial Day period. It would demonstrate a dramatic domestic leadership initiative, as a backdrop for your meetings with the European leaders.

10. You can relate this program to your own vision of a more self-reliant America with a clean sense of purpose to improve the quality of life for all Americans and to strengthen the cause of freedom in the world.



A NOTE ON ATTITUDES

Secretary Rog Morton is particularly supportive, feeling that the program is critical to both your political leadership posture and the achievement of our national energy goals.

Others within the government who support the concept philosophically include:

Frank Zarb

Secretary Simon

Bill Seidman

Jim Cannon

Secretary Coleman

Secretary Dunlop

Secretary Kissinger

Federal Reserve Chairman Arthur Burns

Senator Howard Baker

Outside government, similar support comes from:

Douglas Dillon (former Secretary of the Treasury;
Chairman, Dillon, Reed)

George Woods (former President, World Bank;
former Chairman, First Boston)

Pete Peterson (former Secretary of Commerce;
Chairman, Lehman Brothers)

David Rockefeller (Chairman, Chase Manhattan Bank)

Edward Teller (University Professor of Physics,
University of California; and
Associate Director-at-Large,
Lawrence Livermore Laboratories)



John S. Foster (Vice President, Energy R & D,
TRW, Inc; former Director of
Defense Research and Engineering,
Department of Defense)

At the Business Council meeting (May 9) Dave Packard was supportive and helped to bring together a key group of business and financial executives for discussion of the general concept. The following were particularly supportive:

Stephen Bechtel, Jr.	(Chairman, Bechtel Group)
Ben Biaggini	(President, Southern Pacific)
Shearon Harris	(Chairman, Carolina Power and Light)
Ed Littlefield	(Chairman, Utah International and successor to Packard as head of Business Council)

I would say that, within the Administration, Alan Greenspan and Jim Lynn are in general philosophical opposition to the concept, although they have been most willing and helpful in aiding an exploration of the plan. Walter Wriston (Chairman of the First National City Bank) was likewise philosophically opposed to the concept at the Business Council Meeting.



UNITED STATES GOVERNMENT

Memorandum

TO : Alan Greenspan

DATE: August 22, 1975

FROM : Burton Malkiel, Rudy Penner, John Davis, Milton Russell
and George von Furstenberg

SUBJECT: Analysis of ERFCO

A. Effect of ERFCO on Energy Investment and Supplies

An institution such as ERFCO clearly has the power to direct more capital toward energy than would have been available otherwise. The relevant questions are how much more capital and what is the economic cost of the extra energy that is produced. Over a seven-year period ERFCO is expected to invest \$110 billion in the equity and debt issues of the energy and energy-related industries. This amounts to \$16 billion per year.

The effects of a massive Government-assisted credit program on energy production have not been studied in detail, but it is obvious that energy investment will not rise by \$16 billion per year for the following reasons:

1. Some ERFCO funds will be used to acquire existing assets such as equipment, leases, etc., leaving less funds to finance new investment.
2. By making loans available at lower rates, ERFCO will reduce the need for energy-related corporations to go to private capital markets. In other words, ERFCO lending will simply replace private energy lending to a large degree.
3. Energy firms that are not fortunate enough to be aided by ERFCO will see their market threatened by any increase in energy supplies added as a result of ERFCO activities. They will, therefore, cut back on their investments.

ERFCO proponents have claimed that "by 1985 ERFCO would support projects delivering a direct energy output equivalent to more than seven million barrels a day of oil..." FEA's estimates relate to the output expected from all ERFCO-supported energy investments. Some portion of these investments would have occurred even in the absence of ERFCO. In assessing the



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effect of ERFCO upon energy supplies a sharp distinction must be made between the energy produced with ERFCO support and the energy produced because of such support. Clearly, if ERFCO supported all energy investments, all of our output would be produced with ERFCO support, but this does not imply that none would have been produced without it. Our experience with other Federal credit programs, such as the GNMA Tandem program and Eximbank lending, suggests that the additional investment undertaken will be only a very small fraction of the lending undertaken by ERFCO. Advocates of expanding Federal credit programs regularly seek to imply that an additional dollar of credit is equal to an additional dollar of productive outlay, while in fact most of the additional Federal credit is usually offset by reduced demand for private credit. There is every reason to expect that the same will apply to ERFCO operations. To some significant degree we will merely be replacing private credit flows with government guaranteed credit, and there would be only a small and perhaps negligible effect upon total energy investment.

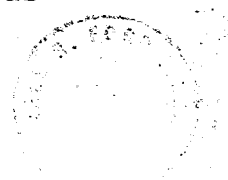
B. Where Does the Extra Energy Investment Come From?

Even though net energy investment stimulated by ERFCO is likely to be far less than the gross amount of lending, some net new investment is stimulated; and we must ask where the resources to finance this investment originate. Will this be an addition to total investment or will it be diverted from other uses? There are two relevant aspects to this question.

1. Can ERFCO generate an increase in employment, incomes, and therefore, total savings?
2. If income is not affected, can ERFCO alter the proportion of income that is saved?

The answer to both of these questions is likely to be no. The Administration has chosen to limit the degree of stimulus given the economy because of a fear of reigniting inflation. Without a change in fiscal and/or monetary policy, any stimulus to investment coming from ERFCO would have to be countered by tighter monetary conditions in the credit markets or less expansionary fiscal policies, leaving the growth path of incomes and employment approximately unchanged.

It is also unlikely that ERFCO can affect the rate of saving out of a given private income. The large volume of borrowing by ERFCO will raise interest rates, but most studies suggest very little relationship between personal saving and interest rates. To the extent that any economic stimulus



resulting from ERFCO activity is offset by tightening up the rest of the Federal budget, savings would be generated but the Administration is already having great difficulty in restraining the Congress from creating even higher deficits. It is more likely that any necessary offsetting restraint would come from tighter monetary policy, thus imposing even stronger upward pressure on interest rates. Higher interest rates might attract inflows of foreign saving, but to a very large extent other offsetting changes would occur through the exchange rate structure so that it is very unlikely that net foreign investment in the U.S. would, in fact, rise.

If ERFCO does not create significant amounts of new saving, any new investment that it induces in energy must be offset by reduced investment elsewhere in the economy,--whether in housing, small business, non-energy related corporations, or in state and local governments. The true economic cost of ERFCO will be a reduction in the national welfare unless there are very persuasive reasons to believe that an insulated group of decision-makers in ERFCO can redirect a massive volume of investment (equivalent to as much as five percent of total business fixed investment) to more profitable uses than are presently realized by the private market. There is a very strong presumption that ERFCO will not be able to do this. An even stronger case would have to be made to determine why command over such a tremendous volume of resources should be vested in a group or an institution that would be freed both from the discipline of the private market and from oversight by the rest of the Government as well.

C. Should ERFCO Have Preferential Access to the Capital Markets?

In general the private market can be relied on to allocate capital to those activities where the expected rate of return is greater than the expected cost. To the extent that energy investments would be undertaken by the private market in any event, ERFCO would be superfluous. Moreover, ERFCO's lending rate would be little lower than the present direct borrowing costs of those private corporations, including many of the energy producing companies, whose borrowings in the bond markets carry an AAA rating.

The Federal Financing Bank's lending rate is now 8.63 percent on 10 year loans. ERFCO's annual operating costs are estimated at \$75 million. To cover these costs, we might assume that ERFCO would have to lend at about 17 basis points above its borrowing rate or about 8.8 percent. A firm with an AAA rating can currently borrow at about 8.9 percent in the corporate bond market. In other words, ERFCO would provide only a 10 basis point advantage to such firms, given the above assumptions.

Government activities to encourage energy-related investments might be justified on any of three bases.

1. External economies on particular energy projects.

It has been argued that private returns are less than social returns so that a less than optimal amount of investment would take place if left entirely to the private market. More specifically, it is argued, and correctly, that private markets do not take account of the national security and foreign policy implications of increasing domestic energy production. However, even if ERFCO were to increase domestic energy production by the equivalent of 7 million barrels by 1985 -- and we strongly question this estimate -- it must be asked whether this amount of added independence is sufficient to warrant the economic costs.

2. The scale of future energy related projects is so large that private enterprise cannot handle them. The successful financing of the (highly risky) multi-billion dollar Alaskan Pipeline Project makes it clear that private enterprise can and will undertake large-scale energy projects that promise acceptable returns. ERFCO proponents would argue that while such consortiums may be feasible, they take a very long time to put together. The counterargument would be that speed is not a characteristic of bureaucratic organizations like ERFCO and that one would not want a Government agency to rush into large projects without the careful planning and research which would characterize a comparable private undertaking.

3. Many energy projects are too risky for the private market to undertake. Two categories of risks can be defined. First, there are risks related to uncertainties about the effectiveness of the technology, the costs of inputs, and the private market for the output. Second, there are risks related to Government regulatory and price policies.

The first category of technological and other market risks cannot be avoided and they will impose losses on ERFCO, just as they would impose losses on a private firm. Because of its large size, ERFCO may be able to attain a greater degree of diversification than individual firms or private consortiums, but its ability to reduce overall risk will be limited because risks in the energy area have a high positive correlation to the extent they are related to international price developments.

Regardless of the degree of diversification, ERFCO must expect some losses on its highly risky portfolio and, in all probability, the true economic losses to society will be greater than for comparable private ventures because of the

freedom of ERFCO from market disciplines. If it is assumed that the loss rate is 5 percent of the principal balance outstanding annually on the "risky" part of its portfolio and if ERFCO were to be required to cover these losses from its interest and dividend earnings on the balance of its portfolio it would require an average rate of return of about 14 percent on these less "risky" bond and equity investments.

It should again be pointed out that this required break-even rate of return is not very much lower than the private market would require on similar investments. Consequently ERFCO does not have much room to maneuver if it is to break even. It could make loans to risky firms at 8.8 percent and absorb losses by writing down its equity but if this is the intended policy it should be so stated at the outset. Unless the Congress and the public are informed, there will eventually be cries of "scandal" and "mismanagement," much like those now being directed at the UDC -- a similar institution created by the State of New York which channels funds into construction projects under an implied guarantee by that state government.

The second category of risk involved in energy related investments concerns future energy prices. Since the future trend of energy prices is likely to be heavily affected by government policies, these risks can be considered government-induced. Such uncertainties will lead to less energy investments than might otherwise be undertaken. This argument would appear to be the most valid justification for government attempts to supplement the private allocation of capital in the energy field. But in this instance the more appropriate way to proceed would appear to be minimum price guarantees for selected high-risk activities, such as the development of synthetic fuels, or outright Federal subsidization of pilot plant construction and operation in this and in other selected areas in order to help accelerate the development of technologies and capabilities that may have to be used in contingencies. Creation and maintenance of additional storage and reserve capacity might be another avenue. However, there is no reason at all for suggesting that the ERFCO type vehicle is the appropriate mode of supplementing private efforts. Of course, explicit subsidies to risky projects do have an important economic disadvantage. There are limits to the speed with which the resources associated with energy development can be produced. There is a limited supply of technicians, engineers, and scientists who are needed for highly technological developments so that the large scale subsidization of risky ventures is sure to retard the development of projects with a more certain

payoff. We must ask whether we wish to gamble large amounts of these scarce resources on highly uncertain ventures when they can earn a more certain return elsewhere in the economy.

In summary, there is no compelling reason for socializing a large share of the total credit flow to the energy sector. Neither the needs test that has been proposed for ERFCO participation nor the seven-year life of ERFCO will have any operational significance if the experience with other Federal credit programs is any guide. Corporate funds are fungible and everybody "needs" subsidies once they have been made available. This has been a major factor in the inability of the Federal government to contain the growth of its credit programs once these have been initiated.

D. Effect of ERFCO Upon Private Financial Market Capabilities and Prospects for Eventual Termination of ERFCO.

ERFCO, once set up will not be easy to eliminate. This organization, designed to supplement the private sector, will instead tend to displace it. The eventual phasing out of ERFCO will be infeasible because ERFCO will reduce the necessity, and in turn the ability, of private financial institutions to evaluate and fund energy investments. Just as Federal guarantees have shrunk the range of housing that is financed in the private sector, the private financial institutions on which energy companies now rely would perform a narrower range of functions after ERFCO came into existence than they did in the past. In short, creation of ERFCO would lead to an attenuation of the private ability to finance energy projects and this atrophy of the private capital market would solidify ERFCO's future role and tend to make it permanent.

Housing is an outstanding example of the process in which the expansion of a public financing vehicle eventually debilitates private sector capabilities. Another potential danger is the expansion of the role of the agency beyond its original objectives. There are many examples of this process in financing programs, including the Rural Electrification Administration (REA) and the Reconstruction Finance Corporation (RFC). REA virtually completed its original function of funding the distribution of electricity to farms some twenty years ago. Nonetheless, subsidized credit is being used in ever increasing amounts -- but now in part to build generating plants and telephone systems.

The life of the RFC was extended into the 1950's even though its function was the Depression-oriented one of dealing with special problems of firms in temporary financial difficulty. The danger of expanding functions is even greater with ERFCO than with REA or RFC because ERFCO's role is not limited to a restricted or specific function (providing power to farms -- of which there are a finite number -- or dealing with a Depression). Consequently, termination of ERFCO can be expected to be much more difficult than terminating these other funding institutions, and the record in these cases speaks for itself.

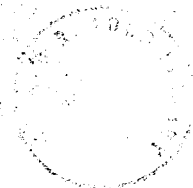
The scale foreseen for ERFCO operations will also tend to perpetuate and extend intervention in capital markets, regardless of our intentions. It is contemplated that ERFCO will be borrowing and relending, under federal guarantees, an average of \$16 billion annually, or the equivalent of 5 percent of total business investment in recent years. It is highly unlikely that ERFCO will increase the volume of savings. Hence, capital will be diverted to energy and away from other uses, reducing investment in plant and equipment in other vital sectors of the economy. The working of the political process makes it exceedingly doubtful that other industries and/or pressure groups will stand idly by while this occurs. The probable response to ERFCO-induced capital shortages elsewhere in the economy will be further interventions in the capital markets.

As this process continues, the increasingly constricted capital market will become less and less able to perform its function of allocating funds to those industries with the highest potential for increased employment and production. As a result, private economic decisionmaking progressively will be displaced by centralized authority in capital allocation.

E. Budgetary Impact of ERFCO

Incremental energy investment generated by ERFCO will largely be induced by the subsidy that ERFCO offers energy companies. The delayed nature of part of that subsidy perhaps has misled some to underestimate the on-budget impact of ERFCO. This impact consists of the original capital infusion, the net operating costs of ERFCO, and the outlays of appropriated funds to cover any deficiencies when ERFCO instruments are retired. ERFCO will redirect capital to the energy sector only if current interest charges are held to the minimum required by the Federal cost of capital. It will not be possible to build a reserve for bad debt on this basis. Consequently, those advances which are not fully repaid must be covered by future transfers from taxpayers to holders of guaranteed ERFCO bonds. We should not

be deluded that placing some of these expenditures off-budget now does anything but obfuscate true governmental cost. The current and prospective ERFCO budgetary impact takes on special meaning in view of the Administration's effort to hold spending down.





FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

OFFICE OF THE ADMINISTRATOR

September 16, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: FRANK G. ZARB

Attached is a copy of the draft legislation authorizing an Energy Independence Authority (EIA). At your direction the Vice President and I closed on the remaining open issues and resolved some of the language difficulties we had in earlier drafts. This draft is also consistent with your final decision with respect to size of funding and organizational structure.

However, final inter-agency clearance, that is, the OMB legislative clearance process, has not been completed.

In addition, I would strongly urge an early conversation with the Republican leadership as well as the joint leadership prior to any public announcement on your intention to submit this legislation.

Attachment





THE VICE PRESIDENT
WASHINGTON

September 15, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: THE VICE PRESIDENT *WZ*
FRANK ZARB

SUBJECT: Corporation to Finance Energy Projects.
Suggested Name: Energy Independence
Authority (EIA)

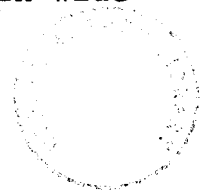
AGREEMENTS ON EIA

Based on our discussions with you, there are now no outstanding disagreements on the major elements of the proposal to create a corporation to assist in financing energy projects. A copy of proposed legislation for this purpose is attached at Tab A, and may be summarized as follows:

1. The purpose of EIA, a corporation with a limited ten-year life, would be to help achieve energy independence for the United States by providing financial assistance to private sector energy projects.
2. To the extent possible, the corporation's financial assistance will be provided on self-liquidating terms and in coordination with private sector financing. In addition to assisting in the achievement of energy independence, EIA's activities will also
 - create jobs;
 - stimulate economic recovery; and
 - ease the shortage of capital in an area essential to economic health and national security.
3. EIA would be a \$100 billion Government corporation with \$25 billion of equity and \$75 billion of debt.



4. EIA would be a new, autonomous Federal authority which reports directly to the President.
5. A five man board of directors would be designated by the President, subject to the advice and consent of the Senate.
6. The Chairman of the Board would be the chief executive officer of the corporation and the President at his discretion would choose full or part-time members from either private or public service.
7. Although autonomous, the corporation's programs would be subject to an annual OMB management and financial review, and Treasury concurrence in the timing and terms of the issuance of debt; however, the corporation's actual financing and expenditures would be off-budget.
8. FEA, ERDA and ERC would be given advance notice of pending project approvals to allow for Executive Branch coordination and specific Presidential disapproval if warranted.
9. The compensation of EIA's staff would be under Civil Service rules, except that the Chairman of the Corporation plus a reasonable number of officers can be appointed and paid without regard to Civil Service requirements or Executive Branch salary limits.
10. EIA will concentrate primarily on the following types of projects in support of your 1985 energy independence goals:
 - * New technologies either to support or directly produce, transport or conserve energy.
 - * Technologies essential to the production of nuclear power.
 - * Conventional technologies if they are directly related to production, transportation or conservation of energy and are of such size or scope that they would not otherwise be financed by the private sector, or represent institutional or regulatory arrangements which are not in wide-spread use.



11. EIA will not undertake projects which (a) can be financed without Government assistance, (b) are not commercially viable because of the policies of a state regulatory commission, or (c) will produce energy which would be produced by the private sector in any event.

NEXT STEPS

We would recommend the following next steps.

- * Convene an early meeting of your economic and energy advisors to inform them of your basic decision.
- * Develop a strategy for notifying and involving the Congress.
- * Announce the objectives and the basic elements of your proposal at an appropriate forum, including a decision on the Corporation's name.
- * After the speech, circulate the draft legislation for several days of interagency review. This will allow further refinement and clearance to occur without premature leaks.
- * Submit the legislation to the Congress as soon as possible after your announcement.



September 10, 1975

A BILL

To establish the Energy Resources Finance Corporation, a Corporation with authority to make loans, guarantee loans, and otherwise provide financing and economic assistance for those sectors of the national economy which are of critical importance to the development of domestic sources of energy and the attainment of energy independence for the United States; to assist in the expediting of regulatory procedures affecting energy development; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Energy Resources Finance Corporation Act of 1975."

Title I. Findings and Purposes

Section 101. Findings. The Congress finds and declares that:

(1) The achievement of energy independence for the United States by 1985 or as soon thereafter as possible is a goal which is essential to the health of the national economy, the well being of our citizens and the maintenance of national security.



(2) Energy independence for the United States is not likely to be achieved without financial support and encouragement beyond that which is likely to be forthcoming from traditional private capital sources in the traditional manner.

(3) Achieving the goal of national energy independence in an expeditious manner can be facilitated through the establishment of an independent entity of limited duration which will provide additional capital, where possible in conjunction with private sources of capital, to assist the development of domestic energy resources, and by authorizing such entity to encourage the prompt resolution of questions coming before governmental regulatory or licensing entities.

Section 102. Purposes. It is the purpose of the Congress, in this Act:

(1) to encourage and assure the flow of capital funds to those sectors of the national economy which are of critical importance to the development of domestic sources of energy, or which are otherwise important to the attainment of energy independence for the United States by 1985 or as soon thereafter as possible, and to facilitate regulatory and licensing decision-making;



(2) to provide financial assistance, where possible by the making of loans and the guaranteeing of loans in conjunction with private sector financing, for those activities which show the greatest potential of contributing to the development of domestic energy resources;

(3) to hasten the commercial operation of new energy technologies subsequent to the research and development phase;

(4) to supplement and encourage, and not compete with, private capital investment and activities in the development of domestic sources of energy; and

(5) to carry out the foregoing purposes through the creation of the Energy Resources Finance Corporation, an entity of limited duration, which will assert its best efforts to, on an aggregate basis, either realize profits or minimize losses; and to provide for the timely and orderly liquidation of such corporation's investments and undertakings.



Title II. Corporate Status and General Powers

Section 201. Establishment.

(1) There is hereby created a body corporate, to be known as the Energy Resources Finance Corporation (hereinafter referred to as the "Corporation").

(2) The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices in such other places as may be determined by the Board of Directors of the Corporation.

Section 202. General Powers.

In carrying out the purposes of this Act, the Corporation shall have the power:

(1) To adopt, alter, and rescind bylaws and to adopt and alter a corporate seal, which shall be judicially noticed;

(2) To make contracts with private or governmental entities;

(3) To lease or purchase such real estate as may be necessary for the transaction of its business;

(4) To accept and dispose of real and intangible property (including money);

(5) to sue and be sued and to complain and defend in any court of competent jurisdiction, State or Federal;



(6) To select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of the business of the Corporation and to define their authority and duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys and agents.

(7) To make provision for and designate such committees, and the functions thereof, as the Board of Directors may deem necessary or desirable;

(8) To determine and prescribe the manner in which obligations of the Corporation shall be incurred and its expenses allowed and paid;

(9) To exercise all other lawful powers necessarily or reasonably related to the establishment and conduct of a corporate entity and the exercise of its powers, purposes, functions, duties and authorized activities;

(10) To use the United States mails on the same terms and conditions as the executive departments of the United States Government; and

(11) With the consent of any board, commission, independent establishment, or executive department of the executive branch to make use of services, facilities, officers, and employees thereof, with or without reimbursement, in carrying out the provisions of this Act.



Section 203. Tax Status.

The Corporation and any Subsidiary (as defined in Section 304 of this Act), its franchise, capital, reserves, surplus, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that (1) any real property owned in fee by the Corporation or any Subsidiary shall be subject to State, territorial, county, municipal, or other local taxation to the same extent, according to its value, as other similarly situated and used real property, and without discrimination in the valuation, classification or assessment thereof, and (2) any entity acquired or established, or activity undertaken, by the Corporation or any Subsidiary (except financial assistance as that term is defined in Section 301 of this Act) which engages directly in the production, transportation, or sale of energy, fuels or energy-related commodities, facilities or products, shall be subject to taxes imposed by the United States or any State or subdivision thereof in the same manner as if such entity or activity were not acquired, established or undertaken by the Corporation or a Subsidiary thereof.



Title III. Functions of the Corporation

Section 301. Financial Assistance.

(1) The Corporation is authorized and empowered, in its sole discretion and upon such terms and conditions as it may determine, to provide financial assistance to any business concern which is engaged, or proposes to engage, in any activity which increases or would increase the development, production, conservation, transportation or distribution of domestic supplies of energy, including but without limitation to financial assistance which:

(a) enables such business concern to finance the ownership, construction, conversion, or expansion of productive facilities, or the acquisition of equipment, plant, machinery, supplies, or materials or the acquisition or development of land, mineral rights and process services; or

(b) provides such business concern with working capital; or

(c) aids such business concern in the payment of current debts or obligations.

* * * * *

As used in this Act: (i) the term "business concern" shall mean any individual, corporation, company, association, firm, partnership, society, or other private entity which is engaged in the development, manufacture, supply, importation,



exportation, procurement or production of goods or services in the United States and which is deemed by the Board of Directors to be essential, by itself or as part of a larger industrial grouping, to the achievement of energy independence by the United States or the long-term security of energy sources and supplies for the United States, and (ii) the term "financial assistance" shall mean any form of advance, extension of credit, investment, participation or guarantee, including, without limitation, loans, guarantees of obligations, guarantees of price, purchase and leaseback of facilities, and the purchase of convertible or equity securities.

(2) No financial assistance may be provided under subsection (1) unless an application therefor has been submitted to the Corporation in such manner and containing such information as the Corporation may require.

(3) (a) The Corporation is empowered to provide financial assistance to any project which in the judgment of the Board of Directors will make a significant contribution to the achievement of energy independence by the United States. The Corporation shall provide financial assistance if, in the judgment of the Board of Directors, the project will not receive from private sources alone sufficient financing, or financing upon such commercially reasonable terms, as to make the project commercially feasible; provided, however, that the maximum degree of private financing shall be sought in connection with any project hereunder.



(b) In providing financial assistance to projects which qualify under subsection (a), the Corporation shall concentrate primarily on those projects which in the judgment of the Board of Directors:

(1) employ, or would stimulate the development and production of, technologies, processes or techniques which are essential to energy production, distribution, transmission, transportation or conservation and which are not in widespread domestic commercial use at the time of the Corporation's commitment of financial assistance; or

(2) employ or stimulate the development and production of technologies and processes which are essential to production and use of nuclear power; or

(3) employ technologies which at the time of the Corporation's commitment of financial assistance are in widespread domestic commercial operation, provided that any such project is in the judgment of the Board of Directors (i) directly related to energy production, distribution, transmission, transportation or conservation, and (ii) either:

(A) of such size or scope that it would not be undertaken without the assistance of the Corporation; or

(B) represents an institutional or regulatory arrangement which is not in widespread domestic commercial use, the success of which



would lead to improvements in energy production, distribution, transmission, transportation or conservation and would assist in achieving the purposes of this Act.

provided, however, that in connection with any project for the production, distribution, transmission, transportation or conservation of energy which is sponsored by a business concern whose rate of return on investment is regulated by any public body the Corporation may provide financial assistance under this subsection (3) only if in the judgment of the Board of Directors the policies of such public body would permit such business concern to secure a rate of return on the project sufficient to liquidate the Corporation's investment over a reasonable period of time.

(c) The Corporation shall not provide financial assistance to projects which otherwise qualify for such financial assistance if, in the judgment of the Board of Directors, (i) such project would receive sufficient financing from private sources if sponsored by another business concern in the same industry, and in a position to provide equivalent service, as the applicant, or (ii) such project would not increase significantly the aggregate contribution of the industry of which such project is a part to the energy independence of the United States; or (iii) such applicant does not display satisfactory levels of efficiency, management capacity



or similar factors which are customarily considered by private sources of financing before making an investment decision.

(4) Financial assistance provided by the Corporation under subsection (1) may be made upon such terms, and subject to such restrictions, as shall seem to the Board of Directors to be commensurate with the needs of the recipient, and may be renewed, modified, or extended by the Board of Directors as it may determine.

(5) To the extent practicable, in the judgment of the Board of Directors, financial assistance provided under subsection (1) shall be in the form of loans and loan guarantees, rather than equity investment. In no case shall the aggregate amount of financial assistance made under this section to any one business concern or affiliated business concerns exceed at any one time 10 per centum of (1) the authorized capital stock of the Corporation plus (2) the aggregate principal sum of the obligations of the Corporation authorized to be outstanding.

(6) Each loan made under subsection (1) shall bear interest at such rate as the Board of Directors of the



Corporation may determine, giving consideration to the needs and capacities of the recipient as well as to the Corporation's need to sustain continuing operations out of returns on investment. Except as provided in subsection (9) hereof, all loans provided by the Corporation shall, in the opinion of the Board of Directors, be made upon such terms as to reasonably assure retirement or repayment, and may be made or effected either directly or in cooperation with banks or other lending institutions. Loans may be made directly upon promissory notes or by way of discount or rediscount of obligations tendered for the purpose. The Corporation, under such conditions as it shall prescribe, may take over or provide for the administration and liquidation of any collateral accepted by it as security for such loans.

(7) The Corporation is authorized, on such terms and conditions as the Board of Directors may prescribe, to guarantee any lender against loss of principal and interest on securities, obligations, or loans (including refinancings thereof) issued to provide funds to any business concern, as such term is defined in this Act. All guarantees entered into by the Corporation under this section shall constitute general obligations of the United States of America backed by the full faith and credit of the Government of the United States of America. Any guarantee made by the Corporation under this section shall



not be terminated, canceled or otherwise revoked, except in accordance with the terms thereof; shall be conclusive evidence that such guarantee complies fully with the provisions of this Act and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans and of the guarantee; and shall be valid and incontestable in the hands of a holder of a guaranteed security, obligation, or loan, except for fraud or material misrepresentation on the part of such holder. Prior to issuing any such guarantee, the Corporation shall obtain the concurrence of the Secretary of the Treasury as to the interest rate, timing and other substantial terms and conditions of such guarantee. There are authorized to be appropriated to the Corporation such amounts, to remain available until expended, as are necessary to discharge all the Corporation's responsibilities under this subsection. The Corporation shall be subrogated to the rights of any third party receiving payments of interest or principal out of funds provided by the Corporation under a guarantee arrangement authorized hereunder.

(8) The total amount of financial assistance by the Corporation, outstanding at any time, computed to include the sum of (i) the full amount of the Corporation's liability under all guarantees, (ii) reserves for all other contingent liabilities, and (iii) all loans and other forms of financial assistance authorized under subsection (1) hereof, shall not exceed the sum of (i) the authorized capital of the Corporation,



(ii) the amount the Corporation is authorized to borrow under Section 402 of this Act, (iii) all unrealized gains on the Corporation's investments, and (iv) the earned surplus of the Corporation, all as determined under generally accepted accounting principles.

(9) The Corporation may make high-risk loans or direct investments, or provide product price guarantees or other direct financial assistance, which in the judgment of the Board of Directors will further the purposes of this Act. The Board of Directors shall create such reserves as may be necessary to meet contingent liabilities which may be created under this subsection (9); provided, however, that notwithstanding any other provision of this Act, the Corporation may not provide any financial assistance or make any further commitments for financial assistance (except pursuant to previously made binding commitments) if, after audit, the Corporation is required under generally accepted accounting principles to establish a reserve or reserves for bad debts, price support commitments, contingent liabilities, or other unrealized losses, which reserves in the aggregate exceed the sum of the Corporation's paid-in-equity capital plus its earned surplus, both of which shall be determined in accordance with generally accepted accounting principles.

(10) For purposes of computing the amounts specified in subsections (8) and (9) of this section, the financial



statements of the Corporation and its Subsidiaries shall be consolidated.

(11) The Corporation may charge reasonable fees for issuing guarantees, and reasonable fees for making commitments for other forms of financial assistance pursuant to subsection (1).

(12) The Corporation may, in compliance with applicable laws governing transactions in securities, sell in public or private transactions all or any part of the common or preferred stock, capital notes, bonds or any other evidences of indebtedness or ownership acquired by the Corporation pursuant to this section.

(13) The President of the United States may review, and in his discretion approve, modify or disapprove in any respect, all decisions of the Corporation to furnish financial assistance under this Act.

Section 302. Access to Information.

Every applicant for financial assistance under this Act shall, as a condition precedent thereto, consent to such examinations as the Corporation may require for the purposes of this Act, and shall further consent that any reports of examinations of the applicant by constituted authorities may be furnished by such authorities to the Corporation upon



request therefor. The Corporation shall require such reports as it deems necessary from any business concern receiving financial assistance under this Act regarding activities carried out pursuant to this Act. The Corporation is authorized to prescribe the keeping of records with respect to funds provided by loan, grant or contract and shall have access to such records at all reasonable times for the purposes of insuring compliance with the terms and conditions upon which financial assistance was provided.

Section 303. Subsidiaries

(1) The Corporation may create or cause to be created wholly-owned subsidiary corporations with such powers, authorities, privileges and immunities, consistent with the purposes of this Act, which may be required:

(a) to produce, acquire, carry, sell or otherwise deal in energy-related commodities and materials;

(b) to purchase and lease land, purchase, lease build, operate and expand plants, and purchase and produce equipment, facilities, machinery, materials, and supplies;

(c) to lease, sell, or otherwise dispose of land, plants, facilities, and machinery in order to induce business concerns to engage in the foregoing activities.



(2) The powers of every subsidiary corporation created or organized under this section shall be set out in a charter which shall be valid only when certified copies thereof are filed with the Secretary of the Senate and the Clerk of the House of Representatives and published in the Federal Register, and all amendments to such charters shall be valid only when similarly filed and published. No subsidiary created hereunder shall have a term of existence beyond the authorized life of the Corporation. A corporation organized pursuant to this section is referred to as a "Subsidiary" in this Act. Nothing herein shall be deemed to prevent the Corporation from investing funds of the Corporation in corporations other than Subsidiaries.



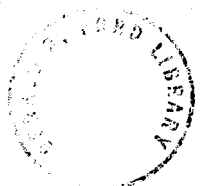
Title IV. Capitalization and Finance

Section 401. Capital Stock and Dividends.

The Corporation shall have capital stock of \$25,000,000,000, subscribed by the United States of America acting by and through the Secretary of the Treasury, payment for which shall be subject to call in whole or in part by the Board of Directors of the Corporation. On the date that is 180 days after the close of each fiscal year of the Corporation, the Corporation shall declare and shall thereafter pay a dividend on its outstanding capital stock, in an amount determined in the discretion of the Board of Directors, taking into account the current annual yield on marketable obligations of the United States at the time the dividend is declared; provided, however, that the Corporation may waive or defer payment of any such dividend if (a) the Corporation has no earned surplus on the date on which the dividend would otherwise be declared, or (b) the Board of Directors determines that the funds otherwise available for payment of the dividend should, in furtherance of the purposes of this Act, be used to provide financial assistance pursuant to subsection (1) of Section 301 of Title III.

Section 402. Obligations of the Corporation.

The Corporation is authorized to issue and to have outstanding at any one time notes, debentures, bonds, or



other obligations in the aggregate principal amount of \$75,000,000,000; provided, however, that the Corporation shall not issue any such obligation without the prior concurrence of the Secretary of the Treasury as to the method, source, interest rate, timing and other terms and conditions of such obligation. All obligations of the Corporation issued under this section shall be fully and unconditionally guaranteed as to principal and interest by the United States, with the same force and effect as a guarantee issued by the Corporation under subsection (7) of Section 301 of Title III, and such guarantee shall be expressed on the face of all such obligations. The Secretary of the Treasury may direct that any such issuance by the Corporation be sold to the Department of the Treasury for its own account or to the Federal Financing Bank.

Section 403. Source of Funds for Purchases by Secretary of the Treasury.

(1) For purposes of purchasing the capital stock and obligations of the Corporation pursuant to Sections 401 and 402, respectively, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under the Second Liberty Bond Act are extended to include such purchases. Each purchase of obligations by the



Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases and sales by the Secretary of the Treasury of such obligations under this section shall be treated as public debt transactions of the United States.

(2) Obligations of the Corporation issued pursuant to this Act shall be lawful investments, and may be accepted as security for all fiduciary trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof.

Section 404. Forms of Notes, Bonds and Other Obligations.

In order that the Corporation may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this Act, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Corporation, to be held in the



Treasury subject to delivery, upon order of the Corporation. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Corporation shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other obligations.

Section 405. Moneys of the Corporation.

All moneys of the Corporation not otherwise employed may be:

(a) deposited with the Treasury of the United States subject to check by authority of the Corporation, drawn on the Treasury of the United States by a Treasury disbursing officer, or

(b) with the approval of the Secretary of the Treasury, deposited in any Federal Reserve bank, or

(c) with approval of the Secretary of the Treasury, and by authorization of the Board of Directors of the Corporation, used in the purchase for redemption and retirement of any notes, debentures, bonds, or other obligations issued by the Corporation.



Title V. Management

Section 501. Board of Directors.

(a) The authority of the Corporation shall be vested in the Board of Directors, except as to those functions, powers and duties assigned to the Chairman of the Board as provided in this Act and such matters as may be delegated to officers of the Corporation pursuant to Section 504 of this Title. The Board of Directors shall consist of five voting members appointed by the President by and with the advice and consent of the Senate, who shall hold office at the pleasure of the President who shall have the power at any time and from time to time to designate a new Chairman of the Corporation from among the members of the Board. Of the five members of the Board, not more than three shall be members of any one political party. The Chairman shall devote his full working time to the affairs of the Corporation and shall hold no other salaried position.

(b) The President may determine, at the time of appointment of any Director, other than the Director who shall serve as Chairman of the Board, whether such Director shall serve in a full-time or part-time capacity. Directors who are serving part-time may hold other private or public positions but shall devote such time to the affairs of the Corporation as are necessary to discharge their duties. Directors who are serving full-time shall



devote their full working time to the affairs of the Corporation, including such responsibilities as may be assigned by the Chairman of the Board and shall hold no other salaried position. Directors of the Corporation, whether serving full-time or part-time, shall be compensated at an annual or daily rate to be determined by the President of the United States, but no Director holding a full-time public position shall receive additional compensation from the Corporation for his services as such Director. Directors shall be reimbursed for reasonable expenses not otherwise reimbursed which are incurred in connection with their services as directors of the Corporation.

(c) Before entering upon the duties of his office, each director shall take an oath faithfully to discharge the duties of his office. Whenever a vacancy shall occur on the Board of Directors, the President shall, with the advice and consent of the Senate, appoint a person to fill such vacancy, determining at the time of such appointment whether the person so appointed shall serve full-time or part-time. All directors shall be citizens of the United States.

(d) The Board shall meet at any time pursuant to the call of the Chairman and as may be provided in the bylaws of the Corporation. A majority of the duly appointed and serving directors shall constitute a quorum, and any action by the Board shall be effected by majority vote of a quorum.



The Board of Directors shall adopt, and from time to time amend, such bylaws as are necessary for the proper management and functioning of the Corporation.

Section 502. Officers, Employees, Attorneys and Agents.

(a) The Chairman of the Board shall be the chief executive officer of the Corporation, and as such shall be responsible for the management and direction of the Corporation (including the making of expenditures associated with administration of the Corporation). The President of the United States shall fix the compensation of the Chairman of the Board.

(b) The Chairman of the Board may appoint and fix the compensation of all such personnel as may be necessary for the transaction of the Corporation's business, all in accordance with the provisions of Title 5, United States Code, governing appointments in the competitive service and the provisions of Chapter 51 and subchapter III of Chapter 53 of such title relating to pay rates; provided, however, that notwithstanding the foregoing, the Chairman of the Board and a reasonable number of executive officers of the Corporation designated by the Chairman may be employed by the Corporation under contracts not exceeding five years and without regard to provisions of Title 5, United States Code, governing appoints and pay rates in the Federal service.

(c) The Chairman shall define the duties of the officers and employees of the Corporation, and provide a



system of organization to fix responsibility and promote efficiency. Without prejudice to contract rights, any person appointed by the Chairman may be removed in the discretion of the Chairman.

(d) The Chairman of the Board shall have authority to obtain the services and fix the compensation of experts and consultants in accordance with the provisions of Section 3109 of Title 5, United States Code.

(e) No officer or employee of the Corporation may receive any salary or other compensation for services from any source other than the Corporation during his period of employment.

Section 503. Conflicts of Interest.

(1) The provisions of Chapter 11 of Title 18, United States Code, shall apply to the directors and all officers and employees of the Corporation; except that the provisions of section 208 of such title shall not apply to the procedure whereby compensation of such directors, officers and employees is fixed under this Act.

(2) No officer or director of the Corporation shall, during the period of his service as such with the Corporation, maintain any interest in a project for which financial assistance is committed or provided under this Act.



Section 504. Delegation.

The Board of Directors may, by resolution, delegate to the Chairman of the Board or other officers of the Corporation such of its functions, powers and duties assigned to the Board under this Act as it deems appropriate. The Chairman of the Board may, by written instrument, delegate such functions, powers and duties as are assigned to the Chairman by the provisions of this Act to such officers or employees of the Corporation as he deems appropriate.



Section 505. Fiscal Year, Reviews and Audits

(a) The fiscal year of the Corporation shall coincide with the fiscal year of the United States Government.

(b) On or before June 30 in any year, the Corporation shall submit to the Director of the Office of Management and Budget a financial and management plan, in such detail as the Director may prescribe, for the succeeding fiscal year.

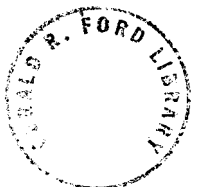
(c) The Corporation and its Subsidiaries shall retain a firm or firms of nationally recognized public accountants who shall prepare and report an annual audit of the accounts of the Corporation and its Subsidiaries, on a consolidated basis, including the statements identified in 31 U.S.C. 851. The General Accounting Office is authorized to conduct such audits of the accounts, and to report upon the same to Congress, as such Office shall deem necessary or as Congress may request. All books, accounts, financial records, reports, files, papers and property belonging to or in use by the Corporation or its Subsidiaries and necessary to facilitate an audit shall be made available to the person or persons conducting the audit and facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.



Section 506. Reports.

(1) The Corporation shall make and deliver a quarterly report to the Congress and the President. The report will state the aggregate sums then outstanding or committed as loans, loan guarantees or other financial assistance and a listing of the business concerns so involved with the Corporation. The quarterly report in which any expenditure or commitment to a business concern or project is first noted shall contain a brief description of the factors considered by the Board of Directors in making such expenditure or commitment. The report shall also show, on an unaudited basis, the assets and liabilities of the Corporation as of the end of the Corporation's fiscal quarter preceding the date of the report and the number, functions and compensation of persons employed by the Corporation at salary rates exceeding \$2,500 per month.

(2) The Corporation shall make and deliver to the Congress and the President an annual report containing the audited financial statements and report prepared by the independent public accountants pursuant to Section 505. The annual report shall also contain, in addition to the information required in the quarterly report, a general description of the Corporation's operations during the year, a specific description of each project or activity in which the Corporation is involved, a status report on each such project or activity, and an evaluation of the contribution which the project or



activity has made and is expected to make in fulfilling the purposes of this Act (including, where possible, a precise statement of the amount of domestic energy produced or to be produced thereby).

(3) On or before June 30, 1983, the Corporation shall make and deliver to the Congress and the President a report evaluating the overall impact made by the Corporation and describing the status of each then current activity or program of financial assistance. This report shall contain a Liquidation Plan. The Liquidation Plan shall describe in the greatest detail practicable how each activity, project or obligation involving financial assistance, and every substantial asset or liability of the Corporation will be liquidated, terminated, satisfied, sold, transferred or otherwise disposed of. Each annual report thereafter made by the Corporation will describe what progress is being made in effecting such Liquidation Plan.

(4) On or before January 31, 1986, the Corporation shall make and deliver to the President a report setting forth the Corporation's recommendation as to whether or not the existence of the Corporation should be extended (for the limited period and purpose described in Section 803(3)).

(5) Every audit and report required by this section shall relate to and report on Subsidiaries, if any, as well as the Corporation.



Title VI. Federal Agency Proceedings

Section 601. Definitions. As used in this Title--

(1) The term "Federal agency" means an "Executive agency" as defined in 5 U.S.C. 105, including an independent regulatory commission.

(2) The term "proceedings" means any action taken by a Federal agency initiating or in carrying out the process leading to approval or disapproval of any project.

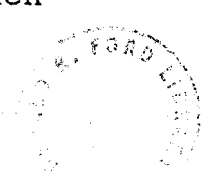
(3) The term "project" means any activity in connection with which financial assistance to a business concern has either been provided or committed pursuant to this Act.

Section 602. Certification by the Corporation.

(1) The Corporation may, in connection with its extension of financial assistance under this Act, certify that the project to which such financial assistance is committed or provided is of critical importance to the achievement of the purposes of this Act.

(2) Such certification shall be issued by the Corporation only upon application therefor and then only after a satisfactory showing by the applicant that such certification is reasonably necessary to assure the expeditious completion of the project to which it relates.

(3) A business concern may submit a certification made pursuant to subsection (1) above to any Federal agency which



is required by law to approve, disapprove, license, or review all or any portion of the project including the initiation, development or completion of the project.

(4) Any Federal agency which receives a certification authorized under subsection (1) above shall forthwith commence all necessary proceedings which may be required for the approval or disapproval of all or any portion of the project and shall give such proceedings preference over all other questions pending before it, except other proceedings involving similar certifications, and shall complete all such proceedings and render a decision within 12 months (or such shorter period as the Corporation may for good cause specify) from the date of submission of the certification to such Federal agency.

(5) With the approval of the Corporation, any Federal agency which receives a certification provided under subsection (1) may for good cause shown extend for up to six additional months the time for completion of any proceeding specified pursuant to subsection (4).

Section 603. Judicial Review.

(1) Judicial review of a Federal agency's final action concerning a project which has been certified under Section 602 of this Act shall be given priority over all other matters pending on the court's docket.

(2) Should any relevant Federal agency fail to expedite its proceedings in regard to a project covered by this Act

within the period specified pursuant to Section 602 of this Title, the Corporation may obtain from the appropriate United States district court an order directing compliance by the Federal agency with the provisions of Section 602.

Section 604. Expediting Functions of the Corporation.

(1) In order to coordinate, simplify and expedite the processing of applications to construct, license or review energy projects, the Corporation, in cooperation with all interested Federal agencies, shall oversee the entirety of the Federal approval process. The authority to approve or disapprove applications for energy projects shall remain in those Federal agencies required by law to consider such projects.

(2) The Corporation shall have the following duties and authorities in the project approval process:

(a) The Corporation shall develop, in cooperation with all other Federal agencies with authority over any aspect of energy projects, a single composite application which shall be the sole application required for Federal approval prior to the commencement of a project. Such composite application shall be composed of removable and insertable sections in order to accommodate the information necessary for all Federal approvals for each proposed project in one document of manageable size.



(b) Immediately upon receipt of a composite application the Corporation shall forward the application to the Federal agencies required by law to consider it.

(c) In order to carry out the purposes of this Title, the Corporation is authorized to coordinate and expedite the review of applications for project approval undertaken by Federal agencies and, in consultation with such agencies, may establish appropriate priorities and timetables for the completion of those agencies' review processes; provided, however, that all such timetables and priorities shall be consistent with the statutory obligations of such agencies.

(d) The Corporation shall keep apprised of the processing of energy project applications at the State and Regional level and, where appropriate and consistent with applicable Federal and State law, suggest procedures for consolidating State and Federal proceedings with a view to reducing duplication of effort and expediting the overall review and approval process.

(e) The Corporation may, within 20 days after receipt of any Federal agency decision approving or disapproving an application, petition that agency to reconsider its decision. Petitions for reconsideration filed by the Corporation shall be granted or denied within 30 days of their receipt by the agency involved.

Title VII. Unlawful Acts and Penalties

Section 701. False Statements.

Whoever makes any statement, knowing it to be false, or willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining money, property, contract rights or anything of value, under this Act, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both.

Section 702. Forgery.

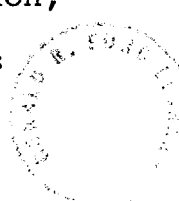
Whoever (1) falsely makes, forges, or counterfeits any note, debenture, bond, or other obligation, or coupon, in imitation of or purporting to be a note, debenture, bond, or other obligation, coupon or thing of value issued by the Corporation, or (2) passes, utters or publishes, or attempts to pass, utter or publish, any false, forged or counterfeited note, debenture, bond, or other obligation, coupon or thing of value purporting to have been issued by the Corporation, knowing the same to be false, forged or counterfeited, or (3) falsely alters any note, debenture, bond, or other obligation, or coupon, issued or purporting to have been



issued by the Corporation, or (4) passes, utters or publishes, or attempts to pass, utter or publish, as true any falsely altered or spurious note, debenture, bond, or other obligation coupon or thing of value issued or purporting to have been issued by the Corporation, knowing the same to be falsely altered or spurious, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

Section 703. Misappropriation of Funds and Unauthorized Activities.

Whoever, being connected in any capacity with the Corporation, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to the Corporation, or (2) with intent to defraud the Corporation or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Corporation, makes any false entry in any book, report, or statement of or to the Corporation, or, without being duly authorized, draws any order or issues, puts forth or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud, participates, shares, or receives directly or indirectly any money, profit, property or benefit through any transaction, loan, commission, contract, or any other act of the Corporation, or (4) gives



any unauthorized information concerning any future action or plan of the Corporation which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company, bank, or corporation receiving loans or other assistance from the Corporation, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

Section 704. Infringement on Name.

No individual, association, partnership, corporation or business entity shall use the words "Energy Resources Finance Corporation" or a combination of these words which a court of competent jurisdiction shall find reasonably likely to mislead or deceive, as the name or a part thereof under which he or it shall do business.

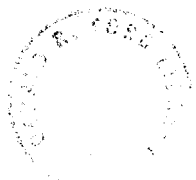
Section 705. Unlawful Contracts.

The provisions of Sections 431 through 433, inclusive, of Title 18, United States Code, shall apply to contracts or agreements with the Corporation pursuant to this Act. Such contracts or agreements include, but are not limited to loans, loan guarantees, purchase agreements, advances, discounts and rediscounts, acceptances, releases, and substitutions of security, together with extensions or renewals thereof.



Section 706. Additional Penalties.

In addition to any other penalties provided in this Title, on conviction the defendant shall be liable to the Corporation for any profit or gain acquired as a result of the conduct constituting the offense for which he was convicted.



Title VIII. General Provisions

Section 801. Coordination with other Entities.

The Corporation shall seek the advice and recommendations of the Energy Resources Council, the Federal Energy Administration, the Energy Research and Development Administration and the Department of the Interior in determining whether the provision of financial assistance to a particular business concern or to promote a particular activity will further the purposes of this Act. Any such advice or recommendation shall be provided to the Corporation within 30 days of its request.

Section 802. Severability.

If any provision of this Act, or the application of any such provision to any person or circumstance, shall for any reason be adjudged by any court of competent jurisdiction to be invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall be affected thereby.

Section 803. Termination and Liquidation of the Corporation.

Notwithstanding any other provision of this Act:

(1) The Corporation shall make no commitments for financial assistance after June 30, 1983, and shall furnish no financial assistance after June 30, 1986.



(2) From and after June 30, 1983, the Board of Directors of the Corporation shall diligently commence all practical and reasonable steps to achieve an orderly liquidation of the Corporation's affairs on or prior to June 30, 1986. Such steps may include the sale or transfer to any agency of the United States, or the sale directly to the public, including any business concern, of all or any portion of the Corporation's assets.

(3) The Corporation shall terminate on June 30, 1986, or at such earlier date as the President of the United States shall determine, provided, however, that if the President shall determine that the orderly liquidation of the Corporation's affairs requires the continuation of the Corporation beyond June 30, 1986, the President may, by Executive Order, extend the authorized life of the Corporation for not more than three years after such date.

(4) If, on the date of termination of the Corporation, its Board of Directors shall not have completed the liquidation of its assets and the winding up of its affairs, the duty of completing such liquidation and winding up of its affairs shall be transferred to the Secretary of the Treasury, who for such purposes shall succeed to all the powers and duties of the Board of Directors and Chairman of the Board of the Corporation under this Act, and nothing herein shall be construed to affect any right or privilege accrued, any penalty or liability incurred, any criminal or



civil proceeding commenced, or any authority conferred hereunder, except as herein provided in connection with the liquidation of the remaining assets and the winding up of the affairs of the Corporation. Following such transfer, the Secretary of the Treasury may assign to any officer or officers of the United States in the Treasury Department the exercise and performance, under his general supervision and direction, of any such powers and duties until the Secretary of the Treasury shall find that such liquidation will no longer be advantageous to the United States and that all of its legal obligations have been provided for, whereupon he shall retire any capital stock then outstanding, pay into the Treasury as miscellaneous receipts the unused balance of the moneys belonging to the Corporation, and make the final report of the Corporation to the Congress. Thereupon the Corporation shall be deemed to be dissolved.

Section 804. Relationship to Other Laws.

Except as may be provided elsewhere in this Act, neither the Corporation nor any Subsidiary shall for any purpose be considered an "Executive agency" as defined in 5 U.S.C. 105 or an "agency" as defined in 5 U.S.C. 551. The provisions of the United States Code relating to public contracts and public buildings and works, including Federal Property and Administrative Services Act of 1949, and the Davis-Bacon Act (40 U.S.C. 276a.), shall not apply to the functions of the



Corporation and its Subsidiaries. Nothing in this Act shall be deemed or construed to make the Government Corporation Control Act, 31 U.S.C. 841, et seq., applicable to the Corporation.

Section 805. Reservation of right to amend or repeal.

The right to alter, amend, or repeal this Act is expressly declared and reserved, but no such amendment or repeal shall operate to impair the obligation of any contract made by the Corporation under any power conferred by this Act.

