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**NOMINATION OF JOSEPH C. SWIDLER TO BE A
MEMBER OF THE FEDERAL POWER
COMMISSION**

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HEARINGS

BEFORE THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

**THE NOMINATION OF JOSEPH C. SWIDLER TO BE A MEMBER
OF THE FEDERAL POWER COMMISSION FOR THE REMAINDER
OF THE TERM EXPIRING JUNE 22, 1965**

APRIL 11, MAY 2, AND 9, 1961

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NOMINATION OF JOSEPH C. SWIDLER, OF TENNESSEE, TO BE A MEMBER OF THE FEDERAL POWER COMMISSION

(For the Remainder of the Term Expiring June 22, 1965¹)

TUESDAY, APRIL 11, 1961

U.S. SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 5110, New Senate Office Building, Hon. John O. Pastore (acting chairman of the committee) presiding.

Senator PASTORE. We will now hear the matter of the nomination of Joseph C. Swidler, of Tennessee, to be a member of the Federal Power Commission for the remainder of the term expiring June 22, 1965.

This is the vacancy that resulted June 22, 1960, when the term of William R. Connole, Independent, of Connecticut, expired.

We are particularly pleased this morning to have as our first witness, the distinguished senior Senator from Tennessee, Senator Estes Kefauver. You may now proceed, Senator, in any way you please.

STATEMENT OF HON. ESTES KEFAUVER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator KEFAUVER. Mr. Chairman, Senator Schoeppel, and members of the committee, I believe, Mr. Chairman, you have a note from Senator Hill?

Senator PASTORE. Yes, I thought I would put it in after you spoke, Mr. Kefauver, but if you want me to put in now, I shall.

Let me say this for the purpose of the record. Senator Hill is presiding at an executive session and cannot be present to endorse Mr. Swidler. However, he would be very happy to have the chairman or any members of the committee announce that he endorses and supports the nomination of Mr. Swidler.

Senator KEFAUVER. Mr. Chairman, I am here to very wholeheartedly recommend the confirmation of Joe Swidler for the position for which he has been nominated. I want to say in all earnestness that I think this is a fine selection. I think it is one of the best appointments that the President, our new President, has made.

I would like to also point out that Mr. Swidler is the President's personal selection. By that I mean that Mr. Swidler did not come to me or to any other Senator or have anyone come to us to get letters

¹ This is the vacancy that resulted June 22, 1960, when the term of William R. Connole, Independent, Connecticut, expired.

written to the President seeking the job or making application for him. Not that I wouldn't have been glad to have written letters very earnestly recommending Mr. Swidler, because as I shall say later, I have high regard for him. But I just didn't know that he was interested. He was in private practice, so that I didn't know that he would be willing to be a member of the Federal Power Commission.

The President, his political and his own personal advisers, made this selection. I am sure Mr. Swidler didn't even know he was being considered.

The first I knew about it, and I know the same is true of Senator Gore, and other Senators, was that Mr. Swidler came to my office and said that he had been offered the position. He didn't want to say anything about it, except it, until he had talked with the Senators from Tennessee. I, of course, told him that I would be very happy to recommend him, that I thought it was a fine selection; I would be glad to endorse him as enthusiastically as I could.

So that is the way Mr. Swidler's selection came around. I have—I am sure all of you have read the biography of Mr. Swidler. He is a comparatively young man, but he has had more than 25 years of very excellent experience, which qualifies him very highly and splendidly for the position that he has been nominated for.

I don't know of many people who have better educational background, better experience in Government, that would make them suitable for this place. I don't know of anyone. He is highly respected by the lawyers, by the people in Tennessee Valley, who have done business with him. He is a man who is a very industrious worker. He is sound in his opinions and he defends them well.

I have known Mr. Swidler since about 1933. In public matters before I came to the Congress in 1939, I have had occasion to take matters up with the Tennessee Valley Authority and on public matters since that time I have had occasion to take them up with the Tennessee Valley Authority. Sometimes Mr. Swidler would agree with the position that we would take, sometimes he wouldn't, but he has always been well founded in his decisions and in his legal analysis so that I consider him one of the public servants that I know.

He has had 25 years that makes him well qualified for this position. He is a fine citizen, family man. He is recognized as an outstanding lawyer.

I want to say this about Mr. Swidler, these things: That when he was with the Tennessee Valley Authority, he always wrote his opinions and took his position according to the law, according to the TVA Act, and regardless of whether he might have a different personal opinion. And that would be the way he will serve on the Federal Power Commission.

I know, Mr. Chairman, it has been said that he is interested in the viewpoint of the consumer, that he is consumer minded. Well I don't know anything wrong with that. After all, we all have to be interested in the consumer. The consumer, in my opinion, has in some respects been the forgotten man around this country for some years and maybe is now. It is in the interest of the producing wells, in the interest of the utilities, and electrical companies, transmission companies, the distribution companies, everybody should be interested in the consumer.

I think that is an integral part of our free competitive enterprise and when we get away from our interest in the consumer we have lost a very important part of our free enterprise system.

Senator PASTORE. I hope my friend didn't misunderstand me; that is whom I am interested in.

Senator KEFAUVER. I know, I have heard you express that.

I want to make these points about Joe Swidler. He will administer the law as it is written. I know that by my experience with him and that he will administer the law according to the decisions of the courts and no personal feeling or philosophy that he might have will interfere with him carrying out his duty in that way.

I want to say also that while he is interested in the consumer, as all of us should be, the companies should be or are interested in the consumer, that he would be fair to the companies and to the consumers alike, realizing that the companies have to make the profit in order to get along, and that the consumer should be treated fairly.

Another thing, knowing his great administrative ability, how hard he works, his keen legal mind, I feel that he would do much to expedite the business of the Federal Power Commission.

We have all been alarmed sometimes about the great backlog of cases, some rate cases not decided for 5 or 6 years. I know that he will try to do something about that.

I have received many letters, several letters about Mr. Swidler. I would like to have permission to place some of them in the record, Mr. Chairman, but one just came to me this morning which, with your permission, I would like to read. It is from Mr. Ray Morton, the president of the Memphis Light, Gas & Water Division of the City of Memphis. It is addressed to me [reads]:

Having known Joe Swidler for many years during the period that he was General Counsel of the Tennessee Valley Authority, and during the entire life of the Memphis Light, Gas & Water Division from 1939 to date, and having worked with him very closely since he left the Tennessee Valley Authority and went into private practice, I feel quite sure that the President made an excellent appointment when he nominated him to be Chairman of the Federal Power Commission.

We have always found Joe to be honest, capable, and clear thinking, and a man whose character and integrity are above reproach.

At the present time, the division has many matters before the Federal Power Commission, and I believe that we pretty well know the manner in which the Commission conducts its business, especially as it has been constituted over the past few years. It is my firm opinion that Joe Swidler, with his utility, legal, and organizational experience, will streamline the handling of cases which appear before the Federal Power Commission to the end that they will be decided on their merits justly and expeditiously and thereby tend to eliminate the backlogs that exist at the present time.

I am sorry that I cannot be in attendance when he appears before the Senate Commerce Committee for confirmation. Any courtesy or help you might be able to give him would be greatly appreciated.

But there are people from Tennessee, lawyers, and others, who are here, who can testify in person if you desire them to.

Thank you very much.

Senator PASTORE. We shall submit for the record, or have inserted in the record any letters that you submit in support of this nomination.

Any questions of Mr. Kefauver?

Senator SCHOEPPPEL. No questions.

Senator PASTORE. We are happy to have you here, Mr. Gore.

**STATEMENT OF HON. ALBERT GORE, A U.S. SENATOR FROM THE
STATE OF TENNESSEE**

Senator GORE. Mr. Chairman and gentlemen of the committee, as a young man only 3 or 4 years out of law school, but with experience in the Department of the Interior, Mr. Joe Swidler came to Tennessee as an employee of the Tennessee Valley Authority. He began as an attorney in the Power Division. He received a promotion to Assistant to the General Counsel, and after some years in that capacity he was again promoted to Solicitor for the TVA and then succeeded to the position of General Counsel for the TVA, where he made an enviable record.

I have known Mr. Swidler a long while. I hold him in high personal esteem.

Upon retirement from the TVA, he entered the private practice of law in Nashville, Tenn., where according to current rumors and reports, he has done rather well.

His selection for this important position had not occurred to me until Mr. Swidler came in to my office and said that he had been called to Washington for discussion in very high places regarding this position. I said, "Hoorah." I endorsed him wholeheartedly. Here is a man who has demonstrated fidelity to trust in the positions he has held, and in the performance of duty in the position to which he has been nominated he will, I am confident, demonstrate ability and stubborn determination to follow the course of right, and the public interest will be paramount in his goals and objectives.

I thank you, Mr. Chairman, and gentlemen of the committee for the opportunity of so testifying.

Senator PASTORE. Thank you very much, Mr. Gore.

Are there any questions of Mr. Gore?

It is always a delight to have you, Mr. Gore. We are very grateful for your contribution.

We have Congressman Loser next.

**STATEMENT OF HON. J. CARLTON LOSER, A REPRESENTATIVE IN
THE CONGRESS FROM THE STATE OF TENNESSEE**

Mr. LOSER. Thank you, Mr. Chairman, and gentlemen of the committee.

I would like to join our very distinguished junior Senator from Tennessee in his very fine remarks about Mr. Swidler.

I am a member of the Nashville bar and have been for some 30-odd years. I have known Mr. Swidler as a practitioner at that bar for some period of time and I would like to say that it is my considered opinion that he would make a very capable officer or as a member of the Federal Power Commission. He stands very high among the lawyers with whom he has been associated for a number of years and it would meet with general approbation in my community if Mr. Swidler were confirmed by the Senate.

I thank you so much.

Senator PASTORE. Thank you very much, Mr. Congressman.

I would like to ask you a few perfunctory questions. Have you any financial interests that would be inimical to your responsibilities on this Power Commission?

**STATEMENT OF JOSEPH C. SWIDLER, OF TENNESSEE, NOMINEE
TO BE A MEMBER OF THE FEDERAL POWER COMMISSION**

Mr. SWIDLER. No, sir.

Senator PASTORE. Do you see any conflict of interest that you may have with the Federal Power Act?

Mr. SWIDLER. No, sir.

Senator PASTORE. Are you familiar with that sentence that I read to the previous witness—I will read it again, for purposes of this record—"Said Commissioners shall not engage in any other business, vocation, or employment." Are you familiar with that?

Mr. SWIDLER. Yes, sir.

Senator PASTORE. Do you expect to abide by it, sir?

Mr. SWIDLER. Yes, sir.

Senator PASTORE. Will you submit for our files any financial holdings that you do have?

Mr. SWIDLER. Yes, sir.

Senator PASTORE. For determination of this committee?

Mr. SWIDLER. Yes, sir.

Senator PASTORE. Are you familiar with Senate Resolution 338 that I read:

that it is the sense of the Senate that individuals appointed to administrative and policymaking positions shall be willing to serve for a period long enough to permit them to contribute effectively in their assigned task, and that it is the sense of the Senate, nominees appearing before its committee shall indicate their willingness to serve so long as the President so desires.

Are you familiar with that?

Mr. SWIDLER. I am familiar from having heard you read it to the previous witness. I assume that means within the term to which the nominee is appointed.

Senator PASTORE. That is correct.

Mr. SWIDLER. Yes, sir.

Senator PASTORE. We have had instances where they remained only for a short while. By the time they got trained and experienced in the job they saw fit to leave their Federal responsibility. Sometimes there may be extenuating circumstances that will justify that, but Congress feels that there should be an indication at the time the nominee appears before our committees that he is prepared to serve as long as the President would like to have him within the term.

Mr. SWIDLER. Yes, sir.

Senator PASTORE. You are prepared to do that?

Mr. SWIDLER. Yes, sir.

Senator PASTORE. We have a biographical sketch here. You are familiar with the sketch?

Mr. SWIDLER. Yes, sir.

Senator PASTORE. Do you desire to add anything further to it?

Mr. SWIDLER. No, Mr. Chairman.

(The biographical sketch follows:)

BIOGRAPHICAL SKETCH, JOSEPH C. SWIDLER, NOMINATED MARCH 21, 1961, TO BE A MEMBER OF THE FEDERAL POWER COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 22, 1965

Mr. Joseph C. Swidler, 54 years of age, is now a practicing attorney in Nashville, Tenn., where he moved in 1958. He was employed by the Tennessee Valley Authority from 1933 until 1957 when he entered private practice.

During the last 12 years of his service for TVA he was General Counsel and Secretary of the Corporation. He was active in the development of the TVA power program and participated in all the major acquisitions of utility properties. He also served as chairman of the board of the TVA retirement system.

Mr. Swidler is a native of Chicago and attended the public schools of Chicago, the University of Illinois, the University of Florida, and the University of Chicago. He received his Ph. B. degree from the University of Chicago in 1929 and his J.D. degree in 1930.

During the period 1930 to 1933, Mr. Swidler was engaged in private practice in Chicago and also served as one of the editors of Public Utilities and Carriers Service, a legal service in the utility field. For several months in 1933 he served as Assistant Solicitor for the Department of Interior, leaving to enter TVA employment in Knoxville, Tenn. He served on loan to the Department of Justice as Counsel, Alien Property Bureau, in 1941, and to the War Production Board as Counsel, Power Division, in 1942.

He served in the Navy from 1943 to 1945 on the staff of the Assistant Secretary of the Navy.

Mr. Swidler is married to the former Gertrude Tyrna of St. Louis, and they have two children, a daughter 16 years of age and a son 12 years of age.

Senator PASTORE. I think we are prepared to recess until 2 o'clock. (Thereupon, at 12:30 p.m., the committee was recessed, to reconvene at 2 p.m., this same date.)

AFTERNOON SESSION

Senator PASTORE. Now, we will come back to Mr. Swidler.

Mr. Monroney?

Senator MONRONEY. Mr. Swidler, as you perhaps know, Oklahoma, along with Texas, is one of the two largest producers of oil and gas in the United States. This is one of our major industries and of course one of our major resources.

We recognize that the Supreme Court holding has made the interpretation of the Natural Gas Act the law of the land and until Congress should change it, this is the law that the Federal Power Commission must operate under.

My question to you, sir, keeping in mind the very strong recommendations of my very dear friend, Senator Gore, is there anything in your experience or your knowledge that would render an unbiased opinion or an opinion other than one of fairness to considering the cases on natural gas that come before you?

Mr. SWIDLER. No, Senator Monroney. I know of nothing in myself that would make it impossible to decide each case on its merits. I have no preconceptions or prejudices in this field and my only effort would be to follow the standards of the Natural Gas Act.

Senator MONRONEY. And you would approach each case with a complete sense of fairness, completely openminded to consider each case on its merits according to the law of the land and according to the evidence adduced in the hearings?

Mr. SWIDLER. Yes, sir.

Senator MONRONEY. You have never written anything for publication that indicated any preconceived ideas or antagonisms toward the natural gas industry or the members involved in production or distribution of gas, have you?

Mr. SWIDLER. Neither for publication, so far as I am aware, or privately.

Senator MONRONEY. So there is no feeling on your part that would render you, as a judge, sitting on these cases, biased in any way, shape, or form?

Mr. SWIDLER. Not so far as I know.

Senator MONRONEY. I would like to talk about power later.

Senator PASTORE. Senator Schoeppel?

Senator SCHOEPEL. I will defer to Senator Scott.

Senator PASTORE. Senator Scott?

Senator SCOTT. Mr. Swidler, the 1933 bound volume of the Journal of Political Economy, at page 260, contains a review that you wrote covering the published "Opinions and Orders of the Illinois Commerce Commission, 1930-31."

The review begins with this language, and before I quote it, I want to note particularly that this was made many years ago and I was going to ask you whether or not this was still your views.

The statement I read is this:

A public utility commission may function on one of two different theories, or on a combination of the two. It may conceive of itself as primarily a quasi-judicial body, whose function is to act in the role of a court in the decision of petitions and complaints, deciding cases on the basis of records built up by the parties litigant; or it may operate on the theory that it is an aggressive administrative body with the duty of initiating proceedings for the reduction of rates and the improvement of service whenever the facts warrant, and which uses its staff of experts in building up records in such proceedings.

Now this was a long time ago, but I would like to have your comments on it as to what your views are regarding these two theories of a public utility commissioner.

Mr. SWIDLER. In checking back over the things that I have written through the years, that is one that I missed, I regret to say, but I still think that the second theory is the right one.

Now this was written, of course, before the Administrative Procedure Act was passed and before there had been such sharpening of thinking about the role of staff in relation to the role of a commission as there has been since.

But I do think that a commission differs from a court in the respect that it should provide a sense of direction for the agency and that it has an affirmative responsibility to see to it that the congressional or legislative objectives are reached so that if, for example, rates are too high and no complaint is filed, yes, I would think that the Commission had affirmative responsibility to take action to bring rates down.

Now that is provided for not only in the Federal Power Act and in the Natural Gas Act, but in most of the State commission laws as well. It is an authority that is, I am afraid, rarely exercised, but it is an authority that is quite within the scope of the conception of the role of the Commission which is created by the legislation.

Senator SCOTT. Mr. Swidler, referring to the 1939 volume of the Political Economy, at page 282, which contains your review of "What Electricity Costs," which was edited by the late Morris L. Cooke—by

the way, a distinguished former resident of my own community—your review comments on a paper read at the meeting of the Institute of Public Engineering, in which a Mr. Clayton W. Pike dealt with the "Distribution Cost of Electric Energy With Special Reference to Residence and Rural Consumers."

Your comment included this language from page 284:

The Pike paper presented more definite cost figures than any other read at the institute meeting, and will undoubtedly help to dispel some of the haze of uncertainty and obfuscation which has made distribution costs seem such a mystery. Like the other papers, however, it is subject to two principal criticisms. It is, in the first place, based on averages derived from company figures which are themselves unreliable. Utility companies have had every incentive to pad both capital and operating costs, and averages derived from such figures will necessarily be excessive.

This language seems to state that utility company figures are unreliable. Is that your opinion today?

Mr. SWIDLER. No, Mr. Scott, that is not my opinion today. I adhere to the opinion that you read as of the time. This was before the Federal Power Commission and Securities Exchange Commission had taken steps to clear out a lot of water from the corporate structure of utilities and their holding companies.

It was the abuses to which I referred in that review which led in part to the enactment of these laws under which, through the supervision of the agencies which Congress has created, the books of account now have become meaningful.

Senator SCOTT. I pointed out, of course, that this is a very long time ago and much has happened since.

Mr. SWIDLER. Yes, sir.

Senator SCOTT. Then you would not say today, would you, that utility companies pad their capital and operating costs, or would you? I don't know.

Mr. SWIDLER. No, sir, I would not. I was speaking then of an entirely different era, and I am happy to say one that is gone. I think utility books of account now by and large should be entirely reliable, for what they represent themselves to be, that is.

Senator SCOTT. Now, the announcement of your appointment by the President was made on January 26, and it came to the Senate March 21. There was some speculation, indicating opposition, on the part of some members of your own party and I want to classify this distinctly as a rumor and ask you whether or not it has any basis in fact. I want to classify it as a rumor because I have no way of giving it any credit at all. But shortly before your name came to the Senate there were reports that an arrangement had been worked out whereby you were to be nominated as originally announced and designated as Chairman, but that thereafter, a reorganization plan would be submitted to enlarge the membership of the Federal Power Commission to seven, this is to be followed by the nomination of two persons, who could cancel out your vote.

Now, do you have any knowledge of this at all or do you just wish to classify it as rumor and let it go as that?

Mr. SWIDLER. I would just let it go as rumor. I don't recall I ever heard that particular one before.

Senator SCOTT. You can hear anything in Washington.

Mr. SWIDLER. One of the big advantages of having spent the time between the submission of my name and this hearing in Nashville, is that I wasn't subjected to as many rumors as I would have been if I had lived here.

Senator SCOTT. I have been receiving newspapers from Tennessee and these papers evidently are being sent to me because they want me to clear up one thing. The Knoxville Journal, September 13, 1957, has a story which begins: "Swidler Resigns as TVA Counsel."

And then on Saturday, January 28, 1961, there is another statement: "Swidler"—well, the caption is "Kennedy's Selection for FPC Chairman, Swidler, Once Fired, as TVA Legal Chief." And the statement says "Efforts to block the Jones appointment have brought the discharge." The news article says in part:

The reason for his discharge, cloaked as a resignation at the time, was that Swidler preferred being fired quietly to resigning on request, thus he could protect his civil service retirement benefits. His resignation had been asked because TVA Chairman Herbert T. Vogel discovered Swidler was using agency personnel in preparing loaded questions intended to give Arnold R. Jones a hard time during Senate committee hearings on his appointment to the Board.

I am asking you to comment for the purpose of clearing this up. I want you to know it is not any personal hostility on my part. I rather think that when the time comes, there is unlikely to be any opposition from me. I would like you to know I am not influenced by planted stories in morning papers either way, but I do think that in fairness to the Commission and to the Congress, that you ought to be given an opportunity to clear this up, since the newspapers in your home State appear to be making a great thing of it. Would you care to comment as to what the actual facts are?

Mr. SWIDLER. I would be glad to tell the whole story and I must say that I appreciate the very fair and neutral way in which you introduced it.

I might also say I was rather flattered at the attention that the Knoxville Journal gave the circumstances of my leaving TVA several years ago. At the time this story appeared there were big things happening in Laos, and troubles in the Congo, events I thought had far transcended this matter, but they thought this was the most important news of the day and gave me streamer headlines.

Senator SCOTT. They have been sending me copies of it. I therefore feel obliged to bring it to your attention.

Mr. SWIDLER. I think perhaps the question you ask involves several different matters and I will, if you like, start from the beginning and tell you the story in a way that may explain them all and if it doesn't, why you can ask me questions.

Senator SCOTT. Handle it in any way you see fit so that you may have a fair opportunity to comment on them.

Mr. SWIDLER. As you know, there was a change in administration in 1953 and that was reflected in changes in the TVA Board. And in the period from 1954 to 1957, there was a complete change in the complexion of the Board. This was a difficult period for the Board and I might say for staff as well. It was inevitable that some tension, some misgivings, should have been created in this period.

During, as I recall, spring and early summer, there were hearings or proposed hearings on the nomination of Mr. A. R. Jones of Kansas as a member of the Board. At one stage in connection with discussion

of his appointment, the TVA Washington office handed me a thick document relating to the development of the rivers of Kansas and I was asked to analyze it—I think it related to the natural resources of Kansas, rivers of Kansas.

Senator SCHOEPPEL. With your indulgence, might I ask you, who gave you what in this case?

Mr. SWIDLER. It was given to me by the TVA's Washington representative, Miss Margaret Owen, and it was a volume the name of which I no longer recall, but it was prepared in Kansas and dealt with the development of Kansas' natural resources. That is about as much of it as I can remember. It was too big and thick for me to go through myself at the time. I turned it over to one of the young men in the office and I asked him—this was not transmitting the request I received, but going beyond that, and on my own initiative, I ask him to prepare some questions which would bring out the views of Mr. Jones, if submitted to him, on the policy questions with which he would be faced as a member of the TVA Board.

This young man prepared a set of questions in response to my request and I must say that they were not a very good set of questions. They were never approved by me nor were they used.

As I recall, shortly after this time Dr. Paty, the last holdover of the previous administration, died, I think, in August. Dr. Curtis, who had been the third man on the Board, his term expired in May. In September, a copy of this set of questions was apparently brought to the Chairman of the Board, General Vogel. He was at that time the only member of the Board. Mr. Jones, I think, had been approved but had not yet been sworn in. General Vogel called me down to his office. I have refreshed my recollection on the date, it was on September 11, 1957. He called me down to his office and told me that he had acquired this set of questions, that it had impaired his confidence in me to the extent that he thought I could not serve usefully as General Counsel of TVA, and he asked for my immediate resignation.

I arranged to see him the next day, being too shocked at the time to respond immediately. When I saw him the next day, I told him that I had no question as to his right to have anyone that he wanted as his General Counsel and that if he, as I say, then being the sole Board member, if he wanted me to leave for this reason or any other, or no reason at all, I would go.

At the same meeting I told him that under the civil service regulations in force at the time I was entitled to a pension, that someone who had reached the age of 50, as I had, and who had more than 20 years of service, as I had, and whose separation was involuntary, as this certainly was, was entitled to a pension. And I asked that the record be made clear that the termination was involuntary so that there would be no mischance on the entitlement to a pension. He agreed to that and to other details of the arrangements. It was a fairly amiable discussion the second day when he found I would not insist upon staying as General Counsel when he wanted me to leave.

And accordingly, 30 days later, I was terminated and that concludes this little story.

Now, have I left anything out, Mr. Scott? If so, I will be glad to come back to it.

Senator SCOTT. Nothing that I know of. I simply raised the contrast between the two news stories to give you a chance to explain it, that is all.

The only other question I wanted to ask you is the same one I asked Mr. Morgan, which has to do with the President's action in asking independent agencies to keep him informed of the work of the agency at various interim periods, which of course would be in addition to your annual report, which is public and available to everyone.

Would a discussion or comment from the White House influence your decision in any matter pending before the Commission?

Mr. SWIDLER. No, it wouldn't, Mr. Scott, and I must say that the discussion of this problem that I have heard at the White House indicates a clear recognition of a proper dividing line between being of assistance to the agencies in handling their administrative burden and interfering in decision of particular cases.

I think that so far as those now in authority are concerned, and to whom I have spoken, they are very much aware of this problem and I can't imagine them trying to influence a decision in a contested case.

Senator SCOTT. If it were to occur that anyone attempted to influence your decision, whether it be from the White House or from the Congress, in a contested case, would you feel obliged to make public disclosure of that fact?

Mr. SWIDLER. I would certainly feel obliged to show my own strong reaction to the impropriety. I don't think it is very likely to happen to me, Mr. Scott. I would not encourage it.

Senator SCOTT. I am making the distinction between common inquiry from the White House or from Capitol Hill as to the status of your entire case list, backlog, or as to the status of a given case, whether it is in hearing state, whether an opinion is being expected in the near future as against matters going to substantive course.

I think your answer covers the substance and that is what you intended?

Mr. SWIDLER. Yes, sir.

Senator SCOTT. Thank you very much.

That is all I have.

Senator PASTORE. Did I understand you correctly that you feel it is your obligation under the Federal Power Act, not only to supervise the distribution of natural gas and electric power, but even without any initiation or application to that end being made by any individual, that your responsibility is to protect the public interest and even to initiate reductions in rates on your own initiative where you feel they are high and not in the public interest?

Mr. SWIDLER. Yes, sir, I do, in principle, Senator Pastore.

As a practical matter, the Commission is so overwhelmed with the burden it already has, that I do not think it is likely to do much for quite a while beyond catching up, but I certainly do think it is the responsibility of the Commission to see that rates are not excessive and that reasonable rates are put into effect.

Senator PASTORE. I am very happy to hear you say that you feel it is the responsibility of the Commission as such because after all, there is no one to protect the public interest outside of the Commissioners. That is why they have been appointed. It is their function to see

that the public interest is protected regardless of whether anyone makes a complaint or not.

Mr. SWIDLER. I take it that is why section 5 was put in the Natural Gas Act and a comparable section in the Power Act.

Senator PASTORE. Senator MONRONEY?

Senator MONRONEY. In your biography, I do not see any identification as to the political affiliation to which you adhere. By law no more than three of the five members are to be members of the same political party.

Mr. SWIDLER. I am a Democrat.

Senator MONRONEY. You are appointed as a Democrat?

There has been some concern expressed by a few that owing to your previous history and very effective experience in TVA, a Government installation and operation, which I consistently supported as being a great undertaking, but that because of your public power background, it might be as though you were employing the coach of one team to referee a game with another team against the former team. I believe it might be helpful to the committee if you could express to us at this hearing your feeling toward the continuing operation of the public and private parts of the power spectrum, that they must live side by side.

There is a place, I believe, in our economy, that justifies the service of both and I think it would be helpful to have something on the record at this juncture to clearly identify your feeling toward it. I am sure you have operated in TVA in such a way that you did not impinge on the territories and the operations of private utilities that were adjacent to it.

I would appreciate if you would briefly give us some ideas of your views in that regard.

Mr. SWIDLER. The question you raise is, of course, a very natural one. I would not have accepted this appointment if I did not feel that I could discharge it without bias or prejudice. It is true that I have worked for the public sector of the power industry, if you want to consider TVA in that class, and it is for some purposes, I stated to the convention of the American Public Power Association in 1958, that I did not believe in universal public ownership in the power industry; that I believed in the system that we have now, part public and part private; that I thought it was good for the public sector and it was good for the private utilities and it was also good for the public.

I have noticed within TVA—one could not help notice it—the extent to which the desire to excel in comparison with the private sector of the industry has been a stimulus to doing better work, to attempting to achieve excellence in the work of the agency.

I am sure that works on the private side, too; that measuring themselves against the public performance has been valuable in strengthening and toughening the private utilities, and that they are leaner and stronger, have lower rates and better service, than they would have if there were no public sector.

The private utilities are the reliance of 80 percent of the people of this country for power service. They represent an investment of many, many billions of dollars. It would be unthinkable to want to injure the private utility industry. I do not. I would regard it as part of my responsibility to encourage them to become stronger rather than weaker and to improve their performance.

Now, I do believe in freedom of choice on the part of the communities of this country as to the kind of electric service they receive. It seems to me that the people of a community are entitled to do this job themselves if they want to. I don't think that it is likely that there will be any major shift in the near future in relative proportions of the public and private sides, but I feel, as a matter of principle, that the door should not be slammed on the aspirations of any community that wants to handle its own power business any more than we should attempt to prevent a city now operating its own electric system from selling it to a private power company.

And this I also told the APPA delegates in one of their meetings. It was not necessary, I felt, for them to regret the sale to private companies of some municipal systems, but, on the other hand, I thought that the cities that wanted to get into the power business should also be able to effectuate the desire of the community.

Senator MONRONEY. In the matter of public power generation, for example, where the use of available power can be advantageous to both the public and private sector by purchases, sales, or trades, perhaps for peaking power, to save the expense of building new steamplants for a private utility, privately owned utility, or integrating in grid systems, there is nothing in your background or experience that would be prejudicial to any mutually advantageous cooperation between the private sector and the public sector?

Mr. SWIDLER. On the contrary, I am a strong advocate of such cooperation and of stronger grid systems and of greater, constantly increasing economies in production and transmission.

Senator MONRONEY. Greater use of electricity, no matter which source it comes from, would be your goal and to the eventual lowering of the ultimate cost, whether it comes off the private powerline or the public powerline.

Mr. SWIDLER. Yes, Mr. Monroney.

Senator MONRONEY. Regardless of your background, you would go into any case involving privately owned utility unbiased, unprejudiced, with a complete sense of fairness to call the case just as the evidence shows?

Mr. SWIDLER. That is right. I would have no objective except to carry out my responsibilities under the Federal Power Act and the Natural Gas Act, and no other act. I would not be working for or carrying out any responsibilities that I once had as an employee of TVA. I would be responsible only under the legislation under which I took my oath of office.

Senator MONRONEY. Thank you, sir.

That is all I have.

Senator PASTORE. Senator Schoeppel?

Senator SCHOEPEL. Mr. Swidler, I have noted with interest your biographical sketch and your great experience and background in a number of these activities in which you have participated and which practically make up a major portion of your professional lifework.

I note that you were a practicing attorney in Nashville where you moved in 1958. That was after the experience that you discussed here in answer to Senator Scott's question, is that not true?

Mr. SWIDLER. Yes, sir.

Senator SCHOEPEL. What did your general practice consist of there? What type of practice, Mr. Swidler?

Mr. SWIDLER. Most of my clients are either cities or electric cooperatives, or organizations of cities and cooperatives. I represent the Tennessee Rural Electric Cooperative Association, the Alabama Rural Electric Cooperative Association in some matters, and a number of individual electrical cooperatives. The Tennessee Municipal League is one of my clients, and a number of individual cities. I think those are my major present clients.

Senator SCHOEPEL. In your general practice, when you returned to it, I take it that you represented REA's, did you not?

Mr. SWIDLER. Yes, sir.

Senator SCHOEPEL. I was interested in what you had to say about Mr. Jones, who it was my good fortune and pleasure to know. I look back upon it as an enriching experience because I learned something about that man, his activities and outlook, and his adherence to reasonable principles.

In answer to Senator Scott's questioning here, you made some reference to a compilation that was given to you which some member of your staff was asked to review and to prepare some questions.

Mr. SWIDLER. Yes, sir.

Senator SCHOEPEL. Did that have to do with water resources, as you recall it now, or do you presently recall it, of the State of Kansas?

Mr. SWIDLER. It may seem funny, Senator Schoepel, but my only real recollection of it is that it had a yellow cover. It dealt with, I think, the development of the rivers and other natural resources of Kansas.

Senator SCHOEPEL. I was rather interested in that for this reason—

Mr. SWIDLER. It turned out not to be very helpful for the purpose to which it was referred to me.

Senator SCHOEPEL. We regret very much we do not have the type of rivers that a lot of my colleagues on this committee have in their respective domains, and we regret we do not have the deep valleys, the rivers, which might be utilized for hydroelectric power. It was rather intriguing to me that someone presumed to know something about the State of Kansas, when we have no such sites that are available, and how Mr. Jones could have some compelling interest in that, that he had overlooked in Kansas, was a rather mystifying thing to me. I wanted to clear that up because Mr. Jones, of course, was confirmed by this committee, or he was approved by this committee, and the Senate later confirmed him in that important position in TVA.

Are you satisfied, generally speaking, with the present operations of TVA?

Mr. SWIDLER. Yes; I think, generally speaking, that I am. A lot of the fears that I had when I left TVA have not materialized. I would not be candid with you if I did not say that I entertained them at that time. But the TVA Board seems to have continued with the TVA program in many ways as it was conducted in the past, and I think my misgivings were greatly excessive, speaking of Mr. Jones in particular.

Speaking of Mr. Jones in particular, Mr. Schoeppel, may I say from what I can see, and from what I hear, he has done a good and a conscientious job.

Senator SCHOEPEL. The only reason I had for asking this question—I am fully aware that the TVA does not come under the jurisdiction of this committee, or the Federal Power Commission as such—but I was glad to hear you say that in your opinion, Mr. Jones' activity has been satisfactory.

I might say for the benefit of the record here, as I tried to tell some of my colleagues in the Senate at the time some objections were raised—and honestly, as they viewed it at the time I was satisfied that time would show that they were wrong in their conclusions, and I am very happy to have you say what you are saying here now with reference to Mr. Jones' zealous disposition to adhere to the laws and rules and regulations.

Mr. SWIDLER. Senator Schoeppel, you may recall that he was Assistant Director of the Budget at the time he was nominated. And a number of the various proposals that, in my judgment, were not intended to be helpful to TVA were originated in the Bureau of the Budget. Now, that was probably not a very good reason to be apprehensive of Mr. Jones, and yet that did carry over and I am delighted to be able to say that it was without foundation.

Senator SCHOEPEL. I am glad to hear you say that.

Now, Mr. Swidler, I want to ask you some general questions, and unfortunately I have a commitment at 3 o'clock sharp and some of the other members of this committee on the minority side desire to have the opportunity to ask some questions, and they could not be here this afternoon. I understand that we are to conclude this hearing, or recess it, at approximately 3 o'clock. Before that time I want to ask you some general questions.

Do you subscribe to the theory with reference to these independent agencies, the Federal Power Commission being one of them, that they are creatures of the Congress?

Mr. SWIDLER. I certainly subscribe to carrying out these acts of Congress exactly as they are written.

Senator SCHOEPEL. The question I asked—maybe I didn't make myself clear: the Federal Power Commission is one of the independent agencies of the Congress. What I was wondering, whether you so construe it, you so conduct yourself with reference to its being one of the independent agencies of the Government?

Mr. SWIDLER. Yes, indeed.

Senator SCHOEPEL. Now, as was brought out this morning in the questioning—and I have always when someone comes before this committee for nomination, asked them this question, what I now ask you: whether you would have any objection if any Member of Congress, be he a Member of the House or of the Senate, make inquiry as to the status of any matters that are before the Federal Power Commission, not going into the matter that is in the bosom of the Commission for final determination or anything like that, but as to the status of it? The reason for my question has been that as Senator Pastore brought out here this morning, many of us have experienced it. Some of these commissions are badly overloaded, some of them by reason of the laws that the Congress has passed, some of them possibly need

additional staffing; but they are behind, and we get numerous letters and inquiries from some of our constituents honestly saying to us, "Here is a matter that has been before this department or that department. It has been down there for weeks and months and months," and some of them over a year, or almost 2 years, and ask us to find out what the situation is. When will there be a determination, if any?"

Now, do you consider that objectionable, or would you frown upon such inquiries coming from the Congress?

Mr. SWIDLER. Senator Schoeppel, I can say without reservation that I think that is an appropriate inquiry and I would not resent it. I agree also with what Mr. Pastore said, that if a simple inquiry like that is permitted to disturb the working of the Commission, it is the fault of the Commission.

A Member of Congress is entitled to that information, and the Commission should make it available.

Senator SCHOEPEL. I am glad to hear you say it, because I subscribe wholeheartedly to that view, and I think it is perfectly proper. And as far as making those inquiries public, as far as the Senator from Kansas is concerned, any of those commissions where I make inquiry on any matters whatever, is perfectly at liberty to make them completely and totally public if they so desire.

But there are many, many instances, because of this excessive load factor, that it is hard to work applications off in the time a lot of folks think they ought to be worked off in and have decisions rendered, and they are making inquiries and giving us a lot of concern up here as to what we should do about them. Personally, I feel that those independent agencies, organized as they are, should make every effort to bring up their dockets within reasonable periods of being current. Whether that will ever happen or not I do not know. But I fully agree that that has been one of our disturbing situations, and it is growing rather than diminishing in certain of our independent agencies.

Now, I would like to ask you this: Have you read the Landis report?

Mr. SWIDLER. Yes, sir.

Senator SCHOEPEL. I don't want to be presumptuous, but I would like to have your views. Do you agree with that report with reference to the independent agencies in its entirety, or do you have some reservations?

Mr. SWIDLER. I think it would be, perhaps, as presumptuous to say I agree with everything in the report as to say I disagree. I have suspended judgment on quite a few of the recommendations. I feel I would need more background to evaluate them.

Senator PASTORE. May I intervene at this point?

We have asked witness after witness here before, that is, we have admonished them not to forget the fact that independent agencies are the arm of Congress. I think we ought to be specific in asking you questions on the Landis report.

Do you still feel that independent agencies, particularly the Federal Power Commission, is an arm of Congress?

Mr. SWIDLER. Yes, I do.

Now, that doesn't mean that it ought not to seek help where it can. It doesn't mean—

Senator PASTORE. You shouldn't forget who appointed you, either.

Mr. SWIDLER. That is right.

Senator PASTORE. Go ahead. I am finished. I got in my licks.

Senator SCHOEPPPEL. And to that I generally subscribe. If you are going to be tactful and considerate, that is something you have to take into consideration. But generally speaking, in the overall I subscribe to your view as you said a while ago, that they are independent agencies and should be maintained as such until changed by the Congress of the United States in due and proper form and in due and proper manner, and I take it that you subscribe to that, Mr. Swidler?

Mr. SWIDLER. Yes, sir.

Senator SCHOEPPPEL. Mr. Chairman, unfortunately I have a 3 o'clock appointment. I regret it, but had I known about it, I could have changed it. But some people are coming from my own State and leaving this afternoon later on and I must attend.

Senator PASTORE. I realize, Senator, and as a matter of fact you talked to me informally about this before, and that is the reason why we set this hearing between 2 and 3.

It will be convenient for you, Mr. Swidler, to return, of course?

Mr. SWIDLER. Yes, sir.

Senator PASTORE. Rather than set a date at this time—I am acting chairman in the absence of the chairman, Mr. Magnuson is expected back in Washington this afternoon or this evening, and we will leave it this way, that we will resume this hearing at the call of the Chair.

Thank you.

(Whereupon, at 3 p.m., the committee was recessed, to reconvene at the call of the Chair.)



NOMINATION OF JOSEPH C. SWIDLER TO BE A MEMBER OF THE FEDERAL POWER COMMISSION

TUESDAY, MAY 2, 1961

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., in room 5110, New Senate Office Building, the Honorable Warren G. Magnuson (chairman of the committee) presiding.

The CHAIRMAN. Now, we will resume with the nomination of Mr. Joseph C. Swidler, of Tennessee, to be a member of the Federal Power Commission for the remainder of the term expiring June 22, 1965. This vacancy resulted when the term of William R. Connole expired.

Mr. Swidler is 54 years of age. He is a practicing attorney now in Nashville, Tenn. He was employed by the Tennessee Valley Authority from 1933 to 1957 when he entered private practice and, although this has been placed in the record in full, there are some of us who couldn't attend the other meeting. The Senator from Rhode Island is not yet here. He will be here in just a moment. He conducted the other hearing. It was the consensus of the committee that they wanted to call you back after the first hearing and ask you some further questions.

So, Senator Schoeppel, I believe you have some questions.

Senator SCHOEPEL. I will defer to Senator Thurmond. I understand he wanted to get away a little early, did you not?

Senator THURMOND. That is all right. I will stay as long as I can. Go ahead if you want to; either way you want to, it doesn't make any difference.

Senator SCHOEPEL. I will yield to you, Senator, if you desire to ask questions at this time.

Senator THURMOND. Mr. Swidler, I have a few questions I would like to propound to you.

The first is, With your background of long experience with TVA, you probably were able to form some opinion of the kind of job TVA has been doing. In your opinion has TVA been doing a good job in the power field?

Mr. SWIDLER. Yes, Senator Thurmond, I think TVA has an excellent record of service.

In my opinion, Senator, it has a good record, economical construction and operation, and has operated on a promotional basis that has been very successful in making TVA a useful instrument in improving the economic conditions in the Tennessee Valley area.

Senator THURMOND. If TVA has been doing a good job in the production of power would it not be advisable for the Federal Government to do a comparable job in other areas?

Mr. SWIDLER. Well, TVA was created as a result of a rather unique combination of circumstances and the creation of TVA by the Congress was therefore not necessarily a precedent so far as the creation of other Federal agencies is concerned.

Now, whether Congress, looking at the TVA experience, would want to use some of it elsewhere is, of course, a question for you gentlemen and not for me. But, I don't think that the fact that TVA was created or that it has been successful necessarily means it is a model for other agencies elsewhere.

Senator THURMOND. I believe you said in 1948—and I quote:

No hydroelectric system can operate economically or efficiently without firming power. The obvious and usual means of providing such power is through the operation of auxiliary steam facilities and the natural conclusion is that Congress intended to provide for them.

That was your statement.

Mr. SWIDLER. Could you tell me what statement that is from? Is that from testimony before a committee?

Senator THURMOND. That is a statement, I believe, you made in 1948.

Although you were speaking with reference to TVA does not your statement logically apply to any hydroelectric development?

Mr. SWIDLER. I don't remember the context of that statement, Senator.

Senator THURMOND. Do you deny that statement?

Mr. SWIDLER. No, sir, I don't. I just was trying to think of what the circumstances were and what in particular I had reference to at the time. But I think it is true that most hydroelectric developments require some sort of firming capacity. There may be some projects with sufficient regulation involved in the project itself so that steam-power wouldn't be necessary as a supplement, but I would say by and large that thermal plants to firm the hydropower would add to the efficiency of most hydroelectric developments; yes, sir.

Senator THURMOND. The statement you made, as I stated, was—I want you to understand carefully:

No hydroelectric system can operate economically or efficiently without firming power. The obvious and usual means of providing such power is through the operation of auxiliary steam facilities and the natural conclusions that Congress intended to provide for them.

You understand the question now?

Mr. SWIDLER. I understand the question but, Senator, I was obviously there speaking of a question of interpretation of the TVA Act, and what I must have been saying, because I don't recall this testimony, is that one of the aids to interpretation was the physical circumstances of the situation where firming power was required.

I certainly was not saying there that Congress had given any blanket authority to all agencies to add steampower where there were hydroplants. I was confining myself, I am sure, to the—

Senator THURMOND. You were speaking in reference to the TVA Act?

Mr. SWIDLER. Yes, sir.

Senator THURMOND. Then, does not your statement logically apply to any hydroelectric development?

Mr. SWIDLER. So far as the question of efficiency is concerned it does. Now, of course, some of the Federal hydro projects have been firm by agreements with private power companies to use their thermal plants for supplementation of the regular hydroflows, and that is another way to do it, but where you have particularly a flashy hydroelectric development with high flows in flood season, very low flows in periods of summer drought, obviously that project is severely handicapped unless it can firm its capacity from other sources of supply.

Senator THURMOND. Another question. Do you believe that it is necessary and desirable that the Federal Government provide steamplants to firm up power produced at its hydroelectric powerplants, especially where they involve variable flows of water? What concomitant fluctuation is in power production?

Mr. SWIDLER. Yes, Senator Thurmond, I think it makes good sense to put these hydroelectric developments on an economical basis, either through federally supported plants or by tying the plants in with existing systems, either hydro or steam.

Senator THURMOND. Your answer is "Yes," as I understand it?

Mr. SWIDLER. Yes, as a matter of economy, although where the power would come from could be different in one situation or another. It could come in some cases from existing privately owned steamplants and in other situations from Federal plants.

Senator THURMOND. Mr. Swidler, would you say that it would be desirable for the Federal Government to build steamplants to firm up the power from its Missouri River dams or to firm up the power from dams in the Central Valley in California, or to firm up power from dams under construction on the Upper Colorado River?

Mr. SWIDLER. I have no opinion on that question, Senator Thurmond. I think it would depend on all of the facts involved and I have made no such study so that I would want to express myself on that.

Senator THURMOND. Well, from your experience that you have had you don't have any opinion on that subject?

Mr. SWIDLER. No, sir, I don't. I think if I were in the position of having to formulate some recommendations I would want to make a good deal more study.

Senator THURMOND. I can't hear you. If you don't mind, speak louder so we can all hear you.

Mr. SWIDLER. Senator Thurmond, I said if I were in a position to make a decision or recommendation on any of those situations I would want to make a good deal more intensive study than I have had a chance to do.

Senator THURMOND. It is my understanding that you have also said, I want you to listen to this now because I am going to quote from what you said.

Mr. SWIDLER. Yes, sir.

Senator THURMOND (reading):

If the Government as part of a general watershed development program may properly assume the obligations of an area's sole power supply then it necessarily has authority also to take whatever steps may be necessary to make its general program effective and to perform adequately the responsibilities which it has undertaken.

Now, does this mean that in the TVA area the Federal Government as a result of a general watershed program involving hydropower has assumed the obligation of being the area's sole power supplier?

Mr. SWIDLER. Yes, I think in the Tennessee Valley area the TVA has assumed the basic responsibility for power supply. This arose as a result of the acquisitions by TVA of the existing power supply facilities of the companies which formerly served in the area which TVA now occupies. There is no other source of power supply in an area of some 80,000 square miles serving about 5 million people. And that area, with congressional blessings, TVA is now the sole source of power.

Senator PASTORE. Will the Senator yield for a question at that point?

Senator THURMOND. I will be pleased to yield to the distinguished Senator from Rhode Island.

Senator PASTORE. I want to say I am impressed with your background, Mr. Swidler, and I will support you wholeheartedly. Fundamentally I think your interest is in the consumer and that, I think, is the first responsibility of the Federal Power Commission. But on this question of the TVA, do you think that it is fair to other regions of the country that have to depend entirely and solely upon private power, and where the cost by comparison is much higher than in other parts of the country—and now I am speaking particularly of New England—and to use taxpayers' dollars to expand the facilities of TVA by building steamplants and then using that as a medium of propaganda to attract industries out of other parts of the country where the cost is higher, and where taxpayers' money has been used in order to buy these steamplants to produce electricity which is tax free?

The question is, In your mind is that fair?

Mr. SWIDLER. Well, Senator, I think it is, but if we are to get into a discussion of TVA it is going to be difficult to be brief.

Senator PASTORE. No; don't get me wrong, I am not opposed to TVA. I think that all of the natural resources of this country should be explored and exploited to the optimum in the interest of the people, even though immediately it might affect a certain segment of the country in a particular region, but now we are talking about building steamplants, we are going beyond the original purview of the TVA; we are talking now in terms that it is serving a whole valley and because the demand becomes greater we need to build more steamplants, but that demand is becoming greater only because industries are being attracted there under the pretext that the current is cheaper, and it is only cheaper because the taxpayers are paying for it.

Mr. SWIDLER. Well, of course, under the bond financing amendment of the TVA Act which was passed a couple of years ago, the new steamplants are being financed by the consumers of the Tennessee Valley themselves and are being paid for with the proceeds of bonds which are revenue bonds and which Congress has no obligation to redeem from general revenues at all.

It seems to me that the TVA program has been good for the country and has probably helped the consumers in Rhode Island as well as in the Tennessee Valley. The rate of economic growth in the Tennessee Valley has not been such as to threaten the rest of the country. On the contrary, it is only slowly catching up, and I think that the process of catching up is good for the rest of the country.

You may not remember, Senator Pastore, I think you are a younger man than I am, but when TVA was created the region in which it operates was known as the Nation's economic problem No. 1. It was a region which was low in economic development and which was a source of danger, economic threat to the rest of the country. I think the whole country should be satisfied that TVA has done so much—

Senator PASTORE. I think we are missing the point—

Mr. SWIDLER. To raise the economic level in that area.

Senator PASTORE. I am not arguing about the TVA. I made that abundantly clear. I am not arguing against all of these hydroelectric projects which we have initiated. I repeat again, I think we should explore and exploit to the optimum all of our natural resources which in the long run inure to the benefit of our people. But the question has been raised here, how far do you go beyond the realm of developing a natural resource and then get yourself into competition with private industry to the detriment of the people who are actually supporting the program and the detriment only flows from the fact that it is tax free.

Now, if every electric company in this country were publicly owned you wouldn't have any disparity at all in the philosophy of free competition, but it just so happens, and you have said here very, very clearly, the last time that you came here, that you didn't think that private industry should be put out of business, you took a very firm position on that. Now, you take us in New England, we cannot develop hydroelectric power because there is nothing to develop it from.

In other words, we have to rely chiefly and exclusively upon privately owned public utilities. In New England more so than any other part of the country our power costs are higher. That being the case we are being asked from time to time to contribute for the expansion of TVA. All I am saying is this: How far do we go in taking a natural resource and converting it more or less into a private enterprise by building new steamplants, because you say the expansion is necessary, and then using the low cost to attract industries from other parts of the country?

Now, how far can you go and do that equitably, fairly, and logically?

Mr. SWIDLER. Well, Senator Pastore—

Senator PASTORE. I know if you build more and more steamplants in the TVA valley, the TVA becomes much more efficient. I know it becomes much more economical to run. I know it becomes much more effective, and I think it serves the region a lot more effectively as well, but the question is how far do you go in developing a tax-free enterprise to the detriment of other privately owned companies?

Mr. SWIDLER. You understand, Senator Pastore, I am not running for office on a TVA—

The CHAIRMAN. Excuse me.

Can you folks in the back of the room hear at all?

Would you talk so they can hear? I am sure they want to hear what you have to say.

Mr. SWIDLER. I am not running for office on a TVA ticket, but nevertheless I by no means disavow the experience that I had through almost a quarter of a century working for TVA. I think your ques-

tion is a very complex one and if you like I will try to answer it as well as I can.

There are several things, I think, that need to be said. One of them is that in the Tennessee Valley area per capita income is still less than two-thirds of the national average.

Another thing is that there is really, as I understand it, no proof that TVA has enticed industry from other parts of the country—

Senator PASTORE. I didn't use the word "entice," I said "attract."

Mr. SWIDLER. Or attracted industry. The number of relocations has been very, very few. Most of the industry—

Senator PASTORE. Well, if you came from Rhode Island you wouldn't be making that statement, because that is what we have been going through. I mean, after all, I got the headache and you are telling me that I don't have it. [Laughter.]

I realize that you don't make the law, that ultimately this is going to be the decision of the Congress. And I realize, too, that we are not going to argue the pros and cons of TVA. I am merely following up the questions that were raised by my distinguished friend on my left on this question of how far we should go in developing our natural resources and I repeat again I shall support you wholeheartedly because I think you are interested in the consumer.

But I get a little bit weary about what it means to all the country to get some of these publicly owned utilities and keep developing them and they are tax free and they don't pay taxes and everyone else pays taxes. Now, it would be fine if we were all in the same boat, but we are not. I happen to come from a part of the country where the boat is a little shaky and I would like to steady that boat if I can.

We have had a tremendous exodus of our textile industry out of New England because—many of them, of course, went to my friend's State, but the fact of the matter still remains that the differential in the power costs has hurt the economy of my State for the simple reason that the very cheapness of the cost of this power is being used to attract industries out of my State. I don't think it is fair to use taxpayers' money in order to do that.

Mr. SWIDLER. Well, the textile industry in the Tennessee Valley is also declining and for the most part moving to the Carolinas, so if you have lost industry it has not been in the Tennessee Valley area.

Senator THURMOND. On that point I might state to the distinguished Senator from Rhode Island that we do have cheap power down our way, but it is private power, by steamplants, it is not public power.

I will continue now with questions.

Mr. Swidler, I believe that the Federal Government has built or is building six dams in the Columbia River utilizing the greater part of the fall between the Canadian boundary and its mouth in the Pacific Ocean. Would that not constitute a general watershed development program and would you say that by instituting such a program in the Columbia River the Federal Government has assumed the obligation of being the area's sole power supplier?

Mr. SWIDLER. No, sir, I wouldn't. I think that the power supply responsibility is related not only to the amount of capacity that the Federal Government installs but also on the extent to which existing

power supply facilities are acquired and the extent to which the Federal Government takes over the market.

The arrangements, as I understand them, in the Northwest provide for feeding the power into a pool where it is available both to private as well as to public agencies and the addition of capacity on the Columbia doesn't necessarily involve any utility responsibility, as I understand the situation in that area, sir.

Now, Senator Magnuson knows a great deal more about that.

The CHAIRMAN. I was going to say the chairman could answer that question, but I will let the Senator from South Carolina proceed.

I merely wanted to add this for the record. When we are discussing these basin projects, although they involve the same general objective, the development of the resources and power, navigation, flood control, and reclamation, that the situation in each basin is somewhat different. The TVA and Columbia Basin developments are entirely different, although the objective is the same.

I don't know how many times I have put in the record or said or discussed that in the Columbia Basin we pay back to the Government with interest, and we are way ahead of our schedule. In some cases this could not be done, where there would be more flood control, more navigation involved. The natural resources themselves create these differences.

The Pacific Northwest Bonneville Power Pool actually divides itself about one-third private power generation, one-third Federal generation, and one-third State, municipal, and PUD generation. That is the way it is worked out. It goes into the pool and then the pool sells it to the consumer. It is marketed after it leaves the generator mainly by private concerns who also generate a portion of the power.

In TVA you have a little different situation. You have a different situation in the Missouri Basin, and in the Mississippi Basin, because there you are dealing more with flood control matters and less power. Nature gave us a little better deal in this matter than they gave New England or the TVA. Now, we can't change that and we don't intend to change it.

Mr. SWIDLER. Senator Magnuson, I would be delighted to have you sit by my side and help me answer these questions.

The CHAIRMAN. Sometimes there is a misunderstanding as to actually what the Federal Government does to our area in the multipurpose projects, to get a loan. Now, it is usually a very favorable loan, but we do pay back with interest and we are ahead of schedule. As a matter of fact, Bonneville Dam, the first one that was built, is now over 50 percent paid for with interest and the rest of them gradually pay themselves out as the generators come on the line. So, there is a different situation.

Now, the steamplant type of problem might inject itself into our area because, as the Senator from Rhode Island knows, because he has been a distinguished member of the Joint Committee on Atomic Energy for some time, we are starting a reactor out there which would also feed into the power pool any excess power not needed for the Hanford project. But that is a dual situation rather than a steamplant singular purpose to firm up the power in these other areas.

Senator PASTORE. That is a little different, Mr. Chairman, because we are now considering an authorization of \$95 million to use the

steam that is coming out of a plutonium reactor and heat that is being wasted that ought to be used. Now, I am wholeheartedly in support of that as well. I am not arguing against the development of our resources and I hope I don't leave that impression. I am merely saying we can overstep the line.

The CHAIRMAN. I want to say that the Senator from Rhode Island all the time he has been a Member of the Senate has supported all of these projects and has done it very, very consistently, so surely no one could imply that he was not for the development of the natural resources of this country. I know of no one coming from another area who supported us more wholeheartedly than the Senator from Rhode Island.

Senator THURMOND. Mr. Swidler, I believe also that the Federal Government has built or is building six dams on the Missouri River utilizing the fall from Fort Peck Dam to the head of navigation. Would that not constitute a general watershed program and would, in your opinion, the Government assume all or part of the obligation of being the area's sole power supplier?

Mr. SWIDLER. No, sir, I don't think that the mere decision to build those projects in itself would make the Federal Government the utility supplier for that area.

Senator THURMOND. What, if any, is the distinction between the responsibility assumed by the Federal Government in these projects on the Columbia River and Missouri River and that assumed in connection with TVA?

Mr. SWIDLER. Well, the difference is that in the TVA area all the private facilities have been purchased by the Federal Government. There is no privately owned source of power supply in the Tennessee Valley area, and at the time of the acquisition Congress knew that in taking over this area it was assuming that responsibility, that there wasn't anybody else there that could provide the power that was required by the people in the area.

Senator THURMOND. Mr. Swidler, what in your conception must the Federal Government do in order to assume an obligation of an area's sole power supplier and where the Federal Government has in significant areas, in your opinion, assumed the role of being the exclusive source of power; what role, if any, would be left to the privately owned electric companies?

Mr. SWIDLER. I don't know any other area where the Federal Government has as yet taken over the responsibility for the area's power supply. Of course, where the Government has taken over the private companies they have no more function.

Senator THURMOND. What in your opinion should be the proper role of privately owned electric companies on the one hand and the role of the Federal electric power on the other hand?

Mr. SWIDLER. There are such a variety of situations that I don't know that I can give one answer that covers them all. I can speak, I think, for the situation that I know best, which is the one in the Tennessee Valley, and there I think that their role should be each to do as good a job as possible and to act as stimulants to the other, each to surpass the other performance. I think this has happened to a large extent and that the TVA does a better job because of the performance—the improving performance of the power companies in its

area, and that these companies, too, are continually doing a better job, partly as a result of TVA being in the area.

Senator THURMOND. How, then, can a privately financed electric company compete with a federally owned electric company which is subsidized and has no taxes to pay?

Mr. SWIDLER. Under the Revenue Bond Financing Act there couldn't be any competition anyway except in a very small peripheral area. Congress has now set geographical limits on the TVA area.

Senator THURMOND. Well, not only TVA but we are talking about dams in the Columbia River now, six dams out there, six dams in the Missouri River. What is going to be the situation there? I believe you said in those cases the Federal Government would not be the exclusive operator and furnisher, provider of power?

Mr. SWIDLER. That is right.

Senator THURMOND. As it is in TVA?

Mr. SWIDLER. That is right. As I understand the situation; yes, sir.

Senator THURMOND. Then how are private companies that are not subsidized and have taxes to pay going to compete with a federally subsidized Federal power that has no taxes to pay?

Mr. SWIDLER. A lot, of course, would depend upon the particular project. I think some of the projects in the Missouri Basin are marginal projects where the costs of power supply would not be significantly lower than those of the private power companies. In any case, the cost of wholesale power is usually a pretty small part of the retail price and I wouldn't think would affect the competition at the retail level very much. Of course, where the rate that is live for wholesale purposes by the Federal agency is lower than those of the private companies, presumably the Federal agency would get whatever the market was mobile enough to take advantage of, but in that area in particular I think the cost differential is so small—

Senator THURMOND. The cost of what?

Mr. SWIDLER. The cost differentials between public and private power supply are small enough so that the rate influence of the Federal projects doesn't seem to me to extend very far.

Senator THURMOND. Then, if the cost differential is so small between private power and public power what is the advantage of the public power?

Mr. SWIDLER. The advantage of the overall hydroelectric developments goes beyond the question of power supply. These are not merely, as I understand it, power projects; they are projects which are useful for a number of other purposes—for navigation, for flood control, some of them for irrigation, our recreational purposes which are becoming more important now throughout our country as our population grows; municipal power supply, various other things.

Senator THURMOND. But then when you build steamplants you are going beyond the features you mentioned, aren't you?

Mr. SWIDLER. Yes, sir.

Senator THURMOND. How is that?

Mr. SWIDLER. Yes, sir.

Senator THURMOND. You are going beyond that and chiefly for what purpose? None other than power, is it?

Mr. SWIDLER. A steamplant would tend to support the economy—

Senator THURMOND. It won't provide any recreation or navigation or these other features?

Mr. SWIDLER. No, sir, I think—

Senator THURMOND. The only purpose would be to provide more power, wouldn't it?

Mr. SWIDLER. The purpose would be to make the project as a whole more economical by firming up secondary power.

Senator THURMOND. In any conflicting situation between an investor-owned utility and a Government-owned or Government-financed utility, how much weight would you give to the fact that the Government-owned or Government-financed utility would have lower capital cost and by reason of a considerably lower tax burden, would be likely to have lower operating costs?

Mr. SWIDLER. I suppose that would be one factor, Senator. I am not sure of your question. I want to answer you candidly—

Senator THURMOND. Do you want me to repeat the question or did you understand it?

Mr. SWIDLER. I understood it, Senator. I assume that this is a case that could arise in the Federal Power Commission and it would arise, I assume, on a complicated record with many, many other factors involved. Now, if your question is, everything else being the same, which would be entitled to the license, I suppose it ought to be given consideration from the consumer's point of view, yes, but I don't think it is likely that you will get a situation where all other factors are the same. You would simply have to ball all of the public benefits and issue the license to whichever applicant could provide the better public service.

Senator THURMOND. It would be natural that if you had a Government-subsidized project with no taxes to pay they might provide power somewhat cheaper, wouldn't it?

Mr. SWIDLER. The public agency could have some advantages; yes, sir.

Senator THURMOND. Therefore, the cost of the power would be cheaper to the consumers in that area, but somebody has to foot the bill, haven't they?

Mr. SWIDLER. That is right.

Senator THURMOND. The whole Nation would do it or parts of the country would do it?

Mr. SWIDLER. That is right.

Senator THURMOND. And the consumers of that particular area would gain while the consumers of the Nation would lose, would they not?

Mr. SWIDLER. So far as tax policy is concerned that is a function of the Federal Power Commission, but whether anything should be done to levy compensatory tax adjustments against the public agencies is your question, not mine. I think the Commission has to look at the situation as it finds it. No Federal project would be involved unless Congress authorizes it.

Senator THURMOND. Are you going to look at it from the standpoint purely of the consumers in that one area or the consumers throughout the whole Nation who are going to have to bear this burden of taxation?

Mr. SWIDLER. I think I would look at it as I found it, Senator, and if Congress had not provided for tax adjustments, that I would not think it was my function to make them.

Senator THURMOND. Again, I ask you the question, are you going to look at it from the standpoint of consumers in that immediate area or consumers throughout the whole Nation, consumers out of the area having to pay more than those within the area?

Mr. SWIDLER. Senator, I don't think I would make any arbitrary tax adjustments that Congress did not direct me to make. If Congress thinks that the situation as it comes before the Commission is unequal and unfair Congress should provide that these projects will not be weighed the same, that one project should weigh heavier than the other, that some discount should be made or some additional credit given to one or the other applicant.

It seems to me that this is not for the Power Commission to do, and that we must look at it as it comes to us and not try to carry through any social philosophy we might have one way or the other by making arbitrary adjustments one way or the other. I think we have to look at it on the basis of what it costs these applicants and what their actual expenses are, and that we ought not to go through this process to which there is no end, of making compensatory adjustments. When you start that you are on the beginning of a road that leads to confusion and chaos because if you begin to make adjustments on one side then the other folks say, ah, gentlemen, but we suffer some burdens that they don't, so they want some adjustments to be made on their side, and I think it gets you nowhere, that we have to take it on the basis of actual costs, actual expenses, actual revenues, and leave any adjustments to Congress.

The CHAIRMAN. And when you have a case in front of the Commission where there might be this sort of a conflict, there is long and detailed testimony bringing out the matters of costs, the matters of taxation, and all those things that the Commission must weigh.

Mr. SWIDLER. That is right.

The CHAIRMAN. There surely is no dearth of testimony on this subject before the Commission when a case like this is up, is there?

Mr. SWIDLER. No, there is a lot of testimony on this. I should add this, Senator Thurmond, that these are all matters that I would like to give more thought to.

I just want to add this, Senator Thurmond, if I may—

Senator THURMOND. Go ahead.

Mr. SWIDLER. That I answered perhaps a question that I should have tried to duck on the ground that I did want to think more about it, but I know that you want my present attitudes on this and I hope in giving them that I am not committing myself irrevocably to this statement of position, because if in the assumption of the new responsibilities and with the additional learning that I hope I will have a chance to do, I should find occasion to change my mind, I shall exercise that right.

Senator THURMOND. Again I want to ask you this: Would your decision be based on the best interest of the consumers in that area or would you take into consideration the best interest of the consumers throughout the Nation?

Mr. SWIDLER. I would try to follow the standards of the statutes which, as I understand it, do not require and probably don't authorize making conceptual adjustments in actual financial statements. I would take the figures as I found them, which I think would mean, trying to be responsive to your question, that I would make the decision on the basis of the interest of the consumers in that area, because I don't know how you could look at the problem any differently without basing your decision on your economic preconceptions and your social philosophy. I don't think that is what we are supposed to do. I think we ought to take the figures as we find them.

When you start making adjustments you come out with the answer you wanted in the first place. You have no guidelines, you have no direction, except the answer you wanted to arrive at initially. I have seen many, many of these jiggered financial statements adjusted for this and adjusted for that and I think they are worthless. They come out with just whatever the artists at figures who prepared these statements wanted to show when they started. They didn't need to go through all these figures in order to come up with that answer. They knew what they were going to come up with when they started and I don't want to travel down that road. I want to stick to solid figures, actual costs, actual expenses, and I will give whatever weight, whatever preference, whatever discount, whatever credit Congress directs, make any adjustment Congress directs, but I don't want to get into the figure-juggling business myself.

Senator THURMOND. Now, in passing upon conflicting applications for the development of a hydroelectric project under the Federal Water Power Act, if the proposed plans for construction and operation were equivalent, would you regard the power capital costs resulting from the lower rates at which Government funds are made available and lower operating costs resulting from the imposition of a much lower tax burden, as supporting a decision in favor of a Government-owned or Government-financed applicant?

Mr. SWIDLER. All other considerations being equal, yes, sir.

I don't think that would happen, but I think that is the kind of expression of point of view that you want from me and that is my feeling on it, that if one of the applicants has an advantage in lower capital charges that it is to the interest of the consumer that that advantage should be reflected in the consideration of the application.

Senator THURMOND. In any conflict as to who would be permitted to build the same or equivalent transmission lines would you favor construction of Government-owned or Government-financed lines?

Mr. SWIDLER. No, sir, I would look at the whole picture and I would favor the answers that resulted in the greatest economies, in the best utilization of all your available resources.

The CHAIRMAN. And that is the question that Congress in all cases must answer when they give or do not give the appropriation?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. For the particular transmission line?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. And if you think there is a dearth of testimony in those cases, anybody that thinks that, they are mistaken, too.

Senator THURMOND. Since Government funds are made available to Government-owned or Government-financed power systems at rates which are generally about one-half or less the rates at which capital

can be obtained in the marketplace from investors, since Government-owned or Government-financed power systems have a tax burden which is much less than the total tax burden imposed on investor-owned companies, and since assuming an efficiently run Government-owned or Government-operated power system, these substantial advantages in capital and tax costs can result in lower rates to the consumers of such Government-owned or Government-operated power system, what do you conceive to be the place, if any, of the investor-owned utility company?

Did you understand that question?

Mr. SWIDLER. I think I understand you, Senator, and if I don't answer, why, I hope you will catch me up and I will be glad to fill in on anything I have missed.

The investor-owned utilities now have about 80 percent of the market, they provide the backbone of power supply in this country. Now, any change that came about by reason of greater Federal activity could only be as a result of congressional approval of that activity.

Now, this is not a problem for the Commission as I visualize the role of the Power Commission. Unless Congress should adopt a greatly expanded program in the power field there is no occasion to anticipate any great change in the relative roles of the private part of the industry and of the public side. It will, of course, take some additional appropriations for the public side to maintain its present 20 percent, approximately, of the market. But, to go beyond that would require congressional sponsorship of an extension of Federal power activity and it would come about not through anything the Power Commission did but through the action of you gentlemen.

Senator THURMOND. Now, incidentally, since these same advantages could be used to result in lower cost in the gas business would you favor increased Government ownership or financing in this field or do you confine your beliefs on Government just to the electric light and power industry?

Mr. SWIDLER. I have had no sponsorship in any way of any public activity on the gas side and I don't know of any suggestions to that effect. So far as the power field itself is concerned I have stated my view that I don't think it would be a good thing for the country to have universal public ownership of power facilities. In this country we have a system where the private part of the industry and the public part monitor each other and I think this is good, and I would like to see it continue.

Senator THURMOND. I can't hear you, you are dropping your voice. I wish you would keep it loud, sir.

Now, Mr. Swidler, earlier in the hearings on your nomination a letter from Mr. Ray Moulton from the Memphis Light & Water Division was read into the record. That letter states in part, and I quote:

At the present time the division has many matters before the Federal Power Commission.

Was not the city of Memphis recently one of your clients—

Mr. SWIDLER. They still are.

Senator THURMOND (continuing). And, if so, would not there be a possibility of conflict of interest to the extent that you as a member

of the Commission would be passing judgment on matters pertaining to a former client?

Mr. SWIDLER. I would divorce myself, of course, from any association with any former client. I might say that in my work for the Memphis Light, Gas & Water Division, I have confined myself almost exclusively to their power problems, and that their matters before the Power Commission are gas problems in which they stand in the role of intervenors, I believe, in some of the gas proceedings and where the same point of view is maintained by others who are parties to those proceedings.

At any rate, I am not familiar with those cases, have had no part in it, and even if I were familiar and did have a part I would, of course, be careful to avoid any possible conflict-of-interest situation.

But as I see it now nothing would come before me involving Memphis in which I had previously participated.

Senator THURMOND. I believe, Mr. Swidler, you were a member of the President's Task Force on Natural Resources?

Mr. SWIDLER. I was one of the members of—yes, I think that was the name. There was an advisory committee, too, and I wasn't clear whether I was on the task force itself or on the advisory committee. I think I was on the task force.

Senator THURMOND. Well, don't you remember which you were on?

Mr. SWIDLER. No, sir, I don't.

Senator SCOTT. Would the Senator yield? I don't think the witness should be blamed for that, there are so many commissions and task forces and advisory committees.

That is all I have to say.

Senator THURMOND. I didn't think Mr. Swidler had served on so many, though. I thought maybe he would remember the ones he had served on.

Senator SCOTT. It is difficult, sir. That was merely my point.

Senator THURMOND. Among other things, the task force proposed, and I quote:

Regional wholesale power supply systems should be made responsible for meeting the expanding wholesale power requirements of all retail electric systems at the lowest possible cost and supplied with as much hydroelectric capacity as is economically feasible for low-cost peaking power and reserve capacity.

Now, would you tell me whether the regional wholesale power supply systems contemplated by the task force, would be Federal organizations resembling the TVA or the Southeastern Power Administration, and if so, what would be the relation of the investor-owned electric companies operating in the same area to the regional wholesale supply systems?

Mr. SWIDLER. Well, Senator, I have nothing whatever to do with the preparation of that report. I don't know what was intended by that language. The way that committee functioned, the members were not individually consulted about the recommendations and I know I wasn't. I had nothing whatever to do with that.

Senator THURMOND. Do you mean to say that a report was submitted by the task force of which you were a member and made recommendations, and you had nothing to do with the recommendations?

Mr. SWIDLER. That is right, sir.

Senator THURMOND. You didn't see them?

Mr. SWIDLER. No, sir.

Senator THURMOND. You didn't pass on them?

Mr. SWIDLER. No, sir.

Senator THURMOND. And you were not asked to pass on them?

Mr. SWIDLER. I think there was a—

Senator THURMOND. Did you approve the report?

Mr. SWIDLER. No, sir. There was a meeting in which a lot of these things were discussed. I attended but didn't otherwise participate. After that meeting speeches were made—why, some committee prepared that report, but I wasn't on that committee.

Senator THURMOND. What you mean then is a subcommittee of the task force prepared the report for the task force and submitted it without consulting the members?

Mr. SWIDLER. That is right. It was a very large group and it worked in a very informal way and as it happened my own role in it was not a significant one.

Senator THURMOND. I think that is all, Mr. Chairman.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. On the record.

The committee will now go into executive session, but we will resume here at 2:30 p.m.

Senator SMATHERS. Mr. Chairman, in the light of your announcement of Mr. Swidler's reappearance again this afternoon, because of some previous, longstanding commitments I will be unable to ask of Mr. Swidler questions which some people had asked me to ask of him. However, I want to say for the record that I think the questioning of Mr. Swidler by the Senator from South Carolina, Senator Strom Thurmond, completely covers all the points which were raised in the questions that I was requested to ask.

Consequently, I do not now feel in the light of Mr. Swidler's answers to the Senator from South Carolina's questions that there is any further purpose to be accomplished in my going over the same ground that was covered by the Senator from South Carolina.

The CHAIRMAN. The committee will be recessed until 2:30 this afternoon.

(Thereupon, at 11:25 a.m., the committee was recessed, to reconvene at 2:30 p.m., this same date.)

(The following communications were received for the record:)

U.S. SENATE,
COMMITTEE OF APPROPRIATIONS,
February 27, 1961.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR MAGGIE: Your committee will shortly consider the nomination of Mr. Joseph Swidler for appointment to the Federal Power Commission.

Mr. Swidler was connected with the Tennessee Valley Authority a total of 24 years, 15 of which were spent as General Counsel. During this period of time, Mr. Swidler compiled an extremely enviable record as a loyal and conscientious Government servant.

He is widely recognized for his astuteness as an attorney and for his abilities which have made him outstanding in his field.

It is with great pride I recommend him to you most highly and I hope that your committee will act favorably on his nomination.

With kindest personal regards, I am

Sincerely,

Estes,
ESTES KEFAUVER.

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
March 31, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce,
Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I have your letter requesting my views on the nomination of Mr. Joseph C. Swidler to be a member of the Federal Power Commission.

In my opinion, Mr. Swidler is eminently qualified for this appointment and I strongly support his confirmation. I hope his nomination will be approved promptly by your committee and the Senate.

Sincerely yours,

ALBERT GORE.

STATEMENT OF S. R. FINLEY, GENERAL MANAGER, ELECTRIC POWER BOARD OF CHATTANOOGA, CHATTANOOGA, TENN., TO THE SENATE INTERSTATE AND FOREIGN COMMERCE COMMITTEE, IN CONNECTION WITH THE HEARING TO BE HELD ON THE NOMINATION OF JOSEPH C. SWIDLER, NASHVILLE, TENN., TO BE A MEMBER OF THE FEDERAL POWER COMMISSION

My name is S. R. Finley, and I am a graduate mechanical and electrical engineer, licensed as a professional engineer in the States of Tennessee, Georgia, and Ohio. Practically all of my adult life has been spent in the electric utility business, and since July 12, 1937, I have been employed by the Electric Power Board of Chattanooga successively as chief engineer, general superintendent, and general manager, which position I now hold.

In the last 24 years our board has had many relationships with the Tennessee Valley Authority, from whom we purchase our entire electricity requirements. All of these have been under my direction, and it was through these contacts with TVA that I became acquainted with Joseph C. Swidler, who for many years was General Counsel of TVA, but who now is engaged in the private practice of law in Nashville, Tenn.

I have always found Mr. Swidler to be well informed, industrious, highly ethical, and honorable in his responsibilities. He has a highly developed consciousness of the public interest which is often involved in matters with which he is associated. In my opinion, he will make an excellent member, and I hope Chairman, of the Federal Power Commission, and I urge that your honorable committee approve his nomination for confirmation by the Senate.

My board has no relationships, nor do we expect to have any, with the Federal Power Commission. My only interest in submitting this wholehearted endorsement of Mr. Swidler is that I believe the public interest will best be served and the work of this important Commission expedited and better carried out if we can have as a member of it a man of Mr. Swidler's known and proven ability, industry, and ethics.

NASHVILLE, TENN., April 11, 1961.

Senator WARREN MAGNUSON,
Interstate and Foreign Commerce Committee,
Senate Office Building, Washington, D.C.:

We strongly recommend confirmation of Joseph Swidler's appointment to the Federal Power Commission. We believe he is uniquely qualified by experience and ability to perform effectively the Commission's functions in a manner fair both to the utilities regulated and to the vast number of gas and electricity consumers throughout the Nation.

HERBERT J. BINGHAM,
Executive Secretary, Tennessee Municipal League.

WASHINGTON, D.C., April 6, 1961.

Senator WARREN G. MAGNUSON,
Senate Office Building, Washington, D.C.:

Urge approval by your committee and confirmation of Joseph Swidler as Chairman of the Federal Power Commission. Believe strongly he would uphold the public interest.

JAMES G. PATTON,
President, National Farmers Union.

PUBLIC SERVICE COMMISSION OF WISCONSIN,
Madison, Wis., April 11, 1961.

Senator WARREN G. MAGNUSON,
*Chairman, Interstate and Foreign Commerce Committee,
Senate Office Building, Washington, D.C.*

MY DEAR SENATOR: I regret that my duties as Wisconsin public service commissioner do not permit my appearance before your committee in support of confirmation of Mr. Joseph Swidler as a member of the Federal Power Commission.

By way of identification may I say that I have served as professor of economics at the University of Wisconsin until my retirement 2 years ago, when I was appointed to the remainder of a 2-year term, where I am still serving. All of my life has been devoted to economics, more particularly institutional economics, which combines law and economics. The major share of my attention has been devoted to public utilities and I am the author, among other writings, of two books in this field published by the Macmillan Co.: "Outlines of Public Utility Economics" in 1927 and "Public Utilities in American Capitalism" in 1957.

In connection with these studies I engaged in research, consulting, and administrative activities with commissions, private and public utilities, and cooperative agencies. Beginning in 1933 and extending to 1942 I was retained by the Tennessee Valley Authority on an interim basis as (1) special adviser to the Board, (2) power planning engineer, and (3) consultant. I do not now have any special connection with TVA or any other operating public utility. It was in this relationship that I first met Mr. Joseph Swidler in 1933, who was then an attorney in the Legal Division. Of course, I have known and observed him ever since.

As you and the members of your committee are well aware, there are two current regulatory problems that transcend all others in importance: one concerns the regulation of transportation agencies and the other the regulation of the natural gas industries. In both cases it is a question of working out the comparative limits of monopoly and competition. This is an old problem with the utilities and it has been worked out practically with varying degrees of success. May I say somewhat categorically that no mathematical formula or dogmatic theory will provide the solution of this problem. It will have to be worked out as a matter of negotiation and mutual accommodation, keeping in mind the public interests which these institutions are to subserve.

Our commission among others was instrumental in pushing to a conclusion the *Phillips* case which represents the hard core of the natural gas problem. No one can be sure that this case provides all the answers. It is incumbent upon the Federal Power Commission in cooperation with the State commissions and with the Congress to work out reconciliations between what sometimes appear to be mutually exclusive answers. It is in this connection that Mr. Swidler in my opinion can be of the greatest help in working with his colleagues. He is no dogmatist. He is loyal to the organization he is working for. Controversy, incident to negotiation, is only a means to a greater end.

I sincerely hope that your committee will vote to recommend Mr. Joseph Swidler's confirmation.

Sincerely yours,

MARTIN G. GLAESER, *Commissioner.*

AFTERNOON SESSION

(NOTE.—The afternoon session was devoted to the consideration of Mr. Morgan's nomination to be a member of the Federal Power Commission; however, the following discussion concerning Mr. Swidler was held and is reproduced at this point in the record:)

Senator SCOTT. Mr. Chairman, when we heard Mr. Swidler on April 11, there was a colloquy where I asked Mr. Swidler if he had heard a rumor that was circulated in Washington that the President would request the enlargement of the Federal Power Commission by two members and then I added the further remark "in order to balance him off;" and Mr. Swidler said, no, he hadn't heard the rumor, but he had stated to me he understood he was replying to the fact it was to balance him off, that he did have knowledge that the request might be made to enlarge it and I freely accept the explanation. I have no mental reservations about it at all. His explanation to me is perfectly satisfactory.

The CHAIRMAN. Well, you can put that in the record. I do want to say to the committee, as I said this morning, it is my understanding, and this is not a rumor, this is a result of some meetings, that there will be reorganization plans submitted on the Federal Power Commission under the General Reorganization Act. There will be plans submitted to most of the agencies, the so-called independent agencies. The FCC came up last week and the Federal Power Commission, I don't know whether that will be next or follow. So, there will be a reorganization plan. It is, I think, a plan to expedite and enlarge the authority of the Commission members to be able to delegate, and to assign, more responsibility to other people in the Commission. But there will be reorganization plans, so this is not a rumor, there will be a plan on the FPC.

Senator SCOTT. Well, the President has since sent a message up and that's what Mr. Swidler wanted to clear up and it is cleared up as far as I am concerned.

The CHAIRMAN. The message came up, but the plan didn't.

Mr. SWIDLER. I just would like to add one word to that explanation.

I regret having misunderstood your question, Senator Scott.

The question was whether I had knowledge of the President's proposal to recommend an expansion in the number of the members of the Commission. It was introduced, however, by Senator Scott, in these words, that "there was some speculation indicating opposition on the part of some members of your own party and I want to classify this distinctly as a rumor and ask you whether or not it has any basis in fact," and then the question was "whether an arrangement had been worked out whereby you were to be nominated as originally announced and designated as Chairman, but that thereafter a reorganization plan would be submitted to enlarge the membership of the Federal Power Commission to seven, this to be followed by the nomination of two persons who could cancel out your vote."

Well, I had my eye on the canceling out feature in view of the introduction that there were some people in both parties who had opposed my nomination.

Senator SCOTT. That's easily understood. I threw that in gratuitously and you answered the last part of it.

Mr. SWIDLER. I misunderstood your question. I did know that this was brewing although I——

Senator SCOTT. I didn't know how close I was. Two days later, the President sent up the message and asked for the two additional ones; I didn't know I was that close to the situation.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. On the record.

The committee will stand in recess until 2 o'clock, Thursday afternoon.

(Thereupon, at 4:20 p.m., the committee was recessed, to reconvene at 2 p.m., Thursday, May 4, 1961, in room 5110, New Senate Office Building, Washington, D.C.)

THE STATE OF NEW YORK
IN SENATE
January 15, 1890.
REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE
IN ANSWER TO A RESOLUTION
PASSED BY THE SENATE
MAY 1, 1889.
ALBANY:
J. B. LIPPINCOTT & CO. PRINTERS.
1890.

NOMINATION OF JOSEPH C. SWIDLER, OF TENNESSEE,
TO BE A MEMBER OF THE FEDERAL POWER COMMISSION
FOR THE REMAINDER OF THE TERM EXPIRING
JUNE 22, 1965

TUESDAY, MAY 9, 1961

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to adjournment, at 10:10 a.m., in room 5110, New Senate Office Building, Hon. John O. Pastore presiding.

Senator PASTORE. The committee will be in order.

Mr. Swidler, please.

Mr. Swidler, there are some questions that some of the members would like to ask you. If there is no objection, Mr. Schoeppel may proceed.

Senator SCHOEPPEL. I will be glad to, Mr. Chairman.

I want to ask a number of questions for the benefit of the record, Mr. Swidler.

Since your return to the private practice of law you have been active in assisting certain cities to construct municipal electric distribution systems that parallel the distribution systems of some of the private utilities. There have been reports that you have publicly taken some position and denounced the law of Kentucky which prohibits such a parallel construction.

Would you give us some explanation of your position with reference to this, and in what way you have been active in assisting the communities to change from private generated power to Federal generated power, if that is what you had in mind?

Mr. SWIDLER. Yes, Senator Schoeppel.

I represent two cities in Kentucky, Paducah and Princeton. Each is within the area which TVA is authorized to serve under the provisions of the bond amendment to the TVA Act, whereby each town that wanted to could own its own electric distribution system and buy power from TVA.

In the case of Paducah, Senator Schoeppel, that determination has a history which goes back more than 20 years. Paducah is at the mouth of the Tennessee River. It is located only a few miles from Kentucky Dam, one of TVA's largest structures. It is also only 10 or 15 miles from the Shawnee steamplant. It is in the center of a great concentration of TVA power, and for over 20 years it has been attempting to acquire this plant—its distribution system, rather—and to buy power from TVA.

In 1940 when the franchise of Kentucky Utilities Co. was short-lived—had only a few years to run—the company proposed, in order to facilitate its own financing, that a new franchise be granted under the terms of which Kentucky Utilities Co. would sell its distribution system to the city at any time the city wanted to buy it, and was in position to secure power from TVA.

The city, virtually from the time that franchise was negotiated at the request of the company, has been trying to take advantage of the option granted in the franchise to acquire that system.

There is a long history of litigation, in most of which I played no part, long before I left TVA, starting in 1943. This is a litigation which has a certain celebrity in Kentucky because it is a kind of case study of judicial frustration of the efforts of a town to take advantage of the rights theoretically accorded by the laws of the State.

I was asked, I think in 1958, if I would represent the city in a new effort to take advantage of its contract rights, and I have been doing so.

I might say that a contract is now in the final stages of negotiation with Kentucky Utilities Co. I think all the substantial points have been negotiated.

The same story applies, in slightly different circumstances, in the case of Princeton. Princeton has been proceeding under the provisions of the statutes of Kentucky rather than under any franchise provisions. And in that case, too, a contract has been negotiated and is now being put in final form.

Did I leave out something from your question?

Senator SCHOEPEL. No. I think that answers it satisfactorily, Mr. Swidler.

When you were before us on April 11 you said in response to a question that if, for example—

rates are too high and no complaint is filed, the Commission has administrative responsibility to take action to bring rates down.

Of course, I realize, as you do, that the Natural Gas Act itself makes a distinction between the initiative on the part of the Commission to raise rates or to reduce them, and can increase rates only in accordance with a new schedule filed by the natural gas company.

Would you tell us whether in your judgment the Federal Power Commission has any administrative duty in the direction of increasing rates where they might be discriminatory?

Mr. SWIDLER. Yes, I think it does. I think that that is not apt to become a serious question because any company management would be remiss if, when faced by a crisis in carrying on its own business, it failed to apply for necessary increases. But I should think that if the Federal Power Commission should become aware that a gas company was not asking for the amount it would require in order to carry out its public service responsibilities, it should take some action.

Senator SCHOEPEL. You think that would be in the interest of fairness?

Mr. SWIDLER. Yes, I do.

As I say, I believe that is apt to be academic because I can't imagine a company management letting things slide to that extent.

Senator SCHOEPEL. What is your opinion with regard to the action the FPC should take in the future as existing FPC licenses for existing hydroelectric projects expire?

Mr. SWIDLER. I am hopeful that the Congress will provide some guidance to the Commission on that score. It seems to me that that problem is so fraught with important legislative considerations that some additional legislation is indicated.

Senator SCHOEPEL. Had you finished?

Mr. SWIDLER. Yes, I think so.

Senator SCHOEPEL. Let me ask you: Would it be your position that if such licenses expire the FPC should recommend that the Federal Government take over these projects?

Mr. SWIDLER. No, sir. As I see the situation now, it would not be conducive to stability and to efficiency in power supply for the Federal Government to take over a project here and a project there. It could be that one or two of these projects would fit into a Federal system, that they could contribute more to the power economy by being integrated with existing Federal projects; but I should say that for most projects that would not be indicated, as I can see things now.

Senator PASTORE. Will the Senator yield for a question on that point?

Senator SCHOEPEL. Surely.

Senator PASTORE. Just so the record will be clear: Could this be done without legislative fiat? I mean, would it be a decision that would lie exclusively within your jurisdiction without any additional authorization by the Congress?

Mr. SWIDLER. I can't answer that question, Senator Pastore. As I understood the question of Senator Schoepel he was asking what I would recommend.

Senator PASTORE. That may be so. But it wouldn't make any difference what you would recommend if the final decision were up to the Congress. How you felt about it might be considered by the Congress, but what I was determining here, for purposes of the record, is if we are not getting into matters of congressional policy.

Mr. SWIDLER. I think we are, but if Senator Schoepel wants my policy views I don't want to withhold them.

Senator PASTORE. That is true. I want the record to indicate that. So I will ask the question again: Could you do that on your own without approbation of Congress?

Mr. SWIDLER. Not as I understand the law; no, sir.

Senator SCHOEPEL. Mr. Swidler, in the regulations of the FPC, of the rates, charges, and conditions of the sale of power by privately owned utilities, could you tell us where the jurisdiction, in your judgment, of the FPC ends and where the jurisdiction of the State regulatory authorities takes up? In other words, is there, in your judgment, any conflict in this area; and, if so, how should this conflict be resolved? Would it be your suggestion that it be by legislative fiat?

Mr. SWIDLER. Did you confine your question to the power companies?

Senator SCHOEPEL. Let me repeat.

In the regulation by the Federal Power Commission of rates, charges, and conditions of the sale of power by privately owned utilities, can you tell me where the jurisdiction of the FPC ends and where the jurisdiction of the State regulatory authorities takes up?

Mr. SWIDLER. The statute is fairly clear in drawing the line, and I didn't realize that there was a jurisdictional problem. The statute specifically excludes the regulation of distribution of electricity even if that electricity is generated and transmitted in interstate commerce.

The statute also yields Federal jurisdiction over security issues to the State commissions where the State commissions have authority to pass upon those issues.

As I read the statute, it is rather carefully conceived to avoid conflicts. I am not aware that there is a serious jurisdictional conflict. Local matters are now confided to the State commissions and interstate commerce problems to the FPC.

Senator SCHOEPEL. And that, in your opinion, is where they should rest when those situations develop?

Mr. SWIDLER. Yes. I have no recommendations for any change in that situation.

Senator SCHOEPEL. Do you believe that all transmission facilities should be required to be common carriers?

Mr. SWIDLER. I can answer that, Senator Schoepel, in terms of your question simply by saying "No."

If you would like me to expand my views on the common-carrier question, I would be glad to do it. But I certainly don't believe that all transmission facilities should be common carriers.

Senator SCHOEPEL. Thank you.

Now let me go to another matter.

Mr. Swidler, a White House release dated January 26 of this year states that you are to be named to the membership on the Federal Power Commission as Chairman. Might I inquire, is it your expectation that you would be so designated, or has there been any definite statement made to you with reference to this?

Mr. SWIDLER. So far as I know, there has been no change of the President's intention to appoint me as Chairman.

Senator SCHOEPEL. Since your retirement from TVA I understand that you have been representing certain groups, as you testified a while ago. Would you care to tell us what type of legislation you were then supporting?

Mr. SWIDLER. Do you mean in Kentucky?

Senator SCHOEPEL. Yes.

Mr. SWIDLER. Senator Schoepel, I was informally advocating changes in the Kentucky law which would make the statutory rights of cities which acquire their own electric distribution systems effective. Under the Kentucky law as it stands today the right accorded by the legislature is so hedged procedurally that it is very, very difficult for a city to take advantage of the legislative grant of the right to go into the electric distribution field when a community wants to do so.

There were a number of practical improvements in the Kentucky acquisition law that I favored. One of them, for example, was to reduce the three valuation trials that are required in condemnations to one. Under the present Kentucky law a city, to acquire a distribu-

tion system, must first go through a long and involved negotiating procedure. Then, after months of negotiations, which usually have no prospects whatever of success, but which can't be shortened, there is an appraisal procedure, one appraiser appointed by each of the parties and a third to be selected by the two or, if they cannot agree, to be appointed by the Governor of Kentucky.

This is a meaningless rigmarole because neither party is required to accept the results of the appraisal.

After that appraisal has been completed and rejected, a suit might be filed in the county court. The first step there is for the county court to appoint a three-man jury of view. The report of that jury is also meaningless, because neither party is required to accept it.

Then a jury is empaneled in the county court, and there is a full-dress condemnation trial; and this, too, is meaningless, because if either party takes exception, there must be a trial de novo in the circuit court. This, I say, makes no sense.

If the State means for the cities to have no option to enter the distribution business, it should repeal the statute. If the cities are to have the right to enter the distribution business, it ought to be under a sensible statute which makes it possible, without almost insuperable obstacles, to determine a fair value for the property and to enable the city to get into the business.

The specific amendments that I proposed were all intended to implement the established general policy of the State to permit such an option to the cities.

Senator SCHOEPEL. Not to be arbitrary with reference to the values that they may expect legitimately to be placed upon the properties to be taken?

Mr. SWIDLER. No, sir; there would still be due process. There would still be a jury determination of value. But you wouldn't go through step after step after step which exhausts and bankrupts the city long before it gets to the stage where it can actually take over.

Senator SCHOEPEL. Mr. Swidler, have you served in a consultative capacity to committees of Congress, and what was the nature of the legislation for which you served?

Mr. SWIDLER. I served in a consulting capacity until January of this year and for I guess most of the year before that in the House Public Works Committee. The committee referred to me for study a number of bills, and I might say that the most important of the measures which was referred to me for study and report was the so-called Trimble bill. I forget the number of the bill at the moment. I prepared an analysis of the bill for the committee at the last session.

A number of other bills were referred to me involving specific public works in various parts of the country and I prepared reports and amendments in that context.

Senator SCHOEPEL. Mr. Swidler, I presume that you are aware that there is some question in the minds of many as to the right of the President to designate the new Chairman of the Federal Power Commission in the present state of the law, considering the fact that the incumbent Chairman continues as a member of the Commission until June 1962. Have you examined these pertinent sections, and do you have any definite conclusions one way or the other on this?

Mr. SWIDLER. I have examined these sections, yes, Senator Schoepel. I have an opinion on it as a lawyer. I don't regard the problem, however, as my legal problem. This is the President's legal problem, and I presume that he has legal advice.

Senator SCHOEPEL. And, of course, Congress should probably have something to say about that in the intended legislation, the suggested legislation that might be offered for consideration of Congress.

Mr. SWIDLER. Well, of course, the President's problem is construing existing legislation, and the congressional problem is whether to change the legislation.

Senator SCHOEPEL. In the President's message of the 13th, the President gave special attention to the Federal Power Commission. He recommended, as I remember, that the Commission be enlarged by adding two members and that the Chairman be given power to allocate the work of the Commission among the various Commissioners. It was then suggested that this will make possible the establishment of three panels of two other members and himself: two working with gas, one with electricity, one panel of three members to work in one area, while another panel of three covered the other, freeing the Chairman for administrative matters.

Now, in general, is it your understanding that the President is suggesting panels of three, composed of the Chairman and two members, or is he suggesting panels of two with the Chairman operating in the administrative area? What is your general reaction on this proposal, if you have any, or if you care to state your views?

Mr. SWIDLER. I think that the recommendation had in mind providing some flexibility so that the panels could be set up in either way, depending upon how the panel system works out.

I think flexibility is important. I would like to see it preserved until the new Commission can get its bearings and determine how best to carry on the work of the Commission. I am frank to say that I don't know now, Senator Schoepel, just how the Commission can carry on its work most effectively.

Senator SCHOEPEL. I take it that for the time being you might have no objection to keeping the Commission in its present size and authorizing it to operating in panels of two until you have an opportunity to look it over more carefully, or could I assume that—

Mr. SWIDLER. I am sure that the President had good reasons for his recommendation, and he has been advised by experts who know more about it than I do. These are not my recommendations, but I see nothing amiss in them.

Senator SCHOEPEL. Mr. Swidler, as a former Federal employee, you of course I am sure are familiar with the so-called merit system of appointment and promotion within the Government service. Should you become Chairman of the FPC with primary authority over personnel matters, what is your attitude toward the present staff of the FPC as you become acquainted with them with reference to this question?

Mr. SWIDLER. Although I have been out of the Government service for several years, I still think of myself primarily as a career Government employee.

It has been my experience that the career service contains many people of great ability and dedication. I am sure that I shall find

in the Federal Power Commission great reservoirs of talent, initiative, enterprise, that I want to take full advantage of.

The management problem in a Federal agency has many points in common with management problems in any large institution, public or private. I am sure that there will be some cases of people who would perhaps do better work elsewhere. There will be a need to bring in some additional talents. But I am impressed, from what I know, with the great number of highly skilled and dedicated people in the Federal Power Commission, and I think primarily it would be my effort to try to draw out of them the best of which they are capable.

It makes a lot of difference, Senator Schoepfel, whether a man is working in an agency that has a goal, that has some leadership, where the people feel that what they are doing is important, where they feel that their work will leave some record that it will be effective.

In an agency with good esprit the best in the staff is brought out, and I would hope to be able to do that, Senator Schoepfel. I would regard my term of office as a great success if I were able to achieve that goal.

Senator SCHOEPEL. Turning to another matter, are you familiar with the so-called area pricing policy of the Commission?

Mr. SWIDLER. Generally.

Senator SCHOEPEL. Would you give us your opinion as to the wisdom of this approach to the pricing of gas of an independent producer? What are your views on it, please?

Mr. SWIDLER. This is, of course, the major problem that faces the Federal Power Commission. With your leave, Senator Schoepfel, I would like to reserve judgment on that. If the Commission is faced with this overwhelming backlog of producer cases, certainly some administrative devices must be worked out to expedite the consideration of those cases.

I shall consider myself fortunate if the Commission is able to work itself out of that backlog and to develop these devices in the course of another year or two. I certainly don't think I have any answer now.

Senator SCHOEPEL. I think your answer is eminently fair and I share your views; namely, that it is a troublesome proposition and something should be evolved and worked out that can expedite it in some manner. I am very glad to hear you say that, as you have just a moment ago.

Are you familiar with the so-called *X-20* case, Transco, recently decided by the Supreme Court, which held that the Commission can take into consideration the end use of gas and the initial price thereof in determining whether a certificate of public convenience and necessity should be granted to the applicant?

Mr. SWIDLER. Yes, sir. I believe you asked me about that at the first hearing.

Senator SCHOEPEL. Yes. Do you have any further elaboration that you want to make with reference to it now?

Mr. SWIDLER. No, sir. I thought that was a very good opinion of the Supreme Court.

Senator SCHOEPEL. Do you consider that the public interest entails consideration of the supply of gas that will be available for the public?

Mr. SWIDLER. Sir?

Senator SCHOEPEL. If it were shown that the reserves being discovered were falling off in comparison with the gas used—and in a lot of areas that is the situation—would such a factor cause you to reevaluate the prices allowed for gas of independent producers?

Mr. SWIDLER. It is one factor in a complex of factors, Senator Schoepfel.

Senator SCHOEPEL. Mr. Swidler, I understand you very frankly said that you did not have any definite experience in the administrative responsibility or the regulation of the gas industry.

Mr. SWIDLER. That is right.

Senator SCHOEPEL. That you were primarily interested—and, of course, when you were with TVA—on the electrical side?

Mr. SWIDLER. That is right.

Senator SCHOEPEL. I note that in a message of the President he publicly said that the techniques necessary for the handling of problems in the field of electric power and natural gas are different:

An understanding of one industry does not guarantee a background for dealing with the other.

I am agreeing with the President because I see two different types of approach here and two different series of problems, and certainly the latter on gas is very important.

Do you feel that you have to approach this, I presume, on an experience by day, week, and month basis, to familiarize yourself with the problems of the independent gas producers and the independent operators who are developers of gas properties in those fields, as well as the larger companies which have large reserves?

Mr. SWIDLER. I approach these problems with great humility. I know I have a lot to learn.

Senator SCHOEPEL. Do you carry into this responsible position, if you are confirmed here, any preconceived idea or any feeling of prejudice against the oil or the gas industry who are the subject matter of regulation before the Federal Power Commission?

Mr. SWIDLER. Not at all.

Senator SCHOEPEL. I think, Mr. Chairman, those are the only questions that I have to ask at this time.

I thank you, Mr. Swidler.

Mr. SWIDLER. Thank you, Senator Schoepfel.

Senator PASTORE. Mr. Cotton?

Senator COTTON. Mr. Swidler, I was interested in your colloquy with Senator Schoepfel in regard to the matter of municipal public electric plants. If a city, or metropolitan area, decides that it wants its own municipal powerplant, and secures it, then that takes out of an area that is being served by a private utility a certain lucrative part of their field. Is that a reasonable statement?

Mr. SWIDLER. It could happen that way, yes.

Senator COTTON. If that is done on the basis of permitting the private utilities a certain return on their investment, a factor in rate regulation, that could mean that the other residents of the area served by that particular utility which had lost a lucrative section would be compelled to pay a higher rate for their electricity; is that right?

These questions are just simply leading up to the question I want to ask you. Though they seem argumentative, is that at least a possibility?

Mr. SWIDLER. It is a possibility.

Senator COTTON. What would be your ideas of solving that problem? It is argued to me that if the residents of city X want their municipal plant, that they want to pay for it, buy it, construct it, they ought to have it without being impeded in their desires. How would you take care of the added burden placed upon the other consumers in the district or area served by the utility? Would you take over the utility and serve them publicly? Would you subsidize them in some way, or would you let them in the nature of things bear the added burden? What is your general approach on that particular problem?

Mr. SWIDLER. Any city which buys or condemns a piece of an integrated power system would and should have to pay severance damages. To a degree, and perhaps in some cases completely, the severance damages would make the company whole and enable the company to continue to serve its remaining consumers without the necessity for increasing rates.

Senator COTTON. Do you mean permanently?

Mr. SWIDLER. This could be, yes.

Senator COTTON. Or for a limited period.

Mr. SWIDLER. This could be permanent. There could also be situations where the company would not be in position to apply as low rates for the remaining customers in the future as it would have been if it hadn't lost a part of its market.

I think this is a question of values in the kind of city in which we live.

The price of keeping each private system at its peak of efficiency, according to its own what you might call technocratic assumptions would be to deprive the people in its area of any right to operate their own electric systems, and I say this is too high a price to pay at least in those circumstances.

The legislatures and the courts have worked out procedures for compensating the companies. Where there is a really acute case I think the legislature should take a special look at the problems of that particular company. But this is a fairly rare situation. And in the cases that I know something about, with which I have been in contact, the point is more theoretical than practical, and the impact of the loss of a single community upon the rest of the system is hard to find; especially in view of the rates of growth of the companies.

It is a rare case where any single community in a large integrated system will account for more than the 1 year's loan growth of the whole system. So that it is a loss that is fairly readily made up.

But at any rate I think you have to balance against the interests of the company in running the kind of system that it would prefer, perhaps the lowest cost system that it can plan, against the right of people to run their affairs the way they want to.

Senator CORRON. Just to carry that a little further, and I won't take unnecessary time, from a general nationwide standpoint you and I have had our innings in other committees and at other times about TVA and private versus public power.

Mr. SWIDLER. I remember very well, Senator Cotton.

Senator COTTON. There is no need of our putting on another rehearsal of that.

In complete sincerity I want to ask you this, and I ask it from the standpoint of one who represents a section of this country where their consumers and industry are compelled to pay more for their electricity perhaps than almost any other locality, where we can't have a TVA, can't have an authority unless we are prepared to abolish and move cities that have been located there for 250 or 300 years.

I have gathered in the past—and correct me if I am wrong—I assume that you feel that in most cases, at least, power can be produced more cheaply and efficiently by public power than private?

Mr. SWIDLER. I don't assume that in all cases, Senator, no.

Senator COTTON. In most cases?

Mr. SWIDLER. I am not convinced that that is so, Senator Cotton.

Senator COTTON. You feel that is true in the case of TVA; do you not?

Mr. SWIDLER. Yes, sir; I do.

Senator COTTON. Which is probably the best and largest example of public power in this Nation.

Mr. SWIDLER. TVA had some quite unusual advantages.

Senator COTTON. If that is true, strictly speaking, shouldn't the whole country have those advantages? Shouldn't we be all public or all private? I mean, is it really fair, extending the example that I have given you, to take certain areas of this country where they are endowed with certain advantages, and to make them islands of low-cost public power in these days when you can transmit power without much leakage for long distances, without going the whole hog and having people of every section, and industries of every section, have that same advantage, assisted by the taxpayers?

Mr. SWIDLER. The advantages that I was thinking about were not primarily institutional advantages but locational advantages; and geographical advantages. The ability to integrate a power system with a comprehensive resource development program on a major river, the existence of large coal deposits in the immediate vicinity of the power system, the ability to combine hydro and steam, the existence of a very large system which permits greater diversity, thus taking advantage of the economies of size—all of these things played a part and few of them are transferable or exportable. So that the experience in the Tennessee Valley is not necessarily a pattern for what happens elsewhere.

By this I don't mean to exclude the possibility of some additional public power areas, but all I say is that TVA does not necessarily demonstrate the need or the feasibility of such additional areas; that each would have to stand on its own bottom.

Senator COTTON. You have through your years of experience—and you have had long experience and I have heard you testify before committees before and have always admired your ability and your frankness—is it your studied opinion—

Mr. SWIDLER. Let me say "Thank you," Senator Cotton.

Senator COTTON. It is sincere. I have disagreed with you very vitally at times, as you know. That is a privilege we all have. It is no reflection on you, and I hope not on me. But is it your studied

opinion that there are areas in this country where private power should continue and continue indefinitely, or do you feel that gradually public power should take over? I think that it a fair question. If it is not, don't you answer it. I think we are entitled to know that.

Mr. SWIDLER. I am glad to make a stab at an answer, Senator Cotton.

I feel that no area would consider the kind of a major convulsion which is involved in a transition from private to public power supply for marginal advantages.

Senator COTTON. I beg your pardon. What do you mean by marginal advantages?

Mr. SWIDLER. In order to save a small percentage on power.

Where the power companies are doing a good job it seems to me that they are secure. That doesn't mean that there won't be some transfers between private and public operation. There are and there should be—I think it would be a mistake to try to freeze exactly the present patterns of ownership.

I said here on an earlier occasion when you were absent, Senator Cotton, that I saw no signs that public power interests should weep when a community decides to close down a municipal system and sells to private power companies, provided that when a community wants to make the reverse change and acquire itself a privately owned system it is free to do so.

As you probably know, the transitions tend to be all in one direction. The municipal systems have been closing shop at the rate of about one a month over a period of years. It is much easier to sell out a municipal system than it is for a city to get into the power business.

I think the safety valve of the ability to change is a hallmark of democracy that ought to be preserved, and I don't see that it is a serious problem; that it would involve any revolutionary changes in our power supply system. And just as I say to the people on the public power side, "Be calm," I say the same thing to the private companies, "Contain yourselves." This is not the country's most serious problem by any means.

Senator COTTON. May I just say this to you:

It is very difficult to be calm when you see your own section of the country being bled to death. If public power is cheaper, if public power is an advantage, then everybody should have it, and the convulsion, the convulsion of changing from private to public power when, as you use the term "marginal," when the percentage gained is small, the convulsion is a lot better in operation for ulcers than to just wait and quietly bleed to death.

I come from a section that sees and has seen the situation of not being able—I don't say that our industries have been attracted away, but not being able to continue on a nominal growth scale, and one reason is because of the difference in electric rates, and it has been public power that has made that difference. You say because of advantages that are natural and so forth, and ability to integrate.

I think another factor has been investment of the taxpayers' money and the resources of the Federal Government behind it. There is no use in going over that.

But what I am trying to get at is this:

If this is going to be a gradual encroachment through the years until those places where the convulsion will be too great, or where the advantages, the opposite of a big hydroelectric dam, is not there, if they are going to be left as the backwaters of the country, it presents a very serious situation, whether it is gradual or an immediate convulsion.

I am apprehensive of a public service commission that in the guise or under the principle of freedom of choice is going to let the lucrative parts of this country go into the hands of public power with low rates and leave the other sections of the country to perish.

I am asking you frankly, man to man, and I am not sure of the answer—this is not an argumentative question, this is a straight question—shouldn't all of the citizens and all the States and all the industries of this country have the advantages of public power—in which I am convinced you believe, because I have heard you testify so many times—rather than just some who happen to live in those localities where it is easy to get those advantages?

Mr. SWIDLER. Senator Cotton, you have heard me testify about TVA. I don't think I have ever testified before about the relative merits of public and private power generally. I am inclined to answer your question now with great candor. I am not saying that this is the way I would have answered it 10 or 20 or 30 years ago, but this is the way I feel now.

I would feel now that a universal public power system would not be to the interests of this country. I have looked at trends in the growth of the two types of systems and they seem to be fairly stable in their relationships.

In our kind of society you can't have complete certainty. The cost of certainty is to prohibit change. I don't think you want to do that. I think our society is flexible enough to accommodate itself to these changes which work both ways. I don't see any likelihood of major changes in the overall national proportions. I do see the possibility of shifts back and forth, and I think those are good, and that they should work both ways.

When a community finds that its own electric system isn't doing as well as would be possible if it sold out to a private company, I think it ought to be free to sell. I would hate to see the public system freeze even so that it couldn't improve itself by associating itself with a strong nearby private power company.

And I think, conversely, when a community has an opportunity, as its own leaders determine, to improve its situation by undertaking its own power supply, it should be free to do it. And these shifts by and large apparently tend to balance off. They don't balance off necessarily within each company. But the price to pay for giving that kind of absolute assurance to every company is too high a price in my opinion.

Senator COTTON. Just to summarize with two very short questions.

I gather that you do feel that there are parts of this country that are better and more efficiently served by private power?

Mr. SWIDLER. I think that there are many parts of this country where you could not secure more than a marginal improvement by a shift of public power systems; yes.

Senator COTTON. Are there any parts where you couldn't secure any improvement?

Mr. SWIDLER. I assume that there are; yes.

Senator COTTON. Now, as a member of the Federal Power Commission, would you consider it one of your duties and responsibilities that whenever there is a shift and this natural law of change is taking place, to protect the consumers and users of the remaining districts or sections served by private power from having their costs go up because of the removing from that area, from its perimeter, from part of its service, a part of the market?

Mr. SWIDLER. The Power Commission must serve the interests of all.

Senator COTTON. Would you consider the interests in that particular instance?

Mr. SWIDLER. I wouldn't consider the interests of the remaining consumers only.

Senator COTTON. I haven't suggested that. Would you yourself, feeling as you do, considering all factors, would you consider carefully the protection of those remaining users?

Mr. SWIDLER. Yes, sir.

Senator COTTON. And would you consider it beyond the feature of initial damages or initial costs of taking over the plant? I view a good deal of apprehension this thought you advance that when a community or somebody else buys a plant, or takes it on condemnation, what they pay is going to be a permanent protection for the users, the market in the rest of that area.

I doubt if that is a very safe protection.

Mr. SWIDLER. The long-range interests of all consumers should be considered.

Senator COTTON. Thank you.

Senator YARBOROUGH (presiding). Senator Scott?

Senator SCOTT. Mr. Swidler, I have no questions. I am sure you know how I feel about the desirability of implementing the personnel of the Commission where there are advantages, and I am sure you know that I have not expressed any opposition to your confirmation. I am interested in the proceedings, but at this point I believe you and I are both aware of my feelings.

The Morning Gazette implies that there is some mysterious conspiracy on this side of the table to delay your confirmation. I would like to make it clear that my only recollection of the progress of this hearing is that it has been interrupted by sessions of the Senate, or by the necessary action of the chairman, in which the members have concurred, in substituting hearings on urgent measures or other matters, or because we have simply not had the time on given days to complete your testimony on that day.

There is an implication in the morning gazette—gazetteer—that some people up here are trying to delay your hearing. I was in executive committee sessions today, as I have been before, and I understand that the chairman is unavoidably absent and that that is the only reason why we are not holding an executive session.

I would like to make this clear for the record, because there seems to be an assumption that if you are primarily an advocate of public power you are either good or bad according to the opinion of the writer, or if you are for private power or for a partnership theory

that you belong in the good or the bad side, or that if you believe in the private power theory or the partnership theory you must, by the very nature of that belief, be some sort of a stooge for the oil and gas interests.

I hold a different opinion. I believe that the consumers of my State, which has lost population—and the Commonwealth has lost population each decade, has lost that population to other areas for other reasons, including lower power rates, sometimes also for reasons of climate, sometimes perhaps for reasons of the operation of the seniority system in Congress—but for whatever reason, I believe there is a case to be made for the ordinary consumer and his interests that may coincide with that of private power. If he is in Pennsylvania I suspect that generally it does. If he lives in Tennessee, his interests may coincide with that of the public power, and I think we should respect those differences. But I do want to make it clear, except for this little homily of mine—and I assure you there are no grits. In this homily—I am perfectly prepared, as you know, to vote for your confirmation and to go into executive session and say so; and have been now for some time since you have testified. Your views and mine happen to disagree. My views lost; and the President is entitled to put people in there who agree with his views if they are otherwise qualified.

I would like to clear that for the record because the keeper of our public conscience has again this morning undertaken to advise us of what we must do. With all due respect to the press I wrote a book once saying you must never quarrel with the press, and that is why I do it frequently.

Thank you.

Senator YARBOROUGH. Are there any further questions of the witness?

Senator SCHOEPEL. Mr. Chairman, I would like to ask one further question.

Mr. Swidler, you may have covered this before. If you have, indicate it, and if you have not I would like to have your views on it.

The TVA has now been demarcated in a certain area of activity, for which it is certified and for which it comes under the jurisdiction of the laws and the rules and the regulations.

Do you generally agree that that is a satisfactory arrangement to prevent some of the very things that you have been questioned about here this morning, about the loss of industries going into other areas where they have a greater advantage, say, of public power, they may think, and taxing power and all that. In other words, summing it up: Do you generally agree that the limitations placed upon the TVA are practical at this present time?

I know that TVA is not the subject of this committee's or the Federal Power Commission's consideration.

Mr. SWIDLER. Senator, at the time that the territorial limitations to the bond-financing amendment were proposed, I was opposed and I was opposed to them on several grounds. One of them was that the question of boundary adjustment didn't lend itself to legislative solution, that there had been a long period of stability and that I thought that situation would continue without the necessity for a legislative line. I thought I saw the possibility that it would prove

in the long run to be hurtful to the private companies because I wasn't sure that—I hope you will understand me, Senator—I wasn't sure that Congress would hold the line perhaps as well as TVA would without legislation.

TVA has all the area that it can, say, graze over.

There was another reason, and that is that by leaving the situation relatively fluid—that is not exactly the word I want—by failing to make it extremely rigid, I thought the influence of the TVA program would be more widespread without necessarily adding additional territory; that a degree of flexibility would help in expanding the effect of the TVA example.

I think these considerations are still valid and it remains to be seen whether that line is a right line, whether it can be held or should be held.

I would think it would be a mistake, for example, for TVA—I mean for the Congress—to direct the places where TVA should act locally.

This is, I think, a matter that is easier and better for the TVA Board to handle. So I do have questions about the territorial limitations in the bond financing amendment, Senator Schoeppel.

Senator YARBOROUGH. Any further questions?

All questioning closed?

(No response.)

Senator SCOTT. Mr. Chairman, in another hearing on Howard Morgan, may I ask to include as part of that record a letter to the President of the United States from Representative Robert Wilson, of California, under date of April 28, 1961, which he has requested be included, and of course a copy of it made available to Mr. Morgan.

Senator YARBOROUGH. Yes. The letter is ordered to be included in the hearing of the record of Mr. Howard Morgan, nominee for the Federal Power Commission.

That record is open, is it?

Mr. BAYNTON. Yes, sir.

Senator YARBOROUGH. The letter of April 28, 1961, from Mr. Bob Wilson, Member of Congress, is ordered printed in the Howard Morgan record on motion of the Senator from Pennsylvania.

If there are no further matters to be heard this morning, the hearing stands adjourned.

Thank you.

(Whereupon, at 11:23 a.m., the committee was adjourned.)

the first of these is the fact that the bones of the skeleton are not all of the same size, and that the bones of the skull are not all of the same shape. This is a very important point, and it is one which has been overlooked by many writers on the subject.

The second point is that the bones of the skeleton are not all of the same color, and that the bones of the skull are not all of the same texture. This is also a very important point, and it is one which has been overlooked by many writers on the subject.

The third point is that the bones of the skeleton are not all of the same weight, and that the bones of the skull are not all of the same density. This is also a very important point, and it is one which has been overlooked by many writers on the subject.

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