

02  
10  
R424  
1986m

PUBLIC HEARING  
before  
SENATE ENERGY AND ENVIRONMENT COMMITTEE  
on  
REORGANIZATION PLAN NO. 001-1986

(Which transfers certain functions of the Department  
of Energy to the Department of Commerce and Economic  
Development, the Department of Community Affairs,  
and the Department of Environmental Protection)

July 30, 1986  
Room 407  
State House Annex  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Daniel J. Dalton, Chairman  
Senator Paul Contillo, Vice Chairman  
Senator Catherine A. Costa

ALSO PRESENT:

Mark T. Connelly  
Office of Legislative Services  
Aide, Senate Energy and Environment Committee

\* \* \* \* \*

Hearing Recorded and Transcribed by  
Office of Legislative Services  
Public Information Office  
Hearing Unit  
State House Annex  
CN 068  
Trenton, New Jersey 08625







DANIEL J. DALTON  
Chairman  
PAUL CONTILLO  
Vice-Chairman  
CATHERINE A. COSTA  
WILLIAM L. GORMLEY  
LEE B. LASKIN

**New Jersey State Legislature**  
**SENATE ENERGY AND ENVIRONMENT COMMITTEE**  
STATE HOUSE ANNEX, CN-068  
TRENTON, NEW JERSEY 08625  
TELEPHONE: (609) 292-7676

July 18, 1986

NOTICE OF PUBLIC HEARING

The Senate Energy and Environment Committee will hold a public hearing on July 30, 1986, at 10:30 A.M. in Room 407, Fourth Floor, State House Annex, Trenton, New Jersey.

The subject of the public hearing will be Reorganization Plan No. 001-1986, which transfers certain functions of the Department of Energy to the Department of Commerce and Economic Development, the Department of Community Affairs, and the Department of Environmental Protection.

Persons interested in testifying at the public hearing should contact Mark Connelly, Committee Aide, at (609) 292-7676.



## TABLE OF CONTENTS

### Page

Senator Gerald R. Stockman District 15	4
Charles A. Richman Acting Commissioner New Jersey Department of Energy	6
Joel R. Jacobson Former Commissioner New Jersey Department of Energy	30
Henry T. Blekicki Assistant Commissioner New Jersey Department of Commerce and Economic Development	40
Sam Scozzaro Chairman, Utility Task Force New Jersey Federation of Senior Citizens	50
Edward Lloyd General Counsel New Jersey Public Interest Research Group	59
Naomi Yager Energy Director League of Women Voter of New Jersey	69

### APPENDIX

Copy of letter sent to New Jersey Governor Thomas H. Kean from Edward Lloyd, NJPIRG	1x
Copy of letter sent to New Jersey Attorney General W. Cary Edwards from Edward Lloyd, NJPIRG	2x
April 17, 1986 testimony of Edward Lloyd, NJPIRG before the joint Assembly State Government and Assembly Energy and Natural Resources Committees	4x

\* \* \* \* \*

mjz: 1-46  
di: 47-73



SENATOR DANIEL J. DALTON, (Chairman): We would like to get our public hearing started if we could. The subject of today's hearing is the Governor's recently issued Reorganization Plan transferring virtually all the functions of the Department of Energy to the Department of Commerce and Economic Development, the Department of Community Affairs, and the Department of Environmental Protection.

The Reorganization Plan was delivered to the Legislature on June 30, and unless the Legislature passes a resolution disapproving the Plan, it will take effect on August 29.

The implementation of the Plan would effectively abolish the Department of Energy, and would leave the State without an independent energy voice.

The Plan raises a number of important issues: First, there is the issue of timing. On June 30, the Governor told us that the Department of Energy, which has existed for 10 years, is to be abolished in 60 days. During his first term the Governor never mentioned abolishing the Department of Energy. Indeed, he never mentioned it until his Budget Message of this year. What is so important about abolishing the Department of Energy that it must be done on 60-days notice? What compelled the Governor to take this step?

There is also the issue of the legality of the Reorganization Plan. The Reorganization Plan was issued on the authority of the Executive Reorganization Act of 1969. The law states, however, that: "A reorganization plan," and I'm quoting, "may not provide for, or may not have the effect of abolishing or transferring a principal department of all the functions thereof," yet it seems that this is precisely what the Reorganization Plan does.

Thirdly, there is the issue of what I feel is a disregard for the Legislature and the legislative process. Legislation abolishing the Department of Energy was introduced

in the Assembly -- A-2019 and A-2080 -- in February of this year. The Assembly State Government Committee and the Assembly Energy and Natural Resources Committee held a joint public hearing on the legislation on April 17, and on May 5, the State Government Committee reported a Committee Substitute for A-2019 and A-2080.

The Assembly approved the legislation on May 15, and on that date it was received in the Senate and referred to this Committee. Similar legislation was introduced in the Senate on May 5. The Assembly considered the legislation for three months; the Senate had barely six weeks when the Governor decided to short circuit the legislative process.

Reorganization plans, as I understand them, are fundamentally housekeeping measures to reshuffle agencies and to promote administrative efficiency and economy. But the Department of Energy was established by the Legislature in 1977 to perform a variety of statutorily delegated responsibilities. It would seem to me that absent any compelling circumstance, only the Legislature has the authority to abolish the Department and reallocate those responsibilities.

Again I ask, what is so important about dismantling the Department of Energy that the legislative process, which is intentionally deliberative, cannot run its course? Why was it decided that the Senate should not consider this legislation in a normal way?

There is the issue of the twisted result produced by the Reorganization Plan. The pending Assembly and Senate legislation statutorily abolishes the Department of Energy and transfers its functions to other Departments. This Reorganization Plan does not technically abolish the Department of Energy. Thus, if it takes effect on August 29, the Department of Energy will still exist. The Governor will be required to appoint a Commissioner of Energy, even though the Commissioner will have no staff or any responsibilities to



fulfill. Moreover, this Plan would have the Commissioner of Commerce and Economic Development making energy policy decisions for residential consumers. In other words, we will have one Commissioner doing nothing, and another Commissioner doing what he shouldn't be doing.

This is ridiculous, but it is the inevitable result of the Governor using the wrong method to achieve his goal. Again, what was so compelling to make the Governor choose such an inappropriate method, one which does not even accomplish his stated objective?

All these questions raised by the issuance of the Reorganization Plan are linked to the substance of the Plan. If the Plan were designed to accomplish a simple Executive Department housekeeping matter, we shouldn't be here today. This Reorganization Plan, however, would accomplish sweeping policy changes. It appears to abolish a principal State Department. It would transfer the major energy planning functions of the Department of Energy to the Department of Commerce and Economic Development, a Department with a mission fundamentally different from that of the Department of Energy. This Plan would accomplish these changes at a time of great instability in the energy markets, at a time just months after the Department of Energy adopted a comprehensive Energy Master Plan for the State, and at a time when hearings on the Hope Creek rate case are about to begin, hearings at which the Department of Energy would be an intervener.

This Committee will thoroughly investigate the substantive issues raised by the proposal to abolish the Department of Energy when, at a later date, we consider the pending Assembly and Senate legislation. I realize, however, that questions about the effect of the Reorganization Plan cannot be separated from questions concerning what that Plan proposes to accomplish. Therefore, while the focus of today's hearing will be on the legal sufficiency and appropriateness of

the Reorganization Plan, I know that at times we will, of necessity, be required to discuss the substance of the Plan.

Because this Plan originated in the Governor's office, I invited the Governor's Counsel, as well as other Executive Branch personnel to attend the hearing today to provide us with the Governor's rationale for submitting this Plan at this time. The Governor's Counsel informed me that he would not be attending, but would send appropriate representatives from the Department of Energy and the Department of Commerce and Economic Development to present the Administration's position on this Reorganization Plan. It should be noted that I again asked the Governor's Counsel to reconsider his decision not to attend, and when I arrived here this morning I received a letter indicating that he again declined our offer.

It should be noted, however, that in the Governor's Counsel's first response to me and the invitation, he indicated that his representatives would be, "Fully prepared to answer all questions." We are fully ready to ask those questions here this morning.

Before I call up the representatives of the Executive Branch, I want to acknowledge and have come up for a few words someone who has been very active as far as energy policy and formulating energy policy in the Legislature, the Chairman of the Senate Oversight Committee, Senator Gerry Stockman. Senator Stockman?

G E R A L D R. S T O C K M A N: Thank you very much, Senator Dalton. Members of the Committee, there is a certain risk in candor, but I am going to risk it and say that I hadn't intended to speak this morning. I think the risk is that that suggests, arguably, that this isn't a major issue, a major energy policy issue facing this Committee. I think better the answer is that I have been preoccupied in some other areas, and somehow this scheduled hearing itself got away from me.

But, I want to salute this Committee, particularly the Chairman of this Committee, Senator Dalton, for, I think, very, very clearly trying to maintain a healthy, positive energy policy legislatively in this State. He and I have, on more than one occasion, found ourselves somewhat voices, I guess, crying in the wilderness on, I think, major energy policy issues that will continue to be with us into the next decade and beyond. For instance, the Hope Creek question; the question of the tremendous impact that is going to have on the ratepayers of this State.

But today's hearing, I think, is also very vital, because I think it marks a variety of mischiefs. I think it is illegal. I will join with Senator Dalton in urging the Senate to move to challenge this Reorganization Plan and, in fact, I am thinking seriously that should that not succeed, or should, for any reason, the Senate not be able to act, I am considering seriously whether to join with others in a private suit to challenge this action, which I consider not only bad energy policy, but I think an affront to the Legislature.

I hear no utilities complaining, and I doubt if I sat through the full testimony you'll hear today -- which I am unable to do -- that I would hear any such complaints. In fact, at the risk of sounding a little paranoid, I tend to hear the footsteps of those energy utilities in the background of this so-called reorganization.

I think the Energy Master Plan is somewhat jeopardized by this move. I think our beginnings of efforts at effective cogeneration are challenged by this move. I think the conservation regulations that this Committee and others have attempted to start to develop are seriously challenged by this move. I think this is dead wrong. I stopped a reporter in the hall to chat about something, and I asked him if he was heading this way to listen to this testimony. He is very bright, and one of the really best, I think, media people in the State

House corp. He kind of chuckled, and he said, "I will be frank. I sometimes cover those issues, but the abolition of the Energy Department just doesn't grab me that much. It isn't that jazzy."

I think it is going to grab a lot of people in time, and it is going to grab them in the pocketbook because I think it will be a great loss for the consumers of this State. I urge this Committee to stay right at it.

Thank you very much, Mr. Chairman.

SENATOR DALTON: Thank you, Senator Stockman. I appreciate your remarks.

We would like to turn to Assistant Commissioner of the Department of Community Affairs, Chuck Richman. Chuck, I think you are also Acting Commissioner of the Department of Energy. I don't know how to address you.

A C T I N G   C O M M .   C H A R L E S   A .   R I C H M A N :  
Chuck would be fine.

SENATOR DALTON: Chuck would be fine, okay. I don't know whether you have a prepared statement or you would like to go right into questions.

A C T I N G   C O M M .   R I C H M A N : Senator, I have a brief statement. I will be brief in anticipation of your many thoughtful questions.

On June 30, Governor Kean submitted to both houses of the Legislature a Reorganization Plan for the transfer of certain functions of the Department of Energy to the Department of Commerce and Economic Development. The Plan was submitted pursuant to the Executive Reorganization Act of 1969.

This action by the Governor was designed to more closely align energy planning with economic planning. As I pointed out in prior testimony on this subject, the months of hearing and research that went into the writing of the most recent Energy Master Plan again and again pointed to the fact that the State's economic well-being and a sound energy policy were integrally combined.

The Governor called for this action in February, and action was taken to support his call by the Assembly in May. In order to ensure the continuity of policy, to provide a stable environment for Energy's dedicated and talented staff, and to provide permanent leadership at a Cabinet level, and in pursuing his statutory prerogative to examine the organization of State government with an eye toward realignment of existing agency relationships and functions, when doing so will promote a better and more efficient operation of the Executive Branch, the Governor submitted the Reorganization Plan that is the subject of this hearing.

The filing of that Plan, I hope, should not be interpreted by you as any criticism of the Legislature. Rather, it represents the use of a statutory authority given to the Executive by the Legislative Branch. The Governor will continue to seek action on this 2104 and A-2019. We welcome the fact that you have stated today that you will conduct hearings on these bills.

SENATOR DALTON: Thank you very much, Chuck. Let me first focus on the Reorganization Plan submitted to the Legislature by the Governor on June 30. I trust you have come to this hearing prepared to answer questions about this, and that you are fully familiar with the Executive Reorganization Act and the specific Reorganization Plan at issue. Is that correct?

ACTING COMM. RICHMAN: Senator, I come to this hearing as Acting Commissioner of the Department, as an employee of that Department. I am not an attorney. I certainly am not here to debate what Senator Stockman and others have suggested may be an issue for the courts. With that proviso, I am certainly here to answer your questions.

SENATOR DALTON: Well, what I am trying to establish is this: In the response received from the Governor's Counsel, he indicated that you would be fully prepared to answer all



questions. Did you come to this hearing today fully prepared to answer all questions?

ACTING COMM. RICHMAN: I'm fully prepared to answer the questions to the best of my ability.

SENATOR DALTON: Okay. Let me first deal with some of the reorganization plans that were filed prior to this one. In 1972, there was an internal reorganization of divisions, boards, and commissions within the Department of Labor and Industry. Are you familiar with that?

ACTING COMM. RICHMAN: To a limited degree.

SENATOR DALTON: Can you tell me about that?

ACTING COMM. RICHMAN: No, I cannot discuss the specifics.

SENATOR DALTON: So, you can't discuss those specifics. In 1972, Governor Byrne reorganized divisions, bureaus, and offices within the Department of Community Affairs. This was a reorganization internal to one principal Department. Is that correct?

ACTING COMM. RICHMAN: I don't know.

SENATOR DALTON: You don't know. In 1978, Governor Byrne utilized the Executive Reorganization Act to consolidate some of our economic development functions after we created the Economic Development Authority. Are you familiar with that?

ACTING COMM. RICHMAN: No, sir.

SENATOR DALTON: Well, I could continue to ask you about other reorganizations because I want to compare this Reorganization to those other reorganizations, but you are not prepared to speak to those previous reorganizations.

ACTING COMM. RICHMAN: That is correct.

SENATOR DALTON: This is precisely why we wanted the Governor's Counsel here, because of the fact that I think there is a need as far as comparing the public policy implications of those reorganizations and the public policy implications of the Reorganization we are about to discuss today.

I think what I am trying to bring out is, there was some technical rationale for this Reorganization, and I wanted to compare that to any information the Governor's office could provide me with regard to the technical rationale for those previous reorganizations.

ACTING COMM. RICHMAN: I think, Senator, all the reorganizations you have just discussed predated this Administration, so I am not sure that you could hold anyone within this Administration to even knowing necessarily what the thinking was behind those decisions.

I am certainly prepared to discuss with you the reasons and the policy considerations behind this Reorganization recommendation of the Governor, and the reasons it has been put forward. I am not sure that we can't discuss this Reorganization standing alone on its merits without comparing it to previous decision-making.

SENATOR DALTON: Well, I think--

ACTING COMM. RICHMAN: I assume what you are getting to is the degree of difference or the scope of the decision. As the Acting Commissioner, I raised the question with Counsel's office as to whether they believe and were comfortable and confident that the order as it is drafted, the order as signed by the Governor, met the requirements of the Reorganization Act and would be sustained by a court should it be challenged. I was advised yes, and based upon that, obviously the Governor went ahead and signed the order.

SENATOR DALTON: Well, I think the point is, those reorganizations and the rationale for those reorganizations was the Executive Reorganization Act. Those reorganizations were internal, for the most part, to those departments.

In this case what we are talking about is something much more sweeping. We're talking about taking what literally are the major divisions of a Department and removing them from that Department, and then spreading their authority and those

divisions over three other Departments. So, it is clear to me -- if it is not to you -- that no such sweeping changes utilizing the Executive Reorganization Act as a basis have ever taken place heretofore.

ACTING COMM. RICHMAN: I beg to differ with you. My recollection is that Governor Byrne, using the Reorganization Act, removed from the Board of Public Utilities the rate-making and regulatory jurisdiction over all transportation, and moved those functions to the Department of Transportation. That was a fairly substantial reorganization and removed what for decades had been a regulatory function by a quasi-judicial body to another agency.

SENATOR DALTON: Now, to your knowledge, did the Legislature approve of that transfer? (no response) Well, let me answer the question for you, yes.

ACTING COMM. RICHMAN: Afterwards.

SENATOR DALTON: It did. Okay, it approved--

ACTING COMM. RICHMAN: Subsequent to the reorganization.

SENATOR DALTON: --the transfer. And, in this case--

ACTING COMM. RICHMAN: There is nothing to prevent that from happening now.

SENATOR DALTON: Oh, is that correct? From what I understand, this goes into effect August 29.

ACTING COMM. RICHMAN: I believe, and again--

SENATOR DALTON: Is the Assembly coming back, by the way, to your knowledge?

ACTING COMM. RICHMAN: I don't know. Senator, I believe that the Legislature's approval of the reorganization of Transportation -- and it could be that my recollections are wrong -- but I believe the Legislature's action was after the effective date of the reorganization order. But I will have that researched, and then respond to you.

SENATOR DALTON: Let me ask you this, Chuck. If, in fact, the Reorganization Plan that is before us today takes effect, what will be left in the Department of Energy by way of functions, and which personnel will be left in the Department if, in fact, the Plan takes effect?

ACTING COMM. RICHMAN: The functions relating to emergency planning would remain behind. Obviously, the Commissioner, a statutory title, would remain behind. Precisely which staff and which staff members would remain with the agency has not yet been determined, but presumably there would be a small core staff that would be involved in the emergency planning activities, and the Commissioner, along with certain clerical staff who would support them.

SENATOR DALTON: So, it would be the Commissioner, a clerical staff--

ACTING COMM. RICHMAN: And probably numbered in several professionals who are involved in emergency planning.

SENATOR DALTON: Several professionals, okay. Now, what functions will be left?

ACTING COMM. RICHMAN: The functions relating to emergency planning, which include--

SENATOR DALTON: So, emergency planning.

ACTING COMM. RICHMAN: Those are substantially the functions that will remain.

SENATOR DALTON: Okay. So we are going to have a Cabinet level position, with a clerical staff, and several professionals to execute emergency planning. Okay.

How do you think this Plan improves upon the Committee substitute legislation adopted by the Assembly on May 15?

ACTING COMM. RICHMAN: I think this Plan is consistent to the extent that most of the functions which under the Reorganization Act will be transferred to Commerce are consistent with what that legislation calls for. In issuing the Reorganization Plan, the Governor felt it was important to

take that action and move it forward for some of the reasons I have suggested to you: The importance of continuing efforts to ensure that the Master Plan is properly adhered to; the importance of what we found in the Master Plan, that economic planning and energy planning are closely linked; and, that we should, as quickly as possible, move forward to continue that process.

The Plan moves a step toward what the legislation does. Obviously, we welcome the completion of the legislative process to finish what the Governor's Reorganization Plan began.

SENATOR DALTON: How does this Plan improve upon the Assembly substitute?

ACTING COMM. RICHMAN: It doesn't necessarily improve upon it. It moves it forward at a rate faster than what has happened to date. I think to the extent that we have created -- that we will create permanent leadership, a Commissioner who has the confidence of the Governor serving full-time there, and to the extent that we can begin, as early as possible, to have a Master Plan, design it and implement it consistent with our economic policies, that that should take precedence and be done as quickly as possible.

SENATOR DALTON: So, speed was the issue then? I mean, the Governor's office made a determination that the legislative process was -- and I'll use kind words -- a more deliberative process than his ability to effectuate these changes via an Executive Order. I mean, is that the rationale?

ACTING COMM. RICHMAN: The rationale was to assure, as early as possible, that we would have the best mechanism in place to effect energy policy. The Governor felt -- as he announced in February in his Budget Message -- that combining Energy and Commerce was a way of effecting that. He felt that by June, using the statutory authority vested in him by the Legislature, that he could partially accomplish that goal using the tools he had legally.



SENATOR DALTON: Senator Contillo, I know you had some questions on this point.

SENATOR CONTILLO: I notice that Senator Stockman left, but there was a great deal of interest generated recently by the activities in the Public Broadcasting Authority. I was curious as to why you abandoned the transfer of the Public Broadcasting Authority to Commerce, as it was envisioned in the Assembly bill. What was the purpose of that?

ACTING COMM. RICHMAN: I don't think it was an abandonment. As you are aware, in the statute creating the Department of Energy and the statute under the plan in A-2019, Public Broadcasting and the Board of Public Utilities, no matter where they are placed, remain independent of the organization they are in. So really what you are doing with those two organizations is just shifting them.

SENATOR CONTILLO: Okay. I won't even challenge that comment right now. I think that is a whole subject for another time, just how independent they are. I think that is going to be dealt with legislatively in the future. Continue.

ACTING COMM. RICHMAN: With the transfer of the energy portions, we're talking about moving functions within the jurisdiction of a different Commissioner. That was the reason for the importance of moving that aspect of it. The others -- I guess we can debate it -- at least statutorily, are independent of control of the Commissioners, or the agencies they will be attached to. They are attached to other agencies because we have a statutory constitutional limit of 20 departments, so when you have these hybrids, you just attach them someplace.

SENATOR CONTILLO: I am also curious-- You had an Energy Master Plan Committee provided in the Assembly bill, which was taken out, too. Why was that?

ACTING COMM. RICHMAN: The Master Plan Committee can only be created by statute. A governor can't create a

committee to adopt a master plan. We are still very hopeful, as I suggested, that the Senate will deal with the basic legislation, will approve the basic legislation, will approve legislation that has a Master Plan Committee in it, but the Governor couldn't create that as part of the Reorganization Act.

SENATOR CONTILLO: But by making differences between the existing Assembly bill and the Governor's Plan, wouldn't that make even a lengthier process? In other words, there is an Assembly bill in place now, I assume. You know, it has been worked on for over three or four months, as Senator Dalton indicated. If an expeditious resolution is the problem, it would seem to me that the Governor would have tried as closely as possible to keep his Plan parallel, as opposed to moving the--

ACTING COMM. RICHMAN: Sure. The movement maintains the status quo, other than who is making the decisions. The decisions now move over to the Commissioner of Commerce, as opposed to an Acting Commissioner of Energy. I don't find that inconsistent with moving ahead on legislation at the same time. If the legislation that the Governor could sign were passed before August 28, that would make the Reorganization Plan move. And I'm sure he would be delighted to sign a bill if one reached his desk that he could sign.

But, in the meantime, it was our best judgment that the Reorganization Plan and the ability to continue to do those things that Energy has with some degree of stability -- and we believe the idea of merging Commerce and Energy is the right one -- should take effect and take place.

SENATOR CONTILLO: Okay. Commissioner -- if I may call you Commissioner still -- the Public Broadcasting Authority and the Board of Public Utilities will be in the Department, but not of the Department.

ACTING COMM. RICHMAN: That is the present status, and it would remain in that status until legislation effecting a change were to be passed.

SENATOR CONTILLO: Then, the Division of Energy Planning and Conservation is the only major entity with functions, powers, and duties under the effective supervision of the Energy Commissioner right now?

ACTING COMM. RICHMAN: That is correct, although the Commissioner does have certain authorities outside of that Division. The Emergency Planning Authority rests outside the Division of Energy Planning and Conservation. That is to remain under the Reorganization.

SENATOR CONTILLO: The Reorganization Plan retains the position of Energy Commissioner and, in effect, transfers the Division of Energy Planning and Conservation to the Department of Commerce and Economic Development. Is that correct?

ACTING COMM. RICHMAN: That is correct.

SENATOR CONTILLO: Then, could you tell me what the day-to-day functions-- Will you be that Energy Commissioner? What do you see--

ACTING COMM. RICHMAN: I don't know. I would love to work myself out of that job, but I don't know.

SENATOR CONTILLO: Let's assume--

ACTING COMM. RICHMAN: The day-to-day activities of that individual -- whether it be me or someone else -- will be to provide the day-to-day supervision of those staff members who remain with regard to emergency planning. There is a certain degree of data analysis that is implied by that, but we all recognize that it is highly unlikely that there is going to be an energy emergency in the time period between, hopefully, when the Reorganization Plan will take effect and the Legislature will make some final decisions on the pending legislation. So, I am not worried that it is going to be a burden to anyone.

SENATOR CONTILLO: I'm curious about what the person is going to do, how he is going to be paid, and how you can justify a salary for a person who, in effect, really has no job.

ACTING COMM. RICHMAN: No one is going to get two salaries, so whether it be me -- and I don't think it is any secret that at some point along the line I am going to be moving, and have partially moved to the Department of Community Affairs -- or the Governor names someone else as Acting Commissioner, whatever other role or duty that person has, that is going to be his or her primary function, and he or she will hold both titles.

SENATOR CONTILLO: In effect, then, it is as the Senator indicated in the beginning. It will be a Commissioner without a job, and possibly without a salary, because, in effect, they have dismantled the Department.

ACTING COMM. RICHMAN: Well, it's a Commissioner who has certain responsibilities that remain behind, those of emergency planning. It's not an abolition of the Department. The Governor doesn't have that statutory authority, but--

SENATOR CONTILLO: No, but the effect-- Correct. So, technically, while he doesn't have that authority, it created a shell. But, the effect of what he has done seems to be in conflict with the law, that he can't act in a way that would effectively abolish the Department, and he really has abolished the Department -- technically not, he has left a shell there -- but the effect of what he has done has been to abolish a Department, in direct confrontation with legislative direction.

ACTING COMM. RICHMAN: Well, that is the question obviously. The attorneys who reviewed the Reorganization Order believe that rather than in direct conflict with the Legislature, the Governor is exercising his statutory authority under the Reorganization Act, as properly delegated to him by the Legislature.

SENATOR CONTILLO: Okay. To the same point again, I suppose, the cost here to the public-- In, I guess it was April, Assemblyman Haytaian said that there would be a substantial cost saving resulting from the transfers that he

envisioned. The Governor's Plan states specifically that it will reduce expenditures by more closely aligning similar functions.

Now, can you document specifically exactly how much money will be saved by the Governor's Plan, and how?

ACTING COMM. RICHMAN: There are two ways that saving is going to occur. The Legislature already took \$70,000 out of the joint budget, presumably so that we don't double pay the Commissioner in this fiscal year. We would anticipate the Commissioner of Energy needing, presumably, less of a Commissioner's office staff. That is probably in the short-term range of about another \$100,000 that could be saved.

Long-term, and one of the motivations for combining the two agencies, is the recognition that the State is about to embark on spending plans involving the Exxon oil overcharge moneys and what is called the Stripper Well Funds, which will amount to somewhere between \$100 million and \$125 million. The Department of Energy's administrative staff is too small to effectively deal with that kind of a funding requirement. Part of the rationale for the merger was taking the two small agencies, both of which have a base administrative staff, and combining them, and being able to better handle those activities. It is a way of avoiding the hiring of additional staff.

SENATOR CONTILLO: You are going to take people off the Energy payroll. Are you saying that Commerce and Energy have people doing nothing now and they will just take up the slack?

ACTING COMM. RICHMAN: No, no, certainly there are not people doing nothing now, but in any agency you have a threshold of required staff. You have a fiscal officer at Energy; you have a fiscal officer at Commerce; you also have a fiscal officer at Human Services. They basically have the same responsibilities, but you know that the fiscal officer at Human Services has a heck of a lot more work to do.



SENATOR CONTILLO: Okay. Would you identify for me those officers whom you feel will lose their jobs and will not be rehired? What specific person will lose his job in the Energy Department and not be rehired in Commerce and Economic Development?

ACTING COMM. RICHMAN: That is the point I am trying to make. We face an Energy Department that has had a budget ranging in the \$3 million to \$7 million range, now being faced with accounting for \$100 million to \$125 million of Federal funds. It has a staff of talented people, good people, but a size of staff that I wouldn't feel comfortable having fulfilling the fiduciary responsibility of handling that.

When you combine the two staffs, you should have enough numbers, enough people, to properly support that. So, it is not a question necessarily of people being fired; it is a question of having sufficient staff between the two when you combine them, where you would have had to hire more State employees if Energy had stayed alone.

SENATOR CONTILLO: Isn't there also a difference in responsibility, function, direction, thrust for the Department of Energy as opposed to Commerce and Economic Development? In fact, at times they may be diverse responsibilities. The responsibility for energy planning may be contrary to what is good at that particular moment for economic development. Making one department out of them, you are cheating someone; someone is being left without an advocate. Probably, if they were both attorneys, they would be in conflict because, you know, everyone needs his own advocate.

So, it seems to me there are an awful lot of important questions that Energy had to deal with, that will now be left in a vacuum. It's almost like the potential there of having the fox watch the henhouse, in effect, Commerce and Economic Development dealing with energy. The potential there is sometimes unnerving.

ACTING COMM. RICHMAN: I have had this question asked of me before.

SENATOR CONTILLO: Not that way possibly.

ACTING COMM. RICHMAN: Almost. Ten years ago, I might very well have agreed with you, because 10 years ago the conventional wisdom was that you couldn't have economic development and conservation, that they didn't work together, that you had to use more energy to build more widgets. I think what we have learned over the last 10 years, and really what we learned in this last writing of the Master Plan, is that good economic policy is the least cost of energy option. That is what the Master Plan calls for. It is the cheapest way to deliver. It is the creation of more and alternative ways of providing energy. It is giving the business community and the job creation that goes along with it, and the residential sector, the ability to choose and have alternatives.

I have not seen the conflict. Just the opposite is true. I have seen where business has learned that the traditional way of doing things, that business groups are dominated by utilities, is not in their best interest, that there should be a little bit more friction between the two. That is what the Master Plan purports to do. In our discussions -- and I assume Assistant Commissioner Bleicki will testify next -- with representatives of Commerce, they clearly understand that there is a strong, strong tie between good energy planning and good economic planning, and that the State will benefit by the two being together.

I might point out to you that it is not unique to combine the two. In fact, in the legislative process, the oldest standing committee of the Congress of the United States is the House of Representatives' Commerce and Energy Committee. They deal with legislation involving both, and I think well. So, I don't think they are mutually exclusive. I think they work together well.

SENATOR CONTILLO: Well, will you concede that there is a potential for conflict?

ACTING COMM. RICHMAN: There is always potential for conflict. I wouldn't tell you that I could rule it out 100%. I think, though, based on the evidence--

SENATOR CONTILLO: There is not a utility in this State that is going to endorse or support cogeneration. You know, they're worried about their own stockholders, and well they should be; that is their responsibility. Sometimes that trust and responsibility is contrary to the consumers' good, the public's good.

ACTING COMM. RICHMAN: Sure, but the Department of Commerce -- and, again, maybe I shouldn't be speaking for them -- doesn't represent the utility industry. They represent the business of the State. There are tens of thousands of small companies that will benefit more from cogeneration than maybe the utility opposition to it.

SENATOR CONTILLO: I mean the whole area now of resource recovery, where we have the generation of electricity from those plants where the State assists, and who it assists, what it does, and how it develops things. The Department of Energy may have a different view than Commerce and Economic Development. You know, I am very, very uneasy, again, with the loss of the advocate, from that point of view.

I have just one more question for you. It's sort of a sum-up of what we have been talking about. If the Governor's Reorganization Plan takes effect, we will effectively have abolished the Department of Energy by transferring its principal functions to other Departments; in other words, leaving a figurehead Commissioner -- whether it be yourself or someone else -- in place, and saving the State no money in the process, perhaps even increasing the costs of State government by having a Commissioner on the payroll who we really don't need.

ACTING COMM. RICHMAN: I think I've-- Obviously, we will debate the point for a lengthy period of time. I don't believe that the Governor, in the Reorganization, effectively abolishes the Department. He has taken action which we believe is consistent with the Reorganization Act and within the statutory authority granted him.

There are real, though small, dollar savings in terms of the Commissioner and the Commissioner's office which eventually will take effect. There are real savings in the avoidance of the need to hire additional staff which will occur by combining, particularly, the administrative staffs of the two agencies.

SENATOR CONTILLO: Are you talking about the Exxon--

ACTING COMM. RICHMAN: Yes.

SENATOR CONTILLO: But this was not the reason for developing this Plan, was it?

ACTING COMM. RICHMAN: Was that the sole reason? No, but that was one of the components that was looked at. If Energy were to stand alone, we would be out there today hiring substantial numbers of people to be bookkeepers and auditors, to handle those funds.

SENATOR CONTILLO: I think Senator Costa had a few questions she would like to ask.

SENATOR COSTA: Commissioner Richman, just to get back on something you said regarding Exxon and the stripper wells, I understand that part of that money goes to business, but that the moneys are really for energy conservation purposes. They are to be used for conservation programs mainly for the poor.

ACTING COMM. RICHMAN: Yes, that is correct.

SENATOR COSTA: So, why should the Department of Commerce and Economic Development be disbursing those moneys?

ACTING COMM. RICHMAN: Well, it's our plan, and hopefully the Legislature will agree in approving A-2019, or the Senate version of that, to have a Department of Commerce,

Energy, and Economic Development, and the statutory authorities which now reside in Energy will be completely transferred at some point to Commerce. So, I think we have to no longer think of it as strictly a Department of Commerce. It is a Department of Energy and Commerce, something broader, and a group that will address those far-reaching aspects of it.

SENATOR COSTA: Won't it need new people to disburse those funds? I mean, it's about \$150 million, as I understand it.

ACTING COMM. RICHMAN: My best judgment is that there will be some additional hirings. It is also my best judgment -- as I answered Senator Contillo -- that in combining the two agencies, we can minimize the number of additional State employees that will have to be hired. The purpose of the money, and the clear court's directive, is to get as much of that money to the users as possible. You do that through the most efficient way. One way is to minimize your administrative costs. We can do that by combining the two agencies' administrative staffs, thereby not having to hire more people.

SENATOR COSTA: I would now like to focus on some questions regarding the genesis of this idea. Could you please tell the Committee if there was any time prior to last February when the Governor made any statements about retaining or abolishing the Department of Energy?

ACTING COMM. RICHMAN: To the best of my recollection, the Governor, when he appointed Leonard Coleman Commissioner in 1981, or early 1982, asked him to examine that question.

SENATOR COSTA: There wasn't even a reference to this proposal in the official text of his State of the State Message, nor in the Budget Message that he gave on February 10, was there?

ACTING COMM. RICHMAN: That is correct.

SENATOR COSTA: Now, there have been bills pending in the Legislature to abolish the Department for several years. I



know you know about the bill introduced by Assemblyman Haytaian four years ago, isn't that right?

ACTING COMM. RICHMAN: That is correct.

SENATOR COSTA: Could you please tell the Committee exactly when the Governor decided to get behind this idea?

ACTING COMM. RICHMAN: I cannot answer that question. I have not been privy to those discussions.

SENATOR COSTA: I refer to an article in The Star-Ledger on October 27, 1982, where they addressed Assemblyman Garabed "Chuck" Haytaian's proposal, and he said that a step like that would save a minimum of \$192,000 a year. As the press release went on, it said: "But Governor Thomas Kean derides this claim and favors keeping the Energy Department in its present form. He terms the shift purely cosmetic and says it would not result in any real savings."

At the bottom of that same release, it says: "But no one can predict with any accuracy the future of the world's energy supply, or whether the Energy Department will once again be forced to take on increased responsibility." That is regarding how the Energy Department first came about in the 1970s when there was a severe energy shortage.

I go on: "Or whether the Energy Department will once again be forced to take on increased responsibility. In the meantime, it is important for New Jersey to try to develop a consistent policy. It cannot do so if this Department is to be summarily abolished. For that reason, the Governor is wise to oppose this bill."

I have another article from the paper, dated October 23, 1983, a year later, when you recall the Governor had the Office of Management and Budget-- Mr. Al Fasola headed that, and he came back with this: "We found that the belief that a lot of money could be saved by the mergers" -- and he was discussing the Energy Department -- "and elimination of the Department, is a false issue." He goes on: "A study team

looked at the proposal, but dropped it quickly." Fasola said, "If the Administration pushed for the eliminations and the mergers, we would be creating a battleground with the Legislature."

ACTING COMM. RICHMAN: I think I'm on it right now.

SENATOR COSTA: He goes on to say, "Savings would be negligible." He said, "Not only would it meet strong opposition from the Legislature, but the savings would be negligible."

Do you have any response?

ACTING COMM. RICHMAN: Sure. We have never suggested that we are talking about vast savings. Assemblyman Haytaian and I, in fact, testified before an Assembly Committee, where he said millions and I said hundreds or thousands. I still believe my number was more accurate than what the Assemblyman had suggested.

In the editorial you read from The Star-Ledger, they talked about consistency of policy, and I think that is the point and what we have evolved to. The earlier Master Plans had certain focuses, certain direction, looking for certain issues. We did much in the early days to develop a specific process with regard to the residential sector, how it would function, what it would do.

In the second Master Plan, there was a great deal of discussion and a detailed examination of the utility industry and how it should evolve. But the changing atmosphere -- and I think it is important to recognize that sometimes change works to our benefit -- has shown us, in this last version of the Master Plan, that there is a very strong link into the future, for this State to take advantage of good energy policy and good economic policy working in tandem. The Alexander Grant studies on the cost of doing business in New Jersey show of all the criteria, the energy costs are the worst. Commissioner Putnam, when he testified this year before the Assembly Revenue and

Finance Committee, was asked the question: "What is industry telling you about why they are not coming to New Jersey?" His response was, "The energy costs."

We should focus on that, and that is what the Master Plan does. The Governor's decision was, in focusing on that, that we should assure that we have those two policies in lock step, promoting the least cost for all of our consumers; and, in promoting that least cost of energy for all of our consumers, doing it in a way whereby we assure that economic vitality.

SENATOR COSTA: I think what you just said now gave argument to why the Energy Department should stay in existence, to promote programs for least cost, to encourage business to come here, and to take care of the individual residents of the State of New Jersey. There could be more focusing of attention on the Department of Energy solely involved with that, than on the Department of Commerce and Economic Development along with Energy.

ACTING COMM. RICHMAN: Obviously, it is an issue where we find ourselves on opposite sides.

SENATOR COSTA: I do want to say one thing about the Legislature, and about taking away the authority that is vested in the different branches of government. We're speaking of the Legislature, which has the authority to change the ruling as far as departments are concerned. And yet, this smacks clearly of doing it in another fashion without the Legislature acting.

If it is to force the Legislature to act, this, once again, is not the prerogative of the Executive Branch. The Legislature is purposely a deliberative body; the Senate is even more a deliberative body than the Assembly. I really think that this is no way to go.

ACTING COMM. RICHMAN: Senator, obviously I understand your position. I was advised, and the Governor was advised by Counsel that the authority granted him by the Legislature under

the Reorganization Act allowed him to submit what is Reorganization Plan 001-1986. Obviously, his attorneys have advised him that it meets the criteria of the law. The complaint might be with the Reorganization Act statute, but we believe that the Governor has acted faithfully to what the law requires of him.

SENATOR CONTILLO: Let me just say to that exact point, the lawyers may have to settle this. It won't be settled in this Committee room. But they do talk about the effect of abolishing or transferring a principal department, and I think any reasonable person who is sitting through this hearing knows the effect of what we have done has been to abolish that Department. However, the lawyers don't always speak English and they, in effect, will have to fight that out.

Aside from that, I, as a Senator, and as the representative of 180-some-odd thousand people in my district, am somewhat concerned that their best interest may not be served by the Department of Energy being placed in the Department of Commerce and Economic Development. Commerce and Economic Development's concern for rate reduction for business is laudable, but there are others in the State who are not business who may have a strong concern, and who may be abandoned. They have lost their advocacy, as you and I discussed about 20 minutes ago.

ACTING COMM. RICHMAN: Senator, again, we have not abolished Energy except that we have removed that as a title within the 20 Cabinet departments. We have added Energy to the portfolio of a Commissioner who now heads the Department of Commerce. We have not come before you, either in the Reorganization Plan or with a statute, and said, "We want to take out of the statute all references to the residential sector. They can do it by themselves."

What we have done is said, "We can do the two activities better by combining the two agencies in one, and we

will be able to protect and continue the same functions we have."

SENATOR CONTILLO: You know, what would prevent the Governor from deciding to get into another department and, in effect, transferring or taking the authority away from it using this same device? It is frightening to me.

ACTING COMM. RICHMAN: You're asking me, though, to answer a lawyer's question.

SENATOR CONTILLO: Yeah, okay.

ACTING COMM. RICHMAN: You know, what is the extent of the Reorganization Act of 1969?

SENATOR CONTILLO: Okay, but what I am saying is, regardless of what the lawyers come up with, we can take this particular issue, and we know effectively that the Department of Energy doesn't exist any more. The function is in another place. And, it may belong there. But the scary part of it is that the Executive can come in and do that, when I don't really think he has the authority, because he could do it with any other department he wished. The Department of Education -- he could cut that if he decided to. There would be a furor. As Senator Stockman said, the basic television reporters do not think this is a very spicy issue. If it were Education, or the Public Advocate's Office, you would have a full room here because of the fear of what could happen.

ACTING COMM. RICHMAN: Again, that, I believe, is a function of how the Reorganization Act operates, the extent to which a Governor can act under it.

SENATOR CONTILLO: Senator Dalton, I will turn your hearing back to you. (as Senator Dalton returns to the room)

SENATOR DALTON: Are you finished, Catherine?

SENATOR COSTA: Yes.

SENATOR DALTON: Let me get away from the actual Reorganization Act and get into the timing. If it took until February for the Governor to propose to abolish the Department,

and it took until April 17 for the Governor to propose a Committee substitute, and it took another full month for the Assembly to pass the bill -- three full months in all on this year's legislative calendar -- and five and a half years since Mr. Haytaian first introduced the bill, could you explain to this Committee what suddenly has become so urgent about this proposal that it took the Governor only 45 days to announce the reorganization of the Department by Executive Order? That gives both houses only 60 days to consider that order.

ACTING COMM. RICHMAN: I'm not sure that we are talking about a great urgency to get it done. The Governor announced it in February. I have seen legislation passed much quicker than that. We have had a fairly long period of time to discuss this. The agency, we believe, obviously based on the Governor's recommendation, based upon the Reorganization Plan, is best suited at the Department of Commerce.

I suggested in my opening statement to you that there are important implications for the continuing policy initiatives, important implications for stability of staff in gaining for them a home that we hope the Legislature eventually will agree with, but getting that done as quickly as possible. We have major policy initiatives under way that I think will succeed well, but which also need to be continued. I think they will continue in the Department of Commerce, in a stable Department, in one where we have a full-time Cabinet officer.

SENATOR DALTON: Well, that doesn't answer my question, at all. What I'm saying is, there was a great deal of time spent on this by the Governor, by the Assembly. Why isn't that same time afforded the Senate? Weren't those same concerns relevant to the Assembly and to the Governor that you are not imposing upon us?

Let me ask it another way, Chuck. Is there something in this Plan that the Governor doesn't want this Senate to explore?

ACTING COMM. RICHMAN: I'm sure not.

SENATOR DALTON: There's nothing in this Plan that we--

ACTING COMM. RICHMAN: I assume the purpose of today's hearing and subsequent hearings is to fully explore the Governor's recommendation.

SENATOR DALTON: Well, why is the Governor afforded a tremendous amount of time? He afforded the Assembly a tremendous amount of time, and he won't afford this Committee the same amount of time.

ACTING COMM. RICHMAN: The issue has been before us for some period of time.

SENATOR DALTON: It hasn't been before this Committee. Come on, this bill came over May 15. I have no further questions.

SENATOR COSTA: May I just say something, Commissioner? You keep referring to stability regarding putting this Department into the Commerce Department. Does that imply that the Department of Energy has not been a stable Department, has not been one of stability?

ACTING COMM. RICHMAN: No. I think what I am referring to is a concern I have for the staff who are at the Department. With any change, with any bureaucracy, whether it be in the private sector, where one company buys another company out, or a change such as this, which is being debated in public, it creates instability; it creates a difficulty in recruiting new people. It makes it hard to fill vacancies. We have had some vacancies over recent months that I would like to fill, but I am having difficulty in recruiting people to come there. They want to know what the end result is. They want to know where they are going to be.

The Governor, in issuing the Reorganization Plan, we believe, helped to create that stability. There is an end result. There is an end to the process for most of the functions that we are trying to recruit people to.

SENATOR COSTA: I would think that it would be reversed. You have a stable condition right now. As you yourself stated, when you make these changes there is a certain sense of instability. I can understand what you're saying, though. Right now you are in a state of flux because you don't know where you're going.

ACTING COMM. RICHMAN: Well, I think where we are going -- most of the agency, many of the functions -- is to Commerce. I think that will lend itself well to most of the staff understanding where they are going and feeling comfortable.

SENATOR DALTON: Staff only became uncomfortable when the bill came here, Cathy. Thank you, Chuck.

I would like to call on -- Mr. Bleicki, if you would give us your indulgence-- We have with us today the former Commissioner of the Department of Energy, Joel Jacobson. Former Commissioner Jacobson is interested in testifying on the bill. I know you have a time problem, Commissioner, so we'll be glad to hear from you right now. Thank you very much for taking the time out to come before this Committee.

J O E L R. J A C O B S O N: Thank you, Senator. Senator Dalton, Senator Contillo, Senator Costa: I appreciate very much the opportunity to be here. I am anticipating my first retirement check by this Friday. That only signifies to me the restraints under which I have operated in the past. Everybody knows that State employees are not free to speak their minds, but now that I am no longer a State employee, I am.

SENATOR DALTON: No one has ever accused you of that.

MR. JACOBSON: I am delighted for this opportunity to be here.

I have about 10 minutes worth of comments I would like to make, and then I will be glad to answer any of your questions. I have two prefatory remarks I would like to make. First, the Assistant Commissioner whom you just heard was



selected by me when I was Commissioner. I regarded him then, as I do now, one of the most intelligent, dedicated employees of the State of New Jersey. He was always noted for his team loyalty, and I would like to observe that the passage of years has not impaired that team loyalty.

It is unfortunate, in my judgment, that the people who had the responsibility for making this decision, didn't have the courage to show up to answer your questions.

The second point I would like to make is, I read The Newark Star-Ledger this morning and I was surprised to the point of astonishment to read a statement by Mr. Potter, who holds some obscure job in the State of New Jersey, opposing this plan. I want to observe that this is an example of the inexorable grind of the law of averages, because after years of poor judgment, wrong decisions and political sophistry, Mr. Potter finally got one right. (laughter) It was too little and too late, but he finally got one right. We ought to give him that credit.

I am opposed to the plan submitted by the Governor. I am opposed to the manner in which he is trying to do it to preempt your legislative prerogatives, and I am opposed to the substance of his proposal. I think it may be important to point out, as I recall them, the conditions that existed at the time the Department was created in 1977, when Governor Byrne gave me the honor of serving as the first Commissioner.

As you know, at that time the price of a barrel of oil had recently quadrupled from \$2.50 to about \$17.00, and I was on the job three hours when it was then doubled further until it reached the level of about \$36.00 a barrel of oil. What used to pain me greatly at that particular time was that the cost of extracting a barrel of oil from the ground, whether the retail price was \$2.50 or \$36.00, was \$.25 a barrel. So, we rapidly came to the conclusion, as you may have heard, that this was not exactly a natural crisis. This was a man-made

crisis. As a consequence, it precipitated soaring utility rates, which were a problem for everybody in this State, and it generated, in my judgment, the folly of nuclear power, with which we are currently wrestling.

In any event, it was easy to identify the crisis at that time. We were all sitting in long lines waiting for a gallon of gasoline. There were threats of people being thrown out of work because of a so-called natural gas shortage. We used to see bumper stickers, primarily on cars from Texas, enshrining the message, "Let the bastards freeze in the dark." We created a Department of Energy to respond to this identifiable crisis. I'm happy to point out, with a great deal of parochial pride, that New Jersey was the first state in the nation to do that. I recall being in Washington, where I was introduced to then newly appointed Secretary of Energy Schlesinger, and I was already a Secretary of Energy, a Commissioner of Energy. So, he was only second to what the State of New Jersey had done.

The purpose of the Department at that time was not to be a bookkeeper to chronicle these problems. The purpose of the Department of Energy was to be an aggressive Department to identify the culprits of this man-made crisis, to recommend programs, and to fight for the protection of the consumers of the State of New Jersey.

With that background, I now read that the Governor proposes to promote the reduction of energy costs, to promote and maximize economic growth, and to promote employment and ensure general prosperity in the State by doing away with the Energy Department. It is ludicrous; it is absolutely ludicrous. And to indicate to you my concept of what a Department of Energy is, we are not a shock absorber, but a shock transmitter, so that the people of the State of New Jersey will know what their problems are and how to continue to resolve them.

So, as a consequence of what took place in 1977, you heard such phrases as, "contrived shortage," which it was; "obscene profits," which they were; and, "buccaneers," which they were. I was given the distinct honor of being selected by the Mobile Oil Company as an object of their editorial ire in a series of advertisements that were published in newspapers all over the country. It was one of the proudest moments of my life. They took an obscure State bureaucrat and made a national figure out of him. I had invitations to speak all over the country as a consequence of it. We were faced with the problem and the encouragement of nuclear power, based upon the theme that it was, "Too cheap to meter." It turned out to be not so cheap, and damned dangerous in the process.

We were faced with the concept of a floating nuclear power plant. It is too bad Senator Gormley is not here. I would like to know what his reaction was to a nuclear plant three miles off of Atlantic City. That plant was taken off the blueprint only when the Department of Energy said, "Yeah, you can go ahead with it, but make sure that none of the rate increases are ascribed to the ratepayers, but to the stockholders." They cancelled it the next week.

We generated a conservation program. We delineated the Master Plan, and once again I want to indicate what a significant role Chuck Richman played in all of those plans. He was a tower of strength at that particular time.

Now, that was then. Now it is 1986, and you have before you this plan to do away with the Department of Energy. We may still be shaking in our boots when we think of a Three Mile Island or a Chernobyl, but apparently, to some people, the crisis is over. You know, we are no longer sitting in long gasoline lines. There is no longer a so-called shortage. There never was a shortage. The prices are lower, so what is the crisis? Why are we now maintaining something that is archaistic? Why don't we get rid of this thing and institute significant savings?

I think anybody who can read English who reads today's paper can understand why the crisis is not over. The OPEC ministers are meeting in Geneva right now. At this very minute they are in Geneva. The problems of determining what the price of a barrel of oil is, are unbelievable. The price, within the period of a few months, has plunged from \$28.00 a barrel to about \$7.00 a barrel and, if the Saudi Arabians have their way, it may soon be below \$5.00 a barrel. The price of oil is not an economic price; it is a political price. How can you make decisions concerning the bureaucratic response to a crisis in the State of New Jersey based upon economics? You can't possibly.

What I am indicating to you is, the volatility of the present situation is such that to reach the conclusion that because the price is now lower, and because there are no gas lines, and because there is no shortage -- I emphasize that there never was -- the energy crisis is resolved, is absolutely and fundamentally naive. As a matter of fact, I think it is unworthy of anybody who believes he has national aspirations. It's not smart; it's dumb.

Now, what we see before us, based upon that, is the wrong diagnosis with the wrong remedy and at the wrong time. I would like to get specific, in just a few minutes, concerning this particular Plan. The Master Plan of the Department of Energy challenges the utilities to prove they are providing least-cost services. If you remove the Department of Energy from Cabinet status, it obviously weakens that challenge. I have to question the sincerity of anybody who says he wants to protect the ratepayers of the State of New Jersey by eliminating the one force that has been able to identify some of the problems in the past.

The Department of Commerce, which apparently has been given the major function of the recently proposed denigration of the Department of Energy, was severed from the Department of

Labor years ago because of the conflicting constituency. How could you serve the constituency of those of labor and at the same time serve the constituency of those of commerce? So, the Legislature justly separated those two Departments. Now, to put the Department of Energy into the Department of Commerce is sheer folly. How do you regulate an industry when you are designed and set up and established to encourage that industry to flourish? There is an apparent conflict of interest? There is no apparent conflict of interest; there is a conflict of interest. It can't be done. It is the absolute worst place to put any proposed change in the Department of Energy. It is an abandonment of the public interest. Again, it is sheer folly.

The Department of Energy has just adopted some strict energy conservation regulations for the utilities to conform to. The Office of Business Advocacy in the Department of Commerce opposed that. Here is a Department which is now going to regulate utilities? The New Jersey Utilities Association, probably correctly for its own interests, has opposed it. But do you expect those who are supposed to regulate this industry to be in opposition to it? And yet, they are. The case is still pending. Nonetheless, it continues to denigrate the role of the State of New Jersey in protecting its citizens by attacking the very existence of the Energy Department.

New Jersey has received over \$100 million from the oil company for their overcharges, and I am so happy that somebody has finally proven that what we were saying in 1977 is true. The Department, which is alleged to take care of the money for the conservation program -- as Senator Costa asked -- has been denigrated by disappearing. It will lower morale, it will promote inefficiency, and it will delay the effect of using these funds intelligently and, believe me, the overcharges were flagrant, undetected, and unpunished, in my judgment. This is some solace, but small solace for some of the things that took place.

Now the other argument is, well, if you are going to do this, you are going to eliminate bureaucratic duplication and you are going to save lots of money. Equally ludicrous; equally ludicrous. And that was attested to by no more than two members of the Governor's Cabinet -- the incumbent Governor's Cabinet -- by Commissioner Coleman and by Commissioner Curran, when they said that the savings, if anything, would be minimal, and probably nonexistent.

There are no programs being abolished; there are no employees being cut; the budget funds are being provided by an assessment on the utility. How do you save the State money?

My conclusion, as you may have guessed by now, is that what he is trying to do is wrong, and he is doing it in the wrong way. I don't believe you -- and apparently by your presence here you do not believe it either -- should be bullied or lulled into a bucolic state of false security to make a permanent decision upon what is obviously a temporary aberration. Let's not substitute a very neat table of organization for a genuine energy program in this State. If you succumb to what the Governor wants to do, that is what you will be doing.

I would urge you, don't let him do it.

SENATOR DALTON: Thank you very much, Commissioner. Again, let me indicate that we certainly appreciate your presence here today. I should note that you were known for your candor in the many positions in which you served the State, and you haven't lost your touch. (laughter)

Senator Contillo has some questions, and he will be followed by Senator Costa.

SENATOR CONTILLO: You seem to agree then that we are setting out the fox to watch the henhouse.

MR. JACOBSON: That is exactly the phrase I was going to use, but you used it first so I didn't. Put the fox in charge of the chickens, absolutely right.

SENATOR CONTILLO: So, it's bad enough they seem to be transferring against what should be done, but the idea of the way they're transferring doesn't seem to be proper as far as the independence of the different branches of government are concerned.

MR. JACOBSON: Oh, I agree completely.

SENATOR CONTILLO: But specifically where they are going -- of all of the places to put it -- seems to be--

MR. JACOBSON: The worst place, you're absolutely right.

SENATOR CONTILLO: So you do see a real threat to the integrity of the Department of Energy?

MR. JACOBSON: It's a complete elimination of what I consider to be a significant function in defense of the interests of the State of New Jersey. I can't believe that anybody would seriously recommend it at this time.

SENATOR DALTON: Senator Costa?

SENATOR COSTA: Is it Mr. now? I'm so used to Commissioners.

MR. JACOBSON: It is Mr.

SENATOR COSTA: Mr. Jacobson, Joel, it's nice to see you. We go back some time. I recall that I was so delighted when the Department of Energy became a Department and you were its first Department head, because I knew you would be doing a good job for the consumers of the State. If you recall, at that time I earned the wrath of Mobile Oil also because I put in a class action suit against all the major oil companies because of their manipulation of the prices. In fact, at a seminar, Mobile Oil and I got into it because I told what they were doing with their profits. Immediately they bought Montgomery Ward. Don't you remember that at that time?

I learned an awful lot about how they manipulate oil prices because out of a barrel of crude comes three things: home heating oil, gasoline, and the heavy substances, like the

-- what do you call them -- jellies and everything that comes out of that. Each time it seemed they could take anything out of that barrel of crude. And it seemed like in the summertime, they took out for gasoline so that the prices would go up, and in the wintertime they took out less for home heating fuel so the prices would go up. That was the big fight we had at that time.

Isn't it strange, though, how they were making a profit at \$2.50 and \$3.00 a barrel of crude, and yet now, all of a sudden, we hear they are all dying because they can't make that much money. But, as I said, we were in the same business then, and I really appreciated your being in that Department.

You were a very strong and effective consumer advocate as the first Energy Commissioner. Of course, now, I think you have answered the question, but I am going to ask it again. Do you feel that consumer advocacy is a proper and necessary role for the Energy Department?

MR. JACOBSON: Absolutely, otherwise you have a bunch of bookkeepers just writing down numbers. If it is not there to protect the interests of the State and the citizens, who needs it?

SENATOR COSTA: I think you answered my next question, which was: How do you think consumer advocacy will be affected by a transfer of the Department's principal functions to the Commerce Department?

MR. JACOBSON: Well, the probabilities are that you will find somebody who doesn't have the guts to do it. And if you do find somebody who has the guts to do it, he won't have the tools to do it. So, it's obviously the wrong decision.

I might say this in passing: I believe, just so I don't sound like I am the only guy in the world who is so great-- I must tell you that I believe Commissioner Coleman did an excellent job in doing precisely what you are talking about, being a consumer advocate. I was very pleased with the



manner in which he responded to some of those challenges. So, it was not just me; it was people given the job with the proper tools, which he had at that time.

SENATOR COSTA: I have the greatest pride in Commissioner Coleman; in fact, I have adopted him. That is why I am so upset over this change because I thought he was doing an admirable job in that position, and really getting going in protecting the consumers of the State. Now this comes about.

The Department's intervener status has been evoked over the years to advance consumer interests in energy regulatory matters. Is this status likely to be affected by placing the Division of Energy Planning and Conservation in the Department of Commerce, and will the Division be more likely to advance the interests of the business sector in matters of energy regulation? (no response) You have kind of answered it all, but I thought I would ask it again.

I think it would be fair to say that during your tenure you used your prestige as Energy Commissioner to retain a downward pressure on energy prices. You were particularly successful in your sparring matches with the oil industry. Now, it isn't likely that such consumer advocacy will be continued by a Department charged with promoting the business sector. Don't you agree?

MR. JACOBSON: You cannot serve two masters, of course. If you are there to protect the interests of business, you're there to protect the interests of business.

SENATOR COSTA: I think I will ask you just once more. Do you see any threat to the integrity of the Department's rule-making authority if its functions are transferred to the Department of Commerce and Economic Development?

MR. JACOBSON: It will be the disappearance of it.

SENATOR COSTA: It will disappear. I think that is about it. Thank you so much for being here. Your testimony was very important.

MR. JACOBSON: Thank you.

SENATOR DALTON: Commissioner, it's 12:15, so we got you out of here on time. Again, thank you very much for your appearance.

MR. JACOBSON: I appreciate it. Thank you very much.

SENATOR DALTON: Thank you again.

SENATOR COSTA: Mr. Chairman, may I just say one thing? I would like to refer this for the record. On March 12, 1982, State Energy Commissioner Leonard Coleman told a legislative committee that he was absolutely not in favor of dismantling his Department at that point.

SENATOR DALTON: Okay, that shall be duly noted in the record.

SENATOR COSTA: Thank you.

SENATOR DALTON: The next speaker will be Mr. Henry Blekicki, representing Commissioner Putnam of the Department of Commerce and Economic Development. Welcome, Mr. Blekicki.

A S S T. C O M M. H E N R Y T. B L E K I C K I: Thank you.

SENATOR DALTON: Do you have an opening statement, sir, that you would like to offer?

ASST. COMM. BLEKICKI: I believe Commissioner Richman has adequately stated the Administration's position with regard to the Reorganization Plan. However, I would like to make a few additional comments before, of course, being available to answer your questions.

As Commissioner Richman has indicated, there is a great deal of commonality and a great many common interests and goals between the Department of Energy and the Department of Commerce as it presently stands. During the four and a half years that the Department of Commerce has been functioning, it has become quite aware of the fact that energy costs and energy availability are terribly important in our mission of job creation, not only with regard to the costs of energy to the

business community, but, also, to the residents of this State, because the cost of living in a particular state is certainly one of the issues which a business considers when deciding to expand or to move into a particular state.

So, we feel that there is no inconsistency; in fact, there has been demonstrated over the last several years a tremendous consistency in goals and in programs between the Department of Energy and the Department of Commerce. To my knowledge, there has never been a situation in which the two Departments have been at odds with one another on a particular issue. I take exception to Commissioner Jacobson's comments; in fact, I looked into that matter when it was earlier alluded to at an Assembly hearing, and found that what our Office of Business Advocacy had done on a particular issue was simply raise the issue of costs, and ask the Committee to consider costs. It did not take a position opposed to or in favor of the action at that point. My memory is failing me now as to the particular details of it, but I was very clear after talking with our Chief of the Office of Business Advocacy, Dr. Rocco Guerrieri. In fact, the Department, and his office specifically, were not opposed to a position which the Department of Energy had taken.

Furthermore, the Department of Commerce, with the merging of functions with the Department of Energy, would certainly be interested in reducing energy costs for all of the public, be it the business sector or the individual residential ratepayer. We have long believed that it is in the best interest of the State that these rates be decreased as much as possible.

There is, of course, within the current government structure, a representative of State government in the administrative branch that has the major responsibility of protecting the interests of the public, and that is the Public Advocate. Certainly, we would feel that the Public Advocate

would continue to represent his constituency. I do not think there would be any lessening of that commitment.

So, with those brief remarks, I would be pleased to answer any questions the members of this Committee may have.

SENATOR DALTON: If I may start out, the act that created your Department, Mr. Bleicki-- By the way, sir, let me ask an initial question. How long have you been at the Department?

ASST. COMM. BLEKICKI: Since its inception, April 1, 1982, when Commissioner Putnam also came on board.

SENATOR DALTON: Okay. The act which created your Department charged it with providing business and industry the optimum climate within which enterprises may grow and prosper. Pursuing an aggressive energy conservation strategy will prevent the growth of the electric and gas utilities. How do you plan to reconcile those two goals?

ASST. COMM. BLEKICKI: I don't think there is an inconsistency in the goals. I am familiar with the fact that one of the major utilities in this State has a very aggressive program of cogeneration and of buying power from outside its own resources, and that a second major utility has, in fact, created an operating entity for cogeneration. So, I do not personally believe that cogeneration or the introduction of market factors, more competition into the marketplace, are at odds with the long-term benefit of the utilities not only in this State, but across the nation. It certainly is a different mode of operation, but, in the long run, I believe that the national policy of bringing more competition and less regulation into the marketplace with regard to utilities is a positive move that will benefit all of the public, be it the corporate public or the individual residential homeowners.

SENATOR DALTON: Energy conservation -- you used cogeneration -- energy conservation in general, vis-a-vis the interests of the utilities, where do you come down as far as

those concerns -- an energy conservation plan as submitted by the Department of Energy via its Master Plan -- are concerned? What is your feeling about that?

ASST. COMM. BLEKICKI: The Master Plan proposes to aggressively implement energy conservation programs that are cost-effective. I think that it is in the best interest of all segments of New Jersey's population, again, be it the business community or the residential ratepayer, to have that sort of a program continued. Certainly, it would be the purpose and the function of the Department of Commerce, if and when it has the responsibility for energy, to continue that policy because there are only gains to be obtained by all segments of New Jersey's economy.

SENATOR DALTON: So, you support the energy conservation component of the Department's Master Plan.

ASST. COMM. BLEKICKI: Yes, sir.

SENATOR DALTON: Okay. When there were public hearings held before the regulations were adopted, the Department's Office of Business Advocacy submitted a letter which was entered into the public record, requesting that the DOE rethink its regulations. The letter stated in part, and I'm quoting: "The costs thus incurred would find their way into the current rate structure. Can the hard-pressed economy of the industrial Northeast, including New Jersey, absorb such increases? Your proposal is very tentative, even relevant to its long-term beneficial effects."

Now, it seems to me -- and that is the end of the quote -- that there you were questioning the energy conservation plan as put forth by the Department of Energy.

ASST. COMM. BLEKICKI: No, sir.

SENATOR DALTON: Okay. Why don't you clarify that for me?

ASST. COMM. BLEKICKI: What we were simply doing was raising the consciousness of the group with regard to a key

element of the Master Plan -- the Energy Master Plan, I should say -- the cost-effectiveness component. So, there was no disagreement. It was simply a matter of pointing out that the Energy Master Plan specifically focuses in on the cost-effectiveness, and that we should not forget that point.

SENATOR DALTON: Now, when you use the term "cost-effective," cost-effective to whom?

ASST. COMM. BLEKICKI: To the ratepayers.

SENATOR DALTON: To the business ratepayers or the residential ratepayers?

ASST. COMM. BLEKICKI: Well, depending upon what the issue is. If it only impacts the business community, then, yes. If it impacts all of the ratepayers, then, yes, to all of the ratepayers.

SENATOR DALTON: Okay. In 1983, the Legislature passed the Electric Generating Facilities Needs Assessment Act. The Department, as I recall, didn't take a position with regard to that Act. Why not?

ASST. COMM. BLEKICKI: That was in 1982?

SENATOR DALTON: In 1983.

ASST. COMM. BLEKICKI: We were really still in a formative stage, and I don't think we were prepared, at that point in time -- less than a year of our existence -- to deal with a major issue of that magnitude. So, I think perhaps that is the reason why we did not take a position at that point in time.

SENATOR DALTON: What are your feelings about it now?

ASST. COMM. BLEKICKI: We think the issue of site selection, the need for additional plants and their location, is a critical one because certainly the cost of creating a new generating facility is a major cost, be it atomic power or be it coal, and that if we can find alternate sources, such as cogeneration, which provide lower cost energy to the public, then I think that is the desirable way to proceed. So, we

fully support the idea that there should be very serious consideration given to any proposal to develop an additional generating capacity of the traditional nature. In fact, there is another benefit to the ratepayers in having the private sector developing cogeneration facilities, in that the risk then is entirely on the owners of the cogeneration plant, and there is no risk if those facilities are not performing of that cost being passed on to the ratepayers.

So, we think there are some significant advantages to having alternate sources of energy available to all of the citizens of the State.

SENATOR DALTON: Perhaps the most important issue that is going to be decided in the very near future, important with regard to its impact upon business and the residents, is the whole issue of Hope Creek and passing along those costs. What are your feelings about that issue at this point? Will your Department have intervenor status in that case?

ASST. COMM. BLEKICKI: Well, I believe that the Division of Energy Planning and Conservation, which is part of the Department of Energy, has already intervened, and I would think--

SENATOR DALTON: Well if, in fact, this takes place, this transfer of jurisdiction, would that then be under your jurisdiction?

ASST. COMM. BLEKICKI: Under the Department of Commerce's jurisdiction.

SENATOR DALTON: Right.

ASST. COMM. BLEKICKI: And it should certainly continue in the same vigorous fashion in which it was introduced.

SENATOR DALTON: Do you support the position taken by the Department of Energy with regard to the Hope Creek case?

ASST. COMM. BLEKICKI: I am not that familiar with the range of issues to be able to answer that fully.

SENATOR DALTON: Do you know the distinction between market base rates and rates dealing with the costs of service?

ASST. COMM. BLEKICKI: In a broad sense. As I understand it, really what we are looking at with market base, is that rates should be established based upon what is the least cost of energy available at that time, rather than the actual cost of a particular unit coming on stream. Since our utilities are hooked into a grid connecting into the Midwest -- Pennsylvania, Maryland, and so forth -- at the current time I believe that rate is somewhere in the neighborhood of four and a half cents a kilowatt. I think that is the base point that is being used. I think there is certainly significant benefit to looking at the actual cost of competing sources, rather than simply looking at the actual cost of a particular generating facility that may not be as efficient as alternate sources are.

SENATOR DALTON: So, what you're saying is, the value-- I mean, where do you come down as far as--

ASST. COMM. BLEKICKI: We are supportive of the concept of introducing market factors, including market pricing, into the energy rate base process -- the rate-making process.

SENATOR DALTON: Okay. So if, in fact, there is energy to be obtained via the grid, do you feel that the cost of that should be the cost that is absorbed by consumers, both business and residents?

ASST. COMM. BLEKICKI: It is the policy of the Department of Commerce that we should always attempt to obtain energy at the lowest possible cost. We are at the end of a long pipe line with regard to the oil and electrical power; therefore, we tend to have -- as a State and as a region -- higher energy costs than the rest of the nation. This has inured to our disadvantage with regard to job creation and, also, with regard to employment and the well-being of all of the citizens. So, anything that can be done to reduce the cost of energy should be pursued aggressively.



SENATOR DALTON: So, in other words, the intervener status, and the position taken by the Division of Energy Planning and Conservation will not be altered at all by this Executive Order?

ASST. COMM. BLEKICKI: That's right.

SENATOR DALTON: Okay. Can you assure this Committee that that Division, with all of its functions, powers, duties, and personnel, will remain substantially unchanged if, in fact, it is transferred to your Department?

ASST. COMM. BLEKICKI: The powers and responsibilities, and the programs, will certainly not change with the transfer. There may be some relocation of personnel if there is deemed to be certain efficiencies to be gained by merging, for example, members of the Divisions of Administration of the two Departments together. But, as far as functions and responsibilities, and the aggressiveness with which the Department of Energy has pursued its mandate, no, that will not change.

SENATOR DALTON: Now, as I understand it, you have been a member of the Energy Conservation. Is that correct? Are you a member of that?

ASST. COMM. BLEKICKI: No I am not.

SENATOR DALTON: Is Mr. Putnam a member of that?

ASST. COMM. BLEKICKI: I'm not sure. I'm not able to answer that question.

SENATOR DALTON: Okay. I think he is.

ASST. COMM. BLEKICKI: You may be right.

SENATOR DALTON: Okay. I was just wondering how often they meet, and what your thoughts are as to the useful function that serves -- that advisory council?

ASST. COMM. BLEKICKI: I cannot make any comments about that.

SENATOR DALTON: I have no further questions. Senator Costa?

ASST. COMM. BLEKICKI: I might make one additional point that I had forgotten to mention. There is a prior example of the commerce functions and the energy functions of a state being combined for the benefit of all the citizens. And, as I understand, in the State of Michigan, there is a Department of Commerce and Energy, and that it has functioned successfully for a number of years, and that there is no inherent conflict between those two areas of responsibility. And so, I genuinely believe that there is no real conflict that would detract from the aggressive implementation -- successful implementation -- of energy policy as well as economic development policy.

SENATOR DALTON: Senator Costa?

SENATOR COSTA: Yes, just one question. Mr. Blekicki, how do you reconcile encouraging business to come into New Jersey and offering them cheap power, when you have Hope Creek that has very expensive power, and you have been trying to encourage people to look into other forms of -- cogeneration, for one?

ASST. COMM. BLEKICKI: I'm not sure of the focus of your question.

SENATOR COSTA: Well, you, as an economic department--

ASST. COMM. BLEKICKI: When we attempt to attract business into the State of New Jersey, we certainly have to be realistic with regards to what the actual cost of energy is in the State. And certainly, New Jersey, while it may be less expensive than parts of New York City, is much more expensive than the rest of the nation. And therefore, we have not been able to offer companies that benefit, that they will have lower energy costs if they were coming in from Virginia, or from Texas, or from California. So, I don't -- you know, I think that that has been a major impediment in this Department's efforts to attract companies, and jobs, into this State. Anything that can be done to reduce the cost of energy will of

course make the Department of Commerce's activities, with regards to job creation, that much more effective.

SENATOR COSTA: I'm just thinking of Hope Creek coming on line right now, and it's rather expensive. How do you go into alternative sources with trying to bring industry in?

ASST. COMM. BLEKICKI: Well, for example, just within the last week, I met with staff of the Department of Energy and a private developer of a major new cogeneration plant that is proposed for the State of New Jersey, and it is something which we are fully supportive of.

SENATOR COSTA: What kind of a generation plant?

ASST. COMM. BLEKICKI: A cogeneration plant, where they would be generating steam and electricity simultaneously. And this would be in the PSE&G territory, but the energy would be wheeled to JCP&L. And we certainly indicated our full support for that type of activity, and if there were any problems with regards to permitting with environmental issues where there need to be a focusing in of the issue, that we offered our staff, through the office of Business Advocacy, to aid that plan to receive prompt and proper attention within the Department of Environmental Protection. So, we are very concerned and anxious to see that cogeneration plants are built in this State so that there are alternate sources too of energy that are of lower cost.

SENATOR DALTON: Just for the record, if in fact a transfer of the Division of Energy Planning and Conservation is made to your Department, that it's your thought, and I guess you assurance to this Committee, that the position of that Division and the aggressiveness of that Division with regard to its intervener status, in the Hope Creek case, will continue.

ASST. COMM. BLEKICKI: Correct.

SENATOR DALTON: Thank you very much, Mr. Blekicki. I appreciate your coming and speaking to the Committee.

ASST. COMM. BLEKICKI: My pleasure.

SENATOR DALTON: I'd like to now call on Sam Scozzaro, from the New Jersey Federation of Senior Citizens. Sam, whenever you're ready. And, welcome. We wanted to get you on after the Executive Branch, because I know you might want to be on your way.

S A M S C O Z Z A R O: My name is Sam Scozzaro. I am Chairman of the Utility Task Force of the New Jersey Federation of Senior Citizens on whose behalf I appear here today. Thank you, Mr. Chairman, for granting me the privilege of expressing the views of the Federation on Governor Kean's proposed Reorganization Plan Number 001-1986 that would transfer certain functions from the Department of Energy to the Department of Commerce and Economic Development, to the Department of Community Affairs, and to the Department of Environmental Protection.

On April 17, 1986, I appeared before the Joint Assembly State Government Committee and the Assembly Energy and Natural Resources Committee, at which time I presented a statement on behalf of the Federation in opposition to Bill number A-2019 that would abolish the Department of Energy and transfer certain powers to the Department of Commerce and Economic Development, and Bill number A-2080, that would abolish the Department of Energy and transfer certain of its components and necessary functions to the Department of Environmental Protection. The Federation's opposition still stands because it is not in the best interest of the New Jersey ratepayers.

The Department of Energy has become a viable working organization that has unquestionably produced favorable results to the benefits of all New Jersey energy users, and contributed to the economic well being of the State. To dismantle it at this time would constitute a disservice to the ratepayers and the taxpayers of the State. It should be left alone as an independent department to pursue the objective for which it was created; namely, to establish a State energy policy.

The Federation supported the creation of the Department of Energy in 1977. At that time the Federation was involved in coalition with the Citizens Labor/Energy Coalition in fighting big oil at the national level. We felt at that time that New Jersey needed a governmental authority to study the crisis and come up with an energy policy for New Jersey that would protect the economic interests of the State. So far it has succeeded in that effort. I don't believe anyone would challenge the Department of Energy's first Commissioner, former Commissioner Joel Jacobson, and his success in obtaining favorable federal governmental action during the oil crisis on behalf of the New Jersey consumers. Nor do I believe anyone would wish to challenge former Commissioner Leonard Coleman's untiring efforts in establishing energy conservation priorities and the implementation of the conservation programs.

On April 21, 1986, I attended the one day conference on the 75th anniversary of the Board of Public Utilities, at the Gateway Hilton in Newark. At that meeting, in response to a proposal to abolish the Department of Energy, Commissioner Joel Jacobson said, "To eliminate the Department would be a fundamental mistake." Now, he spoke for himself, and I think what I am saying here now, I am only repeating what he said at that time. And he so eloquently expressed his opinion here today. He was later interviewed by Ted Sherman of The Star Ledger, April 22, 1986, Commissioner Joel Jacobson expanded on his original statement stating, "If the Legislature does dismantle it, the worst place to transfer its functions would be the Commerce Department, which has contradictory interests."

Several years ago, former Energy Commissioner Coleman told this Committee -- the Energy and Natural Resource Committee, "...that it would be short-sighted to downgrade the Department to a division in another department because energy policy could too easily be overlooked if combined with other governmental functions." The warnings of these two former

Commissioners should be heeded. Their criticisms are based on practical experience.

With due respect to the Governor, I make bold to say that his reorganization, transfers, and splitting of the Department of Energy between the Department of Commerce, the Department of Community Affairs, and the Department of Environmental Protection is bad organizational planning that if implemented will have the effect of emasculating and destroying the effectiveness of the agency. And the Legislature, at a later date, will be called upon to correct the mistake.

Contrary to the Governor's profession in his general statement of purpose in the Reorganizational Plan, it will not promote the reduction of the cost of energy. First, because the ingredients that go into energy costs are deep-rooted and are affected by federal law as well as State law. As for example, deferred taxes paid by ratepayers and not paid by utilities; the impact of other federal regulatory bodies. Secondly, the rate making decision by law rests with the Board of Public Utilities, an autonomous body. The only ray of sunshine of energy costs comes from the Division of Rate Counsel of the Public Advocate, who are vigorously pursuing all utility rate increases. However, whether a rate cost is litigated in the Administrative Law Court, or whether it is decided by stipulation by the major interested parties, the final decision is rendered by the Board of Public Utilities.

We are also in disagreement with the Governor in his use of what the Federation considers an unfair intrusion in the Legislature's proceedings. That is, the use of the back door to accomplish the dismantling of the Department of Energy, and bypassing of the Legislature by invoking Section 2 of the Act PL 1969-c 203. In our form of government, the people, besides voting for the Governor, grant him certain powers. But also there are restrictions. People also vote for their Legislative representatives and grant them certain powers and restrict them

in the exercise of power. The Governor, in invoking Section 2 PL 1969, has failed to take into account the restrictions imposed on him in Section 52:14 c 6 of the Act which restricts him in the application of his Reorganizational Plan. The Act states:

A) A reorganization plan may not provide for, and a reorganization under the Act may not have the effect of:

1) Creating a new principal department or all the functions thereof, or consolidating two or more principal departments or all the functions thereof.

In the Reorganizational Plan the Governor is consolidating two or more principal departments. We question the validity of his action.

At the present time the status of the Assembly Bill that would integrate part of the Department of Energy into the Department of Commerce and Economic Development and assign another part of the Department of Energy to the Department of Environmental Protection is that the Bill was passed by the Assembly and now rests in the Senate awaiting action by that body. By invoking the Act PL 1969-c 203, the Governor has complicated the situation by intruding into what is at this time an affair of the Legislature for their determination. His action raises additional legal questions.

1) Doesn't the Governor's action constitute a violation of the Constitution, Article III, distribution of power of government?

2) Doesn't the Governor's action violate Article IV, Section 1, which states:

1) Legislative power shall be vested in a Senate and General Assembly.

3) Doesn't the Governor's action constitute interference with the Legislative process?

These are questions the Federation asks this body to give serious thought to.

In order to resolve the problem created by the Governor's action, the Federation believes that a meeting with the Governor, the Legislative leadership, and the Senate Energy and Environment Committee is necessary to clear the air and correct any misunderstandings that exist regarding the power vested to each branch of the government by the law.

Secondly, a plan should be negotiated with the Governor on how to best achieve the goals expressed in the general statement of purpose in his Reorganizational Plan.

Skyrocketing utility rates is the issue and the dilemma we are faced with. Utility rate making is the responsibility of the Board of Public Utilities, a power granted by the Legislature. There has been mounting criticism of the Board's rate making decisions. In order to correct the problem, the Federation has recommended the restructuring of the Board by expanding it and requires a background of experience in areas of expertise required in determining the justness of a utility rate increase requests, and to ensure fairness between the utility and it's consumers.

The other area that impacts on utility rates and requires correction is Title 48 of the Laws of New Jersey. These Laws are antiquated and do not effectively meet the needs of today's consumers. Over the years, much gimmickry and quackery has crept into the rate making process which should be legally restricted or forbidden.

If we are sincerely looking to correct the utility rate problem so that industry, residential, and commercial consumers can live with the cost of energy, this is where we must begin. The shuffling of a department is not the answer.

Now, there were several comments here that were made by Commissioner Bleckicki, I think it was. I don't think they have a full grasp by what they mean when they talk about cogeneration and conservation. In order to make my point, I'd like to point out that Public Service, Gas, & Electric, and



most utility companies in this area use, 10,700 BTU's to produce one kilowatt of electricity. When you flip your switch in your house, that converts to 3413 BTU's, which is that there is a loss of 33% between the fuel that's used to generate the power and when it is converted.

Now, when they talk about cogeneration, they talk about the steam that's being thrown into the air, they talk about generating the power, and the use of that steam, well, which is fine. That's correct. However, that 33% is what has to be looked into if they're going to conserve and save power. Fine, you can conserve by putting insulation around the windows and around your doors, and so on, but it's the duty of the utility company to get involved in their own efficiency and their own effectiveness. And that's where the problem lies. I don't think that even the Department of Energy as it stands right now has a good concept of what they're going after when they talk about conservation.

I don't think that the Department of Commerce and the Environmental Protection people have a good grasp on what they're going after when they're talking about bringing costs down for industry and the utility, because, I haven't heard it expressed at any place. And that's why I'm expressing it now, before this Committee, so that you have a full grasp of what actually is being talked about.

But, the main problem is the fact that the Governor has taken it upon himself at this stage of the game, when here the Senate hasn't yet had an opportunity to express itself. This is what bothers me. And what bothers me, if he can do this now, with this energy situation, he can do it later on with some other problem that he might be involved with. And, I think that is a dangerous road that's being travelled, and I don't think it should be permitted. And I think that if this Committee has any power whatever to have this reversed -- this action reversed -- I would heartily endorse whatever action they took to reverse that.

You know, I've lived long enough to know, and have seen the action of Mayor Haig in the State of New Jersey. You know, he was considered the boss, and he dictated the policy. Now, are we having here another emulation of that policy, when we disregarded it several years back? They're the kind of questions that bothered me. And, it bothers the senior citizens.

Now, those of us that are senior citizens are not going to be around to enjoy, probably, the fruits of the things that we're talking about. The younger folks are going to be around to enjoy those fruits. All we can do as senior citizens is point the way. This is what we're trying to do. Now, we have already been able to take and help our senior citizens that are in need. We've been able to do that. We've had successes along those lines. But, what we're looking at right now is what affect this is going to have on our children. This is what bothers us; this is why I'm here as a senior citizen; this is why I'm here before this Committee today. I'm interested in what's going to happen to my children, and my grandchildren. And we want something done about this energy situation.

And particularly, you mentioned about Hope Creek I, which I'm involved in as an intervener on Hope Creek, and I'm also involved in the rate case. Here's another place where I must bring out the fact that Public Service has 9000 megawatts of electricity right now, without Hope Creek. Their peak load was 7,600 megawatts of electricity. In other words, there's an excess of 1400 megawatts of electricity there right now. Now, with Hope Creek coming on line, that's going to increase the megawatts by ten sixty-seven megawatts, or 10,067 megawatts. Now, they're only using 7,600 megawatts. Why are we asked to pay for all this excess generating capacity? Why is the utility passing the cost on to industry and everybody concerned? They're talking about the economy of New Jersey?

On one hand they talk about energy area development rates. They get special rates for those people. And yet they sock it to the senior citizen, the residential consumer. Fourteen cents is what they're asking for; 18.6% is what they're asking for.

The impact of Hope Creek I is 18.7%. In other words, if that plant wasn't built, and wasn't brought into the rate base, there wouldn't be any need for an 18% rate increase. There would be a need for reducing the cost because of the oil cost going down, gas cost going down, and other fuel costs going down -- coal and so on.

Well, folks, I think I made my point, and I don't want to go any further. And, if you have any questions, I'd be happy to answer them.

SENATOR DALTON: Sam, I appreciate your testimony very much. Do any of the Committee members have any questions for Sam?

SENATOR COSTA: I just want to make a statement that, I want to thank you very much for coming and giving such good and well thought out testimony. I have to agree with you and what you said about the use of a back door to accomplish a dismantling of the Department of Energy, bypassing the Legislature, as being an unfair intrusion in the Legislative procedure. I certainly agree -- I'll speak for myself -- and I'm so pleased that you came before us today.

Just one question. When you testified in the State Assembly on April 17th, you stated that rather than abolishing the Department of Energy, we should be considering legislation to strengthen the Department. Could you elaborate on that?

MR. SCOZZARO: Yes. The Department of Energy has done an excellent job as far as it has gone. Now, with the Commissioner being transferred to the Department of Community Affairs, there's an opening there. The Department of Energy needs a little more life into the Department itself. The staff

is not working as I would like to see a staff working. They seem to have blinders on. They can only see that conservation cogeneration situation. Beyond that, there are such things as fluidized generation -- or turbines, and so on. There's those things that have to be looked at; the new techniques, the new technologies that are coming on into the utility situation, and they don't seem to be involved with that.

For example, I was in California visiting my children and grandchildren, and while I was there -- my daughter being involved the way she is with UCLA -- there were some attorneys there that were involved with the San Diego Gas and Electric rate increase case there. And, they were also asking for the privilege of establishing a holding company. Well, in the discussion I learned that the Public Utility Commission of California decided not to allow them to go to the holding company unless they met these 20 restrictions. Well, I got a copy of those things. I brought the copy, and since I'm on the Advisory Board of the Board of Public Utilities, I gave a copy to the staff of the Board of Public Utilities, I gave a copy to the Department of Energy, I gave a copy here to Mark Connelly, so that they would know what's going on throughout the nation. But anyway, I haven't heard a thing from the Department of Energy as to what action they're going to take on that thing.

However, I did take it upon myself to take action and make my opinions known before the Advisory Board that I didn't think that our Board of Public Utilities had enough teeth in their 18 requirements for allowing a utility to go to holding companies. And, that is what I mean by the Department of Energy not doing what I believe they ought to be doing and ought to involve themselves in. I hope I've answered your question.

SENATOR COSTA: Yes, thank you. I'm pleased that you're on this Commission. Thank you very much.

SENATOR DALTON: Sam, again, thank you very much for your testimony.

MR. SCOZZARO: Okay. I'm sorry I feel the way I do, but I can't help myself, as you well know.

SENATOR DALTON: You don't have to apologize to me, Sam. The next testimony will be taken from Ed Lloyd. Ed? Ed, for the record, you might clarify who you are representing today.

EDWARD LLOYD: Okay. Thank you Senator. My name is Ed Lloyd. I'm General Counsel for the New Jersey Public Interest Research Group -- New Jersey PIRG -- and I'm here as General Counsel and representing New Jersey PIRG. Thank you for giving me the opportunity to present PIRG's views on the future of the New Jersey Department of Energy. And I hope there is a future to the New Jersey Department of Energy.

I think I can summarize my testimony with five basic principles:

- 1) There is a need today, just as there was a need in 1977 when the DOE was created, for a strong, independent, cabinet-level Department of Energy to develop statewide energy policy and to undertake statewide energy planning through an enforceable Energy Master Plan.

- 2) If the major functions of DOE must be transferred, -- and we don't believe they should be -- the Department of Commerce is the wrong place to locate these functions because of the irreconcilable differences in the goals of the two Departments.

- 3) If a new home must be found for DOE -- and again, we don't think one is needed -- DEP should be chosen, because the statewide planning and regulatory functions of DEP and the Department of Energy are compatible and easily harmonized, unlike the functions and the goals of Commerce and Energy.

- 4) While addressing the issue of State energy policy, the Legislature should declare unequivocally that the BPU, like

all other State agencies, is bound to implement the Energy Master Plan as well as the conservation and cogeneration policies of the DOE, and the Legislature should restructure the BPU to give it broader representation and greater accountability to the public.

5) The Reorganization Plan that was issued by the Governor on June 30th is of questionable legality and would establish an extremely harmful precedent of legislation by the Executive which was neither intended nor contemplated in the Executive Reorganization Act.

The first four points of my testimony today are virtually the same as the testimony I presented to the Assembly Committees considering these matters on April 17th. I submitted a copy of my April 17th testimony with today's testimony. I would like that made part of the record of this hearing. And I would like to briefly review the substance of that testimony with the Committee.

I want to focus on the conflicts between the Department of Commerce and the Department of Energy, as I see them, anyway, because I think that's something that-- Certainly, there have been witnesses here this morning that have indicated that there are no conflicts, and I must confess I see it quite differently. I'm on page three of my April 17th testimony.

The conflict in the goals of the two Departments, I think, are substantial. The Department of Commerce was created -- and I'm quoting from the Department of Commerce Act -- to be "devoted exclusively to monitoring the interests and concerns of business and industry...", "...to provide business and industry the optimum climate with which enterprises may grow...", and as a "voice for and advocate of the interests of the business sector." Those roles would more often than not be in conflict with sound energy policy and planning which among other things must consider the interests of all consumers,

including low-income consumers, the benefits of conservation, and the importance of alternative sources of energy such as cogeneration and solar energy. If there is any doubt remaining as to the departmental conflict, one need look no further than the Department of Commerce opposition to the DOE conservation regulations. And there's been some discussion of that this morning, so I won't dwell on it.

The Department of Commerce itself, as Joel Jacobson pointed out, was created just five years ago to resolve a conflict between Labor and Industry in the former Labor and Industry Department. We think that to combine Commerce and Energy now would simply create a new conflict that would have to be undone at some future date. We don't think that the State should repeat the mistake of combining Commerce with another conflicting agency.

There is even a further conflict between the roles of Energy and Commerce, and that is that Commerce is required to, and I again quote, "cooperate with...utility companies...to supplement and support" their programs. Commerce cannot meet this obligation and set energy policy as well.

I would point out that the federal government learned the lesson that regulation and promotion cannot function effectively within the same agency. In 1974, the Congress split the Atomic Energy Commission into the Nuclear Regulatory Commission and the Energy Research and Development Agency to separate out the regulatory and promotional functions with respect to nuclear power. The State should take a lesson from Congress and not combine Commerce and Energy. Those who ignore history are doomed to repeat it. I hope the State doesn't ignore the history of the Atomic Energy Commission.

Just a couple further comments on the conflicts I see. There was discussion this morning about cogeneration and how that might be of benefit to all consumers. And I certainly have been a proponent of cogeneration for nearly 10 years. We

worked on getting cogeneration provisions put into the original Department of Energy Act. But I must say there are certainly conflicts on how the cogeneration rates will be set, what rate the industrial cogenerator itself will get and what cost saving will be passed on to the ultimate consumer. And in that situation, I think the Department of Commerce would have a severe conflict between the interest of a business cogenerator who is there, certainly, to cut it's energy cost, and the interest of consumers who would also benefit from the cogeneration of electricity. And those benefits -- that line has to be drawn somewhere. And if you've got an agency who has on one hand a duty to promote business interests, I don't think that they can promote the consumers interest at the same time. I think that's just one example; I think there are others. It's interesting to hear the Department of Commerce today voice its concerns about low cost energy. My question is, where were they in 1982 and 1983 when the Chairman and many of us were trying to stop what we viewed then, and I still view, as a waste of money that's been poured into the Hope Creek Nuclear Plant. I think we were at a point in 1982 where we were trying to prevent good money being thrown after bad. Today, we have a situation that, no matter how it's resolved, is not going to be of benefit to energy consumers in the State.

I don't think I'm going to go into my concerns about the abolition of the Department of Energy or its conflicts any further. I'd be happy to answer questions about them. But, let me come to the fifth point of my summary this morning, which addresses the events that have occurred since the April 17th meeting.

On June 30th, as you well know, Governor Kean issued and transmitted to the Legislature a Reorganization Plan for the transfer of virtually all of the functions of DOE to three other principle departments of the Executive Branch. The Plan was issued and transmitted pursuant to the Executive Reorganization Act of 1969.



The Plan, by its terms, transfers out of DOE virtually all of the staff, and all of the functions, leaving only the Board of Public Utilities, the Public Broadcasting Authority, the Commissioner himself, and some rarely exercised emergency functions. The BPU and the PBA -- Public Broadcasting Authority -- are in but not of DOE. And that is, they are part of DOE only for administrative purposes. They are neither directed by DOE, nor are their staff or functions the staff or functions of DOE. I think it seems the Department, that Chuck Richman conceded this morning, that the presence of the BPU and the Public Broadcasting Authority in DOE are not functions of DOE, and is not the reason that they believe that this Reorganization Plan would comply with the Reorganization Act. I think they're right. I think that those functions are not really functions of the Department, and were never intended to be, and certainly are not a basis for that Department's existing. Those agencies could be in but not of literally any agency in government. The emergency functions, however, seem to be the basis upon which the Administration is justifying compliance with the Executive Reorganization Act. And I think we should examine what those emergency functions are.

They require a report to be submitted once every three years, and they authorize the exercise of other powers only in the event that a state of emergency is declared by the Governor. Thus, these are, at best, intermittent functions which are infrequently, if ever, exercised by DOE. It seems to me that there are no day to day functions, if you will, left in the DOE were this Reorganization Plan to go into effect. Because of that, we believe that the Reorganization Plan has the effect of abolishing all of the ordinary functions of the DOE, in violation of the Executive Reorganization Act.

I think it's been pointed out to you earlier that Section 6 of that Act provides a reorganization plan may not provide for, and a reorganization under this act may not have

the effect of: abolishing or transferring a principle department of the Executive Branch, or all of the functions thereof. And we think that's exactly what this Reorganization Plan does.

We believe that the proposed Reorganization Plan, therefore, is without legal authority, and we have today written Governor Kean and asked him to withdraw the Plan or in the alternative, to defer its effective date for 90 days to give the Attorney General an opportunity to render a formal opinion concerning the legality of the Plan. We think the Attorney General has an independent duty to evaluate the legality of any Executive action. I think the Attorney General has recently exercised his view that moments of silence were not Constitutional, and chose not to defend that. We think that that independent authority should be exercised in this case to examine the Reorganization Plan, and determine whether in fact it does comply with the requirements of the Executive Reorganization Act.

we have also today in a separate letter asked the Attorney General to issue just such an opinion. I have attached the copies of these two letters to my testimony.

Beyond the questionable legality of the Reorganization Plan, NJPIRG believes that the Plan establishes an extremely harmful precedent for legislation by the Executive. If this Plan takes effect, it would establish a precedent that would permit a Governor, for instance, to transfer all of the staff and the functions from the Public Advocate to the Attorney General's office, or effectively gut any department, leaving only a skeleton crew headed by a commissioner with only occasional functions to perform. We do not believe that this is either the letter or the spirit of the Executive Reorganization Act, but it is in fact what will happen if the June 30th Reorganization Plan is implemented.

Indeed, we do not believe that the Legislature intended or even contemplated the transfer of functions between Executive departments of State government in the Executive Reorganization Act, but only within such departments under the Act. Agencies which are subject to transfer and abolition under the Act are limited to sub-cabinet level bodies by Section 3 of the Act, and the only case that's addressed this Act held that an intra-department reorganization was valid under the Act.

We hope that the Governor will remedy the problem by withdrawing the plan and permitting the Legislature to act on the legislation which is currently before it. Even the 90 day deferral of the effective date of the Plan might give the Legislature adequate time in which to act. If the Governor does not so act, we recommend that the Legislature pass a concurrent resolution stating that it does not favor the Reorganization Plan and proceed immediately to consider the bills before it which address the future of DOE.

Thank you again for giving me the opportunity to present our views, and I would be happy to answer any questions you might have.

SENATOR DALTON: Thank you, Ed. Appreciate it. Ed, you have been a member of the Advisory Council on Energy Conservation.

MR. LLOYD: Yes.

SENATOR DALTON: You have.

MR. LLOYD: I have. As I understand, I still am.

SENATOR DALTON: Can you tell me when the Council last met?

MR. LLOYD: Quite frankly, I can't remember when we last met. It was at least five years ago. It's my understanding that-- I was appointed, I believe, in 1978 as the environmental representative to the Advisory Council, and as I read the Act, I serve until my successor is appointed and

confirmed. To my knowledge no successor has been appointed or confirmed. But, I'm not aware of a meeting having been called in the last five years. I guess I should point out--

SENATOR DALTON: Don't you think there's a statutory-- Isn't there a statutory requirement that they meet?

MR. LLOYD: There's a statutory requirement that they meet at least four times a year. It doesn't appear that that statutory requirement has been complied with. When we were first appointed to the Advisory Council, the Advisory Council was quite active. We had monthly -- I think almost monthly -- meetings on the original Energy Master Plan. We had sub-committees that were assigned to various aspects of the Energy Master Plan that came back and reported to the full Committee, and the full Committee made their views known to the Department. Commissioner Jacobson used to come to the meetings personally, very regularly.

Since those early days, there has not been much activity. And my recollection is there were at least 22 or 23 meetings in the very beginning of that Advisory Committee.

SENATOR DALTON: How do you account for the lack of Council Meetings?

MR. LLOYD: I can't account for it. I mean, I think that my experience certainly was that we did serve a useful function. I think Commissioner Jacobson had some concerns that the representation on the Council was heavily weighted toward industry. There was an environmentalist, a consumer, and 13 industry members. I felt like I was sitting in on a corporate board room meeting at times in those meetings when we heard various energy industries talking about what their concerns were with energy policy which tended to differ from ours.

SENATOR DALTON: I don't have any further questions. Cathy?

SENATOR COSTA: No, just thank you.

SENATOR CONTILLO: It's an interesting point he brings up that it was legislative intent, truly, that transfers were to be made only within the departments and not between the departments. That's a very-- What are you basing that on?

MR. LLOYD: I've looked at the Energy Reorganization Act itself, and agencies are defined only as sub-cabinet level agencies. There is certainly authority to abolish an agency, which is a sub-cabinet level agency. It's not apparent that there was authority or contemplation that agencies would be transferred between departments. I mean, it seems that the major focus was to reorganize a department. I mean, if it could be done more efficiently. That issue has never been addressed by a court, and I think I guess the fairest thing to say is the legislation is silent on that. It doesn't say it's prohibited, it doesn't say it's allowed. I think it could be read either way.

SENATOR CONTILLO: Do you feel that the Executive has exceeded its authority in this area?

MR. LLOYD: I certainly do. I think we're left with a Department of Energy that has a Commissioner with occasional, if any, functions. And, it's sort of reminiscent of the law that was passed in England in the early 1800's to have a coast watcher sit on the Cliffs of Dover and watch for Napoleon's ships, and that law remained on the books until well after World War II. It seems to me under the Reorganization Plan we're going to have a Commissioner of Energy just sitting over there waiting for an emergency to happen, and if it happens, then he might have a few duties to perform. But, if it doesn't happen, it doesn't appear that he has any duties to perform.

SENATOR CONTILLO: Of course, in 1943 he might have been a useful guy, you know.

MR. LLOYD: Perhaps. Maybe in 1993, under the Reorganization Plan the Commissioner of Energy will have a function as well. I don't know.

SENATOR CONTILLO: And, the point you brought out was the fear that I had that, while we're dealing with this Department that may not be on everyone's lips at the present time, if they chose a different department, like the Public Advocate's Department or the Department of Education, I think the public focus would be stronger to realize the terrible things that could be -- the terrible power that could be taken over by a single Executive.

MR. LLOYD: I don't think the Legislature was delegating that kind of power to the Governor when they passed the Executive Reorganization Act. And I think that if it's not clear, perhaps the Legislature ought to address that with an amendment to the Reorganization Act. In my view, the Reorganization Act is clear that that was not intended.

SENATOR DALTON: Ed, you've heard the -- I guess it was Mr. Blekicki -- say that the intervenor status of the Division will not change at all with respect to the Hope Creek rate case. What are your thoughts about that? I mean he sat -- we have him on record now.

MR. LLOYD: In one sense, I guess I'm glad he's on record that it isn't going to change. I think he's got a real problem, though. The history of rate cases before the Board of Public Utilities is that often there are industrial interveners that are there to promote the business and industry's concerns with rate making. And there are often times when it is decided that utility needs "x" amount in a rate increase; the next question is, who's going to pay that amount? And, the concern of the industrial interveners, as you might imagine, is that the minimum impact of that rate increase be felt by business and industry. Well, certainly, the Department of Energy, I think, in its intervention role has promoted concerns in the interest of residential ratepayers in keeping their cost down. There's an obvious conflict, I think, between how much a residential ratepayer is going to pay, and how much an

industrial or business interest is going to pay. And, I don't know how that conflict can be easily resolved if you combine Energy and Commerce.

So that, I'm in one sense delighted to hear him say that it isn't going to change; he may -- if that is accurate -- well have problems in fulfilling his statutory duties as a Commerce Department.

SENATOR DALTON: Ed, again, thank you very much. And, thank you for your testimony.

MR. LLOYD: Thank you.

SENATOR DALTON: Our last witness today will be representatives of the League of Women Voters.

N A O M I Y A G E R: I'm Naomi Yager. I'm Energy Director of the League of Women Voters of New Jersey. We thank you for this opportunity to present our views on a subject that has long been a concern of ours.

In 1977 the State of New Jersey and the League of Women Voters were in agreement about the need for a Department of Energy. We both recognized a critical situation and saw that government planning and intervention were needed. The League supported the creation of a Department of Energy and has consistently opposed efforts to abolish it.

I read Senator Dalton's articles in The New York Times and The Trenton Times and we find that you made a very eloquent case for retaining the Department, not only for the sake of consumers, but it seems to me for the sake of its opponents.

We would like to add a plea on behalf of our children, our grandchildren, and the future of this State.

We all admit that oil is a finite resource, even if we don't agree on just how finite it is. The burning of coal and oil, in addition to being the source of acid rain, is the source of carbon dioxide and other pollutants contributing to the menacing greenhouse effect. Although the use of nuclear energy might seem to be the answer to these problems, I know I

need not review for you the hazards associated with this source of energy. Rational energy planning and far seeing energy policies are, therefore, more important now than they were in 1977.

Instead of dismantling the Department of Energy and scattering its resources, we should use the breathing time granted to us by the present low prices of oil to prepare for the crises which surely lie ahead. Any sports fan will tell you -- and I am one -- that "catch up" is not the way to play. To allow this shortsighted act to go unchallenged is a deed that will haunt us, and I mean you, in, I fear, the not too distant future.

So, I thank you again for allowing us to emphasize that we support the retention of a separate Department of Energy.

SENATOR DALTON: Thank you very much, Ms. Yager.

MS. YAGER: Thank you, Senator.

SENATOR DALTON: Any questions for Ms. Yager?

SENATOR COSTA: Appreciate it, and I certainly agree with what you say. Now is the time to prepare for the future. If there will be a crisis then we will be prepared when it does come upon us.

MS. YAGER: Yes. All the reasons that we had in 1977 are going to come back.

SENATOR COSTA: I know.

MS. YAGER: Thank you.

SENATOR DALTON: Thank you very much. Based upon our hearing today -- I'm going to address this to the Committee members -- there is considerable question, at least in my mind, that whether the Executive Reorganization Act was applied properly in this case. There are substantial--

SENATOR CONTILLO: There's no question in my mind; it was not.



SENATOR DALTON: There's substantial policy issues, and policy questions, with regard to what the Governor's Reorganization Plan attempts to accomplish. The question of the proper role of energy conservation and planning and where that role should rest; the question of the implementation of our Master Plan and where that function should rest; the question with regard to the whole issue of energy public policy planning, and who should be its advocate, are all questions that are raised beyond the Constitutional and legal questions that are raised by the Governor's Reorganization Plan. And what I'd like to do as a result is propose to the Committee that in light of these questions that we request that the Governor rescind the Plan 001-1986, to give this Committee the opportunity to examine the Assembly Substitute Bill that he himself proposed and which was received by the Committee on May 15. And that will give us the time to study more closely the policy issues that are attached to and raised by the Plan.

So, I'm going to make that in the form of a motion to the Committee.

SENATOR CONTILLO: Are you going to indicate that the Committee considers the impropriety of Executive intrusion into the Legislative area?

SENATOR DALTON: Definitely. And I think what I'd like to do also is to give the Governor, respectfully, two weeks to respond to our request. And, if in fact we don't hear from the Governor at that point, then I will be in touch with the Committee members again to determine the proper course.

SENATOR CONTILLO: Mr. Chairman, is it my understanding that the other way of stifling the Governor's action would be Legislative action?

SENATOR DALTON: Excuse me?

SENATOR CONTILLO: That the other way of stifling the Governor's thrust here -- 001-1986 -- would be Legislative action denying his request.

SENATOR DALTON: That's correct.

SENATOR CONTILLO: Would it be advisable for us to institute that simultaneous with the action you're suggesting this afternoon?

SENATOR DALTON: Well, let's not be forced today.

SENATOR CONTILLO: I wonder where does that come from?

SENATOR DALTON: There is a resolution that I put in that would basically indicate that we consider this -- the Legislature -- considers this Reorganization Plan unfavorable. But that resolution, unfortunately, isn't before this Committee today, and so we can't act on it. Senator Costa?

SENATOR COSTA: I was just thinking of the unfairness of the timing of the Governor's request statement which was made on June 30th when the Legislature went out on recess for the summer. And, although the Senate has come back four sessions, the Assembly has no intention of returning until September 4th. So, really, we could not take action Legislatively. And, as I said, it's grossly unfair, and it's disrespectful of the Legislature.

SENATOR DALTON: Well, that's, again, a very kind way of putting it, Senator Costa. I could put it in much harsher terms.

Given there has been a motion that has been seconded to contact the Governor -- a written communication -- asking -- requesting that he rescind his Reorganizational Plan, and raising both the legal and the public policy questions that are inherent in this Plan and that were raised by a number of speakers this morning. And to respectfully request that he give an indication of -- he respond within two weeks to the Committee. So, it's been moved and seconded. So, on the motion.

MR. CONNELLY: This is on the motion the Senator just described. Senator Dalton?

SENATOR DALTON: Yes.

MR. CONNELLY: Senator Contillo?

SENATOR CONTILLO: Yes.

MR. CONNELLY: Senator Costa?

SENATOR COSTA: Yes.

SENATOR DALTON: Thank you very much, Cathy and Paul.

That will conclude our hearing today.

**(HEARING CONCLUDED)**

## **APPENDIX**

July 30, 1986

The Honorable Thomas H. Kean  
Governor of New Jersey  
Trenton, New Jersey 08625

Dear Governor Kean:

NJPIRG has reviewed the Reorganization Plan (No. 001--1986) which you issued and transmitted to the Legislature on June 30, 1986. As set forth in detail in the enclosed letter to Attorney General Edwards, we believe that the plan violates the "Executive Reorganization Act of 1969", P.L. 1969, c.203 (C. 52:14C-1 et seq.), and have asked the Attorney General to render a formal opinion regarding its compliance with the provisions of the act.

We are writing to request that you either rescind the order or, in the alternative, defer the effective date of the plan for 90 days (pursuant to N.J.S.A. 52:14C-7(b) which permits such an extension) to give the Attorney General an opportunity to render an opinion before the plan takes effect.

The rescission or deferral would also give the Senate time to review the legislation which has passed the Assembly and accomplishes all of the goals of the plan. As you know, it took the Assembly three months to consider this legislation and ultimately pass a committee substitute bill. The rescission or deferral would give the Senate an equal amount of time beyond the summer when the Legislature does not regularly meet to consider the legislation.

We hope that you will give serious consideration to our request. We would be happy to meet with you at your convenience to discuss our concerns. We would appreciate a response to our proposal at your earliest convenience.

Thank you for your consideration of our views.

Respectfully,



Edward Lloyd  
General Counsel

cc: Attorney General W. Cary Edwards

1x

July 30, 1986

The Honorable W. Cary Edwards  
Attorney General of New Jersey  
Hughes Justice Complex  
Trenton, New Jersey 08625

Dear Attorney General Edwards:

On June 30, 1986, Governor Kean issued and transmitted to the Legislature a Reorganization Plan (No. 001--1986) for the transfer of virtually all of the functions of the Department of Energy (DOE) to three other principal departments of the Executive branch, the Department of Commerce and Economic Development, the Department of Community Affairs, and the Department of Environmental Protection. The plan was issued and transmitted pursuant to the "Executive Reorganization Act of 1969", P.L. 1969, c. 203 (C. 52:14C-1 et seq.).

The plan, by its terms, transfers out of DOE virtually all its staff and all its functions leaving only the Board of Public Utilities (BPU), the Public Broadcasting Authority (PBA), the Commissioner himself, and some rarely-exercised emergency functions. Section 6 of the "Executive Reorganization Act of 1969", N.J.S.A. 52:14C-6, provides in pertinent part that:

- (a) A reorganization plan may not provide for, and a reorganization under this act may not have the effect of -
  - (1) Creating a new principal department in the Executive branch, abolishing or transferring a principal department or all the functions thereof, or consolidating 2 or more principal departments or all the functions thereof ....

NJPIRG believes that the June 30th plan violates the above prohibition by providing for and having the effect of abolishing and transferring a principal department and all its functions. The BPU and the PBA are "in but not of" DOE; that is, they are part of DOE only for administrative purposes. They are neither directed by DOE, nor is their staff or function the staff or function of DOE. The emergency functions require a report only once every three years and the exercise of other powers only in the event that a state of emergency is declared by the Governor. Thus, these are, at best, intermittent functions which are infrequently, if ever, exercised by DOE. Therefore, the reorganization plan would result in

2x

The Honorable W. Cary Edwards

Page 2

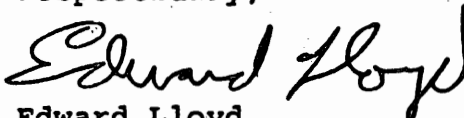
July 30, 1986

a bare DOE but for the Commissioner. This is certainly an effective abolishing of the department and in violation of the act.

I am writing, on behalf of NJPIRG, to formally request that you as the State's chief law enforcement official, render a formal opinion as to whether the June 30th Reorganization Plan complies with the requirements of the "Executive Reorganization Act of 1969." As you can see from the enclosed letter, we have asked the Governor to rescind or defer the order to give you an opportunity to render such an opinion.

Thank you for your prompt attention to this important issue. We would be happy to meet with you at your convenience to discuss this matter. I would appreciate a response regarding whether you will grant our request at your earliest convenience.

Respectfully,

A handwritten signature in cursive script, appearing to read "Edward Lloyd".

Edward Lloyd  
General Counsel

cc: Governor Thomas Kean

3x



TESTIMONY OF EDWARD LLOYD  
NJPIRG GENERAL COUNSEL  
BEFORE THE ASSEMBLY STATE  
GOVERNMENT COMMITTEE AND  
THE ASSEMBLY ENERGY AND  
NATURAL RESOURCES COMMITTEE  
APRIL 17, 1986

Good morning. My name is Edward Lloyd. I am General Counsel for the New Jersey Public Interest Research Group (NJPIRG). Thank you for giving me the opportunity to present PIRG's views on the proposals to abolish the New Jersey Department of Energy (DOE).

Put very simply, NJPIRG supports the preservation of a strong, independent, cabinet-level DOE. There is a need today, just as there was in 1977 when the DOE was created, for statewide coordination of energy policy and planning. That need can only be met by a cabinet member whose single goal is energy policy. Energy policy should not be subordinated to the mission of any other state agency.

The state is currently experiencing wildly fluctuating energy prices. Oil prices are dropping at the same time as the state faces the highest electricity prices in the nation and the largest request for an increase in electric rates in the state's history. Energy consumption patterns are rapidly changing. Even utilities are diversifying into other energy fields. Witness the creation of the Public Service holding company and its new subsidiaries. These are precisely the circumstances under which the state should develop long-term energy policies and plans. It is not the time to subordinate those needs to the state's other missions.

Simply because fuel oil is currently abundant is not a reason to abandon long-term energy policy and planning at the department level. A budget surplus did not lead to the call to abolish the



Department of Treasury last year because Treasury carries out important policy and planning functions in good times as in bad. The end of one drought did not lead to the abolition of the Water Supply Authority or the state's efforts to undertake and continue long-term planning and policies for water conservation and supply because these functions are vitally important in times of calm as well as in times of crisis. The end of inner city riots has not lead to the abolition of the Department of Community Affairs because it has important missions to fulfil in the cities. This reasoning is no less applicable to DOE which has a vital role in planning to meet the state's future energy needs at a reasonable cost for industry as well as residential consumers now as in 1977.

The DOE has just begun to meet these challenges. It has just published its third and most comprehensive Energy Master Plan (EMP). It has just promulgated its long-awaited conservation regulations. It has just proposed strong incentives for cogeneration. It has just intervened in the Public Service record-breaking rate case.

And yet the DOE has much left undone. It has yet to exercise its authority under the Needs Assessment Act to determine the need for new electric generating facilities which may be one of the most important energy decision facing the state in the next few years. It is about to get \$80 million from the Exxon overcharge case for energy conservation programs.

In order to implement these newly promulgated policies and effectively execute these other powers, the agency must maintain its independent cabinet status. Only a department can issue binding guidelines to other departments and assure their compliance. This cannot be done by an energy division buried in some other department whose mission leads it to other priorities. Just four years ago,

then -Energy Commissioner Coleman told this committee that it would be "short-sighted to downgrade the department" to a division in another department because energy policy could be too easily overlooked if combined with other government functions. What was short-sighted four years ago is just as myopic today.

Moreover, no evidence has been offered to suggest that the closing of the DOE will either save money or appreciably reduce staffing levels. Indeed, Commissioner Coleman denied that either would occur before a Senate Committee just last week.

If the purpose of these proposals is to consolidate state government functions, there are better roads to travel. Combining Banking and Insurance has been proposed, or adding the BPU and creating a Department of Regulated Industries to cite another. Folding Defense into Law and Public Safety is yet another. These and other such proposals have the advantages of consolidation without the drawbacks of subsuming important functions in other equally important ones.

As stated earlier, PIRG is opposed to subordinating the important functions of DOE to the mission of any other agency, but if the abolitionists prevail, the last place the DOE functions should end up is the Department of Commerce (DOC). The conflict in the goals of these two departments is irreconcilable. The DOC was created to be "devoted exclusively to monitoring the interests and concerns of business and industry," "to provide business and industry the optimum climate with which enterprises may grow," and "as a voice for and advocate of the interests of the business sector." These roles would more often than not be in conflict with sound energy policy and planning which among other things must consider the interests of all consumers including low-income consumers, the benefits of

conservation, and the importance of alternative sources of energy such as cogeneration and solar energy. If there is any doubt remaining as to the departmental conflict, one need look no further than the DOC opposition to the DOE conservation regulations.

The DOC itself was created just five years ago to eliminate the conflict between industry and labor in the former Labor and Industry Department. To combine DOC and DOE would simply create a new conflict that would no doubt have to be undone at some future date. The state should not repeat the mistake of combining DOC with another conflicting agency.

There is even further conflict between the roles of DOE and DOC. The DOC is required to "cooperate with... utility companies... to supplement and support" their programs. DOC cannot meet this obligation and set energy policy as well.

The federal government learned the lesson that regulation and promotion cannot function effectively within the same agency. In 1974, Congress split the Atomic Energy Commission (AEC) into the Nuclear Regulatory Commission and the Energy Research and Development Agency to separate out the regulatory and promotional functions with respect to nuclear power. The state should take a lesson from Congress and not combine DOE and DOC. Those who ignore history are doomed to repeat it. The state should not ignore the AEC history.

Once again, PIRG does not support the subordination of DOE's functions to those of any other agency, but if these functions must be transferred, DEP should become their new home. Like DOE, DEP has the duty to develop "comprehensive policies for the conservation of the natural resources of the State," provide for the "distribution of information on conservation," and prepare, administer, supervise, and coordinate "statewide, regional and local programs of conserva-

tion." DEP does statewide planning in water supply, water quality, air quality, solid waste management, and land use. It is a planning and regulatory agency and is compatible with the functions of DOE. If DOE's duties must be transferred, DEP is the proper place for them.

The Energy Master Plan (EMP) is the cornerstone of effective energy planning and policy. It must remain a strong, independent, and enforceable document. One cabinet-level agency must be responsible for preparing, adopting, revising, and implementing this plan. The Administration proposes to transfer these functions to a committee of seven cabinet members. This proposal is a prescription for paralysis. Leaving the development of this vital document to seven cabinet members, or worse yet their designees, each with their own special set of concerns other than energy policy, will commit the EMP to a bureaucratic black hole from which it will never emerge. Gone will be the opportunity to produce as DOE has done in the past an objective, independent and enforceable document. This proposal is reminiscent of the Cabinet Development Review Commission made up of a number of cabinet members or their designees. It was to review major development projects throughout the state. It might have been the perfect vehicle to address the questions of rapid development on Route 1. Unfortunately, all the commission ever did was to meet and squabble. It never seriously affected a single project. The EMP should not be relegated to a similar fate. If the EMP is to be an effective planning and policy document, one person, one cabinet member, without conflicting loyalties imposed by statute, must be given responsibility for preparation and implementation of the EMP. If seven people had that responsibility, no one

of them is accountable for getting the job done so that it will not get done or at best not get done well. The job should be assigned to one cabinet member and s/he should be held responsible for the task.

No discussion of energy policy in the state would be complete without mentioning the BPU. The BPU is independent of any other state agency and should remain so. It is of no particular consequence which state department houses the BPU although DOE is the logical one. What is of consequence is that the BPU should be subject to the EMP and be bound to implement it as is every other state agency. This duty is clear under existing law, but it is equally clear that the BPU and the DOE have been feuding ever since the DOE was created, and neither of the sitting governors nor this legislature has stepped in to clarify the relationship between the two agencies.

While the Legislature is focussing on the state's energy policy in these proposals, it should do two things: First, it should declare, once and for all, that the BPU is bound to implement the provisions of the EMP and the conservation and cogeneration policies of the DOE as are all other state agencies. Second, the Legislature should restructure the BPU to give it broader representation and more accountability to the public. If these two tasks are ignored in the present review of the energy issue, this area will be revisited in the all-too-near future.

The BPU regulates total utility revenues which are nearly double the size of the state budget. Thus, three individuals have nearly twice as much say about where consumer dollars go as the entire legislature does in passing the state budget. There are

bills before the legislature addressing the structure of the BPU. NJPIRG urges these committees to consider them in conjunction with the DOE proposals.

Thank you again for giving NJPIRG the opportunity to present its views on these important concerns.



