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Book Review: Willrich: Administration Of Energy Shortages: Natural Gas And Petroleum

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BOOK REVIEW

ADMINISTRATION OF ENERGY SHORTAGES: NATURAL GAS AND
PETROLEUM by MASON WILLRICH

Ballinger Publishing Company, 1976, Pp. xvii, 289. \$16.50

Based upon his study under a commission from the Administrative Conference of the United States, Mason Willrich has written a scholarly and detailed evaluation of two disparate programs of the federal government which respond to resource "shortage." Petroleum and natural gas, which account for two-thirds of the energy consumed in the United States, are subject to different regulatory systems. The author attempts to define "shortage" generically with respect to both systems as a "situation of diminishing energy supply or increasing demand in which government action is deemed necessary in order to direct or control the distribution of available supplies by non-price methods."

But the stated definition breaks down in the distinction the author draws between the shortage of natural gas and the supply vulnerability of petroleum. In the final chapter, the natural gas "shortage" is singled out for the specific recommendation that Congress enact legislation to broaden federal authority to administer the natural gas shortage on a nationwide basis, and specifically to grant additional authority to the Federal Power Commission to allocate intrastate natural gas now exempt from regulation.

The petroleum "supply vulnerability" is seen only as a potential petroleum shortage, and Willrich believes it can be dealt with by the Federal Energy Administration's present authority.

The study was confined to non-price aspects of shortage administration, which means it deals mainly with curtailment practices of the Federal Power Commission, and not its rate- and price-fixing responsibilities. The Federal Energy Administration has only allocative activities, so all its functioning areas are included. With respect to the excluded area, Willrich observes that the price mechanism is a better allocator of energy supplies in the long run than government programs, but he does not put his eggs in that policy basket. He says that any government action consciously directed to the energy shortage problem will cause less damage than doing nothing.

The non-price constraint in the study is awkward. Beyond that, additional discussion of the possibilities of integrating the federal government's "shortage administration" activities involving petroleum and natural gas would be welcome. However, the narrower focus which was adopted lays a good foundation for comparing and contrasting the activities and methods of the Federal Power Commission and the Federal Energy Administration. There is much material for students of administrative law and of public administration: Independent regulatory agency versus single administrator agency; the adjudicative traditions of utility regulation versus the less formal legislative-type hearings of an allocating agency; and the merits and demerits of the procedural protections of the Administrative Procedure Act.

The book is also a useful handbook for practitioners whose interests are concentrated in one or the other of the administrative systems. Chapters two through four treat natural gas, including the structure of the industry, the jurisdiction and procedures for natural gas curtailment, and its administrative development and implementation. Chapters five through seven cover the same general topics for the petroleum industry. There are introductory and concluding chapters which concern energy shortages generally, constitutional authority, issues and options, and conclusions and recommendations.

This reviewer's bias is based upon familiarity with the workings of the Federal Power Commission. That agency's system of procedural safeguards seems superior to that available under the administrative structure of the Federal Energy Administration. The latter agency seems to have been largely unconstrained by either substantive or procedural standards in its enabling statutes. Furthermore, the beginning of the system was founded upon incomplete contingency planning; the promulgation of its rules and regulations was dominated by the office of the General Counsel; and an *ad hoc* and anonymous group of "reg writers" (regulation drafters) played a significant policy-shaping role. The drafting of the statute was based upon the premise that only a short-term emergency had to be dealt with. Judicial review was inconsistently assigned to a Temporary Emergency Court of Appeals and to district courts.

The workings of the Federal Power Commission are perhaps not a model to be emulated, and certainly a statute almost 40

years old is an imperfect instrument for the task assigned. But fairness is one of those measures of administrative action—the others are practicality and consistency with other policies—which can be applied impartially. These standards don't dictate final answers, but legislators and government policymakers should be reminded of them from time to time.

The chapters dealing with energy shortage generally and generically make important contributions. Of particular interest is the discussion of the administrative options among government action to direct or control the distribution of energy supplies by utilization of existing contractual arrangements, pro rata reductions, end-use priorities, and negotiated settlements.

The volume is easily read, and a considerable contribution to thinking on an important subject.

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