

United States General Accounting Office

GAO

Report to the Chairman, Committee on
Energy and Natural Resources, U.S.
Senate

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ENERGY REGULATION

The Quality of DOE's Oil Overcharge Information





United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

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March 15, 1989

The Honorable J. Bennett Johnston
Chairman, Committee on Energy and
Natural Resources
United States Senate

Dear Mr. Chairman:

In your July 25, 1988, letter, you requested that we provide you with information on several issues related to the Economic Regulatory Administration's (ERA) efforts to collect oil overcharges from companies that violated petroleum price regulations. ERA, under authority delegated by the Secretary of Energy, is responsible for resolving oil overcharge cases under the Emergency Petroleum Allocation Act of 1973.

Between August 1973 and January 1981 (the date the President lifted the price controls on refined petroleum products), ERA and predecessor federal agencies established and enforced regulations controlling the allocation and pricing of crude oil and refined petroleum products. Through its program, ERA has audited oil companies' compliance with these regulations and has identified alleged violations. ERA has attempted to resolve these alleged violations through (1) negotiated settlements with the companies, (2) legal actions in courts of law, or (3) the administrative process through which ERA attempts to get companies to take specific actions to remedy alleged violations.

ERA has collected approximately \$6.5 billion in oil overcharges with another \$1 billion due from settlement agreements in which moneys have not yet been received. According to an ERA estimate, as of the beginning of fiscal year 1990, actual recoveries from unresolved overcharge cases are likely to total between \$200 million and \$500 million. The total amount of outstanding overcharges alleged by ERA is greater.

As agreed with your office, we focused on the following three areas: (1) whether ERA maintains accurate information on the amount of outstanding oil overcharges it alleges, (2) how ERA develops the estimates it provides to the Congress of the amount of overcharges it expects to collect, and (3) whether ERA makes use of workload data when requesting resources in its budget requests.

Results in Brief

We found that ERA maintains a case-tracking database that is used primarily to monitor the status of oil overcharge cases. Although the database includes some information on outstanding overcharges, it is not used by ERA management or attorneys to calculate the total overcharge amounts that ERA has alleged or expects to collect. The information is not complete and, in some cases, is known to be inaccurate and not up to date.

The estimates ERA prepares for the Congress of the overcharge amounts it expects to collect are rough estimates that are not based on analyses of individual or categories of cases and are not documented. Finally, ERA officials told us that they consider the type and size of unresolved cases when formulating ERA's budget request for resources; however, they could not provide documentation to show how this is done.

Amount of Outstanding Overcharges

ERA maintains information on all oil overcharge cases in a computerized case-tracking database. The database, which is updated monthly, includes information on the overcharge amounts alleged by ERA in each case; the type of case, such as whether the case is in administrative litigation, judicial litigation, or post litigation;¹ and the status of the litigation in each case. As of July 1988, 218 active oil overcharge cases were in administrative and judicial litigation. According to ERA officials, the primary use of the database is to monitor the status of cases; they do not use the database information on the alleged overcharge amounts. They acknowledged that the amounts in the database may not be entirely accurate or current.

After reviewing the information contained in the case-tracking database, we identified several factors that precluded us from using the information to determine the total amount ERA has alleged in unresolved oil overcharge cases. These factors include the following:

- The database does not specify whether the amount shown includes principal and interest or only principal, and the amounts in the database do not consistently contain both the principal and interest amounts. For example, of the 41 cases for which we were able to match the amount in the database to the source documents, 25 contained only principal while

¹ Administrative litigation is conducted before the Department of Energy's Office of Hearings and Appeals and the Federal Energy Regulatory Commission. Judicial litigation is conducted before the federal courts. Cases in "post litigation" have been resolved through settlement negotiations, administrative litigation, or judicial litigation, but the amounts due have not been fully collected.

16 contained principal and interest.² Generally, administrative litigation cases included principal only, while those in judicial litigation included interest up to the date of the source document.

- During litigation, the overcharge amount alleged by ERA may change, but the database is not always updated to reflect the change. In addition, when changes are made, reference to the new source document is not always added to the database, precluding independent validation of the data. Case attorneys are supposed to provide management with monthly updates on case information for entry into the database. ERA officials, however, said that the attorneys do not always provide the information necessary to update the alleged amounts in the database, particularly when the status of the case does not change.
- The database is not always updated in a timely manner. For instance, we found five cases that had been settled or dismissed, dating back as far as 1984, that were listed in the database as being active in July 1988. ERA officials said that some of these cases may have remained in the database because decided or settled cases are not removed from the database until ERA receives the final consent order or the case is officially dismissed. However, they said that some may remain in the database because of error.

ERA Estimate of Future Recoveries

We found that the estimates ERA provides to the Congress of the amount of remaining overcharges it expects to collect from unresolved cases are not well supported. The amount that ERA will ultimately collect as a result of negotiated settlements or litigation can be considerably less than the amount of violation alleged by ERA. For example, in cases involving bankrupt firms, ERA may collect only a small portion of the amount of violation it alleged.

ERA estimated in its fiscal year 1990 budget request that it will collect between \$200 million and \$500 million from the resolution of remaining oil overcharge cases. In developing its estimate, ERA used past estimates as a base and subtracted the amounts collected from cases that have been, or are expected to be, settled to determine how much will be outstanding at the beginning of the fiscal year. However, neither this estimate nor past estimates are based on any specific methodology, such as a case-by-case assessment of the amount ERA expects to collect or an analysis of groups of cases with similar characteristics. The ERA officials

²In the 16 cases where interest was included, the amount of interest shown in the source document was generally larger than the principal amount. Further, in those cases where interest is included in the amount listed, that figure is often outdated because interest continues to accrue while a case is being litigated.

involved in preparing the estimates said that the estimates are speculative. Further, ERA officials were not able to provide us with documentation showing how the estimates were derived. The officials said that documentation which discusses the relative strengths of individual cases could adversely affect ongoing litigation if it were somehow released to the alleged violators.

Basis for ERA Budget Request

ERA employs a form of incremental budgeting to develop its budget requests. Specifically, ERA officials and Department of Energy Budget Office officials told us that in formulating the requests, they consider ERA's current budget, its declining caseload (as cases are being resolved), and the types and sizes of the cases that are outstanding. ERA officials provided us with a few reports, such as a periodic staffing report and a case workload graph. They said this type of information was used in determining staffing needs. However, ERA could not provide documentation to show how these factors were considered in arriving at its requested staffing level. Most of ERA's budget for compliance activities is devoted to personnel costs.

Observations on Data Limitations

As ERA's oil overcharge caseload declines, the Congress and the executive branch may require more complete and current information on the aggregate amount of oil overcharges that can realistically be collected from unresolved cases. If such information is required, ERA may need to improve the way it collects and maintains oil overcharge information in its case-tracking database. As noted, the aggregate estimates ERA prepares of the amount of remaining overcharges it expects to collect are not well supported and are not documented. These estimates are not based on any specific methodology such as a case-by-case assessment of the amount ERA expects to collect or an analysis of cases grouped by case type.

Further, we recognize ERA's concerns regarding the impact the release of such analyses could have on ongoing litigation. However, by releasing only aggregate estimates, analyses of the merits of individual cases can still be safeguarded.

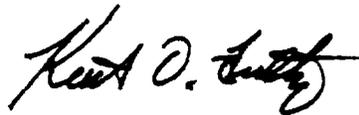
Scope and Methodology

In our attempt to verify the accuracy of the information contained in ERA's database, we analyzed the database and compared the information in it with various source documents. We also interviewed senior ERA officials to learn how the information contained in the database is entered,

maintained, and used; how the aggregate estimates of future oil overcharge collections are developed; and the factors they consider in preparing ERA's budget request. In addition, we requested supporting documentation. (See app. I for detailed scope and methodology.)

We discussed the contents of this report with responsible ERA officials and have incorporated their views where appropriate. However, as agreed with your office, we did not obtain formal agency comments. As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from the date of this letter. At that time we will send copies of this report to the Department of Energy and make copies available to others upon request. If you have any questions regarding this report, please contact me at (202) 275-1441. Major contributors to this report are listed in appendix II.

Sincerely yours,



Keith O. Fultz
Director, Energy Issues

Scope and Methodology

To obtain information on the amount of alleged outstanding overcharges, we examined the information in the Economic Regulatory Administration's (ERA) database for 218 cases in judicial and administrative litigation. We focused our analysis on 65 of the 218 cases that accounted for 92 percent of the total alleged amount shown in the database that ERA provided us. For these 65 cases, we attempted to compare the amounts found in ERA's case-tracking database with the amounts found on the appropriate source documents. We interviewed officials from ERA's Office of Management and Information Systems and the Directors of Administrative and Judicial Litigation to discuss the sources and uses of the information in the database.

To determine the basis for ERA's estimates of expected oil overcharge recoveries, we interviewed the officials responsible for preparing the estimates and requested documentation of how the estimates were prepared.

Finally, to determine the basis for ERA's resource requests, we interviewed the Director of ERA's Office of Management Systems, who is responsible for preparing ERA's budget; officials from the Department of Energy's Budget Office and Office of Organization and Management Systems; and Office of Management and Budget officials who are responsible for analyzing the dollar amounts and staffing levels requested by ERA. We also interviewed officials in ERA's Office of Enforcement Litigation to determine what role this office has regarding ERA's budget request. In addition, we reviewed ERA's budget requests and requested supporting documentation.

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