

AMERICA'S ENERGY POLICY: BUDGET BARGAIN OR CLOSE-OUT SALE?

Efforts to harness energy represent one of man's most relentless pursuits. As technology advances, society becomes increasingly dependent on services generated by energy. Advantages and disadvantages stem from this increased dependence. When we use our resources efficiently, energy development provides exceptional strength, but when we fail to acknowledge significant environmental and economic factors, energy demands stifle our economy and abruptly alter our lifestyle. The following analysis begins with an overview of important events concerning energy during the past decade. This background provides a valuable context for understanding and analyzing energy fiscal policies.

AN ENERGY TAPESTRY

During the 1950's and 1960's, the United States benefitted from inexpensive, readily accessible, and seemingly inexhaustible energy resources.¹ By 1970, America's abundant energy supplies began to diminish, and all experts² now agree that the United State's domestic oil production will never surpass the peak reached in 1970.³ While domestic oil production declined, America's dependence on foreign oil increased. This rising dependence linked the United States to economically and politically volatile countries.⁴

On October 18, 1973 the Organization of Petroleum Exporting Countries (OPEC) imposed its first oil embargo.⁵ This embargo quadrupled crude-oil prices and fueled inflation in the United States. The Federal government responded to this crisis through diverse legislative and executive efforts. In early November 1973, President Nixon proposed "Project Independence,"⁶ the first major executive energy initiative in the 1970's. A week later, Congress authorized a fuel allocation and price control system,⁷ and the construction of the Alaskan pipeline.⁸ In December, Congress instituted year-round daylight savings time⁹ and lowered the maximum speed limit on the nation's highways

1. IV CONGRESSIONAL QUARTERLY, CONGRESS AND THE NATION (1973-1976) 201 (1976). Energy was a bargain for the post-World War II era until the early 1970's.
2. Denis Hayes, Director of Solar Energy Research Institute, statement made at the University of Notre Dame Law School, November 19, 1982.
3. D. HAYES, RAYS OF HOPE 9 (1977).
4. V CONGRESSIONAL QUARTERLY, CONGRESS AND THE NATION (1977-1980) 451 (1980). America depended on potentially unstable sources and the burden of uncertain supplies posed significant concern.
5. *Supra* note 1.
6. *Id.* at 207.
7. *Id.* at 210.
8. *Id.* at 208.
9. *Id.* at 211.

to fifty-five miles per hour.¹⁰

On January 23, 1974, President Nixon declared energy policy development to be the Federal, state, and local governments' most critical legislative task.¹¹ OPEC's decision to cease its oil embargo in March 1974 mitigated the urgency for energy legislation. Yet, President Nixon continued to strive for energy security. By the close of 1974, Congress had enacted two-thirds of President Nixon's threefold Federal energy structure.¹² Despite this achievement, President Nixon failed to convince Congress to enact his most significant reorganizational proposal — the creation of a Department of Energy and Natural Resources.¹³

Though oil supplies gradually returned to the pre-embargo level, the cost for imported oil increased dramatically¹⁴ and the resultant imbalance of payments contributed to worsening economic conditions in the United States. Consequently, the need for long-term, cohesive energy policies became increasingly apparent. President Ford demonstrated his support for the creation of a national energy policy on January 31, 1975 by sending Congress a thirteen part proposal¹⁵ that he hoped would become the basis for a national energy policy.

President Ford's energy proposal, particularly his conservation plan, stirred considerable debate.¹⁶ President Ford wanted to promote conservation by increasing energy prices through two methods: first, by placing an additional three dollar fee on every barrel of imported oil;¹⁷ and second, by lifting the federal controls which held the price of domestic oil below its real market value.¹⁸ President Ford recommended phasing in the fee on foreign oil through one dollar increments over three months.¹⁹ After considerable discussion, President Ford extended the price increase timetable and postponed his plan to deregulate domestic oil.²⁰ In return, he hoped Congress would formulate a comprehensive energy plan. Congressional efforts produced a bill entitled "Energy Policy and Conservation Act"²¹ and President Ford signed it on December 22, 1975. He was not completely satisfied with the bill, but he believed it would provide a foundation upon which

10. *Id.*

11. *Id.* at 218. President Nixon stated in his 1974 energy message to Congress on Jan. 23, 1974: "No single legislative area is more critical or more challenging to us as a people."

12. *Id.* at 217. In May, President Nixon signed a measure which created the Federal Energy Administration (FEA). In October, President Energy Research and Development Administration (ERDA).

13. *Id.*

14. D. HAYES, *supra* note 3, at 15.

15. *Supra* note 1, at 234.

16. *Id.* at 235.

17. *Id.* at 234.

18. *Id.* at 235.

19. *Id.* at 234.

20. *Id.* at 235.

21. *Id.* at 235, 237.

Congress could eventually construct a more comprehensive national energy program.

By 1976, the once highly publicized energy problem no longer captured the nation's attention. Despite declining public concern, President Ford realized that energy questions posed long term problems and on February 26, 1976, he asked Congress to act on sixteen proposals ranging from deregulating the price of new natural gas to providing a fifteen percent tax credit for energy conservation improvements.²² By the close of 1976, however, Congress had only enacted four of the proposals.²³

In January 1977, President Jimmy Carter took office and almost immediately the pressures of the on-going energy crisis became apparent.²⁴ Like Presidents Nixon and Ford, President Carter realized that continued dependence on imported energy supplies undermined national security and hindered the United States' economy. Consequently, President Carter made energy policy a fundamental domestic concern²⁵ and the Democratic congressional leaders made passage of a national energy policy their top legislative priority for 1977.²⁶ President Carter's most ambitious energy policy proposal in 1977 was his recommendation that Congress create a new Cabinet-level Department of Energy.²⁷ President Carter agreed with Presidents Nixon and Ford that centralizing energy policy efforts would enable the Federal government to confront energy problems in a comprehensive way. President Carter's proposal became a reality on August 4, 1977.²⁸

In 1978, Congress dedicated substantial efforts toward drafting a national energy policy based on President Carter's plan originally presented in April 1977; however, President Carter's proposal encountered opposition similar to the rebuttal that President Ford's higher energy price proposal received.²⁹ Democratic leaders argued that increased energy costs would spur inflation, depress America's flagging economy, and cause more unemployment.³⁰ Following months of debate, Congress presented President Carter with a five-part energy package on October 15, 1978.³¹ The package lacked many of the tough

22. *Id.* at 258.

23. *Id.* at 258. The 94th Congress enacted Ford's requests concerning Alaskan natural gas, the naval petroleum reserves, weatherization assistance and thermal building standards, but the other 12 requests either failed to win final approval or had been ignored by Congress altogether.

24. *Supra* note 4, at 451. American suffered from a natural gas shortage, and decreasing domestic oil production forced the United States to purchase a record 46% of its oil from foreign sources in 1976.

25. *Id.* at 457.

26. *Id.* at 457.

27. *Id.* at 460. President Carter proposed the creation of a Department of Energy in his March 1, 1976 message to Congress. He stated, "Nowhere is the need for reorganization and consolidation greater than in energy policy."

28. *Id.* at 459.

29. *Id.* at 468.

30. *Id.* at 469.

31. *Id.* at 468.

features that President Carter requested, however, he believed that it at least declared America's intent to control its energy use.

In 1979, President Carter presented Congress with an additional energy policy plan that contained three fundamental features:³²

1. a windfall profits tax on oil company revenues;
2. a massive Federal push to develop a synthetic fuels industry;
3. the creation of an Energy Mobilization Board to streamline high-priority energy projects.

He announced the windfall profits tax in April and scheduled a major televised address for July 5 to announce the synthetic fuels industry and Energy Mobilization Board proposals.³³ But by the end of June, waiting lines at gasoline pumps in many cities evidenced America's continuing energy problems.³⁴ Acknowledging these frustrations, President Carter rescheduled the July energy address and held a "domestic summit" at Camp David where he conferred with Americans from multiple and diverse backgrounds.³⁵ On July 15, President Carter emerged from Camp David, announced his synthetic fuels and energy mobilization proposals, and described the United States as suffering from "a crisis of confidence."³⁶ He declared that by marshaling the energy crisis, the nation could generate "a rebirth of the American spirit,"³⁷ that would supply solutions to complex economic troubles and social disparities.

By the close of 1979 all three measures were still in conference, but two major events sparked public awareness of energy issues. The first occurred on March 28, 1979, when the Three Mile Island nuclear power plant unleashed the worst nuclear reactor accident in the history of nuclear power in the United States.³⁸ And the second occurred in November when Iran erupted into revolution and rebels captured United States embassy personnel, ostensibly because the United States had supported the former Shah to insure Middle East oil supplies.³⁹ These events highlighted the interrelated implications of energy issues.

In 1980 Congress thwarted three of President Carter's key energy proposals. First, Congress rejected the section within the windfall profit tax proposal that recommended placing the revenues generated by the tax into an energy security trust fund. This fund would then be used to develop mass transit and synthetic fuels, and to help low income people pay their fuel bills.⁴⁰ Second, Congress dismissed President Carter's energy mobilization board proposal.⁴¹ And third, the

32. *Id.* at 493.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 500.

39. *Id.* at 111.

40. *Id.* at 506.

41. *Id.* at 503.

House thwarted an Administration plan to provide grants to state and local governments for energy planning and conservation.⁴²

The inauguration of Ronald Reagan as President of the United States was the most significant event affecting national energy policy in 1981. President Reagan's approach to energy policy differs from his three predecessors in two important ways. First, he has attempted to deemphasize the government's role in energy development.⁴³ Second, President Reagan has requested drastic decreases in government funding for all non-nuclear energy programs.⁴⁴ The implications of these cuts can be seen by tracing the impact of the fiscal year 1980 and 1981 budgets from the federal level to the state and local levels in Indiana.

Several factors influence the State of Indiana's energy policy. First, Indiana does possess abundant reserves of coal and oil shale, but has only minimal proven reserves of oil and natural gas.⁴⁵ Second, because Indiana lacks oil and natural gas and heavily consumes these resources, the State is a net energy importer. Lastly, the State's reliance on external energy resources creates a negative economic impact on the State. Energy policy, both State and Federal, directly affects Indiana's economy and its potential for growth.

Indiana's potential for economic growth is closely linked to the development of its energy reserves. Indiana's coal reserves, which are the State's most abundant energy resource, are estimated at eleven billion tons.⁴⁶ Despite these enormous reserves, the State imports more coal than it produces. In 1980, Indiana produced 28,768,000 tons of coal and consumed 45,525,000 tons.⁴⁷ Coal does not constitute a more significant factor in Indiana's energy scheme for several reasons. First, Indiana's coal contains a high degree of sulfur, and therefore, it cannot be burned without air pollution control devices. Many coal consumers find it more economical to import and burn low-sulfur coal than to install the pollution control devices required for burning high-sulfur coal.⁴⁸ Second, coal cannot yet be converted economically to liquid or gaseous fuels due to market failures, regulatory obstacles, and unavailable technologies. Finally, the steel industry cannot use Indiana coal to make coke; therefore, Indiana's steel industry must import coal for its coking process.⁴⁹

Indiana faces similar problems with its greatest energy resource, oil

42. *Id.* at 530.

43. U.S. DEP'T OF ENERGY, SECURING AMERICA'S ENERGY FUTURE: THE NATIONAL ENERGY POLICY PLAN I (1981):

Increased reliance on market decisions offers a continuing national referendum which is a far better means of charting the Nation's energy path than stubborn reliance on government dictates or on a combination of subsidies and regulations.

44. U.S. DEP'T OF ENERGY, FISCAL YEAR 1982 BUDGET IN BRIEF (1981).

45. M. LARASON AND K. REAMS, INDIANA ENERGY POLICY 8 (1982) (draft paper) [hereinafter cited as LARASON].

46. *Id.*

47. *Id.* at 10.

48. *Id.* at 11.

49. *Id.*

shale.⁵⁰ The State's estimated oil shale resources, designated as the New Albany type, total nearly forty billion barrels.⁵¹ However, oil shale has not yet contributed to the state's energy needs, because cost-effective technologies have not been developed to refine this resource.

Indiana has only minimal proven reserves of oil and natural gas, and depends heavily on external producers for these traditional fossil fuels. In 1980, Indiana's seven refineries produced approximately three percent of the State's annual oil consumption. Indiana's five hundred natural gas wells provided less than one percent of the State's annual natural gas consumption.⁵²

As fossil fuels become even more costly, Indiana may turn to other energy sources to meet its needs. Seven active hydroelectric generating stations are located in the State, supplying an estimated 377 million kilowatt hours of electricity a year. Indiana does not have any active nuclear power plants, but it does receive interstate transfers of electricity, totalling early 4,786 million kilowatt hours a year, from nuclear power plants in adjoining states.⁵³ Hydroelectric and nuclear power meet only a small portion of the state's total energy needs.

By considering the recent trends in Indiana's energy production and consumption, one gains an enriched understanding of Indiana's energy picture. Since 1960 both the consumption and production of coal have increased. Indiana's consumption of natural gas has increased by nearly 140% since 1960 while its output has declined. Additionally the state's fossil fuel consumption increased by seventy-one percent while its production increased by only forty-two percent. These production and consumption trends forced Indiana to become a net energy importer.⁵⁴

Assigning a monetary value to these production and consumption figures demonstrates the economic impact of Indiana's position as a net energy importer. In 1960, the state's energy deficit totalled \$372.7 million in nominal dollars. The deficit grew to \$4,673.2 million in 1979, and by 1980, to \$6,896.4 million.⁵⁵ Since 1974, the amount of the deficit has increased by at least \$400 million a year.⁵⁶

These figures demonstrate that significant amounts of money are flowing out of Indiana to pay energy bills. Computing Indiana's net energy deficit as a percentage of the estimated Gross State Product (GSP) further illustrates the negative economic impact of Indiana's position as a net energy importer. In 1960, Indiana's energy trade deficit comprised 2.86% of the GSP. During 1964 and 1965, it declined to a

50. *Id.* at 12.

51. *Id.*

52. *Id.* at 8. INDIANA ASSOCIATION OF CITIES AND TOWNS, ENERGY EFFICIENCY IN MUNICIPAL OPERATIONS 14 (1982).

53. *Id.* at 15.

54. DIVISION OF ECONOMIC ANALYSIS, INDIANA'S ENERGY TRADE BALANCE: 1960-1979 (1982).

55. *Id.* LARASON *supra* note 45, at 10.

56. INDIANA'S ENERGY TRADE BALANCE, *supra* note 54.

low of 2.58%, but by 1979 the trade deficit had climbed to 8.20% of the GSP.⁵⁷

The energy trade deficit has several negative effects on Indiana's economy.⁵⁸ First, the net capital outflow of Indiana dollars for energy costs depletes investment capital and may hinder the expansion of business and the creation of new industry. Second, the State's dependence on energy imports renders it susceptible to supply interruptions which makes Indiana less appealing to new businesses. Third, Indiana's reliance on out-of-state energy subjects the State to cartel-induced price changes. Finally, as energy expenditures consume an increasing portion of the Indiana budget, funds become limited. At some point, the State's energy expenses for heating government buildings and fueling government cars force the government to use funds from other state programs. Consequently, Indiana's net energy trade deficit directly affects the State's economic and social health.⁵⁹

The Division of Energy Policy within the Indiana Department of Commerce formulates Indiana's energy policy. The Division is divided into two sections: the state-funded Resource Development Division, designed to promote the increased use of Indiana's energy resources, and the federally-funded Conservation Division, designed to monitor energy conservation programs and techniques.

Conservation and resource development constitute the key components of Indiana's energy strategy. The Division of Energy Policy's primary objective is to reduce the use of energy produced outside the state by developing these two areas. This strategy unfolds in a tripartite fashion. First, increased energy conservation can slow the demand for energy imports. Second, increased production and export sales of Indiana's indigenous energy resources can diminish the state's negative balance of payments for energy. The Division endorses innovative research and development projects that will encourage the production and use of Indiana oil shale and coal. Third, substituting Indiana's fossil fuels and renewable energy technologies for imported energy can reduce the State's demand for external energy. The Division is committed to the full and efficient use of renewable resource technologies in Indiana.

At the local level, the South Bend ethanol plant has been selected for study for three reasons. First, the plant is financed by a unique mixture of Federal funds, local money, and private investment. This combination may become more prevalent as greater budget cuts occur. Second, the construction of the plant demonstrates how the development of alternative energy technologies can benefit both the state and local communities. Third, at various planning stages, the ethanol plant

57. *Id.* at Table 3.

58. LARASON, *supra* note 45, at 1.

59. *Id.* at 5.

was threatened with cuts in government funding. A loss of Federal funding would have stopped the plant's development.

At each level of government, escalating energy prices have been significant. Economic dislocation, social disruption, and unemployment have all been attributed, in part, to increased energy costs. Energy prices play an important role in the social and economic development of the nation.

Over the past decade, energy costs consumed an increasing percentage of the nation's overall spending. In 1970, the United States paid \$83 billion for energy and by 1980, that figure soared to \$378 billion. During that decade energy consumption increased by only 14% while energy costs rose 132%. In addition, over that period personal income grew by 37% while the inflation rate was 94%.⁶⁰ The Department of Energy (DOE) estimated that the Gross National Product (GNP) decreased by \$60 billion in 1979 and \$95 billion in 1980. DOE hypothesized that if the 1973-74 energy price increases had not occurred, the loss in the growth rate of the 1980 GNP might have been totally avoided.⁶¹ Under this scenario, the 1973-74 recession would still have occurred, but its impact would have been diminished and in 1975, the GNP would have surged above its actual levels. This surge would have continued through 1980 and would have prevented any growth rate loss in the 1980 real GNP.

The impact of escalating energy costs manifests itself in other ways as well. First, the Consumer Price Index (CPI) increases an average of 1.9 to 2.5% when energy prices rise.⁶² Second, a decline in energy costs may reduce the inflation rate. For example, the overall 1981 inflation rate decreased because of lower inflation rates for energy and food. Finally, high energy costs negatively affect the business sector. DOE estimates that 900,000 to 2.1 million jobs were lost from 1973 to 1980 because of rising energy costs. DOE further asserts that high energy costs caused labor productivity to decline by approximately .4 percent, and energy prices have reduced investment in plant and equipment. DOE estimates that investment in fixed plant and equipment by 1980 fell about 12% below where it would have been without the energy price increases.⁶³ High energy prices have forced the business sector to limit its investment in new plant and equipment and to underutilize its existing plant and equipment.

High energy prices have varying negative impacts on regional economies. State energy prices differ depending on distance from the energy source, type of available supply, and state or local taxes. In the residential sector, average 1978 state prices varied by 159%. In the

60. D. DeVaul, NATIONAL AND STATE ENERGY EXPENDITURE 1970-1980 2 (1981).

61. OFFICE OF POLICY, PLANNING AND ANALYSIS, INTERRELATIONSHIP OF ENERGY AND THE ECONOMY (1981).

62. D. DeVaul, ECONOMIC IMPACTS OF NATIONAL, STATE AND LOCAL ENERGY PRICE INCREASES 7 (1982).

63. OFFICE OF POLICY, *supra* note 61, at 22.

commercial sector prices differed by 110%; and in the industrial sector prices differed by 184%.⁶⁴ These variances produce several results.

First, in regions with high residential heating and cooling costs, escalating energy prices reduce household disposable income and cause a shift in consumer spending. As more income is spent on energy costs, less income is available for other consumer goods and services. This diminished demand drains the economy of employment opportunities.⁶⁵

Second, high heating and cooling costs also affect the commercial sector. Hospitals, schools, and government buildings located in regions with high energy costs must increase the cost of their services or accept a decrease in profits as energy bills become a larger share of their operating expenses. This conclusion has particular significance for local governments. In a survey conducted by the International City Management Association, approximately fifty percent of the responding cities stated that energy expenditures are their second highest budget line item.⁶⁶ Local governments are now confronted with raising additional revenue, cutting back on services, or implementing conservation measures in order to meet these bills.

Third, rising energy costs affect regional employment and productivity. Energy price increases cause a reduction in the output of energy dependent regions.⁶⁷ Studies have also shown that per capita income grows faster in fuel producing states than in other parts of the country.⁶⁸ As a result, employment growth has shifted from energy-poor to energy-rich regions.

Finally, transportation energy costs are consuming a greater percentage of every family's personal income. In fact, in 1979 the transportation budget for urban families rose faster than any other budget category.⁶⁹ Transportation energy costs will become a particularly difficult problem for people living in rural regions.

The overall effect of the regional variances in energy prices has been a shifting of money from energy consuming to energy producing states. The Midwest's heavy energy dependence and its large manufacturing base make it particularly sensitive to higher energy prices. In late 1981 real personal income rose across the country, but fell in the Midwest. In March of 1982, housing sales dropped twenty-eight percent and auto sales dropped nineteen percent. Sales of durable goods in late 1981 declined 5.4% in the Midwest while only .5% outside the region.⁷⁰

Higher energy costs create inequities both among regions and

64. D. DEVAUL, *supra* note 62, at 1-2.

65. *Id.* at 20.

66. INDIANA ASSOCIATION OF CITIES AND TOWNS, *supra* note 52, at 7.

67. D. DEVAUL, *supra* note 62, at 29.

68. *Id.* at 30.

69. *Id.* at 34.

70. *Id.* at 33.

among social classes. The decreases in the GNP, increases in the CPI, lost employment opportunities, and diminished disposable household income translate into real dollars and cents for the consumer. When that consumer is a low-income family, the impacts of higher energy costs can be particularly devastating. In 1980, families at the poverty level spent 32.4% of their disposable income on energy, compared to an average of 10.8% for non-poverty households.⁷¹ The impact of energy costs on low and fixed income households is overpowering considering that these expenditures generally occur over the short winter months. Low income families are least able to afford conservation measures so they have fewer ways to reduce their energy bills.

The social and economic implications of rising energy costs cannot be ignored. The economic impacts of higher energy prices are significant, cumulative, and long-lasting. Any national, state, or local energy plan should strive to diminish the negative economic and social consequences of rising energy prices. To place these broad implications in context, this paper focuses on the impact of rising energy costs on the state of Indiana.

CONSERVATION

Conservation programs are designed to reduce growth in energy demand by encouraging the efficient and economical use of energy. For Fiscal Year 1981, President Carter proposed \$1,067 billion for federal energy conservation programs. This request represented an increase of \$24 million over Fiscal Year 1980.⁷² The actual appropriations for energy conservation programs for fiscal year 81 totalled \$558 million.⁷³ That figure reflects President Reagan's March 1981 rescissions and deferrals.⁷⁴ In Fiscal Year 1982, the Reagan administration proposed a substantial curtailment in the budget for energy conservation programs. The Administration sought \$195 million for conservation programs in Fiscal Year 1982, but Congress appropriated \$143 million.⁷⁵ Adding the Fiscal Year 1982, appropriation to the \$241 million of Fiscal Year 1981 deferrals created a \$384 million fund for energy conservation programs.⁷⁶ The \$143 million in new appropriations represents a seventy-five percent cut from the \$558 million Fiscal Year 1981 figure. For Fiscal Year 1983, President Reagan has sought \$22 million for energy conservation programs.⁷⁷

71. *Id.* at 40.

72. U.S. DEP'T OF ENERGY, BUDGET IN BRIEF 1981, 5 (1980).

73. U.S. DEP'T OF ENERGY, *supra* note 44, at 5-6.

74. S. AMDUR, A SUMMARY OF PRESIDENT REAGAN'S MARCH 10 BUDGET PROPOSAL, 2 (1981).

75. U.S. DEP'T OF ENERGY, *supra* note 44 at 6. U.S. DEP'T OF ENERGY, FEDERAL ENERGY PROGRAMS FY83, BUDGET HIGHLIGHTS 18, 32 (1982).

76. *Id.*

77. *Id.*

Energy Extension Service

The National Energy Extension Service Act⁷⁸ was enacted in 1977. The Energy Extension Service (EES) program is designed to make available to small-scale energy users practical energy conservation opportunities. The program emphasized personalized services tailored to a particular target audience within a state. Thus, Congress intended to provide the targetted audience, small-scale energy users, with technical assistance and information on energy matters.

The energy conservation budget lists the EES, in the state and local grants section. In Fiscal Year 1981, \$336 million was available for state and local grants.⁷⁹ In Fiscal Year 1982, state and local grants were funded at \$232 million, of which \$178 million constituted a Fiscal Year 1981 deferral.⁸⁰ Funding for state and local energy conservation grants has decreased by thirty-one percent from Fiscal Year 1981 to Fiscal Year 1982. The Reagan administration has requested no funds for the EES program in Fiscal Year 1983.

Funding for Indiana's EES program has steadily decreased since 1980. Over a one year period Indiana received a \$591,800 grant.⁸¹ The State contributed no funds of its own for the support of the program. In the following year DOE awarded Indiana a \$395,200 grant.⁸² Again no State funds supplemented the federal funds. For the current year, Indiana accepted a \$198,200 grant from the federal government. As now mandated by law, the State must match twenty percent of the grant from the federal government.⁸³ This State match of federal funds constitutes the first time Indiana has become financially involved in the EES program.

From May 1980 to April 1982, Indiana's EES underwent approximately a thirty-three percent reduction in funding. If the period from May 1980 to April 1983 is considered, the cuts amount to approximately sixty percent. These funding reductions have had an impact on Indiana's EES. The Division of Energy Policy continues to fund all the component programs of the EES,⁸⁴ but does so at drastically reduced levels. Since the EES is primarily an outreach program, quantifying the meaning of these reduced funding levels is difficult. However, several assertions can be made. First, the Division of Energy Policy has not made a deliberate decision to discontinue any service; rather, the

78. Energy Research Act, Pub. L. No. 95-39, 91 Stat. 191 (1977).

79. All Fiscal Year 1981 budget figures reflect the rescissions and deferrals proposed by President Reagan and enacted by Congress. U.S. DEP'T OF ENERGY, *supra* note 44, at 53.

80. U.S. DEP'T OF ENERGY, *supra* note 75, at 32.

81. U.S. DEP'T OF ENERGY, NOTICE OF GRANT AWARD, (1980). This award ran from May 21, 1980 to May 21, 1981.

82. U.S. DEP'T OF ENERGY, NOTICE OF GRANT AWARD, This award ran from April 20, 1981 to April 20, 1982.

83. R. HEDDING, *Energy Extension Service* 1 (1982).

84. Indiana's EES includes four different programs: the Small Retail Business Program, the Indiana Energy Information Center, the Rural Energy Conservation Program, and the Urban Energy Conservation Program. U.S. DEP'T OF ENERGY, *supra* note 82.

outreach activities such as energy audits, educational programs, and seminars will operate on a "first come - first serve" basis, until the funds for a particular program are depleted.⁸⁵ Second, the budget cuts may lead to an emphasis on cheaper services such as seminars and pamphlets rather than energy audits.⁸⁶ Finally, to the extent that mass media outreach is used, the EES becomes less effective in decreasing energy consumption. Comprehensive site-specific conservation information, provided in a personalized matter produces the greatest energy savings.⁸⁷ The federal budget cuts are likely to have an impact on Indiana's EES.

As Indiana's EES decreases its level of services, two questions arise. First, will private industry involve itself in outreach activities and thereby reduce the impact of the federal budget cuts? To a great extent, local gas and electric companies already offer energy conservation materials, and most utility companies will offer energy audits when contacted by a consumer, although generally the utility company charges a fee for such services, and consumers may be unwilling to pay such a fee. Second, how does a lack of energy extension services affect the energy consumer? Since Indiana's EES is designed to be consumer-motivated, actual use of the program may be minimal unless the consumer is energy conservation oriented. Additionally, much of the information offered by the EES is available elsewhere.

State Energy Conservation Plan

The State Energy Conservation Plan Base and the State Energy Conservation Plan Supplemental form the State Energy Conservation Plan (SECP). The SECP program was enacted to promote energy conservation and reduce energy consumption in the public and private sectors.⁸⁸ The base program of the SECP, established by the Energy Policy and Conservation Act⁸⁹ offers federal financial assistance to states developing and implementing a comprehensive state energy conservation plan that reduces the 1980 state projected energy consumption by at least five percent.⁹⁰ The plan must include mandatory lighting standards for public buildings, mandatory thermal efficiency standards and insulation requirements for new and renovated buildings, a traffic law permitting a right turn on red, mandatory energy efficiency standards and policies for state government procurement practices, and promotional programs for car pools, van pools, and public transportation.⁹¹

85. See "CONCLUSION," *infra* p. 579.

86. GENERAL ACCOUNTING OFFICE, RESIDENTIAL ENERGY CONSERVATION OUTREACH ACTIVITIES—A NEW FEDERAL APPROACH NEEDED 12 (1981).

87. *Id.* at 5.

88. 42 U.S.C. §6321 (Supp. II 1978).

89. National Energy Conservation Policy Act. Pub. L. No. 95-619, 92 Stat. 3239 (1978).

90. 42 U.S.C. §6322(a)(1) (1976).

91. 42 U.S.C. §6322(c) (Supp. II 1978).

The SECP supplemental program was created by the Energy Conservation and Production Act⁹² and offers further financial assistance to the states for energy conservation. Each supplemental plan must include provisions for three programs. First, the plan must contain provisions to implement a public education program for increasing public awareness of the energy and cost savings from conservation and renewable resource technologies. Second, the plan must ensure the effective coordination of local, state, and federal energy conservation programs. Third, the plan must promote and provide energy audits for buildings and industrial plants within the state.⁹³

As mentioned previously, the state and local grants for energy conservation programs suffered a thirty-one percent reduction from Fiscal Year 1981 to Fiscal Year 1982. The SECP program has undergone a fifty percent reduction. In Fiscal Year 1980 and Fiscal Year 1981, the program was funded at \$47.8 million.⁹⁴ The Reagan administration sought to terminate funding for the SECP program, but Congress appropriated \$24.0 million to the program for Fiscal Year 1982.⁹⁵

Indiana receives funding for its SECP under both the SECP base⁹⁶ and supplemental programs.⁹⁷ From Fiscal Year 1981 to Fiscal Year 1982, grants awarded to Indiana under the SECP base program decreased by twenty-five percent from \$1,000,100 in Fiscal Year 1981 to \$754,800 in Fiscal Year 1982.⁹⁸ The decrease in funding under the SECP supplemental program from Fiscal Year 1981 to Fiscal Year 1982 is negligible. In Fiscal Year 1981, Indiana received \$226,400 in SECP supplemental grants monies,⁹⁹ and in Fiscal Year 1982, the State was awarded a \$211,000 grant.¹⁰⁰ No state funds supplement the federal funds.

The federal budget cuts have resulted in the following service cuts: no specific funding for the implementation, monitoring or updating of current thermal and lighting efficiency standards; second, the industrial program now operates at less than half of its former capacity, and finally, the emergency energy plan receives no funding for redrafting or reconsideration in Fiscal Year 1982.

92. Energy Conservation and Production Act, Pub. L. No. 94-385, 90 Stat. 1125 (1976).

93. 42 U.S.C. §6327(b)(1) (Supp. II 1978).

94. GENERAL ACCOUNTING OFFICE, STATE ENERGY CONSERVATION PROGRAM NEEDS REASSESSING 4 (1982).

95. *Id.*

96. Under the SECP base program, Indiana receives money for lighting and thermal efficiency standards, an energy information library, promotional materials for carpools and van pools, energy conservation models for industrial settings, and energy-conscious government procurement practices.

97. Under the SECP supplemental program, Indiana finances three programs: an energy curriculum for kindergarten through high school students; energy audits for residential, industrial, and commercial buildings; energy planning for local governments.

98. U.S. DEP'T OF ENERGY, *supra* notes 81 and 82.

99. U.S. DEP'T OF ENERGY, NOTICE OF GRANT AWARD, SUPPLEMENTAL STATE ENERGY CONSERVATION PLAN, (1980).

100. U.S. DEP'T OF ENERGY, *supra* note 82.

Interestingly, despite the budget cuts some programs have received more funding. Both the energy audit programs for residential and industrial consumers were awarded more money in the Fiscal Year 1982 grant than the Fiscal Year 1981, and new money was made available for intergovernmental programs.

These funding changes have had several results: the increase in the energy audits program has produced more audits, and since these audits are generally personalized and site-specific, energy savings are likely to occur. The decrease in funding for the industrial program has curtailed promotion of energy conservation in industrial settings. The cessation of funding for lighting and thermal efficiency standards could effectively halt enforcement of those standards. Overall, the decrease in funding has stunted program creativity. Indiana is relying on energy conservation measures which have been tried and tested rather than trying to develop new methods for energy conservation.

It is unlikely that Indiana will commit funds to the SECP while federal dollars are continuing to come to the State. Local government financial involvement is also highly unlikely because of other priorities, but local governments can adopt a variety of low-cost conservation measures like energy efficient building codes, restrictions on building temperatures, and energy conscious government procurement practices which will reduce the State's energy usage. Private industry may involve itself in the SECP by promoting certain products as energy efficient and by offering special financing for energy conservation measures. However private industry involvement will occur only if business will profit from such a venture. Probably only the consumer's interest in energy conservation measures will entice a firm to actively promote and push its product as an energy saver.

The impact of the federal budget cuts on the Indiana energy consumer is probably quite small. The majority of Indiana's SECP revolves around promotional or educational material. Since the mere receipt of such information may not lead to the employment of energy conservation devices, the consumer may not reap any energy savings from it. Presently, the effect of reduced SECP service levels on the energy consumer is minimal.

Schools and Hospital Program

The National Energy Conservation Policy Act¹⁰¹ created a fifty percent matching grant program to aid schools and hospitals in decreasing energy consumption. The Schools and Hospitals Energy Conservation Program operates in two phases. In Phase I, the Department of Energy provides money for the development of a state plan for energy conservation for schools and hospitals.¹⁰² Also during Phase I, individual

101. National Energy Conservation Policy Act, *supra* note 89.

102. 42 U.S.C. § 6371(c) (Supp. II 1978).

buildings receive detailed energy audits designed to identify maintenance and operational changes which have no significant costs and can reduce energy use by fifteen to thirty percent.¹⁰³ During Phase II, DOE offers financial assistance for the design, purchase, and installation of specific energy conservation measures that can produce an additional fifteen percent of energy savings.¹⁰⁴

Schools and hospitals submit their grant requests for energy conservation measures and technical assistance to the state, which then ranks the applications according to potential energy savings, and these ranked requests are sent to DOE regional offices for final approval. Federal funding of fifty percent must be matched with non-federal money by the institution. The Carter Administration requested \$203 million for the Schools and Hospitals program in Fiscal Year 1981, but the Reagan Administration's rescissions and deferrals reduced the appropriation to \$81.3 million.¹⁰⁵ One hundred million dollars was requested for the program in Fiscal Year 1982; approximately that amount was appropriated, and no funding has been sought for the program for Fiscal Year 1983.¹⁰⁶

The State of Indiana uses federal money awarded under the Schools and Hospital Program for administrative and management expenses. Indiana received \$107,774 under the Schools & Hospitals Program for the budget period beginning April 1979 and ending September 1981,¹⁰⁷ a continuation grant of \$98,000 for use from October 1980 to September 1981,¹⁰⁸ and a supplemental grant of \$95,443 for the budget period beginning September 1981 and ending September 1982.¹⁰⁹ For the entire budget period running from 1979 through 1982, DOE allocated \$301,217 to Indiana, which the State has matched.¹¹⁰ Thus, a total of \$602,440 has been available for administrative expenses arising from the Schools and Hospitals Program grants during the 1979-1982 budget period.

The DOE has funnelled \$4.1 million in grants for Fiscal Year 1981 and \$1.1 million in Fiscal Year 1982 to schools and hospitals in Indiana.¹¹¹ The DOE does not distribute funds through the state office. Rather, when the DOE regional office approves a school or hospital request the grant monies issue directly to that approved school or hospital from the regional office.

Schools and hospitals in St. Joseph County and South Bend have received grant monies from the state and the Department of Energy

103. 42 U.S.C. § 6371(b) (Supp. II 1978).

104. 42 U.S.C. § 6371(e) (Supp. II 1978).

105. U.S. DEP'T OF ENERGY, *supra* note 44, at 53.

106. L. PARKER, R. BOMBERGER & S. ABBAS, *THE UNFOLDING OF THE REAGAN ENERGY PROGRAM: THE FIRST YEAR* 41 (1981).

107. U.S. DEP'T OF ENERGY, *NOTICE OF GRANT AWARD*, (1980).

108. *Id.*

109. U.S. DEP'T OF ENERGY, *supra* note 107.

110. *Id.*

111. *Id.*

since 1978. For Fiscal Year 1981, local schools and hospitals received \$314,234 through the Schools and Hospitals Program. The applicants matched that money with \$314,236 of their own funds.¹¹² In Fiscal Year 1982, both the number and size of the grants dropped. St. Joseph County and South Bend schools and hospitals were awarded \$182,052 which the applicants matched with \$246,159.¹¹³

In Fiscal Year 1981, St. Joseph County and South Bend hospitals and schools received less than eight percent of the \$4.1 million available for grants. Although the grant money available for Fiscal Year 1982 had decreased to \$1.1 million, the schools and hospitals in St. Joseph County were awarded sixteen percent of the funds.

The amount of grant money available to Indiana schools and hospitals for energy conservation measures has been drastically reduced since Fiscal Year 1981. Grant applicants are now competing for fewer resources. Despite the decreasing amount of grant monies, the South Bend area is receiving greater proportionate funding under the smaller Fiscal Year 1982 levels than the Fiscal Year 1981 levels. However, the total dollar amounts that St. Joseph County schools and hospitals were awarded in Fiscal Year 1982 is less than the amounts they were awarded in Fiscal Year 1981. These smaller dollar amounts result from two factors. First, the budget cuts decreased the money available for grant awards so less money was available for distribution. Second, the economy was suffering from high interest rates and scarce money supply. Some schools and hospitals in the St. Joseph County area may not be able to afford the financing and capital necessary to meet the fifty percent matching requirement.

The Schools and Hospitals Program was originally justified on two bases. Schools and hospitals generally do not pay taxes so they are unable to avail themselves of energy conservation tax credits. In other words, they cannot "write off" their investment. Additionally, schools and hospitals rely on current operating expenses and are, therefore, unable to undertake projects extending beyond their current budget period. These facts highlight the impact decreased Federal support for the program can have. If a school cannot obtain funding for energy conservation measures, energy costs will consume a greater portion of the school's budget resulting in cuts in educational programs and potential increases in taxes. If hospitals cannot obtain partial government funding for energy conservation measures, fees will increase to finance the soaring energy costs. Increased medical costs will, in turn, impact on Indiana's health care programs, particularly Medicaid. School children, taxpayers, and medical care recipients can all be harmed by funding reductions in the Schools and Hospitals Program. These problems have not yet manifested themselves, however.

112. Sue Whitaker, Division of Energy Policy, Indiana Department of Commerce, Interview, October 25, 1982.

113. *Id.*

It is unlikely that Indiana, South Bend, or private industry will step in to aid the Schools and Hospitals Program. As long as Indiana schools and hospitals are receiving some funding under the program, the State will not supplement the federal program. Local governments, such as South Bend, cannot afford to step in because the program is so expensive. Private industry is highly unlikely to take up the federal government's share of the program, again because of its cost. Private industry may be willing to partially finance energy conservation measures if such actions can be treated as tax deductible gifts to charities. Private industry may also arrange for special financing for energy conservation measures in order to sell their product.

Even without the Schools and Hospitals Program, many institutions will react to rising energy costs. Schools and hospitals will adopt energy conservation measures motivated solely by potential energy savings. Nevertheless, the Schools and Hospitals Program might induce an institution to adopt the measure at an earlier time, thereby saving more energy. Additionally, if the measure is financed solely by institution funds, hospital rates, and perhaps taxes may increase at a greater rate than if the measure is financed by the institution and the government. Decreased funding for the Schools and Hospitals Program can wreak havoc with budgets and operations of schools and hospitals.

RESOURCE DEVELOPMENT

Oil Shale

Indiana's resource development branch of the Division of Energy Policy coordinates oil shale, one of Indiana's richest energy resources.¹¹⁴ This division fosters efficient energy use and incentives for private industry to develop Indiana's indigenous energy resources. Though Indiana did not receive any comprehensive federal funding for oil shale development, state funds were combined with a federal grant to finance a study which will determine the extent and location of economically recoverable oil shale.¹¹⁵ This effort sparked some private interest, but the Administration's decision to cut federal support for oil shale projects places development in a high risk category and deters private initiatives.

The Reagan Administration has chosen to encourage oil shale development by decontrolling conventional fuel prices, revitalizing the economy, and removing regulatory uncertainties.¹¹⁶ In July 1981, the Administration stated that it would reduce funding for oil shale projects because private corporate planning activities had intensified;¹¹⁷ however, Exxon's abandonment of an unfinished Colorado synfuels

114. LARASON, *supra* note 45, at 12.

115. IRWIN, OIL SHALE PROSPECT OF THE NEW ALBANY SHALE (1982).

116. *Supra*, note 5.

117. *Supra*, note 5.

project in April 1982 illustrates the tenuous nature of private investment in oil shale development.

Oil shale could make a significant contribution to Indiana's energy supply; some estimates state that Indiana's oil shale reserves, used in conjunction with other energy resources, could last for several hundred years.¹¹⁸ Without Federal support, however, Indiana's troubled economy may not be able to muster the requisite capital for several years. Given the likelihood of increasing energy costs, which to Indiana means increasing state revenue losses, Indiana cannot afford to wait.

South Bend Ethanol Plant

In 1980, Congress enacted the Biomass Energy and Alcohol Fuels Act.¹¹⁹ Under this Act, a project can receive financial assistance in the forms of insured loans, loan guarantees, and price guarantees.¹²⁰ Congress conditioned financial assistance on showing that the project could not obtain credit elsewhere without the assistance offered by the Act. In fiscal year 80, the Departments of Energy and Agriculture received \$745 million and \$525 million, respectively, to provide financial assistance to alcohol fuels projects.¹²¹ This appropriation was made on a multi-year basis so no additional funds were granted in Fiscal Year 1981.

When President Reagan took office in 1981, funding for alcohol fuels projects changed dramatically. The Administration viewed alcohol fuels as a technologically proven energy resource no longer needing government subsidies. Direct federal spending on alcohol fuels will decrease through 1986 because the Administration contends that market forces and private investment initiatives will spur the development of renewable resources such as alcohol fuels.¹²²

In Fiscal Year 1982, President Reagan sought to terminate the Alcohol Fuels and Biomass program, and in addition, to rescind the unobligated balances of the Fiscal Year 1981 appropriated funds. Under this proposal, the Department of Energy would have lost \$741 million and the Department of Agriculture \$505 million.¹²³ The Fiscal Year 1981 funds were not rescinded, but Congress appropriated no additional money to the program for Fiscal Year 1982, and the Fiscal Year 1983 budget requests \$3 million for an orderly phase-out of alcohol fuels research and development activities.¹²⁴

Although funding for the alcohol fuels program has been curtailed, the program does receive certain other federal subsidies. The sale of

118. LARASON, *supra* note 45.

119. Pub. L. No. 96-294, 94 Stat. 683 (1980).

120. 42 U.S.C.A. §§8813-8815 (Supp. II 1978).

121. OFFICE OF MANAGEMENT AND BUDGET, ADDITIONAL DETAILS ON BUDGET SAVINGS FY82 BUDGET REVIEWS 109.

122. U.S. DEP'T OF ENERGY, *supra* note 43, at 9.

123. OFFICE OF MANAGEMENT AND BUDGET, *supra* note 121, at 109.

124. *Id.*

gasoline containing at least ten percent ethanol is exempt from the four cents per gallon federal excise tax on motor fuels.¹²⁵ This exemption expires in October 1992.¹²⁶ Additionally, Section 44(E) of the Internal Revenue Code provides a forty cents per gallon alternative income tax credit for alcohol used as fuel.¹²⁷ The Internal Revenue Code, Section 46, also provides a ten percent investment credit for property or biomass property.¹²⁸ In January 1982, President Reagan proposed repeals of both these credits and the exemptions. Elimination of the exemptions and credits for alcohol fuels would yield \$431 million to the Treasury in Fiscal Year 1982.¹²⁹ Reagan's proposals would leave alcohol fuels programs with only minimal government support.¹³⁰ Congress has yet to act on these proposed repeals.

The financing of the construction and initial operation of the South Bend ethanol plant is a unique mixture of federal, local, and private money. The project cost totals approximately \$191 million of which \$180 million constitutes plant development and \$11 million public costs. A loan guarantee, an Urban Development Action Grant (UDAG), and limited and general partners' capital contributions have been combined to finance the \$180 million in plant development costs.

New Energy Corporation of Indiana, the original developer of the plant, first acquired a \$1,769,000 grant from DOE.¹³¹ The grant was used for site studies, pre-construction planning, and regulatory compliance, and must be repaid once the plant has started commercial operation. To finance the actual construction of the plant, New Energy Company of Indiana, the limited partnership operating the plant, obtained a \$140,914,000 loan.¹³² The United States government through the Department of Energy has guaranteed repayment of ninety percent of the principal and interest of the loan.

The City of South Bend was awarded an Urban Development Action Grant by the Department of Housing and Urban Development, totaling \$9.9 million, of which \$4.9 million constitutes a loan payable to the government by New Energy Company of Indiana. The city will advance approximately \$2.6 million to New Energy Company for plant site preparation work,¹³³ and will use another \$2.3 million to relocate utility transmission lines on the plant site, extend city sewer, storm sewer, and water lines to the plant, and construct an access road to the plant from the nearest state highway. The remaining \$5 million will be awarded to the South Bend Development Corporation (SBDC), an In-

125. I.R.C. §4081(c) (1976).

126. I.R.C. §4081(c)(4) (1976).

127. I.R.C. §44E (1976).

128. I.R.C. §46(a)(2)(c).

129. OFFICE OF MANAGEMENT AND BUDGET, *supra* note 121, at 110.

130. *Id.*

131. FIRST BOSTON CORPORATION & E.F. HUTTON & COMPANY, PROSPECTUS FOR NEW ENERGY COMPANY OF INDIANA 25 (1982).

132. *Id.* at 23.

133. *Id.* at 25.

diana non-profit local development corporation, which will buy a \$5 million special limited partnership interest in the New Energy Company.¹³⁴

Capital contributions from the general and limited partners of New Energy Company will finance the plant's remaining construction costs. New Energy Corporation, as general partner of New Energy Company of Indiana, contributed \$3 million in equity capital. The bank loan and the loan guarantee were conditioned on New Energy Company raising an additional \$37 million of equity.¹³⁵ The company, offered for public sale \$37 million in limited partnership interests in \$5,000 increments. E.F. Hutton & Company and First Boston Corporation agreed to subscribe for \$32 million of limited partnership interests,¹³⁶ which added to the \$3 million general partnership contribution and the \$5 million SBDC special limited partnership interest, constitute the \$40 million in equity capital required by the banks and DOE.

Through various mixes of private and public funding, the partnership has raised \$185,636,000 for the construction and operation of plant, but throughout the early stages of planning the various funding arrangements existed very tenuously. The banks conditioned their loan on the execution of a loan guarantee agreement by the U.S. Government, and on the existence of \$40 million in equity capital. The loan guarantee also depended on the partnership's raising \$40 million in equity capital, and accumulating that hinged on the \$5 million special limited partnership interest being purchased by SBDC. This special limited partnership interest in turn, depended on the \$10 million UDAG being awarded to South Bend. Additionally, the \$2.6 million advanced to the partnership for site preparation work by South Bend depended on the UDAG. These various conditions suggest that funding such an enterprise through private and public investment is a risky business, and further suggests that the South Bend ethanol plant would never have materialized without active government support. Private industry is unwilling to finance alcohol fuels technologies without some federal government guarantees.

CONCLUSION

When President Reagan took office, he sought to reduce the size of government and to minimize the Federal government's influence in the private sector by exercising tighter fiscal policies and eliminating inefficient programs and programs which the private sector can adequately manage. No reasonable individual could disagree with these goals. But, somewhere between conceptualization and actualization, these laudable objectives dispersed into a milieu of contradictory initiatives

134. Second Supplement to Prospectus Dated April 28, 1982, August 25, 1982, at 1.

135. FIRST BOSTON, *supra* note 131, at 4.

136. Second Supplement to Prospectus, *supra* note 136, at 1.

and results. Federal energy policy and programs, areas where President Reagan specifically sought to illustrate the benefits of minimizing federal support, demonstrate the misfortunes which result from the improper application of reasonable principles.

An examination of the federal energy budget indicates that the Administration has not consistently applied its objectives. Between Fiscal Year 1981 and Fiscal Year 1983, funding for all federal energy programs except nuclear power has been drastically reduced, solar by ninety percent and conservation by ninety-seven percent. These budget cuts dismiss the proven benefits and cost-effectiveness of many of these programs and ignore the likelihood that neither state governments nor private ventures have the resources to maintain such programs.

The Administration decided to reduce conservation and renewable resource programs because it believed that free market forces would better foster these energy alternatives. Ironically, the Administration's free market orientation disregards the signals of the market place, increasing funding for the fading nuclear industry while slashing support for high growth renewable resource technologies.¹³⁷ Energy supplies the lifeblood of our economy and fulfills essential human needs. While the market place may best solve immediate energy problems, supplying energy for the future requires consistent and comprehensive planning. Higher energy prices have spurred consumers to conserve and arguably supplant the need for federally-funded conservation programs. However, the market place does not provide the optimum forum for deciding long-term energy questions.

Currently, the United States and world economies heavily depend on fossil fuels, a finite and environmentally hazardous resource. The transition to clean, renewable resources is inevitable; the crucial issue is whether private industry or the federal government provides the most efficient vehicle for fostering this transition.

Private industry decisions focus on gaining short-term payoffs and are dictated by the profit motive. This orientation minimizes corporate incentives to invest in long-term projects which do not guarantee a commensurate payoff. In contrast, the federal government is the only structure which has the capacity to properly address essential national needs. State and local governments lack the authority and financial resources to solve energy problems from a national perspective. The federal government not only has the responsibility to confront fundamental concerns such as energy, it has the duty to do so. By ignoring this duty, the likelihood of a tumultuous transition causing unnecessary human suffering and economic havoc dramatically increases.

The Administration views energy development as part of its Economic Recovery Program:

When fully implemented, the Economic Recovery Program will release

137. Flavin, *U.S. Losing Sunshine Race*, Chicago Trib., Jan. 1, 1983, at 9.

the strength of the private sector and insure a vigorous economic climate in which the Nation's problems, including energy problems, will be solved primarily by the American people themselves . . .¹³⁸

By making this correlation, the Administration acknowledges the significant relationship between energy and economic recovery. But, an economic recovery program which fails to support growth industries during critical formative periods will hinder rather than release the strength of the private sector.

State and local governments play a vital role in stimulating economic recovery; however, their impact on energy development remains largely dependent on federal initiatives. Fiscal pressures force state and local governments to prioritize the allocation of available revenues. Housing, mass transit, roads, and Medicaid are traditional responsibilities for state and local governments. Given these responsibilities, energy programs will probably not receive state and local support unless these other programs are secure.

Despite the millions of dollars eliminated from the federal energy budget during the Fiscal Year 1981 to Fiscal Year 1982 period, Indiana's Division of Energy Policy will be able to offer nearly the same level of services and programs until the autumn of 1983. At that time, the Division of Energy Policy will be forced to scale back their operations. The Division has proposed the following adjustments if federal funds are not reinstated. First, the Division's staff will be reduced from twenty-two to fifteen. Second, the Auditing Program of the SECP will be eliminated. Third, the Energy Efficient Transportation Program of the SECP will be transferred to the Indiana Department of Transportation. Fourth, the Government Procurements Program of the SECP will be moved to the Department of Administration. Fifth, the Schools and Hospitals Program will not continue. And sixth, the EES and the SECP will continue on rollover funds.

During the past ten years, the United States has experienced great fluctuations in federal attitudes toward energy policy. Amid these fluctuations, waste and inefficiency occurred. Presidents Nixon, Ford, and Carter may have overreacted to the oil embargoes of the 1970's by funding programs which did not prove cost-effective. But, their efforts did raise the nation's consciousness concerning the importance of confronting energy issues, a volatile feature of our economy. Their initiatives stirred significant scientific research and centralized creative energy efforts. When President Reagan took office, he labelled DOE as an illustration of unnecessary government intervention. He attempted to dismantle DOE and succeeded in scaling down many significant programs. This process resulted in reorganizational costs and reversed prior government efforts to address energy issues.

Attitudes and strategies concerning energy issues continue to be de-

138. *Supra* note 49, at 2.

bated and important problems remain. One clear lesson emerges from the last ten years of energy policy efforts: government per se is not the problem; problems result when governments act irresponsibly, inefficiently, and negligently. Unfortunately, the Reagan Administration's efforts have created significant long-term energy uncertainties that cannot be resolved by fragmented efforts by the federal government, state and local governments and the private sector.

*Michael O. Kenney**

*Ann E. Burford***

* B.A., University of Notre Dame, 1980; J.D. Candidate, Notre Dame Law School, 1983.

** B.A., Illinois College, 1980; J.D. Candidate, Notre Dame Law School, 1983.