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## Energy Policy in America Since 1945: A Study of Business-Government Relations

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## BOOK REVIEW

### **Energy Policy in America Since 1945: A Study of Business-Government Relations**

By Richard H. K. Vietor. Cambridge University Press, 1984. Pp. 354 \$29.95 (hardcover).

Although neither a law book nor a book on other aspects of environmental concerns, anyone interested in the field of environmental law should be familiar with the material presented so lucidly by Professor Vietor<sup>1</sup> in *Energy Policy*. His book deftly examines the pulls and tugs of governmental policies on supply, demand and pricing of coal, petroleum and natural gas since World War II. Environmental issues surface from time to time during all of the periods covered, but it was the repercussions from the 1969 oil spill in the Santa Barbara Channel which created the environmental laws and regulations during the 1970's. Environmental concerns then became a strong influence on national energy policy:

Environmental regulations altered the supply and demand relationships among fuels by changing relative costs, and thus prices, between them. On the demand side, air pollution controls sharply curtailed coal use on the east coast, resulting in increased demand for low-sulfur residual oil and natural gas. The anti-nuclear movement, which effectively forestalled the only alternative to fossil-fueled, electric power generation, further focused demand on oil and natural gas.

On the supply side, policies to prevent water and land degradation helped delay mineral leasing and the construction of powerplants. By increasing the costs and

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risks of large-scale power projects at a time when oil and gas prices were controlled, those policies depressed new supply and intensified reliance on proved reserves of easily accessible oil and natural gas. This accelerated the draw-down of inventories and increased dependence on OPEC through 1979. Ironically, the higher costs of environmental protection probably helped the price mechanism to enforce conservation and eventually restore equilibrium to energy markets.<sup>2</sup>

With the current fuel surplus, the environmental battles may have temporarily cooled. But as U.S. oil and natural gas production continues to decline with no prospects in view for meaningful supplements from non-fossil fuels, the need for increased fossil fuel development will once again challenge environmental concerns. An understanding of where we have been in fossil fuel regulation for the past twenty-five years, and why we have been there, will be indispensable to understanding how our legal and political systems are likely to treat these issues in the future.

Economist Joseph Kalt is cited as concluding that ideology was the single most important factor in congressional policy on oil price controls throughout the 1970's.<sup>3</sup> While ideology may not have been the "single most important" factor in the development of other energy policies, it was largely responsible for the disjointed and at times hysterical treatment of energy issues in the past. It also spills over into much of what has been written of developments during this period.<sup>4</sup> This closely reasoned, dispassionate and factually persuasive analysis is a particularly useful contribution in an area in which such approaches have played a minor role in issue resolution.

It has been said that for every complex problem there is

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2. Richard H.K. Vietor, *Energy Policy in America Since 1945* at 234 (1984).

3. *Id.* at 248 n.27.

4. See, e.g., John Blair, *The Control of Oil* ix (1976), written by a co-author of the FTC's "Staff Report on the International Problem Cartel," and later Chief Economist of the Senate Subcommittee on Antitrust and Monopoly. One need not read beyond the preface to discover his ideology: "In domestic oil monopoly power does not stem from . . . but rather from. . ."

always a simple solution and that such a solution is always incorrect. The U.S. government has not adopted a simplistic approach to energy issues. Indeed, it has come up with no solution, either simple or complex, for the management of fossil fuels. Ad hoc approaches are made to those bits and pieces of energy policy which, for political, ideological or economic reasons, surface as current issues. In the absence of an institutional framework to adequately address these concerns within a coherent national energy program, the issues are addressed as short-term problems, resolved through compromises between contending factions in the ideological, economic and political spheres. The issues are frequently presented in an adversary context: consumers vs. producers; northeastern vs. southwestern states; coal vs. oil; interstate vs. intrastate gas; majors vs. independents; domestic vs. imported; big vs. small; integrated vs. divested; and especially, government controls vs. free market. By attracting the attention of the popular media, these conflicts become grist for its mill, are further simplified and then pass into the great muddle of conventional wisdom, which all too often provides the basis for energy policy discussions.

To successfully challenge conventional, ideologically-tainted wisdom, facts must be marshalled in sometimes excruciating detail. This book has over one thousand footnotes, mostly devoted to factual support for the text. In view of the predominance of energy misinformation, this detail is essential to establish the credibility of the analysis.

After a general introduction (which, with the last two chapters, provides an excellent summary of the subject), the book is divided into three chronological periods, within which oil, natural gas and synthetic fuels from coal are separately discussed. From 1945 to 1958, the development spans the early postwar period (when embryonic synfuel programs were aborted because of a petroleum glut). It continues through the evolution of natural gas as a major fuel source, the beginning of its replacement of coal and oil and its price control, the invasion of foreign crude and residual oils into U.S. markets, and ends with the mandatory oil import quotas of 1959. The next part, 1959 to 1968, discusses the management of the sur-

plus of fossil fuels then available to the U.S. market. Exemptions and exceptions developed in the oil import program, natural gas price controls evolved to greater complexity and the coal industry declined further. Finally, the period from 1969 to 1980 traces the shift from abundance to shortage. Petroleum prices were controlled for most of that time. Natural gas price controls evolved into the Natural Gas Policy Act of 1978,<sup>5</sup> a complicated sixty-page tome establishing nine categories, each with several sub-categories, for the pricing of a single fungible commodity.

After being guided through this U.S. energy labyrinth, there is no basis to conclude that an expansion of traditional regulatory concepts into energy matters will lead to the appropriate framework within which to resolve energy issues. Past regulatory efforts have been dismal failures.

For example, interstate natural gas has been regulated since the passage of the Natural Gas Act in 1938.<sup>6</sup> Regulations were administered by a traditionally organized federal regulatory agency within a more or less traditional regulatory framework, both procedurally and substantively. Nevertheless, Congress regarded the regulatory evolution of natural gas pricing as such a failure that it spent months in 1978 detailing statutory price levels for natural gas. A legal analysis of the Natural Gas Act, the cases interpreting it and the decisions of the Federal Power Commission (FPC) will not explain the failure of this traditional method of dispute resolution. Natural gas pricing has been driven by politics, ideology and market forces, and not (as one might be led to believe by reviewing administrative decisions and case law) by determining the actual cost of producing natural gas.<sup>7</sup> Although the FPC's methodology of pricing natural gas was held legally supportable, price is also influenced by the overall picture of energy supply, demand, intrafuel competition, investment capital decisions, environmental issues and worldwide energy markets, over

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5. 15 U.S.C.A. §§ 3301-3432 (West 1982 & Supp. 1986).

6. 15 U.S.C.A. §§ 717-717z (West 1976 & Supp. 1986).

7. The chapters on natural gas (chapters 4, 7, 11 and 12) provide an especially useful analysis.

which the FPC had no jurisdiction nor control.

At present, there is a surplus of petroleum and natural gas. Crude oil prices have fallen to a level unthinkable a few years ago. The synfuel industry is moribund—again. Domestic production is in trouble. There is talk of national security interest, quotas and tariffs. This book is a useful history of how these issues were treated in the past and why they remain unresolved.<sup>8</sup> Its best use would be for the leaders of government and the energy industries to reflect upon what this analysis presents with respect to the turbulent way in which U.S. energy policy has developed. They would do well to consider taking steps now, at a time of temporary surplus, to develop institutional mechanisms to treat energy issues calmly and rationally. As the author says in the closing sentence: "If the utility of markets were more widely recognized, and their limitations more readily admitted, then the interaction of business and government in America would surely contribute more to the national good in the future than it has in the turbulent, postwar past."<sup>9</sup>

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8. For example, a cabinet task force (chaired by the then Secretary of Labor George Schultz) was created in 1969 to examine import controls and their impact on national security. Vietor, *supra* note 2, at 142-44.

9. *Id.* at 354.

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