Report on

**Establishment and Operation
of the Federal Energy
Regulatory Commission's
Daycare Center**

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This report can be obtained from the
U.S. Department of Energy
Office of Scientific and Technical Information
P. O. Box 62
Oak Ridge, Tennessee 37831

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

DOE/IG--0300
TI92 002209

CHAIRMAN

October 11, 1991

Mr. John C. Layton
Inspector General
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Report on the "Establishment and Operation
of FERC's Day Care Center"

Dear Mr. Layton:

This letter serves to acknowledge receipt of the above-referenced report. As we have indicated earlier, the IG staff is to be commended for the report's generally thorough analysis and for its overall willingness to consider and reflect the Commission's comments on the earlier drafts. Also, we find your recommendations to be fair and sensible and have already begun to implement them.

For example, in line with your first recommendation, the management contract between the FERC Day Care Center, Inc. and the Child Care Group, Inc. has been amended to reflect the Center's correct legal name and to clarify that the contract is solely between the Board of Directors and the child-care provider.

As you know, we are still concerned by certain statements in the report. However, we appreciate that our position on those issues is presented at the appropriate pages in the report.

As always, we appreciate your cooperation in this and all other matters.

Yours truly,

Martin L. Allday

cc: Michael W. Conley
Assistant Inspector General for Inspection

MASTER

Department of Energy
Washington, DC 20585

September 16, 1991

Chairman, Martin L. Allday
Federal Energy Regulatory
Commission
825 North Capitol St., N.E.
Room 9000
Washington, D.C. 20426

Dear Mr. Chairman:

BACKGROUND:

The report on the "Establishment and Operation of the Federal Energy Regulatory Commission's Daycare Center" is provided to inform you of our findings and recommendations and to give you an opportunity to comment. The purpose of this inspection was to review for efficiency, economy and compliance with laws and regulation, the Federal Energy Regulatory Commission's establishment and operation of its Daycare Center.

DISCUSSION:

We found that Federal Energy Regulatory Commission officials generally followed Federal laws and regulations, GAO decisions, District of Columbia and GSA requirements in establishing its Daycare Center. However, some of the appropriated funds the Commission provided to the Center may have been spent in an inappropriate manner; and the contract to manage the Center may have to be revised to address concerns regarding Government liability.

We also found that the Center was constructed in a short time-frame and the results of a survey conducted to determine the level of interest in the Center may not have been available or fully considered before action was taken to construct the Center. At the time of our review, we found that the Center had not been receiving enough revenue to cover its operating expenses, even though the Commission was providing space and related services at no charge to the Center.

The report includes six recommendations that address the issues identified in our review. Management concurred with our recommendations and are in the process of implementing the recommendations. Management's comments are summarized in the report.

Martin L. Allday
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We appreciate the cooperation of your staff during the inspection.

Sincerely,

John C. Layton
Inspector General

Enclosure

U. S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL

REPORT ON THE
ESTABLISHMENT AND OPERATION OF THE
FEDERAL ENERGY REGULATORY COMMISSION'S
DAYCARE CENTER

Report No.: DOE/IG-0300
Date Issued: September 16, 1991

Office of Inspections
Washington, D.C. 20585

REPORT ON THE
ESTABLISHMENT AND OPERATON OF THE
FEDERAL ENERGY REGULATORY COMMISSION'S
DAYCARE CENTER

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Report on the
Establishment and Operation of the
Federal Energy Regulatory Commission's
Daycare Center

PURPOSE, SCOPE AND OBJECTIVES

We have completed an inspection of the Federal Energy Regulatory Commission's (FERC) Daycare Center (Center). The purpose of the inspection was to review for efficiency, economy and compliance with laws and regulations, FERC's establishment and operation of the Center. The inspection objectives were to review:

- (1) FERC's compliance with Federal laws and requirements of the General Services Administration and the District of Columbia;
- (2) the source and amount of funds for establishing and operating the Center; and
- (3) the organizational relationships between FERC, the Center and the contractor operating the Center.

BACKGROUND

In 1976, the General Accounting Office (GAO) determined that when necessary to the execution of agency functions, an agency can donate space rent-free and pay any expenses associated with establishing a daycare center, including space design, renovation, supplies and equipment. GAO also stated that "assuming factual determination can be made, no legal impediment exists to the use of appropriated funds for this purpose" (B-39772-O.M., July 30, 1976). This determination was based, in part, on a 1971 GAO decision that Federal agencies may spend appropriated funds allocated to them for any and all expenses "necessary" or incident to carrying out the stated purposes of their appropriations. (50 Comp Gen 534) (1971)

Consistent with GAO decisions, on December 19, 1985, Congress passed Public Law 99-190. This law included an amendment, commonly known as the "Tribble Amendment", that allows Federal agencies to establish child care centers (40 U.S.C. 490b as amended by Public Law No.99-190, Section 139, 99 Stat. 1323). According to this statute, space can be provided to a child care center if:

- 1) "such space is available;
- 2) such officer or agency determines that such space will be used to provide child care services to a group of individuals of whom at least 50 percent are Federal employees; and
- 3) such officer or agency determines that such individual or entity will give priority for available child care services in such space to Federal employees."

The Tribble Amendment also allows child care centers to be provided space and services without charge. Services, in this statute, are defined as including the providing of light, heat, cooling, electricity, office furniture, office machines and equipment, telephone service, and security systems.

RESULTS OF INSPECTION

Summary of Findings

We found that FERC officials generally followed Federal laws and regulations, GAO decisions, District of Columbia (D.C.) and General Services Administration (GSA) requirements in establishing its Center. However, the officials had the Center constructed in a short time-frame and the results of a survey conducted to determine the level of interest in the Center may not have been available or fully considered before action was taken to construct the Center. At the time of our review, we found that the Center had not been receiving enough revenue to cover its operating expenses, even though FERC was providing space and related services at no charge to the Center.

Also, some of the appropriated funds FERC provided to the Center may have been spent in an inappropriate manner; and the FERC Executive Director may have exceeded his authority in making decisions regarding the management contractor for the Center.

Finally, a FERC official sent a letter to FERC regulated companies returning contributions they had already made because of the concern that these contributions raised possible conflict of interest problems. This letter and its enclosures describe how these companies could anonymously contribute to the FERC Daycare Center through the Combined Federal Campaign. We believe this letter may give the appearance of being a solicitation of indirect contributions from FERC regulated companies.

A detailed discussion of the results of our review follows.

Center Planning

On November 24, 1987, the then Chairman Martha O. Hesse sent a letter to Congressman John Dingell indicating that FERC supported government-sponsored child care facilities and was contacting the GSA about developing a facility.

We were told by a past FERC Executive Director, Mr. Vince Mason, that on June 30, 1988 the then FERC Chairman, Martha O. Hesse told him that she wanted him to work on getting a daycare center for FERC. Mr. Mason told us that on July 1, 1988 he met with his staff to start planning the daycare center. He also stated that his staff decided on the 941 Building as the location for the Center and in October 1988 an interim steering committee for the Center was established. This committee was made up of 14 members, with Mr. George Pratt volunteering to serve as Chairman. In January 1989, then Chairman Hesse hired Mr. Kenneth Plumb to replace Mr. Mason as FERC's Executive Director. Mr. Mason was reassigned. Chairman Hesse assigned Mr. Plumb the task of establishing a daycare center at FERC. In March 1989 the committee was expanded to 17 members that were divided into five subcommittees--finance, contractor, operation charter, facilities, and furnishings.

An April 14, 1989 progress report on the Center showed a scheduled opening date for the Center of May 1, 1990. Mr. Kenneth F. Plumb, past FERC Executive Director, stated in an interview with us that when Martha O. Hesse, past Chairman of FERC, was informed of this scheduled opening date she stated that she wanted the Center completed by December 15, 1989. He stated that when Ms. Hesse was informed that completing the Center by December "would" be more costly, she stated that "what mattered is that the December date was met."

One of the first steps taken by the planning committee was to have a survey conducted to determine the level of interest in a FERC daycare center.

On May 4, 1989 a consulting group was hired for \$6720 to, among other things, conduct a survey to determine the interest of FERC and other agencies' employees in using a daycare center at FERC. FERC officials provided us with a summary of the survey results. It appears, due to the timing of the survey and plans for construction of the Center, that the survey results may not have been available or provided in time to be fully considered by FERC officials before they took action to establish a daycare center.

For instance, in an April 28, 1989 memorandum from Mr. George Pratt (who became the Executive Director in February 1990), Chairman of the Center Planning Committee, to Kenneth Plumb, Executive Director, Mr. Pratt wrote that he and another FERC employee would meet with GSA to discuss their approach to expediting the planning and building of the Center. This memorandum was dated prior to FERC contracting with the consulting group to conduct the survey and thus prior to receiving results of the survey.

In a May 5, 1989 memorandum, Mr. Pratt wrote that the consulting company doing the survey had sent him a draft questionnaire which he edited with them on the phone. He stated that he expected to distribute the survey on May 10, 1989 with a return of no later than May 19, 1989. There was no mention in the memorandum how the results would be used. In a June 9, 1989 memorandum to Mr. Plumb from Mr. Pratt, Mr. Pratt wrote that the consultant had sent an analysis of the survey returns. On June 19, 1989 the then Executive Director, Kenneth Plumb wrote to Mr. Pratt stating that the Office of Administrative Services was preparing the final contract documents for the construction of the Center.

Survey Results

The survey summary showed that the consultant surveyed 1469 FERC employees and 8,000 employees at agencies other than FERC. Of the 9469 surveys sent out, only 102 or about 1 percent of the total surveys distributed were returned. Ninety of the 102 respondents were FERC employees.

According to the summary, FERC officials considered that 78 of the respondents were candidates to use a child care center at FERC (This figure included nine expectant parents at the time). Fifty-five of the respondents indicated that they would use an infant center.

The summary also showed that 68 respondents missed at least 1 to 6 or more full days due to "ill" children at an estimated annual cost to FERC of \$67,271. We question the use of this cost in evaluating the need for the Center, since according to the Center management it is their policy that sick children should not be brought into the Center.

The summary further showed that 65 respondents stated that they would give strong consideration to leaving their position if an on-site center was provided by another government agency with all other benefits being equal. FERC officials estimated that it cost \$5000 to replace an employee. We did not find that FERC officials indicated how many of the 65 employees they felt would

have left if a daycare center had not been established. However, we believe that it would be unreasonable to assume that all 65 employees would have had an opportunity for a position at an outside organization.

FERC officials estimated that the annual cost for time missed by their employees as a result of child care problems, other than illness, is approximately \$40,560. The survey summary stated that the estimate was based on an assumption that \$21 was the average hourly salary for employees.

We asked Mr. George Pratt, Executive Director, about the timing of the survey results and how these results were considered in the decision to establish a daycare center. He stated that although the survey was performed concurrent with actions to establish the Center, progress on and the trend of the survey results were monitored continuously. He also stated that an earlier survey had been performed by FERC officials in the summer of 1988. This survey he stated showed considerable support for a daycare center. However, he also stated that he has given up on trying to locate the results of the 1988 survey. He went on to say that the survey performed by the consultant in 1989, corroborated the results of the 1988 survey and provided "validity and reliability" lacking in the 1988 survey.

It appears certain from Mr. Pratt's comments that the 1989 survey results were not available to be fully considered before action to establish a Center took place. Also, we believe, the survey results did not convincingly show evidence of interest in a daycare center at a level which would make such a center financially self-sustaining. Further, the survey summary did not provide any conclusions as to the possible success or failure of a center.

Incorporation

Another key step taken by the planning committee was to incorporate the Center. On May 29, 1989 the government of the District of Columbia issued a Certificate of Incorporation to the Center. The incorporators listed on the Center's Articles of Incorporation included George L. B. Pratt and two other persons. Also listed were the names and addresses of the 16 other directors constituting the initial board of directors, including George Pratt. During this same time-frame, the planning committee was making arrangements for construction of the Center, which required GSA approval.

GSA Approval

Because the buildings that house FERC operations are leased by GSA, FERC needed GSA's approval to construct the Center. Specifically, GSA's approval was needed because the projected cost of the Center exceeded the \$50,000 delegated authority limit on repairs and renovations that GSA had previously given to FERC. On June 23, 1989, Kenneth F. Plumb, past Executive Director, wrote a letter to the Acting Administrator of the General Services Administration (GSA). In this letter, Mr. Plumb stated that the then Chairman of FERC, Martha Hesse, wanted the daycare center constructed by December 15, 1989 and opened for business on January 2, 1990.

On July 12, 1989, in response to Mr. Plumb's letter, the Acting Administrator of GSA granted a delegation of authority to FERC to construct the Center. The reason for this delegation, according to this letter, was because of FERC officials desire to open the Center as soon as possible. GSA, also agreed to help fund the center with \$150,000 to be used to upgrade the classification of the space from office to "special" (i.e., bathrooms, extra HVAC, kitchen area and sprinklers).

Site Selection

In determining the location of the Center, FERC generally followed D.C. and GSA requirements for daycare centers. D.C. law (29 DCMR 300, May 1987) applies to child development facilities providing care for less than twenty-four hours per day per infant or child on a regular basis. This law states that a child development facility must be licensed in the District of Columbia before operation can begin. The minimum amount of space per child or infant per session must be 60 square feet of outside play area. This outside play area can be in an enclosed yard on the premises, or in a nearby park or playground, or on a properly safeguarded roof facility with the approval of the D.C. Mayor. Draft GSA regulations concerning daycare facilities state that these facilities shall be located on the level of exit discharge, which for FERC would be the first floor.

FERC officials as early as July 1988 planned to locate the Center in the 941 Building located at 941 North Capitol Street. However, the first floor of this building was occupied by another Federal agency, a restaurant, and the building management group. The Federal agency agreed to take a portion of the space of the restaurant and the management group agreed to move to the third floor. However, the restaurant and management group officials requested specifications which FERC officials believed were too costly and may have exceeded their legal authority. These

specifications included such items as an atrium for the restaurant and private toilets and skylights for the management group.

We were told by the former Director, Division of Logistics Management that in order to keep costs down and to comply with GSA requirements to locate the Center on the first floor, FERC officials decided around May of 1989 to place the Center at building 825 on North Capitol Street, Room 1000. At that point, all further planning for the Center focused on Building 825.

It appears that a factor in deciding the location of the Center was the opening date schedule by Chairman Hesse. We found, for example, an undated document titled "Daycare Center Options Discussion Points" that contained the statements that the "941 option has very little chance of being achieved by December" and that "the 825 option has a much greater chance of being achieved by December."

In order to put the Center in the 825 Building, Room 1000, FERC had to relocate the Public Reference Room that was at the time located in this space.

Public Reference Room Relocation Costs

According to FERC, the Public Reference Room had been renovated in mid-1988 at a total cost of \$51,951. Despite this recent renovation, the Public Reference Room was temporarily moved to the second floor of 825 North Capitol Street at a cost of \$13,271. In March, 1990, the Public Reference Room was moved to its new permanent space on the third floor of the 941 Building at a cost of \$47,813. The then Director of the FERC Division of Logistics Management told us, that FERC wanted this latest move of the Public Reference Room regardless of the Center because the move enabled them to move FERC's Records Center from another location in downtown Washington, D.C. to the third floor of the 941 Building.

Funding

Source of FERC Daycare Construction Funds

In order to account for and provide funding to establish the Center, in Fiscal Year 1989 FERC officials set up budget and reporting (B&R) account codes called Daycare Construction and Daycare Consultant Services. In Fiscal Year 1989 FERC allotted \$316,000 and \$17,962 in funding to these accounts respectively. Also, in a July 1989 memorandum to FERC, GSA agreed to reimburse FERC for \$150,000 of its Center costs.

We found by reviewing FERC budget reports and talking with a FERC budget official that the Fiscal Year 1989 funds allotted to the Center accounts came from an unallotted funds account. The budget official told us that the unallotted funds account is generally supplied by specific purpose B&R accounts that program officials determine have allotted funds that are not needed in that fiscal year. FERC and DOE Budget officials stated that they believed there was no FERC requirement that funds to the Center needed to be formally reprogrammed.

It appears from the budget reports we reviewed that the majority of the 1989 funds in the unallotted account used to fund the Center accounts were originally allotted to the Office of Information Resources Management. We interviewed the Associate Executive Director of this office to determine the impact on his operation of transferring these funds to be used for the Center.

Regarding funds transferred from his office to unallotted funds account, that were used to fund the Center, the Associate Executive Director stated that he is not aware of any negative impact on his operational activities since he typically has excess funds each fiscal year. He stated that funding changes are accomplished by completing a "Request for Funding Level Change" form. This form is initiated by the requesting office, stating the requested change in funding--including a justification. The form is then sent to the Associate Executive Director for Financial Management for approval. The Associate Executive Director for Information Resources Management stated that he did not recall if this system of changing funding levels was in place in Fiscal Year 1989 when the construction of the Center was started. Therefore, we were unable to obtain copies of the funding-level-change forms to see the justifications for the funding changes made in Fiscal Year 1989 to fund the Center's construction.

We asked the Associate Executive Director why his office had excess funds on hand. He explained that he monitors his planned expenditures against the actual costs and identifies any excess funds. He stated that the past three Chairmen had been very supportive of office automation and his office has therefore had funding provided each fiscal year, usually beyond their needs. The Associate Executive Director stated that periodically a new priority, program, or initiative would arise and managers would be asked to take a close look at their budgets to see if they could identify funds which could be used for the new initiatives. He stated that he has always tried to do his part when this situation occurred and that he figured it was his duty.

In Fiscal Year 1990, the Daycare construction account was allotted \$262,000 and a Daycare furnishing account was established and allotted \$60,000. A FERC budget document dated March 1990 showed that FERC officials were preparing a bill to GSA for reimbursement of \$150,000 of the cost of the Center. We were told by the Director, Division of Budget and Financial Policy that FERC received \$150,000 from GSA in July 1990.

Start-Up Funds

We found conflicting opinions as to what start-up costs could be paid by an agency and how long the start-up period lasts. In a memorandum dated March 31, 1989, Department of Energy, Assistant General Counsel for General Law concluded that DOE appropriated funds may be used to defray other start-up and initial operating expenses (in addition to those cited in the Tribble Amendment). According to the memorandum, these other costs include the cost of staff and toys, or other specialized equipment. This memorandum also stated that start-up funding could continue to such time as voluntary fund-raising efforts and tuition receipts are sufficient to make the center self-sustaining.

In order to determine how other Federal agencies provided funding to their daycare centers, FERC's General Counsel conducted an informal survey and found that other agencies either provided:

- 1) no start-up funds for child care centers;
- 2) start-up funds in the form of a loan; or
- 3) start-up funds in the form of a grant.

After conducting the survey, the FERC General Counsel's opinion in a June 23, 1989 memorandum was that the Commission could provide either a grant or a loan to the Center, depending on available resources. FERC General Counsel further stated that if the Commission provided a loan, reasonable loan terms with the daycare provider could be negotiated. FERC General Counsel stated in the memorandum that he was not aware of any specific requirements for debt structures for daycare providers. That is, daycare providers can be encumbered by loans. Also in the memorandum, the General Counsel, FERC, stated, however, that according to GSA's General Counsel, agencies may not provide funding for salaries of daycare providers.

Another opinion is given in a memorandum written by Assistant Chief Counsel, General Legal Services, Internal Revenue Service (IRS) on July 13, 1990 concerning their child care program. This IRS official concluded that "appropriated funds may be used to pay start-up costs, provided that an administrative finding is made that a strictly limited and temporary expenditure of such

funds for these costs, including the salaries of administrator, for a short defined period, is necessary for the establishment of such centers." The "short defined period", according to the memorandum, should be interpreted to mean a period of three to four months in most circumstances and never more than six months.

We observed during our review that FERC procurement made at least seven purchases for the Center after the Center opened in January 1990, and after a \$60,000 grant was awarded to the Center for start-up expenditures. These seven purchases totaled \$5,986 with the last purchase order being dated January 30, 1991. Since we were not reviewing all small purchases made by FERC procurement we cannot be certain that these were the only purchases for the Center made by FERC procurement since the Center opened in January, 1990. These expenditures may have been spent beyond a period that would be considered reasonable for start-up-costs.

Bylaws and Memorandums of Understanding

FERC's responsibilities with respect to the Center are contained in a Memorandum of Understanding (MOU) and in the Bylaws between FERC and the Center, both dated September 26, 1989. The MOU was signed by George L. B. Pratt in his capacity as Chairman of the Center's Planning Committee and Kenneth Plumb. Pursuant to the MOU, FERC is responsible for providing: the space for the Center; building maintenance services; utilities; and local telephone service.

The Bylaws were originally adopted by the Planning Committee on September 26, 1989. These Bylaws generally established the requirements for the management and operation of the Center; to include defining the Center's purpose, organization, and requirements for admission of children, for membership meetings, and for the board of directors.

We found a second MOU dated November 16, 1989, that was essentially the same as the MOU dated September 26, 1989 except that the November 1989 MOU cited the location of the Center as building 941 instead of the 825 building as stated in the September 26, 1989 MOU. The MOU was signed by Kenneth Plumb and George Pratt. The FERC Executive Director, George L. B. Pratt stated to us that he had handwritten the date on the second MOU of November 16, 1989, but could not explain why there were two MOU's with the Center nor why the November 16, 1989 MOU cited the location of the Center at building 941. The September 26, 1989 MOU was found in the files kept in the FERC Executive Directors Office. The November MOU was found in a grant file in support of a \$60,000 grant provided by FERC to the Center.

Start-Up Grant

FERC provided a \$60,000 grant to the Center on November 21, 1989. We reviewed the grant file and found a MOU dated November 16, 1989 that discussed the general purpose of the grant. This MOU as well as the one dated September 26, 1989 stated that none of the start-up funding was to be used by the Center for salaries of the daycare providers once the Center had opened. The only other document in the file was a three page unsigned estimate of one-time and recurring costs for the Center dated November 15, 1989.

Annotated on this document is a circle around certain costs with the notation "Grant = \$60K to cover these costs." We were told by the Director, Division of Budget and Financial Policy that the initials on this annotation are those of the Associate Executive Director for Financial Management. The circled costs were for consulting and advertising expenses totalling \$55,090. We were also told by the Director, Division of Budget and Financial Policy that the amount of the grant was determined based on these estimated costs.

Although FERC officials cited these estimated costs as the basis for the grant, we found in a review of FERC accounting records that some of these expenses had already been funded by FERC. For example the consultant whose fees were estimated to be \$6,720 actually turned out to be \$6,584, and this amount was paid by FERC out of the Daycare Construction account coded VR2553ASO in August 1989. The other consultant was paid \$4,260 in February 1990 and \$13,702 in March 1990. These payments equalled the estimated cost for this consultant of \$17,962 and the payments were made out of the Daycare Consulting account coded VR2520EDO. We did not find any documentation or signatures in the grant file indicating who approved the grant award. However, the grant was paid out of the Daycare Operations account coded VR2554ASO.

The FERC General Counsel had provided guidance that a grant could be used to provide start-up funds for equipping and supplying the Center. In an interview with us the FERC General Counsel stated that the authority for the grant was found in the Tribble Amendment which he stated provided general grant authority to all agencies for daycare centers. He did not provide us with any other source of grant authority for FERC.

Grant Authority

Public Law 97-258, gives DOE the authority to award grants. However, the FERC General Counsel was not sure if this law provided grant authority to FERC. A DOE Office of Financial

Procurement Policy official told us that FERC has to follow DOE financial assistance regulations. In providing the \$60,000 grant to the Center we found that FERC did not fully comply with DOE regulations.

Public Law 97-258 Chapter 63 - titled, "Using Procurement Contracts and Grant and Cooperative Agreement" states that an executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when:

- (1) The principal purpose of the relationship is to transfer a thing of value to the State or Local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or service for the direct benefit or use of the United States Government; and
- (2) substantial involvement is not expected between the State, Local government, or other recipient when carrying out the activity contemplated in the agreement.

Based on its grant authority the Department established Financial Assistance Rules under 10 CFR Chapter II subchapter H part 600. These rules state in subpart A, 600.20 that:

- a) A DOE financial assistance award is valid only if it is in writing and is signed by a DOE Contracting Officer.
- b) An award may be made only if DOE approves an application and/or State plan and if there are sufficient appropriated funds.

Also the rules state in 600.21 that: Each financial assistance award shall be made on a Notice of Financial Assistance Award which include the following, as applicable:

- a) Identification information for the project being supported, including a unique instrument number.
- b) The dates of the budget period covered by the award, and if additional funding is contemplated after such period, the expected duration of the project period.
- c) The class of recipient (e.g. state government, educational institution, individual).

- d) The source and amount of DOE funds authorized for obligation by the recipient during the budget period specified;...
- e) General terms and conditions of the award...
- f) Special terms or conditions of award...(e.g. reporting requirement and payment methods).
- g) The approved budget for the budget period...
- h) A reference to or inclusion of the approved application...(e.g. statement of work).
- i) The name, address and telephone numbers of recipient and DOE staff with responsibilities for the project.
- j) Any other provision necessary to establish the respective rights, duties, obligations, and responsibilities of DOE and the recipient, consistent with the requirements of this part.

As discussed in the next section some of the grant funds may not have been used appropriately.

Center Operations

The Contractor Subcommittee of the Planning Committee consisted of five members and was given the task of selecting the vendor who would manage the Center. This Subcommittee solicited bids on August 18, 1989 for managing the Center. Two proposals were received from child care groups. One was not acceptable and the other only wanted to provide consultant services. According to a September 14, 1989 memorandum the subcommittee would mail on September 15, 1989 a letter to over three hundred and fifty firms listed in the "yellow pages". A walk-thru was held September 21, 1989 with 13 firms participating. Only six firms followed up with written proposals. The Subcommittee analyzed the documentation and eliminated two proposals. Subcommittee members conducted on-site visits of the four remaining providers. From these visits the Subcommittee eliminated one of the providers because of sanitation problems. The remaining three providers were evaluated by the Subcommittee. The Subcommittee selected and entered into a contract with the Winchester School Inc. and its Director on November 7, 1989 to operate the Center. This contract was signed by Mr. George Pratt, as Head, FERC Employees' Day Care Organizing Committee.

On November 30, 1989, the FERC Daycare Center deposited the \$60,000 from the grant in the Crestar Bank, a branch of which is located in the 825 Building. This account, now in the name of the Martha O. Hesse Child Care Center, was the operating account for the Center until the Winchester School contract was terminated effective on May 11, 1990.

On December 15, 1989 the Center was officially dedicated, and opened for business on January 2, 1990. The Center, designed for 60 full time children, opened with seven children and progressed to 20 full time children and 20 part-time children by the end of May, 1990.

The Child Care Group (CCG) was contracted to manage the Center on May 11, 1990. The CCG was given \$25,000 in operating funds from the Martha O. Hesse Child Care Center account. These funds were deposited on May 29, 1990 in an account in the Crestar Bank under the name of the Child Care Group, Inc. (CCGI). This account is now being used as the operating funds account for the Center. Parents were asked to make all checks payable to the CCGI. As of January 31, 1991, the CCGI account had a balance of \$5,285, while the Martha O. Hesse Child Care Center account had a balance of \$1,239.

A third account was opened December 17, 1990 by the Board of Directors of the Center. This account in the Fort Belvoir Credit Union is in the name of the FERC Daycare Fund. As of February 1991, the balance was \$736. According to the Board Treasurer, this account is for tuition assistance and is to be funded by private donations, contributions from the Combined Federal Campaign (CFC) and fund raising functions.

As of January 31, 1991, Daycare salaries since inception made up \$185,725 of the total expenses of \$210,095 paid by the Center. Total receipts for this period including tuition, interest and contributions (but not the \$60,000 FERC grant) had yielded \$157,610. This means that \$28,115 more has been spent on salaries than the Center has taken in as receipts.

According to a memorandum dated February 13, 1991 to the Office of Inspector General from the FERC Director of Internal Control, \$52,780 of the initial \$60,000 grant was expended as of December 31, 1990--\$30,880 of the grant was used to cover salaries of Center employees and was carried in the Center's records as a loan while \$21,900 was used to cover other Center operating expenses. According to the MOU establishing the grant, these funds were to be used for start-up equipment and supplies. Therefore, depending on how start-up expenses are defined in terms of time period covered and type of expenses, some of the

\$21,900 in grant funds spent on "operating expenses" may also be inappropriately spent and may need to be recovered by FERC.

Mr. George Pratt, Executive Director provided us an October 2, 1990 document concerning receipts versus salaries paid for the Center. This document contains a footnote which states that "any portion of the initial operating grant that is used to pay salaries or Center personnel is treated as a loan to the Center." In a memorandum to the Office of Inspector General, dated February 13, 1991, the Director, FERC Internal Control stated that when all of the grant money was used, an agreement would be executed to formalize the total amount of this interest free loan. Also in a draft audit report, prepared by external auditors, dated April 26, 1991 a footnote appears listed as Long Term Debt Agreement. This note states that the portion of the \$60,000 start-up grant from FERC used to pay salaries of child care providers will be treated as an interest free loan and will be repaid to FERC as the inflow of funds to the Center permits.

We found in our review of monthly Center financial reports, however, that the Center is not using revenue that exceeds expenses to repay the loan. Instead excess funds are added to the balance of grant funds available. The portion of the grant spent on salaries that FERC has identified as a loan is in essence being treated like a revolving line of credit. This treatment may result in FERC providing continued funding of the Center beyond the start-up period. Also, unless a formal loan agreement is entered into--establishing the terms of loan repayment and the entity responsible for repayment of the "loan"--the FERC may not ever be repaid.

Construction of the Center

On August 1, 1989 a FERC contract was awarded for construction of the Center. We noted during our review that GSA, in a May 19, 1989 memorandum to a FERC Official, had stated that "No matter who does the project it (the Center) will take 8-10 months before it could be open...". The December completion date gave the contractor a shorter time-frame than the 8-10 months suggested by GSA to complete the construction. This is evident by various correspondence found during our review. For example on April 19, 1990 the construction contractor stated in a letter "As you are aware, this job was 'fast-tracked' in order to meet a schedule that we advised you was unrealistic...". On a Routing and Transmittal Slip a FERC official noted that "The negotiations were 'fast and furious'...". On May 7, 1990 a FERC Contracting Officer sent a letter to the Contractor stating "We realize that this project was 'fast-tracked'...". In response to the May 7, 1990 letter the contractor on May 21, 1990 wrote:

"We feel that you are taking advantage of the unreasonable schedule to which (the Contractor) was held as a result of FERC's inability to make a decision to go forward with the project. As a result of the abbreviated time frame, the procedures outlined in your letter (directing us to deal with the Procurement Operations Division) were not followed because FERC specifically requested that we 'fast-track' the job and deal directly with the Division of Facilities and Logistics Management."

An estimate of the total cost of establishing the Center of \$705,013 was reported in the Gas Daily Newspaper dated November 27, 1990. The FERC Director of Internal Control provided us with a document which, he believed, showed the basis for this estimate.

Daycare construction/supplies	\$590,928
Relocation and Renovation of Public Reference Room	<u>114,085</u>
TOTAL	<u>\$705,013</u>

A GSA memorandum dated May 19, 1989 estimated the cost of the Center to be \$500,000. At that time the Center was to be completed by May 1, 1990. Kenneth Plumb, the former Executive Director, stated that the cost of the Center increased due to the shortened time-frame for opening the Center. The shortened time-frame was set by the then Chairman Martha O. Hesse. Subsequently in June 23, 1989 the construction cost estimate for the Center increased to \$575,000. On August 1, 1989, FERC entered into a fixed-price contract with Total Management, Inc. for the construction of the Center at a cost of \$529,612. The contract was later modified and actual cost for the construction of the Center was \$508,746. FERC incurred additional costs directly associated with the Center for the temporary relocation of the reading room, consulting for the Center and equipment for the Center.

Based on a limited review of the FERC accounting records provided based on our request, we estimated the cost of establishing the Center, not including the \$60,000 grant to be \$655,072 as follows:

Construction of the Center	\$508,746
Construction of Playground	9,346
Other construction via purchase orders	18,528
Consultants	24,546
Toys/Furniture	43,726
Door Bell	460
Telephone communications	3,776
Bulletin Board	1,423
Public reference room temporary relocation	13,271
FERC employee assigned to Center full time	<u>31,250</u>
 TOTAL	 \$655,072

The \$655,072 figure also does not include a total of \$23,750 in awards paid to 14 FERC employees during fiscal year 1990. The awards were, in part, based on the employees work on the Center. These employees are listed in a letter dated February 5, 1991 from the FERC General Counsel to Congressman John Conyers, Chairman, Committee on Government Operations. The letter shows that the amounts of the awards ranged from \$250 to \$5,000.

Tax Exempt Status

In a memorandum dated September 1, 1989, the then Associate General Counsel, Enforcement, General Law and Rulemaking responded to "certain matters related to financial considerations associated with the proposed FERC Daycare Center (Center)." He stated that even though the Center is incorporated in the District of Columbia as a non-profit corporation, it must obtain federal IRS designation as a 501 (c)(3) tax exempt corporation in order to accept tax deductible contributions. He also advised that the Center, composed of current FERC employees, may not solicit or accept contributions in any form, either directly or indirectly from any industry related entities without creating a conflict of interest (18 CFR 3c.5(c)). In response to whether the Center corporation may accept money in its own right or whether it is necessary to establish a foundation for this purpose, the Associate General Counsel stated that as a legally incorporated entity, the Center may accept any contributions in its name.

On December 5, 1989, the Center's Board filed with IRS form 501 (c)(3) (tax exempt) statute. On April 13, 1990, IRS certified that the Center was exempt from Federal income tax under section 501 (c)(3).

Private Gifts

According to 18 CFR Part 3c - Standards of Conduct for Commission Employees, section .5 - Conflicts of Interest, subsection (c) Gifts, entertainment, loans and favors, "no employee shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from any person who:

- (i) Has or is seeking to obtain, approval or denial by the Commission of actions required under status, or Commission's rules and regulations; or
- (ii) Conducts operations or activities which are regulated by the Commission or concerning which determinations of status are pending before the Commission; or
- (iii) Has or is seeking to obtain, contractual or other business or financial relations with the Commission; or
- (iv) Has interests which may be substantially affected by the performance or nonperformance of the employee's official duty; or
- (v) Is in any way attempting to influence the employee's official actions."

We found that six companies gave a total of \$3400 to the Center between December 1989 and March 1990. Listed below are the amounts contributed by the six regulated companies prior to April 1990 and the date the checks were received and returned to the sender.

CHECKS RETURNED

	<u>RECEIVED</u>	<u>RETURNED</u>	<u>AMOUNTS</u>
1.	12/89	11/15/90	\$1000.00
2.	2/90	11/15/90	\$1000.00
3.	2/90	11/15/90	\$ 100.00
4.	1/90	11/15/90	\$1000.00
5.	3/90	11/15/90	\$ 50.00
6.	2/90	11/15/90	<u>\$ 250.00</u>
TOTAL			\$3400.00

The FERC General Counsel stated to us in an interview that the checks from regulated companies were held by FERC in a safe in the Executive Directors office while FERC officials determined a

way for the companies to legally contribute to the Center. The General Counsel stated that the Center had applied to the CFC and FERC officials believed that this would provide a method for companies to contribute to the Center without a conflict or the appearance of a conflict of interest.

The FERC General Counsel returned the checks on November 15, 1990 to the companies which sent them "because of considerations related to ethics in Government and the appearance of any kind of conflict of interest." The letter transmitting the checks also stated that the FERC Daycare Center was approved as a participating organization in the Combined Federal Campaign and the letter's enclosure stated that "Anyone wishing to make a contribution to the Martha O. Hesse Day Care Center should make checks payable to the CFC (please be sure to specify CFC No. 2352) which will designate the Child Care Center." The letter further stated that the identity of future contributors to the Center would be withheld from the Center and any officer or employee of the FERC.

We asked a CFC official for the administrative process for companies to contribute to CFC. The CFC Official stated that anyone wanting to contribute to the CFC can do so. CFC is basically for Government workers to contribute with the United Way for private entities. If a private entity wanted to contribute to CFC they can send their checks to CFC. All pledges require a pledge card for audit purposes. If a contribution is received without a pledge card, CFC central accounting makes one up for the contributor listing the contributor as anonymous unless otherwise told to list them as a contributor. Therefore, a private company could send a check with a designation number and contribute to the entity of their choice without the entity knowing of the contribution.

We found that \$1550 was contributed to the Center by individual FERC employees in December 1989. These contributions were listed on an undated document in the Center files as "scholarship" funds.

Combined Federal Campaign Receipts

On June 19, 1990 FERC's Center became a qualified member of the Combined Federal Campaign of the National Capitol Area. CFC officials notified FERC officials that approximately \$11,000 (less CFC administrative cost) would be available to the FERC Daycare Center, Inc. The FERC Daycare Center began receiving their payments in March 1991. Further payments will be made monthly until the final payments on pledges are received.

In May 1991, the Board Treasurer told us that CFC and private contributions would be used for tuition assistance, but they were using the contributions to offset the operating expenses of the Center at the time. The Treasurer provided clarifying comments on our report stating that CFC and private contributions were used to provide tuition assistance beginning in 1990. The Treasurer stated that tuition assistance in 1990 and the first part of 1991 was provided without formal procedures. He also stated that a formal program of tuition assistance was established in June of 1991.

A CFC official told us that the identity of contributors is available to member organizations unless the contributor has requested anonymity. The official stated that the names of contributors are not automatically supplied, but must be requested by member organizations. The official also told us that they had no record of FERC or the Center requesting the names of the contributors and that they had not provided these names to FERC. We did not determine if FERC knew of any of the regulated companies, whose private contribution checks were returned, had contributed through CFC to the Center.

Termination of Management Company and Selection of Successor

Mr. Pratt, Executive Director terminated the services of the Winchester School, Inc. and its Director on May 11, 1990. The specific reasons for the termination, given in a memorandum dated May 11, 1990 were:

1) Insurance

- a) The Board was not furnished a copy of the insurance policy as required.
- b) Certification does not provide any indication that the agency or provider were licensed by the District of Columbia as required by the contract.
- c) Certification of insurance states 10 days for written notice, while the contract states 30 days.

2) No certified audit report was provided as required by the contract.

The Child Care Group, Inc. submitted an unsolicited contract proposal to manage the Center to Mr. George Pratt, Executive Director on April 5, 1990. The contract proposal was for the period June 1, 1990 to May 31, 1992. The Child Care Group, Inc.

had previously been employed from July 1989 through December, 1989 by FERC as a consultant to help establish the Center. On May 11, 1990 Mr. George Pratt, Executive Director signed a contract for the FERC Daycare, Inc. with The Child Care Group, Inc. to manage the Center.

We reviewed the Bylaws of the Center in order to determine Mr. Pratt's authority to terminate the Winchester School, Inc. contract and enter into a contract with the Child Care Group, Inc. The Bylaws which were in effect at the time of the termination gave the Executive Director a role in determining the vendor who would operate the Center. The bylaws state that "with the advice and consent of the Commission's Executive Director, the Board of Directors, its Executive Committee and other designees, will contract with a vendor to operate the Center with professionally qualified child-care providers".

Also, the Bylaws stated that "The Board of Directors of the Center will consist of eleven (11) Directors elected by the parents of children enrolled in the Center.... A Planning Committee will serve until the first annual membership meeting...". According to the Bylaws this first annual membership meeting was to occur on the second Tuesday after the Center opened -- January 1990. Due to the initial low enrollment at the Center, there were not enough parents to form a Board of Directors in January 1990. In fact, the first Parent Board meeting did not take place until April 3, 1990. At this time Officers of the Board were nominated and elected. Since the Bylaws state that the Planning Committee will serve until the first annual membership meeting, this first Parent Board meeting was the change over to new Center management. Therefore, it appears that the Executive Director did not have authority to terminate the operating contractor on May 11, 1990.

FERC General Counsel stated in comments on a draft of this report that:

"Even after the parent Board took office on April 4, 1990, it consisted of parents who had only reluctantly agreed to serve as Board members. As full-time government employees and parents, these new Board members were just beginning to get acquainted with the numerous time-consuming tasks necessary to start-up the Center. Therefore, it would have been unrealistic during the Center's start-up period to expect extensive involvement by a parent Board. When serious administrative and management problems developed and doubts were raised about the adequacy of insurance coverage, Mr. Pratt considered it his responsibility as

FERC's Executive Director and as the official expressly assigned the job of establishing the Center, to protect the Commission's substantial investment and interests in the Center. In short, Mr. Pratt believed that it was part of his official responsibilities to make the decision to terminate the contract."

FERC General Counsel staff reviewed the Bylaws, MOU's and Management Contract. We reviewed an August 30, 1990 draft memorandum from the FERC Assistant General Counsel for General and Administrative Law to the FERC General Counsel. This draft memorandum discussed the conclusions of FERC General Counsel's staff review of the management agreement between the Child Care Group, Inc. and the Center. In the draft memorandum FERC General Counsel's staff concludes that the Center which is represented by George L.B. Pratt, the FERC Executive Director, and the Board Secretary details additional duties and responsibilities for the FERC. The draft memorandum includes the following statements by the FERC General Counsel staff:

"The Corporation has also agreed to provide facilities, utilities, repair and maintenance services, security, including security clearance checks for CCGI staff and designated security personnel who will assist in monthly evacuation drills. These provisions are much more extensive than the MOU's.

"The Contract also states that '(t)he Corporation will indemnify CCGI and hold it harmless from any liability, expenses and/or damages CCGI sustains as a result of the termination of the staff. The Corporation also agrees to be responsible for certain personnel checks.

....

"The Contract as a whole, and the continuing involvement of senior Commission staff in the day-to-day operations of the Center, could create major liability for the Commission and its employees. One example would be a situation in which a CCGI employee is accused of molesting or otherwise mistreating the children at the Center. The contention would be made by irate parents (with some persuasive appeal) that the commission, through its senior staff, condoned the hiring of the personnel, and was responsible for 'security' and 'personnel checks,' an argument that might subject the Commission and its staff again to suit, with unfavorable media consequences.

....

"The Management Contract between CCGI and the Corporation should be disavowed by the Commission in writing as soon as possible and a new contract between the Center's Board of Directors and CCGI put in its place. Otherwise, it might be argued that the Commission ratified the contract by taking no action after we learned of its existence."

In a separate August 30, 1990 draft memorandum from the FERC General Counsel to the Center Board of Directors it was stated that the Center's Board should execute as soon as possible a new contract with the management company without Commission staff as signatories to the contract.

This same draft memorandum states that the Bylaws "contemplate" that the contract for the Center be between the management company and the Center and that the company be selected by the Board of Directors, "[w]ith the advice and consent of the Commission's Executive Director." This draft memorandum also noted that in order that there be no confusion about the extent of the Commission's involvement in the Center "(which should be limited to the provisions of the MOU)" dated September 26, 1989, the provisions of the Bylaws that require that the Board seek the "advice and consent" of the Executive Director should be deleted through an amendment to the Bylaws.

We did not find that FERC had disavowed the May 11, 1990 contract as recommended by the August 30, 1990 draft memorandum from the FERC General Counsel staff to the General Counsel. We also did not find, as recommended by the August 30, 1990 draft memorandum from the FERC General Counsel staff to the Center Board, that the May 11, 1990 contract had been amended to be signed by the Center Board and to correct the name of the Center from "FERC Day Care, Inc." to FERC Daycare Center--the name in the incorporation documents.

The Board President stated that she did not receive this FERC General Counsel draft memorandum in draft or final form. However, we noted that the Bylaws were amended February 1991 to exclude the "advice and consent" clause.

Lawsuit

A lawsuit was filed on behalf of the original Center manager with the United States District Court for the District of Columbia on May 25, 1990. The lawsuit was filed, which listed seven counts, against the FERC Daycare Center, Mr. George Pratt, and three other FERC employees.

On July 2, 1990 FERC requested that the Department of Justice provide legal representation to FERC employees and the FERC Daycare Center, Inc. In a motion filed with the District Court on July 20, 1990 the Department of Justice stated that they would not provide representation to the Defendants. In a memorandum dated August 15, 1990 from the Deputy Assistant Attorney General to the FERC General Counsel, the Department of Justice agreed to represent all individual employees and denied the request to represent the FERC Daycare Center, Inc. The FERC Daycare Center, Inc. was represented by a law firm pro bono.

We were told in an interview on June 6, 1991 of the FERC General Counsel that a law firm, which has represented FERC regulated companies before FERC in the past is representing the Center at no charge. He stated that the Office of Government Ethics (OGE) had been verbally advised and the OGE had verbally responded that no apparent conflict of interest existed. On July 17, 1990 FERC General Counsel staff followed up the telephone conversation with a letter to the OGE which stated:

"Based on our conversation, I understand it is the Office of Government Ethics' (OGE's) position that the center, may without violating any ethical stricture, accept pro bono representation from a law firm even if the firm appears in proceedings before the Commission. Accordingly, we are advising the center that it may seek such representation as long as the lawyer for the center is not personally involved in proceedings before FERC."

FERC obtained a handwritten concurrence from the Office of Government Ethics dated July 19, 1990.

FERC's General Counsel in commenting on a draft report stated that:

- (1) the Justice Department informally suggested to FERC that FERC obtain pro bono representation for the Center after Justice indicated that the Government could not represent the Center;
- (2) once Justice determined that it could not represent the Center, the need to obtain representation was immediate, because the Center had court pleadings to which it was required to respond;
- (3) the Center could not turn to Federal employee volunteers because of a statutory prohibition that bars Federal employees from appearing as counsel for anyone other than the Government in any matter in which the United

States is a party or has an interest (see 18 U.S.C. 205); and

- (4) the firm that agreed to represent the Center is a large one with nearly 300 lawyers in its Washington office alone and many departments. No FERC employee ever discussed representation for the Center with any firm attorney involved in FERC matters and no firm attorney doing FERC work participated in the Center litigation."

A third party complaint was filed with the United States District Court for the District of Columbia on August 13, 1990 for the FERC Daycare Center, Inc. The FERC Daycare Center, Inc. requested that the Winchester School, Inc. indemnify all costs and expenses incurred in connection with defense of any and all claims and in connection with any liabilities asserted by Plaintiff.

On June 19, 1991, the United States District Court for the District of Columbia ordered that the lawsuit be dismissed.

Current Financial Status of the Center

The Center has been operating at a loss since opening and continues to operate at a loss, even though FERC provides space, cleaning and utilities at no cost to the Center. According to FERC's estimate in November 1989, these services are provided at an annual cost to it of \$198,000.

A February 4, 1991 Child Care Group report to the Center's Board of Directors showed that the Center revenue should equal expenses when the Center had 45 children. Another report from the Child Care Group showed that the Center had 42 full time slots filled as of the end of March. These slots included 16 children of FERC employees, 19 children of employees from other Government agencies, and 13 children from employees of private companies--a total of 48 children some of whom were part-time.

In a May 9, 1991 memorandum from the Center Treasurer to Mr. George Pratt, Director, Office of the Executive Director, the Treasurer stated that the Center is "in desperate need of funds." The memorandum went on to state that the Center's expenses exceeds its income by about \$3000 per month and that the Center had no other financial resources that it could turn to. The memorandum further stated that the Center needed about \$6000 to operate into the summer months.

In an interview with Mr. Pratt in June 1991, we asked if FERC was going to provide the funds requested by the Treasurer for the

Center. He stated that FERC's General Counsel had made a determination in a memorandum that FERC should not provide any more loans to the Center and that he would not provide the funding requested.

Conclusions and Recommendations

We found that FERC officials generally followed Federal laws and regulations, GAO decisions, District of Columbia (D.C.) and GSA requirements in establishing its Center. However, the officials constructed the Center in a short time frame and the results of a survey conducted to determine the level of interest in the Center may not have been available or fully considered before action was taken to construct the Center. At the time of our review, we found that the Center had not been receiving enough revenue to cover its operating expenses, even though FERC was providing space and related services at no charge to the Center.

Also, some of the appropriated funds FERC provided to the Center may have been spent in an inappropriate manner; and the FERC Executive Director may have exceeded his authority in making decisions regarding the management contractor for the Center.

Finally, a FERC official sent a letter to FERC regulated companies returning contributions they had already made because of the concern that these contributions raised possible conflict of interest problems. This letter and its enclosures describe how these companies could anonymously contribute to the FERC Daycare Center through the Combined Federal Campaign. We believe this letter may give the appearance of being a solicitation of indirect contributions from FERC regulated companies. FERC officials did not agree with this conclusion and stated that the conclusion seriously distorts what actually occurred.

We recommend that the Chairman Federal Energy Regulatory Commission:

1. Have the FERC General Counsel review the current Center management contract and render an opinion as to whether the contract should be revised to address concerns regarding Government liability, and legal name of the Center.
2. Obtain a legal opinion from FERC General Counsel as to FERC's authority to award grants.

If FERC has the requisite authority then FERC officials should prepare official grant documentation according to DOE financial assistance regulations to support the \$60,000

grant.

If FERC does not have the requisite authority then FERC officials should take appropriate steps to recover grant funds or have the grant agreement ratified as required.

3. Request a clarification from FERC General Counsel and if necessary from GAO of what is considered a reasonable period for start-up. Once a clarification is received funding of start-up expenses by FERC and the loan amount should be adjusted and/or recovered as appropriate.
4. Review the expenses paid for out of the \$60,000 grant to determine what portion of the grant should be considered a loan.
5. Have the FERC General Counsel draft a loan agreement reflecting the terms for repayment and signed by a representative of the debtor organization and FERC.
6. Review the FERC small purchases made for the Center after January 1990 and determine whether the purchases were consistent with the MOU between FERC and the Center; and if not determine if the funds expended should be recovered by FERC from the Center.

Management Comments

Management generally agreed with the recommendations and stated that they have already begun to implement them. Specifically in response to our first recommendation, FERC stated that the management contract between the FERC Daycare Center, Inc. and the Child Care Group, Inc., has been amended to reflect the Center's correct legal name and to clarify that the contract is solely between the Board of Directors and the child-care provider. They stated that the FERC Executive Director is not a party to the contract.

Management also stated that the report should recognize that all FERC activities examined in the report were aimed at achieving legitimate and important objectives and benefits in the interest of the government. These objectives and benefits were discussed in a October 2, 1987, House Committee on Government Operations report entitled "Child Care in Federal Buildings."

The Committee report found that the American work place has changed dramatically over the past three decades and that the majority of American children are growing up in homes where both parents or the sole parent is employed outside the home. The

report recognized that the need for quality and affordable child care to meet the needs of working parents far exceeds supply, and that employer-assisted workplace child care is a potentially important source of preschool child care. It further recognizes that the Federal Government, as the nation's largest employer, needs to address the day care concerns of its employees in seeking to resolve a pressing work-related problem, while realizing the resulting benefits of improved productivity, retention and recruitment.

Management stated that they were gratified that we included these comments in the management comments section of the report. However, they felt the comments express a fundamental point that should be integrated into the text of the report.

Management comments on specific aspects of the report and our response to these comments follow.

Management Comment

Management commented that information provided by them, as to the development of the initial plans for the Center, was used in our report, but we failed to draw any conclusions from this information.

Inspector Comment

We used the information provided by Management, regarding the development of the initial plans for the Center, in the Center Planning section of the report to discuss the chronology of events. Since no issue was noted regarding Center planning, no conclusion was drawn from the information.

Management Comment

Management commented that they disagree with our conclusion in the report that the letter returning checks to companies regulated by FERC "may give the appearance of being a solicitation of indirect contributions to the Center." They commented that this conclusion is a misinterpretation of what actually occurred. They also stated that:

In response to our earlier comments, the report now recognizes that the letter returned contributions that the companies had already made, because of a concern that these contributions raised possible conflict of interest problems. But the report mistakenly claims that the letter described how 'these companies' could anonymously contribute to the Center through the Combined Federal Campaign. In fact, the

letter did not describe how 'these companies' could contribute; it referred to the mechanism that had been adopted to govern all contributions to the Center. The report (p. 19) purports to quote the letter as saying 'Anyone wishing to make a contribution to the Martha O. Hesse Day Care Center should make checks payable to the CFC (please be sure to specify CFC No. 2352) which will designate the Child Care Center.' This language does not appear in the letter at all. It is actually a quote from an earlier general notice announcing the Center's membership in the CFC and outlining the proper procedures for making contributions to the Center. A copy of this notice was enclosed with the letter. The information about contribution procedures was provided as part of the explanation of why the company's earlier donations needed to be returned. Accordingly we disagree with the conclusion that the letter may give the 'appearance of being a solicitation of indirect contributions.'

Inspector Comment

In response to the this comment, our conclusion is based on the content of the letter and its enclosure (returning the checks) sent to six companies and the fact that the checks from these companies were returned up to eleven months after receipt. The letter tells the companies that the Daycare Center is a part of the Combined Federal Campaign (CFC) and the enclosure gives the address and CFC account number for the Center. The letter, signed by the FERC General Counsel, includes the following:

"For your information, as then closed [sic, the enclosed] notice indicated, the Day Care Center was approved on June 19, 1990, as a participating organization in the Combined Federal Campaign of the National Capital Area. As the notice further indicated, to avoid any potential conflict of interest, the identity of future contributors to the Center will be withheld from the Center and from any officer or employee of the FERC. Any such contributions are, of course, fully deductible under Section 501C3 of the Internal Revenue Code."

The enclosure includes the statement that:

"Anyone wishing to make contributions to the Martha O. Hesse Daycare Center should make checks payable to the CFC (please be sure to specify CFC No. 2352) which will designate the Child Care Center. Contributions should be sent directly to:....."

FERC Management in comments above stated that "The information about contribution procedures was provided as part of the explanation of why the company's earlier donations needed to be returned." Even if this was the intended purpose for providing contribution information, providing this information as an enclosure to a letter returning checks that FERC had held for up to eleven months may give the appearance that the FERC General Counsel was soliciting an indirect contribution. Thus, we have not changed our conclusion in the report.

Office of Inspector General

KEY DATES AND EVENTS

November 24, 1987

Chairman Martha O. Hesse states, in a letter to John Dingell, Chairman, Subcommittee on Oversight and Investigations, House of Representatives, that the Commission is seeking a means of developing a facility.

June 30, 1988

The then Executive Director, Vince Mason, is told by Chairman Martha Hesse to plan and construct a daycare facility for FERC.

January 24, 1989

Executive Director, Vince Mason was replaced by Kenneth Plumb.

May 4, 1989

Consultant hired to do survey of employee interest in daycare center, among other assignments.

May 29, 1989

FERC Daycare Center incorporated in the District of Columbia.

July 12, 1989

GSA grants FERC a delegation of authority to construct a daycare center and commits \$150,000 towards the effort.

July 26, 1989

The Child Care Group is hired for consultant work.

August 1, 1989

Total Management, Inc. is contracted to design, plan, and construct the FERC Daycare Center.

September 26, 1989

FERC Daycare Center Bylaws signed by Mr. Pratt as Chairman, Planning Committee.

September 26, 1989

Memorandum of Understanding (MOU) signed by Mr. Pratt for FERC Daycare Center, Inc. and Kenneth Plumb for FERC. (note: location listed as 825 N. Capital)

November 7, 1989

Contract entered into between FERC Daycare Center, Inc. and Mrs. Mary L. Rhim, and The Winchester School, signed by Mr. Pratt, as Head FERC Employee's Daycare Organizing Committee and Mary L. Rhim.

November 16, 1989

MOU signed between FERC and FERC Daycare Center, Inc. Mr. Pratt for FERC Daycare Center and Kenneth Plumb for FERC. (note: location listed as 941 N. Capital)

November 21, 1989

Treasury issues check in the amount of \$60,000 to FERC.

November 30, 1989

FERC Daycare Center, Inc. deposits check in the amount of \$60,000 in bank under the name of The Martha O. Hesse Child Care Center.

December 15, 1989

Dedication ceremonies for the FERC Daycare Center held.

January 2, 1990

FERC Daycare Center opens for business.

February 8, 1990

George Pratt replaces Kenneth Plumb as Executive Director.

April 3, 1990

First Board of Directors organized.

April 24, 1990

IRS certifies Center's status as exempt from Federal income tax.

May 11, 1990

Mr. Pratt, as Executive Director, terminates Mrs. Mary L. Rhim and The Winchester School.

May 11, 1990

Mr. Pratt, as Executive Director, notifies parents that the Child Care Center will be under new management, The Child Care Group, Inc.

May 11, 1990

Mr. Pratt, for FERC Daycare, Inc. signs a contract with The Child Care Group, Inc. to manage The FERC Daycare Center.

May 25, 1990

Lawsuit filed against Mr. Pratt, FERC Daycare Center, Inc. and three other FERC employees.

June 19, 1990

FERC Daycare Center qualifies as CFC member organization.

July 2, 1990

FERC requests the Department of Justice to provide legal representation for the defendants in this lawsuit.

July 20, 1990

Defendants file second motion for enlargement of time as the DOJ states that they determined that the Department will not provide representation to the defendants.

August 13, 1990

Motion to dismiss.

August 13, 1990

Third party complaint of defendant FERC Daycare Center filed.

August 15, 1990

DOJ agrees to represent all individual employees. DOJ denies the request of FERC Daycare Center, Inc. for representation.

November 15, 1990

Energy companies contribution checks to FERC Daycare Center returned by FERC General Counsel.

December 21, 1990

Court orders three counts dismissed as to individual defendants.

June 19, 1991

The Court orders that the action against the FERC Daycare Center to be dismissed.

END

**DATE
FILMED**

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