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Testimony

Before the Subcommittee on Energy,  
Committee on Energy and Natural  
Resources, U.S. Senate

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# PROPANE AND HEATING OIL

## Federal Oversight of the Propane Education and Research Council and National Oilheat Research Alliance Should Be Strengthened

Statement of Mark Gaffigan, Director  
Natural Resources and Environment



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Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss highlights of our report on the extent to which the Propane Education and Research Council (PERC) and National Oilheat Research Alliance (NORA) implement consumer education, research and development, and safety and training programs related to the use of propane and heating oil.<sup>1</sup> Tens of millions of Americans rely on propane and heating oil for heat, hot water and—in the case of propane—cooking and motor fuel. Within the last 15 years, Congress authorized the creation of two national entities to undertake propane and oilheat research and development, safety and training, and consumer education programs and provided the U.S. Department of Commerce (Commerce) and the U.S. Department of Energy (DOE) with certain related authority. The Propane Education and Research Act of 1996 (the Propane Act)<sup>2</sup> and the National Oilheat Research Alliance Act of 2000 (the Oilheat Act)<sup>3</sup> authorized the establishment of PERC and NORA, respectively. The Oilheat Act expired on February 6, 2010, and is under consideration for reauthorization,<sup>4</sup> but the Propane Act does not expire.

PERC and NORA fall into a category of federally-authorized programs known as check-off programs. To fund check-off programs, a fraction of the wholesale cost of a product is set aside by the producer and deposited into a common fund to be used to benefit producers and consumers. Similar programs are in place for agriculture commodities, including, for example, milk, as well as beef, pork, and cotton, among other commodities. To fund PERC operations, each gallon of odorized propane gas sold is assessed \$0.005.<sup>5</sup> To fund NORA operations, each gallon of heating oil sold is assessed \$0.002.

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<sup>1</sup>GAO, *Propane and Heating Oil: Federal Oversight of the Propane Education and Research Council and the National Oilheat Research Alliance Should Be Strengthened*, [GAO-10-583](#), (Washington, D.C.: June 30, 2010).

<sup>2</sup>Pub. L. No. 104-284, 110 Stat. 3370 (Oct. 11, 1996).

<sup>3</sup>Pub. L. No. 106-469, 114 Stat. 2029 (Nov. 9, 2000).

<sup>4</sup>The Congressional Budget Office, in a March 2, 2010 cost estimate, determined that reauthorizing NORA for one additional year would have no impact on the federal budget. The Budget Office also indicated that it believed that NORA's activities should be considered governmental in nature because assessments collected by NORA are compulsory and enforced by the federal government's sovereign authority.

<sup>5</sup>As propane is naturally odorless, an odorant is added as a means of detecting a leak. Virtually all commercial propane is odorized.

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In preparing this testimony, we relied on our work supporting the accompanying report. This report examined: (1) how PERC and NORA spent the assessments they have collected; (2) the extent to which PERC's and NORA's reported activities help to achieve the results defined in their strategic goals; (3) the extent to which PERC and NORA's activities have met key requirements; and (4) the extent to which PERC's and NORA's activities and spending received federal oversight. To do our work, we examined PERC's and NORA's spending from the first year of operation—1998 for PERC and 2001 for NORA—through 2008; performance, response to the authorizing statutes; and coordination with applicable federal agencies. We assessed the reliability of financial data from PERC and NORA by analyzing related documentation, examining the data to identify obvious errors or inconsistencies, and working with PERC and NORA officials to identify data problems and determined the data to be sufficiently reliable for our purposes. We also reviewed PERC and NORA financial statements, annual reports, meeting minutes, and other reports and obtained information and views on both PERC and NORA from a wide range of officials in DOE and the Departments of Commerce and Agriculture and the private sector. The report contains a more detailed explanation of our scope and methodology. Our work was conducted in accordance with generally accepted government auditing standards.

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## Background

PERC and NORA provide the framework for propane and oilheat producers and marketers to establish self-help, non-federal programs of research and development, training, safety, and consumer education activities. Both the Propane Act and the Oilheat Act outline key procedural, administrative, and spending requirements to administer these programs. To help with that administration, PERC has about 30 staff, a national council, and 5 advisory committees, while NORA has 2 staff, an executive committee, and 3 advisory committees. Both the Propane and Oilheat Acts specify three areas as mandatory functions and priorities for PERC and NORA's programs and projects, although the Acts do not specify a particular funding level or ranking. The three mandatory areas are:

- *Research and development:* The Propane Act requires PERC to develop programs that provide for research and development of clean and efficient propane utilization equipment. The Oilheat Act directs similar oilheat-related research and development and directs NORA to fund projects in the demonstration stage of development.

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- *Safety and training/education and training:* Both the Propane Act and the Oilheat Act require development of programs to enhance consumer and employee safety and training. PERC refers to this program area as “safety and training,” while NORA refers to it as “education and training.” Projects that fall into this spending category include developing employee training materials and conducting training courses for industry personnel.
  - *Public/consumer education:* The Propane Act directs PERC to develop projects to inform and educate the public about safety and other issues associated with the use of propane. Similarly, the Oilheat Act directs NORA to develop programs that provide information to assist consumers and other persons in making evaluations and decisions regarding oilheat. Such activities have included the development of radio, television, and print advertising directed at consumers and industry professionals.

While there are certain restrictions on the types of activities PERC and NORA can undertake, which I will discuss later, the Acts generally do not prohibit PERC and NORA from conducting programs or projects beyond these mandatory areas, and both organizations have carried out additional activities. PERC, for example, has spent funds on agriculture and engine fuel programs. In addition, to coordinate its activities with other parties, as required by the Propane Act, PERC has established an industry programs area to provide support, data, and other services to the propane industry and maximize its impact. Likewise, in 2004 and 2005, NORA funded an oil tank training and education program for tank installers, inspectors, and insurers to address concerns about storage tanks, which NORA officials stated spanned all three mandatory areas in the statute.

By statute, both PERC and NORA give a portion of the assessments collected to state propane and oilheat associations with similar missions.<sup>6</sup> Pursuant to the Propane Act, PERC gives 20 percent of its assessments to state propane associations. According to PERC, its oversight of these funds includes a PERC council review of a state association’s proposed use for these funds and the submission of periodic and final reports from the state associations. The Oilheat Act requires NORA to give 15 percent of its assessments each year to qualified state associations, which may then request to receive any portion of the remaining 85 percent of the assessments collected in their states. NORA’s oversight of state

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<sup>6</sup>The PERC and NORA state associations are private enterprises and not state government entities.

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expenditures is similar to PERC's, but state associations are required by NORA to submit quarterly reports on program spending. Both PERC and NORA are also expressly authorized by their statutes to use the assessments they collect to meet general and administrative expenses.

Mr. Chairman, our report provides detailed information about our four findings, which are summarized in the following sections.

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## PERC and NORA Spent Over Half of Their Collected Assessments on Consumer Education

According to our analysis of PERC's and NORA's audited financial statements, annual reports, and other financial information they provided to us, together PERC and NORA collected \$458 million in assessments through 2008, and they spent over half on consumer education programs, with far less spent on the other two priority areas of research and development and safety and training. Specifically, from 1998 to 2008, PERC collected about \$350.6 million. During those years, PERC and its affiliated state propane associations spent over \$318.5 million as follows:

- \$178.6 million for consumer education (50.9 percent),
- \$50.7 million for safety and training (14.5 percent),
- \$28.1 million for research and development (8 percent),
- \$20 million for industry programs (5.7 percent),
- \$12.5 million on agriculture programs (3.6 percent),
- \$5.8 million on engine fuel programs (1.7 percent), and
- \$22.7 million for general and administrative expenses (6.5 percent).

The remaining balance of about \$32.1 million was unspent, mostly reflecting, according to PERC, approved commitments to future spending.<sup>7</sup>

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<sup>7</sup>In estimating PERC's unspent balance, we found discrepancies between the rebate totals in their annual financial statements and annual reports, and a requested breakdown of cost data by program area—e.g., consumer education and research and development. As a result, the \$32.1 million includes some amount representing the discrepancy involving these data.

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Consistent with its authorizing statute, PERC allocated \$69.5 million (19.8 percent of its assessments) to state propane associations.<sup>8</sup>

According to our analysis of NORA's audited financial statements, annual reports, and other NORA information provided us, from 2001 to 2008, NORA collected over \$107.4 million.<sup>9</sup> Together, NORA and the affiliated state associations spent a total of about \$101.6 million, as follows:

- \$68.4 million (63.7 percent) on consumer education programs,
- \$17.8 million (16.5 percent) on education and training,
- \$6.2 million (5.8 percent) on research and development,
- \$300,000 (0.3 percent) on oil tank training, and
- \$8.9 million (8.3 percent) on general and administration expenses, and special projects.

NORA had not yet spent \$5.8 million; however, according to NORA officials, approximately two thirds of the \$5.8 million balance has been designated for future expenditure but has not yet been disbursed. Consistent with its authorizing statute, NORA allocated \$80.4 million (74.9 percent of assessments) to state oilheat associations.<sup>10</sup>

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<sup>8</sup>According to PERC data, state propane associations spent about 49.3 percent of the assessments PERC provided to them on consumer education, 38.5 percent on safety and training, 9.8 percent on industry programs, 0.7 percent on agriculture, 1.1 percent on research and development, and 0.5 percent on engine fuel work.

<sup>9</sup>NORA's outside accountant informed us that, of the \$107 million total, NORA had collected approximately \$103 million and had accrued receivables of \$4 million at the end of 2008.

<sup>10</sup>According to NORA data, state associations spent about 81.4 percent of the assessments NORA provided to them on consumer education, 18.0 percent on education and training, and 0.6 percent on research and development.

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## PERC and NORA Report Activities in All Program Areas, but It Was Not Always Clear How Those Activities Helped Achieve Strategic Goals

PERC's research and development and agriculture program activities appeared consistent with strategic goals, but it is not clear to what degree consumer education, safety and training, engine fuels, and industry activities helped achieve these goals. For example, a key goal of PERC's consumer education activities was to increase propane usage, but studies provided to GAO were inconsistent about whether propane usage actually increased. NORA's research and development activities were generally consistent with its strategic goals, but because NORA's strategic plan lacked goals for its consumer education, education and training, and oil tank program areas, GAO could not determine if these activities achieved desired results.

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## Some PERC and NORA Activities Appear to Meet Statutory Requirements, but Others Raise Issues about Coverage of the Acts and Other Matters

Some PERC and NORA activities appeared to meet the requirements of the Acts. For example, as called for in the Propane Act, PERC maintains a 21-member council; has submitted its annual draft budget to the Secretary of Energy each year from 2000 through 2009; and has had its financial records audited by a certified public accountant at least annually since 1998. As called for in the Oilheat Act, NORA has coordinated its activities with industry associations and others to ensure the efficient delivery of services and avoid unnecessary duplication; does not appear to support advertising or promotions of oilheat; publishes a budget and an annual report for public review and comment each year; and appears to make its council meetings, including those of its executive committee, open to the public.

However, other activities raised issues about coverage of the Acts and other matters, specifically the following:

*PERC and NORA activities related to Congress and politically affiliated entities.* The Propane Act prohibits the use of PERC assessment funds for certain "lobbying" activities, specifically for "influencing legislation or elections," except for recommending to the Secretary of Energy any changes in the Act or other statutes that would further the Act's purposes. The Oilheat Act contains similar provisions. However, some of PERC's and NORA's activities—particularly communications and expenditures related to Congress or to politically affiliated entities—raised issues about the coverage of the Acts. We found, for example, that PERC paid for a grantee to attend activities associated with the Republican and Democratic national conventions, for a grantee to contribute thousands of dollars to several politically active organizations, and for a grantee to spend thousands of dollars to host Senate and House receptions. We also found,

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for example, that minutes of an August 2008 NORA executive committee meeting indicated that the NORA president said he was seeking state senators' support for NORA reauthorization, and that a December 2008 NORA-qualified Massachusetts state association newsletter indicated that the NORA president traveled to Washington to urge both Massachusetts senators to support NORA reauthorization. However, neither the Propane Act nor the Oilheat Act provides guidance on what constitutes "influencing legislation or elections;" there is little pertinent legislative history; no court has addressed what this language means as used in these statutes; and other federal laws containing similar language have been interpreted in different ways. As such, it is not clear whether or not the Propane Act's or the Oilheat Act's prohibitions cover those types of activities. Assuming PERC and NORA's activities were permitted, issues remain about whether Congress anticipated that the assessment funds would be used for these activities and whether they qualify as "consumer education" under the Acts. Issues also remain about whether Congress anticipated that such a high proportion of the groups' funding would go to consumer education activities, in comparison to the relatively little support given to research and development, a key area of congressional interest as the laws were debated prior to enactment.

*PERC funding of consumer education activities after spending restrictions were triggered.* PERC initially designated certain activities as "consumer education" but, when price-based restrictions on consumer education programs were triggered in 2009, it redesignated and continued the activities as "residential and commercial" matters. The Propane Act specifies that if the 5-year average rolling price index of consumer grade propane exceeds a particular price threshold, PERC's activities must be restricted to research and development, training, and safety. Commerce notified PERC in August 2009 that this price composite index threshold had been exceeded. We found that, after the August notification, PERC approved three grants, including a no-cost change order to a previously approved grant. These grants initially had been proposed and approved as consumer education grants, which would be prohibited under the restriction, and amended their designation to a new program area called "residential and commercial" matters. The Propane Act does not specifically define the scope of activities permitted under the price

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restriction nor the activities that must cease.<sup>11</sup> The resulting lack of a precise statutory line between permitted and prohibited activities creates difficulty in assessing compliance with the restriction.

*NORA monitoring of state associations.* It is unclear whether NORA's monitoring procedures are adequate to detect non-compliance among its state grantees if it occurs. The Oilheat Act requires NORA to monitor the use of funds it provides to state associations and impose any terms and conditions it considers necessary to ensure compliance with the Act.<sup>12</sup> The Oilheat Act also requires NORA to establish policies and procedures that conform to generally accepted accounting principles (GAAP) for auditing compliance with the Act. According to NORA's president, NORA's monitoring of state associations included, among other things, policies and procedures to review state grants and disbursements and requirements in grant agreements with the state associations that specify the authorized and unauthorized use of NORA assessment funds. However, based on our review of general ledger entries, financial statements, and certain other reports and information prepared by selected state associations, we were unable to determine whether spending by state associations of NORA funds met the requirements of the Oilheat Act. For example, based on our review of the general ledger expenditures entries for 2006 to 2008, we found that hundreds of entries indicated only that a purchase was made, with no details as to the type of or reason for the purchase.

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## Federal Oversight of PERC and NORA Has Been Limited

While Commerce has issued propane and oilheat market and impact studies as required by the Propane and Oilheat Acts, DOE's oversight of PERC and NORA has been limited. The Propane Act requires Commerce to prepare two reports: (1) an annual analysis of changes in the price of propane relative to other residential energy sources; and (2) an analysis done at least every 2 years examining, among other things, whether PERC's operation has had an adverse impact on propane consumers and propane prices. We found that Commerce has fulfilled these requirements. The Oilheat Act also requires Commerce, beginning in 2002 and every year thereafter, to prepare an annual oilheat price analysis similar to its price

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<sup>11</sup>The Oilheat Act, by contrast, contains a broad definition of "consumer education": "the provision of information to assist consumers and other persons in making evaluations and decisions regarding oilheat and other nonindustrial commercial or residential space or hot water heating fuels."

<sup>12</sup>The Propane Act contains no similar explicit monitoring requirement for PERC.

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analysis of propane. The department had not been fulfilling this requirement because it became aware of it only after meeting with us during our review; however, in April 2010, it issued a 2008 oilheat price analysis. DOE, on the other hand, has not been exercising its oversight authority for either PERC or NORA, and DOE officials told us that they believe that DOE has no oversight role regarding either one. Yet DOE is empowered to review both organizations' annual budgets; to recommend activities and programs it deems appropriate; and, in PERC's case, to require submission of reports on compliance, violations, and complaints regarding implementation of the Propane Act. Indeed, although DOE is authorized to be reimbursed by PERC for the department's PERC-related oversight costs (up to the average salary of two DOE employees), DOE told us it has never requested reimbursement because it has never incurred any oversight costs. This current lack of oversight is part of a longstanding pattern; in a 2003 report, we found that DOE's oversight of PERC was lacking and recommended that the department take corrective action.<sup>13</sup> In its comments on our 2003 report, DOE stated that the Commerce Department rather than DOE had oversight responsibility and, therefore, DOE did not act on our recommendation. We found that DOE's position regarding PERC remains unchanged. Importantly, as neither the Propane nor the Oilheat Act contains a specific enforcement mechanism for any potential PERC or NORA violations, any oversight program implemented by a federal agency would be hampered.

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## Conclusions and Matters for Consideration by Congress

In conclusion, because PERC's and NORA's authorizing statutes do not provide for a particular funding level for specific activities or indicate a ranking among the activities designated as priorities, they afford PERC and NORA wide latitude in deciding how and in what amounts they spend assessments collected. Since the legislative history of both statutes indicates that a need for research and development funding was a key factor driving the legislation, PERC's and NORA's decisions to spend over half of their funding on consumer education raises issues about whether these funds are being used as Congress anticipated. Furthermore, while some PERC and NORA activities appeared to meet statutory requirements, the lack of specificity in the language of the statutes raises issues about what activities are covered under certain provisions of the acts. While we

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<sup>13</sup>GAO, *Propane: Causes of Price Volatility, Potential Consumer Options, and Opportunities to Improve Consumer Information and Federal Oversight*, GAO-03-762 (Washington, D.C.: June 27, 2003).

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did not determine, and do not express an opinion about, whether or not the requirements were met, these uncertainties highlight the need to clarify some of the statutes' definitions and requirements. Compounding the lack of specificity in the requirements of the statutes is the lack of a specific enforcement mechanism that would enhance compliance through proactive federal oversight. A final concern is the fact that, despite our 2003 recommendation that DOE exercise its oversight authority regarding PERC, DOE continues to believe it does not have an oversight role for either PERC or NORA. In light of the lack of any specific requirements in the statutes for federal agencies to conduct oversight, federal oversight is likely to remain very limited.

In our report, we suggested that as Congress considers whether to reauthorize NORA or amend PERC's authorizing statute, it may wish to impose greater specificity on the requirements it has established and to establish mechanisms to enhance compliance with those requirements. Specifically, we suggested that Congress may wish to consider

- specifying any prioritization of activities it wants to be undertaken and detailing more specifically which activities are prohibited (such as some of those involving lobbying);
- subjecting PERC's and NORA's activities to review, interpretation and approval by an independent, designated entity and specifying a federal oversight role by requiring DOE to monitor and oversee the expenditure of PERC and NORA funds; and
- establishing a specific enforcement mechanism, and expressly authorizing DOE to refer any potential violations of law to appropriate enforcement authorities.

In commenting on our report, PERC interpreted certain information differently in several cases. PERC also believes the Propane Act allows it to fund all of the types of activities it has conducted related to Congress and politically affiliated entities but welcomes clarification by Congress regarding the Act's current lobbying restrictions. NORA did not disagree and, in some aspects, agreed with the report. The Department of Commerce agreed with the report's general findings regarding the agency's statutory obligations to conduct certain analyses. DOE did not comment.

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Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

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## Contact and Acknowledgements

For further information about this testimony, please contact Mark E. Gaffigan at (202) 512-3841 or by e-mail at [gaffiganm@gao.gov](mailto:gaffiganm@gao.gov). Ernie Hazera (Assistant Director), Bob Baney, Jennifer Andreone, Amanda Cherrin, Robert Dacey, Abe Dymond, Karen Keegan, Alison O'Neill, Kiki Theodoropoulos, Susan Sawtelle, and Barbara Timmerman made key contributions to this testimony.

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