

DOCUMENT RESUME

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Letter to Rep. Richard L. Ottinger; by Elmer B. Staats, Comptroller General.

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GEN. GOVT MATTERS



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20348

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B-178726

December 15, 1976

The Honorable Richard L. Ottinger
House of Representatives

Dear Mr. Ottinger:

We have reviewed the current funding status of the Energy Research and Development Administration (ERDA) as you requested in your letter of October 6, 1976, and your followup letter of October 13, 1976. We have also carefully considered the views expressed by your staff in a meeting on November 4, 1976, and further expounded in your letter of November 9, 1976.

The issue posed by your inquiry concerns the extent of fund availability to ERDA in light of the unusual circumstances surrounding its appropriations for fiscal year 1977 operations. Normally, ERDA's operations are governed by detailed specifications laid down in authorizing legislation pursuant to which appropriations are enacted. Because enactment of ERDA's appropriations for fiscal year 1977 preceded conclusion of the authorizing legislation, availability of the appropriations was made contingent upon enactment of the related authorizing statutes. See Pub. L. No. 94-355, 90 Stat. 889, and Pub. L. No. 94-373, 90 Stat. 1043, 1058.

It became apparent in the closing days of the 94th session of Congress that the new fiscal year might well start without enactment of the requisite authorizing legislation, in which event a significant portion of ERDA's operation would have to cease by virtue of the limitation which had been placed upon availability of its 1977 appropriations. To avoid such eventuality the Congress added section 110 to H.J. Res. 1105, Pub. L. No. 94-473, making continuing appropriations for 1977, to the effect that:

"Provisions in Public Law 94-355 and Public Law 94-373 which make the availability of appropriations therein for the Energy Research and Development Administration dependent upon the enactment of additional authorizing legislation shall not be effective until the date set forth in section 102(c) of this joint resolution [March 31, 1977] or the enactment of such authorizing legislation, whichever first occurs."

Though authorizing legislation has not yet been enacted, it is clear under the quoted terms standing alone that ERDA's appropriations for 1977 would be fully available, the sole restriction against their availability having been rendered inoperative. Question arises, however, in connection with the interpretation of section 106 of the joint resolution as it might relate to ERDA's spending authority. Section 106 provides that:

"No appropriation or fund made available or authority granted pursuant to this joint resolution shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during either the fiscal year 1976 or the transition period ending September 30, 1976."

Initially, it seems logical to conclude that ERDA may use funds provided in its appropriations for 1977 only for such projects and activities which were authorized during the period July 1, 1975, through September 30, 1976. Since ERDA's 1977 appropriations would not be at all available for obligation absent section 110 of the joint resolution, it seems to follow that the ERDA appropriations were made available pursuant to the resolution and, further, that the limitation imposed by section 106 is, therefore, applicable by its terms.

Argument for the suggested reading of the provisions involved is compelling. We are not convinced, however, that this reading is the only permissible one or, that it is the correct reading.

The making of "continuing appropriations" available for the Government's business has traditionally been limited to covering those instances where appropriations have not been timely enacted. "Continuing appropriations" provide fund availability to agencies under generally restrictive limitations for periods necessary to allow the Congress to complete action on regular appropriation measures. The instant joint resolution was under consideration in the Congress at the time action became necessary to cover ERDA's activities into fiscal year 1977. Its terms, including the provisions of section 106, were geared toward the traditional need for continuing appropriations into the upcoming fiscal year for a number of Government programs. Congress had not yet expressed its intent in the form of enacted appropriation levels for those programs.

Appropriations for ERDA operations in 1977 had been enacted into law. As mentioned earlier, however, availability of the appropriations was made dependent upon the enactment of additional authorizing legislation. Had

Congress dealt with the fact of ERDA's 1977 appropriations not being available, by incorporating an appropriation for ERDA in the joint resolution, there would be no question but that the limitations of section 106 would apply. But the Congress did otherwise. It added section 110 removing the restriction against ERDA's previously enacted appropriations thereby leaving the appropriations by their terms fully available for obligation.

In the circumstances it is our opinion that the Congress did not intend removal of restrictions against the use of previously enacted appropriations to be subject to the separate restriction of section 106. There was no need for the application of limitations based upon fiscal year 1976 operations as contemplated by section 106 with regard to agencies for which 1977 appropriations had not yet been enacted. In ERDA's case, the Congress had thoroughly considered agency plans for 1977 and had provided appropriations to allow ERDA to operate at specific funding levels. The limitation placed upon these appropriations was essentially to maintain the integrity of the legislative process calling for authorization acts to precede appropriations. When it became clear that the 94th Congress would close without passage of an authorization act for ERDA, Congress removed temporarily the provisions which served to allow for authorizing legislation to pass before the enacted appropriations could take effect. In the closing days of the session it was apparent that appropriations for ERDA's operations in fiscal year 1977 were more important than maintenance of the previously contemplated order of appropriations following authorizations.

Accordingly, after careful consideration it is our opinion that section 106 of the joint resolution was not intended as a limitation upon the availability of ERDA's appropriations for fiscal year 1977 and should not be so construed.

The conclusion that the provisions of section 106 do not serve to limit the availability of ERDA's 1977 appropriations would, in light of those appropriations being provided in lump-sum terms, normally require the further conclusion that ERDA is free to utilize its funds for any purpose consistent with its basic underlying authority. This is so because, absent detailed authorizing legislation, the only definition of expected ERDA activity in 1977 is contained in the conference committee reports supporting the lump-sum appropriations made and such reports would not ordinarily serve to limit the express terms of the appropriation acts. See LTV Aerospace Corporation, 55 Comp. Gen. 307 (1975), 75-2 CPD 203; and 55 Comp. Gen. 812 (1976).

Again, however, we do not believe that the construction of the statutes which would normally follow should prevail. It is evident that the Congress intended ERDA to be circumscribed as to use it might make of its appropriations. Such limitations were obviously intended to be applied through

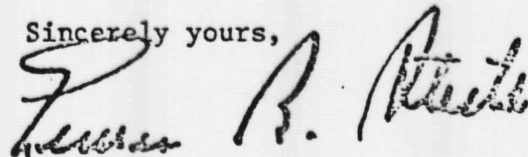
detailed purposes to have been covered by the authorization acts which failed to become law. Recognizing the clear congressional intent to impose limitations on ERDA operations, we cannot construe the appropriations involved as evidencing a contrary intent on the basis of failure to include specific limiting provisions in the appropriation acts.

Under the circumstances, the best evidence of congressional intent in the matter is carried by the detailed objectives laid out in the conference committee reports supporting the level of appropriations provided, and it is our view that until further legislative action is taken, ERDA's use of its 1977 appropriations should be in accordance therewith together with such authorities and limitations as have been enacted into law. See Conference Reports H.R. Rept. No. 1297, 94th Cong., 2d Sess. (1976) and H.R. Rept. No. 1330, 94th Cong., 2d Sess. (1976). Under this analysis, ERDA states, and we agree, that it does not have authority to undertake the following activities, for which no legislative authority was ever enacted and which are not included in the conference committee reports:

- Nuclear Fuel Assurance Act program
- Synthetic fuel commercial demonstration facilities
- Loan guarantees for biomass commercial demonstration facilities
- Small grants program for specified energy-related systems and supporting technologies
- Price guarantee program for municipal solid waste demonstration projects

Additionally, it is our view that in view of the confusion arising out of the manner in which fiscal year 1977 funds were provided to ERDA, the agency should proceed in close coordination with the authorizing committees before commencing controversial projects or activities, notwithstanding their falling within the boundaries of its authority as set forth herein. We understand that ERDA plans to proceed in such manner.

Sincerely yours,



Comptroller General
of the United States