

## *Report of The Committee On Coal Conversion*

**T**HE PAST YEAR has produced a smattering of proposed orders prohibiting burning of oil and natural gas, a temporary gas-for-oil policy and the introduction of new legislative proposals in Congress to reduce utility use of oil and natural gas.

### *1. Interim Regulations:*

The Powerplant and Industrial Fuel Use Act of 1978 ("FUA") prohibits after May 8, 1979 new powerplant or major fuel burning installation ("MFBI") facilities from using oil or natural gas as a primary fuel source without an exemption from the Economic Regulatory Administration ("ERA"). It further authorizes the issuance of regulations to prohibit oil and natural gas from being used in existing powerplants. The ERA issued on March 21, 1979 regulations dealing with criteria for determining whether certain transitional facilities are to be classified as "existing" or "new" facilities.<sup>1</sup> On May 8, 1979 the ERA issued interim regulations containing definitions, procedural rules and exemption criteria for new powerplants and MFBI's that burn oil and natural gas.<sup>2</sup> On July 11, 1979, the ERA issued interim regulations for existing facilities.<sup>3</sup>

The interim rules, which reflect a shift from the ERA's hard line approach taken in the earlier draft rules, redefine the criteria for determining what is an MFBI or powerplant subject to FUA's restrictions. MFBI's and powerplants were redefined to exclude the aggregation of existing units up to 100 million Btu's per hour with new and existing units for purposes of determining whether a combination of units at a site consumes fuel at a heat rate of 250 million Btu's per hour and thus comes within the reach of the FUA. That redefinition will allow industry to expand boiler capacity without falling under the fuel use prohibitions of the Act. The interim rules also adopt a less restrictive definition of what is a site for purposes of aggregating generating units to determine whether they qualify as MFBI's or powerplants. In addition, the rules exclude both internal combustion engines used to generate electricity from the definition of powerplants or MFBI's and, under defined circumstances, certain boilers under 100 million Btu's. In addition, filing fees for exemption petitions were reduced and criteria for qualifying for exemption were made less restrictive and reporting requirements were eased.

The interim rules issued in May and July 1979 have been appealed by a number of electric utilities and industries, including major segments of the automobile and steel industries. The various review petitions have been

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<sup>1</sup>44 Fed. Reg. 17464.

<sup>2</sup>44 Fed. Reg. 28530 and 44 Fed. Reg. 28950.

<sup>3</sup>44 Fed. Reg. 43176 (July 23, 1979).

consolidated for briefing and argument this summer in the United States Court of Appeals for the Fourth Circuit in Docket Nos. 79-1277, *et al.* It presently is not clear whether final rules will issue and overtake those appeals before they are decided. Major issues in the appeals include ERA's criteria for determining an existing plant's "technical capability" to burn coal (a prerequisite for prohibition of oil or gas use) and ERA's cost test for prohibition orders and general exemptions.

## *2. Prohibition Orders:*

The ERA the past year issued 21 proposed orders to prohibit the burning of oil or natural gas under the FUA to 11 utilities. It plans to issue an additional 40 proposed prohibition orders within the next year. No final prohibition orders have been issued under the FUA. The apparent motivation of the ERA in issuing the proposed prohibition orders to one of the 11 utilities, Consolidated Edison, was to assist it in overcoming state environmental roadblocks to its application to convert three generating units to coal. The ERA has expressed continuing interest in using prohibition orders to assist utilities and industries in overcoming environmental restrictions against burning coal.

## *3. Gas-for-Oil Policy:*

An interesting and ironical twist in the ERA's administration of the FUA is its gas-for-oil policy announced in May 1979 as a temporary exception to the coal-for-gas-and-oil policy. Under that exception, the ERA grants to utilities temporary public interest exemptions from the FUA's prohibition against using natural gas for boiler fuel as long as the use of gas does not displace any coal.

The short-term exemption policy originally arose with the discovery of the natural gas "bubble" but may be assuming a life of its own. The DOE has received over 1,000 exemption applications for utility plants and has declared the majority of those applications eligible for temporary exemption. It actually has issued well over 200 exemptions despite opposition from the coal industry, which says that such exemptions indirectly cut coal use. The ERA recently renewed the gas-for-oil policy, which was scheduled to expire on February 27, 1980, until October 31, 1981. The ERA further has decided to allow all powerplants, except those in the Midwest, to burn gas on an interruptible basis regardless of the sulfur content or type of oil displaced. In a sidelight to the gas-for-oil policy, the ERA is considering a plan to use natural gas curtailment priorities to encourage electric utility boiler conversions to coal. That is, an electric utility would be moved up the gas curtailment priority ladder if it had a coal conversion plan.

## *4. The Administration's proposed legislation for reducing oil and gas use.*

The Carter Administration, on March 6, 1980, introduced the long-awaited utility fuel use reduction legislation. The bill as introduced is a two-phased, \$10 billion proposal to reduce utility oil and gas use by the equivalent of 1,000,000 barrels of oil a day by 1990. For Phase I the pro-

posed legislation earmarks \$3.6 billion in federal grants to assist utilities in converting to coal 107 generating units located primarily in the Northeast. Those 107 units represent a reduction from DOE's original list of 141 units. In Phase II an additional \$6 billion in federal grants would be provided to utilities (mostly in the South and California) that voluntarily reduce oil and gas use. Of the Phase II grants, \$50 million would be given to states to defray conversion plan administration costs.

The Administration proposal is intended to increase coal use to 40 to 45 million tons annually during the 1980's and would require utilities to meet only existing, not future, clean air guidelines. The grant system evidently is the Administration's response to the ineffectiveness of the Energy Supply and Environmental Coordination Act of 1974 ("ESECA") and its successor FUA in getting utilities to convert to coal. The environmental provisions and the incentive grants to utilities may lead to a stormy debate in Congress.

##### 5. *Miscellaneous:*

A. The President's Commission on Coal released its interim and final reports respectively on July 12, 1979 and March 3, 1980. The Commission's recommendations were designed to save more than 2,000,000 barrels of imported oil per day by 1980 through increased coal use. To achieve that savings the Commission recommended that utilities be prohibited from using oil and natural gas beyond present levels, that oil and natural gas use be reduced to 40% of present levels by 1990, that after 1985 oil and natural gas use be prohibited in coal-capable utility boilers operating more than 1,500 hours per year and in coal-capable industrial boilers over five megawatts equivalent, and that oil and natural gas be prohibited in new industrial boilers over five megawatts equivalent constructed after 1980.

To ease the burden placed on utilities, the Commission also recommended that \$15 billion in federal grant assistance be extended to encourage conversion and that state regulatory bodies set rates sufficient for utilities to attract the necessary private capital for conversion.

B. The Federal Energy Regulatory Commission announced on February 15, 1980 a policy of quick action on electric rate increase requests needed for utilities to convert to coal. The policy statement arose out of a New England Power Company wholesale rate increase filing in Docket Nos. ER80-66, *et al.*, a portion of which related to coal conversion costs. The Commission suspended the rate increase, including the coal conversion portion, for the full statutory five months. Upon reconsideration the Commission invited a new rate filing solely for the Company's coal conversion program and indicated that such filing would be made effective after the minimal one-day suspension from the effective date originally requested.<sup>4</sup> It should be noted that under Commission Order No. 555, Docket No. RM75-13,

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<sup>4</sup>*New England Power Company*, Docket Nos. ER80-66, *et al.*, Order Denying Applications For Rehearing, February 13, 1980 (at 5).

issued November 8, 1976, facilities that accomplish conversion from oil or gas to coal may be included in rate base when under construction.

C. The ERA at the end of July 1979 created a special Office of Fuels Conversion to administer the parts of the FUA that allow ERA to prohibit oil and natural gas use in boilers. The Office also will assume responsibility for fuel conversion under ESECA.

D. The Treasury Department reportedly will propose in the near future rules under the Energy Tax Act of 1978 clarifying the use of a 10% investment tax credit for industrial boilers converted to coal or for boilers improved to increase fuel conservation.

E. Perhaps the most intriguing development during the past year was the recommendation of the Carter Administration's Regulatory Analysis Review Group in comments filed in response to ERA's interim FUA rules on October 31, 1979. The Group concluded that the Energy Department should consider terminating its FUA rules and regulatory program for utilities because the future high cost of oil and gas generation by itself will assure reduction in oil and gas use.

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