SUGGESTED IMPROVEMENTS IN THE ADMINISTRATIVE PROCESS

HEARINGS

BEFORE A

SPECIAL SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

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SUGGESTED IMPROVEMENTS IN THE ADMINISTRATIVE PROCESS

WEDNESDAY, FEBRUARY 27, 1963

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to notice, at 10:15 a.m., in room 1334, Longworth House Office Biulding, Hon. Oren Harris (chairman of the special subcommittee) presiding.

The CHAIRMAN. The subcommittee will come to order.

Over a period of years this committee has been concerned with the problems that come under its jurisdiction. The Legislative Reorganization Act of 1946 specifically directed the committees of the Congress to maintain an oversight. If anyone wonders how the committee in 1957 and 1958 designated that investigation as coming under the Oversight Committee, that is where it came from. The Reorganization Act, in section 136, specifically directed the committees of the Congress to maintain an oversight or a watchfulness of the administration of the laws enacted by the Congress under the jurisdiction of the particular committee.

We have tried during these years to carry out this responsibility as a committee. The jurisdiction of the Committee on Interstate and Foreign Commerce is not only of great importance, but it is extensive and very wide. In carrying out the responsibilities of the committee we try to maintain a watchfulness or oversight of all of the operations; that is, the administration of the laws, with which this committee is concerned.

But since 1957 and 1958 the committee has given special emphasis to problems affecting the major regulatory agencies of the Government, since most of them come under the jurisdiction of this committee.

It was recognized by our beloved late Speaker Sam Rayburn, who was chairman of this committee at the time several of these regulatory agencies were born. And the Speaker felt that the Congress, in laying down the rules and setting up these great agencies of the Government, had tremendous power over the business, the economy, the welfare of the consumers, and the future needs of the people of the country. He has on many occasions discussed with me the real intent of these agencies being set up as an arm of the Congress, and doing a job or being called upon to do a job which the Congress could not, for many reasons well known to everyone, do itself.

So consequently we have been giving a lot of attention in the last several years to these problems. We have issued reports. In my judgment those reports contain valuable information. And all with an objective of better administration and improved procedures, inuring to the interest of the public—and that means the consumers of America.

We have had legislation that has been derived out of the work of the committee and the hearings and investigations conducted during the last 6 years. In the last Congress, specifically, every agency, that is, every major regulatory agency, with the exception of two, has undergone reorganization by the Congress, some through legislation designed by this committee establishing the pattern which had been approved by the Congress, and others with the same pattern under a reorganization plan submitted to Congress by the President of the United States. The Federal Power Commission has not been so reorganized, primarily because there has not been a request for it. The request was made by the Commission in the past under the chairmanship of Mr. Kuykendall, which was considered in hearings by the other body as well as the general consideration given by this committee. The same request was made by the present makeup of the Commission in the last Congress under the chairmanship of Mr. Swidler, the present chairman. But the committee and the Congress did not feel and have not felt the wide latitude they have requested to be in keeping with the intention of the Congress when these agencies were established. Neither would it be in keeping with the spirit of these reports, because we believe there should be a Commission to run these agencies and not a one-man affair. And neither should the staff do it.

I advised the Commission in the last Congress that if they wanted a reorganization plan such as had been set up for almost all the other major regulatory agencies, that I as chairman of the committee would introduce such a bill to work it out.

I was advised that they did not think it would be necessary, as they were getting along very well.

In addition thereto, the chairman of the various regulatory agencies under the jurisdiction of the committee, and others in the Government, after consultation with our own committee, and together, as we understand, suggested to the President, President Eisenhower, some few years ago, the establishment of an Administrative Conference—I believe that is the name of it—the Administrative Conference of the United States. That was at the time when we had under consideration legislation to do something about the overall problem of ex parte contacts and those things involved with it.

That Conference was set up. Judge Prettyman was made chairman of it. It did a very good job in this particular field. President Kennedy in 1961, in continuing the work of the Congress with Judge Prettyman as the chairman reestablished the Administrative Conference and approved its work. That Conference has concluded its preliminary work, and has made a recommendation to the President, as I understand it.

We are now at the crossroads as to whether or not that type of institution, in the best interest of the administration of laws by these variout agencies of the Government, will be made permanent. During the

course of this committee's work at this time Judge Prettyman will ultimately come before the committee for the full development of that story in order that the committee may have the benefit of his experience and their recommendation in arriving at its judgment as to what to recommend.

I make this statement for the record at this time to give a brief background of the interest of the committee in carrying out its duties and responsibilities.

Today the committee has been called together for the purpose of surveying the objective of improved procedure of the regulatory agencies, and how we may arrive at the best solution in carrying out our job and giving help to those who are responsible for such a tremendous task.

As I have explained, we have been working on this problem for the last 7 or 8 years. Recently my attention was called to a statement that was carried in the press on Saturday, January 26. In view of the fact that it referred to a particular problem which has concerned this committee, I made some inquiries about the problem. I learned, as the article had indicated, that a letter had been written to the President of the United States under date of January 23, 1962, by Commissioner Howard Morgan of the Federal Power Commission.

Now, as chairman of the committee—and I think that I express the feeling of the committee—it isn't our duty or responsibility to become involved with any differences of opinion on any particular decision or judgments made by the Commission. We maintain it is the duty of all Commissioners to do their job and make their own decisions based on the facts and information in any particular case. If it is a part of the majority decision, or if it is a unanimous decision, or if it is a dissent on a particular issue, it is the duty of each Commissioner to assume his own responsibility. And so this committee is not concerned, then, with any differences of opinion that might exist within the Commission itself, or any personalities that might be involved. We are concerned with the administration of the laws and whether or not these Commissions are carrying out the law as written and intended by the Congress and the legislative record, we think, should be considered.

In view of the fact that the letter had to do with the general problem of the regulatory agencies of the Government after obtaining a copy of the letter and reading it, I felt that this committee should have the benefit of the experience of Commissioner Morgan, as we intend to have other Commissioners not only of the Federal Power Commission but of the other agencies of the Government, particularly the chairman, to report the progress they have made in carrying out their responsibilities.

But in view of the importance and the seriousness of the charge that has been made about the regulatory agencies as such as referred to in the letter, it appears to us that the committee might be benefited by having the views of Mr. Morgan as to what is meant in dealing with the agencies as such.

So at this point, since it is the background of the hearing today, the letter of Mr. Morgan to the President referred to will be included in the record.

(The letter referred to follows:)

FEDERAL POWER COMMISSION,
OFFICE OF COMMISSIONER,
Washington, January 23, 1963.

The PRESIDENT,
The White House, Washington, D.C.

DEAR MR. PRESIDENT: It is with considerable regret that I now convey to you my firm decision not to accept a further appointment to this Commission after expiration of my present term of office on June 22, 1963. I respectfully request that a nomination to replace me be made in time to permit confirmation by the Senate prior to that date.

There are a number of reasons for my decision but I am sure I should be considered less than gracious if I were to list them all. Besides, several of them are clearly visible to those who have read the dissenting opinions which I have been obliged to write during my service here. I should, however, like to make a general comment concerning the regulatory agencies which may be of some small help to you, to my successors, and to the public interest. My study and work in the regulatory field cover a period of 25 years, and the strongest convictions produced by that experience are those I am setting forth in this letter.

Standing as it does midway between the extremes of unbridled monopoly and undiluted State ownership, public utility regulation has been perhaps as noble, hopeful, and challenging a concept as any in our democratic framework of government. The passage of law establishing this concept required all the courage self-sacrifice and tenacity of men like George Norris, Hiram Johnson, Gifford Pinchot and many, many more of the same caliber. Ordinary men could not possibly have secured the enactment of those laws against the almost overwhelming forces opposed to them. Ordinary men cannot administer those laws today in the face of pressures generated by huge industries and focused with great skill on and against the sensitive areas of government. Ordinary men yield too quickly to the present-day urge toward conformity, timidity, and personal security.

Under our laws the great natural monopolies which form our utility industries are granted almost priceless protections and privileges. The industries and individual companies are keenly alert to their rights, as they should be, and properly insist before the commissions, the courts and the Congress, upon prompt and full enjoyment of those rights.

But those unusual rights—rights not enjoyed by unregulated industry—are accompanied by unusual obligations and responsibilities. Or are supposed to be. There is the rub. If our regulatory laws are not administered by men of the same character, courage, and outlook as the men who enacted the laws, we will surely find the regulated industries and companies successful in postponing, or evading entirely, the responsibilities which are supposed to accompany their rights. When this happens, utility regulation ceases to be or never becomes a protection to the consuming public. Instead it can easily become a fraud upon the public and a protective shield behind which monopoly may operate to the public detriment.

The big problem in the regulatory field is not ex parte communications, influence peddling, and corruption as that word is commonly understood, though where these problems exist they can be serious. In my experience as a regulatory official I have been approached only once with a veiled intimation that money or stock was available in return for a favorable decision, and that was at the State level, not here in Washington. But abandonment of the public interest can be caused by many things, of which timidity and a desire for personal security are the most insidious, the least detectable and, once established in a regulatory agency, the hardest to eradicate. This Commission, for example, must make hundreds and even thousands of decisions each year, a good many of which involve literally scores and hundred of millions of dollars in a single case. Without the needed sense of public responsibility, a Commissioner can find it very easy to consider whether his vote might arouse an industry campaign against his reconfirmation by the Senate, and even easier to convince himself that no such thought ever crossed his mind. And if he can fool himself, whom can he not fool?

The big problem is to find men of ability, character, courage, and broad vision who have the same viewpoint as the authors of the legislation they will be called on to administer; men who would feel at ease while working with a Pinchot or

a Norris; men who don't become neurotic with worry after having cast a vote for the public interest.

Admittedly there is no oversupply of such men these days. There never was. But such men, and only such men, make great regulatory commissioners. It is only when a commission is staffed by men, for example, like Eastman, Aitchison, Splawn, and Mahaffie of the old Interstate Commerce Commission that the public gets protection instead of platitudes; principle instead of puff jobs and image building; hard work instead of "streamlining" and wall chart juggling.

As you well know, there has been a great deal of study of regulatory agencies lately, and with good reason. All of the studies I have seen mention the matters I have discussed in this letter, but only in passing; and then proceed to make detailed suggestions of an organizational and administrative character. I am sure the agencies will continue to benefit from these studies and suggestions, but I am equally convinced that the main problem is in the area of personnel selection which I have discussed.

Regulatory agencies have extraordinary problems and responsibilities, and they operate under extraordinary pressures. They require—and they cannot operate successfully without—extraordinary men.

Let me emphasize that these comments have been general in nature and apply equally to all regulatory agencies. With the exception of the persons named herein they are not intended to depict or describe any individual, including my colleagues and myself.

Service on the Commission has been an immensely stimulating and educational experience for me, for which I shall remain grateful to you. Please let me extend all good wishes for the continued success of your administration.

Very sincerely,

HOWARD MORGAN, *Commissioner.*

The CHAIRMAN. My letter to Mr. Morgan inviting him to come to the committee giving an opportunity to explain further his views on these important matters and his reply thereto will be included in the record.

(The documents referred to follow:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., January 26, 1963.

Hon. HOWARD MORGAN,
Commissioner, Federal Power Commission,
Washington, D.C.

DEAR COMMISSIONER MORGAN: Under the provisions of the Reorganization Act of 1946, the Committee on Interstate and Foreign Commerce is directed to keep a constant watch and oversight of the administration of the laws that come under its jurisdiction. For some time the committee has given its attention and consideration not only to the administration of these laws, but the improvement of regulatory procedures in the interest of the public, and the purposes for which these agencies were created. The Federal Power Commission is a part of the jurisdiction of the committee.

My attention has been called to your statement to the President and your request not to be reappointed when your term expires in June of this year. The reasons given—as reported through the press—are of special interest to the committee. In view of our efforts to bring about improved procedures in the regulatory agencies, and better service to the public, I would like to extend to you an invitation to present to the committee your views and suggestions on how best to obtain these objectives.

In view of the importance and enormity of this subject, I am scheduling a meeting of the Subcommittee on Regulatory Procedures for Tuesday morning, February 26, at 10 a.m., in the committee hearing room, 1334 Longworth House Office Building, at which time we would be pleased to have you appear and explain to the committee your views and suggestions toward improved procedures in these major regulatory agencies.

Sincerely,

OREN HARRIS, *Chairman.*

FEDERAL POWER COMMISSION, OFFICE OF COMMISSIONER,
Washington, February 7, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of January 26 requesting my attendance at a meeting of your Subcommittee on Regulatory Agencies for Tuesday morning, February 26, at 10 a.m. Because of an oral argument I must attend at that time, I have arranged with your committee chief counsel, Mr. Howze, to meet with your subcommittee at 10 on February 27 instead of the prior date.

I hope you will accept my apologies for the delay in answering this letter. I have been submerged in work since receiving it and have had to put off not only this but many other letters until time permitted answering.

You pointed out that the letter of invitation was occasioned by press reports—in some of which I am afraid I was extensively misquoted—concerning my reasons for asking not to be reappointed to this Commission.

Fof your information and that of your subcommittee I am enclosing 10 copies of the letter which I wrote President Kennedy. The general comments in this letter, as I pointed out therein, represent a point of view concerning the major and crucial area of difficulty in all regulatory agencies which I have been developing with increasing conviction for a number of years. I sincerely believe that when commissions are staffed by men of genuinely outstanding stature and caliber, men such as those mentioned in the letter, the less important administrative and procedural problems of the agencies tend to be minimized, while the more important problems are more quickly recognized and dealt with. This is not to say that the numerous studies of such problems are unnecessary or that they are not helpful, but that a main avenue of attack on those problems is the recruitment and selection of outstanding personnel at the Commissioner level. My comments were not directed specifically toward this or any other single agency.

Your letter of invitation suggests that you wish my views primarily on matters of precedure and I shall be glad to discuss such matters with the subcommittee, within my competence to do so. It should be pointed out however that I am not a specialist in administrative and procedural matters nor have I attempted to become one. My work, both at the State commission level and on this Commission, has of necessity been directed toward the substantive aspects of case decisions and broad regulatory policy. I shall however be glad to discuss any matters you desire, in the hope that such a discussion may provide some small and continuing benefit in the regulatory field, to which I have devoted a number of years of study and work.

I accept your invitation and look forward to a useful discussion with your subcommittee.

Sincerely,

HOWARD MORGAN, *Commissioner.*

The CHAIRMAN. Mr. Morgan, with this background, I think you should have an opportunity at this time to make whatever statement you would care to make.

STATEMENT OF HON. HOWARD MORGAN, MEMBER, FEDERAL POWER COMMISSION

Mr. MORGAN. I am here in answer to your invitation which was issued after my letter to the President was written declining further appointment to the Federal Power Commission.

I wish to emphasize again, as I did in my letter to the President, that the ideas in the letter were general in nature and general in application. They have been made by many others before me. Dean Landis is a noteworthy example. And I think every regulatory committee of the House and Senate which has studied regulatory agencies has emphasized very heavily the necessity for excellent quality in the appointments to the Commissioner level. President Kennedy him-

self in his message to the Congress on regulatory agencies on April 13, 1961, under the heading "The Caliber of Appointed Personnel" said this:

> No amount of reorganization or new procedures can be effective without or a substitute for high-quality personnel in charge of these agencies. No other single step can accomplish as much.

The thought I had in writing the letter is that so many studies concentrate on administrative and procedural matters that it seemed important to me, and has for many years, to emphasize and reemphasize the very point that President Kennedy himself made in his report to Congress.

I would like to include in the record as well as my letter to the President a letter which I wrote to my old friend Congresswoman Green, of Oregon, in December of 1960, at the time when the first inquiry came to me concerning my willingness or interest in serving on any regulatory agency in Washington. I believe you will see that the same comments in a different form are contained in this letter, and show that my interest in this matter has not changed over a long period of time. If it please the subcommittee, I would like to offer this letter for inclusion in the record.

The CHAIRMAN. It will be received.

(The document referred to follows:)

THE BLACK BUTTE RANCH,
Sisters, Oreg., December 16, 1960.

HON. EDITH GREEN,
Member of Congress, House Office Building, Washington, D.C.

DEAR MRS. GREEN: This is in answer to your request for background material relevant to my posible appointment to the Interstate Commerce Commission or other regulatory agency and is an expansion of the material furnished your staff by telephone yesterday. Also enclosed are references, where appropriate covering each period and type of experience.

First, however, let me reemphasize one point which I made yesterday. Over the past several years, when asked by you and Senator Morse, Senator Neuberger, and others to consider such an appointment, I have consistently refused. As a young man in the Government service, I had the great privilege of working under the direction of the late Joseph B. Eastman, Chairman of the Interstate Commerce Commission and one of the finest public servants ever to be employed by our Government. This was a wonderful experience but it's impossible for me to forget the heartbreaking frustrations and overwork which confronted this great man as he tried to produce order, prompt action, and vigorous protection for the public against the steady opposition of a majority of Commissioners who were usually moribund and sometimes worse. I am certain that this long, lonely struggle contributed to his untimely death during the war; a war which had already prevented President Roosevelt from acting upon the reorganization plans Mr. Eastman had prepared for him.

When Mr. Roosevelt himself died before the end of the war and Mr. Eastman's proposals and the need for reform were forgotten, I promised myself that I would never return to Washington in connection with a regulatory agency except in a policymaking position and then only if assured that the President who had appointed me was determined to follow through with a thorough house cleaning and the appointment, at his earliest opportunity, of a clear working majority of Commissioners dedicated to honest, vigorous regulation in the public interest.

The events of the past few weeks, including Senator Kennedy's appointment of Dean Landis to advise him, have given me the first hope since Mr. Eastman's death that these conditions may soon prevail. If this is the case, then you may submit my name to the President-elect and his advisers, for in these circumstances I should be honored and delighted to serve, if nominated and confirmed.

If these conditions are not to prevail, however, my previous attitude will remain unchanged for as you know, I do not need a job; I have a good life and it would be pointless to exchange it for the anxieties and frustrations endured

by Mr. Eastman for so many years with only limited opportunity for tangible and lasting accomplishments during his lifetime.

To sum up: If it is now possible to restore some of the standards for which Joseph Eastman worked and for which he is still revered, then I can think of no greater honor than to be asked to help, and no assignment which could command more of my energy, loyalty, and gratitude. I hope I have not belabored the point beyond reason, but it will be of crucial importance to me if called upon to decide whether to serve.

I have no direct or indirect interest, ownership, or association in or with any type of industry regulated by the Federal Government, or in any association maintained by such industry. No such industry or association has asked me to become a candidate for appointment to a regulatory agency, and no such industry or association has been or will be authorized by me to assist my candidacy (if I should become a candidate) for such an appointment in any way, directly or indirectly.

Please accept my thanks for your interest in this matter. Regardless of the outcome, so far as I am concerned, I hope some sweeping improvements are made soon. Believe me, the public is entitled to better treatment from the Federal regulatory agencies than it has been getting.

Sincerely,

HOWARD MORGAN.

Mr. MORGAN. Now, the press has reached too many conclusions about the contents of my letter to President Kennedy, and it has been widely misquoted. Two principal questions seem to have arisen from these press stories. One was: Was I referring to my colleagues on the Federal Power Commission in any derogatory way? The answer is "No," and the letter itself makes that plain. I want to make it even plainer now. My colleagues are able, honest, conscientious men, and further, they are men whose company I enjoy, and for whom I have formed a genuine personal fondness. And this includes all of them. I cannot and will not make derogatory comments about them. And I am very sorry that my letter to the President has been misinterpreted by those who have sought to make a sensational thing out of it.

I have differed with my colleagues on policy matters, sometimes quite strongly. But that is what a commission is for. It would not be a proper commission if it did not have the interplay of opinions, including those that are strongly held. But on a personal basis, my association with my colleagues has been pleasant, friendly, even, and amicable, and I have no reason to believe that it will do other than continue on that basis.

Another question has arisen as a result of press stories: and that is: Was I referring to myself when I described the qualities that an ideal commissioner should have? The answer to this is also "No," as was made plain in the letter, and I would like to make that plainer now.

I mentioned four men who served on the Interstate Commerce Commission a number of years ago who exemplified my idea of outstanding commissioners to serve as a model for all regulatory agencies. They were the great Joseph Eastman, Clyde Aitcheson, Walter Splawn, and Charles Mahaffie. I knew three of those men personally, and I knew them all by reputation. I worked for one of them for a brief period.

Now, gentlemen, if I had twice the brains I have and five times the knowledge, and were about two-thirds of my present age, and were appointed to a regulatory commission, I think that after serving 20 years there might be a chance that I could possibly belong in the company of those men. But under no other circumstances. So I was not referring to myself.

I want to apologize, I must apologize to the subcommittee for the fact that although your invitation was issued to me almost exactly 2 months ago, the volume of work in the Commission has been such as to prevent me from making the kind of study and detailed recommendations regarding procedural and administrative matters which I know you are interested in and which I would like to lay before you. I have a few suggestions which I assume will come out in the course of the hearing. But they are not complete. Perhaps I will have a chance to do this later. There have been numerous invitations for me to do some writing on the subject, and when I am free to do so it is my hope that I will be able to.

Now, gentlemen, I would be very happy to attempt to answer any questions you have.

The CHAIRMAN. That concludes any statement that you desire to make; you do not wish to comment further on your letter to the President?

Mr. MORGAN. Those are my general comments. I will be happy to answer any specific questions you have in mind, sir.

The CHAIRMAN. Commissioner Morgan, I asume from your letter and your statement that you do not desire to continue as a member of the Federal Power Commission beyond your term, which will expire in June?

Mr. MORGAN. That is correct, sir.

The CHAIRMAN. And you have made that clear to the President?

Mr. MORGAN. Yes, sir.

The CHAIRMAN. Now, in your letter to the President you state that there are a number of reasons for your decision. Several of the reasons are clearly visible in your dissenting opinions. That is a very interesting comment. I myself would like to have out of your experience just what you have in mind with reference to the decision which you reached, that you would not desire to serve further on the Commission.

Mr. MORGAN. It is my view, and it is set forth as clearly as I was able in several dissenting and also concurring opinions, that the quality of regulation at the Federal Power Commission, even though it has been substantially improved in the last 2 years, is still not sufficiently vigorous and imaginative to offer full protection to the public, or for that matter, to offer full fairness and promptness of decision to the industries which are supposed to be regulated by it. There is a tendency to hold back from employing new avenues of approach or seeking for new solutions. Like all institutions, the Federal Power Commission is loath to abandon what it considers tried-and-tested means, and to adopt new ones. My dissents spell this out in far more reasoned and logical fashion than I can hope to do here speaking "off the cuff."

But I finally came to the conclusion, after assessing my ability to change things, and the speed with which that could be done, balanced against the imposition on my family and the sacrifices involved in public service in Washington, I came to the conclusion that the rate of accomplishment was not rapid enough to satisfy me and make me feel that all this was worthwhile. And so I asked the President not to consider me for reappointment. There are other factors, as I hope I have made clear, beside those which appear in the dissents, which went into my decision. And some of those are personal.

The CHAIRMAN. I am not myself interested in any of the personal matters, but I am interested in the broad problem here of helping to bring about improved regulation.

Mr. MORGAN. I understand, sir.

The CHAIRMAN. You are a young man.

Mr. MORGAN. I thank you for the kind words, sir. I am not sure you are accurate.

The CHAIRMAN. You can understand my statement when you realize my age at this stage in comparison to yours. But you have had 25 years of experience in this field of regulation, you say?

Mr. MORGAN. Let me add that that is not continuous experience, sir. The experience covers a span of 25 years, but it is not continuous in this field.

The CHAIRMAN. But you have had long experience?

Mr. MORGAN. Yes, sir.

The CHAIRMAN. Now, am I to understand that you have decided that there is not enough imagination in dealing with the problems of regulatory agencies, even though you have convictions, that you have become discouraged and perhaps disgusted and given up hope that you can accomplish what in your mind you feel would be best in carrying out the laws, and just decided you would get out; is that a fair statement or not?

Mr. MORGAN. Well, I wouldn't put it quite that way. But there is a question, and there has been increasingly a question in the minds of students of regulatory affairs over the past few years, as to whether utilities can actually be regulated in the manner envisaged by the authors of the legislation under which they are supposed to be regulated.

And this in part is what I was talking about in my letter to the President. We live in an age which enables enormous pressures to be generated, and as I said, focused with great skill on the agencies of Government that are supposed to control certain sectors of industry.

Now, I am sure I don't have to tell the members of the subcommittee who have dealt with regulatory matters for many years that the regulated sector of industry is very different from the unregulated. As I said in my letter, it has enormous privileges which become rights when they are granted by law as they are. And those industries are very quick, as they should be, to take advantage, full advantage and prompt advantage, of all the rights that they have. They are not so quick to accept the responsibilities that go along with those advantages.

The CHAIRMAN. Are you talking about the industries?

Mr. MORGAN. Yes, sir.

And the pioneer legislators who enacted the laws expected the regulatory agencies to be firm, and it is necessary for them to be so, and to be prompt to seeing to it that the other side of this compact between the regulated utilities and the public is carried out. If the agencies are not firm, if they are not prompt, if they don't move on their own initiative to investigate and to hand down orders, the natural expectation is, gentlemen, that the executives of those industries, competing with each other for the top jobs and for the favor of stockholders, will be forced by the very pressures of cor-

porate structure to see what they can do to delay accepting those responsibilities. I am not condemning anyone, this is just the way things are. And in the absence of firm regulatory practices and atmosphere, the public does not get the advantages from this compact betwen the regulated industries and the public that it is supposed to get.

The CHAIRMAN. Commissioner, could you get a little bit more specific. We are still talking about your decision, your dissents now. You say the reasons are clearly visible to those who read them; that is, the reasons you are not going to continue. They are embodied in your dissent. Could you be a little bit more specific and give us an example of what you mean is included in your dissent?

Mr. MORGAN. I think if you will look at the dissent I wrote to the Idaho Power Co. finance order, docket E–7067, an order authorizing the issuance of promissory notes, you will find a very good example of what I am talking about. Here is what appears to be a routine order authorizing the issuance of $30 million of promissory notes. This order is what the regulatory agencies call boilerplate. It is a standard form order which exists for the purpose of simply filling in the proper dates and the proper amounts, and issued to authorize the issuance of stocks or bonds in a case where there is no controversy, simply a routine run-of-the-mill approval of a finance issue.

I wrote—let me go further and say that among the purposes of the issuance of these promissory notes was the construction of a dam on the Snake River in Idaho, the third dam of a three-dam plan authorized by the Federal Power Commission some years ago. I wrote a seven-page dissent to the order, pointing out a number of things concerning problems, unsolved problems, raised by this proposal of the company to build a dam. The financial issue itself raised no problems. There was no question of interest rate or collusive bidding, or anything of that sort. It was routine in that respect. But the construction of the dam raised a number of problems. And I invite your attention to the dissent. I will try to put the gist of it into as few words as possible.

I pointed out that the Idaho Power Co. is now selling about 20 percent of its system capacity at rates which appear to be below its cost of production of electricity. It is doing that because it has a surplus of capacity. The extent to which that surplus exists and the extent, if any, to which the company is selling below the cost of production, is unknown, because it has not been investigated. But it seems clear on the face of it that the two dams that Idaho has built now have produced a very large surplus of power, leading Idaho Power to sell at wholesale to other power companies under conditions which may raise the gravest kind of question about discrimination, and about practices which may threaten the company seriously from the point of view of its solvency.

I expressed the need for an investigation of this matter before a third dam was biult which would be sure to aggravate the situation and cause it to spread.

I pointed out that the previous membership of the Commission had notified Idaho Power Co. that it would make a full rate investigation

of Idaho Power if and when a certain contract, based on the sale of surplus power to Utah Power & Light Co., went into effect. That contract went into effect while this present Commission was sitting, in 1961. It is another one of the sales of surplus power at dump rates.

I pointed out that this Commission has an obligation to do that which the former Commission said should and would be done when that surplus power contract went into operation.

Now, the previous Commission, as we all know, was critized strongly for its inaction and for its lethargy, and a great many other things. Here is a situation where that Commission was prepared to act and had notified the company that it would act. And I tried to persuade my colleagues that under the circumstances we must act. And I advocated that the securities be authorized, but that, as the law permits us to do, we put a conditioning restraint on the use of that money; namely, that we not allow it to be spent on the construction of a third dam until we had investigated and made sure that that third dam would not damage the public interest by aggravating the already serious surplus problem of Idaho Power.

I also pointed out that if the Bonneville Administration extends its marketing territory to the State of Idaho, no one can predict when, if ever, Idaho Power will be able to market in an orderly fashion the power from its existing dams, let alone a new dam.

Now, gentlemen, problems of this kind, when they are raised on a factual basis, pose the need for investigation to determine the seriousness of them. And investigation is not a punitive action. It is not a damaging action. It is nothing more than a determination of the facts to find out whether a certain action should be taken.

You will find when you read this order that it is a simple boilerplate order, a standard finance issuance order, accompanied by a seven-page dissent raising grave problems of public policy and the protection of the public. And there is not one word of response from my colleagues, not one word of explanation as to why this Commission is not willing to do what the previous members of the Commission said could be done, should be done, and would be done.

Now, let me emphasize again, gentlemen, that you cannot disagree with actions or inactions of people without seeming in the eyes of some to be attacking them or criticizing them personally. I want to assure you, it is not my intention to do that, and I am not doing that. It is in the nature of disagreement that when you disagree strongly, some people feel that there is a personal element in it. I assure you, that is not so. This case which I have discussed briefly here, and which you can read in 5 minutes, is an example of what I have been talking about, and is an example of what I mentioned in my letter to the President.

I hope this clarifies the matter somewhat for you.

The CHAIRMAN. Well, Commissioner, I can understand why differences of opinion will develop between people as to any problems. If Congress had not had that in mind they never would have made these agencies into commissions, agencies of the Government, they would have just given them one man to run as he in his own judgment saw fit to run.

That, of course, leads me to the second broad general question for your explanation, in the dissent in this particular case, of what caused you to arrive at your decision.

Then you state to the President that you would like to make a general comment concerning the regulatory agencies. Obviously we are commenting on the "regulatory agencies," meaning all of them. Do I take from this statement that you feel that there are procedures which should be changed in the law?

Mr. MORGAN. There are a few. But I wasn't really discussing procedures there. Those words, if I recall correctly, were preliminary to the comments I made with regard to the importance of personnel selection in all regulatory agencies.

The CHAIRMAN. All right, that limits it to what you said, I suppose, in your statement.

And then you refer in the following paragraph to certain great men who have served in Congress-sponsored agencies.

Then you say to the President:

> Ordinary man cannot administer those laws today in the face of pressure generated by huge industries. Ordinary men yield too quickly to the present-day urge toward conformity, timidity, and personal security.

By that do you mean that in these regulatory agencies—since you have said that in your statement—that these agencies today are staffed with ordinary men?

Mr. MORGAN. I don't think you can say that.

The CHAIRMAN. What did you mean?

Mr. MORGAN. I meant to reinforce a point that has been made over and over by students of the regulatory process, that these agencies have the most unusual problems, they are more than judges, they are administrators. The cases that the Federal Power Commission has before it, for example, I am sure are far more difficult than the average case before any court in the country, with the possible exception of the Supreme Court. They are huge in size with regard to money, with regard to the number of customers served, with regard to the volumes of gas and electricity that are involved. They are actually extraordinary responsibilities that these agencies have to carry out. I am not an expert on all the regulatory agencies, but I know that to to a greater or lesser degree the same thing is true of them all.

I feel, and I was trying to say while bowing out, that these agencies require the finest men that this Nation has, and it will take everything those men have, all their personal qualities, all their education, experience, character, and courage to carry out these laws properly. And I am simply saying that, as many have said before me, that no other kind of man should be selected for these agencies. This can be done. The prestige of these agencies can be raised to the point where you can attract the finest man in the country to them—and prestige will do it. In past years I can remember that the Interstate Commerce Commission was an agency with enormous prestige, it was a very great honor to serve on the Interstate Commerce Commission. Perhaps it had as much prestige as any agency of the U.S. Government.

The CHAIRMAN. Do you feel, then, Commissioner, that these agencies are staffed with personnel today that are yielding toward conformity, timidity, and personal security?

Mr. MORGAN. I must say frankly, sir, that there have been times in the past year and a half when I felt that was happening in the FPC; yes, sir.

The CHAIRMAN. Well, did you mean the statement to be applicable to the other agencies of the Government, since you did refer to regulatory agencies as such?

Mr. MORGAN. To the extent that any agency has a lower level of qualified personnel at the top positions than is possible, my statement applies to them all.

The CHAIRMAN. Further, you say:

> If our regulatory laws are not administered by men of the same character, courage, and outlook as the men who enacted the laws, we will surely find the regulated industries and companies successful in postponing or evading entirely the responsibilities which are supposed to accompany their rights.

Do you care to comment on what you meant by that?

Mr. MORGAN. Well, I think I have already covered that point. But that is simply an exercise in logic. I think that it is an easily demonstrable fact.

Mr. BENNETT. Mr. Chairman, would you yield before we leave this point?

The CHAIRMAN. Yes, Mr. Bennett.

Mr. BENNETT. Mr. Morgan, in respect to your statement that in the past year and a half you have felt that on some occasions that your fellow Commissioners had tendencies toward conformity, timidity, and personal security, what did you have in mind?

Mr. MORGAN. Well, let me make a general statement. But I assure you——

Mr. BENNETT. I would like you to be pretty specific about it, because that seems to me to be a serious charge against other Commissioners, whether they be on your Commission or some other Commission. And I would like to know what you had in mind specifically. I am sure you have got something in mind.

Mr. MORGAN. I don't want to be specific as to the case involved. But let me say this, that when in open Commission meetings—and I don't mean it is open to the public, but with the full Commission present and the staff department heads, the lawyers, the secretary, the executive director—the statement is made that we mustn't investigate the situation because it would disturb industry, and perhaps——

Mr. BENNETT. The statement made by whom?

Mr. MORGAN. By a Commissioner, and sometimes by the staff—and that statement is accepted and acted on, in the absence of any other reason for such an action, or usually inaction, then I would say this is an example of what I was talking about.

Mr. BENNETT. What would the statement be about? Specifically what was he talking about that the rest of the Commission accepted?

Mr. MORGAN. The case I have just discussed, Idaho Power Co., is a case in which that statement was made, and formed the basis for the Commission's refusal to investigate. And there have been others.

The Pacific Power & Light-Pacific Gas & Electric intertie proposed in California, which involved a financial issue of the Pacific Power & Light Co., was another situation in which the failure or refusal to investigate the matter to see whether it was consistent with the public interest was explained not in the Commission's order, but in——

Mr. BENNETT. I am not talking about the public interest now, I am talking about this charge that you made, the tendency of ordinary people—and you have narrowed that down to some of your colleagues

on the Federal Power Commission—some of them have yielded to conformity, timidity, and personal security. I would like to have you direct your remarks a little more specifically to that situation or situations, the situations which caused you to reach this conclusion.

Mr. MORGAN. Well, I felt we understood, at least I understood, sir, that when the only reason offered during the decisionmaking stage of a case is that to take a certain action would upset the industry, and perhaps cause the industry not to be so cooperative in the future, this is an example of what I am talking about. Now, there are other reasons——

Mr. BENNETT. You mean the Commission has entered decisions merely on the basis of the fact that to do otherwise would upset the particular industry, is that right?

Mr. MORGAN. Let's not be—I don't want to confuse you.

Mr. BENNETT. I am using your words.

Mr. MORGAN. You will never read that in a Commission decision issued to the public, I can assure you of that.

Mr. BENNETT. I am not saying that, I am asking you to explain this charge that you made.

Mr. MORGAN. I am simply trying to tell you that there have been cases where the real reason, not the reason stated to the public, but the reason given in meetings and private conversations within the Commission, for failure or refusal to act, is that the industry would not like it. Now, there may be a good reason——

Mr. BENNETT. You mean the real reason is not stated in the written opinion?

Mr. MORGAN. That is correct. Now, that may be a good reason, that and others, when the proposed action is unwarranted or unwise. But when that is the only reason given in private, but a different reason is given to the public, then I have doubts that the public is getting what it needs and requires from the agencies.

Mr. BENNETT. I would say that a Commissioner who did that was dishonest, wouldn't you?

Mr. MORGAN. I am not willing to go that far.

Mr. BENNETT. You say the Commissioner has put one thing in his opinion, but his real reason is concealed, he has got some other reason which is not stated in the written opinion issued to the public?

Mr. MORGAN. Yes, sir.

Mr. BENNETT. You say to do that is not dishonest?

Mr. MORGAN. I don't think it is in the usually accepted sense of the word or the term.

Mr. BENNETT. Is that what you call conformity?

Mr. MORGAN. I think you could call it that. I think you could call it timidity also, and I think you could call it an urge or need for personal security. But those are not terms ordinarily thought of under the heading of dishonesty.

Mr. BENNETT. You are getting into some pretty serious charges, I think.

The CHAIRMAN. I want to get further explanation, if I can, because it seems to me to be a serious charge, what is in the next statement. And that is in the second full paragraph on page 2, following the statement that was referred to a moment ago.

You say to the President:

> Instead, it can easily become a fraud upon the public and a protective shield behind which monopoly may operate to the public detriment.

Now, I want to find out if what you meant here was to say to the President, in the letter, which you released to the press, as I understand, to become public—is that going on in either the Commission you are serving on, or in any of the other Commissions, to your knowledge?

Mr. MORGAN. I think that again this is simply an exercise in logic. If the agencies do not exercise the vitality and vigor that the law calls for, the public has very little possibility of learning this. The public assumes it is getting from the agencies what the law calls for. If it gets less than that, I think you can say that the public is being cheated, shortchanged, defrauded. What I am trying to point out here are the possibilities inherent in the situation, the possibilities which in my opinion will be precluded if men of real stature or caliber are appointed to these offices.

The CHAIRMAN. And we are to arrive at a conclusion, then, that that is not being done?

Mr. MORGAN. What is not being done?

The CHAIRMAN. Men of real stature and ability being appointed to these Commissions.

Mr. MORGAN. If you will read Dean Landis' report where he deals with this subject, he describes the decline of Commission personnel beginning about the time of World War II in far more specific detail than I have in my letter to the President. If you would like, I will be happy to read some of this into the record.

The CHAIRMAN. I think that is already in our records, Commissioner Morgan. And I might also say that Dean Landis is not down here any more; his time was short for one reason or another. I admire Dean Landis; I have long had great admiration for him; he is a man of great ability. He had a job to do which was a temporary job. But I might say at the outset that his views about the concentration of control over these agencies down at the White House were not in accordance with what we thought was the intent of the law. And I think the President feels the same way, from my conversations with him and from public statements he has made.

Mr. Moss. Mr. Chairman?

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Morgan, while we are at this point, I have read your dissents, and let me say that I find in them a sense of great vigor, clarity and logic. There may be instances in reading them where I have not always agreed, nevertheless the fact that you have stated well and without any equivocation your views is, I think, much to your credit.

I read the Idaho Power decision. And you point out here in this statement, as it has been read here in the committee, that if our regulatory laws are not administered by men of the type you refer to, Norris, Johnson and Pinchot—and I would point out that this wasn't partisan, because all of these were distinguished Republicans, one of them was the great Senator from my State—that there is a danger in this exercise again of a desire of conformity, a timidity in moving beyond the existing practices or policies that ultimately could lead to a type of regulation which would be a fraud upon the public.

Now, a fraud is not too difficult to define. One thing, it isn't the real thing, is it?

Mr. MORGAN. That is correct, sir.

Mr. MOSS. The public expects that in your role as a regulator that you will see that its interest is protected, and the utilities' interest is part of the public interest?

Mr. MORGAN. That is absolutely correct.

Mr. MOSS. It is important that we have utilities of vigor, able to undertake the responsibilities given them, along with their rights to serve?

Mr. MORGAN. That is very fundamental.

Mr. MOSS. And in the Idaho case you mentioned four points as forming the basis for your dissent, urging the Commission to go beyond the practice of just more or less pro forma approval of financing to determine the uses to which this additional money is going to be put, is that true?

Mr. MORGAN. That is correct, sir.

Mr. MOSS. You mentioned the fact that there was a serious question in the previous Commission as to whether or not the wholesale rates then existing were under the actual cost of production.

Mr. MORGAN. That is correct.

Mr. MOSS. And if they were, this would be unsound unless the other ratepayers of Idaho were looked to, to produce the revenue to make up the deficiency?

Mr. MORGAN. And in that case it would be discriminatory.

Mr. MOSS. And in that case it would be discriminatory. And you said to the Commission, let's look at it, go ahead and approve it and condition it and see whether or not this is a fact. The previous Commission raised a serious question, indicating that they would at a given point, the effective date of the Utah contract, undertake to evaluate the rates.

Mr. MORGAN. Yes, sir.

Mr. MOSS. And you went on to mention the fact that Idaho Power had stated—this wasn't just your opinion, but the company itself had stated that if the Bonneville area was extended, that they might not proceed with their program of expansion, is that true?

Mr. MORGAN. They made the flat statement that they would abandon all expansion programs in Idaho if Bonneville's market area was extended.

Mr. MOSS. And you thought this was a significant fact which the Commission should have evaluated?

Mr. MORGAN. I still do, sir.

Mr. MOSS. And then there was a further matter, that Oregon and Washington and Idaho had a claim that they were prosecuting against the company of almost $7 million for damage.

Mr. MORGAN. Yes.

Mr. MOSS. And you thought the impact, in the event the States should prevail on this, the impact upon Idaho should be considered by the Commission along with these others?

Mr. MORGAN. I thought we should at least find out whether they are insured against such a claim.

Mr. MOSS. And you also look at the practice characterized by you as a 5 percent present-worth method of depreciation for its Brownlee

and Oxbow projects, instead of the regular straight-line method prescribed by the FPC's uniform system of accounts?

Mr. MORGAN. Yes, sir.

Mr. MOSS. And in the failure of the Commission, at least in their opinion, to take cognizance of any of these factors, you found that there was timidity, a reluctance to move into perhaps a new area in approval of requests for finances, of expansion by company?

Mr. MORGAN. It seems so to me. And my impression was strongly reinforced by the conversations within the Commission while this case was before us.

Mr. MOSS. Now, I would say that before the California case in which you also dissented—I was under the impression that the Commission did look to the uses of the proposed findings.

Mr. MORGAN. The law requires us to.

Mr. MOSS. And I felt— I had every conviction that this was being done. So to that extent, at least to me, I could, I guess, by a very broad application of the term "fraud," say that that type of regulation at that point was not the type of regulation which I anticipated was provided for in the procedures of the Commission and contemplated in the law itself.

Mr. MORGAN. I put it as strongly as I could in my dissent. And I wrote two of them in that case. We did not do—not only did we not do what the consumers normally expected us to do—we did not do what the law requires us to do.

Mr. MOSS. That is all I have.

The CHAIRMAN. I want to continue until we get through with the letter. I think it should be analyzed before we continue further.

I don't think anyone could have any disagreement with what Mr. Moss has just said with reference to the responsibility of a Commissioner in going into any particular problem and arriving at a decision in his own mind from the facts and information he has.

But the implications with reference to the character and ability of other Commissioners, not only in your own Commission, but in other regulatory agencies, are what I think we should be interested in in this committee.

I might say, Commissioner, I have been very strong over the years for men of ability, background, and experience in these various regulatory agencies. And I have a letter on file from the President of the United States to that effect. And I have a letter on file from the former President, Mr. Eisenhower, to that effect.

In my letters to them, I urged consideration of men of ability, and when they had performed their duties, that reappointment be considered. I feel that this is a policy that should be followed by the Chief Executive.

But the real question here is that in your statement of the reasons for your not wanting reappointment, you make reference to the regulatory agencies in general, and you characterize them as manned by ordinary men, and you make reference to courage and outlook, which if not proper, and so forth, brings on the type of fraud that Mr. Moss referred to, and that seems to me to be a real problem here today.

Anl I wanted to know for the committee just what you meant by this characterization. I have a feeling that there has been a gradual

improvement in the administration of the laws of these regulatory agencies for the last several years.

I have a feeling that that has resulted because our problems are different and more acute today than when Mr. Aitcheson was a member of the ICC. They are far more complicated today than when Mr. Joe Eastman 25 years ago was a member of the Interstate Commerce Commission—and a great man he was—and Mr. Splawn, whom you mentioned, and Mr. Mahaffie in more recent years.

But we have reached a period of time of transition into these more highly technical, concentrated areas that challenge, as you have indicated here, the best that is in any Commissioner. And for that reason I think it is helpful to first fully realize the tremendous responsibility of any Commissioner in one of these fields today.

But then, when there are implications as to the character of the regulatory Commissioners as of today on a general, broad basis, it seems to me it deserves further clarification and explanation.

And I must say in all frankness that I think that President Kennedy has given very serious consideration to the appointment of men to these regulatory agencies, and has taken his job very seriously in trying to get the kind of men on these agencies that we should have—not that every appointment has been as I would probably have made it, and I made some suggestions to him on certain appointments which he didn't see the same way I did, but he assumed his responsibility in it.

And I have been quite encouraged that we were progressing in the administration of these laws.

Mr. MORGAN. So am I.

The CHAIRMAN. The way I read your letter, the actual language of it seems to convey the idea that we are deteriorating in the administration of laws. And if that is the case, we want to know it. And we want to know from you or anybody else how we can improve regulations.

I agree with what you said a moment ago. No matter how good a law is, if it is not adequately or properly administered, it isn't worth anything to the American people and the public.

Mr. MORGAN. Let me say, Mr. Chairman, that if my failure—which was purely oversight—to include a sentence in my letter saying that the deterioration that I spoke of a minute ago as described by Dean Landis, which set in about the time of World War II—if my failure to include a sentence saying that that deterioration has in my judgment now been halted, and that a visible improvement is now present; if that failure led to or is partly responsible for some of the misinterpretations of the letter, then I am deeply sorry. I feel that the deterioration has been largely halted, and that we are making some improvements in this vital area of the quality of personnel.

The CHAIRMAN. Why didn't you go down to the President and sit down and talk to him, then, and tell him all about this, instead of writing a letter and giving it to the papers?

Mr. MORGAN. I understand that is not at all easy and simple to do, sir.

But at any rate, my main object in writing the letter was to reemphasize what many people have reemphasized before me, and will after I leave here, that concern as to the quality of the personnel at the Commissioner level can't be overdone, the importance of it can't be exaggerated. This is mainly what I was trying to say. And if, as I say, my failure to include a point or two that should be in the letter has led to some misinterpretations, I am genuinely sorry for that.

The CHAIRMAN. I don't believe, if you mean that, that I have misinterpreted the letter. I read it, and that is the reason I wanted to give you full opportunity to explain just what you meant by certain of your very pointed statements.

Mr. Bennett.

Mr. BENNETT. Mr. Morgan, I want to go back to what I was discussing with you a few minutes ago. I listened with interest to the questions of Mr. Moss.

I have often heard you say that the quality of administration has improved. The deterioration that you talked about has subsided. But yet you just said a few minutes ago that within the last year and a half, the majority of the members of the Federal Power Commission issued an opinion that was not based upon the facts of the case, as stated in the opinion, but was based upon something secret or private that they formulated their judgment upon, which the public was not and cannot under the circumstances become aware of.

Now, am I stating the situation accurately?

Mr. MORGAN. I think so. There are other factors involved, but this one is present; yes.

Mr. BENNETT. Would you say that that kind of a practice on the part of your fellow Commissioners is not dishonest?

Mr. MORGAN. Certainly not in the sense of the ordinary interpretation of the word. Until men are perfect——

Mr. BENNETT. What do you mean, in the ordinary interpretation? Is it dishonest for a Commissioner to conceal something in an opinion that he writes that he ought to have revealed?

Mr. MORGAN. That happens over and over and is fairly common. The mere fact that——

Mr. BENNETT. Fairly common?

Mr. MORGAN. The mere fact—I think it is common everywhere—the mere fact that a factor which played a part in the formulation of an order is left out of the order does not make the order totally dishonest or the person who wrote it dishonest.

Mr. BENNETT. Does it make it misleading?

Mr. MORGAN. It may make it misleading.

Mr. BENNETT. Does it make it a fraud?

Mr. MORGAN. If it involves an important matter, and if the concealment was with deliberate intent, yes, it can become very serious. But this happens many times with no serious consequences at all.

Mr. BENNETT. Let's not talk about theoretical cases; let's talk about the decision that you referred to. Let's talk about that:

Was that opinion by a majority a misleading opinion?

Mr. MORGAN. I think so, and I said so at very great length in two dissents.

Mr. BENNETT. Was it dishonest?

Mr. MORGAN. No; I wouldn't say that.

Mr. BENNETT. Was it fraudulent?

Mr. MORGAN. That is hard to say. To the extent that any order deprives the public of what it thinks it is getting and knows it is entitled to get, that word might be used. There are only a few cases that I would think of using that word for.

Mr. BENNETT. Well, the public, according to your thesis in these decisions, is losing something, is that not true?

Mr. MORGAN. It is losing some protection.

Mr. BENNETT. The public is losing something that it is entitled to by the decision that you are talking about, is that not true, in your opinion?

Mr. MORGAN. That was my opinion.

Mr. BENNETT. And, therefore, if the decision is contrived by facts or circumstances which are not revealed in the opinion, is that not a fraudulent opinion?

Mr. MORGAN. I have not used that word in describing this——

Mr. BENNETT. You have used the word "fraud" here, pretty profusely, I would say, in one letter.

Mr. MORGAN. I used it in my letter to the President——

Mr. BENNETT. That is what I am talking about.

Mr. MORGAN (continuing). To describe what can happen unless great care is given to this matter of personnel selection; yes, sir, I did.

Mr. BENNETT. What I would like to talk about today is what did happen.

Mr. MORGAN. Well, if you are trying to get me to use a word——

Mr. BENNETT. I am not trying to get you to do anything except to explain what you can about this language. And I am having a difficult time.

Mr. MORGAN. I don't choose to relate that particular language to this particular case. This language, if you will notice——

Mr. BENNETT. All right. Is there a case that you can relate it to?

Mr. MORGAN. No. I have made my dissent——

Mr. BENNETT. If you can't relate it to a case, what are you talking about? Just a hypothetical case that didn't apply to the Federal Power Commission at all?

Mr. MORGAN. I simply said that utility regulation can easily become a fraud upon the public——

Mr. BENNETT. Anybody knows that, Mr. Morgan. I have a 7-year-old granddaughter that knows that. Don't you think the President knows that, too, without your telling him in the letter, in those three single-spaced pages?

Mr. MORGAN. I assume that he does know that.

Mr. BENNETT. You are telling him, as a matter of fact, that he had a bunch of low level, conformist, timid people on the Commissions, outside of yourself, who were there for personal security reasons and who were doing a poor job, isn't that what you were trying to do here?

Mr. MORGAN. No; it was not. The letter speaks for itself.

Mr. BENNETT. I will say it does, although there are a lot of things here that do not meet the eye. You have used a lot of language that you ought to interpret. And we ought to find out for sure whether this is just a lecture you are giving the President about what we ought to do with some other Commission, or what you ought to do with the Federal Power Commission.

What was the case? What were you trying to do, tell him what we ought to do with the Federal Power Commission in the future, or were you giving him an abstract lecture?

Mr. MORGAN. I was doing exactly what the letter says I was doing. I was reemphasizing once more, as many other people have done, the importance of the caliber of personnel at the top level in regulatory agencies.

Mr. BENNETT. You say in the letter, ordinary men cannot administer these laws. Now, would you describe your fellow Commissioners as ordinary men?

Mr. MORGAN. I would rather not describe them at all, sir.

Mr. BENNETT. I think, Mr. Chairman, we are entitled to this information. This man has made some serious charges here against other members of the Commission.

Now, maybe the charges are true, I don't know. But I think it is our job to find out, and I think this witness is evasive about it. I don't think he is frank with us.

And I don't think he is being honest with us in his statement.

You have used some language in here, and you are smart enough to tell us what you meant by it. And I am going to ask you again: What did you mean, that the other Commissioners, your fellow Commissioners, are ordinary men in the sense that you used it in the last sentence on page 1 in your letter?

Mr. MORGAN. I am sorry, but my responsibilities require me to differ on occasion with my colleagues, and when I do, to set forth my reasons for differing with them, and I have done this. But my responsibilities do not require me to pass judgment on them as individuals, as persons. I described my relations with them at the outset of my testimony. And what I said was true.

Mr. BENNETT. I heard what you said at the outset of your testimony, and I have already read what you said in your letter. And I am having a hard time reconciling the two.

Mr. MORGAN. Have you read the part of my letter which says it does not intend to depict or describe anyone including myself or my colleagues?

Mr. BENNETT. Yes.

Mr. MORGAN. That means what it says, too, sir.

Mr. BENNETT. What category do you put yourself in as a Commissioner? Are you an ordinary man, as a Commissioner?

Mr. MORGAN. I am afraid that I am.

Mr. BENNETT. Is that the reason you are quitting, so the President can put an extroardinary man in your place?

Mr. MORGAN. It is one. And I hope he does.

Mr. BENNETT. Do you think there are any better men in the Commission than you as far as the protection of the public interest is concerned?

Mr. MORGAN. That is a difficult question to answer.

Mr. BENNETT. Would you give it a try?

Mr. MORGAN. I would rather not try to rate the members of the Commission with respect to each other, including myself, sir.

Mr. BENNETT. You want to leave with us the impression, then, that as a matter of fact you are not offering any criticism of your colleagues or their decisions, and that you are perfectly satisfied with the

caliber of protection that they are giving the public on the Commission?

Mr. MORGAN. Will you repeat that again, sir?

Mr. BENNETT. Will you read it to him, Mr. Reporter?

(The record was read by the reporter, as requested.)

Mr. MORGAN. I have not commented, and I will not comment on the caliber of my colleagues, because to do so would be to make a personal reflection or estimate of them which would be entirely improper. I have commented at length in my dissenting and concurring opinions as to their actions and as to the policies that they have adopted or have failed to adopt, and those statements remain on the public record where anyone may consult them. But I have not made personal judgments or comments, and I see no reason to do so now.

Mr. BENNETT. You just want to make this as a high-level discussion to give the committee the same kind of gobbledygook that you gave the President in your letter of January 23, is that about the size of it?

Mr. MORGAN. I think I am being as clear as I can be on what I can properly say with respect to my colleagues, and what I can say only with great impropriety. I have commented on policies, on principles, on actions, and on inactions. I can do that, but I think it would be the grossest impropriety for me to comment on them as individuals and with your indulgence, I will not.

Mr. BENNETT. I am not through, Mr. Chairman, but I understand you want to adjourn.

The CHAIRMAN. Since you have discussed, as an example of what you have in mind, the *Idaho* case, I think in order for the record to be complete it should be included in the record.

(The document referred to follows:)

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

Idaho Power Company — Docket No. E-7067

ORDER AUTHORIZING THE ISSUANCE OF PROMISSORY NOTES

(Issued December 10, 1962)

Idaho Power Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of Idaho, Oregon and Nevada, with its principal business office at Boise, Idaho, filed an application on October 10, 1962, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of unsecured Promissory Notes in an aggregate principal amount not to exceed $30,000,000, at any one time outstanding. Notes are to evidence bank loans and renewals of loans to be obtained on or before December 31, 1962. Each Note will be issued prior to December 31, 1963, and will mature not later than one year after its date of issue, the final maturity of all Notes being not later than December 31, 1964, and will bear interest at the rate applicable in New York City at the time of each borrowing to commercial bank loans of such form and character. As of the date of the application, that interest rate was 4½ percent.

By order issued December 24, 1959, and supplemented December 29, 1960, in Docket No. E-6907, the Commission authorized Applicant to issue up to $40,000,000, principal amonut of short-term promissory notes, the authorization to expire on December 31, 1962. As of August 31, 1962, Applicant had outstanding $3,900,000, aggregate principal amount of Promissory Notes, and expects to have

outstanding Notes in the total principal amount of approximately $9,600,000 as of December 31, 1962.

The request herein for authorization to issue Notes in the maximum principal amount of $30,000,000, will cover the issuance of new Notes and the issuance of any renewal Notes, including renewal Notes for the payment of any Notes presently outstanding or to be issued on or before December 31, 1962, under the above-described authorization in Docket No. E–6907.

During 1963, Applicant expects to undertake permanent financing arrangements, including the issuance of equity securities, probably during the fall of that year; the exact form, amount and times of issuance of such long-term corporate securities necessarily will depend upon future market and other conditions. However, should market or other conditions cause a delay in or postponement of the contemplated permanent or long-term financing, Applicant states that it may be necessary to issue short-term notes up to the amount of $30,000,000, in order to avoid delay and additional cost in the construction of essential service facilities.

The proposed issuance of Notes will enable Applicant to (1) issue renewal or replacement Notes for those presently outstanding or to be outstanding on or before December 31, 1963; and (2) carry forward Applicant's construction program for the balance of 1962 and 1963, which is currently estimated at $24,400,000, described as follows: Snake River Development (Project No. 1971), $8,830,000; other production facilities, $500,000; Brownlee-Boise 230 kv. line No. 3, $4,438,000; other transmission lines, $1,513,000; substation facilities, $3,130,000; distribution lines and facilities, $4,900,000; and, general plant and facilities, $1,089,000.

None of the proposed Notes will be resold to the general public, and no finder's fee or other negotiation fee, commission or remuneration will be paid in connection therewith to any third person.

Written notice of the application has been given to the Idaho Public Utilities Commission, the Nevada Public Service Commission, the Oregon Public Utility Commissioner, and to the Governor of each of those States. Notice of the application was also given by publication in the Federal Register on October 30, 1962 (27 F.R. 10563), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest with the Federal Power Commission, Washington 25, D.C., on or before November 19, 1962. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Idaho Public Utilities Commission, by order dated October 25, 1962, authorized Applicant to issue $18,837,500, principal amount of Promissory Notes, "over and above the limitation applicable under Section 61–903, Idaho Code; that is, $11,162,500 or a total of $30,000,000 at any time outstanding."

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 7, 1957, *Idaho Power Company*, Docket No. E–6781 (18 FPC 603).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $30,000,000, all as described above, will be in excess of 5 percent of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $30,000,000, all as described above, will be in excess of 5 percent of the par value of the other securities of Applicant, and therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act, by reason of paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, is appropriate for and consistent with the proper performance by Applicant of service as a public utility and will not impair its ability to perform that service and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $30,000,000, outstanding at any one time, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the maturity of all Notes to be issued pursuant thereto being within one year of their respective dates of issue and the final maturity of all such Notes being not later than December 31, 1964.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

By the Commission. Commissioner Morgan dissenting, filed a separate statement.

JOSEPH H. GUTRIDE, *Secretary.*

Idaho Power Company Docket No. E–7067

(Issued December 10, 1962)

MORGAN, Commissioner, *dissenting:*

Once again the Commission is required, by this application, to address itself to its responsibilities under Section 204 of the Federal Power Act. Once again, as in *Pacific Power and Light*, Docket Nos. E–7024 and E–7025, 27 FPC ——, ——, and ——, we must decide whether our approval of securities under that Section need only be a ceremonial formality requiring no more than a recitation of some of the surface facts and the issuance of a routine order; or whether, as I believe the law plainly requires, we should examine *all* the facts carefully and decide whether, in the light of those facts, the purpose or undertakings to be financed by the proceeds of the security issue are, singly and collectively, "compatible with the public interest," as spelled out in the Federal Power Act as a whole.

Since the law on the subject has been rather extensively explored in *Pacific Power and Light, supra*, particularly in my *dissent* and *further dissent* therein, I shall not repeat that discussion here. Instead I shall confine myself to certain facts which raise serious and unresolved questions of public policy with respect to a portion of this security issue and refer those readers interested in a discussion of the Commission's legal responsibilities to the *Pacific* case.

At the outset let me make it clear that, as in the *Pacific* case, I raise questions only with respect to that portion of the security issue herein associated with a particular project; namely, construction of Project No. 1971. With respect to the remainder of the security issue there are no problems of which I am presently aware, and I pose no objections thereto.

We are informed that:

"Applicant has been engaged in an extensive program of expansion which has consisted primarily of the development of the hydroelectric resources of the Snake River and construction of high voltage facilities from the hydroelectric plants to its load centers and to interconnections wiwth neighboring systems. Applicant estimates at this time that costs for the balance of its 1962 construction program and for its 1963 construction program will amount to $24,400,000.

* * * * * * *

"Over one-half of the estimated costs of the construction program is concerned with the completion of Project No. 1971 and related transmission facilities. Construction of the Hells Canyon plant was started July 27, 1961, with completion scheduled sometime in 1964. Total expenditures incurred in connection with the Hells Canyon plant, as of September 30, 1962, are $4,590,148.00. These expenditures cover preliminary engineering, exploratory drilling, access roads, and reservoir clearing. Latest cost estimates for the completed Hells Canyon unit reported by Applicant, subject to change, is approximately $55,000,000."

The "Hells Canyon plant" referred to is Little Hells Canyon dam, the third and downstream dam of Idaho Power's three-dam scheme, licensed by this Commission amid unparalleled controversy in 1955. The other two dams, Brownlee and Oxbow, have been completed and are in operation.

As can be seen, only minimal outlays have as yet been made for construction of this third dam, and those have only involved minor items such as an access road, pool clearing, and the like. Construction of the main project has not yet begun. In the intervening period since the license was issued, a series of problems have arisen, some of them involving calculations and predictions of Idaho Power's need for energy as expounded during the licensing proceedings, and some of them arising from events which have occurred since then. These problems raise serious doubts concerning the wisdom of proceeding, under present circumstances, to construct this dam. It is my strong belief that the fulfillment and implementation of our licensing responsibility require us, in a separate and independent proceeding, to investigate all questions and quiet all doubts regarding this important natural resource before allowing the company to proceed with its further development.

However, with respect to this particular application, I am convinced that our responsibility under Section 204 precludes us from approving the issuance of securities to finance that undertaking without at least exploring the questions in which Project No. 1971 has become enshrouded.

In the following brief summary of those questions, insofar as they can be identified at the present time, I shall not attempt to reach conclusions or pass judgments. It would be patently unfair and unsound to do so. My only purpose is to outline the questions and urge that the public interest requires their constructive settlement before the expenditure of very large capital funds is permitted.

I

It appears that the Idaho Power Company is already faced with a problem of surplus capacity; and that this situation is likely to continue for some time in the future. Further, it has been variously estimated that Idaho Power will not need the additional 272,000 kw to be provided by Little Hells Canyon dam until sometime between 1966 and 1975,[1] and none of these estimates has taken into consideration the problems Idaho Power may face in attempting to dispose of additional capacity at compensatory rates if low-cost Bonneville power becomes available in southern Idaho.

In the present circumstances there is some degree of doubt concerning the economic wisdom of building all three of those projects, as was the case in 1958 when our predecessors chose to grant a license for all of these separate undertakings to a company that then had an installed capacity of 375,375 kw, rather than recommend the construction of a single large unit by the Federal Government. The extent to which these projects were undertaken as the result of a clash between ideologies rather than as the result of prudent business judgment remains undetermined.

In any event, the result of premature yet legally necessary construction (i.e., for license retention purposes) has been to force Idaho Power to dispose of its surplus production by means of practices which may be operating to the detriment of its consumers and possibly of its stockholders. Consequently, I am most reluctant to enlarge and aggravate what already appears to be a problem seriously affecting the public interest by approving the issuance of securities to finance what, in the light of available evidence, may prove to be additional premature or unneeded construction.

There already exists a need to settle the question whether the cost of Idaho Power's present excess capacity should continue to be borne by its customers, or whether that cost should be borne by its stockholders until inclusion of all generating capacity in Idaho Power's rate base is economically justified. Failing this, however, I feel that as a minimum we should determine whether the financing costs of the additional issue here proposed should properly be charged to Idaho Power's customers or to its stockholders.

The available evidence referred to includes but is not limited to the following:

(a) Idaho Power has contracts with Pacific Power and Light, Washington Water Power, and Utah Power and Light for large blocks of firm power from Idaho Power's new Brownlee and Oxbow dams on the Snake. Idaho Power's contract rates to those companies for that power are: Pacific, 4.75 mills; Washington Water Power, 4.75 mills; and Utah Power,[2] 4.60 mills. Idaho Power's

[1] At the time the three alternate installations were planned, Idaho Power itself testified that they would provide it with surplus capacity. The examiner in the Hells Canyon proceeding accordingly found the economic feasibility of company's three-dam plan "extremely doubtful" until the year 1975 (finding No. 31).

[2] A 1958 rate filing.

systemwide costs are reliably estimated to be in the neighborhood of 6.5 mills. During 1961, the company's sales to those three utilities accounted for more than 20% of its total capacity output.[3]

(b) In 1956 Idaho Power filed rate schedules (FPC No. 24) with this Commission providing for the sale of firm power to the Utah Power & Light Company at rates of 7.5 and 8 mills. They are still in effect. In 1958 Idaho Power filed another rate schedule (FPC No. 26) calling for the sale of additional firm power to the same customer, at the same delivery points, and under the same conditions, at a rate of 4.6 mills—*effective upon the completion of Idaho's Oxbow project* in the latter part of 1961.

This anomaly did not escape the prior members of this Commission. They directed the Secretary to write a letter to the company on June 4, 1958, questioning "the propriety of having rates in the above-designated rate schedule which are different from those contained in your Rate Schedule FPC No. 24, since both agreements provide for essentially the same class of service to the same purchaser at the same delivery points. "In connection therewith," that letter concluded, "the rates and charges contained in your Rate Schedules FPC Nos. 24 and 26 and your company's cost to serve the purchaser may be subject to further scrutiny at the time service is initiated thereunder."

Service thereunder has since been initiated; yet the propriety of the dual rate filings remains unscrutinied.

(c) Inasmuch as certain of Idaho Power's other wholesale customers are paying rates considerably in excess of systemwide average costs, it further appears that the foregoing practices may constitute an illegally preferential and discriminatory situation. Moreover, Idaho Power presently is seeking a 13.6% rate increase from its intrastate retail customers in Idaho. This is developed in full in the Brief of the General Services Administration on behalf of the United States Atomic Energy Commission, dated July 2, 1962, in Case No. U–1006–42 before the Idaho PUC. The question that *should* be determined by this Commission (or by a joint inquiry with the Idaho Commission) is to what extent Idaho Power may be requiring its domestic retail consumers to pay excessive rates to compensate the company for the apparent losses incurred in its interstate sales at wholesale in an effort to dispose of its surplus capacity.

Accordingly, absent at least interim answers to these questions, I am unable to find that the company has made the showing we must require it to make before granting our approval of the security issue here proposed.

II

Company's application makes no reference to its announced intention to cancel *all* of its expansion plans in the event that the Bonneville Power Administration extends service into southern Idaho. The press has recently quoted the company's President as stating this to be the company's intended course of action in the event low-cost Bonneville power service is extended to Idaho.[4] Project No. 1971 constitutes by far the largest element in Idaho Power's expansion plans.

More recently, the press has also reported that the tentative results of Bonneville's studies indicate that it would be feasible so to extend its service. A decision on this matter will be made by the Secretary of the Interior in the near future.

The announced intention of company to cancel its expansion plans, the financing of which we are here called upon to approve, looms large to me as a question that should be definitively answered as part of the investigation that Section 204 plainly requires us to undertake in such a situation.

III

Exhibit H of company's application in this matter, filed October 10, 1962, states that "Applicant has no known contingent liabilities except items such as damage suits or claims (covered by excess coverage insurance after primary

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[3] During 1961, a low-water year, those three utilities did not take their full contract entitlements from Idaho Power. As a result, the revenues per kilowatt-hour paid by those companies to Idaho Power were as follows: Pacific, 6.4 mills; Washington, 6.2 mills; and Utah, 5.1 mills. But in 1962 (and other median water years), it is expected that Idaho Power's sales to those three companies will be greater. Accordingly, the revenues per kilowatt-hour that those companies will pay to Idaho Power will be even less than they paid in 1961.

[4] For example, see the Portland Oregon Reporter of Aug. 17, 1962.

liability), and similar items involving relatively small amounts as of the date of this application."

Since then, on October 15, 1962, a formal complaint was filed with this Commission against the Idaho Power Company by the Attorney General of Oregon. Specifically, that complaint asks that Idaho Power Company be required "to pay to the State of Oregon the sum of $2,300,000 to compensate" it for the salmon loss caused by the collapse and destruction of the fishway utilized by Idaho Power below its Oxbow dam on the Snake River. Subsequent press accounts quote the Attorney General of Oregon as saying that if the States of Washington and Idaho set comparable values on the fish loss they also suffered through company's alleged negligence, Idaho Power will have to pay out some $6,900,000 in damages—provided, of course, that negligence or illegal procedure is found and the claims are allowed against the company by this Commission or by the courts.

On November 7, Idaho Power filed a motion with us to dismiss that complaint. In that motion, it states that company's "fish trap structure was undermined by the waters of the Snake River * * * that the same required the making of repairs, and that such repairs were made with all possible speed and dispatch." Continuing, however, while it admits that "an unknown number of fish were lost," it explains that "said loss was * * * due to an unknown and unforeseeable condition of nature, namely, fish behavior, * * * and that the loss of fish was not due to any negligence on the part of the Company or its contractor, but was a loss that was completely unforeseeable and unavoidable * * *"

Whatever the final findings may be—and their determination cannot long be postponed—it is clear that as a minimum, we should determine whether company is insured against liability in this matter; and, if it is not, whether the scope of its possible liability will alter the costs and advisability of the additional financial burden that company here asks us to permit it to assume.

IV

The financial statements filed in support of this application demonstrate that the company persists in following a 5% present-worth method of depreciation for its Brownlee and Oxbow projects, and not the regular straight-line method contemplated by our Uniform System of Accounts for Public Utilities and Licensees.

The effect of this irregular practice, which defers current depreciation costs to the future, is to increase the currently reported earnings of the company. The purpose, apparently, is to minimize the visible effect of the low interstate wholesale rates at which the company is disposing of its surplus energy from Brownlee and Oxbow.

This, of course, poses a question that should be investigated by the Commission under Section 302 of the Act. The extent to which this deviant practice may or may not affect the costs and advisability of the financing here proposed represents one more of the questionable areas into which we should probe before approving that issue under Section 204 of the Act.

* * * * * * *

Accordingly, and for the foregoing reasons, I am unable to "find" that the issue or assumption here proposed—

"(a) is * * * compatible with the public interest, * * * necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and * * * will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes."

I therefore dissent. My dissent is limited and directed solely to that portion of the security issue designed and intended for expenditures in connection with Project No. 1971.

HOWARD MORGAN, *Commissioner.*

The CHAIRMAN. We will have to suspend these hearings. There are other—there are questions by other members of the committee, so I am going to ask you to come back tomorrow afternoon at 2 o'clock. The committee has an executive session that it must go into now for another purpose.

(Whereupon, at 11:50 a.m., the subcommittee went into executive session.)

SUGGESTED IMPROVEMENTS IN THE ADMINISTRATIVE PROCESS

THURSDAY, FEBRUARY 28, 1963

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to recess, at 2 p.m., in room 1334, Longworth House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

The CHAIRMAN. The subcommittee will come to order.

As we resume the hearings this afternoon, it has been suggested by the members of the committee, Mr. Morgan, that you be sworn to complete your testimony.

Mr. MORGAN. Yes, sir.

The CHAIRMAN. Do you solemnly swear that the testimony that you will give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MORGAN. I do.

TESTIMONY OF HON. HOWARD MORGAN, MEMBER, FEDERAL POWER COMMISSION—Resumed

The CHAIRMAN. When the committee recessed yesterday, Mr. Bennett was in the process of interrogating the witness.

Mr. Bennett, you may proceed.

Mr. BENNETT. Mr. Morgan, what has been your experience in the regulatory field prior to your taking over your present position?

Mr. MORGAN. As an actual working regulator, it was confined to 2 years as public utility commissioner of the State of Oregon.

Mr. BENNETT. You have had no other experience aside from that?

Mr. MORGAN. No, that is not so. I——

Mr. BENNETT. I mean in the regulatory field.

Mr. MORGAN. I was a student of regulation a good many years ago both as an undergraduate and in graduate school.

And I served for a few months in the early months of the war, World War II, in the Office of Defense Transportation at the time it was administered by Mr. Eastman here in Washington.

Mr. BENNETT. What did you do in the Office of Defense Transportation?

Mr. MORGAN. I was assigned to, I believe, two phases of the setting up and organization of the office, and then after it was fairly well organized on a nationwide basis I was assigned to the Freight Opera-

tions Section of the Motor Transport Division, and continued there until I went into the Navy.

Mr. BENNETT. Did you work in Mr. Eastman's office?

Mr. MORGAN. No, I did not.

Mr. BENNETT. Did you know Mr. Eastman personally?

Mr. MORGAN. Yes, sir.

Mr. BENNETT. Did you ever have any task——

Mr. MORGAN. I did not know him well, and I did not know him very long.

Mr. BENNETT. You were only with ODT for 5 months?

Mr. MORGAN. I have forgotten the exact period but that sounds approximately right.

Mr. BENNETT. From April 1 to September 22, 1942?

Mr. MORGAN. I think that is——

Mr. BENNETT. Is that right?

Mr. MORGAN. It sounds very close, and I see no reason to differ.

Mr. BENNETT. Were you assigned to any tasks by Mr. Eastman?

Mr. MORGAN. No; I think it was at his direction that I was assigned to Mr. Ray Atherton, whose mission at the time was to open branch offices in, I think 52 cities in the United States.

And I worked there until that organization job was finished.

Mr. BENNETT. How often did you see Mr. Eastman during the 5 months, 4 or 5 months you were there?

Mr. MORGAN. Very seldom.

Mr. BENNETT. Did you see him at all?

Mr. MORGAN. I believe—well, of course.

Mr. BENNETT. Did you have any conferences with him about your work?

Mr. MORGAN. No, I can't say that I did.

Mr. BENNETT. Did he know you were there, working there?

Mr. MORGAN. Pardon?

Mr. BENNETT. Did he know you were working for ODT?

Mr. MORGAN. Yes.

Mr. BENNETT. Who hired you?

Mr. MORGAN. This, I don't remember.

Mr. BENNETT. It wasn't Mr. Eastman?

Mr. MORGAN. Do you mean who was the hiring official?

Mr. BENNETT. Yes.

Mr. MORGAN. It——

Mr. BENNETT. Didn't somebody give you a job?

Did you interview Mr. Eastman or did he interview you prior to your working there?

Mr. MORGAN. I think there was some correspondence between us before I came east.

Mr. BENNETT. What exactly did you do? I don't mean to make it a long story.

I am not going to prolong this, but what did you do during that 4-month period?

Mr. MORGAN. I don't recall how long I was assigned to Mr. Atherton.

When that organization was fairly complete I was transferred to another section under the direction of Mr. Ed Buhner.

Mr. BENNETT. What doing?

Mr. MORGAN. Pardon?

Mr. BENNETT. What were you doing?

Mr. MORGAN. I was one of his assistants.

He was the Chief of the Freight Operations Section of the Motor Transport Division.

Mr. BENNETT. Did you give a biography, your biography, to the Senate Interstate and Commerce Committee?

Mr. MORGAN. I am sure I must have.

Mr. BENNETT. I want to read from what purports to be your biography in the Senate committee hearings on the nomination, to see whether it is accurate:

> I served under the direction of the late Joseph B. Eastman in the Office of Defense Transportation during 1941–42. This was just after I got out of college.

There are some other quotes in here.

Is it correct that you were employed from March 30, 1942, to September 22, 1942, in the Office of Defense Transportation as an assistant business specialist?

Mr. MORGAN. Are you reading now, sir, or asking me?

Mr. BENNETT. I am reading—I am quoting or reading from an excerpt from your biography, as given to the Senate committee and I am asking you if it is correct.

Mr. MORGAN. Yes; I believe that is correct.

Mr. BENNETT. Now, after September 22, 1942, you went into the Navy with the Bureau of Yards and Docks, and you were with the Naval Transport Service from 1943 to 1946?

Mr. MORGAN. Yes, sir.

Mr. BENNETT. Were you stationed here in Washington?

Mr. MORGAN. I was here for a few months with the Bureau of Yards and Docks, and finally was transferred to Naval Air Transport Service, and went almost at once to Miami and then overseas.

Mr. BENNETT. Now, after you were finished with your military service, your biography said from 1945 to 1948 you were self-employed as a merchant and a broker with this reference, that this was strictly a temporary postwar operation, based on the sale of war surplus equipment during a period of acute shortage of heavy construction machinery in the civilian market.

Mr. MORGAN. Yes, sir.

Mr. BENNETT. Did you go into that business?

Mr. MORGAN. I did for a brief while, in company with a great many other GI's.

Mr. BENNETT (reading):

> It was an outgrowth of my work as a naval officer in the heavy equipment division of the Bureau of Yards and Docks.
>
> The object was to acquire capital and transfer it to long-term investment in a livestock ranch.

Is that an accurate statement?

Mr. MORGAN. Well, that was the object. I am not sure that the results were as grandiose as they may sound.

Mr. BENNETT. Well, you were using your experiences, your heavy experience in the Transport Service in the war, to advantage in the sale of war surplus equipment immediately after World War II?

Mr. MORGAN. Well, I don't know that it was any great advantage to me. I have spent——

Mr. BENNETT. Was it a disadvantage to you?

Mr. MORGAN. I don't think it was really either.

I had been in the heavy machinery division of the Bureau of Yards and Docks, and I had a considerable acquaintance with the types of equipment that the Navy had purchased and owned, but——

Mr. BENNETT. Had you had the experience in heavy equipment machinery before you went into the Navy?

Mr. MORGAN. Yes.

Mr. BENNETT. You had?

Where did you get that?

Mr. MORGAN. Well, I worked my way through college in heavy construction, in the Pacific Northwest; at Bonneville Dam, on highway construction jobs and other things.

I had spent about 4 years out of college working——

Mr. BENNETT. In the sale——

Mr. MORGAN. No; in construction work.

Mr. BENNETT. You were an operator of equipment?

Mr. MORGAN. That is right.

Mr. BENNETT. Had you had any experience in the sale of it before you went in the Navy?

Mr. MORGAN. Never, and I had very little after I came out, I might add.

Mr. BENNETT. Well, you worked at it from 1946 to 1948?

Mr. MORGAN. Yes.

Mr. BENNETT. Was it an unsuccessful venture?

Mr. MORGAN. No.

Mr. BENNETT. Did you make some money?

Mr. MORGAN. I made a modest amount.

I think you are aware of the fact that the real money was made by those who could afford to buy surplus equipment by the acre, which I could not do.

Mr. BENNETT. Well, the only reason I am asking you this is because you went to great lengths in your letter to talk about personal security of people on commissions, and I am just wondering whether your experience that you gained in the Navy with the heavy equipment division with the Navy, had any bearing on your getting out into that business immediately following your discharge from the service; whether that was for personal security reasons, similar to what you referred to in your letter.

Mr. MORGAN. Well, I don't really understand the relevancy, but I will be glad to tell you what my objectives were at the time.

There was a domestic shortage of heavy construction machinery. There had been all through the war.

And it was very acute at the end of the war.

The surplus releases that the Government was making were very much sought after, and there was a time when a person acting, you might say, as a scout, could find equipment for large companies and, after a telephone report describing the condition of it, resell it in a matter of days for a modest profit.

And that is what I was doing.

I don't know that security had anything to do with it. It was merely an occupation and a very temporary one, and not a very secure one, I might add.

Mr. BENNETT. Maybe it has nothing to do with security but it had a connection with the experience you gained in the military service?

Mr. MORGAN. Insofar as I had a——

Mr. BENNETT. It had nothing to do with the connections you made in the military service?

Mr. MORGAN. I don't think I ever met again in my life anyone I worked with in Washington or in the Bureau of Yards and Docks after I left Washington to go in the Naval Air Transport Service.

Mr. BENNETT. Okay. Now, just one or two other questions about your letter.

What is the basis for your comments in your letter to the President as they relate to commissions other than the Federal Power Commission?

Mr. MORGAN. I tried to make it plain yesterday, Mr. Bennett, that I was simply reemphasizing a point that has been emphasized and reemphasized by many people before. And, I am sure, will be again.

I feel it strongly. My experience here has reinforced my feeling and you may describe the letter in part as an abstraction or a reiteration of a well-known principle; that is what it was.

I am sure that what I said is true of all the agencies.

Mr. BENNETT. Well, you are posing as a great expert in this letter to the President.

I don't think there is much question about that, as an expert in the field of regulatory matters.

Mr. MORGAN. I don't think I used that word.

Mr. BENNETT. Not only for the Federal Power Commission but for every other commission in the Federal Government.

Mr. MORGAN. I don't think I used the term "expert."

Mr. BENNETT. Well, I say that you are writing here as an expert.

You are telling him what people—what qualifications people should have to be on these commissions.

Now, would you say that it required some expertise to determine the qualifications for these jobs? Some knowledge?

Mr. MORGAN. Well, you can draw your own conclusions, Mr. Bennett, as to whether I am an expert or not.

Let me help you. I served for 2 years as commissioner in Oregon. It is the only State in the United States that has a one-man commission.

In those years I issued a little over 2,500 orders of which, in the ensuing 4 years since I left that position, exactly 2 have been overturned by an extremely conservative Supreme Court, both by split decisions with long minority dissents.

I don't know whether that entitles me to call myself an expert, and I don't know that it is important, because I never have.

But it isn't a bad record.

Mr. BENNETT. Well, it is important to me, as one member of the committee, to find out what you were driving at in this letter; whether it was just a lot of hot air that you were giving the President or whether you had some facts to substantiate what you were telling him.

And I haven't been able to find out which is the case yet.

Mr. MORGAN. Well, in 2 years in that one-man job in Oregon, and 2 more years, almost 2 years here, I have learned to appreciate, even more than I did as a student, the necessity of having men of strength and character and creativeness and imagination and courage in these jobs.

And I wanted to pass that on to the President again before I left. That is why I did it.

Now, you said yesterday——

Mr. BENNETT. Why did you give the letter to the press then?

Mr. MORGAN. I did that because about a day or so—perhaps 2 days after the letter went to the White House Mr. Pearson published a version of the letter in his column.

He had not seen the letter and none of the Senators, with whom I had discussed the fact that I was going to write the letter, had seen it either.

But on the basis of conversations in the Senate Mr. Pearson published a version of the letter which was not entirely accurate.

It was not seriously inaccurate, but it did contain statements which were not in the letter, and I——

Mr. BENNETT. What difference did that make?

What difference did it make what Pearson said? The President had the letter. He knew what you said.

What were you trying to prove, that Pearson was wrong, by releasing this to the press?

Mr. MORGAN. Mr. Pearson's column is published all over the United States——

Mr. BENNETT. I mean, if you were trying to prove that, I would say that you are trying to do a job that people are engaged in every day in the year without apparently too much success.

I just can't see why you gave this letter to the press, Mr. Morgan, unless it was for the purpose of embarrassing the President.

Mr. MORGAN. No, it was not for that purpose.

Mr. BENNETT. By indicating to the public that he was not appointing the right kind of people to public office.

Mr. MORGAN. It was not for that purpose. It was for the purpose of clarifying the matter.

Mr. BENNETT. It was for the purpose of straightening out Drew Pearson?

Mr. MORGAN. It was for the purpose of clarifying the question as to the contents of the letter.

Mr. BENNETT. Did you get a reply to this letter?

Mr. MORGAN. I got an acknowledgment.

Mr. BENNETT. Did you get a reply?

Mr. MORGAN. I wouldn't call it a "reply."

Mr. BENNETT. Well, I am not surprised.

Why did you send this letter to the President 6 months before your term expired?

Did you believe it would take him 6 months to find an extraordinary character like yourself to go on the Commission?

Mr. MORGAN. I have not, and I do not, characterize myself as extraordinary but it took him 6 months to get me in office.

Mr. BENNETT. Well, he did have a problem, and I, in some respects, sympathize with the problem that he had in getting you confirmed, but he stuck with it and got you confirmed.

But I still can't see—why you felt it necessary to give him 6 months' notice that you were going to leave him.

Mr. MORGAN. I have just given you the answer, sir.

Mr. BENNETT. Did you think he was going to appoint somebody else who would be as hard to get confirmed as yourself?

Mr. MORGAN. I have no way of telling, but that is the reason why I did what I did; to give him time, including such delays as I encountered, to have a replacement by the time my term expires.

That is the reason and that is the only reason.

Mr. BENNETT. Well, you knew, when you wrote this letter, that you were going to create friction among your fellow Commissioners.

You knew, when you sent this gobbledegook up to the President it was going to create a lot of furor as far as this Commission is concerned and yet, as badly as you apparently feel about your job and as badly as you feel about the shortcomings of your other Commissioners, you still want to stick around with them for 6 months after it has apparently become intolerable to you, from the tone of your letter to the President?

Mr. MORGAN. I don't concur in any of your statements, Mr. Bennett.

My differences with my colleagues are on the basis of policy. And we are all men with enough self-discipline to associate amicably and conduct our business smoothly regardless of those policy differences.

Mr. BENNETT. But would you call your letter a mythical letter?

Mr. MORGAN. A mythical letter?

Mr. BENNETT. Yes.

Mr. MORGAN. No, sir, I would not.

Mr. BENNETT. You weren't talking about anybody or you weren't talking about anything in particular; just sat down and wrote the President some platitudes about who should be on the Commission. Mr. Morgan, I don't think you are being fair with the committee.

You obviously, from this letter to the President, can be referring only from your own knowledge to people on the Federal Power Commission because you haven't had experience on any other regulatory agency in the Federal Government and you haven't had any contact with them as far as this record shows.

And yet you come here and go ring-around-the-rosie about what you meant by writing the President of the United States a letter 6 months before your term expires, telling him about the great need for having extraordinary men on these commissions, the great chances there are of fraud, the great chances there are of injuring the public interest, and all of that business.

And yet, you are not willing to be straightforward enough to tell us what you had in mind except on yesterday, very briefly, you mentioned one instance where your fellow Commissioners slipped off the straight and narrow and rendered a decision or two without telling the public the real reasons for their decisions.

But aside from that, it is just a lot of platitudes here.

Yet, it can't be construed, I don't believe, as anything but an indictment of your fellow Commissioners on the Federal Power Commission and, as far as I am concerned, on the basis of the testimony you have given in reply to the questions I have asked you, I think your letter is just a lot of hot air.

That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Morgan, I say that I think it is possible for men to be different and do so with a great deal of respect for each other and a feeling of sincere affection even, because I am going to disagree with my very distinguished colleague from Michigan.

I don't regard the letter as gobbledygook. In fact, I think an objective reading of the letter spells out advice which is sound and with which very few men could disagree.

I think it is time to look at the letter and not a lot of extraneous matters which are not embodied in the letter.

I read it through with great care a number of times.

First, you give not 6 months but 5 months' notice that you do not desire reappointment. I think that is very considerate.

I think when a man reaches the conclusion that he is not going to seek reappointment that he should, in fairness, inform the appointive authority.

I think the action here is a commendable one. Rather than waiting until the last minute and having these Commissions operate as they have on numerous occasions, understrengthened, you gave this much notice.

Now, you say you have reasons. Some of those reasons clearly relate to the letter sent to the distinguished gentlewoman from Oregon prior to the time that you permitted your name to be submitted for appoinment, where you spelled out the type of job you would like to have the opportunity of doing if you were going to serve.

I know it is no great secret to those who were acquainted with your work, that you were imposing certain standards as objectives to be sought as a member of this Commission.

Is that correct?

Mr. MORGAN. Yes, sir. And I think you will find, if you refer to the letter I wrote to Mrs. Green after I had served as Commissioner in Oregon and before I took this appointment, I felt the same way on this subject then as I do now.

Mr. Moss. I am not an expert on regulation.

I have never sat on a regulatory body. I have served on this committee for 6 years and I have served on the old Oversight Committee, and the Administrative Agencies' Subcommittee, and this subcommittee.

The jurisdiction of all three is virtually the same.

I have very clear convictions as to the character of regulations we have had. In some instances I have been very critical not only of the caliber of the personnel in some of the Commissions but in the almost inbuilt certainty that there is going to be far too much delay and procrastination in handling these very significant issues which come before it, whether it is the Federal Power Commission or Federal Trade Commission or Federal Communications Commission, and in all of them we have too much delay, too much indecision.

This is not a partisan consideration.

In dealing with human beings, there seems to be great difficulty in getting these agencies to shorten their operations and to deal in a timely fashion with much of the business they have before them.

Now, you indicate that you have studied the matter of regulation and that you have participated actively in regulating——

Mr. MORGAN. Yes, sir.

Mr. Moss (continuing). For a period of 25 years.

Now, the President, at the time of appointing you, had your background, did he not?

Mr. MORGAN. He did.

Mr. Moss. So you couldn't here, even though it was only 2 years you were an active regulator, have been trying to give him a snow job because you had already given him your background, hadn't you?

Mr. MORGAN. Yes, I had a regulatory record that was available to him and to the whole public.

Mr. Moss. And all of us who were interested at the time of confirmation wanted to read the newspapers and reports of the Senate to find out what your background was.

Again, you were not really trying—it would be difficult at this point for you to confuse anyone as to the extent of your background, wouldn't it?

Mr. MORGAN. I don't see how it could be done.

Mr. Moss. So you summarized it.

Let's see, "From my study and work in the regulatory field, covering a period of 25 years," you studied this field in college?

Mr. MORGAN. And in graduate school.

Mr. Moss. And in graduate school?

Mr. MORGAN. I also took part in Interstate Commerce Commission cases both prior to and after the war.

I was a transportation consultant for the State grange for a number of years.

You don't get this deeply into a subject over a period of that many years without paying very careful attention to it, through reading and participation and associations in various ways, to maintain your interest and knowledge in it. And I have, over a period of 25 years.

Mr. Moss. I will agree with you. I served on the Committee on Public Utilities and Corporations in my legislature for 4 years. The fact that there was a period of time between my service there and my service here on this committee did not lessen my interest in the field. But you don't then go on and say, "Therefore, I recommend, Mr. President," but you say, "These are my convictions"——

Mr. MORGAN. That is right.

Mr. Moss (continuing.) These are personal things. A conviction is a very personal thing, isn't it?

Mr. MORGAN. It most certainly is.

Mr. Moss. And you even have them on subjects about which you are not expert?

Mr. MORGAN. I try to avoid it, but I am afraid it sometimes happens.

Mr. Moss. And I think the third paragraph of your letter:

> Standing as it does midway between the extremes of unbridled monopoly and undiluted State ownership, public utility regulation has been perhaps as noble, hopeful, and challenging a concept as any in our democratic framework of government.

And I think that is an excellent statement and I think it would take a considerable stretch of the imagination to characterize that as "gobbledygook" or "hot air." It is good, sound doctrine. And certainly the men you cite are men who have made a reputation which requires no defense from me or you or anyone else. They have been away from us long enough to have history do a pretty good job of evaluating their contributions, and they were most significant.

Certainly, we give rights to utilities, privileges which carry with them responsibilities, and I think the great majority of them live up to those responsibilities but there are some who don't always do so, and sometimes a little prodding is necessary, isn't it?

Mr. MORGAN. Well, I think the points I made in that letter can stand to be reemphasized. They have been said many times and they will be again. Mr. Bennett said yesterday that he has a 7-year-old granddaughter who understands these things.

I had a great-grandfather who spent a great deal of his time, attempting to teach the Indians Latin and Greek in the Oregon territory, and I learned from him that it pays to repeat simple, obvious, true things over and over lest they be lost sight of. That is all I was attempting to do in the letter.

Mr. Moss. If it didn't pay to repeat them few of our churches would find a need to meet each and every Sunday, as they have been doing for 1,963 years.

Now, I think that another truth comes out here, and I think it is one, as we have studied the problems of regulating, that could well be reflected. I have not had the time to research it but it could well be reflected in some of the reports of this committee.

You can't solve all of these problems of the regulatory commissions by passing new laws or undertaking a new reorganization. There are intangibles here that don't lend themselves to legislative correction.

And I think it is well summarized in this statement, and is one that all of us should consider more because there is a great tendency that whenever an ill appears, to seek a legislative correction, but the type of man is most important——

Mr. MORGAN. I believe so very firmly.

Mr. Moss. Now——

Mr. MORGAN. I believe yesterday I read Mr. Kennedy's statement on this very point. No one could have been more explicit than he in his statement.

Mr. Moss. Now, the letter, I think, in my opinion, and there are those who will disagree, but in my opinion it is excellent and stands on its own feet if it is read objectively.

The Chairman, in outlining the purposes of the hearing yesterday, stated that we were to pursue a study of how to improve the procedures of the Commission.

That being the principal objective, I would like to know if you have some proposals which you feel would be beneficial to this committee as it discharges its obligations to the Congress and to the public.

Mr. MORGAN. I wonder if I could answer your question, Mr. Moss, by reading some notes which I drafted since the meeting yesterday, setting forth the answer to a question which I haven't been asked yet, which is: Why I am leaving the Commission?

Mr. Moss. Well, I would be interested in a fuller statement on that, if you——

Mr. MORGAN. And also including some suggestions as to possible avenues of correction for these ailments and imperfections which are the reasons for my leaving.

Would that satisfy you, sir?

Mr. Moss. I would like very much to hear it.

Mr. MORGAN. One, the Commission does not have the freedom and independence which it needs in order to carry out the powers delegated to it by the Congress.

The Commission is not independent externally and it does not have freedom and independence internally. The reasons can plainly be seen through an analysis of Reorganization Plan No. 9, under the act of 1950.

The President has the power to designate the Chairman and, presumably, he also has the power to withdraw that designation.

The Chairman, under the plan, has almost complete administrative control over the staff, including personnel authority with respect to hiring and termination, promotions, pay increases, and assignments of duties.

This committee and the Congress should understand that more than administrative control is transferred to the Chairman under that plan, because these powers are translatable into control over policies so far as the staff is concerned.

Policies not favored by the Chairman will not be developed by staff members whose futures and careers are directly influenced by the Chairman's actions and policies.

A standing criticism for many years has been that the Commissioners are captives of their staffs. To a degree this is unavoidable, owing to the size and complexity of the workload.

Commissioners must rely in the making of informed judgments on the expertise and information furnished by the staff. The best safeguard for a truly independent Commission, therefore, is a truly independent staff, free to think imaginatively and creatively under Commission policy.

If the flow of information and legal interpretation from the staff to the Commission has been influenced initially by preselected policies, the Commissioners may be deprived of alternative facts and alternative approaches.

Therefore, the way is open for Commissioners to become captives of staff members who are captives of the Chairman, who is, in turn, a captive of the White House.

In my view, this system holds grave perils for the freedom and independence of regulatory agencies created by the Congress, and I urge the members of this subcommittee to look hard at this matter and think hard about it.

Now, again, I want you to understand that I am making no charges, but I am pointing to a situation which exists and, to a greater or lesser degree, hampers the independence and freedom of these so-called independent agencies.

I do not say this situation is bad but it is not perfect and it can become very bad, in my opinion.

Two, the present Commission has inherited a system of attempting to control the price of natural gas in the field which is extremely cum-

bersome, raises countless legal problems, involves certain procedural encroachments on producer and consumer alike, is illegal in my opinion in its effects upon both the producer and the consumer interests and, in my opinion, is neither a fair, nor an effective, way to control producer prices.

For an elaboration on this I refer you to my concurring statement in Amerada Petroleum Corp., Docket CI–62–1544, and my dissent in the fifth amendment to the statement of General Policy No. 61–1.

After inheriting this cumbersome, unwieldy price mechanism, this Commission has done little to improve it, and let me say that I am one of those who, with deep reservations, agreed to accept this pricing mechanism and try to make it work.

I left the door open for future attempts in other directions to handle pricing controls, and I am sorry that the Commission has not yet, although I have hopes it soon will, enter those doors and try some other methods.

Still this Commission has done little to improve it despite the fact that a growing body of economic facts indicates that it has been ineffectual, and that the price of gas today is more the result of competitive forces in the marketplace than the result of the so-called area pricing regulation.

I believe we should work instead for the exemption of small producers, and concentrate our resources upon the regulation of the large ones.

I believe, too, that we should regulate strictly the pipeline's purchasing programs and equip the Commission with an up-to-the-minute inventory on all gas available in the United States and use competitive forces to the extent that we possibly can.

We need a uniform system of accounts for such producers, a long-postponed responsibility and one which no steps whatsoever are being taken toward its discharge.

Three, in an effort to clear up its backlog of caseloads and paperwork the Commission has resorted, on an enormous scale, to the settlement of pipeline rate cases instead of full litigation and proper adjudication of those cases.

Partly, this is because we are short of staff and a large reason we are short of staff is the tremendous manpower we are devoting under the present method, to the control of gas prices at the producer level.

These settlements in my opinion, are a very expensive device, from the consumer's point of view, for the clearance of the Commission's backlog.

I will cite as an example the *Tennessee Gas Transmission Rate* case, which we settled a few weeks ago and in the decision of which I did not participate. I will tell you why.

There were approximately $320 million of rate increases subject to refund in this case.

The FPC staff was of the opinion that the refund should be about $210 million of that total; over two-thirds. Tennessee went to 100 intervenors in the case and got their approval for a voluntary refund of $134 million.

This is $76 million less than the staff recommended, and I did not participate in the decision of the case because of that tremendous gap.

Now, of the $350 million that we have accepted or ordered as refunds in settlement cases, if you apply those figures I think you will come up with a conservative estimate that the staff would probably have recommended about $500 million refunds instead of the $350 million that were refunded.

Now the question that this presents, gentlemen, is this:

Is $150 million of hard-earned consumer's cash paid out, that they will never get again, which will never be returned to them, a proper price for helping to clean up the FPC backlog of rate cases?

Now, I am not persuaded that it is, and I think this matter of pipeline rate settlements has got to the point where it requires an examination.

I know that I, after voting for many of these settlements, have finally had enough, and the one that cured me was the *Tennessee* case I just talked about.

This is far too expensive, in my opinion, a way to clean up a backlog.

Four, the electric and gas utilities of the United States are currently syphoning off hundreds of millions of dollars a year of consumer's money by means of paying taxes to the Treasury on the basis of accelerated depreciation, while reporting their tax expenses to the Commission for ratemaking purposes on the basis of the full taxes they would have paid without accelerated depreciation.

This means that the consumers are being charged huge amounts representing phantom taxes which are not paid and in the opinion of most, if not all, disinterested students of taxation, will never be paid.

Worse still, these funds are reinvested in the corporations with the result that the rate payer must pay a return on capital involuntarily extracted from him by the utilities.

As a result, equivalent amounts are paid out to stockholders, in many cases, as dividends which are in part or in whole tax free.

Some companies have been paying dividends to stockholders which are 100 percent tax free because of the operation of this device. Thus, the rate payer is charged for taxes which never go to the Treasury and stockholders received income on which they pay no, or little, taxes.

This Commission should have moved in to abate this abuse many years ago, as Commissioner Connole pointed out in a brilliant dissent in 1956, and as many progressive State commissions have done in the interim.

This Commission is inexcusably remiss because it has done nothing to change the policy in this vital area. These moneys, in 1961, were accumulating at the following rates:

Gas companies: $52,886,000 per year.

Electric companies: $191,926,000 per year.

The total of these moneys, accumulated at the end of 1961, were:

Gas companies: $306,643,000.

Electric companies: $1,495,938,828.

Not all of the companies holding these funds are under our jurisdiction, but that should not prevent us from moving to end this abuse within our own jurisdiction and to set an example for those State commissions which have not yet dealt with the problem.

This is a flagrant example of ratepayers, who look to the Commission for protection, being forced to pay totally unjustified charges.

Five, the same must be said of the problem of tax consolidations, but I shall not elaborate on this point because it involves cases now pending for decision, other than to say here again we should have acted years ago.

Six, the unprecedented action of the Commission in setting up, with my reluctant concurrence, technical advisory committees representing the electric and natural gas industries, has raised the gravest questions regarding improper influence by industry directly upon the Commission and its staff. These committees have some value, and I emphasize that they do have some value. But I am not persuaded that the value is sufficient, to offset the dangers to the Commission's integrity.

If these advisory committees are not abolished, each of them should be broadened to include more consumer and outside independent interests, such as labor, the universities, genuinely independent Commission staff members; and should contain representatives of all other industries serving as energy sources.

Their meetings should be open to the press and the public, even though this may require such committees to meet in a public auditorium.

Seven, the Commission's regulation prohibiting ex parte communications with Commissioners and other employees involved at the decisionmaking level, concerning cases in litigation before us, should be broadened to prohibit improper communications with those members of the staff who are charged with participation in such cases in behalf of the public interest.

If such staff presentations are altered or weakened as the result of industry pressure, the public's side of the case obviously will be poorly presented, and this will have an inescapable impact on the quality of the decision which finally emerges from the record thus made.

Such a prohibition, in my opinion, would add to the independence of the staff, and perhaps this would obviate the creation of a needed public defender panel within the staff for presentation of the public's case, as has often been recommended.

Eight, the Federal Power Commission is charged with the responsibility of close liaison with other governmental agencies, but the liaison is not close enough or cooperative enough to enable the Commission to adjudge properly the impact of its actions on the programs set up by the Congress to be administered by those other agencies.

Further, the liaisons presently existing are tinged and colored by jurisdictional rivalry and squabbling of the most pettifogging nature, with the result that the attempts at coordination contain within them the seeds of interagency discord.

In my opinion, this is one of the gravest failures of all of the regulatory agencies, as many reports have pointed out, and steps should be taken by the Congress to deal with the problem of interagency policy formulation.

Nine, the Federal Power Commission and, in my opinion, all other regulatory agencies need more insulation not only from the blandishments and enticements of the industries they regulate, such as ex parte communications, offers of future jobs, and so on, but also more insulation from uncertainties with respect to reappointment, reconfirmation, and the like.

I concur with the many suggestions which have been made with regard to increased compensation, drastically increased retirement benefits and longer tenure of office.

I would suggest that 10 years is an appropriate term.

The absence of such protection and insulation is presently an impediment, in my opinion, to the independence of these agencies which the Congress contemplated when it delegated its responsibilities to them.

Ten, each Commissioner needs a larger personal staff of specialists, or assistants, to assist him in analyzing the huge volume of cases which flow through his office each week.

No Commissioner, working with a single assistant and hampered to some extent by the fact that the staff may not always be free and willing to advance its own independent judgment and assistance, can hope to deal accurately and fairly with a weekly load of some 65 to 90 cases brought before the Commission in a single weekly working meeting lasting approximately 6 to 8 hours.

Eleven, one of the most important achievements of the present Commission is the establishment of an Office of Economics within the staff. This was accomplished only last year and is a sad commentary on the administrative standards existing in the agency from its inception until that time.

When one considers that this agency regulates the largest industry in the United States, in terms of investment: the electric power industry, and the fifth or sixth largest; the natural gas industry, it speaks much for what has transpired to point out the tardiness of this agency in turning to the tools of economic analysis in dealing with problems which very often involve more important economic than legal problems.

This Office should be strengthened drastically.

I also recommend that the Commission at all times in the future have not less than two trained economists within its membership at the Commission level.

Twelve, the Commission has shown signs of relapsing toward the old system of issuing anonymous opinions, couched in obscure and confusing terminology, baffling to the members of the bar and even to the attorneys in the case and, of course, even much more so to the general public.

Necessary steps should be taken to insure that every opinion issued by the Commission shall be signed by an individual Commissioner so that the views set forth in that opinion, as well as the coherence and reasoning of the opinion, are directly attributable to him.

Now, there, gentlemen, I have set forth a number of reasons that impelled me to decide that the chances of accomplishment in this agency at this time are not sufficient to balance the sacrifices and dislocations imposed on my family, and to leave the Commission.

And I have attempted, on very short notice, to offer some suggestions concerning most of them.

Mr. BENNETT. Will you yield for one question?

Mr. MOSS. Yes, but I want to thank you for the suggestions.

I am not going to try to comment on them at this point. They are rather extensive, and I would have to study them.

I will be very happy to yield.

Mr. BENNETT. The thing that puzzles me about that statement that you just read, just from listening to you, and you read it hurriedly, and I think there are probably some good suggestions in it——

Mr. MORGAN. I hope, so, sir.

Mr. BENNETT (continuing). Is why in the world didn't you give that story to the President instead of giving him this stuff that you gave him in your letter?

Mr. MORGAN. Sir, I don't know how I can convince you of my sincerity. I have tried.

The letter really does not contain the inferences which you apparently found in it.

It certainly was not intended to contain them.

Let me say, too, that when Mr. Hector retired from the CAB 3 years ago he went over to the White House and presented Mr. Eisenhower with a 75-page memorandum concerning his objections and suggestions.

All I can say is that I envy Mr. Hector the amount of time he was able to spend on that memorandum.

Mr. BENNETT. You drew this up last night you said?

Mr. MORGAN. Actually, I drew it up between 10 and 12 this morning.

Mr. BENNETT. But you didn't have time to give it to the President.

That is the thing that puzzles me, and you could have obviated a lot of trouble here and a lot of suspicion as to what your real motives are, or a least, suspicions in my mind as to what your motives are in writing this peculiar type of letter to the President.

Instead of telling him honestly and straightforwardly and with clarity, as you just have here, the reasons why you wanted to quit and then go ahead and quit, you wrote that.

Thank you.

Mr. MOSS. I have no questions at this point, Mr. Chairman.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Morgan, your statement is a general one which is applicable, I take it, to all the regulatory agencies?

Mr. MORGAN. I intended it to be, sir. I don't pose as an expert on all regulatory agencies, but I think they have common problems and the one I discussed is shared by all of them.

Mr. SPRINGER. Let's come to the Federal Power Commission first.

You have mentioned in paragraph 2, page 1, of your letter to the President:

> Besides, several of them are clearly visible to those who have read the dissenting opinions which I have been obliged to write during my service here.

Mr. MORGAN. Yes, sir.

Mr. SPRINGER. In those last four or five opinions which were rendered how did the Commission stand?

Mr. MORGAN. The last four or five of the decisions——

Mr. SPRINGER. Let's take the decisions that we have here.

Mr. MORGAN. I am not sure I have these in chronological order.

On two or three occasions—I think I can answer your question without looking at them—on two or three or perhaps four occasions I have joined with Commissioner Ross, or he has joined with me, in both dissenting and concurring separate statements.

On all the rest of them I think I dissented alone

They are not really over, I would guess, six or eight dissents. There are about an equal number of concurring statements. These are critical of the majority opinion in certain aspects of the majority's handling of the case, but concurring in the limited result reached.

Mr. SPRINGER. Since you have been on the Commission how many decisions have you participated in approximately?

Mr. MORGAN. I could only guess.

Mr. SPRINGER. Fifty?

Mr. MORGAN. Oh, no.

Mr. SPRINGER. Seventy-five? One hundred?

Mr. MORGAN. It would be in the hundreds, if not thousands.

Mr. SPRINGER. On how many of those have you dissented?

Mr. MORGAN. I think, not more than six or seven.

Mr. SPRINGER. On those six or seven did anybody dissent with you?

Mr. MORGAN. On two or three occasions, I believe.

Mr. SPRINGER. One other joined with you?

Mr. MORGAN. Yes; Commissioner Ross.

Mr. SPRINGER. On the other four the dissent was written by you alone?

Mr. MORGAN. Yes; I think that is about right. I am not actually sure of the figures, but the figures are of about that magnitude.

Mr. SPRINGER. Now, Mr. Morgan, these last days over at the Commission you haven't been very happy with the Commission, have you?

Mr. MORGAN. Well, "happiness" is a relative term, Mr. Springer——

Mr. SPRINGER. Let's——

Mr. MORGAN (continuing). Nobody is really very happy in regulatory work.

Mr. SPRINGER. But you were particularly unhappy, Mr. Morgan, because in your dissents no one agreed with you?

Mr. MORGAN. Well, everyone would like to have some support for his ideas, but I don't think "unhappy" is the term to apply to this situation.

I think——

Mr. SPRINGER. And largely——

Mr. MORGAN. I think "disappointed" would be a better term.

Mr. SPRINGER. Well, substitute the word "disappointed," Mr. Reporter.

You were though particularly disappointed because the other Commissioners did not see fit to agree with you in those opinions?

Mr. MORGAN. Yes.

Mr. SPRINGER. And yet those are the reasons particularly why you are leaving the Commission?

Mr. MORGAN. No; not entirely.

Mr. SPRINGER. Does that have anything to do with your leaving the Commission?

Mr. MORGAN. Well, obviously, it has something to do with my reasons for leaving.

If the Commissioners all agreed with me, more would have been done about the list of imperfections which I read to you, and it would have been done a long time ago.

Mr. SPRINGER. And, Mr. Morgan——

Mr. MORGAN. But the fact——

Mr. SPRINGER (continuing). You believe in this instance that everybody was out of step but you?

Mr. MORGAN. Well now, Mr. Springer, these Commissions were not created for the purpose of achieving unanimity.

We have an obligation, as independent Commissioners, to reach our own conclusions and argue the very strongly when we feel very strongly about them.

Mr. SPRINGER. All right, but you were particularly unhappy that they didn't agree with you?

Mr. MORGAN. I think anyone would prefer to have almost anyone else agree with him on any subject.

Mr. SPRINGER. Mr. Morgan, in this letter, I have tried to analyze it as best I could, there have been a number, I believe, three alleged derelictions of duty as best I can make it out.

If there are others you will advise me?

Mr. MORGAN. Well, I am not sure that I will go along with your word "alleged" because, as I made very plain in the letter on two occasions, the remarks were general and I made it specifically plain that they were not designed to describe my colleagues and myself.

Mr. SPRINGER. Let me ask you this:

Do you believe that that was the impression which was created by the average reader in the 22d Congressional District of Illinois?

Mr. MORGAN. Sir, I don't know any average newspaper readers in that district, and I haven't seen the press reports there.

Mr. SPRINGER. Do you believe that your statement created the impression that you are leading this committee to believe in the congressional district in which you live in the State of Oregon?

Mr. MORGAN. I haven't seen any clippings from that district either but I will say, and I said so promptly at the time when I released this letter to the public to try to clear up the misapprehensions concerning it which came from Mr. Pearson's column—I said that it had been extensively misquoted.

I don't want to criticize the press any more than I want to criticize my colleagues, but they like to stretch things a little bit and make them a little more snappy and exciting than they naturally are.

And this happened to my letter and for that I have already apologized.

Mr. SPRINGER. If you, Mr. Morgan, had been reading in your congressional district in Oregon, and a newspaper came out that a Commissioner of the Federal Power Commission in Washington had alleged that the Commission was not protecting the public interest, what would you have believed?

Mr. MORGAN. Mr. Springer, I am not responsible for what the newspapers say concerning a letter when they put words into it which are not there.

Those words are not in that letter, but I did testify yesterday that in certain cases I felt that the public had received less protection than it should.

I said so in my dissenting opinions, but I did not say so in this letter.

Mr. SPRINGER. You used the words—anyone who reads this, whatever you say, can come to no other impression when you use words

and sentences such as these "conformity," "timidity," "personal security."

"Without the needed sense of public responsibility a Commissioner can find it very easy to consider whether his vote might arouse an industry campaign against his confirmation in the Senate."

Can anyone who reads this letter not conclude that that is what you had in your mind about the people who sit on this Commission?

Mr. MORGAN. Well, I have tried to make it as plain as I can that my differences with my colleagues have been on policy considerations and that has been made very plain and explicit by me.

But I cannot take responsibility for what people read into this letter.

My reasons for leaving are discussed only in the first half of the second paragraph of the letter.

Mr. SPRINGER. We are trying to get this thing straightened out. Whether the President is going to do it or not I do not know. When I first read it—that was the impression created in my mind. That you were making allegation against members of your own commission and generally against commissioners who were deciding cases and writing opinions here in Washington in the public interest.

I want to come first to the Federal Power Commission. Do you find that any of the persons who were on the other side of those cases in those dessenting opinions of yours have been guilty of any derelection of duty?

Mr. MORGAN. I don't think I ever said that they were.

Mr. SPRINGER. I am asking you now under oath, do you?

Mr. MORGAN. I think, as I said yesterday, that there have been cases where they did less than they should have to perform their duty and properly protect the public; and I said so, to the extent that I want to go, or am justified in going, in my written dissent in those cases. There is no need for me to go beyond those dissents, and I never have.

Mr. SPRINGER. You are saying, then, that those commissioners were not looking after the public interest. You are saying that today under oath?

Mr. Morgan. In those particular cases, and to the extent that I pointed it out, yes, that is true, but to no greater extent.

Mr. SPRINGER. Have any of the men on the Commission yielded any part of the public interest to conformity? Have they been guilty of any timidity in the decision of their cases, or have they made their decisions as a result of a desire for personal security, or to be reappointed to the Commission?

Mr. MORGAN. You are asking me to look into men's minds and read those minds, and that can be not done.

Mr. SPRINGER. These are your words, Mr. Morgan, not mine.

Mr. MORGAN. They are words which I explicitly told the President were not descriptive of my colleagues or myself.

Mr. SPRINGER. Do you know of any of these men who have become, and I quote your words, "Neurotic with worry after having cast a vote for the public interest"?

Mr. MORGAN. I do not know that any of them are neurotic. And I certainly couldn't put my finger on it because if they were——

Mr. SPRINGER. Would you say, Mr. Morgan, that any of these men have been guilty of writing opinions which contain platitudes instead of public protection, puff-jobs and image-building instead of principle, wall chart juggling and streamlining instead of hard work? These are your words, Mr. Morgan, not mine.

Mr. MORGAN. When you read those words, coupled with my statement that they were not intended to describe my colleagues and myself, why do you relate them to my colleagues?

Mr. SPRINGER. The whole tenor of your statement, the whole tenor of your letter—you are saying to the President that that is what is going on down in the Commission.

Mr. MORGAN. No; I did not say that, Mr. Springer.

Mr. SPRINGER. If anyone reads this letter he is bound to come to the conclusion—I don't care if it is Jack Kennedy—come to the conclusion that that is what is going on in his shop, and he had better get some better people down there.

Mr. MORGAN. I do not accept that.

Mr. SPRINGER. Let me ask you this. Would you say that these men down at the Commission other than yourself who have been rendering those decisions "have yielded to extraordinary pressures" of business?

Mr. MORGAN. There are all kinds of extraordinary pressures, Mr. Springer.

Mr. SPRINGER. I will rephrase the question. Would you say that any of these men who have been serving on the Federal Power Commission, the people who have been rendering decisions down there, have yielded to extraordinary pressures?

Mr. MORGAN. I would like to discuss with you one of these dissents I have here.

Mr. SPRINGER. First of all, would you answer the question yes or no. And I think legally, as in a court of law, you can then explain your answer.

Mr. MORGAN. I think that the majority have yielded to the pressure of the necessity, as they see it, to make area pricing work—this is a pressure generated within the Government and the general public, not by industry. And to the degree that they have imposed illegal price-fixing methods, coupled with impossible conditions on producers and consumers who wish to appeal those methods, and their failure to develop the formulas fixing rates, they have actually destroyed or invaded the legal and constitutional rights of both the producers in the gas fields and the consumers, each of whom are attempting to get just and reasonable rates fixed.

And I said so, and Commissioner Ross has said so in two or three dissenting and concurring opinions.

Now, there are all kinds of pressures, and the pressure to maintain a given institution and keep it from collapsing, keep it from falling apart, can be just as great as any other kind of pressure.

I believe that in these particular cases—and there have been several of them—violence has been done to legal rights of citizens of the country because the Commission unwisely and mistakenly yielded to the temptation to take the easy way out, to maintain the status quo; rather than face the very difficult task of attempting to find a workable substitute that would preserve the legal and constitutional rights of both consumers and producers.

Mr. SPRINGER. Do you say, then, that the Commissioners have violated their oath of office?

Mr. MORGAN. I would not put it that strongly.

Mr. SPRINGER. How strong would you put it in your own words?

Mr. MORGAN. I do not think such actions produce good regulation or good administration, and I disapprove of them. I don't wish to go farther. You can't make black or white judgments in an issue of this kind. But it is my firm conviction that this is why the Commission did what it did. And Mr. Ross and I dissented from their actions.

Mr. SPRINGER. Now, Mr. Morgan, would you say that the other Commissioners on the Federal Power Commission—again using your words—are just ordinary men?

Mr. MORGAN. No. That question was asked of me yesterday, and I refused to answer it, and explained why.

Mr. SPRINGER. Just a moment; let me finish my question.

Would you say that the other Commissioners on the Federal Power Commission are just ordinary men, or have you found them to be men of ability, character, courage, and broad vision?

Mr. MORGAN. I described my colleagues yesterday, I thought, in accurate words which reflect my high regard and even affection——

Mr. SPRINGER. I cannot hear you, Mr. Morgan.

Mr. MORGAN. I am sorry. I said that I had described my colleagues yesterday in words which I intended to convey my high personal regard for them. I would like to quote it to you.

Mr. SPRINGER. Just in general terms tell me.

Mr. MORGAN. I would like to make it specific.

I said yesterday:

> My colleagues are able, honest, conscientious men, and further, they are men whose company I enjoy, and for whom I have formed a genuine personal fondness. And this includes all of them. I cannot and will not make derogatory comments about them. And I am very sorry that my letter to the President has been misinterpreted by those who have sought to make a sensational thing out of it.

Mr. SPRINGER. Would you describe yourself, Mr. Morgan, as an ordinary man?

Mr. MORGAN. Yes; I would. I try very hard to do the things I think extraordinary men would do if they were in my position. But I do not flatter myself—and I have made this plain before—that I am in the category of the men whose names I listed in my letter to the President and who were, I think, great public servants and regulators.

Mr. SPRINGER. You say you put yourself in that same category?

Mr. MORGAN. I say, I could not put myself in that category. And yesterday I was very explicit on that point.

Mr. SPRINGER. Then you shouldn't be on the Commission, even by your own judgment.

Mr. MORGAN. I will tell you, Mr. Springer, that I had serious misgivings about my capacity to master the technical, legal, economic, engineering, and other facets of this work when I came here. No honest man can be without some doubts as to his capacity, and I have mine.

Mr. SPRINGER. This takes men of extraordinary skill, does it not?

Mr. MORGAN. Pardon?

Mr. SPRINGER. These jobs take extraordinary skill and ability, isn't that correct?

Mr. MORGAN. Mr. Springer, these jobs will absorb every iota of expertise, brains, education, experience, and character that a man has; I don't care who he is, these jobs will drain him of everything he has.

It is impossible in my opinion to exaggerate the need for outstanding men in these jobs.

Mr. SPRINGER. And this is the reason that you are leaving the Commission, isn't it?

Mr. MORGAN. I was asked that question yesterday, and I think the question ended this way:

"Are you leaving for this reason, so that the President can appoint an extraordinary man in your place?"

And I said, "It is one of the reasons, and I hope he does."

Mr. SPRINGER. Would you consider yourself above the average of those serving on the various regulatory agencies in Washington of whom you have knowledge?

Mr. MORGAN. I know very few of them, and I would not presume to rate them against each other or myself any more than I would my own colleagues.

Mr. SPRINGER. Do you consider that you are a man of ability, character, courage, and broad vision, Mr. Morgan, again using your own words, and that you have the same viewpoint as the authors of the legislation that you have been called on to administer?

Mr. MORGAN. Mr. Springer, these words also were accompanied by the statement that they were not meant to describe my colleagues or myself.

Mr. SPRINGER. Mr. Morgan, let me put you in the President's position for just a moment with a hypothetical question, because I think it is important.

Mr. MORGAN. I would much rather that you did not.

Mr. SPRINGER. Are you a lawyer, Mr. Morgan?

Mr. MORGAN. No; I am not.

Mr. SPRINGER. If you were the President making appointments to the Federal Power Commission, would you take into consideration a man's past reputation for truthfulness and veracity to be an important factor in his appointment?

Mr. MORGAN. Yes; of course I would.

Mr. SPRINGER. Mr. Morgan, if you were the President and were to make an appointment to the Federal Power Commission, would you have confidence in the prospective appointee if you knew that he had concealed upon his personnel forms past Government employment information which would have made a difference to you in making the appointment?

Mr. MORGAN. This certainly would be a matter I would want to investigate, of course.

Mr. SPRINGER. Would it make any difference to you as the appointer of a Commissioner to the Federal Power Commission if that applicant had sworn falsely on six or seven occasions with reference to matters contained in the personnel form in violation of the law?

Mr. MORGAN. Mr. Springer, all this was gone into at the time of my Senate confirmation.

Mr. SPRINGER. I am just asking for an answer, is all.

Mr. Chairman, I am not seeking in devious ways to lead the witness into any trap at all; I am just seeking answers, to find out what his background is.

Mr. MORGAN. I will answer you.

Mr. SPRINGER. Would you repeat the question, Mr. Reporter?

(Question read.)

Mr. MORGAN. I want to explain something to you, Mr. Springer, that is important at this point.

Mr. SPRINGER. Will you first answer the question, and then you may explain your answer.

Mr. MORGAN. Would you read the question again, please?

Mr. SPRINGER. Would you read it to him again, Mr. Reporter?

(Question reread.)

Mr. MORGAN. Yes, it would. But it would also make—I would really want to know whether he had or not.

Mr. SPRINGER. Now, in view of the President's message to the Congress on integrity in the Federal service, do you believe that the President would have appointed a man to the Power Commission who concealed on several occasions vital information and swore falsely as to the content of his personnel form?

Mr. MORGAN. He very likely would not have, if that were the case.

Mr. SPRINGER. Mr. Morgan, did you know that in 1961 there were exactly 53 cases of false statements on form 57's that were referred to the Department of Justice for action?

Mr. MORGAN. No, sir, I did not know that.

Mr. SPRINGER. Did you know that the Civil Service Commission—which is not a matter of having to do with an appointee to the Federal Power Commission—is empowered to invoke administrative penalties for false statements on employment applications, including as much as the removal of the person from a position, and barring him from employment for a period of 1 to 3 years?

Mr. MORGAN. No; I did not know that. I hope you understand, Mr. Springer, that I am not applying for employment.

Mr. SPRINGER. Mr. Morgan, did you know that if you had been a civil service appointee instead of a Presidential appointee, the Civil Service Commission would have invoked its privilege and removed you from your position?

Mr. MORGAN. I don't know that.

Mr. SPRINGER. Mr. Morgan, were you ever arrested?

Mr. MORGAN. Yes. And I would like to answer further, if you please.

Mr. SPRINGER. You have answered my question. I have not asked for any explanation. I just asked you a question. You can answer yes or no. I just wanted to know whether you did or did not. If somebody wants to ask you about it any further, that is all right.

The CHAIRMAN. I think that the witness deserves an opportunity to explain.

Mr. SPRINGER. Mr. Chairman, under the rules of evidence, if the question calls for a conclusive yes or no answer, that is all. If someone wants to ask a further question, they can.

I am not asking you whether the arrest was right or wrong. I am asking you whether you were arrested.

Mr. MORGAN. I was.

Mr. SPRINGER. On two occasions?

Mr. MORGAN. Yes, sir.

Mr. SPRINGER. Did you then later fill out employment forms on six different occasions on which you did not list those arrests? Did you or didn't you?

Mr. MORGAN. Mr. Springer, you have overlooked asking me whether either of those arrests were expunged from the record.

Mr. SPRINGER. You don't seem to understand that that does not make any difference in this, Mr. Morgan. I have looked up the law. The only question is whether you answered yes or no. It does not make any difference if they have expunged both of these arrests though I understand they only expunged one of them. I have asked you whether you were arrested.

Mr. MORGAN. I was, improperly.

Mr. SPRINGER. And on none of those seven occasions did you put that on your employment record, did you?

Mr. MORGAN. I thought I had a right not to, and that is still my belief, so far as one of those occasions was concerned, because it had been expunged from the record.

I was very patient when I went through this in Senate confirmation hearings, and did not stand on what I considered to be my rights in the matter.

One of these matters was such a minor thing that I literally had completely forgotten it. It was a trivial, silly, meaningless thing.

The other one was completely improper——

Mr. SPRINGER. Now, we will take them one at a time, since you have insisted. Will you tell this committee of the one that was trivial and did not amount to anything? Will you relate that?

Mr. MORGAN. I will cooperate with you, Mr. Springer. But I must say it is ironic to have to go through this in the Senate to take a Federal position and then to have to go through it again in the House in order to leave.

Mr. SPRINGER. Mr. Morgan, I am trying to find out in simple terms what your reputation for truth and veracity is. And since you are not a lawyer, I think I ought to advise you that that is the right of anybody questioning you when you profess to be testifying as an expert and to be telling the truth. That is why I am bringing this matter up. Do you want to tell me about the first incident which you say amounted to nothing?

The CHAIRMAN. Permit the Chair to say that he is going to be rather liberal about a matter of this kind, but this is a congressional investigation: this is not an investigation in the nature of criminal or court proceedings.

And, consequently, I do not think that you should leave an impression that we are here in the position of trying the man or prosecuting him or passing judgment on him. I do not want this record to leave any impression that that is our function here at all.

Naturally the rules of evidence do not apply in the matter of congressional investigations as they do, strictly interpreted, in a court of law.

The gentleman may proceed.

Mr. SPRINGER. Do you want to relate the incidents which you say was trivial? I was not going to pursue this, Mr. Morgan, but you apparently want to.

Mr. MORGAN. How did you form that impression, Mr. Springer?

Mr. SPRINGER. That is what I understood you to say. In fact, I think in your testimony in the Senate you thought it was a good laugh. In fact right now you laughed about it; you thought it was a big joke. I can get that out if you want it, but I think those were the words you used.

Mr. MORGAN. Did you read it?

Mr. SPRINGER. Yes, I read it. Do you want to pursue it? I don't necessarily want to, but you seem to want to tell these gentlemen about the nature of these two incidents. It is perfectly all right—I don't want to pursue it.

Mr. MORGAN. My exact words were:

I will cooperate with you, Mr. Springer, but it is ironic to have to go through this to take a Federal appointment and then have to go through it again in order to leave.

Mr. SPRINGER. I am willing to leave it and go ahead with the questions if you want to.

Mr. Morgan, when this matter arose in the White House you did not have to fill out a form, did you?

Mr. MORGAN. That is correct.

Mr. SPRINGER. Do you remember what you told them down there?

Mr. MORGAN. Do I remember——

Mr. SPRINGER. What you told about your past at the White House.

Mr. MORGAN. I don't recall telling them anything about it.

Mr. SPRINGER. Did you tell them anything?

Mr. MORGAN. They had the normal and usual report from the FBI. I did not think there was anything left I could tell them about it.

Mr. SPRINGER. I quote from the Senate report:

Mr. Morgan did not tell the White House about one of his arrests, nor about his concealment on the form 57 until the committee's hearings had started.

Is that the truth?

Mr. MORGAN. I think that is the truth.

Mr. SPRINGER. Do you believe that if President Kennedy had known all of these facts with reference to what you did on these form 57's on seven different occasions that he would have appointed you?

Mr. MORGAN. It happens that I believe he would, sir.

Mr. SPRINGER. You are entitled to your opinion. I just asked you a question.

Mr. Chairman, I ask the indulgence of the committee to read a short statement in opposition.

Mr. Chairman, I have listened with interest to 2 days of testimony of this witness, Howard Morgan. If sustained, these charges which I believe he has made, would well warrant the removal from office of a large number of members of regulatory commissions over which this committee has jurisdiction.

First, if we can believe what Mr. Morgan has said in this letter, he has left the Federal Power Commission because the men now serving on the Commission, in his own words, "yield too quickly to the present-day urge toward conformity, timidity, and personal security."

Second, the witness has inferred that a commission or Commissioners are afraid of a campaign against them when they are up for reconfirmation by the Senate.

Thirdly, that men serving on the Commission have become neurotic from worry after having cast a vote in the public interest.

Failure of any member of the Federal Power Commission to act in the public interest for any of these reasons would make him guilty of violation of his oath of office and would be grounds for removal.

The witness has been asked in detail to point to any decision handed down by this Commission or any commission which was made by any commission or commissioner as a result of the above-named deficiencies in the name of the Commission. The witness has failed to point out any single instance in which there has been any proof whatever of the dereliction of duty by any Commissioner or Commissioners as a result of a desire toward conformity, being timid, or for personal security reasons, or for fear that his votes will arouse a campaign against him for reconfirmation in the Senate.

Mr. Chairman, if this witness had taken his charges to the U.S. District Attorney, and had gone before a grand jury and sought an indictment and had that returned and then brought action before a court of criminal jurisdiction, the judge would have been forced as a matter of law to dismiss it before it ever arrived in the hands of a grand jury. The judge himself would have directed a verdict against this witness. If this witness could have brought an action in civil law for damages resulting in an action against any commission or commissioners and could have made his case out in a court of civil law, the judge would have been forced as a matter of law to direct a verdict against this witness.

And, Mr. Chairman, may I say that in civil courts to make out a case to go to a jury only a scintilla of evidence is necessary.

Mr. Chairman, if this witness were to take a case to a court of equity, the fairest court in Anglo-Saxon law, this witness could not have made out a case. In equity there is a rule of law that the complainant must come in court with clean hands. Does this witness come with clean hands and with a reputation of truthfulness?

The records of the hearings on Howard Morgan for appointment to the Federal Power Commission contain findings that he was arrested on September 10, 1937, on an assault charge, found guilty and fined $25 plus costs.

He was arrested on February 7, 1937, in Portland, Oreg., for questioning.

Mr. Chairman, the circumstances of these arrests are not at issue here. What cannot be explained by this witness, and what cannot be justified by a person holding such a high office, is the subsequent concealment of those arrests in direct violation of the law.

On six Government employment applications in the years 1942 to 1952, Howard Morgan answered no to each question relating to these arrests.

On another notarized affidavit he avowed that the statement on one of the other applications was correct.

Mr. Chairman, I quote from page 11 of the committee report to the U.S. Senate on Mr. Morgan's hearing for confirmation:

> Not only did Mr. Morgan fail to answer each question truthfully, but his admissions before the committee make it clear that he deliberately concealed his arrests. In doing so, he violated the law.

Form 57 contains an express warning on its face against all statements. The form specifically refers to the appropriation divisions law which reads as follows:

> Whoever within the jurisdiction of any department or agency of the United States shall knowingly and willfully falsify, conceal or cover up by any tricks or schemes or device a material fact, or make any false or fictitious statements or representations, or use any false document knowing the same to contain any false, fictitious or fraudulent statements or entries, shall be fined not more than $10,000, or imprisoned for not longer than 5 years.

I want to make it clear to this committee that this statute is applicable even though the charges which resulted in one arrest were dismissed, and the statute applicable even though the arrest may be irrelevant to the applicant's fitness for a Government position. This statute is frequently invoked. The records of the Civil Service Commission show that in the year 1961, 53 cases of false statements on forms 57 were referred to the Department of Justice for action.

The Civil Service Commission, in addition to the criminal penalty, is empowered to invoke administratve penalties for false statements on employment applications.

These do include removal from his position and barring him from Federal employment for a period from 1 to 3 years.

It is interesting to know that Mr. Morgan's concealment did not end in 1952, the date of his last form. And I quote from the Senate report again:

> Mr. Morgan did not tell the White House about one of his arrests or about his concealment on form 57 until after the committee's hearing had started.

It would be interesting to know, if all the facts had been known to the White House, would his name then have been submitted. The question is natural, because the facts in this case run directly counter to the letter and spirit of the President's message to Congress on integrity in the Federal service.

Even with this, Mr. Chairman, there seems to be another facet of this case and of this witness which is far more striking on his character than his reputation for veracity and the question as to personal integrity.

A few years ago when the late Senator McCarthy was at his height some people in Washington coined a phrase called "McCarthyism."

A McCarthyite was generally described and defined by those people as "one who brought charges directly by inference against an individual or a group of individuals or an organization charging them with a lack of loyalty or integrity, and failed to bring forth proof thereof."

Mr. Chairman, if this witness' testmony is to be believed, including his letter to the President, there are men serving on the commissions in Washington who are rendering decisions because of conformity, timidity or personal security, or because of fear of nonreconfirmation. But he has failed to bring forward any evidence to that effect, and by a simple statement on his part thereof, without any proof, he has cast a pall over every commission and commissioner in Washington.

Secondly, he has in general words said that the President has been appointing ordinary men who lack the character to regulate in the

public interest. Again this statement has been made without any proof whatever.

Mr. Chairman, this is McCarthyism at its worst. Never in my 13 years in Washington has any statement so broad and so inclusive of any public official ever been made. It is doubtful if this witness knows or realizes today how much damage he has done to the personal integrity not only of the commissions but of the commissioners serving on those commissions.

Mr. Morgan's statement appeared in bold headlines on the front page in every daily newspaper in my congressional district. To leave these charges unanswered when no evidence has been presented as to the dereliction of duty not only reflects upon the integrity of the commissioners and the President of the United States in making those appointments, but upon this committee for not taking some action.

This is the reason that we have met yesterday and today to find out what the evidence was that this man has of dereliction or failure of duty by commissioners or commissions subject to the legislative jurisdiction of this committee. And thus far he has not brought forward any.

Thank you very much.

Mr. Moss. Mr. Chairman——

The CHAIRMAN. I think after a statement of that kind the witness ought to have an opportunity to reply, in all fairness.

Mr. MORGAN. I am a little disturbed by the fact that all these statements have been made and yet the actual incidents upon which they were based were not described.

The two incidents that Mr. Springer is talking about were, one, an investigatory arrest, of exactly the kind you have read about here in Washington which has caused so much controversy and criticism, because I had in my possession a tire given to me by my employer which turned out to be stolen. He came into possession of it through legitimate channels, just as I did. And when those facts were ascertained, the whole thing was dropped. No charges were ever even brought against me. And later the entire matter was expunged from the records by the chief of police of the city, on his own motion, in order to clear the record. And thereafter I thought as a matter of right and law that I had the right not to report that matter, it having been expunged.

I was told after the Senate hearings, in which I did not make that statement, that I should have made it, and I make it here. Whether I had a legal right not to report it I don't know. But I thought I did, and many attorneys have so advised me.

The other arrest—they both happened when I was perhaps 20, or 21, I believe—the other arrest was for taking a truckdriver off my employer's back. He had jumped on him from behind and was beating him, and I pulled him off and punched the truckdriver in the eye. Now, if I had dreamed that I would have, 25 years later, more than 25 years later, to spend this much time discussing the matter, I would have cheerfully punched him in the other eye, too, so that we could spend the whole day discussing it. I do not admit to culpability in the matter. I never have and I don't now. I will let my statement stand, there, sir.

Mr. SPRINGER. Mr. Chairman, I don't think this clarifies the matter for the committee.

What happened as a result of that fight? Were you brought in to court?

Mr. MORGAN. I was brought before a justice of the peace.

Mr. SPRINGER. What did he find?

Mr. MORGAN. He was not a lawyer, so perhaps you won't agree with his finding. I explained the circumstances, and this seemed to puzzle the justice of the peace. So he went out in the hall with a State policeman, and after a conference out there, he came back and asked me, "Did your employer ask you to take that man off his back?"

And I said, "No; the man had his arm around my employer's throat and was choking him, and besides, he was so busy defending himself from an attack by two men that he didn't have time for a conversation with me."

Thereupon, the justice of the peace said, "Well, that is where you made a mistake, young man. You should have waited for your boss to ask you to take him off his back, and that is going to cost you $25."

Mr. SPRINGER. Did you pay the fine?

Mr. MORGAN. Yes, sir.

Mr. SPRINGER. $25 and $17.50 costs? And that is the whole incident?

Mr. MORGAN. That is correct.

Now, I did testify before the Senate that I considered this to be a joke on me, and one that I never expected would have these consequences 25 years later after I had thoroughly and entirely forgotten the matter.

Mr. SPRINGER. Do you mean to tell—you are bringing this up again, Mr. Morgan—do you mean to tell this committee now that a fight in which at least six or seven men were engaged——

Mr. MORGAN. No; there were only three, until I got into it.

Mr. SPRINGER. You say there were only three. It appears to me there were more, but I will take your word for it. You were finally taken to a justice of the peace and fined, and when you got down to your employment record before the Federal Government later on you could not even recollect that you were arrested; are you asking the committee to believe that?

Mr. MORGAN. I am not asking the committee to believe anything; I am just telling you that that is a fact.

Mr. SPRINGER. Mr. Chairman, I will let it rest.

The CHAIRMAN. The Chair hopes that we will not lose too much time in discussing a matter of this kind, which I simply cannot see has too much relevancy to the purpose of this hearing.

The committee, of course, has an opportunity to get all the information it can to make judgment on the presentations made by this or any other witness.

But I would like to make it very clear, as I tried to say at the outset, that our objective primarily is legislative. If there are any legislative proposals that come out of it, why, that is our primary concern.

As I indicated at the outset, in addition to that, our interest is in the administration of the law as required of us by the Reorganization Act of 1946.

Of course, that carries with it improved procedures and recommendations which we are seeking from any and all people to reach these objectives. We are not a court, and we do not want any indication in the record that we are. We are not prosecutors, we are merely a factfinding body trying to carry out our own responsibilities.

Mr. SPRINGER. Mr. Chairman, I cannot let those statements of yours stand alone, for the simple reason that my whole questioning of this witness in the latter half of my questioning was to determine whether or not this was a witness capable of being believed. And I was bringing up past relevancy only with reference to this man's past record for truthfulness and veracity, and I have as much right to do this as anybody does with any witness coming before this committee. And I have not tried to exceed the rules of this committee or any court in which I might be called as a member of the body.

The CHAIRMAN. I don't think the gentleman had any intention to go beyond any authority, but he was getting pretty close to it.

Mr. SPRINGER. Mr. Chairman, I resent that statement. I never at any time came close to impinging on the rules of this committee or the rules of any court in which I practice in this land. And I want to make sure that there is no misunderstanding in this record of my statement on that.

The CHAIRMAN. That is perfectly all right. The Chair has the duty of protecting any witness that comes before it.

Mr. Moss. I think the gentleman's statement details some 2 days of hearings—and I think the gentleman will concede it was prepared in advance of this afternoon's hearings—and reflects a judgment based on 1 hour and 45 minutes of hearings yesterday. The gentleman contends that charges have been made. I am not an attorney. But the gentleman knows that the statement in this letter would not be accepted as charges by any court.

The statement is a statement of personal conviction, and that every man is entitled to have. And it at no point goes beyond a summary of personal conviction. It expresses opinions, it advises as to an ideal type of person, but at no point does it tie into personalities. And it takes the greatest of distortion to make from it the type of document which brought forth the statement, which was prepared in advance of the afternoon session, and at best could be based on 1 hour and 45 minutes of hearings yesterday—I think it raises gravely in my mind, sir, the question of the objectivity which brought it forth.

The CHAIRMAN. I hope we can get back to the objective of this hearing.

Mr. Younger?

Mr. YOUNGER. Mr. Chairman, I would like to know whether you are going to proceed in turns of questioning in the committee. I have been waiting for all this time, and you have gone to Mr. Moss twice now out of turn.

The CHAIRMAN. Mr. Moss just asked permission to make a statement. I hope we can get back to whatever questions there are.

Mr. Hull?

Mr. HULL. I have no questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Morgan, I would like to ask this question in response to questions that you have answered. If your letter does not refer to any of your colleagues, then what does it refer to?

Mr. MORGAN. All I can say is that it is a general statement of what can happen, and I think in some past years has happened, when the caliber of appointees to regulatory agencies is not as high as it can possibly be.

This was all it was intended to be. I put a specific statement in the letter to point this out. And I cannot say any more than that, sir.

Mr. YOUNGER. Just general advice to the President about future appointments?

Mr. MORGAN. That may seem odd to you, sir, but I can give you—and I would be glad to do it—give you a bibliography on this subject by scholars, investigating committees, judiciary committees, university groups. Every one has made this point over and over again for years, and yet it still seems to have to be reemphasized. And that is all I was doing, as many, many other people have done before.

Mr. YOUNGER. In your letter you referred to pressures, you have referred to them several times. Do you refer to pressures from private public utility companies?

Mr. MORGAN. You know, that is a funny thing, but I have never—I hear about pressures, and I am sure they exist, because so many people talk about them—but very little of this has ever been brought against me. I suppose I am considered a hopeless case. But I have had very little experience with pressure.

Mr. YOUNGER. I am just trying to get at what you meant by pressures generated by huge industries. And that is a rather ambiguous definition. What do you mean by huge industries? Do you mean in the field of privately owned utilities?

Mr. MORGAN. Well, I was referring to the general subject of regulation, and of course the industries that are regulated in this country are very large.

Mr. YOUNGER. But in particular, in your field, you were referring undoubtedly to large public utilities, weren't you?

Mr. MORGAN. Our particular commission regulates the natural gas pipeline companies, the field producers, and the interstate electric companies.

But I was referring in general to all the industries that are regulated, they maintain large lobbies, and I am told that they are reasonably effective.

Mr. YOUNGER. Were you ever pressured by a publicly owned utility?

Mr. MORGAN. Yes, I have been.

Mr. YOUNGER. To the same extent that you think the private utilities pressure regulatory members?

Mr. MORGAN. No; I would say to a much less degree. And I am talking now about the State of Oregon, where the public agencies are not under regulation, but occasionally they would come and ask me to do something to make life interesting for the privately owned companies, and I would have to tell them I could not do that.

Mr. YOUNGER. Do you know Mr. Clyde Ellis?

Mr. MORGAN. Yes, sir.

Mr. YOUNGER. Did he or through his cooperative organization ever bring any pressure on you?

Mr. MORGAN. I can't recall that he has ever asked me to do anything except make a speech in Eugene, Oreg., which I was very happy to do, because I had a chance to go back home.

Mr. YOUNGER. With your expenses paid?

Mr. MORGAN. Yes, sir.

Mr. YOUNGER. Have you ever written a dissent on any application from a publicly owned utility?

Mr. MORGAN. Let me extend that last answer, sir. My expenses were paid by the U.S. Government on that trip. I thought perhaps you misunderstood.

The CHAIRMAN. You considered it official, then?

Mr. MORGAN. Yes, sir.

The CHAIRMAN. The record ought to so show.

Mr. MORGAN. Yes. And I think it is wise for regulatory officials to have their expenses paid by the Government.

I am sorry, I have not gotten to your other question, sir.

Mr. YOUNGER. You have written a number of dissents, and most of them, as has been mentioned, are upon applications made by privately owned utilities. Have you ever written a dissent of a decision on an application by a publicly owned utility?

Mr. MORGAN. This is an electric utility you are talking about?

Mr. YOUNGER. Either publicly owned electric or gas companies regulated by the Federal Power Commission.

Mr. MORGAN. I wrote a dissent in the *Marble Canyon* case against the majority order which restricted the right of the Secretary of the Interior to intervene in the case and offer testimony. The majority restricted him to the submission of briefs and oral arguments. And I felt that would leave the case with an inadequate and incomplete record which would make it legally impossible to reach a licensing decision in the case. This was for the issuance of a license for a hydroelectric dam. I am still inclined to feel that way, I am not as sure now after the oral argument as I was then, but I feel it is still true. The applicant in that case was a public agency, the Arizona Power Authority. There was no private applicant.

Mr. YOUNGER. And you wrote a dissent?

Mr. MORGAN. I wrote a dissent in behalf of the right, which I thought was essential to the case, of the Secretary of the Interior to intervene and offer evidence.

Mr. YOUNGER. Then in all other applications by the publicly owned utilities which had applications before the Federal Power Commission you feel that the Commission did act in the public interest, otherwise you would have written the dissent; is that true?

Mr. MORGAN. That is true.

Mr. YOUNGER. In the case of the Idaho Power Co. decision, Docket No. E–7067, which we discussed yesterday, first, are all of the members of your commission appointees by Mr. Kennedy?

Mr. MORGAN. Yes.

Mr. YOUNGER. Now, will you repeat what you told the committee yesterday as to why the majority of the Commission approved the Idaho Power Co. application without examination?

Mr. MORGAN. It is rather lengthy, sir. Do you want it all repeated?

Mr. YOUNGER. No; I think that you can summarize it in just a few words. Maybe I can shorten it.

Mr. MORGAN. Do you have a place in mind, sir?

Mr. YOUNGER. No; except that what you said yesterday was that the committee failed, or the Commission failed to write the proper opinion in your mind because they were fearful of the disturbance of the industry.

Mr. MORGAN. I haven't found that.

Mr. YOUNGER. Well, look it up.

The CHAIRMAN. Do you have a reference, Mr. Younger?

Mr. YOUNGER. No, I do not. I have not seen the transcript. All I have is my memory.

Mr. MORGAN. At the summing up point where I ceased talking about that case, Mr. Younger, I find this—I pointed out that I had raised a number of serious policy questions that should be investigated, and then I said, "There is not one word of response from my colleagues, not one word of explanation as to why this Commission is not willing to do what the previous members of the Commission said could be done, should be done, and would be done."

Now, the strange thing about the Idaho Power decision is simply that. There is a three page——

The CHAIRMAN. Mr. Beasley, bring us a copy of this transcript.

Mr. MORGAN. There is a three-page order followed by a seven-page dissent raising issues which I think should have been investigated to determine whether they were serious or presented obstacles to proper financing, and no word of explanation of the Commission—or no word of answer, at any rate, by the Commission, to the points raised by the dissent.

Mr. YOUNGER. Where you are referring, Mr. Morgan, is to the opinion given in private which was not made public——

Mr. MORGAN. Yes, on page 26.

Mr. YOUNGER. Yes. What was said in private by the Commission as to why they made their decision? Will you read your testimony, on the middle of page 26.

Mr. MORGAN (reading):

I don't want to be specific as to the case involved, but let me say this. When in open Commission meetings—

And I don't mean that it is open to the public, but with the full Commission present and the staff department heads, the lawyers, the secretary, the executive director—

the statement is made that we mustn't investigate the situation because it would disturb the industry—

And then going on in a later paragraph—

by a Commissioner, and sometimes by the staff, and that statement is accepted and acted on in the absence of any other reason for such an action, or usually inaction, then I would say this is an example of what I was talking about.

Mr. YOUNGER. That, I believe, applies to the *Idaho* case, because that was what Mr. Bennett was interrogating you on.

Mr. MORGAN. Yes.

Mr. YOUNGER. I have read your dissent in the *Idaho* case, and you make no mention of that. If that was a violation, or was the reason why the Commission reached their decision, do you consider that in

your dissent in fairness to the public and in the public interest you should have brought that up?

Mr. MORGAN. Let me say this—and I started to get into this matter yesterday. It isn't necessarily a bad thing when it is mentioned, as it frequently is by Commissioners and staff and lawyers, that a proposed action of the Commission would be disturbing to industry. I would say the majority of things we do are disturbing in greater or lesser degree. This is present in almost all cases. The question is whether the proposed action is sufficiently needed by the general public to justify disturbing or upsetting or altering the pattern of business management. Sometimes it is absolutely necessary. Other times the proposed action is so obviously trivial that it isn't worth the trouble. There are borderline cases, too.

Now, as I recall it—and my memory is refreshed since I testified yesterday—there were two points raised about this Idaho Power proposed investigation. One point was that the company had enough grief on its hands already, and perhaps would be disturbed to the point where it might suffer if public attention were called to its difficulties. And the other point was that the Idaho Public Utilities Commission had a rate case underway involving Idaho Power, and also a discrimination complaint brought against it by one of its big customers in Idaho.

And the statement was made by, I think, staff attorneys, and by one or two commissioners, that we ought to wait and see what the Idaho Utilities Commission did about the intrastate rates before we did anything about the interstate rates.

As you will see in my dissent, I pointed out that a section of the Federal Power Act enables us to conduct joint hearings with a State public utility commission. And I advocated that we should do this, for the simple reason that if discrimination was involved in the matter, those portions of the rates lying within the State of Idaho were beyond our reach, and those portions of the wholesale rates lying outside the State of Idaho were beyond the Idaho Utilities Commission's reach, and I argued that under the Federal Power Act we should investigate jointly with the Idaho Commission and work out both sets of rates at the same time.

I still feel that way. But the consensus of opinion was—and I think it was based mainly on not wishing to disturb or annoy the company—not to take any action.

Nothing is set forth, no discussion on the part of the majority in the order. And I didn't see fit, or deem it appropriate, to comment in writing on oral comments made by my colleagues and the staff, since they declined to commit any of their thoughts to writing.

So that is why it is absent from my dissent.

Mr. YOUNGER. Do you think it would have been more disturbing to the industry if you had developed the facts back of this decision and put them in writing than was caused by your dissent in the way in which you did it?

Mr. MORGAN. I am not sure I understand that. Do I understand you to feel that my dissent was disturbing to the company?

Mr. YOUNGER. No; I say do you feel that if you had made a statement in your dissent the same as you made before the committee yesterday as to why the decision was reached, would it have disturbed the industry any more than the dissent which you did write?

Mr. MORGAN. No; I don't think so.

Mr. YOUNGER. Then why didn't you do it? Why didn't you tell the public all the facts back of it, as you did to us yesterday?

Mr. MORGAN. You see, some of these discussions were in the Commission meeting room, and some of them were in staff and Commissioners' offices. And there is a certain degree of privacy and privilege involving these discussions at the decisionmaking stage, just as there is in a court.

You can't—it would be disorderly if you did—put all the oral statements that drift about during one of these cases into either the order or the dissent.

I simply covered the "bare bones" of the situation in a short dissent and let it go at that. It is not customary to put everything that is discussed into either document.

Mr. YOUNGER. You expressed in your dissent your doubt about the money being used to create excess power when excess power already existed; is that not correct?

Mr. MORGAN. Yes, sir.

You may wonder why Idaho Power would be doing that, and so do I. That is why I thought we should have an investigation.

Mr. YOUNGER. Do you feel probably that you might have been prompted a little bit in your concern to curtail the excess power so as to give reason for an application from Bonneville to extend its territory into Idaho to supply power?

Mr. MORGAN. Well, Bonneville would not have to apply to us, unless I am gravely mistaken, for that extension.

Mr. YOUNGER. They could go in any time?

Mr. MORGAN. Well, I believe it involves a decision by the Secretary of the Interior, followed by appropriations for the powerlines from the Congress. But we are not involved in that.

Mr. YOUNGER. In general, and in your past, would you be considered in the industry as leaning more toward publicly owned utilities than privately owned utilities?

Mr. MORGAN. I think the industry feels—at least I read in their publications—they think I am a pro-public-power man. But I think they are gravely in error.

I told you gentlemen a while ago of the 2,500 orders I issued in Oregon. Only two of them have been reversed, and neither of them involve power. And at the time of my Senate confirmation there were letters submitted voluntarily by power company executives in Oregon testifying to my fairness. I cannot recall ever being in a violent struggle with a private power company.

Now, if you are interested, I will tell you my attitude on public power.

Mr. YOUNGER. Now, I am just wondering whether you felt you might lean a little toward publicly owned utilities rather than privately owned utilities.

Mr. MORGAN. I can tell you what my attitude is, and you can judge for yourself. Would you like me to do that?

Mr. YOUNGER. Briefly, if you wish to.

Mr. MORGAN. I feel that public power, where it exists in about the average national ratio which is about 20 percent of the total system, is an extremely valuable thing, because it serves as a yardstick. In my opinion—and I may be wrong, but this is my very firm opinion—

this public power yardstick has been more effective in reducing rates and controlling rate levels than has regulation. If you look at a map of the United States, take a blank map and draw in effective rate levels for, say, 500 kilowatt-hours a month in each State, you will find wide discrepancies all over the United States.

This is not caused by regulation, but it is primarily caused, in my opinion, by the presence or absence, nearby and on an available basis, of low-cost public power.

In the areas where you don't have it, the rates are uniformly very high. In the areas where you do have it and among private power companies immediately adjacent to public power areas, those companies have found ways to get their rates down. It is a stimulus to them, it is a challenge, a goal, and they respond to it.

Now, there are places which, in my opinion, have more public power than is justified; more than they need. The State of Washington, of its total electric capacity in the hands of public agencies, for example, has about 62 percent. The State of Oregon right next door has about 15 percent, which is below the national average. I think they could stand a little more.

New England has virtually none, and has the highest electric rates in the country.

I feel that public power is in danger, with the new technology coming in, of fading out of the picture. And I would not like to see that at all. I think it needs to grow and expand at a fairly rapid rate, or it will fade out of the picture.

Our power system nationally will double in the next 10 years. If public power were to remain stagnant, it would be cut in that 10 years from 20 to 10 percent. The next 10 years our total system will double again, and that means the public power, in 20 years, if it remained stationary, could be down to 5 percent of the total system, and it would no longer be effective as a yardstick to control rates.

For this reason, I would like to see public power expand at about the same rate as the total overall system. And, if it does, I think it will go on performing the very effective regulating service it has performed for 25 years or more.

Mr. YOUNGER. As long as you are leaving this field I would like to get another piece of advice from you in addition to the letter.

Do you believe that the publicly owned utilities borrowing from the Government should pay the same or equal rate of interest on its money that the taxpayer is called upon to pay on the bonds of the Government?

Mr. MORGAN. Well, I must say I have mixed feelings about that. I don't seem to have a strong opinion one way or the other. And I don't believe I have really heard both sides of the argument. I know there is a fierce argument, but I don't believe I have heard it all.

Mr. YOUNGER. In regard to the qualifications which you set up—and you have also mentioned a number of Commissioners who undoubtedly are your ideals—I would like to ask if any of them left the Commission because they could not accomplish all the things that they thought they ought to accomplish, or did they stay and fight?

Mr. MORGAN. I think all those men stayed until death or retirement.

Mr. YOUNGER. And by staying they probably accomplished something?

Mr. MORGAN. I am certain that all of those men did.

Mr. YOUNGER. And they fought for their ideals. And they are your ideals?

Mr. MORGAN. They have been for a long time.

Mr. YOUNGER. But you are not following them?

Mr. MORGAN. Well, I am in a different situation, sir. In the first place, I am not one of those men, and I doubt very much if I have the capacity to become one if I devoted the rest of my life to it.

I will be quite frank with you about that. In the second place, I have some personal commitments to meet. And, too, Mrs. Morgan and I happen to live on one of the most beautiful cattle ranches in the United States, and that is not without its effect in making a decision of this kind.

Mr. YOUNGER. This brings up the point, though, in regulatory agencies. You have set out a very fine group of standards, and I think to the best of your ability you feel that you qualify under those standards as far as you can.

Mr. MORGAN. I try.

Mr. YOUNGER. Now, if the President were to appoint people that would qualify under those standards which you enumerate, and when they find that they cannot accomplish all the things that they would like to accomplish and they leave, then how are you ever going to better the conditions?

Mr. MORGAN. Well, this is another thing that I really wanted to put in my letter.

Mr. YOUNGER. Why didn't you?

Mr. MORGAN. I mean the answer to your question, is what I wanted to put in. The letter got too long, frankly, and it is evident that some people feel it already has too many things in it.

But I do feel that first-rate men of real caliber in this country are not so rare that we cannot find all we need for the Federal regulatory agencies. We have only got a dozen of those, and perhaps half the members who come up for appointment each year want to stay, and with the other half being replaced, we will only be looking for five or six men each year. As I said yesterday, if these agencies could be built to the stature and prestige that the Interstate Commerce Commission had 25 years ago, and certain other changes made——

Mr. YOUNGER. Just a moment. I would like to interject a question there. Do you think that the ICC has degenerated since 25 years ago?

Mr. MORGAN. Well, I would not want to pass judgment on that.

Mr. YOUNGER. Well, you made the statement that if they were of the stature that they were 25 years ago.

Mr. MORGAN. I was talking about prestige only. I was not passing judgment on the quality of administration.

Mr. YOUNGER. I see.

Mr. MORGAN. But whether it is deserved or not, I believe all of the regulatory agencies have lost some of the prestige they had in years past. And this to me is a very serious problem. It multiplies the difficulty of getting the kind of people I have been talking about. But I still think that the problem can be solved.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman?

Mr. BROTZMAN. Mr. Commissioner, there are two or three points I would like to clear up. I understand the chairman stated the general objectives we are trying to follow here yesterday, and that is to ask you certain questions which might better improve the FPC's regulatory process, with due regard for the people of this country, the consumers, and also the regulatory agencies involved.

Now, it is growing late, so I would try to cut my questions down to the absolute minimum. In an attempt to be specific, I think, turn your general direction to the *Idaho Power* case. If I understood your testimony yesterday in relationship to certain language in your letter, you said that ordinary men yield too quickly to the present-day urge toward conformity, timidity, and personal security, and if I understood your testimony yesterday, you cited the *Idaho Power* case as an example of this.

That would be a fair inference; is that correct?

Mr. MORGAN. Yes; I did. And I added—I think yesterday I said that this reluctance to disturb the industry was the only reason offered during the decisionmaking stage of that case. And I have since recalled that one other matter was brought up, namely——

Mr. BROTZMAN. The first question I really had was, I understood that this was the basic reason that was assigned for the majority decision in that particular case. Now, you would like to amend your answer from yesterday in that regard?

Mr. MORGAN. I have, yes.

There was an additional factor discussed, but it was not a very convincing argument to me.

Mr. BROTZMAN. I will just ask you the questions. Now, there were additional or more reasons than one for this particular decision by the majority, is that correct?

Mr. MORGAN. Yes; neither of them very persuasive as far as I am concerned.

Mr. BROTZMAN. Those were reasons given by the majority for their decision, is that correct?

Mr. MORGAN. Orally, yes.

Mr. BROTZMAN. What were they?

Mr. MORGAN. One was that they saw no reason to interfere or disturb a company that apparently was having some difficulty getting out of a surplus position. The other, which is really a self-defeating reason, was that the Idaho Public Utility Commission was already conducting a rate case involving the intrastate rates, and we should wait until that was over before looking at the interstate rates. The reason that is self-defeating is that the Idaho Commission has authority only over retail rates in intrastate commerce. We have authority only over wholesale rates in interstate commerce. Now, if the situation described by Mr. Moss yesterday were in fact happening there—and it is possible—namely, that losses incurred in the interstate wholesale contract sales were being made up by the customers, the retail customers of Idaho, under intrastate rates, then you have a problem of discrimination. And the only way, in my judgment, to reach such a problem is to take advantage of the provisions of the Federal Power Act which allow joint hearings between Federal and State commissions to study both rates at the same time and make whatever adjustments are necessary.

This is why I say the second reason is really not persuasive at all.

Mr. BROTZMAN. But you feel, then, that the basic reason for the decision was the statement made in the caucus, as it were, that they did not want to disturb the industry?

Mr. MORGAN. That is a subjective matter. And all I can say is: that was my judgment at the time, and it still is.

Mr. BROTZMAN. It still is your judgment now?

Mr. MORGAN. Yes. I don't make any flat allegations——

Mr. BROTZMAN. You don't have to explain any further.

Mr. MORGAN. That is my judgment.

Mr. BROTZMAN. I understand your answer now. The next question I have is this: You have mentioned one specific case, Commissioner, that is the *Idaho Power* case—and I am certainly not familiar with all the cases that you have decided over a period of time, but I would imagine they are many. The question I now would like to ask you is, How prevalent was this particular type of activity? Were there other cases that you thought were decided on this particular basis, that is, did they assign one reason in caucus but wrote another reason in the opinion?

Mr. MORGAN. Well, as I started to explain yesterday and was cut off, it depends on the circumstances as to whether this is a bad thing or not. Let's say you have a case that can be decided on three issues, A, B, and C. If it can be disposed of on issue A, in may not be necessary to get to B and C, or if a decision can properly be based on A and B it may not be necessary to pass judgment on C.

Courts do this all the time. We do it all the time. It only becomes a serious matter and possibly destructive of the public interest when, instead of deciding on the major issue, which is A, you decide on the minor issue, which is C, and leave the real issue out of account. Now, this happens only rarely, I am glad to say, in any jurisdiction.

Mr. BROTZMAN. Of those 2,500 cases you decided in Oregon, did you decide any of them that way?

Mr. MORGAN. I am sure that I decided quite a number of them in the way I first described, but none that I know of in the way I described later. That would have been improper.

Mr. BROTZMAN. You decided them on one set of facts, and then recited another set of facts in your opinion?

I was merely saying that it is sometimes proper to decide a case on one issue without ruling on another issue.

Mr. MORGAN. I am sure that this has happened, and that I have done it. As I say, the Supreme Court does this. It is not a problem unless the public interest suffers as a consequence, and unless it is done for ulterior motives to conceal a reason which just won't stand the light of day.

Mr. BROTZMAN. Like the *Idaho Power* case?

Mr. MORGAN. Well, in that case the majority's reason, whatever it was, certainly was not exposed to the light of day, because they didn't discuss the dissent; there is no answering language at all.

Mr. BROTZMAN. So in that particular case it was your intention to say that they were guilty of conformity, timidity, and personal security, as you said in your letter; isn't that correct?

Mr. MORGAN. Well, how did I put it yesterday?

Mr. BROTZMAN. Why don't you answer my question now, yes or no, and explain your answer? You are certainly entitled to do that.

Mr. MORGAN. To tell you the truth, this case has always puzzled me. I don't really know why the Commission did what it did in that case. And since I don't know why, it would probably be best for me not to pass judgment on it. But it is a strange thing when a mystery of that kind is left in a case to which there is a strong and vigorous dissent.

Mr. BROTZMAN. I am sure you realize that that is not even close to a response to the question I asked you.

I would ask that the reporter read back the specific question I asked the Commissioner, and then if you would, please, answer that yes or no, and then go ahead and explain your answer?

Mr. MORGAN. I will be glad to. I think I answered your question "No."

Mr. BROTZMAN. I did not hear you, if you did.

All right, Mr. Reporter.

(Question read.)

Mr. MORGAN. I think the answer to that has to be "No." If I thought I were in possession of any facts to prove or show otherwise, I might answer otherwise. But I don't feel I am. It is a puzzling case, it always has puzzled me.

Mr. BROTZMAN. I will ask you to read your testimony tonight on pages 26 and 27. You will find, if you read all the questions and answers, that you cited that decision as an example of those particular words.

Now, let us press on to another point.

Mr. MORGAN. Just a moment, please.

Yes, I think you could read that into what I said.

Mr. BROTZMAN. You think it is quite plain?

Mr. MORGAN. Yes. After thinking of the full argument, that is, that is, the discussion in the Commission at the time, I think I would be inclined to withhold judgment, and I don't think I made a very strong judgment on the matter yesterday. In fact, it was my intention not to make any judgment at all, and I am surprised to find that I came closer to making one than I thought I had, to be quite candid with you.

Mr. BROTZMAN. I think that it reads that way.

Now, one more question. I think you testified, quoting from Mr. Landis, that there has been a general deterioration in the, shall we say, public regulatory area, and I would assume you meant more particularly in personnel since World War II, isn't that correct?

Mr. MORGAN. Yes. I was talking about the Commissioners.

Mr. BROTZMAN. Now, when were you appointed to this particular office, Mr. Commissioner?

Mr. MORGAN. The office I hold now?

Mr. BROTZMAN. Yes.

Mr. MORGAN. I was confirmed and sworn in during June of 1961. I had been nominated some 5 months before that.

Mr. BROTZMAN. And I think you later testified that you felt the deterioration has been largely halted; is that correct?

Mr. MORGAN. I am sorry, but I did not hear the question.

Mr. BROTZMAN. You testified later, yesterday, to refresh your memory, that the deterioration has been largely halted.

Mr. MORGAN. I think that is true. I am disappointed that the rebuilding is as slow as it is, but I do think and I most certainly hope that we are now on the upgrade.

Mr. BROTZMAN. But I take it that you thought the *Idaho Power* case was not a step forward?

Mr. MORGAN. No, sir; I do not think so; I do not think it was a step forward.

Mr. BROTZMAN. Either as to the decision or as to the approach to the problem; is that correct?

Mr. MORGAN. That is correct. Now, let me make it clear. What I advocated in that case was investigation. I did not pass any final judgments on the conditions that may prevail there and might be demonstrated by an investigation there. But I demonstrated enough prima facie evidence to indicate that an investigation to protect the public interest was justified and necessary in that case.

And to the extent that it was not made, I think it was a failure to move actively to protect the public interest.

Now, again, I am not passing any judgment on what the findings would have been; we don't know. But the fact that we don't know is the very reason why that finance issue should have been conditioned until we did know. This was the same basic major point in the *Pacific Power & Light-Pacific Gas & Electric* tieline case.

Mr. BROTZMAN. In your recommendations today there was one recommendation in which you were discussing captivity by the White House, or words of similar import.

Mr. MORGAN. Yes.

Mr. BROTZMAN. Do you have that available there, that particular statement? I just want to be sure I understand you correctly.

Mr. MORGAN. I think I added some ad lib comment right after that to the effect that I was not attempting to describe what——

Mr. BROTZMAN. Could you just paraphrase it, then? I will accept your paraphrase.

Mr. MORGAN. I think I said I was not describing or alleging that this situation exists or that it is presently bad, but that the framework for it is there, and ought to be recognized by the Congress.

Mr. BROTZMAN. How does this framework operate?

Mr. MORGAN. Would you like me to read you that passage?

Mr. BROTZMAN. Yes.

Mr. MORGAN (reading):

> The President has the power to designate the Chairman, and presumably he also has the power to withdraw that designation. Thus a direct link between the White House and the Chairman is established by law. The Chairman under the plan has almost complete administrative control over the staff, including personnel authority with respect to hiring and termination, promotions, pay increases, and assignment of duties. This committee and the Congress should understand that more than administrative control is transferred to the Chairman under this plan, because these powers are translatable into control over policies so far as the staff is concerned. Policies not favored by the Chairman will not be developed by staff members whose future and career are directly influenced by the Chairman's actions.
>
> A standing criticism for many years has been that the Commissions are captives of their staffs. To a degree this is unavoidable, owing to the size and complexity of the work load. Commissioners must rely on the making of individual judgments on the expertise and information furnished by the staff.
>
> The best safeguard for a truly independent Commission, therefore, is a truly independent staff, free to think imaginatively and creatively under policy estab-

lished by the Commission. If the flow of information and legal interpretation from the staff to the Commission has been influenced initially by preselected policies, the Commissioners may be deprived of alternative facts and alternative approaches. Therefore the way is open for Commissioners to become captives of staff members, who are captives of the Chairman, who is in turn a captive of the White House.

Mr. BROTZMAN. Is all this hypothetical?

Mr. MORGAN. I would say that administrative experts—and I am not one—would have to view this aspect of that administrative arrangement and decide whether the risks inherent in it are worth the advantages it may have. I am not passing final judgment on the matter, but I do want to call it to the attention of the subcommittee and committee.

Mr. BROTZMAN. I have no further questions.

The CHAIRMAN. Mr. Commissioner, I have a good many questions that I would like to ask if other members have concluded.

Mr. YOUNGER. I would just like to ask one question.

Mr. Commissioner, in making that statement about the President and the organization of the regulatory utilities and your criticism of this system, do you follow the recommendations of the former Commissioner Landis?

Mr. MORGAN. No, sir; I do not. And of course, what he recommended was an arrangement which had an extra link in the chain, making it even stronger than the arrangement I have just described.

Mr. YOUNGER. So while you think he is a great man——

Mr. MORGAN. I don't think I described Dean Landis in any way; I referred to what I thought was an extremely skillful and able report, with certain exceptions that I don't agree with, which he made to the President-elect. In my own view—I am pretty old fashioned on this subject—I tend to agree with Eastman and some of the older students of regulatory procedure. I think these agencies do better when they have a considerable amount of independence.

Mr. YOUNGER. Do you think that they are arms of the Congress?

Mr. MORGAN. Yes, sir.

Mr. YOUNGER. And they are not agents of the Executive?

Mr. MORGAN. Well, the Executive certainly has some responsibilities, as the Landis report points out. But I don't think they should be agents of the Executive. The concern I voiced in my letter, perhaps unskillfully, about insulating these regulatory agencies from the sensitive areas of government, from the areas where the political pressures and industrial pressures are focused, carries through in my comments about this matter.

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Morgan, I have followed very closely your presentation here and tried to analyze your presentation and the answers to questions, your position in these matters. I must confess that I find it a little bit difficult to follow your reasoning. You mentioned being puzzled by the case involving the Idaho Power Co. I am quite puzzled about your position and the reasons for what has been done.

Mr. MORGAN. In that case?

The CHAIRMAN. No; in your action in connection with your resignation and your decision leading up to it. In the first place, you have explained very carefully how dedicated you are to certain ethical

principles and things that you think ought to be done in connection with regulatory agencies.

Mr. MORGAN. I have enjoyed my work and studies in this field very much. It is fascinating. There is no more interesting work that I know of and I shall leave it with regret.

The CHAIRMAN. Then you referred to the dedication of certain people whose names you mentioned who have rendered great service in the past. As was expressed by someone else, I wonder, if you are so dedicated, and have the opportunity, why didn't you pursue it with the view of trying to bring about as much of that as you possibly could. It is puzzling to me.

Mr. MORGAN. Well, I think I covered that yesterday, sir. The rate of progress was just too slow.

The CHAIRMAN. In other words, you think that it ought to be done overnight?

Mr. MORGAN. No——

The CHAIRMAN. You have had a year and a half now, and you have become discouraged, and you say, "If I can't have it the way I want it I will quit."

And then you refer—you talk about your letter yesterday and today, and then you read in the record today some very possible reasons for what is wrong. You didn't have those reasons yesterday. I asked you very carefully to explain the letter, which you did undertake from your viewpoint, I presume. And I asked you to give an example of what you meant. And you pointed out the *Idaho* case. And Mr. Brotzman asked you, a moment ago, if that is not what you had reference to, reading the language of your letter, and you answered: "No."

Mr. MORGAN. I think he was trying to get me to connect up those hypothetical statements in the letter describing what can happen in the absence of superior personnel. I cannot prove, and I don't care to try, that the *Idaho* case is a clear example of that. But I do feel that it is a case of failure to take the actions that were available to protect the public interest.

The CHAIRMAN. Well, I don't want to argue the point with you. I just asked you to cite an example, and you yourself selected it as one. And it was developed later that there where four or five or six other opinions. And now you come up today with these reasons that you have given, which I must say are quite interesting, your suggestions and recommendations, particularly to this committee, because we recommended and introduced legislation and considered it, providing for these commissions to elect their own chairmen.

I personally supported that kind of a recommendation in our committee reports, and introduced legislation to carry it out. So you can see that that idea has been thought of around here. The Interstate Commerce Commission has had it all these years, and it has worked out pretty well. I think Mr. Landis' idea—I am not too sure—Mr. Landis' idea would give the Executive far greater authority than he has today.

And you perhaps know that this committee proposed that at no time should the White House interfere with the administration of these laws by the Commission. I think that is fundamental. You have just read a statement about how this works in a roundabout way. And you referred to that as hypothetical the question Mr. Brotzman asked you,

"Do you know any way in which the White House has interfered with the administering of any laws or any cases that you have had down at the Federal Power Commission since you have been there?"

Mr. MORGAN. I don't know of a single case. But I have the distinct feeling that it is not impossible for the attitude of the White House regarding, say, economic conditions generally, to be transmitted to the Federal Power Commission through the linkage I have described, and to permeate the staff.

The CHAIRMAN. Well, have you seen any indication that that has been done?

Mr. MORGAN. If you want me to identify a concrete example, I cannot do that.

The CHAIRMAN. That is a great difficulty. These techniques you used, Mr. Morgan, are to me most puzzling. You raise up strawmen here and knock them down. I don't know whether you realize it or not, but in my judgment this kind of charge is rather serious.

Mr. MORGAN. I have not made a charge about this matter. I suggested to you reasons——

The CHAIRMAN. Maybe you term it something else. You make statements, I will put it to you.

Mr. MORGAN (continuing). Reasons why this committee and the Congress should give some attention to the administrative arrangements which now exist.

The CHAIRMAN. We have certainly been trying to do that for the last 6 years.

Mr. MORGAN. I am not saying that it is out of control, or that improper things are happening now. But it is an arrangement whereby an undue degree of influence for political purposes can be brought to bear on the Commission.

The CHAIRMAN. You have served in the Commission, you have served down there a year and a half now right in the middle of this, and you have made these statements today.

And I don't know—I think I am a reasonable individual, but I gather from this, out of your experience with the work of the Federal Power Commission, that there has been some influence from the White House, yet you say you know of none.

Now, you have made the statement. What else could we interpret from it? If there has been any such influence, I want to know it.

Mr. MORGAN. When you have a chance to read the transcript, sir, you will see that I am describing the administrative arrangement which exists and telling you that it opens the door to abuses of greater or less degree. But I am not making the statement that abuses have been committed. It is not necessary to do that in order to examine an administrative arrangement and decide whether it is wise or unwise.

The CHAIRMAN. Well, of course that is the reason I say your reasoning is a little bit puzzling to me. As you have stated in your letter, the Congress makes the law.

Mr. MORGAN. I understand that.

The CHAIRMAN. Now, don't you take into consideration the policies as set out by the Congress when these laws are enacted?

Mr. MORGAN. That is exactly what I do.

The CHAIRMAN. I would think that from the indication here. The impression I get when you disagree in your dissent—which is right,

as I said at the outset, it is your duty—but your reasoning on that, when the others say they are acting within the framework of the law, and the policies that the Congress has established in reaching their decisions—let me give you an example of something that is underway down there.

The Revenue Act of 1962, on recommendation of the President, included a 7-percent investment credit provision, the purpose of which was to encourage business and industry to modernize and expand the Nation's production facilities. Among other industries which we specifically included are natural gas pipelines, which you have mentioned today.

The bill passed the House, and in the course of its consideration by the Senate, Senator Kerr inadvertently made a statement to the effect that in the case of pipelines, this benefit would accrue to the benefit of the consumer.

When the Senator was asked about this statement, he agreed that it might lead to misinterpretation, and when the bill was in conference, he signed the conference report in which any possible misinterpretation was eliminated. The conference report language reads as follows:

> It is the understanding of the conference on the part of both the House and Senate, that the purpose of the credit for investment in certain depreciable property, in the case of both regulated and nonregulated industries, is to encourage modernization and expansion of the Nation's productive facilities and to improve its economic potential by reducing the net cost of acquiirng new equipment, thereby increasing the earnings of the new facilities over their productive lives.

Chairman Mills, of the Ways and Means Committee, in a letter to the chief counsel, dated November 26, stated in part:

> * * * the investment incentive credit, as I understand it, was to be purely for the purpose of encouraging capital investment. This would clearly not be the result if any investment credit had to be passed on to the users by public utilities.

Thus, we find that the clear intent of the Congress was to conform with the President's recommendation and to give the 7-percent investment credit to firms for the purpose of encouraging economic growth. Nothing was said in the final legislative history to indicate that this tax credit was to be passed on to the consumer.

Now, there seem to be proceedings down in the Commission—preparing to take away the 7 percent from the investor in the pipeline companies and pass it on to the consumer. Now, do you think that taking away the 7 percent from the pipelines could possibly be justified in the view of the obvious congressional intent as I have outlined it here?

Mr. MORGAN. Well, you pose a very intriguing problem, sir. We have scheduled an interpretation of this matter as a rulemaking procedure, and we will have to come to a decision on it. The Interstate Commerce Commission, I understand, has laid down a rule that this tax benefit will be flowed through to the consumer. Now, on what basis they have done that, I don't know. I haven't studied the matter yet. But I am interested in having you pose the problem as you did. It sounds as though it will be an interesting problem when it comes before us.

Mr. YOUNGER. Will the gentleman yield just once, on this same point?

The CHAIRMAN. Yes.

Mr. YOUNGER. You say the ICC stated the refund should be passed on to the consumer?

Mr. MORGAN. That is my understanding; yes. I haven't seen their order; I have simply read a newspaper story about it.

Mr. YOUNGER. The railroads all received the refund, they already have the cash for last year, big refunds on their taxes already?

Mr. MORGAN. As I say, I don't know the details of the order, but I think what this means——

The CHAIRMAN. Since it is in rulemaking, you have got to judge it—there isn't anything I can do about pursuing the question, because it goes beyond the prerogative I have.

Mr. MORGAN. You can be sure that the legislative history will be studied carefully when this matter comes before us.

The CHAIRMAN. On the basic policy matter, then, you mentioned to the staff, and the staff made a statement in this particular case at the prehearing conference—the transcript makes it very clear—in which the staff member referred to the statement that Senator Kerr made. But he did not refer to the action of the conferees, which was included in the conference report. So I cannot pursue that.

In this way, you say that not only should we have an independent commission—and I think there is some difference of opinion as to the meaning of "independence" with reference to an independent commission—but you say that not only shall we have an independent commission, but we should have an independent staff.

Mr. MORGAN. Well, I mean by that, of course, that the staff works within the four corners of Commission policy as set forth in the decisions and rules which gradually develop, but within the framework of that policy the staff should feel very free to explore and create and develop new techniques. There should be great freedom to develop ideas and bring them forth and lay them before the Commission. This is the sort of staff I like to work with.

The CHAIRMAN. With the authority to harass industry?

Mr. MORGAN. Oh, no; that is not what I am suggesting at all. I am talking about the staff as a tool of the Commission in the solution of problems and the decisions in cases.

The CHAIRMAN. Don't you think the staff should be subject to the direction of the Commission?

Mr. MORGAN. Yes; I made that plain; I think it should be.

The CHAIRMAN. What do you mean by being independent, then?

Mr. MORGAN. I have tried to explain to you that the staff's ability and willingness—a willingness encouraged by the commissioners—to explore new techniques and new methods, is a very valuable tool of a regulatory commission. A staff that feels held in, or which knows that certain areas are not to be inquired into, is not such a useful tool. This is all I meant by freedom and independence.

The CHAIRMAN. Perhaps I just cannot see through your reasoning as to this whole thing, because then you turn right around and say that the Commission becomes a captive of the staff, which has been alleged in the past.

Mr. MORGAN. I think that, to a certain extent, in our time, and in the future, all commissions will tend to be creatures or captives of the staff in the sense that for a long time it has been impossible for commissioners to operate independently of the staff.

The volume of work is so enormous, and the cases are so complex, that every Commission is very dependent on the staff.

To that extent I think they will continue to be captives of the staff.

The CHAIRMAN. Mr. Commissioner, we are very dependent upon the staff of this committee for our work. But I don't think there is a member of this committee who feels that the staff controls the members. And any member of any Commission, yours or any other, who does not have the capability of using his own judgment and assuming his own responsibilities, instead of having to rely and depend upon the staff to make his decisions, has no business being there.

Mr. MORGAN. You misunderstand me. I am not talking about relying on the staff for the making of decisions. I am talking about relying on the staff for the information which is crucial and essential to the making of the decisions.

The CHAIRMAN. How else can you handle the matter? If you cannot rely on the staff, who are you going to rely on?

Mr. MORGAN. I don't think we disagree on that. But it is crucially important that the staff, while gathering information, should feel free to get all they can from wherever they can, rather than to be restricted. This greatly expands the ability of the Commissioners to produce good decisions.

The CHAIRMAN. Did you propose these recommendations for improved decisions to the Commissioners?

Mr. MORGAN. We have discussed a number of them several times; yes, sir.

The CHAIRMAN. You did not propose them, then, to the White House?

Mr. MORGAN. No, sir.

The CHAIRMAN. Nor to this committee?

Mr. MORGAN. Yesterday I apologized to the subcommittee for the fact that the burden of work at the Commission in the last month or 6 weeks has been so great that I have not had a chance to do this on a formal basis.

The CHAIRMAN. You say this whole thing started, with reference to getting into the press, over a column by Mr. Pearson?

Mr. MORGAN. That is correct.

The CHAIRMAN. Did you give it to him?

Mr. MORGAN. No, sir.

The CHAIRMAN. Did you give it to somebody else that did give it to him?

Mr. MORGAN. No, sir; no one saw that letter or any copy of that letter before it went to the White House. I did talk to perhaps a dozen Western Senators before writing the letter, to tell them that I proposed to leave the Commission. I did that because by tradition my successor will very probably be a westerner, and I sat down and had a chat with perhaps a dozen men over there to tell them what was going to happen and to urge them, if they could, to help locate a very good man. Each of them asked me if I had a suggestion as to a man, and I told each of them I did not, and that I wished I did.

Evidently Mr. Pearson picked up the story from somebody in the group, one or more, and printed it about 2 days after I mailed the letter. And because the version in the column was somewhat inaccurate. I thought I had better release the letter. I was of course called by the press about it, and I did release it, giving it to all the press at the same time.

The CHAIRMAN. Was that before it got to the White House?

Mr. MORGAN. No, sir. The Pearson article was published either 1 day or 2 days after the letter got to the White House, according to my recollection. And I released it to the press about 2 days after that.

The CHAIRMAN. Well, as has been indicated by others here, I want to commend you for your laudable suggestions regarding having men of ability, strength, and character. That is nothing new around here as to the principle. But being a Commissioner, in the position that you hold now, the implications and the tone of the letter have far-reaching effect.

You seem to be most unhappy with the majority Commission's decisions in several cases, from your letter and your explanation yesterday.

You said that some of the reasons for your decision not to seek reappointment were incorporated in your dissents. Now, in view of all that, you decided the best thing for you to do was to quit and get out of it. And then the technique of letting that all get out in the press—and I know how difficult it is around here, because I have some of that problem myself—but it does raise serious questions as to this method of trying to bring about a different type of commission.

I am glad to hear you say that you did not have that in mind at all.

I am also glad to hear that you did not have in mind any of the Commissioners, and you cannot refer to any existing Commissioners, according to your statements, and that is the thing that puzzles me about the whole thing.

On behalf of the committee I want to thank you for your appearance here.

It would seem to me that you have gotten yourself in a position, with all these statements, that it will make it mighty difficult for you to serve down there effectively now until June.

Mr. MORGAN. At least three of my colleagues and I have been in very strong disagreement on some matters for several months, and I have disagreed with all four of them on certain other matters for almost a year.

But as I said, we are mature men, we are not lacking in self-discipline, and for my part, I find my colleagues on a personal basis to be very attractive and friendly men.

The CHAIRMAN. But the way this has been brought about, with all the publicity, it seems to me it raises a very serious question as to how much good you can accomplish now during the next 4 months of your time left.

Have you given thought to that in view of your attitude and feeling toward this whole thing of not waiting until June?

Mr. MORGAN. No; I haven't given any thought to that.

The CHAIRMAN. Maybe they can put somebody else in there.

Mr. MORGAN. I decided to leave the Commission about last July. But one of the first questions you are asked in a Senate confirmation hearing is, Do you pledge your willingness to serve to the end of the term for which you are being appointed? And my answer was "Yes." I consider it binding. Since that time it has always been my determination to serve out the term.

The CHAIRMAN. I admire anyone for expressing his own opinions and assuming his own responsibility. I disagree sometimes with—which is the right of any person—with their methods as to a particular objective. My own feeling is that you would have been a lot better off if you had waited until about the first of June to bring all this up.

Mr. MORGAN. I was afraid I would be here until December if I did that, sir.

The CHAIRMAN. I doubt it very seriously. I think you would have been given an opportunity, apart from any responsibilities you may have as an active Commissioner, to make recommendations which, had you incorporated them in your letter to the President, instead of the things with the implications in there that I get out of it, I doubt if you would have been up here at all.

Mr. MORGAN. Well, as I told you, I envied Mr. Hector his ability to sit over in the CAB and write a 75-page memorandum on the subject. I was unable to find the time to do that.

The CHAIRMAN. I think that the committee probably was derelict in not having Mr. Hector to come up and bring that 75-page document too. We might have gotten some good out of it insofar as administrative organization and procedure is concerned. You know the principles involved in that document, which are directly contrary to the whole regulatory picture as now established.

Mr. MORGAN. I concurred in almost every one of his criticisms, and disagreed with almost every one of his proposed remedies.

The CHAIRMAN. I don't think I have studied it that carefully.

Thank you very much for your appearance here. We hope that out of all this there can be some good accomplished.

Mr. MORGAN. I hope so, too, sir.

The CHAIRMAN. The committee will adjourn until 10 o'clock tomorrow morning, at which time Mr. Swidler will be here.

(Whereupon, at 5:25 p.m., the committee adjourned, to reconvene Friday, March 1, 1963, at 10 a.m.)

99-948—63——6

SUGGESTED IMPROVEMENTS IN THE ADMINISTRATIVE PROCESS

FRIDAY, MARCH 1, 1963

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to recess, at 10:05 a.m., in room 1334, Longworth House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

The CHAIRMAN. The subcommittee will come to order.

This morning, as we resume the hearing in connection with problems with which this committee is concerned, which are the regulatory agencies, particularly at this time, the Federal Power Commission, we will have as a witness the Honorable Joseph C. Swidler, Chairman of the Federal Power Commission. Mr. Morgan, who is a member of the Commission, yesterday testified concerning his views resulting in his decision not to seek reappointment, and explanation of the letter he wrote to the President of the United States.

Of course, we are thinking particularly of the hearing we have now. Since Mr. Morgan has already made his statement and publicity has resulted therefrom, these questions have far-ranging impact and are most important to the chairman of the Commission, who will have an opportunity to discuss these matters for the benefit of the committee.

Also, I might say in view of the broad general charges, if I might describe them as such, contained in the publicized letter and in statements made during the course of the presentation yesterday and the day before, I think that the committee should give opportunity to other members of the Federal Power Commission to testify if they so desire, because the implications involved might, as happened some years ago with the Federal Communications Commission, raise questions about individual members which they might feel they should have an opportunity to respond to.

At the outset, and in carrying out long-established procedures of this committee, Mr. Swidler, I will ask you to be sworn.

Do you solemnly swear that the testimony you give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SWIDLER. I do.

The CHAIRMAN. Mr. Swidler, you are familiar with the background which led to these hearings, and I believe you have been in attendance during the last 2 days that Mr. Morgan has been before the committee.

Therefore, it will be unnecessary for me to comment on that for your information, because you already know what has been said, and also, I do not delude myself at all. I know there have been discussions about these problems between you and Mr. Morgan for some time, and particularly with reference to the contents of his dissenting opinions. I realize that even one, much less six, I believe he referred to, is a rather difficult and technical and somewhat lengthy matter and I believe you should be permitted to handle it in your own way.

I believe you have a statement you wish to make first.

TESTIMONY OF HON. JOSEPH C. SWIDLER, CHAIRMAN, FEDERAL POWER COMMISSION

Mr. SWIDLER. Mr. Chairman, Mr. Brotzman, I have a prepared statement, but I shall not read it. It is available.

The CHAIRMAN. Do you wish your statement to be included in the record?

Mr. SWIDLER. I should like to have it included in the record; yes, sir.

The CHAIRMAN. I observe that you have a number of exhibits along with it. Do you wish those to be included with it, too?

Mr. SWIDLER. Yes, sir. I should like to have the entire statement made a matter of the record, if you please.

The CHAIRMAN. It is your desire, then, to, in your own words, explain the statement that summarizes the problem before the committee and the information therein?

Mr. SWIDLER. Yes.

I should like to begin, if I may, Mr. Chairman, by telling something about the work of the Federal Power Commission in the last 18 months or so that I have been Chairman.

The CHAIRMAN. Well, permit the Chair to say that your statement, then, will be included in the record in accordance with your desires, and you may proceed.

Mr. SWIDLER. Thank you, Mr. Chairman.

(The complete prepared statement of Hon. Joseph C. Swidler, with attachments, is as follows:)

STATEMENT OF JOSEPH C. SWIDLER, CHAIRMAN, FEDERAL POWER COMMISSION

I am glad to have this opportunity to appear before this committee to answer your questions and to tell you of some of the activities of the Federal Power Commission in the past 18 months during which the present members of the Commission have assumed office. The House Committee on Interstate and Foreign Commerce has great familiarity with the FPC's problems and operations, as well as its legislative history and future legislative needs. I feel privileged to be able to make to this committee an accounting of the present Commission's stewardship over the functions which Congress has lodged in the Commission. I believe that all of the present members of the Commission can take pride in our record of reducing the backlog of pending natural gas cases and of asserting the Commission's long-neglected responsibilities under the Federal Power Act.

You may remember that before the present members of the Commission were appointed, the Federal Power Commission was frequently held up as one of the poorest administrative agencies in the entire Federal system. Dean Landis in his report to then President-elect Kennedy stated that "the Federal Power Commission without question represents the outstanding example in the Federal Government of the breakdown of the administrative process," and the President in a message to Congress in April 1961 singled out the Commission's incredible backlog of pipeline rate cases pending which totaled over $1 billion in rate suspensions.

I believe that we have gone far toward putting our house in order and are now carrying out our responsibilities in a manner that does credit to the administrative process. During the past year and a half we have adopted new policies where needed, reorganized our staff, streamlined our procedures, and supplied new staff leadership. Our major emphasis has been on protecting the public interest and on moving cases along toward conclusion just as expeditiously as possible.

Our efforts to cut redtape and instill a greater sense of urgency in our work have achieved major successes. The Commission in the past 18 months has disposed of the greatest portion of the billion-dollar backlog of natural gas pipeline rate cases we inherited and ordered refunds of over $350 million to consumers throughout the country. In addition, the Commission ordered the pipelines to reduce their existing rates by over $65 million a year.

We have also made progress in reducing our backlog of applications for natural gas pipeline certificates which are required before construction of new projects can begin. The Commission in the last 3 months of 1962 issued certificates for over $230 million of pipeline construction, as compared with approximately $71 million in the comparable period in 1961. We are taking action to further accelerate the pace of our pipeline certificate work because we know the importance to the Nation's economy of prompt approval of pipeline projects which are in the public interest.

I am attaching to this statement a copy of the Commission's latest quarterly report which summarizes our success in reducing our backlogs in all categories of our natural gas work during the past year.

So far as rates of natural gas producers are concerned, the upward spiral has been stopped and natural gas prices at the well have been stable in the past 18 months, for the first time in the history of the Commission. Many people have claimed that producer regulation is impossible, but the present Commission has been pushing forward with what we are confident will prove to be a workable solution to the problem. We are implementing the area rate approach to fix just and reasonable rates for interstate sales of gas by producers in all of the Nation's gas-producing areas.

The Commission has established guidelines which limit the evidence in producer certificate cases and will enable the Commission to hold the line on the price for new gas and at the same time dispose of certificate applications expeditiously.

The Commission's settlement program has helped us reduce our producer rate backlog in this interim period. We have ordered refunds of over $30 million and made some reductions in the annual amount of rate increases under suspension. In the last 6 months we disposed of 289 producer suspension proceedings. We cannot hope to eliminate our backlog of producer rate cases, or even to make a significant reduction, until we complete the area rate proceedings but we have reversed the trend and our backlog is now going down rather than up. This is not success but it is progress.

Another significant recent Commisison action is the adoption of a rule prohibiting ex parte communications dealing with the merits of contested cases. Of course, the mere adoption of a rule against ex parte influence is not in itself determinative but I believe it is significant that there has been no claim that the rule is not being followed in spirit as well as in form. I believe that all parties to the proceedings before the FPC now accept the fact that even though they may disagree with our conclusion, the cases are decided solely on the basis of the record.

Most important of all, the Commission has made clear that it believes in the principle of regulation of natural gas rates and service both by pipelines and producers and is working to carry out the mandate of the statute to protect natural gas consumers.

The Commission has made an extensive study of its responsibilities in light of the statutes which we are dutybound to administer and we have formulated a series of legislative proposals which we consider necessary and desirable to enable us to do a more efficient and more effective job in the public interest. Needless to say our legislative program does not include proposals to repeal our jurisdiction over natural gas producers as was proposed by the Commission in former years.

The Commission has taken a close look at its procedures for processing natural gas cases and found much room for improvement. In the past year we have adopted new regulations which have greatly reduced the time required to complete a pipeline rate case. The regulations require pipeline companies to submit

their entire case and all supporting data verified by an independent certified public accountant at the time a rate increase is filed. The data supplied by the companies under our new regulations will eliminate the need for extended field investigations as a part of rate cases. It was the field investigations which caused much of the delays in processing rate cases, and piled up the backlog. We shall, of course, check the books of pipeline companies periodically to assure compliance with the Uniform System of Accounts but these checks will not delay the processing of rate cases.

We have also made more extensive use of prehearing conferences to clarify the issues and, where possible, to eliminate immaterial or peripheral issues, thus simplifying and materially expediting formal hearings.

A significant step in increasing the efficiency of our field operations has been the creation of a field office in Houston, Tex., which we established to strengthen supervision over our personnel in the area and to serve as a clearinghouse for problems of the small independent producers in the Southwestern United States.

On the electric power side, the Commission has also been working hard and has a record of achievements.

Perhaps our major accomplishment to date is the national power survey we are conducting to encourage the voluntary interconnection and coordination of the Nation's power systems on a regional and interregional basis. For the first time in a decade the Commissioner is exercising leadership in the mainstream of the activity of the industry and in my judgment is making a major contribution toward progress in the industry. The Commission's objectives are to stimulate the Nation's power systems to more efficient operations in the years ahead so as to provide lower rates to consumers. The survey has already resulted in many new interties and joint projects between companies and has provided a forum in which all segments of the industry can work together to improve the use of America's power resources.

The Commission is working closely with over 100 of the leading experts, representing all segments of the electric power industry, who are serving on various advisory committees. For the first time in history representatives of the public, private, cooperative, and Federal power systems are working together in these committees under FPC leadership to take advantage of the opportunities of modern-day technology, by joint plans for the use of large generating units tied together with high voltage transmission lines.

The survey is not intended as a basis for dictating to the various companies in the industry what kind of generating units they should buy, what systems should own and operate them, where they should be located or how they should be integrated for service to the region and Nation. Rather, the purpose is to suggest the general plant location areas and intertie and integration arrangements which the utilities can follow up on their own, with such yariatiaons as more particular investigations and changing circumstances may disclose to be necessary. The most important contribution of the survey is the broadening of industry perspective by introducing into every industry decision on building additional generating and transmission facilities the question of whether every possibility for coordination and joint planning of facilities has been fully explored in the national interest.

Another central activity of the Federal Power Act that the new Commission has invigorated is electric rate regulation. When the present members of the Commission took office the Commission's electric rate regulation functions were practically nonexistent. There were only four professional people engaged in electric rate work. The Commission took immediate action to build up the electric rate staff within the limits of existing manpower. We are now seeking funds to enlarge the staff to the minimum required to carry out effective regulation of the wholesale rates of the public utilities in interstate commerce. This work is of great importance to insure that the cost savings of operating in larger power pools which the national power survey is encouraging are passed on to the public.

The Commission has taken action to speed the processing of applications for licenses for hydroelectric projects and in the last 6 months of 1962 licenses were issued for projects whose construction will add $260 million to stimulate the Nation's economy.

We have also made progress in an area where we can show tangible benefits for the U.S. Treasury. We have developed a simplified formula for collecting the money owned the Federal Government from downstream hydroelectric projects that benefit from upstream Federal developments. In this fiscal year, we are

collecting $1,750,000 in headwater benefits for the Federal Treasury which is three times as much money as has been collected in the entire history of the FPC. We estimate that in the next year we will collect $4 million.

We have announced a new policy limiting the term of licenses granted to hitherto unlicensed projects constructed before 1935 in order to prevent those who have ignored the licensing provisions of the Federal Power Act from obtaining an unmerited advantage. We are making a concerted effort to bring these projects under license and our efforts are meeting with some success.

We have proposed a rule requiring all licensees to submit a comprehensive plan for public recreation with their license applications to assure that the general public obtains the full benefits of the recreation potential of non-Federal hydroelectric projects.

I have mentioned some of the more general actions taken by the Commission during the past 18 months. Of course, the record of the Commission is also expressed in our opinions which speak for themselves. For the convenience of the committee we have prepared a capsule summary of each of the Commission opinions issued in contested proceedings since the present members of the Commission assumed office which is attached as appendix B to this statement. The opinions themselves are, of course, available at the Commission's offices.

Even those who were most critical a year ago now recognize that the Commission is making solid headway on the mountain of work before it. Dean Landis commented publicly in February of 1962 that the attitude of the new Commission "is one of a readiness to meet these challenges and the intention to apply a Herculean effort in doing so." He added that the Commission's "* * * record in the past 3 months of bringing about the refunding of some $35 million of excess charges, is significant." Since Dean Landis' talk last February, we have ordered additional refunds of some $325 million, bringing the total refunds in the past 18 months in pipeline rate cases to over $350 million. This is one measure—one among many, and not the most important—of the returns in public benefits from the recent activities of the Federal Power Commission.

The Commission was gratified to note in the final report of the Administrative Conference of the United States of December 15, 1962, that although the FPC was studied intensively, the Conference made no recommendations for improvements in our procedures. In fact, many of the general improvements suggested by the Committee on Rulemaking were patterned after procedural reforms which the FPC has put into effect in the past 18 months. The final report of the committees' study of the conduct of rate proceedings in the FPC has not been concluded but the preliminary draft which I am quoting with the reporter's permission stated that:

"The present organization and procedures are well adapted to the functions being performed. While further changes of a modest nature may be desirable, the path of procedural innovation has been explored with great ingenuity and thoroughness * * *" (p. 64).

The report also emphasized the need to attract more capable personnel, a problem that is common to most Government agencies and one to which the Commission has devoted a great deal of attention in recent months.

The Commission is not conducting a popularity campaign, and we are reconciled to the fact that no one loves a regulatory agency. However, considering the sharp rivalry among the various segments of the electric power and natural gas industries I believe it is significant that there is a generally favorable response to our efforts to come to grips with the problems facing the Commission.

For example, the December 1962 issue of Public Power contains the following comments concerning the Commission's new programs:

"Can a Federal regulatory agency bring lower electric rates to consumers?

"The all-new Federal Power Commission, the only regulatory body now composed exclusively of Kennedy appointees, has given indications that it may be possible.

* * * * * * *

"First, in pushing for a higher degree of system interconnection and power pooling, and in undertaking the National Power Survey to design an efficient nationwide generating and tranmission system, FPC has served notice that U.S. utilities will be encouraged to take full advantage of the new technology.

"Second, FPC Chairman Joseph C. Swidler has indicated that wholesale power rates of utilities participating in interstate grid systems will be regulated at the Federal level, thus passing along the benefits of large-scale operations at least to the distributing utilities served by such grid systems.

"Whatever the outcome of the many programs being inaugurated by the new Commission, it's clear that FPC will play a larger role in the future of the electric utility industry than it has previously for many years." (Pp. 8, 22.)

The views of the investor-owned segment of the electric power industry with respect to the activities of the new Commission is typified by the following statement in this week's Electrical World:

"Chairman Joseph C. Swidler took the reins of the Federal Power Commission about 18 months ago and is striving to push the agency to greater efforts and broader responsibility. He has initiated the National Power Survey, visited electric utilities and manufacturers, and has undertaken a wide-ranging journey through the Soviet Union to study electrical power installations there.

"Not one to shy away from controversy, he has * * * taken New England utilities to task for high rates; * * * and, generally promised more stringent regulation.

"An insight into this official's thinking should enable the industry to chart its best course. This insight is especially necessary because he started with a TVA background but now shows strong signs of trying to steer to the middle of the road." (Issue of February 25, 1963, p. 72.)

The talk referred to in the Electrical World was one I made to the Electric Council of New England on October 19, 1962, in which I outlined certain actions which I thought the industry should take to reduce rates in that area. In response to that talk, the New England Electric Council pledged:

"* * * that the New England utilities will use every effort to achieve the goals outlined by Mr. Swidler and to cooperate with State and Federal regulatory commissions to bring the most abundant supply of electricity at the lowest possible prices to all parts of the country including New England."

The attitude of the gas industry toward the present Commission is typified by the following excerpts from Gas Magazine:

"* * * they have a growing faith in the present Federal Power Commission. They don't agree with the fact of utility-type controls, but they seem to have unexpected confidence in the New Frontier makeup of the Commission. This confidence in the Commission also is marked by a sense of freedom from favoritism. Most explorers and producers had rather have an honest, if tough, Commission than one which might favor one producer against another, even while siding with producers as a whole against the other segments of the industry and the consumer * * *" [June 1962.]

* * * * * * *

"The Commission under Chairman Joseph Swidler has not been ignoring the 'consumer interest' approach to regulation since taking office. Late last year, it ordered a broad survey of what happens to the refunds it orders, and whether these refunds are being passed along to consumers * * *

"The refund volume is one of the more dramatic results of the Commission's present hard-line settlement procedure. Almost any day, the Commission announces a settlement with refunds ranging from a few hundred thousand dollars to several million. The settlement procedure in rate cases has shown, perhaps more clearly than anything else, the power the Commission now exercises. Where the tendency of companies faced with a rate fight was previously to battle it out to the full Commission and later to the courts if they still weren't satisfied, many now try to get the best they can in negotiations with the staff, and then agree to the settlement." [February 1963.]

I think that the record of the Commission in the past year and a half presents ample proof that the Commission, as presently constituted, is doing a creditable job of carrying out the policies of Congress in the electric power and natural gas fields.

I now invite any questions which the members of the committee may wish to address to me.

[Federal Power Commission release No. 12,497—G–6907]

FPC CHAIRMAN SWIDLER REPORTS PROGRESS IN ALL NATURAL GAS REGULATORY AREAS DURING 1962

WASHINGTON, D.C., February 13, 1963.—The Federal Power Commission cut its pipeline rate case backlog by well over half during 1962, reducing the number of cases on hand from 90 to 41 and the annual dollar amount of proposed in-

creases from $388.2 million to about $151 million, Chairman Joseph C. Swidler reported today.

The FPC during 1962 also made substantial progress in its other three natural gas regulatory areas, Chairman Swidler said. He reported:

A reduction of $16,098,417 in the backlog of proposed annual rate increases by independent producers of natural gas;

A decrease from about $1.1 billion to $914 million in the amount of proposed construction in pending pipeline certificate applications;

A reduction from 3,209 to 2,814 in the number of producer certificate applications pending;

The $1,099,090,000 accumulation of excess rates collected subject to refund 6 months ago by natural gas pipelines was reduced to approximately $470,779,443 at the end of 1962.

During the quarter ended December 31, Chairman Swidler said, the FPC disposed of 23 pipeline rate increase cases involving $96,070,000 annually. At the same time it ordered refunds estimated at $184,946,172, plus interest.

More than two-thirds of the $151,009,400 in pipeline rate increases pending at year's end was involved in five cases. One of these is before the Commission, two are awaiting initial decision by FPC examiners, and two are undergoing staff investigation.

The annual dollar amount involved in proposed rate increases by independent natural gas producers dropped for both the year and for the last quarter of 1962. The Commission had on hand proposed increases totaling $167,525,597 at the beginning of the year, and this was reduced to $158,159,192 by September 30, and to $151,427,180 at year's end. However, the number of cases on hand rose approximately 5 percent from 2,756 at the beginning of the year to 2,881 on September 30 and 2,905 on December 31.

Chairman Swidler also reported an across-the-board reduction in the amount of proposed construction in pending pipeline certificate applications for both the quarter and the year.

Pending applications, measured by the estimated construction costs, were reduced from $1.1 billion to about $914 million for the year; the miles of pipeline in pending applications was reduced from 8,782 to 8,582; and measured by compressor horsepower the reduction was from 772,783 to 612,960. The number of cases on hand, however, rose from 206 to 224 during the year. Corresponding reductions for the quarter were $1,036,230,973 to $913,783,652 (construction costs): 9,414 and 8,582 (miles of pipe); and 767,942 to 612,960 (compressor horsepower).

Hearings have been completed on nearly half of the $913,783,652 backlog of proposed new construction on hand December 31, and approximately $120 million was being held up awaiting further information or action by the applicants or the disposition of other cases.

More than $351 million of the pending pipeline construction applications, or more than one-third, is proposed in the five largest cases. Four of these applications are through the hearing stage, and the fifth is ready for hearing. Temporary authorization has been granted for construction of $138,227,922 of the new construction proposed in pending applications.

The number of pending applications by independent producers seeking authorization to sell gas in interstate commerce was reduced from 3,209 at the beginning of the year to 2,814 on December 31, 1962. The FPC during the year disposed of 2,039 such applications. Temporary authorizations had been issued in 1,892 of the 2,814 cases still pending at year's end. Of the remaining 922 applications, 300 involve service for which temporary certificates have not been requested or which are new filings still being processed. For the last quarter, however, there was an increase in the number pending from 2,557 to 2,814.

The attached tables show statistics as of the end of the last quarter, with comparisons with the preceding quarter and the quarter ended a year earlier. The statistics are divided into four tables—pipeline certificate cases, pipeline rate cases, producer certificate cases, and producer rate cases. The tables include summary remarks concerning the more significant aspects of the statistics.

The publication of these statistics completes the first full year of coverage through the quarterly reports, initiated by Chairman Swidler at the beginning of 1962.

TABLE I.—*Pipeline company certificate filings and actions (construction and operation only)*

	Number of applications, quarter ending—			Miles of pipeline, quarter ending—			Compressor horsepower, quarter ending—			Estimated cost		
	December 1962	September 1962	December 1961	December 1962	September 1962	December 1961	December 1962	September 1962	December 1961	December 1962	September 1962	December 1961
Pending start of quarter	194	200	195	9,414	10,202	7,432	677,942	785,197	590,298	$1,036,230,973	$1,101,470,293	$934,623,381
Applications filed during quarter	71	49	53	916	616	1,830	73,590	55,410	192,050	121,123,452	86,333,844	242,418,571
Certificates issued during quarter	38	51	39	1,562	1,403	476	228,572	72,665	9,565	230,865,173	151,522,153	71,866,821
Otherwise disposed of during quarter	3	4	3	186	1	4				12,705,600	51,011	30,544
Pending end of quarter	[1] [2] 224	194	206	[3] 8,582	9,414	8,782	[3] 612,960	767,942	772,783	[3] [4] 913,783,652	1,036,230,973	1,105,144,587

[1] Increase during quarter.
[2] Includes 82 applications on which temporary certificates involving $138,227,922 in estimated construction cost have been issued.
[3] Decrease during quarter.
[4] Adjusted to include amendments and supplements to applications and modifications of certificates.

ANALYSIS OF CASES PENDING

	Dec. 31, 1962	Dec. 31, 1961
Additional information requested	$11,548,000	$61,955,000
Undergoing staff analysis	69,714,047	171,622,030
Ready for hearing	125,225,404	188,266,145
Hearing in progress	178,208,630	387,598,061
Before examiner for decision	197,110,200	84,253,994
Before Commission	212,365,567	27,458,000
Pending action by applicant or in other cases	107,302,320	164,702,662
Total major projects pending ($700,000 or more construction cost)	901,474,168	1,085,855,892
Minor projects pending	12,309,484	19,288,695
Total, all projects pending	913,783,652	1,105,144,587

5 LARGEST CERTIFICATE APPLICATIONS PENDING DEC. 31, 1962

Name of company	Docket No.	Estimated construction cost	Status
Colorado International Gas Co	G-16904	$99,745,673	Before Commission.
Columbia Gulf Transmission Co	CP62-89	72,225,300	Before examiner for decision.
Oklahoma-Illinois Gas Pipeline Co	CP62-260	64,130,000	Ready for hearing.
El Paso Natural Gas Co	G-16235	58,685,000	Before Commission.
Tennessee Gas Transmission Co	CP60-94	56,624,000	Before examiner for decision.

TABLE II.—*Pipeline company rate filings and actions*

	Number of dockets, quarter ending—			Annual amount, quarter ending—		
	December 1962	September 1962	December 1961	December 1962	September 1962	December 1961
Filings under suspension, start of quarter	64	76	101	$247,042,400	$277,189,100	$394,764,500
Increases suspended during quarter		2		37,000	8,582,900	
Increases allowed without suspension during quarter		3			826,500	600
Disposition of suspension proceedings during quarter [1]	23	14	11	96,070,000	38,729,600	6,573,600
Increases allowed after hearing and decision	5			9,849,000		
Increases disallowed or withdrawn after hearing and decision				8,054,000		
Increases allowed by settlement proceedings	18	14	11	56,726,900	13,026,500	3,275,000
Increases disallowed or withdrawn by settlement proceedings				21,440,100	25,703,100	3,298,600
Filings under suspension, end of quarter	[2] [3] 41	64	90	[2] [4] 151,009,400	247,042,400	388,190,900

5 LARGEST PIPELINE RATE SUSPENSIONS AS OF DEC. 31, 1962

Name of company	Docket No.	Annual amount suspended	Status
El Paso Natural Gas Co	G-12948 et al.	62,526,000	Awaiting examiner's decision.
United Fuel Gas Co	G-20270	14,614,500	Do.
Southern Natural Gas Co	G-18512	10,135,400	Undergoing staff investigation.
Michigan-Wisconsin Pipeline Co	RP60-9	8,507,900	Before Commission.
Northern Natural Gas Co	G-15335	8,137,000	Undergoing staff investigation.

[1] Cases disposed of during the last quarter provided for refunds estimated to total $184,946,172 plus interest.
[2] Decrease during quarter.
[3] Includes 8 cases still pending which have been disposed of except for subsidiary issues.
[4] The accumulated amount of revenues collected subject to possible refund was $470,779,443 on Dec. 31, 1962, compared with $1,099,090,000 on July 1, 1962.

TABLE III.—*Independent producer gas certificate filings and actions (service and abandonment)*

	Number through quarter ending—		
	December 1962	September 1962	December 1961
Pending start of quarter	2,557	2,520	2,973
Applications filed during quarter	402	404	453
Certificates issued during quarter	[1] 80	311	[4] 142
Otherwise disposed of during quarter	65	56	75
Pending end of quarter	[2] [3] 2,814	2,557	3,209

[1] None of these certificates was conditioned to require reductions in the initial sales price of the gas.
[2] Temporary authorizations have been issued in 1,892 of these cases. Of the remaining 922 pending applications, 300 involve service for which temporary authorization cannot be issued. The remaining 622 cases include those for which temporary authorizations have not been requested or which are new filings still being processed.
[3] Increase during quarter.

TABLE IV.—*Independent producer rate filings and actions*

	Number of dockets [1] Quarter ending—			Annual amount: Quarter ending—		
	December 1962	September 1962	December 1961	December 1962	September 1962	December 1961
Filings under suspension start of quarter	2,881	2,902	2,563	$158,159,192	$164,870,541	$165,787,033
Increases suspended during quarter	191	96	203	3,682,301	5,115,468	2,406,941
Disposition of suspension proceedings during quarter	167	117	10	10,414,313	11,826,817	668,377
Increases allowed after hearing and decision	6					
Increases disallowed or withdrawn after hearing and decision				85,465		
Increases allowed by settlement proceedings	161	117	10	5,502,432	3,181,997	491,654
Increases disallowed or withdrawn by settlement proceedings				4,826,416	8,644,820	176,723
Filings under suspension end of quarter	[2] [3] 2,905	2,881	2,756	[4] 151,427,180	158,159,192	167,525,597

[1] A docket may include 1 or more filings.
[2] Includes 901 dockets in area rate proceedings now in progress.
[3] Increase during quarter.
[4] Decrease during quarter.

NOTE.—A substantial portion of the suspended independent producer rate filings are held pending determination of the proper area price in a formal proceeding. The Commission is currently devoting the efforts of a considerable portion of its staff, in expediting 2 area hearings, docket No. AR 61-1 and AR 61-2 and significant decrease in number of suspensions on hand is not anticipated pending conclusion of such hearing.

APPENDIX B

FPC opinions issued since June 28, 1961

Opinion No.		Date issued
346	*City of Colton, Calif.* v. *S. California Edison Co. E-6821* (by Kuykendall, with Swidler and Morgan). Asserts jurisdiction over power sales by Southern California Edison to Colton for resale; rate increases approved by California PUC held invalid.	July 31, 1961
347	*St. Lawrence Gas Co., G-17500, et al.* (by Morgan, with Kuykendall and Swidler). St. Lawrence authorized to import gas from Canada; competing application by New York State Natural Gas Corp. denied.	Aug. 8, 1961

FPC opinions issued since June 28, 1961—Continued

Opinion No.		Date issued
348	*Lo-Vaca Gathering Co., Houston Pipe Line Co.* (by Swidler, with Kuykendall, Morgan, and Ross; O'Connor dissenting). Producer gas sales are subject to FPC jurisdiction if gas is mixed in stream going into interstate commerce. O'Connor dissents on ground action departed from judicial precedent.	Oct. 23, 1961
349	*Tennessee Gas Transmission Co.* (by Kuykendall, with Swidler, Morgan, O'Connor, and Ross). Tennessee Gas Transmission Co. authorized to import natural gas from Canada on interruptible basis through existing Niagara Falls interconnection.	Dec. 14, 1961
350	*Panhandle Eastern Pipe Line Co., et al. CP60-105, et al.* (by O'Connor, with Swidler, Morgan, and Ross). Authorized sales from Elk City Field (Oklahoma) conditioned on 3-cent price reduction.	Jan. 15, 1962
351	*CATC (Continental Oil Co., et al.) G-11024, et al.* (By Swidler, with Morgan, Ross, and O'Connor). Reduces price of CATC sales (Louisiana) by nearly 3 cents; refunds ordered.	Jan. 22, 1962
352	*Tennessee Gas Transmission Co., G-1198)* (by Swidler, with Morgan, O'Connor, and Ross. Determines principles to be used in allocating cost of service among 6 rate zones.	Feb. 6, 1962
353	*Michigan Wisconsin Pipe Line Co., CP61-102* (by O'Connor, with Swidler, Morgan, and Ross). Authorized sales from Woodward area (Oklahoma) conditioned on reduction of initial price to area ceilings.	Mar. 7, 1962
354	*Pacific Power & Light Co., E-7024, E-7025* (by the Commission: Swidler, O'Connor, and Ross; Morgan dissenting. Authorizes issuance of securities holding that Federal Power Act does not confer certificating jurisdiction over transmission lines on FPC. Morgan contends application should not be approved pending policy decisions relative to such an intertie scheduled by the current session of Congress.	Apr. 17, 196
355	*Arkansas-Louisiana Gas Co., G-15667, et al.* (by Swidler, with O'Connor, Ross, and Woodward). Mississippi River Fuel Corp., ordered to allocate to utility customers a large part of gas supply being sold to industrial customers.	Apr. 18, 1962
356	*Union Electric Co., E-6927* (By Ross, with Swidler, Morgan, O'Connor, and Woodward). Holds that interstate transmission of hydroelectric energy is sufficient grounds to require an FPC license for Taum Sauk pumped storage project.	Apr. 19, 1962
357	*Public Service Co. of New Hampshire, P-2288* (By Ross, with Swidler, Morgan, O'Connor, and Woodward). Sets policy that hydroelectric projects built prior to 1935 and still operating without a license should not be given the benefit of the maximum 50-year license permitted by the act.	Apr. 25, 1962
358	*El Paso Natural Gas Co., CP60-72, et al.* (By Ross, with Swidler, Morgan, O'Connor, and Woodward). Reduces initial price by more than 3 cents for producer gas sales from Big Piney area (Wyoming).	June 11, 1962
359	*Standard Oil Co. of California, CI60-733, et al.* (By Ross, with Swidler, Morgan, O'Connor, and Woodward). Reduces initial price by more than 3 cents for producer gas sales from Red Wash area (Utah).	Do.
360	*Alabama-Tennessee Natural Gas Co., G-5471* (By Swidler, with Morgan, O'Connor, Ross, and Woodward). Disposes of 4 pipeline rate increases; refunds and rate reductions ordered.	June 13, 1962
361	*Brazos River Authority* v. *Brazos Electric Co-op. E-6884, et al.* (by O'Connor, with Swidler, Morgan, Ross, and Woodward). Holds FPC has jurisdiction over Authority's rates from licensed hydroelectric project because of the absence of State regulation.	July 17, 1962
362	*Skelly Oil Co., et al., G-18638, et al.* (By Swidler, with O'Connor and Woodward; Morgan and Ross dissenting and concurring). Establishes guidelines for determining in-line prices in producer certificate cases. Reduces initial price.	Aug. 30, 1962
362A	*Skelly Oil Co, et al., G-18638, et al.* (by Swidler, with O'Connor and Woodward; Ross dissenting in part; Morgan not participating). Denies rehearing of Opinion No. 362.	Dec. 18, 1962
363	*American Louisiana Pipe Line Co., G-18419* (by Woodward, with Swidler and O'Connor; Ross recorded as in favor had he been present; Morgan present but not participating). Allows American Louisiana 6 percent rate of return; Michigan Wisconsin Pipe Line, 6½ percent return.	Sept. 17, 1962
364	*Robert P. Wilson, P-4276, et al.* (by the Commission: Swidler, Morgan, O'Connor, and Ross). Dismisses applications for permits and licenses for 4 California hydroelectric projects pending for 9 years and unsupported by applicant.	Oct. 10, 1962
365	*Hunt Oil Co., G-9065* (by Swidler with Morgan, O'Connor, Ross, and Woodward). Provides standards for determining just and reasonable rates for producers prior to establishment of area rates; case remanded to examiner.	Oct. 17, 1962

FPC opinions issued since June 28, 1961—Continued

Opinion No.		Date issued
366	*El Paso Natural Gas Co. G-4769* (by Swidler with Morgan and Ross; O'Connor and Woodward concurring and dissenting. Allows El Paso rates of return of 6 percent in 2 cases 6¼ percent in 2 cases and orders refunds which will total over $68 million and rate reductions of $15.8 million annually. The same rate of return applies to both pipeline and production properties. O'Connor and Woodward would have allowed a separate return on production properties.	Oct. 19, 1962
367	*Natural Gas Pipeline Co. of America RP61-8* (by the Commission: Swidler, Morgan, O'Connor, Ross, and Woodward). Disallows $6.4 out of $12.6 million rate increase; $10 million in refunds plus interest ordered.	Oct. 25, 1962
376A	*Natural Gas Pipeline Co. of America RP61-8* (by the Commission: Swidler, Morgan, O'Connor, Ross, and Woodward). Supplement to opinion and Order No. 367. No change in result.	Nov. 15, 1962
368	*Atlantic Seaboard Corp. et al. G-16401 Et al.* (by Swidler with Morgan, O'Connor, Ross, and Woodward). Directs 4 Columbia Gas companies to revise tariffs designed to maintain competitive position with customers who also buy gas from another supplier and orders them to refund penalty payments.	Nov. 27, 1962
369	*Hunt Oil Co., RI62-467, et al.* (by Swidler, with O'Connor and Woodward; Ross and Morgan dissenting). Dismisses producer rate increases which would have triggered higher rates in Mississippi and southern Louisiana. Ross and Morgan contend case should be remanded and rates allowed to become effective because FPC had not clearly defined standards at the time this case was heard.	Nov. 30, 1962
370	*Portland General Electric Co., P-2233* (by Woodward with Swidler, Morgan, O'Connor, and Ross). Denies request to delete 2 navigation projects from license issued for already constructed Willamette River hydroelectric project (Oregon).	Dec. 3, 1962
371	*Transcontinental Gas Pipe Line Corp., G-10000* (by Morgan, with Swidler, O'Connor and Ross; Woodward dissenting). Denies Transco's proposal to absorb financial losses of distributor through special rate arrangement because it is patently discriminatory and not in the public interest.	Dec. 11, 1962
372	*Texas Eastern Transmission Corp. et al., CP60-122, et al.* (by Ross, with Swidler, Morgan, O'Connor, and Woodward). Approves $151.2 million pipeline construction by 6 companies.	Dec. 17, 1962
Memorandum opinion	*Black Hills Power & Light Co., E-7046* (by the Commission: Swidler and Ross; Morgan concurring; O'Connor and Woodward dissenting). Denies proposal to issue stock to executives and key employees under restricted stock option plan on grounds that there is no showing that the plan is compatible with the public interest. Morgan concurs but states that restricted stock options are unlawful. O'Connor and Woodward state plan meets statutory standards.	Dec. 27, 1962
373	*Atlantic Seaboard Corp., G-17774* (by Woodward, with Swidler, Morgan, O'Connor, and Ross). Grants permanent certificate to Atlantic seaboard for its Terra Alta natural gas storage project (West Virginia).	Dec. 28, 1962
374	*Northern Natural Gas Co., CP61-132* (by O'Connor, with Swidler, Morgan, Ross, and Woodward). Authorizes natural gas deliveries to a subsidiary of Northern at its Bushton, Kans., hydrocarbon extraction plant. Rate reduction ordered to compensate for loss in heating value of gas.	Do.
375	*Appalachian Power Co., E-6906* (by Morgan, with Swidler, O'Connor, Ross, and Woodward). Ordered company to follow prescribed FPC accounting methods on deferred taxes and to report to stockholders on the same basis.	Dec. 31, 1926
376	*Slade, Inc., G-19986* (by O'Connor, with Swidler, Ross, and Wobdward). Rules that reasonableness of 4 proposed gas producer rate increases cannot be determined on present record; cases to be decided in area rate proceedings.	Jan. 3, 1963
377	*United Fuel Gas Co., CP61-107* (by O'Connor, with Swidler, Morgan, Ross, and Woodward). Approves intercorporate transfer of ownership and operation of pipeline facilities by 3 subsidiaries of the Columbia Gas System.	Jan. 16, 1963
378	*Texas Eastern Transmission Corp., G-12446* (by Swidler, with Morgan and Ross; O'Connor concurring; Woodward not participating). Bulk sale of Rayne Field (Louisiana) gas by producers to Texas Eastern held subject to FPC jurisdiction and not in public interest. Companies permitted to work out new arrangement.	Feb. 6, 1963
379	*Southern Natural Gas Co., G-20509, et al.* (by Ross, with Swidler, Morgan, and O'Connor; concurring opinions by Ross, O'Connor, and Morgan; Woodward dissenting in part). Reduces rates by $3.6 million and orders $10 million in refunds; denies higher return on production properties. Ross, Morgan, and O'Connor express separate views on standards for return on well-mouth properties. Woodward dissents on ground that separate rate of return should be allowed on production property.	Feb. 18, 1963

Mr. SWIDLER. I think the test of whether the members of the Commission have done a good job or not does not rest on our decision in any particular case but on our overall record of accomplishments. The basic answer to the charges is to appraise as a whole what we have done or failed to do and our ability to meet the challenge of our jobs. I am indebted to you for giving me this opportunity not only to speak in my own behalf in answering these charges, but also to defend the agency and to try to clarify our program. In the course of my statement today, Mr. Chairman, I intend to touch upon every matter that has been brought up in these hearings.

I was not here during the last hour or two of the hearings yesterday, but I have been briefed on what transpired. If I should miss some point, I know that you will help me by asking questions that will bring out the facts.

I might say that one of the, I hope helpful, byproducts of this hearing is that the members of this committee will get a greater familiarity with the Commission's problems and legislative needs. We have a heavy legislative program this year. Unlike last year, when we submitted a single omnibus bill, this year we will be submitting a series of bills, each with sufficient documentation and support to provide a basis for consideration by your committee.

It is to me, Mr. Chairman, particularly ironic that this controversy should have arisen in connection with the work of the Federal Power Commission, which I have been following since it was created, because I think it is exhibiting more aggressiveness and meeting with more success and laying a more solid foundation for the administrators who come after us than at any time in its history.

I need not tell the members of this committee the state of the Federal Power Commission when the new commissioners took over. What Mr. Landis and the President said are quoted on page 2 of my written statement. It was held up as one of the horrible examples of the failure of administration.

Dean Landis, in his report to then President-elect Kennedy, said that the Federal Power Commission—

> without question, represents the outstanding example in the Federal Government of the breakdown of the administrative process,

and the President, in his message to Congress on the regulatory agencies of April 1961, spoke of the Commission's "incredible backlog" of pipeline rate cases, which totaled over $1 billion in rate suspensions. The Commission was not only failing to protect the interests of the consumers, it was threatening the ability of the industries it regulated to carry on their work.

There has been a real change in the situation since that time. I would like to read to you what Mr. Landis said when we had no more than begun the change which has come over the Commission since we took office. And this, too, is quoted in my statement at pages 12 and 13. Dean Landis said in February of 1962, a year ago, that the attitude of the new Commission—

> is one of a readiness to meet these challenges and the intention to apply a Herculean effort in doing so.

He added that the Commission's—

> record in the past 3 months of bringing about the refunding of some $35 million of excess charges is significant.

Since that time, an additional $325 million has been added to that $35 million of refunds.

To me it was very heartening, Mr. Chairman, when the report of the Administrative Conference came out—and the Federal Power Commission was carefully surveyed in the course of the work of the Conference—that not a single recommendation for improvement was leveled at the Federal Power Commission. Instead, many of the general recommendations which were made to other agencies were based upon improvements which we had already, on our own initiative, incorporated in the work of our agency.

The interim report of the committee's study of the conduct of rate procedures in the Federal Power Commission, from which I quote with the permission of the reporter, had this to say:

> The present administration and procedures are well adapted to the functions being performed. While further changes of a modest nature may be desirable, the path of procedural innovation has been explored with great ingenuity and thoroughness.

I would like now to refer to some of the highlights of this transformation of an agency almost dormant 2 years ago to one which is, I think, fully performing up to the expectations which anyone might reasonably have for improvement in the course of this limited period. The pipeline refunds now are in excess of a third of a billion dollars. This is money that is in the pockets of the American consumers. I am aware that yesterday, in the testimony, a comment was thrown out which was intended to indicate that this was no achievement at all, that this was a setback. I shall discuss that matter in detail later in my statement.

We have stabilized producer prices. On page 85 of our annual report, the committee will find a chart showing the course of natural gas prices in the field, and you will see that beginning in the middle of 1961, they leveled off, and you can see that the incline was very steep until that time.

Now, Mr. Morgan may say that we had no part in this achievement, which is the foundation of natural gas regulation, because if you have runaway field prices, they are transmitted and escalated up the line through the pipelines to the ultimate consumer.

Mr. BROTZMAN. Pardon me, Mr. Chairman.

Is there an exhibit which the members of the committee might be able to look at while you are talking? If you are talking about an exhibit, I would like to see what you are talking about.

The CHAIRMAN. Here is a copy. I think probably we should have copies of these for each member.

Mr. BROTZMAN. The chairman referred to this. Unless we have a copy to follow, it does not mean anything.

What page is that?

Mr. SWIDLER. Page 85, sir.

The CHAIRMAN. You may proceed.

Mr. SWIDLER. I make no claim that this leveling off process was due entirely to the work of the Federal Power Commission. There were other factors at work. It is certainly easier to maintain controls on producer rates during a period of gas surplus than when supplies are tight. I do say it would not have happened without the price control administered firmly by the present Commission.

The CHAIRMAN. I think in view of the fact, Mr. Swidler, that you have referred to it and used this graphically to explain your comment, this chart should be included in the record. So let it be included at this point.

(P. 85 of the annual report of the Federal Power Commission for the year 1962 is on p. 94.)

Mr. SWIDLER. In pipeline certificates, we have also broken the log-jam. In the last quarter of 1962, there were $230 million in certificates issued, as compared with $70 million in the last quarter of 1961.

We have revised our whole system of rate filings to put the burden of proof for filing a prima facie case upon the pipeline in connection with its initial filing, so that we can expedite the processing and avoid rate suspensions for extended periods.

We have not been merely content with ordering refunds from the pipelines and the producers to distribution companies. We have initiated a survey to determine what happens to those refunds. We have no jurisdiction over the rates charged by distributors, but we have authority to find out what the distributors do with the refunds that they receive. We are not disinterested in the ultimate disposition of those refunds. In cooperation with the National Association of Railroad and Utilities Commissioners, we have conducted a nationwide survey, still in process, the effect of which has been to lead many of the State commissions to review their own procedures, and I think in this way we have greatly stimulated State regulation in the public interest.

On the power side, to my mind, Mr. Chairman, our greatest program is the National Power Survey. Here, for the first time, representatives of all segments of the electric power industry, private systems, Federal systems, State and municipal systems, and the cooperative systems are working together, all 3,600 of them, to lay out for the future a design for the kind of power system that makes the most effective use in the national interest of our resources in fuel and technology and capital and equipment.

We have not undertaken as part of the survey to try to solve all of the sources of friction, all of the animosities within this industry. But we have tried to build on what these various segments of the industry have in common. We have tried to provide a forum where they can cooperate with each other in the national interest.

We have tried not to make things worse, but to make things better, and not to leave the consumers of this country the victims of the antagonisms within the industry.

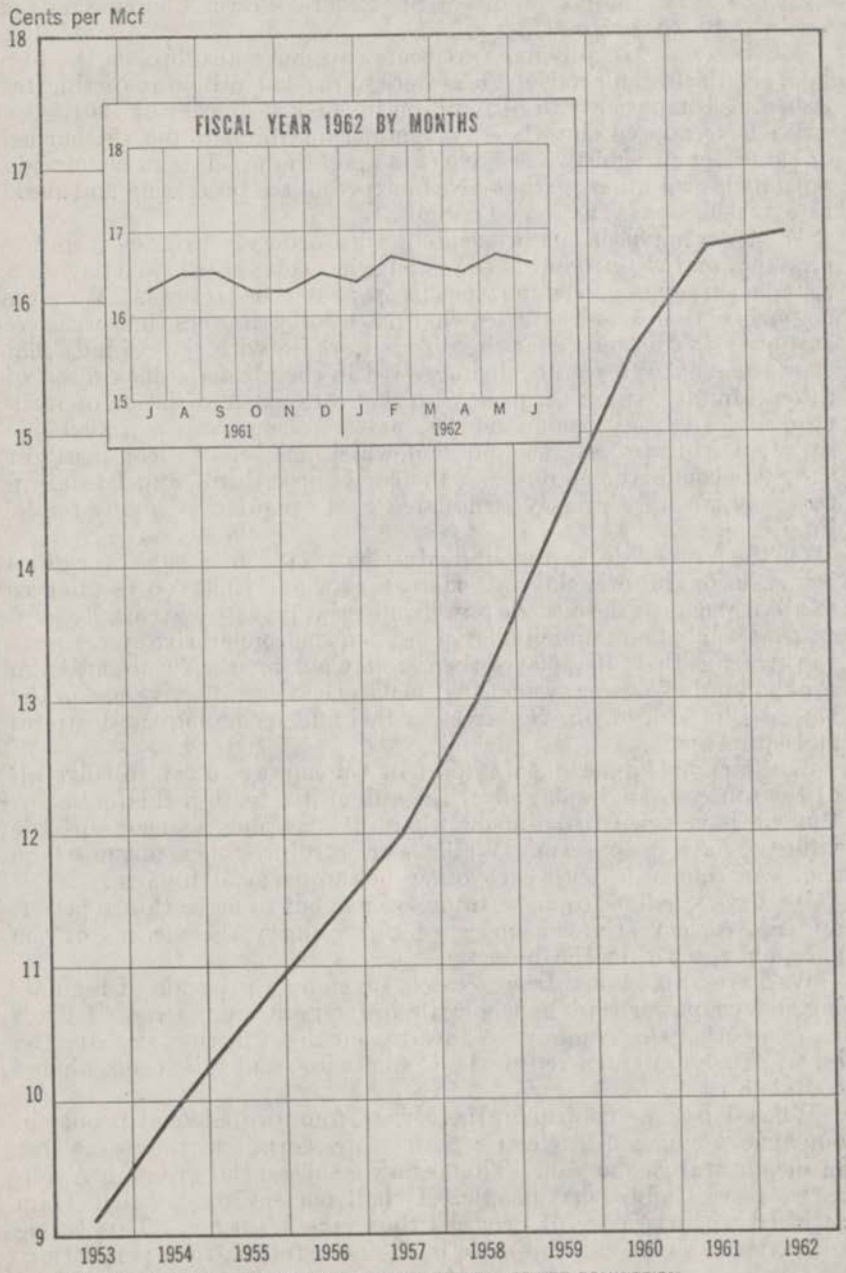
We have also, almost from scratch, taken on a program of regulating electric power rates at wholesale in interstate commerce. I don't know whether this committee is aware, but this function, perhaps the central function entrusted to the Commission, had fallen into almost complete disuse.

When I became chairman, there were four professional people in our agency engaged in electric power rate work, and they were lost in the natural gas bureau. This is now a substantial group, growing as we recruit additional people. I shall not say to you that I am satisfied with the pace of progress thus far—I am not. This is one of the spots we hope to improve in the near future, time permitting.

FIGURE 8

WHOLESALE PRICES OF NATURAL GAS

BY PRODUCERS TO PIPELINE COMPANIES
1953 TO 1962 BY FISCAL YEARS



SOURCE: BUREAU OF LABOR STATISTICS AND FEDERAL POWER COMMISSION

Mr. SWIDLER. One illustration of the determination of the Commission to make its work effective is in the field of headwater benefit determinations, where in the whole history of the Commission, Mr. Chairman, until 1962, only a half million dollars had been collected as payment to the United States for all the benefits conferred by Federal upstream projects on the projects of downstream licensees; approximately the cost of administration of that function. This year alone, we will collect more than three times that much; next year, $4 million, and in the future I hope even larger sums.

There are many more plans and many more activities upon which we are working to increase our effectiveness and our responsiveness to the needs of consumers in the gas and power fields.

To give you some conception of the real composition of the work that we do—not these few cases that have been the subject of so much testimony, and which I shall discuss separately, but to give you a rounded view of the kind of work that we are doing, I have pulled together in exhibit B, which I hope you will read, short descriptions of each of the scores of decisions that this Commission has handed out in the last 18 months, and I don't think anyone who reads that can fail to see the extent to which we have exerted ourselves to discharge our responsibilities, to carry out the congressional programs, to help the electric power and natural gas consumers in this country. These are only a small part of the grist that goes through our mill. They are the formal opinions.

I think that some of the references in the last part of my written statement will illustrate the extent to which informed sources that have studied the work of the Commission have concluded that as a whole, we have been impartial, aggressive in the consumer interest, but fair.

And this is my conception of the role that we should play as a quasi-judicial agency.

Now, I think this record of accomplishments would speak for itself if it were not for Mr. Morgan's charges. It is a hard fact, Mr. Chairman, that the steady, day-to-day grind of work, the opinions on which we labor so hard, get small attention and the easy challenge, the figure launched off the cuff, will get a headline. The adjective pulled out of a hat will be repeated over and over again, especially if it is used in so ambiguous a way that people have trouble figuring out just what is intended.

Mr. Morgan says that his fellow commissioners are able, honest, conscientious men and that he does not want to deal in personalities, and I can assure the members of this committee that I do not want to deal in personalities, either, and that I have not done so. But this hearing has been held because the members of this committee think that Mr. Morgan's charges involve personalities. That is what this is all about. I could not be responsive, sitting here, and saying, "Well, he said that no personalities are involved, so I do not need to talk about them."

You would say I was evading the charges that were intended, and only in the interest of not evading and to the limited extent that is necessary to avoid evasion, I want to deal with these charges.

Now, I would like to address myself, if I may, to Mr. Morgan's letter to the President. I take it the members of the committee have copies.

The CHAIRMAN. Yes, we have copies.

Mr. SWIDLER. I heard, sitting here the last 2 days, a great deal of discussion. Was this intended as aimed at his colleagues, or were these strictures intended merely as general advice to the President on how he could improve the work of the regulatory agencies of the Federal Government?

To met, when I read the letter, I had no difficulty with it at all, except as to detail. In the second paragraph, right at the outset, Mr. Morgan says:

> There are a number of reasons for my decision, but I am sure I should be considered less than gracious if I were to list them all.

And he goes on to say:

> Besides, several of them are clearly visible to those who have read the dissenting opinions which I have been obligated to write during my service here.

This is notice to everyone who can read that he is not delivering a general lecture, but that at least some of what he said is aimed at his colleagues. Everyone has interpreted it that way; this is the only interpretation, in my opinion, of which it is susceptible. And this is the reason the letter has been given headlines.

Now, I confess, I do not know how much of this is aimed at his colleagues. I do not think all of it, because some seem so inept that I cannot believe that it was directed at his associates on the Commission.

Others follow the lines of his dissents and clearly are aimed at us. But I cannot tell you any more than Mr. Morgan was willing to tell you where the one leaves off and the other begins.

Mr. Morgan says:

> Ordinary men cannot administer regulatory laws today in the face of pressure generated by huge industries and focused with great skill on and against the sensitive areas of Government. Ordinary men yield too quickly to the present-day urge toward conformity, timidity, and personal security.

Well, no one is going to quarrel with that as a generalization. I guess an extraordinary man is always better than an ordinary one, assuming that he is extraordinary in a socially desirable way, and as I said at a press conference, sure, it is better to have someone with brains than someone who is stupid—that goes without saying. Courage is always a desirable characteristic. But the question is: Have his colleagues yielded to base considerations of fear?

The CHAIRMAN. Of what?

Mr. SWIDLER. Of fear, which prevented them from discharging their work. I would hate to tell this committee—maybe you would not believe me if I did say it—that I never have to summon up my courage to do what I think is right. But I have, to my knowledge, never failed in the conduct of my work as Chairman of the Commission to do what I thought was right. So far as I know, I have never reached a wrong answer for reasons of timidity, speaking for myself. So far as I know, I can say the same thing for my colleagues who are not here today.

I have said, Mr. Chairman, that I would not use the powers of my office beyond the extent intended by the Congress to achieve results which the statute never contemplated, and that one of the reasons I would not do this was because I thought respect for integrity was

essential to the effective discharge of my job as a quasi-judicial official, and that if the industries that are subject to regulation by the Commission did not believe that the Commission was fair and impartial, we could not discharge our responsibilities. This is the only fear that I have expressed. I have not looked for easy applause or for the approval of claques; but have tried to decide each case as it came before us on the merits and impartially, and not to be pushed or hounded into wrong decisions.

Mr. Morgan goes on:

> The big problem is to find men of ability, character, courage, and broad vision, who have the same viewpoint as the authors of the legislation they will be called on to administer, men who would feel at ease while working with a Pinchot or a Norris, men who don't become neurotic with worry after having cast a vote for the public interest.

You see, even if you vote right, you are wrong anyway, because you worried about it.

I don't know about feeling comfortable with a Pinchot or a Norris. I never met Mr. Pinchot, but I did know Senator Norris. I had, to me, the very great privilege of working with him when I was a young man, employed by TVA, and he was the defender in the Senate of the program of the Tennessee Valley Authority.

I do not know whether I could say that I was at ease with him. I had a deep feeling of reverence for Senator Norris, and I know when I was in his presence that I was in the presence of greatness.

And I learned something, I think, from Senator Norris. He was a great man not only because of a pure and simple dedication to the public interest, but also because he knew that to achieve his program required study, hard work, and attention to procedures. Senator Norris was one of the greatest parliamentarians in the Senate of his day. He never took for granted the detailed work, the tedious preparation that is required in order to achieve success. He was not interested in posturing, not interested in acclaim, he was interested in pushing along a constructive program—he was interested in building. And when he died he left a great monument to his work.

The letter goes on:

> As you well know, there has been a great deal of study of regulatory agencies lately, and with good reason. All of the studies I have seen mention the matters I have discussed in this letter, but only in passing, and then proceed to make detailed suggestions of an organizational and administrative character. I am sure the agencies will continue to benefit from these studies and suggestions, but I am equally convinced that the main problem is in the area of personnel selection which I have discussed.

I think this is illustrative of the thinking that striking an attitude will do a job, that you do not need attention to procedural reforms, that the Administrative Conference has been wasting its time. All you need is someone to set the right pitch.

Then Mr. Morgan concludes, in his last two paragraphs, by saying that he does not really mean anybody in particular, and he sends his compliments to the President.

Now, I am frank to say that I doubt that this will help the President, and I am not at all certain that it was intended to do so. I think the people who read it knew that it was not an honest letter, that it was not intended to help, that it was intended to embarrass both the President and his fellow Commissioners.

Mr. Morgan has referred to two specific cases, *Pacific Power & Light* security issue case, and the *Idaho Power Co.* security issue case.

It is noteworthy that both of the cases which have become such causes celebre are security issue cases. The reason is that our security issue jurisdiction is a very limited jurisdiction. As members of the subcommittee know, it extends only to security issues which are not subject to approval by the State commissions. It covers only about 10 percent of the industry. It was obviously not intended by the Congress, and the legislative history clearly shows it was not intended, as the vehicle for comprehensive regulation of transmission line construction or other construction programs. It was intended to insure the financial integrity of the companies and the soundness of security issues where the State commissions had not passed on them.

In the *Pacific Power & Light* case, what came before us were two security issues, stock and bonds, for a wide range of corporate purposes, of which a small part was to be devoted to the construction of a transmission line which was to operate at 230 kilovolts, but was to be so constructed that it could later be converted to 500 kilovolts.

No question was raised that this line was fully justified as a 230-kilovolts line. The dissenting opinion accepts that fact. What Mr. Morgan challenged was the additional investment required to make it possible to convert that line to 500-kilovolts use. Now, mind you, we have no certificating jurisdiction. That company would not be before us if its securities were regulated by a State commission. It would not be there if they built that line with corporate funds or with the proceeds of a kind of security that did not require our approval. It was only before us for security approval. And it was Mr. Morgan's position that we should use the leverage of our position to prevent the company from installing that capacity for future conversion, although no one could say that looking to the future, this was outside the bounds of a provident managerial decision.

At any rate, the Commission took the point of view that we could not in conscience, considering the limited scope of our authority and the advice of our counsel, hold up that security issue, and I, for one, would not agree to the use of our leverage beyond our authority in order to intervene in a situation Congress had not given us authority to participate in. I may have been wrong. Mr. Morgan may have been right. With the passage of time, I became more convinced than ever that the majority was right. But what I say to you is, not by the wildest stretch of imagination can the position of the majority in that case be used for purposes of attack and division and reflection upon the whole record of the Federal Power Commission.

The other case is also a Pacific Northwest case, Idaho Power & Light Co., where Mr. Morgan thought we should use our security issue jurisdiction to delve into rates under investigation by the State commission, into the possibility that some power was being sold at too low a price—not too high, Mr. Chairman, too low; charges that the company was not charging enough depreciation—not too much, Mr. Chairman, not enough; that it was adopting accounting practices which enabled it to keep its rates down. This was the discrimination we were to investigate.

Well as I have made clear, Mr. Chairman, our rate staff is new, it is just getting off the ground and we have a large backlog. This

did not impress the other members of the commission as the right way to use our limited staff capacity and we refused to be drawn into what we thought was just a rabbit trail.

Now, it could be that we were wrong that this was a better use of our staff. I still do not think so, but I do not think the majority of the Commission have to be right 100 percent of the time in order to be free from attacks upon our integrity.

The way to improve administration, Mr. Chairman, is to work within an agency, if you have a case, to impress your colleagues with the depth of your work, with your ability to make a positive contribution, with your freedom from prejudice, with your desire to be constructive and positive and to help all the consumers of the country, with your freedom from political pressures—that kind of approach, I think, impresses fellow commissioners.

It would have gone far. And a sense of responsibility for the prestige and the reputation upon which the usefulness of this agency depends, a sharing of concern that our program should not be diminished, that its enemies should not be encouraged—this, too, would have gone far.

Mr. Chairman, I should like to go over the program or objections that Mr. Morgan listed yesterday. He listed a dozen things that he thought were wrong with the Federal Power Commission. Of course, this is the place where suggestions for improvement should be made, and I am sure that the sound ones requiring legislation, if there are any, you gentlemen would want to heed, and they are not all bad.

The first point he made is that the Commission does not have freedom or independence, externally or internally, that the President can designate the Chairman, who has complete control over his staff, and that this helps to frame policies. The Chairman, in turn, is the captive of the White House, the staff is the captive of the Chairman, and the Commission is the captive of the staff.

I think I got it all.

In all fairness, Mr. Chairman, I want to say that the White House has never attempted to influence the Chairman of the Federal Power Commission during my tenure in any improper way. I send the President every month a report on our progress and our problems; so as far as I know, these have satisfied him or his staff—I presume he does not read these reports himself—that we are doing a creditable job. I believe, Mr. Chairman, that if we should need help, the White House would attempt to help us, but I can say in complete candor that the relations between the White House and the Commission have been entirely proper.

Now, so far as the scope of the authority of the Chairman is concerned, this is a matter upon which the experts have debated for many, many years and there are well-developed schools of thought on the subject. The Congress has gone first one way and then another. Currently, I think, the conception of the proper organization of an administrative agency is that it helps to have the so-called strong chairman system, in which one man is responsible for the administrative functions of the agency. I may say I believe in that, Mr. Chairman. I cannot see how an agency can dispatch its work if appointments and assignments and all the other mass of administrative matters must be decided by committee. It seems to me that

all the members of a commission are more effective when someone takes care of these administrative chores and helps to shape the work of the agency so that it is easier for the whole commission to focus on the decision of cases and the formulation of policy. The contributions that are made by the other commissioners depends a lot upon them, upon their initiative, upon their resourcefulness, upon their ability to make a positive contribution which will impress their colleagues.

The second point was that no regulation of producer rates was necessary, and while Mr. Morgan did not advocate outright repeal of the authority to regulate producer rates, although, of course, if producer rate regulation is not necessary, I suppose it should be repealed—this is the implication of his comment—he said explicitly that we were barking up the wrong tree in the area rate proceedings, we should find some other workable way and that we should exempt small producers.

Mr. Moss. Excuse me, Mr. Chairman. Does Chairman Swidler have before him a copy of the transcript? I suggest that he do. I know that he desires to be fair here. The summary of the statement given by the Chairman does not accord with the transcript I have before me.

Mr. SWIDLER. These are from my notes. I will be glad to check the transcript, which was not before me when I prepared these.

Mr. Moss. It starts at the bottom of page 73.

Mr. SWIDLER. Very good. Well, here we are. I don't want to be unfair. I think this is the point that hit me. I would have checked the transcript if it were available in time—

> Still this Commission has done little to improve it, despite the fact that a growing body of facts indicates that it has been ineffectual and that the price of gas today is more the result of competitive forces in the marketplace than the result of so-called area pricing regulation.

I think this disparages the need for regulation, Mr. Moss. I am glad to use the exact language. But it holds to me the significance I drew from it yesterday in my notes.

Every day, Mr. Chairman and Mr. Moss, and other members of the subcommittee, many contracts are filed with the Federal Power Commission by producers at rates well in excess of our ceilings. Were these ceilings not in effect, those contrasts would be operative. I do not see how Mr. Morgan can say that the ceilings are ineffectual, when the producers and the pipelines are entering into contracts every day for large quantities of gas at prices well above ceiling, and this, despite the existence of a firm hold on the ceilings. Where would these contracts now be, at what levels would they now be entered into if there were no ceilings at all?

Now, Mr. Morgan has said that we inherited a cumbersome pricing mechanism, the area rate proceedings. This is true. These proceedings had been started when we came here but they had been barely started. They had been given no substance and were about to be abandoned, as individual pricing had been abandoned, when this Commission brought them under control and began giving them vitality and meaning and significance.

Are they cumbersome? They are very cumbersome. The problem of regulating producer prices in the field is one of the most challenging that has ever faced any administrative agency. Here you have thousands of producers, large and small, finding gas at every elevation from a few hundred feet to many thousands of feet, in combination with oil, with condensates, or gas alone, near or far from pipeline systems, belonging to independent producers, and pipeline systems alike. To try to develop a pattern, a workable administrative program that will price natural gas under those circumstances is one that I regard as a supreme challenge to the ingenuity and ability of the Commission.

The area rate proceedings, to my mind, are by far the best solution to this problem. I think they will work. I think we are making a record in our lead case, the Permian Basin proceeding upon which we will, in the course of the next few years, be able to establish fair and reasonable ceiling prices throughout the whole country. But it is not simple, it is not easy, it is cumbersome.

But what is the alternative? The individual proceedings which bogged down to the extent that they became a national scandal? To attempt to set separate prices for each well or for each company? Can you imagine the problems of administration in an industry where frequently a single well will have many owners and if you are going to set separate prices for each company or owner, you will have a number of different prices for gas from each well, let alone from each field.

It is easy to say, Find some other solution. This is the solution that the Federal Power Commission thinks is the right solution; this is the one we are working on.

Mr. Morgan says exempt the small producers. We have looked at that question. We would like to exempt the small producers but the small producers, if they have unregulated prices, introduce an element which makes regulation of the large producers very difficult. It is not easy to have a system of controlled prices if many producers in your area are selling at higher prices.

Not only that, but the smaller producers can trigger the "most favored nation" clauses and bring on the increases by the large producers.

The CHAIRMAN. Maybe it would be a lot easier and more simple if you would just recommend and adopt the Harris-Fulbright bill that was vetoed a few years ago.

Mr. SWIDLER. Well, this is the point, I think, that Mr. Morgan was, I understood, inferentially suggesting and that Mr. Drew Pearson's column was suggesting. It said that Mr. Morgan and Mr. Harris had this in common.

The CHAIRMAN. I think the distinguishing feature is that the bill did not do what Mr. Morgan suggests, but the bill was more in line toward the general approach to that, as you are arguing here, when you go back and analyze the provisions of the bill.

Mr. SWIDLER. Well, I will——

The CHAIRMAN. If you want to go back to 1949, the one Mr. Truman vetoed, that would be in keeping with what Mr. Morgan suggested. Well, I do not want to take you off your subject.

Mr. SWIDLER. I do not think I want to discuss that bill at this time, if I can avoid it.

The CHAIRMAN. Yes.

Mr. SWIDLER. Mr. Morgan's next suggestion is that we initiate an inventory of the gas supplies of the pipelines, as I understand it.

Mr. BROTZMAN. I am sorry, Mr. Chairman, I could not hear that last statement.

Mr. SWIDLER. That the Commission initiate an inventory of the gas supplies of the pipeline, as I understand the proposal. I have a copy of the transcript by my side. I will read that:

> I believe, too, that we should regulate strictly the pipelines purchasing programs and equip the commissions with an up-to-date inventory on all gas available in the United States and use competitive forces to the extent that we possibly can.

That is an excellent suggestion, Mr. Chairman. Mr. Morgan well knows that months ago, the Commission directed at my suggestion, that the staff do just that, and it is now engaged in making such an inventory.

Next, says Mr. Morgan, "We need a uniform system of accounts for such producers, a long-postponed responsibility, under which no steps whatsoever are being taken to discharge."

There are two answers to this one, Mr. Chairman. I agree that it would be useful to have a uniform system of accounts for gas producers. But this committee well knows that we are talking about a very complex and difficult problem. The gas producers are the entire petroleum industry. They produce the gas and the oil together, and the question is how you make the allocations within the industry, this complex petrochemical industry, how you avoid, in the process of establishing a system of accounts for the gas end, taking control of the oil end, where we have no jurisdiction. The products come out of the same pipe. The second part is that this is not a field in which we are idle. Our staff has instructions to try to develop such a system, first as applicable to the pipeline producers, to test it out without embroiling the whole petroleum industry in a half-baked plan.

We have developed, in connection with the area rate proceedings, appendices which secure information from them on a more comprehensive scale than ever before in history, and this may well prove, and I think will prove, to be of great help in moving us along toward the goal of a uniform system of accounts.

But this is a difficult, important matter, and I am sure that this committee is aware that this is not the work of a day and that you will not get such a system of accounts simply by saying we ought to have them.

The next point was the settlement program.

The CHAIRMAN. The what?

Mr. SWIDLER. The settlement program—the pipeline settlement program. I would like to read what Mr. Morgan says on this one. This is beginning on page 75:

> These settlements in my opinion, are a very expensive device from the consumer's point of view, for the clearance of the Commissioners' backlog.
>
> I will cite as an example the *Tennessee Natural Gas Pipeline Rate* case, which we settled a few weeks ago and in which I did not participate in the decision. I will tell you why.
>
> There were approximately $320 million of rate increases subject to refund in this case.

The FPC staff was of the opinion that the refund should be about $210 million of that total; over two-thirds. Tennessee went to 100 intervenors in the case and got their approval for a voluntary refund of $134 million.

This is $76 million less than the staff recommended, and I did not participate in the decision of the case because of that tremendous gap.

Now, of the $350 million that we have accepted or ordered as refunds in settlement cases, if you apply those figures I think you come up with a conservative result that the staff would probably have recommended about $500 million refunds instead of the $350 million that were refunded.

Now, the question that this presents, gentlemen, is this:

Is $150 million of hard-earned consumers' cash paid out, that they will never get again, never have returned to them, a proper price for helping to clean up the FPC backlog of rate cases?

Now, this does a great deal of damage, Mr. Chairman, to a very important, very successful program. It is absolutely untrue that the staff recommends $210 million. This was the position at the initiation of the negotiations. This was a bargaining position. Every one of these settlements was negotiated by staff and recommended by staff—every one. It is a calumny on the Commission which Mr. Morgan is a member of to imply that the Commission rejected staff advice and approved settlements at lower figures than staff recommended. Every one of these settlements, so far as I know, and I think I know, represents the staff's best judgment as to the most that could be obtained under litigation.

That got the headlines, Mr. Chairman, and a lot of people in this country think that the Commission is not doing its job because of this figure lightly tossed off during the hearings yesterday.

I would like to read, if I may——

The CHAIRMAN. You may proceed.

Mr. SWIDLER. The Administrative Conference of the United States made a study of the Federal Power Commission's procedures. The reporter was Prof. Roger C. Crampton, of the University of Michigan. His report on the settlement program I shall read in part.

The potential of settlement devices in disposing of a large number of cases, once they have been fully prepared by the staff, is very great.

I may say that all these were fully prepared by the staff.

During a 6-month period in 1961–62, the Commission entered settlement orders in 29 major pipeline rate cases involving refunds to consumers of over $100 million. The amounts refunded in particular cases varied from approximately 70 percent of the amount subject to refund in one case to a low of 4 percent in another, depending upon a prediction of the results that could reasonably be expected if the cases went through the decisionmaking process and the other ingredients of the bargaining situation. Settlements were coordinated and supervised by a special group of top-level personnel. The pipelines had been under considerable pressure to settle their outstanding rate increase applications because the extraordinary delay has pyramided various increases and left them with huge amounts collected subject to refund. The staggering amount of contingent liability involved has threatened their ability to obtain new financing. On the other side, the distributors have generally been willing to settle providing a moratorium on new increases for a new significant period was involved and the bargain was sweetened with a substantial cash refund. There tends to be greater readiness on all sides to settle as the amount collected subject to refund increases. The presence of numerous intervenors in some cases, one of which might attempt to hold up a settlement for special treatment from the pipeline on an unrelated matter, is said to have complicated some settlements. It is possible that the peculiar backlog and other conditions which created pressure for settlement by all parties may not continue to provide as favorable an environment for settlement once these special conditions are eliminated. However, it seems more than likely that further clarification of substantive standards which the Commission has promised—

And which is proceeding—

will provide greater predictability in pipeline cases, making prolonged and expensive litigation unlikely, except in cases raising novel questions.

And the Committee on Rulemaking itself, in its report adopted by the entire Conference, had this to say:

The beneficial aspects of prompt settlement of rate cases are obvious. The primary dangers involve the possible sacrifice of the public interest in order to avoid formal proceedings or to make a paper record of accomplishment. On balance, the committee is impressed with the possibilities of the use of settlement procedures in connection with rate filings and suspensions, and urges that agencies make more extensive use of this technique as a method of reducing the volume of formal actions the agency must process as a result of suspensions. Of course, the agency must make it perfectly clear to all interested persons that if complaints are filed against rates accepted after settlement negotiations, such complaints will be considered on their merits. The necessary conditions for effective use of settlement techniques include, one, submission of detailed information in support of rate filings.

This we require.

Two, vigorous staff participation during the early stages of a case.

This is the uniform practice.

Three——

Mr. Moss. Would you repeat that, please? I did not get it.

Mr. Swidler. The second requirement is vigorous staff participation during the early stages of a case.

I interpolated that this is the uniform practice.

Three, the early designation of a presiding examiner and the effective use of conference procedures.

I interpolate, our regulations have been amended to provide for extensive use of prehearing conferences and for the early designation of the presiding examiner.

Finally, the existence of sufficient guidelines so that a settlement can be built on expectations concerning ultimate agency decision.

And we proceed, case by case, to narrow the area of doubt.

Now, this represents the studied appraisal of objective experts not trying to help and not trying to hurt, but just to report the facts to the Administrative Conference.

As the summary statements that I read make clear, the pipelines had accumulated so much in the way of rate suspensions that it was impossible for them to show firm financial figures. It impaired their ability to finance. This unquestionably has been of great help in enabling the Commission to work out its settlement program on a firm basis. I do not say that settlements this favorable can always be worked out. What I do say is that the Commission has been alert to take advantage of the fact that the pipelines for reasons of their own were willing to settle on a fair basis.

The next item that Mr. Morgan complains about is that we have not yet changed the Commission rule on the treatment of liberalized depreciation. There is a history on this problem. A long time ago, the Commission decided that it wanted to review the precedents and we selected a case as a vehicle for doing so, the Alabama-Tennessee case. Hearings—oral argument, rather, was ordered in the Alabama-Tennessee case on this one issue.

A few weeks before the date scheduled for oral argument the Court of Appeals of the District of Columbia in the *Panhandle* case handed down a decision saying that the Commission had no discretion with respect to the treatment of liberalized depreciation.

In view of that cloud hanging over the proceedings, the argument was postponed.

In the meantime, the Commission applied for rehearing in the *Panhandle* case. Rehearing was granted before the court of appeals en banc. The matter was argued and is now before the full court for decision. We await that decision. If we have discretion to review rulings on liberalized depreciation we shall do so. The hearings in Alabama-Tennessee have been suspended, they have not been called off.

This is the full story, Mr. Chairman.

The CHAIRMAN. Congress provided the depreciation in such cases, didn't it?

Mr. SWIDLER. The question as to what Congress intended is apparently one not free from doubt. And we have set this matter for hearing so that we can get oral argument on every phase of the liberalized depreciation question.

The CHAIRMAN. Did not the court say that Congress has not provided, that with respect to utilities, ratepayers are entitled to share in the temporary benefits resulting from the use of liberalized depreciation in computing income taxes?

Mr. SWIDLER. I think there have been a good many court rulings, and they are not all consistent. We think that we have some discretion as to the treatment of liberalized depreciation. And if the court sustains us in that view, we will exercise that discretion.

The CHAIRMAN. Yesterday I asked Mr. Morgan about the most recent provision of the 1962 7-percent investment credit.

Mr. SWIDLER. That is involved in a rulemaking proceeding, Mr. Chairman.

The CHAIRMAN. And therefore I would not ask you questions about it.

But on the general broad policy, does not the Commission take into consideration the language that is in the legislation itself, together with the legislative history behind it?

Mr. SWIDLER. Of course, Mr. Chairman. That is controlling. The trouble is, lawyers don't always agree what the words mean and what the legislative history points to. But if we can find any clear expression of congressional will we follow it.

The CHAIRMAN. I think that is commendable for all Commissions to do that. Some of these problems could be minimized.

Mr. SWIDLER. Yes, sir.

Mr. Morgan mentioned tax consolidation, but said that it was now pending for consideration. I don't know why it was brought up. It is involved in a pending case. And we will decide it.

Mr. Morgan criticized the technical advisory committees which he said were—I quote—I think I am quoting, these are from my notes—"Set up with my reluctant concurrence." He says they should either be abolished or broadened.

Well, let's take the advisory committees on the national power survey first. We have an advisory committee on the gas side, and

we have the advisory committees on the national power survey. On the power side we have perhaps 150 people from all segments of the industry working together for the first time, providing essential information as to the plans of their companies, their load forecasts, their technological experience, their expertise in dealing with common problems in generation and fuel handling, or in transmission. And as I said, for the first time they are sitting around the same tables and working together.

I think this is very good for the country, that there should be a forum where all of them look at their problems from a single national point of view, and that the right place for them to do it is in the offices of the Federal Power Commission.

This, I think, is one of the most encouraging developments in power system history.

We have tried to balance these committees among the various segments of the industry. I don't suppose in this, any more than in anything else that you do in a badly divided industry, that we will ever win a 100-percent approval, but I think most people think we have done a fairly good and evenhanded job, and that we have competent advisers. But we have made clear that these are advisory committees, and that the power survey report will be the Commission's report and not an industry report, not a report by any segment of the industry, Mr. Chairman.

On the natural gas side, the Natural Gas Advisory Council meets infrequently. I think it has held a total of three or four meetings so far. It was established in a way that we think safeguarded the consumers interest. Representatives of the distributors, consumers, and regulatory agencies are on it. It may be that that representation could be improved, and Mr. Morgan knows that I have suggested some broadening of representation of consumer interests, and that it is still before the Commission for discussion.

But I don't think it can serve its purpose as a way of finding out what the industry is thinking, as a medium for genuine communication, if we invite all the groups that Mr. Morgan says should be invited, or as I believe he put it, "even if they have to meet in a convention hall."

That would be striking a public pose, it would not be working toward any genuine level of communication.

The next point Mr. Morgan makes is that the regulation of ex parte communications should be broadened to include staff people who advise the Commission, and there should be a public defender within the staff.

The Commission now has under consideration a broadened ex parte rule. So far as the public defender concept is concerned, our whole staff is a public defender staff. And I oppose the public defender principle, because the effect is to relieve the staff and the Commission of their responsibilities as public defenders.

Mr. Morgan's eighth suggestion is that we don't have close enough liaison with other agencies. Our relationships, he says, are touched and tinged with jurisdictional rivalry and discord. Of course, these other agencies—I presume he means departments—are headed by Cabinet officials.

How does he reconcile this with what he says about White House domination? Some of these departments are parties in our proceedings, Mr. Chairman.

I am not making a case for strife and discord with our sister agencies; on the contrary, I believe in harmonious and mutually helpful relationships. I also say there must be proper relations when those other agencies are participating in litigation, and that we can no more indulge in ex parte conferences and communications with regard to sister agencies than we can with other parties to the proceedings.

Mr. Moss. Mr. Chairman, I wonder if I might interpose.

Again, Mr. Chairman, I think that you are reading less than the entirety of the statement, because on page 8, paragraph 3, Mr. Morgan said:

> In my opinion, this is one of the greatest failures of all of the regulatory agencies, as many courts have pointed out, and steps should be taken by the Congress to deal with the problem of interagency policy formulation.

Your ex parte contacts must be proper. A recommendation is going up for action by the Congress, a recommendation which, I might add, was made in response to my questions and directed to a committee.

So I think that the comment you have made as to this particular recommendation falls, because you have not taken into consideration the entirety of the statement.

Mr. SWIDLER. May I read it, Mr. Moss.

Mr. Moss. I have just read it.

Mr. SWIDLER. You didn't read the part I am about to read.

Mr. Moss (reading):

> The Federal Power Commission is charged with the responsibility of close liaison with other Government agencies, but the liaison is not close enough or cooperative enough to enable the Commission to judge properly the impact of its action on programs set up by the Congress to be administered by those other agencies.
>
> Further, the liaisons presently existing are tinged and colored by existing rivalry and squabbling of the most pettifogging nature, with the results that the attempts at coordination contained within these consists of interagency discord.
>
> In my opinion, this is one of the gravest failures of all of the regulatory agencies, as many courts have pointed out, and steps should be taken by the Congress to deal with the problem of interagency policy formulation.

I say that the last paragraph has to be read with that statement to give the sentence continuity.

Mr. SWIDLER. If you read it that way——

Mr. Moss. How else can you read it?

Mr. SWIDLER. I read it as being a criticism of the Federal Power Commission for not working cooperatively with other agencies. I read it as a criticism of the Commission.

Mr. Moss. I think you are seeking the opportunity to be offended.

Mr. SWIDLER. I certainly do not want to be—I recognize that in this troubled line of work one can't afford to be oversensitive, and I don't mean to be so.

Mr. Moss. I am afraid that you are bordering on that at the moment.

Mr. SWIDLER. But this is my reading.

Nine, regulatory agencies need more insulation from uncertainty as to tenure, greater pay, longer term, and so forth.

Now, this is a general recommendation. I agree on the pay. I am not sure I agree on the term. I don't know that the agencies with the longest term have the best record. I think perhaps sometimes it is very useful for the President to be able to conduct a house cleaning. I think perhaps the trouble with some agencies is that house cleanings are overdue, and are deferred by terms that are too long.

At any rate, this has never been a matter of difference between Mr. Morgan and me, it is a matter, I am sure, one of the few matters he raised we can discuss without emotion.

"Each commissioner," he says in his 10th suggestion, "needs a larger staff." The commissioners used to rely entirely on a group of opinion writers when we first came. Now each one has a full-time assistant of his own choice. It may be that they need a second. This is a matter which I may say is under consideration.

Mr. Morgan thinks that the Commission's new Office of Economics which was recently established should be strengthened. I have no quarrel with this recommendation.

His final point is that the Commission is relapsing into anonymous our orders, that they should all be signed. I don't think that a study of our orders will bear that out. I think that all of the opinions or virtually all of the opinions are signed. There is a commissioner who takes responsibility for each of them and works with our opinion writing staff to be sure that they meet the standards of the Commission and reflect the views of the Commission.

Mr. Chairman, I see that I have been speaking for quite a while, and I will now make myself available for any questions the committee may wish to ask.

The CHAIRMAN. I see the time is now almost 12. I should think that to start with any questions now would run us over the noon hour. I think this would be the best time to recess for the noon hour and come back at 2 o'clock.

(Whereupon, at 11:55 a.m. a recess was taken until 2 p.m. on the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Mr. Swidler, you may resume. I believe you had concluded your statement when we recessed at noon.

TESTIMONY OF HON. JOSEPH C. SWIDLER, CHAIRMAN, FEDERAL POWER COMMISSION—Resumed

Mr. SWIDLER. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Moss, any questions?

Mr. Moss. Yes, Mr. Chairman.

Mr. Swidler, first I want to apologize for not having been present at the opening of your remarks this morning. I was delayed, because of some problems of constituents. I regret it very much, because I think the matter we have before us is a very important one. You have been in public service a great many years, haven't you?

Mr. SWIDLER. Yes, sir.

Mr. Moss. And you have held appointive posts prior to becoming a member of the Federal Power Commission.

Mr. SWIDLER. Not Presidential appointments, sir, this is my only Presidential appointment.

Mr. Moss. I said appointive.

Mr. SWIDLER. I have been an employee of various Government agencies for many years, sir.

Mr. Moss. To your knowledge, is it unusual for a person holding an appointment, upon reaching a decision to retire or not to seek reappointment, is it unusual for one to inform in advance and, in the course of the letter of information, express views as to the field in which they operate?

Mr. SWIDLER. I do not recall any letters similar to this one, in my experience.

Mr. Moss. That is not what I asked you, Mr. Swidler. I asked you if it was unusual, if a man retires to not seek reelection, perhaps as much as a year ahead, he informs his constituents—is it unusual for him to issue in connection with that statement of intent to retire a bit of advice to his constituents?

Mr. SWIDLER. To the extent that I have never seen anything like this before, I would say——

Mr. Moss. You have never seen anything like this?

Mr. SWIDLER. No, sir; I think it is very unusual.

Mr. Moss. Well, I have seen letters informing people that they are not going to seek reappointment, commenting upon personal views gleaned not only from the specific service but from allied interests.

Do you think it is improper that a person do this?

Mr. SWIDLER. Mr. Moss, I tried to make clear in my testimony that what I thought was improper about it was that the letter was not intended to be helpful, either to the agency or to the President, but was intended to imply——

Mr. Moss. How do you know what the intent was, sir?

Mr. SWIDLER. Because he states, sir, and this is the way everybody has interpreted it and I do not think it is susceptible of any other interpretation——

Mr. Moss. When you use the term "everybody," I want you specifically to exclude me. So we must now concede that it does not apply to everybody.

Mr. SWIDLER. Everybody but you, sir.

Mr. Moss. Well, I have talked with others who do not agree with that, so it must then broaden. It is not everybody but me; it is some other than you and perhaps others present here. I do not think you can even say you have reached the point where a consensus of interpretation of this letter is well developed. Or do you think you have?

Mr. SWIDLER. Sir, I know the interpretation that has been given by it in the press, I know what my family and my friends interpret the letter as saying, I know what my fellow Commissioners think.

It seems to me that the reflections I see of the letter indicate that it was intended to embarrass and to imply that there were serious charges against his fellow Commissioners.

Now, if members of this committee did not so consider it, I do not understand why you are having this hearing.

Mr. Moss. I do not know what the members of the committee considered it to be.

Mr. SWIDLER. Let me read to you the paragraph that I read before, Mr. Moss, and see——

Mr. Moss. Oh, I know we shall——

Mr. SWIDLER. See if you can find anything in this except——

Mr. Moss. We shall go over it with care.

Mr. SWIDLER (continuing). A signpost to everyone.

Mr. Moss. Mr. Chairman, I have become rather sensitive over the years, 14 years in elective office, and I have learned how artful interpretations can be when you deal with parts out of context.

I am very conscious, when I write a letter, of the possible use out of context. And when I write to some, I with great care review each sentence and weigh each word because of the knowledge of the hazard facing any public figure who writes a letter. So I don't like to just take out of context. If we are going to discuss it, let us discuss it in its relationship of its parts one to the other.

That is how I want mine to be evaluated.

Mr. SWIDLER. Yes, sir.

Mr. Moss. The first paragraph—do you take any umbrage to it?

Mr. SWIDLER. No, sir.

Mr. Moss. And the second.

Mr. SWIDLER. Yes, sir; serious umbrage.

Mr. Moss. All right.

There are a number of reasons for my decision, but I am sure I should be considered less than gracious if I were to list them all.

Mr. SWIDLER. Yes, sir.

Mr. Moss. That is one you find repugnant?

Mr. SWIDLER. Yes, sir.

Mr. Moss. Why?

Mr. SWIDLER. I am sorry?

Mr. Moss. I say do you find that repugnant to you?

Mr. SWIDLER. Yes, sir; very.

Mr. Moss. Why?

Mr. SWIDLER. Because it implies to me, in a very left-handed way, that his experiences were such that if he revealed them he would be ungracious, that his experiences——

Mr. Moss. This was a case where he accepted appointment——

Mr. SWIDLER. Why would a man say a strange thing like that in a letter to the President, that he would be ungracious——

Mr. Moss. Because he might have felt that in his coming here, the discommoding of his family was too great a sacrifice and it might be ungracious to mention that to the President, knowing he had accepted an appointment knowing full well there would be a disturbance.

Mr. SWIDLER. He was staying out his term, sir. It would be not ungracious to leave after staying out his term.

Mr. Moss. That is not what it says here, is it?

Mr. SWIDLER. I am just saying what it meant to me and meant to a good many people.

Mr. Moss, I want to say, I am not trying to pick a fight here. I view myself more fought against than fighting. If I had seen any honorable way to avoid this confrontation, I would have done so, because

it is a great distraction, it has held up the work of the agency in an immeasurable degree. And when I was asked at a press conference following the initial publication of the letter, when the whole press came to me and said, "Are you going to answer these charges?" I held a press conference to try to allay some of these charges. I was asked the question, "Do you think there ought to be a congressional investigation?" and I said "I don't see enough to investigate."

And I did not encourage this investigation.

Mr. Moss. Let's go to No. 3.

Mr. SWIDLER. Yes, sir.

Mr. Moss. Do you find that that paragraph makes a statement which is bad advice or false? You can read in that a discussion of standards for an ideal regulator. Would you find it something with which you would disagree?

Mr. SWIDLER. Well, it is nothing that I would think that President Kennedy would need to know, sir.

Mr. Moss. Are you the one who determines what the President needs to know or does not need to know?

Mr. SWIDLER. No; but when I read the letter, I try to understand the intention as well as the words. In reading this letter, it is apparent to me that Mr. Morgan could not have thought these ideals would come as a revelation to the President, and he had some other purpose. The President is a very well informed man on the problems of regulation, a student of Government who sees these problems in great depth.

Mr. Moss. Mr. Swidler, you and I are not in any fundamental disagreement over the merits of the President.

Mr. SWIDLER. I know, sir.

Mr. Moss. That is not what I asked you. I asked you if you find anything in that statement with which you would disagree.

Mr. SWIDLER. I find in that statement, coupled with the second paragraph, and I do not want to—you say let's not take these paragraphs out of context. That is what I am trying not to do.

Mr. Moss. All right, let's go back to the second one. He states a number of reasons for his intention not to seek reappointment. Some of them he considered he would be less than gracious if he were to enumerate.

These might be purely personal. This is purely speculative as to what was intended there. You can place your construction, I can place mine.

Mr. SWIDLER. Mr. Moss, if this had been intended in a friendly way, Mr. Morgan would have written what he said here yesterday, that he had a beautiful ranch in Oregon to which he wished to return and he left with good wishes and with every effort to help prior to the time his term expired.

Why did he wait until he was here yesterday to suggest these normal, natural reasons for leaving?

Mr. Moss. Do you think you have the right to prescribe the form of comment of your fellow members on the Commission when they have decided to retire?

Mr. SWIDLER. No, sir; and if this letter had not been interpreted as an attack on me and on the Commission, I would not have responded.

But I think that this letter in that second paragraph carried the signal, which was not misinterpreted, that it was an attack, and so it has been interpreted virtually universally.

Mr. Moss. Well, let's take the second sentence. You find the first one, where he would be less than gracious to enumerate all of his reasons, objectionable, he might feel that he would be imposing on the President.

Beside, several of them are clearly visible to those who have read the dissenting opinions which I have been obliged to write during my services here."

What do you find demeaning about that?

Mr. SWIDLER. I think if you will read the dissenting opinions, you will see in the bitterness of some of the challenges to his fellow Commissioners, you will find that this is a strong tie-in, too.

Mr. Moss. We have that in many courts, don't we?

Mr. SWIDLER. I don't think you will find the kind of challenges of integrity that these dissenting opinions are full of, Mr. Moss.

Mr. Moss. I don't think there is a challenge to integrity. I think there is a vigorous statement of personal convictions. I have read the opinions, Mr. Swidler, yours and his. I might say there are some of his convictions that I might or might not disagree with. I would say there are some of your convictions too, that I might agree or might not agree with. But for vigor and clarity, I think his dissents are excellent.

Mr. SWIDLER. If Mr. Morgan thought he could take the curse off this attack by some platitudes about the respect he has for his fellow Commissioners, he is wrong. This was intended as an attack, it was interpreted as an attack, and it was allowed to develop into a full congressional investigation as an attack.

Mr. Moss. We are now talking about dissents. Do you want the statement you just made to apply to the dissents?

Mr. SWIDLER. I think he was trying to get maximum publicity and mileage and create the most problems for his fellow Commissioners in those dissents; yes, sir.

I don't disagree with the right of dissent.

Mr. Moss. Let me say you people on the Commission gave him the greatest mileage out of a dissent that he ever got, and you gave it to him by holding up the publication of the dissent. That is where he got the most mileage out of a dissent.

Mr. SWIDLER. Would you like me to discuss that, explain it?

Mr. Moss. No; this is not the proper forum for that. If I wanted you to explain that I would call you before my subcommittee. Do you mean to say that because you write a vigorous dissent and release it, you are trying to impugn the motives of your colleagues?

Mr. SWIDLER. No, sir.

Mr. Moss. I have written some vigorous ones in this Congress on reports filed by committees, and I have disagreed with men I have regarded as close personal friends and they have had the stature not to regard it as a personal attack. And I have been similarly dealt with in dissents and I have not felt it was a personal attack.

I think you have to be of sufficiently broad gage not to take the dissents as personal attacks.

Mr. SWIDLER. I don't want——

Mr. Moss. I think that that is far more of a reflection on you, sir, than on him. If you are going to deal with a dissent in that fashion, and you are going to say, temper your judgment so that you do not offend the thin skinned, you are going to take the vigor and much of the value out of dissents. I can show you language in dissents from very distinguished Americans that goes far beyond anything contained in the dissents that I have read coming from your Commission.

Mr. SWIDLER. Mr. Moss, there is a line of propriety beyond which——

Mr. Moss. Where has Mr. Morgan breached propriety in the dissents?

Mr. SWIDLER. I would be glad to go over them.

Mr. Moss. I would, too.

Which one do you want to go over? Which one do you want to refer to?

Mr. SWIDLER. Let me get a full copy, sir.

Mr. Moss. Which ones are we referring to?

Mr. SWIDLER. Let's take the *Pacific Power and Light* decision.

Le me instead take as my quote No. 1, Mr. Moss, the Arizona Power Authority dissent, in which Mr. Morgan first said, and I am quoting now from page 12:

I am constrained to remark, however——

Mr. Moss. Where are you reading from?

Mr. SWIDLER. Page 12 of the Arizona Power Authority dissent.

I am constrained to remark, however, that we should not allow the longstanding but usually harmless institutional rivalries between this agency and the Department of the Interior to vitiate the integrity of our judgment where the public's interest in an irreplaceable water resource is at stake. When limited to such picayune matters as our staff's approval to approve the rates at which the Interior Department may sell power from the Federal dams it operates, and Interior's reluctance to submit such rates to us except after long delay, the petty squabble between these two agencies over the bureaucratic question of jurisdiction is merely exasperating. But where it serves to obscure, obstruct, and frustrate the determination of that plan which will best insure the comprehensive development of the priceless waters of the Colorado, it is time to call a halt.

This says, as I understand it, that it is pettifogging jurisdictional, institutional rivalries that are responsible for that decision. I say it is a challenge of our good faith, and it is not the truth.

Then, in the same dissenting opinion, Mr. Morgan went on to say:

A great many people must live with and pay for the project we choose and for a very long time. If we license an inferior project, it is not very helpful to explain that we did it because someone, for reasons not necessarily—

This is page 11—

for reasons not necessarily having to do with the broad, general public interest, was in a great hurry to build it.

And I say that, too, goes not to our wisdom or prudence or judgment, but to motive and is unfair.

I think it is interesting that when this dissent was published, Mr. Morgan was not content with the usual procedures of the Federal Power Commission in releasing dissents, he had his own press release. And just for fear the newspapers would not understand that he was attacking his colleagues, he started his newspaper release with these

words, "In a sharply worded, 18-page dissent, Commissioner Howard Morgan pointed out" and sure enough, it got the headlines.

Mr. Moss. You object to his public-relations posture, there?

Mr. SWIDLER. What I object to, sir, is the lack of appreciation that he is a part of the Commission and that he can destroy, and that by challenging the integrity of his colleagues, he can leave us the rubble to clear up when he goes back to Oregon.

Mr. Moss. I didn't get that. Will you repeat that?

Mr. SWIDLER. Yes. I say that if he destroys on his way out, he will leave us the rubble to clear up when he goes back to Oregon with this kind of challenge to good faith which is destructive.

Mr. Moss. You think the Commission is such a weak body that a strong dissent will destroy it?

Mr. SWIDLER. I think this kind of a challenge of good faith is destructive and the capture of headlines by challenges to good faith is very harmful to the respect for administrative processes that the people should have and that they are entitled to have, I am convinced, in the work of the Federal Power Commission.

Mr. Moss. Do you have a manual on form and format of dissents?

Mr. SWIDLER. No, sir; and I did not get into these dissents, Mr. Moss. I just said this letter I could construe only as an attack. You brought up the dissents.

Mr. SPRINGER. Mr. Moss, I could not hear. I want to hear his last words.

Mr. SWIDLER. I said I did not bring up the dissents; I had no intention of discussing them; I am really not prepared to discuss them. They came into this conversation because Mr. Moss was challenging what was perfectly apparent, that the letter of resignation was an attack.

Mr. Moss. So you have then from the time of these dissents found your relations strained?

Mr. SWIDLER. Yes, sir.

Mr. Moss. You are entitled to that. I think it must be very uncomfortable, however, if you have to work on a commission where everything is in agreement and those who dissent must tread with great care for fear of offending.

Mr. SWIDLER. No, sir.

Mr. Moss. And I think it envisions the type of dissent which would be of little value. Again I would say, and you probably know far better than I, that this language is really mamby-pamby compared with some I have read. I say you know better than I, because you are an attorney and I am not, but I have read some very vigorous dissents that at times I thought bordered on the intemperate, but they were interesting to read and they presented an exposition of views and of convictions.

Mr. SWIDLER. There is nothing that I enjoy more, Mr. Moss, than a vigorous discussion of a point of law or a point of policy or a point of procedure. But I must say that when the challenge is to motive, to integrity, to intellectual honesty, this makes carrying forward a meaningful discussion very difficult. Now, Mr. Morgan and I——

Mr. Moss. Do you think any discussion of motive in a dissent is improper?

Mr. SWIDLER. I think it has to be recognized, Mr. Moss, that attacks on motives make discussions of the merits very difficult; that this is a last resort.

Mr. Moss. Sometimes a motive becomes very important.

Mr. SWIDLER. This is a last resort. When a man challenges motive, he is giving up appeals to reason.

Mr. Moss. Frequently you are dealing here with policy, aren't you?

Mr. SWIDLER. Yes, sir.

Mr. Moss. Not a clear matter of law, with considerable latitude. You do not think a person is entitled to examine motive or discuss it?

Mr. SWIDLER. I will repeat, Mr. Moss, when attacks are made on integrity, it becomes very hard to discuss matters of policy on their merits.

Mr. Moss. Can't you discuss motive without impugning the integrity?

Mr. SWIDLER. When the charge is improper motive, I think it challenges integrity.

Mr. Moss. I didn't see anything of that. A person can challenge motive very vigorously, without impugning integrity. I know people I regard very highly whose judgment I would question in some circumstances.

I would only say, if you are this sensitive, I would not want you to come out into my district and run a political campaign because you would find your feelings hurt a good part of the time.

Mr. SWIDLER. I am just sensitive enough to want to defend myself when a congressional investigation is held on charges against me—no more.

Mr. Moss. I want you to defend yourself with vigor.

Paragraph 2, then, of course, is the key to your feeling that this is a personal attack?

Mr. SWIDLER. Yes, sir.

Mr. Moss. And you only find paragraph 3 objectionable if it is read with 2. Standing on its own feet you would not find it objectionable?

Mr. SWIDLER. There is much in this that I would agree to—most of it, as a matter of fact, is framed in neutral terms and if intended as merely expressing the generalities applying to public administration; yes, there is a great deal that I would not quarrel with at all.

Mr. Moss. Then on its own you do not find it objectionable?

Mr. SWIDLER. Much of it, yes, sir.

Mr. Moss. Do you find any of it objectionable?

Mr. SWIDLER. I think I expressed some disagreement on the question of whether regulators should have long terms or short ones.

Mr. Moss. That is not in the letter. It is in the statement of recommendation.

Mr. SWIDLER. That is right.

But by and large, I do not disagree that men are the key to good administration and that every effort should be made to attract and hold able, vigorous, intelligent, forthright, courageous people.

This I agree with, and if that is all the letter says, then—if that is all I thought the letter did say—I would have no quarrel with it; no sir, none whatever.

Mr. Moss. Do you find anything wrong with the next paragraph?

Mr. SWIDLER. The one beginning "Under our laws"?

Mr. Moss. Yes.

Mr. SWIDLER. No, sir. I think by and large that is all right.

Mr. Moss. The next one?

Mr. SWIDLER. Well, sir, the next one, I think you get into some question there that I do not know my reading would be the same ase yours. I would read it as insinuating, sir.

Mr. Moss. Well, let's say that it insinuates. Would that take away the truth? Let's say, Mr. Swidler, that it does insinuate. Let's say it does.

Mr. SWIDLER. Yes, sir.

Mr. Moss. We will accept your hypothesis that it does insinuate. Does that detract from the truth in the paragraph, that if these things happen, this will result?

Mr. SWIDLER. No, sir; the only part of this that I object to is——

Mr. Moss. I am not always aware that every commissioner who comes before us is up to standard. I have met a few of them that I did not understand as having very much value on commissions.

Mr. SWIDLER. No; if not directed against anyone, I would not find too much to quarrel with here, and I think it is true that sometimes regulation can be a cover for a failure of protection of the public interest when it is not effective.

I think there are situations where the public thinks that their rights are being protected and they are not being protected. This is something I have pointed out, too, Mr. Moss.

Mr. Moss. Then you do not find that there is an untruth in this?

Mr. SWIDLER. No; I do not find there is an untruth in there; merely in its application to the Federal Power Commission.

Mr. Moss. Do you think it is a valid observation?

Mr. SWIDLER. I think it probably does apply to some agencies; yes, sir.

Mr. Moss. The next paragraph?

Mr. SWIDLER. The next one is a long paragraph; let me see. There is a lot in that one.

Mr. Moss. Do you find anything in that that you disagree with?

Mr. SWIDLER. Let me read it a sentence at a time:

> The big problem in the regulatory field is not ex parte communication, influence peddling and corruption—

I think I can agree with that, at least at the present time.

Next:

> In my experience as a regulatory official—

I don't know about his experience. Maybe he is correct in that.

> But abandonment of public interest can be caused by many things, of which timidity and a desire for personal security are the most insidious.

I think that is true in many cases, as a general matter. I do not feel it is true as applied to the Federal Power Commission and I would like an opportunity to answer it if it is a charge.

> This Commission must make hundreds and even thousands of decisions each year.

There he is tying it in with the Commission. That is true enough. We handle some very important cases, some of which involve hundreds of millions of dollars.

Without the needed sense of public responsibility, a commissioner can find it very easy to consider whether his vote might arouse an industry campaign against his reconfirmation by the Senate, and even easier to convince himself that no such thought ever crossed his mind. And if he can fool himself, whom can he not fool?

I think it is pretty clear that that is directed to the Commission.

Mr. Moss. Do you think there is——

Mr. SWIDLER. When he says "easy to consider whether his vote might arouse an industry campaign against his reconfirmation by the Senate," I think there he means that one or more of his colleagues can—have fallen prey to this danger.

Mr. Moss. Let's take it as a general principle. Do you think it is true?

Mr. SWIDLER. It is a tendency which one must keep in mind and try to steel oneself against; yes, sir.

Mr. Moss. In other words, it could arise?

Mr. SWIDLER. Oh, yes, sir. The question is did it?

Mr. Moss. I don't think that is the question before the committee.

Mr. SWIDLER. OK.

Mr. Moss. I would imagine if that were the question before the committee, we would have been having a different kind of investigation.

Mr. SWIDLER. I am very glad to hear you say that, genuinely, Mr. Moss, because I thought you had some question on it. If you have none, I am indeed happy about it.

Mr. Moss. The question was raised by you, sir, not by me.

Mr. SWIDLER. I thought it was raised in the letter, sir.

Mr. Moss. That is where we disagree. I think the letter is a general statement of advice, convictions, even some personal ones.

Mr. SWIDLER. I agree with the next paragraph, about finding men big enough for the job.

Mr. Moss. And the next one?

Mr. SWIDLER (reading):

I would like to mention a little caveat about men who do not become neurotic with worry after having cast a vote for the public interest.

I think if a fellow manages to cast a vote for the public interest, we ought to applaud him, even if he had some qualms in getting there.

Mr. Moss. Let's see. I was talking about the ones discussing agencies——

Mr. SWIDLER. I was talking about the material after the semicolon in the paragraph at the top of page 3. I was expressing a reservation about it. I think there are a lot of people who must summon up their courage to do what they think is right, and I think so long as they do, we ought to be content that this is an achievement.

Mr. Moss. He mentioned men who become neurotic. Neurosis is a different thing from mere worry about a decision.

Mr. SWIDLER. If you want to use it technically, yes, sir.

Mr. Moss. If you use the word "neurotic," I don't know where you would find a dictionary to give the technical definition.

Mr. SWIDLER. I think you have a point, sir.

Mr. Moss. In the next one, do you find anything?

Mr. SWIDLER. I think by definition, you cannot have all the agencies staffed with people of the quality of the half dozen who have been the best commissioners in U.S. history. You have to settle for people.

Mr. Moss. He says admittedly there is no oversupply—there never was.

Mr. SWIDLER. There is an undersupply.

Mr. Moss. "But such men make great"—not good, but great—"commissioners."

Mr. SWIDLER. I think you must make every effort you can to get the best people for the jobs.

Mr. Moss. This does not deny that, does it?

Mr. SWIDLER. OK.

Mr. Moss. Now, the next one:

As you well know, there has been a great deal of study of regulatory agencies lately and with good reason.

Mr. SWIDLER. I think I would like to say one more word about the paragraph before, the one that ends with "hard work instead of 'streamlining' and wall chart juggling."

I found it hard not to take that paragraph somewhat—I will not say personally, but at least as directed to the Commission, because we have installed a new set of wall charts which we call our management information system.

Mr. Moss. Every agency in Washington has, haven't they?

Mr. SWIDLER. I don't think so, because every once in a while they come around to see ours.

Mr. Moss. Every agency I go to for a briefing, I find they have a set of wall charts.

Mr. SWIDLER. We didn't until recently. We got one to try to find out where we stand, to show the disposition of various types of work as compared with the targets and to show us where we are falling behind and what accounts for it.

I could not help feeling that that was a rather barbed remark.

Mr. Moss. But his general advice—you would not disagree with it, would you?

Mr. SWIDLER. Yes; I would. I think it is very important——

Mr. Moss. Let's get this. You are saying that wall chart juggling is far more important than hard work?

Do you want me to believe that that is what you want to tell me?

Mr. SWIDLER. No; I think some of the hard work should be directed toward maintaining a system of keeping track of the work and of keeping track of whether you have met your targets or not and trying to find out what needs to be done in order to speed up the work, that this is where some of the hard work should go, that there isn't a real conflict between hard work and maintaining systems of supervision over your work, that the two are quite consistent and some of your effort should be directed toward control.

Mr. Moss. I have seen agencies come in and put on a beautiful demonstration of their procedure, and then one of them in particular I investigated during the past 3 years, and I was shocked to find how inefficiently managed it was. But of course, if I had just taken the first presentation, which was a masterful job of wall chart juggling, I could have been misled.

Mr. SWIDLER. I agree with that, sir. One must go behind the charts.

Mr. Moss. Still, as a general observation, do you think it is invalid?

Mr. SWIDLER. If not directed at anybody in particular, no; I think that is all right.

Mr. Moss. It is in context with this. It says that—

> I should, however, like to make a general comment concerning the regulatory agencies which may be of small help to you, to my successors, and to the public interest.

And obviously, you feel it is of small help. Nevertheless, it is in context with that statement that the advice is given?

Mr. SWIDLER. Yes, sir.

Mr. Moss. Then the last three paragraphs are fairly general?

Mr. SWIDLER. Yes; no quarrel with those.

Mr. Moss. But really, when you get down to it, you object to the letter because you feel it constitutes a personal attack upon you?

Mr. SWIDLER. Yes, sir.

Mr. Moss. Yet would you not have great difficulty, Mr. Swidler, as imagining yourself as the type of man this letter is describing that should not be in office——

Mr. SWIDLER. Yes, sir.

Mr. Moss. It really describes the type of person that should be and the type that should not be.

Reading the letter, did you honestly feel it described you?

Mr. SWIDLER. I did not think so, but the papers thought it did.

Mr. Moss. I read a lot of things about the Congress. We are one of the favorite whipping boys of the public, and I do not get all heated up that somebody do something to satisfy my feeling of wounded pride. I read it and if I don't feel that it refers to my type of Member, I do not bother with it too much, because if I did, I would be running around here in high dudgeon all the time.

But you, fellows do not begin to get the abuse that we do.

Mr. SWIDLER. Members of Congress acquire a greater degree of nonchalance about these things, perhaps, than agency members do. But I want to impress upon you, Mr. Moss, that I am here, not complaining, but in response to the summons of the chairman of the subcommittee, and I am here to defend myself because he has told me that I am under attack and I must defend myself here. That is all I am trying to do.

Now, who attacked me?

Mr. Moss. I don't know.

Mr. SWIDLER. I can feel the bullets whistlng around my head. Somebody is either aiming at me or he is mighty careless with his gun.

Mr. Moss. I haven't seen any attacks on you. I saw one a few years ago, but I have not seen any recently.

Mr. SWIDLER. Even if I were summoned, if I didn't feel I was attacked——

The CHAIRMAN. Let's not let the record get far beyond what the facts were. You were not summoned here, were you, Mr. Swidler?

Mr. SWIDLER. I was invited, Mr. Chairman.

The CHAIRMAN. You were given an opportunity, weren't you?

Mr. SWIDLER. Yes, sir. I appreciate the opportunity, sir.

Mr. Moss. There are probably a great many things I could ask you about cases, but I don't think it is any of my business. You have stated your position in opinions, and I have the right to agree with you, disagree with you, evaluate your performance, on the basis of those decisions.

Mr. SWIDLER. Thank you.

Mr. Moss. As I have observed before, some of them I agree with, some of them I disagree with vigorously. As I have said, if I were to write the dissent on some, perhaps you might be more offended than you have been.

Mr. SWIDLER. I do not think so, sir.

Mr. Moss. On the other side of the coin, on some, if I were to write them, they would be glowing tributes, because I have strong convictions in the field in which you operate, and a great deal of interest. And I am concerned over the matter of these policies that were proposed yesterday. I sought them, and No. 1, which lays out a hypothesis of a means whereby the Commission could be dominated by the White House, do you concede that under any condition that would be impossible?

Mr. SWIDLER. No, sir; I certainly do not. I think that the problem of preserving the proper role of the administrative agencies in relation to the legislative and executive are matters that need constant review and in which there is a great body of informed scholarly opinion, and where our conceptions keep changing with the times.

Mr. Moss. Here is an area where reasonable men may differ.

Mr. SWIDLER. Yes, sir.

Mr. Moss. They should not at any time be personal in the differing.

Mr. SWIDLER. Exactly; that is right.

Mr. Moss. I believe that at least four of the members here today about 3 years ago joined in a report of this subcommittee which recommended that the Chairman not be designated by the President; am I correct, Mr. Chairman?

The CHAIRMAN. You are so far as I am concerned.

Mr. Moss. Mr. Springer and Mr. Younger—I think we had looked at it.

We were concerned over the preservation of the independence of these regulatory commissions.

Now, in all candor, I thought that your dismissal of these recommendations reflected, as I indicated to you during the course of your discussion, a considerable amount of prejudice toward the proposal rather than going to the merit of the suggestions themselves.

We are really far more interested here in the merit of suggestions than we are in the personalities of any individual.

Mr. SWIDLER. This is right——

Mr. Moss. It is a far more constructive contribution you make when you deal with the merit without involving in comment on the personality differences or making evident personality differences between yourself and the proposer.

But I think that occurred on a number of instances.

Mr. SWIDLER. I agree with that. I think as a serious proposal, it should be discussed very objectively and without personalities.

Mr. Moss. I would be interested, Mr. Chairman, in receiving from you, as you have time, objective comment, divorcing personalities, objective comment on the points that were made here yesterday as recommendations from Commissioner Morgan.

Some of them appeared interesting to me. Some of them I did not agree with. But I would like to have the benefit not only of his views, which I regard as having value, but yours as well.

Mr. SWIDLER. I shall review my testimony and supplement it if I failed to state my position adequately.

Mr. Moss. I made a note here throughout this discussion of his, that you would repeatedly say, "Mr. Morgan knows that I have done this or that or proposed or suggested this," which was an avoidance of the merits or dealing with the merits of these recommendations or suggestions he made.

Mr. SWIDLER. You understand, Mr. Moss, that I do think I was attacked or I would not have responded in that way. I have no desire to bring in personalities if it can be avoided.

My judgment is that these attacks were personal.

Mr. MOSS. You know, tanners use salt water to toughen the hide. Maybe you had better do that, because you are going to have other people who will perhaps express wrong opinions, and they will do it without perhaps the slightest prejudice to you as an individual.

I think you have to learn to roll with the punches and take it.

I think that is all the questions I have at this time, Mr. Chairman.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Chairman, I was very much interested in what you had to say and I have counted, I believe, on four occasions, that you said that you believe that the letter was an attack.

Mr. SWIDLER. Yes, sir.

Mr. SPRINGER. On you and on the Commission.

Mr. SWILDER. Yes, sir.

Mr. SPRINGER. Well, after all that was said yesterday, I am happy to find one person who agrees with me that it was an attack.

That is what I said it was here yesterday. I am certainly not impugning anybody's motives who does not believe that.

The reason I did, and as I said to Mr. Morgan yesterday, in my district, there were headlines in every paper reflecting exactly what you have expressed.

I will quote one of them—

Member says FPC not regulating public interest.

Another one said:

Member attacks Power Commission.

Now, I had some pretty strong language yesterday, and I think there were some people who thought that maybe I overstated it. After listening to you, I think it is about right. I would have had no objection if he had taken those recommendations which he stated here yesterday and put those in the form of a statement and forwarded them to the White House as recommendations for helping the Commission by improving it.

But I think the press, I think everyone who read this letter came to exactly the same conclusion, that this was an attack upon the Commission.

I said yesterday that this was an attack upon the Commission, unsupported by any evidence and I said that was the worst form of McCarthyism, and I want to repeat it today.

Let me ask you just these questions:

How many other members are there on the Commission?

Mr. SWIDLER. There are a total of five, sir.

Mr. SPRINGER. Has there ever been a decision down there that has been rendered, so far as you know, in which any members of the Commission, including Mr. Morgan, has ever been overcome by unusual pressures and rendered a decision accordingly?

Mr. SWIDLER. Not that I am aware of, sir, no, sir.

Mr. SPRINGER. Have you had a chance to talk with the other Commissioners about this letter?

Mr. SWIDLER. Informally, yes, sir.

Mr. SPRINGER. Informally?

Isn't the belief of those members, other than Mr. Morgan, that this was in the nature of an attack upon the Commission?

Mr. SWIDLER. I hesitate to speak for the other Commissioners, sir.

The CHAIRMAN. Will the gentleman yield?

Mr. SPRINGER. Yes, sir.

The CHAIRMAN. I am sorry to learn that the gentleman was ill this morning, but we got a report that he could not be here, but I made the statement that other Commissioners who felt they might have been attacked would be given the opportunity, if they desired, to come before the committee.

Mr. SPRINGER. Has there been any occasion in the Commission where you felt that any member of the Commission yielded on his own conviction because of a desire to conform with the other members, because of timidity, or for any desire or from any desire for personal security?

Mr. SWIDLER. No, sir.

Mr. SPRINGER. Do you know of any Commissioner who has ever rendered a decision who modified his conviction in that decision because he might arouse an industry campaign against his reconfirmation by the Senate?

Mr. SWIDLER. No, sir; I do not.

As applied to me, in particular, and I do not want to get personal beyond what is appropriate here, I would think that was particularly misdirected. As it happens, I was not a political appointee, my confirmation hearings reveal that I informed my Senators that I had been offered this post, and they heard it from me. They did not solicit the position on my behalf. The President offered it to me because he thought that I was the man he wanted, mistakenly or otherwise.

I left a good law practice. I have worked for the Federal Government now for many years. At the end of this term, my Government will provide me with a generous pension, and I have a law practice to go back to. I do not need to stay in this position if I cannot make a contribution to it.

Mr. SPRINGER. Mr. Chairman, do you know of any member of your Commission down there who has become neurotic with worry after having cast a vote for the public interest?

Mr. SWIDLER. We are all at our desks every day, sir.

Mr. SPRINGER. Would you answer that yes or no?

Mr. SWIDLER. No, sir; I do not know anybody who is neurotic.

Mr. SPRINGER. I just want this record to be clear, because Mr. Chairman, these have been the nature of the attack, the very things you pointed out as an attack were the same things I pointed out as an attack yesterday.

Surely the news does interpret what a man says in a letter as long and involved as this.

I did not mean to cut you off. Did you have something else?

Mr. SWIDLER. No; I would particularly like to say for the three colleagues who cannot speak for themselves that they seem to me to be very well balanced, with no neurotic tendencies whatever that I can discern.

Mr. SPRINGER. Have you or any other Commissioners down there been rendering any decisions where you have been getting puff-jobs or image-building instead of protection, or streamlining and wall chart juggling instead of hard work?

Mr. SWIDLER. No, sir.

Mr. SPRINGER. Mr. Chairman, as I read through your statement very hurriedly this afternoon, it seems to me that you have pointed to one, two, three, four, five, six, seven, eight, nine places which I have marked, in which you have pointed out progress that you thought has been made in the Commission in the form of streamlining the agency and bringing it up to date.

Mr. SWIDLER. Yes, sir.

Mr. SPRINGER. You have made this statement—I am not going to say it is all true, but at least you have tried to point out what innovation you made. If those are all true, I want to compliment you.

Mr. SWIDLER. I appreciate that, Mr. Springer.

Mr. SPRINGER. I just hope—I had one Commissioner up here last year and he had a hard time because he had done something which was not particularly popular here on Capitol Hill. I think he was right and I told him I thought he was right at the time. I just hope that you do not let you or any member of the Commission be upset because of the fact that you have had a disgruntled member of the Commission who is now leaving and has seen fit to make a statement impugning, as I get it, not just the Commission but the motives behind personal members of the Commission.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. CHAIRMAN. Did Commissioner Morgan consult you at all before he wrote that letter to the President?

Mr. SWIDLER. No, sir.

Mr. YOUNGER. Did you know that he intended to leave?

Mr. SWIDLER. I knew that he had political interests in Oregon and that he had long considered whether to go back to Oregon or stay on the Commission.

He made a good many trips to Oregon early in his term in an attempt to decide whether to leave the Commission and campaign for the governorship.

And I knew this was something that he was turning over in his mind. But not beyond that, sir.

Mr. YOUNGER. If I properly interpret the testimony yesterday and your statements today, your Commission meetings must have been most entertaining.

Mr. SWIDLER. No, sir; I think that Mr. Morgan was——

Mr. YOUNGER. I should think that either you or he would have known that something was going to happen sooner or later.

Mr. SWIDLER. Mr. Younger, I think Mr. Morgan was quite right in saying that we had both attempted to suppress these problems so that we could work together. We are, after all, on the same Commission, we must meet and we must dispose of our cases and I think we have managed, everything considered, to do our jobs.

Mr. YOUNGER. If I understood you correctly this morning, I would infer that Mr. Morgan wanted to use the authority of the Commission in a punitive way in connection with the approval of the finances.

Mr. SWIDLER. Mr. Younger, I did not use the word "punitive" and I am not sure that that would be accurate. But I think that the dissents reveal that he did want to use the jurisdiction over stock issues in order to develop many collateral lines of investigation and many other collateral problems. In connection with the *Idaho Power Company* security issue case, for example, that was to be the instrument to go into the question of their progress on Hells Canyon, their retail power rates as well as their wholesale power rates, their depreciation policy, the fish problem on the Columbia River, and many other things.

Now, this is a different approach from that of the rest of the Commission, which feels that it should make a calculated decision on the best way to use our staff and not launch off into investigations merely because a company files a security issue application, and which feels that the use of security issue jurisdiction for leverage purposes is something that should not be extended unreasonably.

Mr. YOUNGER. I know you used the word "leverage," but I had used the word "punitive," because I think usually when you want to use the leverage, and when you find a bureaucrat that wants to use a leverage of that kind to accomplish some personal idea that he might have, it is done in a punitive way.

He has that motive in the background. And that is one of the difficulties that we are having today with regulatory agencies when they use one right to try to get at something else which has been denied them.

And I think that is one of the weaknesses.

Mr. SWIDLER. I just want to make it clear that I do not say that this was punitive. I simply say that this was beyond the proper exercise of our powers, and not an effective use—an effective way to use available manpower.

Mr. YOUNGER. Did you say at any time during the consideration of the *Idaho* case that you did not want to go into the investigation of the items Mr. Morgan had suggested because it would be damaging to the company and to the industry?

Mr. SWIDLER. No, sir—no, sir.

Mr. YOUNGER. Did you hear any member of the Commission make that remark in private when you were considering it?

Mr. SWIDLER. No, sir.

The only statement that I have made, and I think if any statements were made, they must be mine, is that if we acted beyond our jurisdiction, we would forfeit the respect of the industry upon which our own effectiveness depended.

Mr. YOUNGER. This morning, you stated that every month you send a report to the President.

Mr. SWIDLER. Yes, sir.

Mr. YOUNGER. Do you send a report to this committee?

Mr. SWIDLER. No, sir.

Mr. YOUNGER. Do you send a report to the Senate Commerce Committee?

Mr. SWIDLER. No, sir.

Mr. YOUNGER. Do you consider that your Commission is an arm of the Congress?

Mr. SWIDLER. Yes, sir.

Mr. YOUNGER. Then why do you send a report to the President and not send one to the respective committees of the Congress which have legislative jurisdiction over you?

Mr. SWIDLER. The President asked me to, sir.

Mr. YOUNGER. Well, do you not think it would be rather incumbent upon you that if you furnished any information to the President, you might also furnish the same information to the bodies that have legislative jurisdiction over you, especially if you are an arm of the Congress?

Mr. SWIDLER. I would assume, sir, that this agency had its own methods of keeping in touch with what we are doing, and, of course, through your staff, we have frequent inquiries. It would not occur to me simply to send you copies of other correspondence, but I would, of course, be delighted to fit into whatever system this committee establishes.

If this committee would like reports, why, of course I would be glad to file them. I assume you would want to make this general and that all agencies would file such reports. But whether it is just the Federal Power Commission or all agencies, I will, of course, be delighted to make any reports that this committee wants.

I should make clear that the President has not asked for exhaustive reports. These are very brief, and deliberately so, so that it hits just the high spots of accomplishments and problems.

Mr. YOUNGER. I imagine one of the things which he is concerned with is the same problem that we are all concerned with, the progress being made on the cases and the backlog—how it is being handled. It would seem to me that if you do get out a report of that kind, and file a report of that kind with the Executive, it also should be filed with this committee, for our information.

Mr. SWIDLER. This report does not purport to be a systematic accounting as to the status of our backlogs in the various areas of our work, but only three or four items of outstanding importance which occurred during the month, either by way of achievement, by way of planning, or by way of problem or setback.

Mr. YOUNGER. There is another problem that I would like to get your advice on. Most of these public utilities do have power of eminent domain, do they not?

Mr. SWIDLER. Yes, sir.

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Mr. YOUNGER. In other words, they can come in and condemn for a right-of-way across my land, and upon just compensation, they can secure through the courts that right-of-way?

Mr. SWIDLER. Yes, sir.

Mr. YOUNGER. And I have no right to dictate to them and tell them what they do with that right-of-way or how they handle the power or gas that they transfer over that right-of-way?

Mr. SWIDLER. Yes, sir.

Mr. YOUNGER. Do you think that same right ought to exist on public property?

Mr. SWIDLER. The Commission is now attempting to formulate a position with respect to the proposed regulation of the Departments of the Interior and Agriculture, to which I am sure you refer——

Mr. YOUNGER. That is right.

Mr. SWIDLER (continuing). Which would condition the use of rights-of-way through the national parks and the national forest, national monuments, upon agreement to certain stipulations as to the right of the Federal Government to make use of the transmission lines which are constructed. I think we will have a position which we will express to the Interior Department with respect to their proposed regulation.

I do not know, Mr. Younger, speaking now personally——

Mr. YOUNGER. I would not ask you to make a statement on it prior to your decision.

Mr. SWIDLER. Very good.

Mr. YOUNGER. But it is a problem with which we are going to be faced, especially out in the West, it seems to me, if any such policy on the part of the Government were confirmed, you might as well wipe out private power, and even Mr. Morgan, in his statement yesterday, does not want to completely eliminate private power.

He wants to maintain the status of it as it is now, although I think he probably feels more kindly toward public power than he does toward private power.

But certainly out West, where you can hardly move without getting a right-of-way over public lands, if the public lands are going to deny the utility the right of going into court or getting a right-of-way without again injecting certain rights that it has in getting stipulations, that, I think, seems to be going a little far.

Mr. SWIDLER. Yes, sir.

Mr. YOUNGER. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Mr. Chairman, I was interested in going a little bit into the charges Mr. Morgan made—at least I have assumed they were charges from his testimony—that the individual Commissioners were rather captives, either of staff or of the Chairman working through the staff.

Perhaps you could enlighten us just a little bit on that.

How many employees does the Commission have?

Mr. SWIDLER. There are about 1,050 employees now, sir.

Mr. ROGERS of Florida. How many are employed by the Chairman?

Mr. SWIDLER. Well, I think that——

Mr. ROGERS of Florida. I realize you may not know the exact number.

Mr. SWIDLER. Our personnel system is such that most of the employees are hired by our personnel director and top staff personnel without most of the Commissioners knowing about it, or my knowing, either. There are a group of appointments at the higher levels which I must make personally and on which the approval of the other Commissioners are required.

All appointments over grade 15 and all hearing examiners are appointed only with the approval of the whole Commission.

Mr. ROGERS of Florida. So each Commissioner has a say-so in the employment of those people?

Mr. SWIDLER. Yes, sir. I make the nominations. Ordinarily, on an important appointment, we arrange for a meeting so that all members of the Commission can meet the candidate and then vote on whether to approve his appointment. But the Chairman as the chief administrative officer has the responsibility for trying to find these people and bringing them to the attention of the other members of the Commission.

Mr. ROGERS of Florida. Would you say it is done pretty much in consultation with the other members whom you interview together or——

Mr. SWIDLER. I do the original screening. On some of these positions, I have literally interviewed twoscore or more people. This is a very time-consuming job. It is only after the sifting process has been completed, normally, that I would bring him to the attention of the other Commissioners.

Mr. ROGERS of Florida. Now, in the rehiring or the firing of such an employee, could any Commissioner initiate a request to the rest of you or to you that this particular employee be dismissed?

Mr. SWIDLER. Yes, sir; he could.

Mr. ROGERS of Florida. Has this ever happened?

Mr. SWIDLER. This has never happened.

Mr. ROGERS of Florida. Have you, as Chairman, dismissed anyone since you have been in your position, that you recall offhand? I realize it might slip your mind.

Mr. SWIDLER. Not in the sense of—a lot of these things are seminegotiated.

Mr. ROGERS of Florida. What I was trying to get at, for not carrying out your policy, have you fired anyone?

Mr. SWIDLER. I think maybe some people have left sooner than they otherwise would. I have not been through a termination processing; no, sir.

Mr. ROGERS of Florida. Was it because of your policy or the Commission's policy that you let him go?

Mr. SWIDLER. It was after discussion with the Commission.

Mr. ROGERS of Florida. So he was not dismissed necessarily, because he was not carrying out your individual views?

Mr. SWIDLER. No, sir; that is right.

Mr. ROGERS of Florida. Does each Commissioner have any say-so on the people that help him?

Mr. SWIDLER. Each Commissioner has the exclusive appointive power for the people in his immediate office.

Mr. ROGERS of Florida. You do not do that appointing?

Mr. SWIDLER. No, sir.

Mr. ROGERS of Florida. And how many would that include for each Commissioner?

Mr. SWIDLER. I think it includes a legal assistant and two secretaries.

Mr. ROGERS of Florida. For each Commissioner?

Mr. SWIDLER. For each Commissioner; yes, sir.

The CHAIRMAN. Will the gentleman yield at that point?

Mr. ROGERS of Florida. Yes, sir.

The CHAIRMAN. Is it not true that every member of the staff is available to every Commissioner when he calls upon him?

Mr. SWIDLER. Yes, sir; that is true.

Mr. ROGERS of Florida. I believe you made the statement already that you have not had any influence at the White House?

Mr. SWIDLER. Yes, sir.

Mr. ROGERS of Florida. In your capacity as Chairman?

Mr. SWIDLER. Yes, sir.

Mr. ROGERS of Florida. I notice you did say earlier that if you needed help at the White House, you would call upon him. When would you feel it necessary to call upon the White House for help? What did you refer to there?

Mr. SWIDLER. Well, I have asked members of the staff at the White House to help me find good people, and they are not easy to get. I must say that a talent hunt is a very difficult thing.

Mr. ROGERS of Florida. But not in decisions of cases?

Mr. SWIDLER. No, sir; not in decisions of cases.

Mr. ROGERS of Florida. Mr. Chairman, I believe that is all I have, thank you.

The CHAIRMAN. Mr. Brotzman, do you have any questions about any deserving people?

Mr. BROTZMAN. To be on the record, I think there are a lot of deserving Republicans. This is on the record.

Now, Mr. Swidler, turning your attention to the testimony about dissents this morning, something came up about a dissent where you allegedly gave Mr. Morgan a lot of mileage, or something such as that.

You gave him an opportunity for a lot of mileage. Was this relative to publishing of a dissent, or to what did that allude? You offered to answer the question. I think it was in response to some statement or question by my colleague from California.

Mr. SWIDLER. I think Mr. Moss finally did ask the questions that that related to. I think that is on the record now.

Mr. BROTZMAN. Let's go into it a little further, because I do not understand it.

Did this allude to some dissent that you did not publish of Mr. Morgan's?

Mr. SWIDLER. Oh, I know the incident you mean.

No, sir. Do you want me to give you this story, sir, now?

Mr. BROTZMAN. Yes; I do.

Mr. SWIDLER. Well, this is the dissent in the *Pacific Power & Light* case.

Mr. BROTZMAN. You say the Pacific Power and——

Mr. SWIDLER. The Pacific Power & Light security issue case that I was talking about. It raised the question of suppression that Mr. Moss mentioned. To my mind, this is not a correct view of the matter and I would be glad to tell you the circumstances.

We decided this case on March 28, 1962.

Mr. BROTZMAN. Would you identify the docket number so we are all talking about the same thing?

Mr. SWIDLER. I have it here. I am talking about docket Nos. E–7024 and E–7025.

The CHAIRMAN. Is that included in the record, if the gentleman will permit? Is that included in the record that you submitted to us this morning?

Mr. SWIDLER. No, sir; it was not included.

I will be glad to, as I mention these papers, offer them for the record.

The CHAIRMAN. I think the entire matter that you referred to ought to be in the record so that whoever reads it may know what the whole story is.

Mr. SWIDLER. Very good.

(The document referred to follows:)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, B. J. O'Connor, Jr. and Charles R. Ross.

Pacific Power & Light Company) Docket Nos. E-7024 and E-7025

OPINION NO. 354

OPINION ON AUTHORIZING
ISSUANCE OF SECURITIES

(Issued April 17, 1962)

By the Commission.

The central question in this case is whether, under Section 204 of the Federal Power Act, 1/ approval of the security issues proposed by Pacific Power and Light Company should have been withheld because one of the many facilities to be financed thereby, the northern half of a transmission line running a distance of approximately 110 miles from Klamath Falls, Oregon, to Round Mountain, California, is to be designed and constructed so that it can be operated at 500 kv when and if 500 kv terminal facilities are provided, although it is to be operated initially at only 230 kv. There is no question that the line is fully justified as a 230 kv line. 2/ The narrow issue, therefore, is whether, in exercising our jurisdiction over security issues, we should make an independent assessment of the wisdom of the decision of management to invest now the additional amounts required to construct the facility in such a way as to enable it to be operated at a higher voltage in the future.

1/ The pertinent language of that Section, contained in Subsection (a) thereof, is as follows:

> No public utility shall issue any security, or assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person, unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability. The Commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes. * * *

2/ "All state and federal authorities are agreed that a 230 kv line is justified and would be useful in the proposed location" (dissenting opinion).

On February 19, 1962, Pacific Power and Light Company (Applicant) filed applications for authorization to issue $35,000,000 principal amount of first mortgage bonds and up to 696,695 shares of common stock, par value of $3.25 per share. 3/ Applicant will use the proceeds of approximately $19,900,000 4/ to be obtained from the issuance of the common stock, together with the proceeds of the bonds, to repay $42,000,000 in promissory notes and will apply the balance toward the cost of its present construction program, which is expected to require the expenditure of approximately $44,000,000 for 1962 and $56,000,000 for 1963. Applicant is a successful enterprise, with over $189,000,000 of capital stock and surplus in a total capitalization of $584,499,000, as of December 31, 1961.

Applicant's 1962-1963 construction program is composed of a multiplicity of items, including hydroelectric projects, a new generating unit in a steam plant, electric distribution facilities, additions to steam heating and water and telephone utility systems, and ten transmission lines. Of the total program for 1962-1963, amounting to $100,000,000, $5,000,000 will be used for the Klamath Falls-Round Mountain line. 5/ A substantially smaller amount, estimated at $1,500,000, is attributable to the extra cost involved in building the line in such a way that its capacity can subsequently be enlarged by conversion to 500 kv. The line in question will interconnect with the system of Pacific Gas & Electric Company, which will build the southern portion. The record indicates that the new intertie will provide for the exchange of energy between the two systems and will be available for use by the Bonneville Power Administration or other utility companies in the Pacific Northwest. A letter-agreement between Pacific Power and Light and Pacific Gas & Electric, dated January 5, 1962, and filed with the Commission as a rate schedule for each company, provides for the building of a 500 kv intertie to be operated at 230 kv until such time as both parties agree that 500 kv operation is economically justified, and for the sale and exchange of electric services. 6/

3/ The applications were supplemented on February 27, March 8, and March 13, 1962.

4/ This was the estimate at the time of our approval of the initial order for the additional shares of common stock. By reason of a decline in the market price of the Applicant's outstanding common stock, the additional shares of common stock produced net proceeds of about $18,000,000.

5/ In using this term, we refer to the northern half of the line, i.e., the portion which Applicant will build.

6/ The filing was completed on February 23, 1962. By letters of March 30, 1962, we allowed the rate schedules to go into effect as of the following day. We note that the January 5 letter-agreement is attached as Exhibit F to the dissenting opinion.

Our staff made a careful examination of the applications and the attached exhibits and filed a detailed report with the Commission recommending that they be approved. 7/ There were no petitions to intervene in these proceedings, and no timely objections to the applications were received from any source. The security issues had the prior approval of the state utilities commissions of California, Oregon, Washington, Wyoming, Montana and Idaho. The matter was considered at length by this Commission at its meeting of March 23, 1962. On the basis of the applications and the staff's recommendations, and in light of the policy of the Commission to encourage public utilities under its jurisdiction to anticipate future loads and to establish and strengthen inter-regional transmission interconnections, a majority of the members were satisfied that the statutory standards had been met and that the purposes for which the securities were being issued were compatible with the public interest. However, in order to give further consideration to Commissioner Morgan's differing view, it was decided to postpone final action until the next meeting. At the Commission meeting of March 28, 1962, the applications were once again the subject of extended discussion.. All members adhered to their earlier views and on March 28, 1962 we issued orders authorizing the proposed security issues.

It should be emphasized that the surveillance exercised by the Commission under Section 204 is far more limited in scope than that we would exercise if, for example, we were issuing certificates of public convenience and necessity for the construction of facilities. Congress has not given the Commission certificate jurisdiction in this area. Indeed, a provision which would have granted us such authority was deleted from H. R. 5423, one of the bills which culminated in the Federal Power Act. In explaining this deletion, the relevant committee report pointed out that:

> While it may ultimately be found desirable to adopt a provision of this kind, the Committee is of the opinion that for the present there is no imminent danger of excessive extensions that would prove disadvantageous to consumers. 8/

The specific provisions of Section 204 make it a particularly unsuitable vehicle for comprehensive licensing-type regulation such as that exercised by this Commission under Section 7 of the Natural Gas Act. Under its provisions, for example, had Applicant elected to finance the construction of its transmission facility out of surplus or from the proceeds of a short-term loan, it could have built the line without so much as notifying the Commission. Again, subsection (f) of Section 204 specifically exempts

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7/ We reject the suggestion in the dissenting opinion that the Commission was importuned to make undue haste in its disposition of the applications.

8/ Senate Report No. 621, Senate Committee on Interstate Commerce, 74th Cong., 1st Sess. (1935), p. 20.

those companies "organized and operating in a State under the laws of which its security issues are regulated by a State commission." By virtue of this provision, this Commission would have had no jurisdiction over the present security issues if Applicant had happened to be incorporated not in Maine but in one of the states in which it operates and in which security issues of domestic utilities are subject to scrutiny by the state commission. Thus, any securities issued by the company building the southern half of the Klamath Falls-Round Mountain line would not come before this Commission. Furthermore, under Section 318, a security issue which is subject to the regulation of the Securities and Exchange Commission under the Public Utility Holding Act is withdrawn from the jurisdiction of this Commission. Under Section 204(e) our authority is further restricted, for it does not extend to notes of less than a year's maturity aggregating less than 5% of the company's outstanding securities. If Congress had intended Section 204 to do service as a grant of certificating authority, it would hardly have confined the exercise of that authority to the relatively few companies which are not exempted from that Section.

The plain purpose of Section 204 is to prevent the issuance of securities which might impair the company's financial integrity or its ability to perform its public utility responsibilities. The Senate Committee report on the bill which included the present Section 204 stressed that "control over capitalization of operating utilities is plainly an essential means of safeguarding the public against unsound financial practices which make impossible the proper and most economic performance of public utility functions." 9/ The concern with "financial practices" is further indicated by the fact that the criteria for approval of security issues in Section 204(a) are copied almost verbatim from Section 20a of the Interstate Commerce Act, 10/ a measure which was enacted as part of the Transportation Act of 1920 in an effort to put an end to abuses which had threatened many railroads with bankruptcy. For several years prior to 1920, the Interstate Commerce Commission, in response to resolutions passed by the Senate and requests by the House of Representatives, had conducted numerous investigations into the financial dealings of certain carriers. The theme of its diagnosis of the railroad problem was that "a most prolific source of financial disaster and complication to railroads in the past has been the desire and ability of railroad managers to engage in enterprises outside the legitimate operation of their railroads, especially by the acquisition of other railroads and their securities." 11/ It was to cure this evil that the Commission recommended that "every interstate railroad should

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9/ See Senate Report No. 621, Senate Committee on Interstate Commerce, 74th Cong., 1st Sess. (1935), p. 50.

10/ 41 Stat. 494; 49 U.S.C. § 20a.

11/ The New England Investigation (No. 4845), 27 I.C.C. 4560, 616 (1913).

be prohibited from expending money or incurring liability or acquiring property not in the operation of its railroad or in the legitimate improvement, extension or development of that railroad" and that no securities be issued by an interstate railroad except for those purposes and without the approval of the Federal Government. 12/

The leading historian of the Interstate Commerce Commission summed up the purposes of Section 20a as follows 12a/:

> While this extension of the Commission's authority was designed, indirectly, to protect the investing public against the dissipation of railroad resources through faulty or dishonest financing, its dominant purpose was to maintain a sound structure for the rehabilitation and support of railroad credit, and for the consequent development of the transportation system. It aimed to render impossible the recurrence of the various financial scandals, with their destruction of confidence in railroad investment, which had become notorious, and to prevent the subordination of the carriers' stake as transportation agencies to the financial advantage of alien interests.

12/ Ibid.

12a/ 1 Sharfman, Interstate Commerce Commission 190 (New York 1931).

It is apparent that, in modelling Section 204 upon Section 20a of the Interstate Commerce Act, Congress must have had similar objectives. 13/

In testing a security issue by the statutory standard, the Commission must satisfy itself, of course, that the object is lawful and within the corporate purposes. Beyond that, we must inquire whether the contemplated investment would impair the company's ability to perform its normal functions as a public utility. The Commission might look to whether the investment is so improvident, frivolous, or speculative, that it threatens to squander the corporate substance without reasonable hope of return. By no stretch of reasoning can the construction of the Klamath Falls-Round Mountain line be fitted into one of these categories.

The dissenting view that the Commission should have withheld its approval appears to rest upon two grounds: (a) that the line is politically controversial, particularly in that it could be used to take Bonneville power away from the Northwest if public authorities were to authorize the sale; and (b) that the construction of a line at a voltage of 500 kv represents a "gamble" that Congress will eventually decide to make the

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13/ The two state decisions cited in the dissent are inapposite. In the Massachusetts case, 62 PUR NS 238; 64 N.E. 2d 640, the State Commission held that the issuance of preferred stock in exchange for common stock was for the sole purpose of furthering the financial interests of persons in 98% control of the company and that, in its judgment, this was not a "reasonably necessary" purpose in the furtherance of the company's public utility business. In the Virginia case, the State Commission held, at 86 PUR NS 136, that, under the different language, coverage, and legislative history of its Act, a Commission order authorizing the issuance of securities is equivalent to a certificate of public convenience. The State Commission then applied a different test than that set forth for an order under Section 204(a), which is not equivalent to a certificate of public convenience and necessity, as pointed out above and as the dissenting opinion concedes.

The dissent also cites Pacific Power and Light Co. v. Federal Power Commission, 111 F. 2d 1014 (9th Cir., 1940) as support for a broad reading of the statutory phrase "compatible with the public interest." The holding in that case, however, was that the phrase "consistent with the public interest," which appears in Section 203 and which the court equates with the concept of compatibility, "does not connote a public benefit to be derived or suggest the idea of a promotion of the public interest." The court notes that "it is beyond our immediate purpose to inquire into the precise nature of the interests to be safeguarded by the Commission in passing upon these applications;" yet that is precisely the question at issue here.

Bonneville surplus available for transmission by a privately owned intertie of which this line will be a segment. We not only can but must put aside the consideration that there may be controversy concerning the disposition of Bonneville's surplus. Whether a publicly owned interconnection should be constructed, whether such interconnection would meet the growing demand for power in the region and thus remove any economic justification for Applicant's proposed expansion of the intertie, and whether Bonneville power should be made available to Applicant for transmission to California, are not for us to decide. It is not for this Commission to exercise the role of Congress as arbiter of these competing claims. That responsibility Congress has yet to delegate.

The remaining question, then, is whether, from an economic standpoint, the extra investment required to make the facilities capable of carrying a voltage in excess of initial requirements--an investment incontrovertibly within the lawful corporate purposes of the Applicant--represents a totally improvident business decision. Any anticipation of future growth is a gamble, and failure to anticipate such growth may be a worse gamble. The electric industry, above all, is one in which making provision for future expansion is customary and prudent. We have no reason to think the "gamble" in this case, that is, the balancing of the carrying charges on the additional investment against the additional costs or losses which will be incurred in the future if the capacity of the facility cannot be expanded when and if needed, is unusual or atypical. Even if the future usefulness of the added investment is contingent upon moving Bonneville power, we cannot say that this is not a contingency Applicant is entitled, and perhaps compelled, to consider. To conclude otherwise is to arrogate to ourselves the right to determine how and by whom Bonneville power should be transmitted.

The movement of Bonneville power, moreover, is not the sole justification for making provision now for a later expansion of capacity. The enormous and continuing growth of the power industry makes it of doubtful wisdom to attempt to restrain electric utilities from taking measures to anticipate future need for greater capacity. This Commission estimated only last January that the demand for electric energy in 1980 will be 3.75 times the requirements in 1960, reflecting a continuation of the industry's recent trend of doubling almost every ten years. The supply of energy needed to meet the demand in the Pacific Northwest and Pacific Southwest areas will come from a variety of sources. In view of the industry-wide tendency toward the use of higher voltages, there is no occasion for surprise that the company has prepared its line, having a life expectancy of upwards of

50 years, for the growing demands of the future. We repeat, however, that even were we to assume with the dissent that the project would be under-utilized if Bonneville power were not obtainable, that fact alone would not justify the Commission in withholding its approval of this security issue. So long as there is a significant possibility that Congress will ultimately decide to make some Bonneville power available for transmission over the Applicant's line -- and such possibility manifestly exists -- this Commission is in no position to deny that the decision to prepare the line for that eventuality was an exercise of business judgment for which we should not attempt to substitute our own.

The dissenting opinion urges that the Commission should have scheduled a hearing. We declined to do so because we did not see how a hearing would illuminate any material issue. The political questions now confronting Congress would not properly be before us. The nature of the Klamath Falls-Round Mountain line was known, as were the contingencies affecting its future use. No amount of testimony would enable us to predict that future use with accuracy or warrant us in exercising jurisdiction over security issues in such a way as to "second-guess" what is essentially a managerial decision.

It should also be observed that procedures for considering security issues must be expeditious if, in view of changing marketing conditions, utilities are to be able to raise the money needed to carry out their responsibilities. In the present case, no objections were raised to the purposed issue. No person, public or private, sought timely intervention.[14/] It would be a serious abuse of power for this Commission to require a hearing and thus delay a $55,000,000 security issue, merely because a small fraction of the proceeds are to be devoted to the construction of facilities which, at extra cost, are susceptible of improvement to enlarge their capacity for a future use which may not materialize. It would be an even more serious abuse of power were we to hold up this security issue merely because questions relative to the disposition of Bonneville's power are politically controversial.

14/ The dissent observes that on March 27, 1962, the Commission received a telegram from the Chairman of the State of Washington Utilities and Transportation Commission requesting that we qualify any approval granted so as to prevent the transmission of federally generated power until Congress has acted. The thrust of the telegram goes to political and policy considerations with respect to the use of the line which this Commission cannot consider in a security case. No question was raised as to the economics of the facility or the soundness of the Applicant's financing program. The telegram, moreover, was superseded and withdrawn by a later letter.

Although we believe that the above considerations are dispositive of this case, we wish to point out that the construction of a high capacity interconnection between the two regions is in harmony with the results of studies of electrical interconnections made by our staff, the Bonneville Power Administration and the Department of the Interior. Such studies were made by our staff in 1950 15/ and 1953 16/ and show that an interconnection between the electric utility systems in California and the Pacific Northwest would be economically feasible and desirable. In 1960 the Bonneville Power Administration submitted to the Senate Committee on Interior and Insular Affairs a study 17/ of possible interconnections between the Pacific Northwest and California. The Bonneville study noted that a proposed intertie between Applicant's predecessor and Pacific Gas and Electric similar to the one here involved would be less costly than an interconnection, then considered, between the federal systems. In commenting on this report in a letter of April 6, 1960, to the Senate Committee, the Chairman of this Commission stated that the findings of the Bonneville Power Administration indicate that a high voltage interconnection between the Pacific Northwest and California would be desirable and economically feasible regardless of whether the regional facilities were constructed and financed by the Federal Government or private interests. As recently as December 15, 1961, a special task force of the Department of the Interior submitted a report 18/ recommending that immediate steps be taken to interconnect the electric generating plants of the Pacific Northwest and Pacific Southwest by lines having a voltage of either 750 kv d-c or 500 kv a-c. Later, in a press release of January 17, 1962 (Appendix C to the dissenting opinion) the Bonneville Power Administrator stated that the plans of Applicant and Pacific Gas & Electric "for a 110-mile 500-kv California intertie are consistent with engineering recommendations of our /Bonneville/ Task Force report on a Pacific Northwest-Pacific Southwest intertie."

15/ Study of an Interconnection between the Electric Systems in the Pacific Northwest and California, Federal Power Commission, February, 1950, pp. 26-27.

16/ Report on Feasibility of California -- Oregon 230 kv Interconnection, Federal Power Commission, March, 1953, pp. 66-67, 69-72.

17/ Study of High Voltage Electrical Interconnection between the Pacific Northwest and California, Bonneville Power Administration, February, 1960, p. 62.

18/ Pacific Northwest-Pacific Southwest Extra-High Voltage Common Carrier Interconnection, Special Task Force of U.S. Department of Interior 5-6 (December 15, 1961).

The dissenting opinion raises a question as to the adequacy of our notice and the length of the notice period. The notice procedure in these cases was in nowise inconsistent with the Commission's regular practice in these matters. In each of the present proceedings, a notice was prepared, describing the securities, setting forth the amounts involved, and stating that the proceeds of the proposed issues would be applied to the payment of outstanding notes and the promotion of the Applicant's construction program. These notices were in the form which has been customary in this agency for twenty-seven years. They did not, to be sure, describe the items in the program as set forth in the voluminous applications. The notices recited, however, that any person desiring to be heard or make protest should do so on or before March 21, 1962, and that the applications were on file and available for public inspection. The notices were dated and sent on March 1, 1962, along with copies of the applications, to the State Commissions of Oregon, Wyoming, Washington, California, Montana and Idaho. The notices were also sent to the Governors and Senators of each of those states and were published in the Federal Register on March 8, 1962, 27 FR 2259. The covering letters to the State Commissions invited the attention of the Commissions to our Plan of Cooperative Procedure, asked whether the Commissions desired to engage in such procedure, and, if not, whether they had any comments or suggestions. The letters to the Governors also asked for comments or suggestions.

A notice in the Federal Register could not, as a practical matter, reproduce the full applications and exhibits thereto. As observed above, the notice advised that all of the documents were available for public inspection. In our view, therefore, the notice was adequate.

Nor was the notice period unreasonably short. All persons were on notice as of March 8, 1962. Certainly, thirteen days, i.e., until March 21, 1962, was an adequate period within which to file a protest or to declare a desire to be heard.

Since the security-issue jurisdiction of this Commission does not embrace a certificating authority, it follows that the approval of the issuance of the securities is not tantamount to an approval of the Klamath Falls-Round Mountain line, or any other facility. Our action in this case implies no opinion or conclusion on the questions whether, how or by whom Bonneville power should be transmitted to California.

Commissioner Morgan dissents. Commissioner Woodward did not participate in these proceedings.

Gordon M. Grant

Gordon M. Grant
Acting Secretary

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Pacific Power & Light Company) Docket Nos. E-7024 and E-7025

ERRATA NOTICE

(May 3, 1962)

OPINION NO. 354

OPINION ON AUTHORIZING
ISSUANCE OF SECURITIES
(Issued April 17, 1962)

Page 5, first full paragraph, line 2, add "12a/" after "follows:"

Page 5, quotation, line 1, change "estension" to read "extension".

Page 5, quotation, line 2, insert the word "the" before the word "dissipation".

Page 5, add the following footnote: "12a/ 1 Sharfman, Interstate Commerce Commission 190 (New York 1931)".

Joseph H. Gutride,
Secretary.

ADDRESS ALL COMMUNICATIONS TO THE SECRETARY

FEDERAL POWER COMMISSION
WASHINGTON 25

Docket Nos. E-7024 and E-7025
Pacific Power & Light Company, et al.

April 12, 1962

TO THE PARTY ADDRESSED

Gentlemen:

Enclosed is a copy of the dissenting opinion by Commissioner Morgan in the above-designated matters.

Very truly yours,

Joseph H. Gutride,
Secretary.

99-948 O - 63 - 10

Pacific Power & Light Company) Docket Nos. E-7024 and E-7025

April 12, 1962

MORGAN, Commissioner, dissenting:

"To be, not merely to seem" must be the objective of every regulatory agency deserving of public confidence and respect. A Commission content with mere seeming, as in this case, substitutes ceremony and ritual for that perceptive, vigilant guardianship of the public interest expected of the great regulatory commissions of the United States.

In this order, which seemingly is concerned only with a routine security issue, the staff and majority of the Commission seem to have dealt alertly with all those technical details possibly entailing later difficulty or unnecessary public expense. The "findings" of the majority seem to indicate that thorough investigations were made at both State and Federal levels. Thus the unknowing reader of this order would never suspect the truth: that there has been no meaningful investigation of all the proposed construction to be financed by this security issue by any agency at any level. Who, reading this order, would imagine that no member of the Commission and no member of the staff is presently able to attest from his own knowledge whether any of the projects are in fact "compatible with the public interest" as the law plainly requires and as the order blandly recites?

What private citizen or public official, after reading the order -- or, for that matter, after reading the preliminary public Notice of Application 1/ circulated among the various Commissions and Governors of the States in which Pacific Power & Light Company operates -- would dream that one of the projects proposed to be financed by this issue of securities is an inadequate, highly controversial, and financially questionable substitute for the extra-high-voltage intertie between the Bonneville Power Administration and the Central Valley project in California recently proposed by the Department of the Interior and scheduled for consideration by the current session of Congress?

Does a public notice which fails to notify the public concerning a fact of that magnitude actually offer "opportunity for hearing" under the Federal Power Act? I hold that it does not.

While applicant had publicly discussed its proposed line in a general way by means of press announcement as long ago as last January, neither the general public nor public officials in the affected States regarded the proposal as a device for exporting BPA surplus to California or understood that the proposed construction was involved in the finance issue here under discussion. Thus the Commission's Notice of Application,

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1/ Appendix A attached hereto.

addressed to Governors and Utility Commissions in the affected States, seemed -- but only seemed -- to notify them of an "opportunity for hearing" on an important issue. That notice states:

> "Any person desiring to be heard or to make any protests with reference to said application should on or before the 21st day of March 1962, file with the Federal Power Commission, Washington 25, D. C., petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection."

The difference (and the importance of the difference) between the Commission's Notice of Application and a genuine public notice is amply illustrated by the following telegram, dispatched and received while the order was still under consideration as the direct result of my telephone call on March 26, 1962, informing the Chairman of the State of Washington Utilities and Transportation Commission exactly what was contained in the pending application. The telegram, addressed to all Commissioners, was received at 8:40 a.m., March 27, 1962.

> "Re your Dockets E-7024 and E-7025 it is requested that FPC give full consideration to position of Pacific Northwest area that no means be provided for the transmission of Federally generated electricity outside present service area Bonneville Power Administration unless and until proper Congressional safeguards be first provided this area. As early as April 1959 in hearings before the Senate Irrigation and Reclamation Subcommittee stated opposition to any California tie-line until such adequate safeguards existed. We therefore respectfully request that in acting on foregoing dockets FPC qualify any approval granted so as to limit any expenditures for interconnection to capacity not in excess of power resources of applicant exclusive of Federally generated power until Congress can fully consider required safeguards."

Does all this throw a new light on the majority's recital, contained in the order, that, on various dates immediately following distribution of the Notice of Application to the Utility Commissions of the States in which PP&L operates, each of those States approved the security issue with no reservations as to the use of the funds raised? It clearly seems so to me -- particularly in the case of those States, Oregon and Washington, whose Commissioners testified before the Senate against any intertie proposal such as is now before us.

This seemingly routine financial matter, decided without a hearing and upon the basis of applicant's representations and assertions alone, actually is deeply involved in a controversy which has been raging with

increasing intensity for nearly 15 years. It is the most important matter affecting the people of Washington, Oregon and California to come before the Commission during the incumbency of any of its present members. In its ultimate implications this issue is perhaps as important to the States of the Pacific Northwest as any development since construction of the first Federal main-stream dam across the Columbia more than 25 years ago.

In the light of these facts, I am persuaded that the "period of public notice given in this matter" was unreasonably short, and that the Notice of Application published and circulated by this Commission was gravely deficient in that it conveyed not the slightest inkling of the serious issues actually involved. Further, I am persuaded that the Commission has not, in actual fact, found that all of the proposed construction is "compatible with the public interest" as required by law, for the reasons that:

(a) the applicant has not shown that there is or will be enough non-Federal power to load the intertie in question here; and

(b) the availability of surplus Federal power -- which might make the line economical -- depends upon a policy decision that must be made by the Congress.

These being the facts, and they are the facts, it was not only premature but impossible for the staff and the majority to "find" that all aspects of the proposal are "compatible with the public interest." I suggest there has been no such finding, that no record exists to support such a finding and that, to those who know and understand the relevant circumstances, the alleged "finding" does not possess even the semblance of reality.

Although no adequate record has been made in this proceeding, there is a voluminous public record, most of it contained in Committee prints and hearings of the United States Senate, 2/ concerning various proposals

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2/ (a) Hearings before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United States Senate, Eighty-Sixth Congress, First Session, on the Bonneville (Pacific Northwest)-California Intertie, April 8 and 9, 1959.

(b) Committee Print of the Committee on Interior and Insular Affairs, United States Senate, titled "Pacific Northwest (Bonneville) California Intertie," May 3, 1960.

(c) Hearing before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United States Senate, Eighty-Sixth Congress, Second Session, on the Pacific

for marketing seasonally-surplus Columbia River power in California by means of physical interconnection to be built either by privately-owned companies or by the Federal government. Discussion of such an intertie goes back at least as far as 1948.

During the intervening years, every consideration of such an intertie has involved complex problems posed by extension of the marketing area of BPA and by the likelihood of conflicts between the Pacific Northwest and the Pacific Southwest over the possible use of the "preference clause" to export power from the Pacific Northwest which is not surplus to that area, but is, in fact, badly needed there.

As a consequence of these long-continued discussions, all Senators and Governors, as well as all Public Utility Commissioners of the Pacific Northwest States, and, in addition, both Senators and the Governor of California, are on record in opposition to any physical interconnection involving the sale of Bonneville power to California-Oregon Power Company (now a part of Pacific Power & Light Company) or to Pacific Gas and Electric Company, or to any other public or private agency in California, unless and until protective legislation is adopted by the Congress effectively quieting all controversy with respect to such exports of power to California.

On July 21, 1960, the Senate Committee on Interior and Insular Affairs adopted a resolution 3/ setting forth the foregoing facts and requesting the Secretary of the Interior to:

(a) " -- continue to suspend negotiations looking to the sale and transfer of surplus power or energy from the Pacific Northwest to California," pending completion of surveys and preparation of protective legislation, and

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2/ (c) continued
Northwest (Bonneville)-California Intertie, May 5, 1960.

(d) Hearing before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United States Senate, Eighty-Sixth Congress, Second Session, on the Pacific Northwest (Bonneville)-California Intertie, June 15, 1960.

(e) Senate Committee on Interior and Insular Affairs, Resolution adopted July 21, 1960.

3/ Appendix B attached hereto.

(b) " -- submit to the Committee for consideration at the next session of the Congress a draft of proposed legislation designed to guarantee to consumers in the Pacific Northwest States first call on power generated by Federal agencies in that region, as requested by the Governors of the Pacific Coast States."

Let us dispense with theoretical discussions of the doctrine of separation of powers and the question whether a single Committee of the Senate has authority to control the policies of an agency such as BPA through Committee resolution: the pragmatic fact is that such a resolution, coming from that particular Committee and backed by every Governor and Senator from the states involved (as well as at least two of the Utility Commissions of the states), is a resolution which the Interior Department regards as binding upon it. In compliance, it has suspended negotiations concerning the sale of BPA power in California and the suspension is in effect now. This means that BPA power is not now available for export to California by the applicant in this case, or by any other private or public agency, and will not be available until the Congress has settled the important issues of public policy involved.

In the midst of this situation, and clearly for the political purpose of influencing that policy decision of the Congress, applicant has asked approval from this Commission for financing (and in an associated proceeding has asked approval for rate filings covering certain interchanges of power), involving a most singular construction project to be built jointly with Pacific Gas and Electric Company. This is to be a transmission line, approximately 110 miles long, from Klamath Falls, Oregon, to Round Mountain, California. It seems probable, though because of the absence of any hearing or record or meaningful investigation it is not certain, that the southern (PG&E) end of the line will not initially be connected to the PG&E Company Pit No. 3 hydro project, thus hopefully avoiding the Commission's preliminary licensing authority, but will be thus connected after construction is completed. The line is planned to include pylons of extra carrying capacity, and 500 kv conductors and insulators. However, it will not initially, if ever, include 500 kv terminal facilities and will be placed in operation at 230 kv. The projected line is situated in such fashion as to constitute an almost mile-for-mile parallel and duplicate of a segment of the EHV line proposed by the Interior Department and now under consideration by the Congress.

This similarity of location and engineering design was highlighted in a news release by the Administrator of BPA on January 17, 1962 4/ in response to inquiries of reporters. The Administrator, in guarded language, noted that applicant's proposed line was "consistent" with engineering recommendations of the Interior Department for its own proposed

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4/ Appendix C attached hereto.

line, that the proposal "could provide an important link" in a full-length intertie, and that applicant had "expressed willingness to lease capacity in the intertie to Bonneville and other northwest utilities."

The Administrator pointedly did not endorse applicant's proposal, nor did he comment on the terms of lease offered to BPA by applicant. Instead he volunteered this significant comment:

> "In view of our region's concern for protecting its power supply, BPA will make no commitment to export surplus Bonneville power outside the region until Congress has acted upon regional preference legislation. Announcement of the companies' plans makes it imperative that our entire region get behind the enactment of such legislation."

It is important that we take note of the significant differences between the two proposed lines. The Federal line is to be nearly 900 miles long, instead of 110; it is to have all the necessary terminal facilities for EHV operation between the Columbia River and the major California market areas; and it is to operate at extra high voltage from its inception.

The circumstances allow it to be said with complete fairness and accuracy that the main characteristics of applicant's proposed line, viewed in the light of the impending policy decisions in the Congress, are political. Its location was chosen for political effect. Its design and intended use have clear political overtones. The timing of its application before this Commission and the urgency with which immediate construction is advocated, reflect and reveal the forces of the political arena rather than the sober, deliberate business judgment with which utility executives ordinarily approach such an investment.

Because of the absence of an investigation, hearing, or adequate record in this proceeding, it is impossible, as I have already pointed out, to "find" that an isolated segment of line such as this, located in sparsely populated country with no heavy industry, connected at both ends to several hundred miles of lower-voltage conductors, and lacking any high-voltage terminals of its own, is "compatible with the public interest." The anomalies in its design and intended use are enough to give anyone immediate pause for reflection.

It is equally, and for the same reasons, impossible to reject the line out of hand as being uneconomic, imprudent or otherwise incompatible with the public interest. There simply is no record on which to base either approval or rejection. I therefore have not advocated rejection of the project in the present proceeding and I do not advocate rejection now.

On the other hand, it is comparatively easy to point out facts, probabilities and possibilities concerning this proposed line which at

the very minimum require the most detailed investigation and sober consideration before giving it approval.

What I have advocated, and what I believe is clearly required by Section 204 (a), (b) and (c) of the Federal Power Act, is careful investigation and genuine opportunity for a hearing to determine whether the line is "compatible with the public interest" as alleged by the order. Failing this, we confront the public not merely with negligent failure of the Commission to secure the necessary information, but with the Commission's pointed and obdurate refusal to ask the necessary questions.

Let us consider the fragmentary facts available to us. All State and Federal authorities are agreed that a 230 kv line is justified and would be useful in the proposed location. The line as proposed would initially and for an undetermined period carry 230 kv but would be built (except for terminal facilities and connecting lines) to 500 kv capacity. The amount of over-building and over-investment has not been identified, but that it is a substantial amount cannot be denied. Clearly this over-building represents a complex gamble by PP&L and PG&E that (a) the building of a Federal or other publicly-owned intertie can and will be prevented; that (b) eventually the projected line will become a segment in a privately-owned Pacific Northwest-Pacific Southwest intertie; carrying (c) the Bonneville surplus load, in addition to company-generated surplus and other purchases. In any gamble involving three essential and interdependent elements such as those, the hazard factor increases geometrically.

If this three-ply gamble is successful, presumably the excess capacity of the segment under discussion here would at some future date become fully utilized and therefore economically justified. It follows that, whatever the eventual outcome, for an indeterminate period (during operation at 230 kv) the opposite would be true -- the facilities could not be used to full capacity and would not be economically justified.

It also follows that if the gamble is unsuccessful, i.e., if a tie-line or system of tie-lines is built under Federal or other public ownership, it is probable if not certain that the excess capacity of the projected line will remain permanently, or for a very long period, unused and therefore permanently or semi-permanently unjustified from an economic viewpoint. 5/

Here we enter an area in which the responsibilities of the Federal Power Commission are to me very clear and of major importance. Let me say at the outset that building excess capacity, in reasonable amounts for a future market that has been carefully assessed, is not only proper but commonplace in the utility industry, and on many occasions has had the support of this Commission, after proper investigation. But here we are not dealing with a solid and assured source of supply, and hence we

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5/ Lest the foregoing reasoning be dismissed as theoretical, Appendices D and E are attached and should be studied carefully. Both are articles from Electrical World, a leading trade journal of the electric utility industry. Appendix D, published before the order was issued, illustrates how little was known of the purposes behind the application in this case, even within the industry itself. Appendix E, published after the order was issued and received by me after this dissent was written confirms the purposes and the strategy and the gamble by applicant already outlined in this dissent.

cannot measure -- in any case we have not measured -- the market, its size, its rate of growth, or the degree to which it can predictably carry the costs of the proposed construction so as to render it economically feasible. We have not done all these things, I repeat, because we are not dealing with, and applicant has not shown, and very probably cannot show, an assured source of power sufficient to load this proposed line.

It is persuasively clear from the applicant's filed rate documents and correspondence, as well as from the wording of contracts between applicant and PG&E, 6/ that the proposed intertie is hopefully based on the seasonal Bonneville surplus (though applicant has access to smaller surplus supplies through other channels), and it may be presumed therefore that the Bonneville surplus is necessary in order to load and justify the proposed construction. Further, it is clear that the future contract which the applicant and its associate company hope some day to conclude with the Bonneville Power Administration is substantially the same as, if not identical with, the contract under negotiation between PG&E and BPA in 1959, prior to adoption of the Senate Interior Committee resolution in 1960 which effectively halted negotiations for such a contract. To say, therefore, that the source of power to load this line is nebulous and speculative is to put the matter very charitably indeed.

Brought together, all of the foregoing elements add up to a proposal which I do not believe can any longer be described as a "calculated business risk," in the words of Mr. Robert H. Gerdes, executive vice president of Pacific Gas & Electric Company, testifying in 1959. 7/

Mr. Gerdes so described PG&E's proposal to spend several million dollars on a tie-line in 1959, after admitting that under his proposed contract with BPA: "I will stipulate right now that the power can be curtailed at any time." 8/

If the proposal was a "calculated business risk" under those conditions in 1959, what does immediate construction of a tie-line look like now, with BPA under effective prohibition against even discussing a contract for export of power to California? Senators Kuchel and Jackson called the proposed construction a gamble in 1959, though Mr. Gerdes did not agree. 8/ I believe it is indisputably a gamble now; a straight-out heads-or-tails political gamble depending entirely upon

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6/ Appendix F attached hereto.

7/ Hearings before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United States Senate, Eighty-Sixth Congress, First Session, on the Bonneville (Pacific Northwest)-California Intertie, April 8 and 9, 1959, Page 165.

8/ Ibid., Page 161.

policy decisions still to be reached by the Congress. Yet the Commission was orally urged by the staff to approve the security issue in this proceeding at once because PP&L had construction crews in the field and wished to start construction of this line immediately in order to avoid penalties.

And Staff said, "Let there be haste;" and there was haste. The paraphrase may be slightly irreverent but it is entirely on point. 9/

Is there a possible basis in the public interest for allowing the construction of major excess capacity by a public utility to the extent proposed and under the conditions prevailing in this case? In justice to the rate-payers who will eventually defray the costs of construction under rates having the force of law, I cannot conceive of such a basis.

The argument has been made (and rejected by every regulatory commission worthy of the name) that regulatory authority is powerless to interfere with an adventure such as this because it lies within the inviolable prerogatives of management. It would be a waste of time and paper to cite all the cases which have held that, while there are some areas of management discretion which should not be invaded unless required by the public interest, every improper or improvident decision of management which threatens unduly to burden the rate-payer or otherwise to damage the public interest is subject to review and reversal. If it were otherwise, no regulatory law would ever have been enacted or could ever have been enforced.

Virtually every manager, and certainly every manager of a public utility in this country, who handles and spends other people's money is rightly subject to public scrutiny and control under law, including the Federal Power Act, and I will not lengthen this dissent by laboring the point.

Another favorite thicket of the utility lawyer defending practices such as those under discussion here is the argument that no interference with an enterprise such as this one is proper because the impact of the actions complained of is not sufficient to bankrupt the company even if the worst consequences were to ensue, and the effect upon the individual rate-payer, while not exactly a happy one, would not be disastrous.

This begs the question and raises a smokescreen of sophistry into the bargain. There is a principle involved here, and a supremely important

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9/ Judge Henry J. Friendly, of the United States Second Circuit, on February 13, 1962, in an Oliver Wendell Holmes lecture before the Harvard Law School adverted to the same subject in the following words: "In these large agencies a considerable amount of delegation is inevitable; definition of standards is required if the agency members are to be masters of the staff rather than the slaves of anonymous Neros, each fiddling his own tune."

one. How can we condone practices on a limited scale which, if indulged on a larger scale, would unquestionably threaten the solvency of an entire utility system? Where is the line of demarcation beyond which "tolerable" practices become intolerably dangerous?

Here too the respected regulatory agencies have refused to be led down the primrose path. There are industries, particularly in the extractive mineral field, wherein gambling is such an essential and customary part of their business practices that the courts have, without prejudice, likened them to a poker game. The electric utility industry has never been considered one of these. It should not become one under the aegis of the Federal Power Commission.

Section 204 (a) provides that public utilities may not issue securities unless the Commission finds, among other things, that the purpose for which the proceeds will be spent is "compatible with the public interest." This provision has never been interpreted by the courts. Nevertheless some light as to the responsibility and burden which it imposes on the Commission and utility, respectively, can be gleaned from the court's interpretation of the similar but less stringent requirements of Section 203. The latter section prohibits electric utility mergers unless the Commission finds them to be "in the public interest." In Pacific Power and Light Co., et al. v. Federal Power Commission, 111 F. 2d 1014 at 1016, the court explained that the purpose of this provision is to insure

> "against public disadvantage through a requirement of a showing that mergers . . . will not result in detriment to consumers or investors or to other legitimate national interests."

For this reason, it continued,

> "the Commission properly requires applicants to make a full disclosure of all material facts. The burden is on them of showing affirmatively that the acquisition or merger is consistent with the public interest. The Commission must necessarily take an over-all view and in many cases it will . . . be called upon to weigh considerations pro and con." (Emphasis supplied.)

In the light of that pronouncement, I am unable to agree that the applicant here has made, or has been required to make, the showing clearly called for by the Act prior to granting the authorization requested. Section 204, as will be seen, is prohibitory in character; it permits authorization of securities "only if" the Commission has obtained information on which it can make the detailed findings that are conditions precedent to its action thereunder. In pertinent part, Section 204 (a) of the Federal Power Act (16 USCA 824c) provides that:

> "No public utility shall issue any security, . . . unless and until, and then only to the extent that, . . . the Commission by order authorizes such issue . . . The Commission shall make such order only if it finds that such issue . . . (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes . . ."

To determine these matters, the Act then at 204 (b) says that the Commission may hold a hearing, and "may grant any application . . . in whole or in part, and with such modifications and upon such terms . . . as it may find it necessary or appropriate" -- depending, that is, upon the extent to which it finds that the purpose of the issue has or has not been shown to meet the established standards. Any doubt as to the decisiveness and finality of the Commission's authority in this area is removed by Section 204 (c). It states that "no public utility shall . . . apply any security or any proceeds thereof to any purpose not specified in the Commission's order . . . or otherwise in contravention of such order." In any event, if the Commission after investigation and hearing finds any matter inconclusive, premature or unsettled, it may retain continuing jurisdiction for the purpose of modifying its original order in the light of subsequent developments (Section 204 (b)).

The only reasonable construction of Section 204 (a), as I read it, is that the language of clause (a) requires this Commission to obtain affirmative proof that the purpose for which the securities will be issued is not only lawful and within the corporate powers of the applicant, but that such purpose is also "compatible with the public interest" and appropriate to the proper performance of public utility service. It further appears that clause (b) requires the applicant to show, and the Commission to find, that the particular means proposed is either "reasonably necessary or appropriate." Faced with this latter choice, the majority "found" the proposed facilities to be neither "reasonably necessary" nor simply "appropriate", but "reasonably appropriate."

If this Commission properly is to exercise the responsibilities entrusted to it by the Congress under Section 204, it must examine into the purposes for which electric utility companies wish to issue securities. There is no other conclusion we can come to. And in determining the scope and extent of the efforts it must exert in discharging that responsibility, it is of little help to say that the Commission's investigation under Section 204 must be narrowly confined because the Commission does not have the power to issue or deny certificates of convenience and necessity for electric company construction. As that power was denied to this Commission in 1935 (See Senate Report No. 621, on S. 2796 in the 74th Congress, at p. 20), we obviously cannot disapprove

or deny proposed construction on that ground. But that is no reason for suspending or confining our inquiry, for the fact remains that this Commission can disapprove proposed utility construction under its power to approve or disapprove the purposes and projects for which utility securities to finance that construction will be issued.

Indeed, this has been done by state regulatory commissions armed with only security approval powers whenever, after an investigation a nd hearing, those commissions were satisfied that the purpose for which securities were to be issued was not "reasonably necessary" to carry out the stated purposes of the electric utility concerned.

Old Dominion Electric Cooperative, 86 PUR NS 129, is a case particularly in point -- where a regulatory commission armed only with the power of approval or disapproval over security issues used that authority to prevent construction of generating and transmission facilities which the commission found not "reasonably necessary" for carrying out the company's utility responsibilities. The matter is discussed there in full.

> "Counsel for Old Dominion argue", the Virginia Commission began, "that the only question for the Commission to decide is whether or not $16,000,000 is needed to acquire the structures described in the application, . . . Under that interpretation of the statute the only issue before the Commission would be whether the amount of $16,000,000 is reasonably necessary. Since that amount obviously is necessary, it would lighten our labors if that were the correct interpretation of the statute.
>
> "In our opinion that is not what the statute means. The . . . purposes of the law as well as its language show that the words 'reasonably necessary' mean not merely that the amount of money sought through the issuance of securities must be necessary to acquire the proposed structures, but also that the proposed structures themselves must be reasonably necessary for the accomplishment of some purpose having to do with the obligations of the utility to the public and its ability to carry out those obligations with the greatest possible efficiency. * * * If the utility, by deciding to build a $16,000,000 plant automatically had the right to borrow $16,000,000, there would be no function for the State Corporation Commission to perform except solemnly to record the fact that $16,000,000 would be reasonably necessary to build a $16,000,000 plant. The general assembly, in passing the statute, could not, in our opinion, have intended that result, because it would appear to be very much better to have no statute at all than to have one that produced only that result. * * * Evidence that the general assembly meant for the Commission to

consider the public interest and not merely the question of whether the amount of money sought was necessary to acquire the proposed plant is found in the following provisions of § 56-61:

> 'The Commission may by its order grant permission for any such issuance or assumption in the amount or on the terms applied for, or in a less amount, or on different terms, or not at all, and may include in its order such terms and conditions fairly relating to the matter of such issuance or assumption as it may deem reasonable or necessary.'

"The quoted language gives the Commission authority it could not usefully exercise if its only function were to pass on the amount of money needed to acquire the plant and not on whether the plant itself was reasonably necessary to perform the public duties of the public utility."

The Supreme Court of Massachusetts interpreted the words "reasonably necessary," as used in a statute dealing with the issuance of securities by public utilities, in the same manner. Speaking in Lowell Gas Light Company v. Department of Public Utilities, 62 PUR NS 238, at 243; 64 NE 2d 640, that Court said that:

> "since the words 'reasonably necessary' are not employed solely with reference to the amount of a proposed issue but refer also to the necessity of the issue itself, it follows inevitably that the Department must inquire whether the declared purpose of the proposed issue is in fact in the circumstances a reasonably necessary purpose. And having in mind that the function of the Department is the protection of public interests, we think that 'reasonably necessary' means reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency."

In this case, perhaps for the reasons spelled out in the Virginia and Massachusetts cases cited, the Commission avoided finding that the proposed construction was "reasonably necessary;" choosing to find instead that it was "reasonably appropriate."

I disagree. There are grave doubts, as I have shown, whether the proposed construction is or can be made "compatible with the public interest" in the existing circumstances. Until it passes that first and essential test on the basis of findings of fact, it is not helpful to talk about the proposed construction as being "reasonably appropriate." Such talk is, in fact, fuzzy, premature, and represents a conflict in terms.

The doubts concerning the projected construction are serious. They are genuine. They relate to the public interest which the applicant is required by law to serve and we are required by law to protect.

This order should be reconsidered by the Commission for the purpose of determining whether the projected construction is, in fact and in law, compatible with the public interest. If any portion of it is found wanting in this respect, restrictions should be placed upon the use offunds raised by this security issue for advancement of the specific project or projects involved, until such time as full compatibility with the public interest can be, and has been, factually demonstrated.

I repeat that, to the extent we fail to do this, we confront the rate-paying public -- and its elected and appointed representatives at both State and Federal levels -- not merely with our failure to insist upon the necessary information but with our specific and repeated refusal to ask the necessary questions.

Whether such behavior is caused by legal obfuscation, confusion or timidity I am unable to say, but I heartily disagree with and dissent from it.

Howard Morgan, Commissioner

Appendix A

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Pacific Power & Light Company) Docket No. E-7024

NOTICE OF APPLICATION

(March 1, 1962)

Take notice that on February 19, 1962, an application was filed with the Federal Power Commission pursuant to Section 204 of the Federal Power Act by Pacific Power & Light Company ("Applicant"), a corporation organized under the laws of the State of Maine and doing business in the States of Oregon, Wyoming, Washington, California, Montana and Idaho, with its principal business office at Portland, Oregon, seeking an order authorizing the issuance of $35,000,000, in principal amount of First Mortgage Bonds, Series due 1992. Applicant proposes to issue the aforesaid Bonds under its presently existing Mortgage and Deed of Trust, dated July 1, 1947, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York) and Oliver R. Brooks (Wesley L. Baker, successor), as Trustees, as heretofore supplemented by twelve supplemental indentures and as to be further supplemented by a Thirteenth Supplemental Indenture to be dated as of April 1, 1962. The Bonds, to be dated April 1, 1962, will be sold at competitive bidding and will bear interest at the rate per annum to be fixed by competitive bidding. Applicant states that the net proceeds of the issuance and sale of the Bonds and of not to exceed 696,695 additional shares of its Common Stock of the par value of $3.25 per share (proposed to be sold separately - Docket No. E-7025) will be applied to the payment of notes then outstanding (not expected to exceed $42,000,000 in principal amount) under a Credit Agreement dated as of August 15, 1961 and to the carrying forward of Applicant's construction program - estimated at $44,000,000 for 1962 and $56,000,000 for 1963.

Any person desiring to be heard or to make any protests with reference to said application should on or before the 21st day of March 1962, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

Joseph H. Gutride
Secretary

Appendix A

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Pacific Power & Light Company) Docket No. E-7025

NOTICE OF APPLICATION

(March 1, 1962)

Take notice that on February 19, 1962, an application was filed with the Federal Power Commission pursuant to Section 204 of the Federal Power Act by Pacific Power & Light Company ("Applicant"), a corporation organized under the laws of the State of Maine and doing business in the States of Oregon, Wyoming, Washington, California, Montana and Idaho, with its principal business office at Portland, Oregon, seeking an order authorizing the issuance of not to exceed 696,695 shares of its Common Stock with a par value of $3.25 per share. Applicant proposes to offer the aforesaid Common Stock initially on a pro rata basis to holders of record of Applicant's presently outstanding Common Stock on the rights offering record date, in the ratio of one share of additional Common Stock for each twenty shares then held. The price of the additional shares will be determined by Applicant's Board of Directors shortly before the proposed offering date, at an appropriate discount. Each common stockholder of record will receive a transferable subscription warrant expressed in terms of rights which will have a life of not less than twenty days. Where the number of rights evidenced by a warrant is not evenly divisible by 20 or is less than 20, then the holder will be entitled to subscribe for one full share with the number of rights which exceeds a multiple of 20 or is less than 20. Applicant will not accept subscriptions for fractional shares. Any shares of the additional Common Stock not subscribed for by warrant holders pursuant to the aforesaid subscription offer will be sold by Applicant to underwriters at the same price at which the shares are to be sold to Applicant's stockholders. The underwriters' compensation for commitments to purchase any unsubscribed shares is to be fixed by competitive bidding. Applicant states that the net proceeds of the additional shares of Common Stock and of $35,000,000 in principal amount of First Mortgage Bonds, Series due 1992 (proposed to be sold separately - Docket No. E-7024) will be applied to the payment of notes then outstanding (not expected to exceed $42,000,000 in principal amount) under a Credit Agreement dated as of August 15, 1961 and to the carrying forward of Applicant's construction program - estimated at $44,000,000 for 1962 and $56,000,000 for 1963.

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Any person desiring to be heard or to make any protests with reference to said application should on or before the 21st day of March 1962, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

Joseph H. Gutride
Secretary

Appendix B

(The following resolution was adopted by the Senate Committee on Interior and Insular Affairs on July 21, 1960:)

PACIFIC NORTHWEST (BONNEVILLE) CALIFORNIA INTERTIE

Whereas the Committee on Interior and Insular Affairs by resolution on May 19, 1959, requested the Secretary of the Interior to suspend all negotiations for the interconnection and the sale of surplus power from the Bonneville or Columbia River Basin system to California until a study and analysis of the feasibility and desirability of a high voltage interconnection for the disposal of surplus secondary energy between the Federal power systems of the Pacific Northwest and California; and

Whereas a report on the analysis requested was submitted to the committee under date of February 17, 1960; and the committee held public hearings May 5, 1960, and June 15, 1960, on the subject; and

Whereas the Governor of California, in cooperation with the Governors of Oregon and Washington, has requested further time for a study and analysis of a high voltage interconnection pending the completion of the report of consultants retained by the Governor of California in cooperation with the Governors of Oregon and Washington, and in consideration of legislation that would effectively protect the interests of the United States and the power consumers of the Pacific coast areas; and

Whereas the quantities of surplus energy which may be interchanged between the Pacific Northwest and California range from 4 billion kilowatt-hours in a dry year to 25 billion kilowatt-hours in a wet year; and

Whereas the committee has heard testimony asserting very substantial benefits accruing from the construction of a high-voltage interconnection between the Pacific Northwest and California and indicating that further studies are required to make a full disclosure of the potentialities of the proposed intertie; and

Whereas the committee finds that the public interest in the interconnection and transfer of power or energy within the Pacific coast areas may require legislation to insure protection of the Federal power and multiple-purpose projects in the systems; and

Whereas a completion of the independent study and analysis of the proposals is essential before any commitment is made on behalf of the United States with respect to the transfer of power or energy from one area to the other of the Pacific Coast States; Therefore be it

Resolved, That the Committee on Interior and Insular Affairs requests the Secretary of the Interior to continue to suspend negotiations looking to the sale and transfer of surplus power or energy from the Pacific Northwest to California, pending the completion of the survey and analysis by the consultants retained by the Governors of the Pacific Coast States; the submission of their report to the committee; and the consideration of

legislation that will protect the interests of the United States and the power consumers concerned; be it further

Resolved, That the committee requests the Secretary to submit to the committee for consideration at the next session of the Congress a draft of proposed legislation designed to guarantee to consumers in the Pacific Northwest States first call on power generated by Federal agencies in that region, as requested by the Governors of the Pacific Coast States; be it further

Resolved, That the Secretary advise the committee of his action with respect to compliance with the request in this resolution.

Approved by the Committee on Interior and Insular Affairs on June 21, 1960.

James E. Murray, Chairman

Appendix C

COMMENT BY BONNEVILLE POWER ADMINISTRATOR CHARLES F. LUCE ON THE PROPOSED NEW INTERCONNECTION BETWEEN PACIFIC POWER & LIGHT COMPANY AND PACIFIC GAS AND ELECTRIC COMPANY:

The plans of Pacific Power and Light Company and Pacific Gas and Electric Company for a 110-mile 500-kv California intertie are consistent with engineering recommendations of our Task Force report on a Pacific Northwest-Pacific Southwest intertie.

The companies' proposal could provide an important link in a full length extra high-voltage common carrier intertie between the generating plants of the Northwest and California. Pacific Power has expressed willingness to lease capacity in the intertie to Bonneville and other northwest utilities.

In view of our region's concern for protecting its power supply, BPA will make no commitment to export surplus Bonneville power outside the region until Congress has acted upon regional preference legislation. Announcement of the companies' plans makes it imperative that our entire region get behind the enactment of such legislation.

Appendix D

A 110-mile line built for 500-kv operation will be the third transmission intertie between Pacific Gas & Electric Co and Pacific Power and Light Co. Each company will build half the line, which will run from Klamath Falls, Ore., to Round Mountain in Shasta County, Calif. Cost is estimated at $10 million.

Construction will begin as soon as possible, and completion is expected by the fall of 1963. Initial operation will be at 230 kv, and conversion to 500 kv will be made when joint studies of load and operating requirements indicate the increase to EHV should be made.

The line closely parallels a line proposed by PG&E in 1960, which was not built after Sen. Murray's (D-Mont) Interior and Insular Affairs Committee indicated that the Committee felt it would conflict with larger proposals also being studied at the time. That proposal, however, was contingent on sale of surplus power by Bonneville Power Administration to PG&E, while no such agreement is included in the present line.

Capacity of the new line was not disclosed, but the capacity of the 230-kv line proposed in 1960 was 200 Mw. At present there are two interconnections between PG&E and PP&L -- the 110-kv Cottonwood line and the 69-kv Stillwater line, which run from separate PG&E switching stations in Shasta County to PP&L's transmission system in Siskiyou County, Ore.

In announcing the line PG&E's president Norman R. Sutherland said, "We have had interconnections for many years with the utility company to the north of us, as well as with the companies bordering our service territory to the East and to the South. Such interconnections have been augmented and expanded as needed. This new line will assure transmission capability for the additional power that will become available as we and the other companies expand our capacities in the years ahead."

A paragraph in the contract between the two companies reads: "We shall continue to study jointly the economic feasibility, in the light of developing circumstances, of converting the line to operation at not less than 500 kv and also of extending it in a northerly and southerly direction to provide an EHV intertie between the Pacific Northwest and California. It is understood that we will convert the line to operation at not less than 500 kv and extend it in both directions at such time as we jointly determine that such actions are economically justified."

Charles F. Luce, Bonneville Power Administrator and chairman of the special task force that proposed an EHV tie linking California and the Northwest (EW, Dec. 25, 1961, p. 34), called the PG&E-PP&L proposal "consistent with engineering recommendations of our task force report."

Luce also noted, "The companies' proposal could provide an important link in a full-length EHV common carrier intertie between the generating plants of the Northwest and California. Pacific Power and Light has expressed willingness to lease capacity in the intertie to BPA and other Pacific Northwest utilities."

Luce's statement emphasized that BPA would "make no commitment to export surplus power outside the region until Congress has acted upon regional preference legislation." He said that the announcement "makes it imperative that our entire region get behind the enactment of such legislation."

(From Electrical World, January 29, 1962, pp. 55-56)

Appendix E

FOUR CALIFORNIA UTILITIES MAKE EHV TIE OFFER

Principal state investor-owned companies make proposal to transport Northwest power into Southern California

California's four principal investor-owned utilities have offered to construct an extra-high-voltage transmission line to carry Northwest power to southern California.

The offer is in effect a competing proposal to the Interior Department's task force proposal for a 750-kv, dc line between Bonneville Power Administration and California (EW, Dec. 25, 1961, p. 34).

The joint proposal by the four utilities -- Pacific Gas & Electric Co., Southern California Edison Col, California Electric Power Co., and San Diego Gas & Electric Co. -- was made contingent upon Northwest power being available and on terms that will make construction of the line economically feasible. These four utilities recently formed the California Power Pool (EW, Dec. 25, 1961, p. 34).

The offer, referred to in PG&E's just-issued 1961 annual report, was believed to have been made during a meeting with BPA chief Charles Luce and other officials several weeks ago.

To be constructed in stages

The report goes on to say: "This line will be constructed in stages as needed and existing transmission capacity of the California companies will be used to the maximum extent to avoid uneconomic duplication of facilities. In view of the transmission lines now existing and to be constructed by the California companies, there is no need whatever for the federal government to spend vast sums of taxpayer's money to construct the transmission facilities recommended by the (Interior) task force. The lines to be built by the California companies will be at no cost to taxpayers and, furthermore, will be productive of substantial tax revenue."

The proposed line (of not less than 500 kv) would extend south from PG&E's Round Mountain Substation in the Shasta area. North from Round Mountain will be the previously announced $11-million, 103-mile, 500-kv intertie with PP&L's 230-kv system at Klamath Falls, Ore. (EW, Jan. 29, p. 55).

No mention is made in the PG&E report of a further extension north from Klamath Falls to The Dalles or some other point in the BPA system. Presumably, some sort of extension would have to be built if the California Pool offer is accepted.

Meanwhile, the California Pool operation is moving ahead. The first step occurred last December with the closing of an existing 220-kv tie between PG&E's Midway Substation and SoCalEd's Magunden Substation, both near Bakersfield. The 250-Mw tie, which will be used for emergencies, has been open for some years. Previously, PG&E used it to buy surplus power from SoCalEd when that company was taking power from Hoover Dam.

The four pool members are presently working on details of further interconnections and other arrangements to permit full operation of the pool.

Finally, details have been released on the 500-kv Round Mountain-Klamath Falls line. Some 600 latticed steel guyed H-frame structures will be used to carry the ACSR cable. Maximum design voltage will be 550 kv. The line will be completed in the fall of 1963 and will be operated first at 230 kv.

(From Electrical World, April 2, 1962, p. 26.)

Appendix F

Pacific Gas and Electric Company

245 Market Street

San Francisco 6, California

N. R. Sutherland
President

January 5, 1962

Pacific Power & Light Company
Public Service Building
Portland 4, Oregon

Gentlemen:

This letter states our agreement to augment our existing electric interconnection facilities by the construction of a new large capacity transmission line to provide for the sale and exchange of energy between our companies and for the parallel operation of our systems, and to provide facilities and arrangements that make possible the sale and exchange of energy between other electric systems in the Pacific Northwest and PG&E, either directly or indirectly through PP&L.

We agree to continue to maintain our respective portions of our existing interconnecting transmission lines. These lines, which connect our electric systems at two points, both located at Delta in Shasta County, are the "Cottonwood Line", a 110-kv electric transmission line running from PG&E's Cottonwood Substation via Delta to PP&L's COPCO No. 2 Power House in Siskiyou County, and the "Stillwater Line", a 60-kv electric transmission line running from PG&E's Stillwater Substation "B" via Delta to PP&L's COPCO No. 2 Power House in Siskyou County.

In addition, we agree to construct, operate and maintian a new transmission line running from Klamath Falls to Round Mountain, with the point of interconnection on or in the immediate vicinity of the township boundary line between Townships 42 N and 43 N in Range 1 E, MDB&M. PP&L will construct, own, and operate the norther section of the line, with terminal facilities at Klamath Falls, and PG&E will construct, own, and operate the southern section, with terminal facilities at Round Mountain and also, if it wishes, at Pit 3. The line shall be capable of operating at not less than 500 kv, and shall be designed and constructed in accordance with specifications acceptable to both parties. However, the line will be operated initially at 230 kv, and accordingly the terminal facilities shall be constructed for initial operation at that voltage.

The construction of the line and terminal facilities shall be commenced promptly after the execution of this agreement, and shall be completed as soon as practicable.

We shall continue to study jointly the economic feasibility, in the light of developing circumstances, of converting the line to operation at not less than 500 kv and also of extending it in a northerly and southerly direction to provide an extra high voltage intertie between the Pacific Northwest and California. It is understood that we will convert the line to operation at not less than 500 kv and extend it in both directions at such time as we jointly determine that such actions are economically justified.

After supplying customers off of the Cottonwood and Stillwater Lines, the primary use of the three interconnecting lines shall be for firm service, exchange service (including emergency service) and sales of surplus energy between PP&L and PG&E. It is contemplated that PP&L may have transmission capacity in its system that will not be required for purposes deemed necessary by PP&L. PP&L intends to make such excess transmission capacity, along with any excess capacity in the three interconnecting lines after serving their primary use, available for service between Bonneville Power Administration and utility companies in the Pacific Northwest and PG&E. In such case PP&L will make a reasonable charge for transmitting the energy of any other company or agency over its system, the exact amount of the charge to be as agreed upon between PP&L and the owner of the energy.

PG&E and PP&L will plan and operate their systems so that the flow of reactive power will not adversely affect the system of the other, and they shall operate, or provide for others to operate, adequate tie line and frequency control equipment so as to minimize the power swings over the lines and to contribute a proportionate share of the total interconnected system frequency regulation. In addition, an operating committee consisting of an equal number of representatives from each company shall meet from time to time to agree upon methods of operation and related matters in order to achieve the purposes of this agreement, and such matters shall include, but not be limited to, reactive power, voltage regulation, tie line control settings, clock corrections, deviations from energy delivery schedules, emergency operations, estimates of deliverties during meter outages, and scheduling arrangements.

From time to time PP&L may desire to purchase energy from PG&E. PG&E agrees to sell PP&L energy provided that PG&E has surplus energy and the parties have mutually agreed as to the price to be paid, the period to be covered and the time of day deliverties are to be made.

The power sale agreement dated July 14, 1952, as heretofore amended and supplemented, between PG&E and The California Oregon Power

Company and to which PP&L is the successor, is hereby in its entirely cancelled effective February 1, 1962. Appropriate notice shall be given to the Federal Power Commission immediately upon the execution hereof and the necessary schedules filed with the Commission in accordance with the terms of this agreement.

Service will commence under this agreement and in accordance with the attached rate schedules on February 1, 1962, and the agreement will remain in effect until February 1, 1972, and from year to year thereafter, terminable on one year's written notice given by either one of us at any time after January 31, 1971.

If this letter and the attached schedules correctly state our agreement, please sign and return one of the enclosed copies hereof.

Yours very truly,

PACIFIC GAS AND ELECTRIC COMPANY

By _____

We agree:

PACIFIC POWER & LIGHT COMPANY

By D. R. McClung

ADDRESS ALL COMMUNICATIONS
TO THE SECRETARY

FEDERAL POWER COMMISSION
WASHINGTON 25, D.C.

Docket Nos. E-7024 and E-2025
Pacific Power & Light Company

December 7, 1962

TO THE PARTY ADDRESSED:

Enclosed is a copy of a statement filed by Commissioner Morgan "dissenting further" in the above-designated matter.

Joseph H. Gutride
Secretary

Pacific Power & Light Company) Docket Nos. E-7024 and E-7025

MORGAN, Commissioner, dissenting further:

On March 28, 1962 the Commission published orders in these dockets authorizing, as of that date, the issuance of securities for the purpose of financing a number of projects, including a particular transmission line from Klamath Falls, Oregon to Round Mountain, California which was, and remains, a highly questionable undertaking. Because of the importunities of the applicant and its associates in the financial community, the majority of this Commission were anxious to issue their order on March 28, without waiting for my dissent to be prepared, and as noted in the order I consented to that arrangement.

Because the order was effective as of March 28 and time for appeals for reconsideration or a hearing was running, I prepared my dissent as rapidly as possible, filed it with the Secretary of the Commission on April 3, and on that date distributed copies to the Governors, Senators, Congressmen and Public Utility Commissions of the states involved so that they might have prompt understanding of the important questions bearing on the public interest which theretofore had been obscured, both by the Commission's earlier "public notice" and by the order.

Acting under instructions not concurred in by me, the Commission's Secretary thereafter withheld my dissent from publication by the Commission while the majority prepared an opinion attempting to explain their position in the case. After post-dating it to April 12, the Secretary published my dissent on that date, and the majority opinion was published five days later, on April 17, while I was in Canada fulfilling a speaking engagement. This procedure, involving the post-dating of my dissent which had not been agreed to by me, created a situation giving the unavoidable impression that the dissent and the majority opinion had been exchanged for examination by the respective authors prior to publication, and that arguments made in the majority opinion and unanswered in the dissent were either unanswerable or were acceptable to me.

That any such impression can only be wholly false is clear from the foregoing statement of the facts.

Further, as I shall show, the focus of the majority opinion was so narrowly directed toward rationalization of the majority's position, rather than toward the public interest, that it repeatedly distorted the facts, the law, and common logic and, as an end result, virtually emasculated Section 204 of the Federal Power Act which sets forth the Commission's responsibilities with respect to security issues. Since this was the first and only occasion on which the Federal Power Commission has ever expatiated on its powers and duties under Section 204,

this unfortunate series of circumstances has resulted in publication of a majority opinion virtually repealing that portion of the Federal Power Act, while serving as a precedent for nonfeasance in the future even more scandalous, if possible, than that of the past.

In the months which have intervened since publication of the majority opinion it has already served as a reference-guide for examiners, for staff members, and for Commissioners themselves who wish to avoid the duties and responsibilities in service of the public interest spelled out clearly by the Congress in the Federal Power Act.

In these circumstances I have the unavoidable duty, in behalf of the public interest, of commenting further in this matter. In doing so it is not my purpose to prolong or exacerbate the controversy, but to bring all aspects of this matter into proper perspective for the benefit of those who may refer to this case and its important issues in the future.

In an attempt to explain their refusal to discharge a duty Congress assigned this Commission, my colleagues have repeatedly misstated my position. Contrary to their claim, I never suggested that "the Commission should have withheld its approval" of and "should have scheduled a hearing" on a $55 million security issue, "merely because a small fraction of the proceeds [estimated by the majority at $1.5 million, or 2.7% of the total issue] are to be devoted to the construction of facilities . . . for a future use which may not materialize."

Throughout our deliberations, as my colleagues well know, I raised no question regarding the undertakings to be financed with the bulk of the issue. I was concerned, and I remain concerned, solely with the question of whether or not the expenditure of an estimated $1.5 million to enlarge the proposed Klamath Falls-Round Mountain tie-line is compatible with the public interest. I was unable, and I remain unable, to state the confines of that concern more clearly than I did in my first dissent, viz:

> "It is . . . impossible to reject the line out of hand as being uneconomic, imprudent or otherwise incompatible with the public interest. There simply is no record on which to base either approval or rejection. I therefore have not advocated rejection of the project in the present proceeding and I do not advocate rejection now.
>
> * * *
>
> "What I have advocated, and what I believe is clearly required by Section 204 (a), (b) and (c) of the Federal Power Act, is careful investigation and genuine

> opportunity for a hearing to determine whether the line is 'compatible with the public interest' . . ."

As this was the sole and separable question of the case, its determination did not require us to delay the remainder of the issue. The sections of the Act referred to above specifically give us the power to separate a single project for detailed investigation; to withhold approval of the expenditure of capital for such a project pending completion of the investigation; and to approve the issuance of capital securities and the expenditure of the proceeds on all other projects while such an investigation takes its course. That is the procedure -- and it is the only procedure -- which I advocated in this case.

Regardless of the "politically controversial" nature of such an inquiry, our statutory responsibility and oath of office require us to consider questions which can only be answered by such an inquiry. The majority's obdurate refusal to inquire cannot be concealed by distorting my position.

But the more serious result of the majority's position is not their refusal to determine whether "the construction of facilities . . . for a future use which may not materialize" is "compatible with the public interest." Nor is it the majority's refusal to define or even discuss "the public interest" as a standard. The more serious result is that -- acting on behalf of the Federal Power Commission, and in the first and only exposition this Commission ever made of Section 204 -- the majority have totally discarded "the public interest" as a standard, despite its unobscurable presence in the statute!

Section 204 (a) clearly and with no trace of ambiguity states that before it may approve a security issue this Commission must satisfy itself that the specific undertaking to be financed --

(1) is lawful, and

(2) that the company is legally authorized to perform it, and

(3) that its performance "will be compatible with the public interest," and

(4) that it will be consistent with the proper performance of public utility service, and

(5) that it will not impair the company's ability to serve as a public utility.

As each of these constitutes an independent standard, we are legally forbidden to approve an issue unless we can find, in fact as well as in fine-spun legal theory, that the proposed undertaking meets each test.1/

Obviously, the fact that Congress refused to prescribe an alternative standard -- one under which the Commission could have approved or disapproved an undertaking in its discretion -- in no way diminishes the Commission's duty to determine whether a proposed issue meets the five standards Congress did prescribe. Nor does it diminish the Commission's authority and duty to disapprove an issue if the undertaking fails to meet any one of the five standards, each of which has a separate efficacy.2/

In their anxiety to avoid decisional responsibility, the majority have perverted the public law. The first two and one-half pages of their statement describe the application and staff's "careful examination" thereof. Then, after explaining for three pages that the test of "public convenience and necessity" is more discretionary than the test of "the public interest," they rule that we need not apply "the

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1/ The Commission, of course, must make the additional finding that "such issue . . . is reasonably necessary or appropriate" for an undertaking if it satisfies each of the five prior standards.

2/ As introduced, the bill that contained what became Title II of the Federal Power Act (S. 1725 and its House companion H.R. 5423, 74th Cong. 1st) made no reference to "the public interest" whatsoever, or to any of the other standards, in what is now Section 204 (bill Section 206).

Instead, the bill provided at Sec. 204 (of the original) that: "No public utility shall undertake the construction of or extension of any facilities . . . unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction . . ." As this authorized the Commission to exercise precedent, unrestrained certificating authority over all utility construction for interstate purposes, the securities section merely stated that utilities could only issue securities for authorized purposes.

But the Senate and House Commerce Committees chose not to vest unconfined certificating power in this Commission. Accordingly, they deleted the certificating section in its entirety, and inserted five specific standards in the securities section instead. (See S. 2796, in the nature of a substitute for S. 1725, as reported by each Committee and as passed.)

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public interest" test because Congress rejected the discretionary test of "public convenience and necessity"! Specifically, the majority opinion rules that, "in testing a security issue by the statutory standard," the Commission need only satisfy itself that the specific undertaking to be financed --

(1) is lawful,

(2) that the company is legally authorized to perform it, and

(3) that it will not impair ("squander") the company's ability to serve as a public utility.

As can be seen, this ruling is in flat and flagrant opposition to the law.

The remainder of the majority's statement consists of a series of question-begging assertions that this Commission is not empowered to determine whether a publicly-owned interconnection should be constructed (a determination I have never suggested we should or could make), or whether the company's proposed interconnection should be used to transmit surplus Bonneville power to the Pacific Southwest (another determination never suggested by me), plus an assertion that applicant's proposal is not "totally improvident."3/ It concludes with references to the desirability of an effective regional tie-line, the alleged "harmony" of applicant's proposal with certain of the Bonneville Power Administration's engineering recommendations, and an explanation (which does not explain) why the Notice herein did not give notice.

3/ The majority tested the proposal by (only) three standards. It says the question "is whether from an economic standpoint . . . an investment incontrovertibly within the lawful corporate purposes of the Applicant -- represents a totally improvident business decision." But the majority did not apply the economic test either, having previously ruled that "whether [a publicly-owned] interconnection would . . . remove any economic justification for Applicant's proposed expansion . . . [is] not for us to decide." Instead, as a substitute for the investigation it refused to make, it merely provided a series of hollow official recitals, such as: "we have no reason to think" that the investment would be "totally improvident"; "this Commission estimated only last January that the demand for electric energy in 1980 will be 3.75 times the requirements in 1960"; and so on. This orotund approach will not prevent undertakings "which make impossible the proper and most economic performance of public utility functions." (Sen. Rept. 621, 74th Congress, emphasis supplied.) In sum, the majority declined to scrutinize the matter at all.

The majority refused to consider, discuss, or acknowledge -- and labored to obscure -- the only question of the case: namely, whether or not it is in "the public interest"[4/] for a company, in the face of an effective prohibition against the export of surplus Bonneville power and in order to protect its private monopoly position, to expend capital underwritten by the ratepayers in a risky attempt to prevent the construction of an admittedly needed extra-high-voltage regional intertie by the construction of a designedly inferior substitute. Management here, as in all similar cases, obviously considers the risks justified as a means of achieving the ends chosen by management; but the question is whether these means or these ends should be imposed on the ratepayers who must ultimately pay the bill. Our duty is to answer that question. And abdication is not an acceptable substitute for a duty discharged.

In an attempt to extract from the majority some sort of lucid exposition of their refusal to answer the question I included the following passage in my dissent:

> "Another favorite thicket of the utility lawyer defending practices such as those under discussion here is the argument that no interference with an enterprise such as this one is proper because the impact of the actions complained of is not sufficient to bankrupt the company even if the worst consequences were to ensue, and the effect upon the individual rate-payer, while not exactly a happy one, would not be disastrous.
>
> "This begs the question and raises a smokescreen of sophistry into the bargain. There is a principle involved here, and a supremely important one. How can we condone practices on a limited scale which, if indulged on a larger scale, would unquestionably threaten the solvency of an entire utility system? Where is the line of demarcation beyond which 'tolerable' practices become intolerably dangerous?
>
> "Here too the respected regulatory agencies have refused to be led down the primrose path. There are industries, particularly in the extractive mineral field, wherein gambling is such an essential and customary part of their business practices that the courts have, without prejudice, likened them to a poker game. The electric utility industry has never been considered one of these. It should not become one under the aegis of the Federal Power Commission."

4/ Apart from its quotation of the statute, and its attempt (both footnoted) to obscure the court holding that says this Commission must require "full disclosure of all material facts" before it can find a proposed undertaking "compatible with the public interest," the majority barely mentions "the public interest" standard.

The majority's response to this was dramatic, if nothing else. After boldly retreating from one of the plain standards set up by Section 204 (a) of the Act (requiring us to "find," before approving an issue of securities, that the project on which the proceeds are to be expended will not "impair" the performance of public utility service), the majority erected their own standard in its place by fancifully embroidering the standard set up by Congress. This new standard turned out to be a banner with a strange device indeed. Under it the majority see no need to examine a particular project unless it is "so improvident, frivolous and speculative that it threatens to squander the corporate substance without reasonable hope of return" or is "a totally improvident business decision." One can only predict that snow and ice will prevail in the nether regions for many years before the members of this Commission discover any need to venture forth in battle for the public interest under that banner -- nor is it altogether impossible that this very prediction played a part in the design of the new standard.

The background facts, as evident to the majority at the time they wrote their opinion as now, clearly indicated that this proposal might very easily serve to prevent the distribution and sale of electric power at the lowest possible cost to the public of the Pacific Coast regions.5/ Obviously, a proposal which on its face raises the

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5/ The realities, "extra record" though they necessarily must be (there being no record), were and remain as follows: (a) the export of seasonally-surplus Bonneville power to California markets is necessary to preserve the continuance of low Bonneville rates; (b) before it can be exported, legislation is probably necessary to prevent the preference clause from operating in such fashion as to create chaos in the existing BPA marketing area; (c) upon the enactment of such legislation, passed by the last Senate but not considered by the House, an extra-high-voltage transmission line, planning funds for which have been appropriated, may be constructed to convey surplus Bonneville power to California, and surplus Central Valley Project power to the Northwest; (d) the purpose of the proposed substitute line is to foreclose later construction of the designedly superior Federal line; (e) the inferior line has not been made available to wheel surplus power between Bonneville and California; (f) no demonstration has been made that it will effectively integrate the two power-producing and marketing regions; (g) the success of applicant's grand design may force an increase of Bonneville rates; (h) this Commission must approve Bonneville's rates; and (i) those rates must be set at levels designed "to extend the benefits of an integrated transmission system and encourage the equitable distribution of the electric energy developed at . . . Bonneville," 16 USCA 832e. A complete discussion of
(continued on next page)

possibility that it may militate against "an abundance of electricity at the lowest possible cost," cannot be presumed to be "compatible with the public interest."[6/] Those background facts plainly signaled a situation that should be investigated thoroughly, and set for hearing if necessary, for the purpose of determining whether the operation of the undertaking, as proposed, would be "compatible with the public interest" and "consistent with the proper performance . . . of services as a public utility," or could be made "compatible" and "consistent" therewith by the exercise of our conditioning power.[7/]

The standard of "the public interest" is not surplusage or Congress would not have placed it in the statute. Its meaning is contained within the four corners of the Act of which Section 204 is a part (not the railroad law). Its statutory environment shows that the standard of the "public interest" by which the subject proposal must be tested, and with which it must be "compatible," is that method of "interconnection and coordination" which will assure, or at least not frustrate or preclude, "an abundant supply of electric energy . . . with the greatest possible economy and with regard to the proper utilization and conservation of natural resources."[8/] As a matter of fact, its legislative history shows that the attainment and safeguarding of the public's interest in this particular matter was the primary reason for

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(continued)

5/ each of these elements appears in the documents cited in footnote 2 at dissent page 3; and again in the hearings on S. 3153 in the 87th Congress before the Senate Subcommittee on Irrigation and Reclamation, and in hearings on the Bonneville inter-tie planning funds before the House and Senate Appropriations Committees. Some of these matters lie within our jurisdiction and some do not. But all of them affect and are affected by the public interest. An understanding of them is necessary to an understanding and identification of the public interest.

6/ The issue is not that applicant failed to demonstrate that its proposal will "promote" the public interest or provide a "public benefit," Pacific Power & Light v. FPC, infra. The question is whether applicant's undertaking "will be compatible with the public interest" as defined by the entirety of the Federal Power Act.

7/ "Section 204 (b) The Commission, after opportunity for hearing, may grant any application under this section in whole or in part, and with such modifications and upon such terms and conditions as it may find necessary or appropriate, . . ."

8/ Sec. 201 (a) and Sec. 202 (a) - (d).

enacting Title II of the Federal Power Act. Senate Report No. 621 of the 74th Congress made this unequivocally clear. It said --

> "The necessity for Federal leadership in securing planned coordination of the facilities of the industry which alone can produce an abundance of electricity at the lowest possible cost has been clearly revealed in the recent reports of the Federal Power Commission, the Mississippi Valley Committee and the National Resources Board . . . The new part 2 of the Federal Water Power Act seeks to bring about . . . regional coordination . . ."

The "precise nature of the interests" that should have been " . . . safeguarded by this Commission in passing upon . . ." the subject application,9/ therefore, is the public interest in an "abundance of electricity at the lowest possible cost," and calls for careful scrutiny of any undertaking under our jurisdiction which may be incompatible with, or designed to prevent, the attainment thereof.

In addition to several misstatements of my position herein, the majority employ a variety of additional devices to justify their somewhat self-conscious refusal to consider this matter. First they say "we should not attempt to substitute our judgment for that of management." The answer is that Congress long ago found that management decisions in the electric power field often are contrary to the public interest; and that Congress established and directed this Commission to substitute its judgment for all management decisions that are not compatible with the public interest.

Next, the majority say they did not feel that a hearing would "illuminate any material issue." The answer to that is that our scheme of Government, including the Federal Power Act, presumes that the facts upon which decisions affecting major issues of public policy must be based are rarely known until a public hearing is held in which all interested parties may participate; and that such decisions should not be made in camera and without public notice. Presumably the countless public and private officials who journeyed to Washington, both before and after the majority acted on this matter, for the sole purpose of testifying before Congress for and against the proposed Federal line would have had at least a few words to offer, if a hearing had been held regarding the extent to which the substitute line was, or by our conditioning power could be made, "compatible with the public interest."

Next, the majority say they did not hold a hearing on the substitute line because it involved "political and policy" considerations which this Commission cannot consider. The answer is that the Federal

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9/ Pacific Power & Light v. Federal Power Commission, 111 F.2d, 1014 at 1017 (1940).

Power Commission is a political entity; its seats are occupied by political appointees; and they serve for the purpose of deciding matters affected by and affecting public policy. If this is a bad thing, which I deny, it is very late in the game to begin worrying about it now.

Next, the majority say they did not hold hearings because "no objections were raised to the proposed issue." The answer, as the majority explain, is that the public and its officials were not notified.

Next, the majority say that the Chairman of the Washington Utilities and Transportation Commission withdrew the strong request for safeguarding conditions which he immediately filed after learning that, in this innocuous "securities" matter, the FPC proposed to determine whether the substitute line was "compatible with the public interest." Specifically, the majority say that his telegram was "superseded and withdrawn" by a later letter. The answer to this is that it is simply not true. No such letter is in the docketed files on this matter, and it is hard to see how one ever could have been, because the Chairman of the Washington Utilities and Transportation Commission never wrote such a letter.

Next, the majority say that a hearing would have been inappropriate because "procedures for considering securities issues must be expeditious." (But they "reject" any suggestion that their expedition was indistinguishable from haste.) The answer is that Congress directed this and other regulatory agencies to hold hearings, if necessary, to determine whether an undertaking to be financed with the proceeds of security issues is "compatible with the public interest"; and that other agencies do so.

Finally and principally, the majority seek to clothe their refusal to investigate in those respectable outer garments which, though threadbare, are sought after more avidly than sables in situations such as this. I refer to legalisms. Specifically the majority allege that, because the Interstate Commerce Commission interprets Section 20 (a) of the Transportation Act of 1920 narrowly, this Agency must therefore interpret Section 204 (which is patterned after Section 20 (a)) in a narrow fashion. Arguing their point, the majority quote "the leading historian" of the ICC as stating that the: " . . . dominant purpose [of Section 20 (a)] was to maintain a sound structure for the rehabilitation and support of railroad credit . . ."

There are several answers to this claim, but two will do.

(1) In the first place, when they issued their opinion the majority refrained from saying that it was Sharfman they were quoting; or from what part or portion of his massive multi-volume work on the ICC

they excerpted the interior portion of one paragraph which formed their quotation. Had they done so,[10/] they would have enabled their audience to find quickly that in the very next paragraph, Sharfman explains that --

> "The considerations set up for the Commission's guidance are stated in very general, and somewhat vague, terms. The Commission is directed to approve the application and authorize the proposed transaction only if it finds it to be, first, for some lawful object within the carrier's corporate purposes, compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance of service to the public as a common carrier and will not impair its ability to perform that service, and second, reasonably necessary and appropriate for this purpose. It thus appears that large discretionary control is vested in the Commission not only over the amount and character of new issues of railroad securities and of new assumptions of financial responsibility, but over the uses to which the proceeds of securities are to be put and over the direction of intercorporate agreements involving financial liabilities. In other words, the purposes as well as the expedients of permanent financing are subjected to the Commission's approval and authorization, with provision for following through the disposition of the proceeds. In order that essential financial projects may not fail for want of complete compliance with the statutory standards, the Commission is empowered not only to grant or deny any particular application, but to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as it may prescribe." (emphasis supplied.)

(2) The second answer to the majority's misreading of the law on this matter, is that the Interstate Commerce Commission has the power to issue certificates of convenience and necessity, and in the exercise of that power it holds extensive hearings before approving each certificate application for railroad construction. Consequently a proposed construction undertaking has been thoroughly investigated (under a different section of the Act) before that Commission is called upon to approve the issuance of securities to finance it, and the results of that prior investigation substitute for or supplement the investigation that it makes under Section 20 (a). In other words, the scope of an actual inquiry by the ICC under Section 20 (a) is not necessarily a measure of the scope of the inquiry authorized thereby;

10/ Specifically, I. L. Sharfman, The Interstate Commerce Commission, Vol. 1 at p. 190.

and that Commission's practice in no way limits the scope of the inquiry we are authorized and directed to make under the statutory counterpart of Section 20 (a). The following excerpts from the decisions of the ICC itself make this clear:

> "We are required to make investigation of securities before authorizing their issue."11/

> "Our powers, in the public interest, to grant or withhold approval of security issues are broad."12/

> "In any application to us for authority to issue securities, we are bound to measure the proposal by the test of the public interest in whatever phase that interest may appear to be affected."13/

And, from the Supreme Court of New York:

> "Whatever may be the language used in its decisions, it is clear that when the [Interstate Commerce] Commission is called upon to approve the issuance and sale of securities under § 20a it has felt itself free, and properly so, to exercise its own independent judgment for that of the directors where in its opinion the public interests would best be served thereby. * * * Obviously, it would be futile [for an applicant] to propose a security issue which the Commission would be bound to disapprove as not 'compatible with the public interest' or with the proper performance by it of service to the public."14/

In sum, the majority's attempt to obscure the unobscurable intent of Section 204 of the Federal Power Act by an overlay of legalisms simply will not do.

11/ In the Matter of Wheeling & Lake Erie Railway Company, 67 ICC 293 (1921).

12/ In the Matter of New York, Chicago, and St. Louis Railroad Company, 79 ICC 581 at 585 (1923).

13/ Stock of New Jersey, Indiana & Illinois R., 94 ICC 727 at 729 (1925).

14/ Casey v. Woodruff, et al., 49 N.Y.S. 2d 625 at 640 (1944).

Neither will the attempt, although it is understandable, to brush aside the Virginia commission's refusal to shirk its statutory duty in a similar situation. In that case the Virginia commission refused to approve an issue of securities by an electric utility on the ground that the facilities to be financed thereby would not be "in the public interest." If I understand their position correctly, the members of the majority imply the case is "inapposite" because that Commission possessed the power to issue or deny certificates of convenience and necessity when it held that the issue was not "in the public interest" as determined under its security-approval statute! The majority have misread the case.

The case involved the 1934 Public Securities Law of Virginia (7 Va. 56-75). "The 1934 statute is concerned only with the issuance of securities," the Virginia commission explained, and it "says this commission must grant the authority applied for unless it finds that the loan is not 'reasonably necessary' to carry out one or more of the [public utility] purposes set forth in the application" (emphasis supplied). The Commission then went on to find that the application "filed December 12, 1949," and on which "public hearings began April 24, 1950," was not "in the public interest" (emphasis supplied).

It is true that the Virginia Code now provides the Virginia commission with the (additional) power to issue certificates of convenience and necessity. Specifically, it states at Section 50 - 265.2 that --

> "It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service . . . without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege. Such certificate shall be issued by the Commission only after formal or informal hearing and after due notice to interested parties."

But below, at Section 56 - 265.8, the law unequivocally states that such certificating authority --

> " . . . shall not apply to or in any way affect any proceeding before the . . . Commission on or before July first, nineteen hundred fifty." (emphasis supplied.)

One has only to read that date and compare it with the filing date and date of commencement of hearings before the Virginia commission to agree with my statement that in the particular case, the Virginia commission was "armed only with the power of approval or disapproval

over security issues" and that it "used that power to prevent construction." The majority in this case were not willing to use that power to initiate an inquiry. There is the difference between the two cases.

The majority opinion includes numerous statements irreconcilable with the facts, which I have neither the time nor the inclination to comment on in detail. The following sentence is selected only as an example. In it the majority assert: "The record indicates that the [applicant's] new intertie will provide for the exchange of energy between the two systems and will be available for use by the Bonneville Power Administration or other utility companies in the Pacific Northwest."

In the first place there was and is no "record" indicating the foregoing, or, for that matter, anything else. In the second place there is only one intelligible reading of that sentence, particularly the portion I have emphasized. It indicates that P.P.&L. and P.G.&E. have offered to allow the use of excess line capacity by other public and private power agencies for wheeling their own power to their own wholesale customers over the companies' line. I have made every possible effort to substantiate this statement, including discussions with company officials, and every effort has ended in a finding that the statement was and still is in flat contradiction of the facts. The companies have, indeed, offered to be the sole purchasers and sellers of power between the two regions but they have not made the line available to other agencies in a genuine wheeling agreement. At this date there appears to be every reason to believe they never will. Let me add that the public interest would probably benefit materially if this prognostication should later prove to be wrong, but as of now it is very far from wrong. Construction of the line has not yet begun, more than eight months after hurried approval of securities, because of the companies' inability to obtain permits to build across public lands, and there is reason to believe that the permits are being withheld as the direct result of the companies' refusal to share costs and benefits of the line in the public interest. This is not the impression conveyed by the sentence I have quoted from the majority's opinion.

The foregoing is set forth as a caution to attorneys and scholars reading this case, so that they may examine asserted facts with care. As can be seen, some of them are not facts.

The majority make much of the undeniable fact that our jurisdiction over security issues of electric companies is limited by the peculiar wording of the Federal Power Act. It is certainly true that many electric companies are required to expose their security issues -- and the projects to be financed thereby -- to our scrutiny either not at all or only because of rather irrelevant factors having to do with place of incorporation and the like. But that is no reason for us to refuse to exercise the jurisdiction, spotty and sketchy though it may be,

which Congress has seen fit to give us, and which we could and should have exercised in this case. Nor is there any reason in the public interest for our failing to call the attention of Congress to the inadequacies of the statute which the majority opinion outlined. No move has been made toward doing so in the eight months since the majority opinion was published. One finds it hard to escape the conclusion that the majority failed to take action in this case not because they lacked the power but because they preferred inaction then and have continued to prefer it since.

The same is true with respect to our lack of certificating power over such newly-important developments as long-distance extra-high-voltage regional inter-ties. I will not lengthen this dissent by a recital of the many ways in which the new transmission technology may now affect the public interest for good or ill in this vital field. The very case here discussed is a fairly illustrative, though by no means a complete, example. Suffice it to say that the technological and economic circumstances affecting the public interest are now radically different from those in which the Congress, in 1935, decided not to grant certificating authority to us. Bills which would close this gap for the protection of the public were introduced in the last session of the Congress. We have been asked to support those bills and I believe we should. But in the eight months since publication of their opinion the majority herein have made no move and have spoken no word in support of those bills despite the present inadequacies of the statute which they themselves have pointed out.

In this case we have been faced with a clear choice: like the Virginia commission in the case cited above we could have used the tools we already have, inadequate though they might prove to be in other cases, while asking that we be provided with the additional tools necessary for full protection of the public interest in all cases. Or we could, as the majority have done with superb illogic, point to the missing tools (and some which are not missing) as an excuse for refusal to use the ones we have, and then conspicuously refrain from asking that the missing tools be supplied.

The latter course was chosen by the majority in this case. I respectfully suggest that it is not good enough. The public interest, like the law available to us but not employed in this case, looms large to those who search for it. If the public is to be given the protection from monopoly which it deserves and expects, the law must eventually match the public interest. I believe the law adequately enabled us, in the public interest, to dispose of the issues posed by this case. In the future the law must be changed so that it matches the public interest in every case, and the law must be used.

Howard Morgan, Commissioner

Mr. SWIDLER. Now, these security issue cases usually are decided by a formal order. They are tied in to the mechanics of issuing securities in the financial markets, and we try to act on them with enough speed so that the companies can take advantage of the underwriting commitments which frequently expire in a matter of hours or days. In this case, because of the transmission-line problem to which I referred in my testimony this morning, Mr. Morgan dissented, and, at the meeting, a statement of that dissent was made a part of the formal order.

There is no statement in the March 28, 1962, order of all of the vigorous pros and cons which had been mooted in the meetings we had held; this case had been discussed on several occasions.

But we simply took the formal order prepared by the staff and issued it in order to enable the company to sell its securities.

But we did attach a short statement of the dissent, and it read as follows:

> Commissioner Morgan dissents on the grounds that the period of public notice was unreasonably short, that the notice of application was deficient, and that the construction of one of the facilities to be financed from the proceeds of the securities authorized herein—the Oregon-California intertie as proposed by applicant—has not been shown to be compatible with the public interest, and should not be authorized pending policy decisions relative to such an intertie scheduled by the current session of the Congress. A Commission opinion and Commissioner Morgan's dissent will be issued later.

This was issued through our information office in the usual way.

Mr. BROTZMAN. What was the date of issuance?

Mr. SWIDLER. The date was March 28, 1962. The press release which was prepared to give notice to the public of what we did stated the facts about the issuance of this order, and included the following statement of the dissent:

> Commissioner Howard Morgan dissented on the grounds that the period of public notice was unreasonably short, that the FPC's notices of application were deficient, and that construction of the Oregon-California intertie "has not been shown to be compatible with the public interest and should not be authorized pending policy decisions relative to such an intertie scheduled by the current session of the Congress."

The press release concluded, as the order had, "A Commission opinion and Commissioner Morgan's dissent will be issued later."

Now, Mr. Morgan felt that this did not do justice to his dissent, and he prepared a separate press release which was issued by the Commission's information office and was made a part of the release, together with the formal opinion. I will read this press statement. It is headed as follows: "Press statement by Commissioner Howard Morgan for dailies in the Pacific Northwest States."

Commissioner Morgan's release then continued:

> Commissioner Morgan, a resident of Oregon and former Oregon public utility commissioner, commented further: "All three of the Pacific coast Governors, all six of the Senators, and the public utility commissioners of Oregon and Washington, are on record against this sort of an intertie, in the absence of legislation protecting he Pacific Northwest against power raids under the preference clause. The Governors and State utility commissioners were informed of this proceeding, but did not understand its significance and did not investigate its interstate aspects deeply enough to discover what was involved. The result was that while the Governors remained silent, the State utility commissioners actually approved the security issue with no reservations as to the projects involved. The majority of the FPC followed their lead.

"When I discovered that a California intertie was involved, I informed the commissioners in the Northwest through Chairman Pearson of the Washington commission. Mr. Pearson promptly protested, and asked the FPC to hold up authorization for the intertie. Unfortunately, this proved not to be enough to stop the majority of the FPC from acting, and at the time final action was rushed through this morning, we still had not heard from anyone in Oregon.

"I shall file a full and vigorous dissent, but I am afraid the Northwest States must now look to Congress for the protection they will shortly need."

The final paragraph:

"This is already a mess, and it can be a dangerous and expensive mess."

Mr. BROTZMAN. This is all from the press release?

Mr. SWIDLER. This is all from the press release issued by the Federal Power Commission information office.

This is the separate press release by Commissioner Morgan.

Mr. BROTZMAN. These all came out——

Mr. SWIDLER. They were issued together. They all come out together. The order, with the notation of the grounds of his dissent, and a statement that a full dissent and a majority statement would be issued later, the Commission's formal covering press release, Mr. Morgan's supplementary press release, were all issued as a package on March 28.

I offer this package for the record, Mr. Chairman.

The CHAIRMAN. Let it be received for the record.

(The document referred to is as follows:)

[Federal Power Commission Docket Nos. E–7024 and E–7025, release No. 11,920]

FPC AUTHORIZES PACIFIC POWER & LIGHT CO. TO ISSUE $35 MILLION IN FIRST MORTGAGE BONDS AND 696,695 SHARES OF COMMON STOCK

WASHINGTON, D.C., March 28, 1962.—The Federal Power Commission today authorized Pacific Power & Light Co., of Portland, Oreg., to issue $35 million, in 30-year first mortgage bonds and 696,695 shares of common stock, par value $3.25 per share.

Proceeds from the stock, of about $19,900,000, and from the $35 million bond issue will be used by the company to repay an estimated $42 million of outstanding promissory notes and to help finance its current construction program.

The bonds will be sold at competitive bidding. The common stock will be offered to Pacific Power's stockholders for subscription on the basis of one share for each 20 shares held. Any unsubscribed shares will be sold at competitive bidding.

Pacific Power's current construction program is expected to require about $44 million for 1962 and $56 million for 1963. The construction expenditures include $250,000 for completion of the company's Iron Gate hydroelectric project, and $18 million for installation of a 150,000-kilowatt unit at its Glenrock, Wyo., Dave Johnston steamplant.

Other items are $5,500,000 for a new hydroelectric project, and $20,865,000 for electric transmission facilities, including a 230-kilovolt line extending from Klamath Falls, Oreg., into California where it would interconnect with Pacific Gas & Electric Co.'s system. Pacific's share of this line is estimated to cost $5 million.

Commissioner Howard Morgan dissented on the grounds that the period of public notice was unreasonably short, that the FPC's notices of application were deficient, and that construction of the Oregon-California intertie "has not been shown to be compatible with the public interest and should not be authorized pending policy decisions relative to such an intertie scheduled by the current session of the Congress."

A Commission opinion and Commissioner Morgan's dissent will be issued later.

PRESS STATEMENT BY COMMISSIONER HOWARD MORGAN FOR DAILIES IN THE PACIFIC NORTHWEST STATES

Commissioner Morgan, a resident of Oregon and former Oregon Public Utility Commissioner commented further: "All three of the Pacific Coast Governors, all six of the Senators, and the public utility commissioners of Oregon and Washington are on record against this sort of an intertie, in the absence of legislation protecting the Pacific Northwest against power raids under the preference clause. The Governors and State utility commissioners were informed of this proceeding but did not understand its significance and did not investigate its interstate aspects deeply enough to discover what was involved. The result was that while the Governors remained silent the State utility commissioners actually approved the security issue with no reservations as to the projects involved. The majority of the FPC followed their lead.

"When I discovered that a California intertie was involved I informed the commissioners in the Northwest through Chairman Pearson of the Washington Commission. Mr. Pearson promptly protested and asked the FPC to hold up authorization for the intertie.

"Unfortunately this proved not to be enough to stop the majority of the FPC from acting, and at the time final action was rushed through this morning we still had not heard from anyone in Oregon.

"I shall file a full and vigorous dissent, but I am afraid the Northwest States must now look to Congress for the protection they will shortly need.

"This is already a mess, and it can be a dangerous and expensive mess."

UNITED STATES OF AMERICA FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross

Pacific Power & Light Co. Docket No. E-7024

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued March 28, 1962)

Pacific Power & Light Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of California, Oregon, Washington, Wyoming, Montana and Idaho, with its principal business office at Portland, Oregon, filed an application on February 19, 1962, as supplemented on February 27 and March 8 and 13, 1962, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of $35,000,000 principal amount of First Mortgage Bonds, due 1992, to be sold at competitive bidding.

Applicant proposes to issue the Bonds under its Indenture of Mortgage and Deed of Trust, dated as of July 1, 1947, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), and Oliver R. Brooks (Wesley L. Baker, successor), as trustees, as heretofore supplemented and as to be further supplemented by a proposed Thirteenth Supplemental Indenture to be dated as of April 1, 1962.

On or about March 29, 1962, Applicant proposes to invite sealed, written bids for the purchase of the Bonds, by newspaper publication and by distribution of a Form of Bid, together with a statement of the terms and conditions relating thereto and a recital of the terms of purchase which will constitute the purchase agreement herein. All bids, whether from a single bidder or from a group of bidders, must be submitted on the Form of Bid provided by the Applicant and each counterpart must be signed by the bidder, or by the representative in the case of a group of bidders. Each bid must be for the purchase of all the Bonds and must specify: the coupon rate, which shall be a multiple of one-eighth of 1 percent; the price exclusive of accrued interest to be paid to Applicant for the Bonds, which price shall be not less than 98½ percent nor more than 102¾ percent of the principal amount thereof; and, that Applicant shall be paid the amount of the accrued interest on the Bonds from April 1, 1962 to the date of

payment therefor and delivery thereof. Each bid must be accompanied by a certified or official bank check or checks in the aggregate amount of $1,050,000, payable in New York Clearing House funds.

Unless postponed all bids for the proposed issuance of Bonds must be presented to Applicant before 11:00 a.m., New York Time, on April 11, 1962, at Room 2033, Two Rector Street, New York 6, New York. Unless Applicant rejects all bids, which it reserves the right to do, or excludes a bid or bids for reasons specified in the statement of the terms and conditions, it will accept the bid which will provide it with the lowest annual cost of money.

Applicant will utilize the proceeds of approximately $35,000,000 to be obtained from the proposed issuance of Bonds, together with proceeds of approximately $19,900,000 to be obtained from the proposed issuance of additional Common Stock (Docket No. E-7025), to repay an estimated $42,000,000, principal amount of Promissory Notes, which Applicant has already issued or will have issued under the authority granted by this Commission in Docket No. E-7011,* and toward the cost of its current construction program, which is expected to require the expenditure of approximately $44,000,000 for 1962 and $56,000,000 for 1963.

Applicant's estimated construction expenditures for 1962 and 1963 include $250,000 for completion of the Iron Gate Hydroelectric project in 1962, and $3,000,000 in 1962 and $15,000,000 in 1963 for installation of a 150,000 kw unit at the Dave Johnston Steam Plant at Glenrock, Wyoming. Applicant allocates $5,500,000 to the Salt Caves Hydroelectric project—subject to obtaining required regulatory authority permits. Other items, for 1962 and 1963, respectively, are: electric transmission facilities, $14,265,000 and $6,600,000; other facilities, $5,031,000 and $4,500,000; electric distribution facilities, $15,383,000 and $17,000,000; additions to steam heating, water and telephone utility systems, $1,827,000 and $1,540,000, and, other plant facilities, surveys and investigations, $1,845,000 and $5,160,000.

Written notice of the application has been given to the Public Utilities Commission of California, the Idaho Public Utilities Commission, the Public Service Commission of Montana, the Public Utility Commissioner of Oregon, the Washington Utilities and Transportation Commission, and the Public Service Commission of Wyoming, and to the Governor of each of those States. Notice of the application has also been given by publication in the Federal Register on March 8, 1962 (27 F. R. 2259), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before March 21, 1962 with the Federal Power Commission, Washington 25, D.C. No protest or petition or request to be heard in opposition to the granting of the application has been received.

On March 13, 1962, the Public Utilities Commission of California; on March 6, 1962, the Idaho Public Utilities Commission; on March 7, 1962, the Public Service Commission of Montana; on March 16, 1962, the Public Utility Commissioner of Oregon; on March 16, 1962, the Washington Utilities and Transportation Commission; and, on March 8, 1962, the Public Service Commission of Wyoming approved the proposed issuance of $35,000,000 principal amount of Bonds, in the manner and for the purposes set forth above.

The Commission finds:

(1) Applicant, a Maine corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is transmitted between the States of Oregon and Washington, from the State of Oregon to the State of California, and between the States of Montana and Wyoming, and is consumed outside of the States in which it is generated. These facilities are in addition to and do not include facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Applicant is, therefore, a public utility within the meaning of that term as used in Section 204 of the Federal Power Act.

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*By order issued October 6, 1961, in Docket No. E-7011, Applicant was authorized to issue up to $45,000,000, principal amount of Promissory Notes, under a Credit Agreement of August 15, 1961, between Applicant and various banks. The notes were to be dated as of the dates of the borrowings; were to mature eleven months after dates or on March 31, 1963, whichever should be earlier; and, were to bear interest at the New York prime rate. The notes were to be issued for the following purposes: to discharge notes aggregating $10,000,000 issued by The California Oregon Power Company and assumed by Applicant in the merger of California Oregon into Applicant; to discharge notes aggregating $18,000,000 issued by Applicant to obtain construction funds; and, to provide additional funds required for Applicant's construction program. The application for the issuance of the notes stated that Applicant's construction program had an estimated cost of $30,034,000 in the last six months of 1961 and an estimated cost of $12,000,000 in the first three months of 1962.

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until—

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(k)(3) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(k)(4) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 60 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

By the Commission. Commissioner Morgan dissents on the grounds that the period of public notice was unreasonably short, that the notice of application was deficient and that the construction of one of the facilities to be financed from the proceeds of the securities authorized herein—the Oregon-California intertie as proposed by Applicant—has not been shown to be compatible with the public interest and should not be authorized pending policy decisions relative to such an inter-tie scheduled by the current session of the Congress. A Commission opinion and Commissioner Morgan's dissent will be issued later.

JOSEPH H. GUTRIDE. *Secretary.*

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross

Pacific Power & Light Company — Docket No. E–7025

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued March 28, 1962)

Pacific Power & Light Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of California, Oregon, Washington, Wyoming, Montana and Idaho, with its principal business office at Portland, Oregon, filed an application on February 19, 1962, as supplemented on February 27 and March 8 and 13, 1962, for an order, pursuant to

Section 204 of the Federal Power Act, authorizing the issuance of up to 696,695 shares of Common Stock, par value $3.25 per share.

Applicant proposes to offer up to 696,695 additional shares of Common Stock to its Common Stockholders of record at the close of business on March 26, 1962, for subscription on the basis of one share of additional Common Stock for each twenty shares of outstanding Common Stock held on such record date, with a supplementary subscription privilege if the number of shares held on the record date is not evenly divisible by twenty or is less that twenty. Rights to subscribe for the additional Common Stock will be evidenced by transferable subscription warrants. The subscription price per share will be determined by Applicant's Board of Directors shortly before the proposed offering date, and will be fixed in relation to, and at an appropriate discount from the then market price of Applicant's presently issued and outstanding Common Stock. The subscription offer will expire at 3:30 p.m., New York Time, on May 1, 1962. In addition, Applicant proposes to sell to underwriters any shares of additional Common Stock for which Applicant's Common Stockholders do not subscribe, at the same price at which shares of additional Common Stock will be offered under the subscription offer, and to fix by competitive bidding the compensation of the underwriters for their commitments to purchase the unsubscribed Stock.

On or about March 29, 1962, Applicant proposes to invite sealed, written bids for the purchase of the unsubscribed Stock by newspaper publication and by distribution of a form of bid and a form of purchase agreement together with a statement of terms and conditions relating thereto. All bids, whether from a single bidder or a group of bidders, must be on the form of bid furnished by Applicant and must be for the purchase of all of the unsubscribed Stock. Each bid must specify, among other things, (1) the price per share to be paid to Applicant for the unsubscribed Stock, which price shall be the same as the subscription price to Applicant's Common Stockholders; and, (2) the aggregate amount to be paid by Applicant to the bidder or bidders as compensation for their commitments and obligations in connection with the purchase by them of the unsubscribed Stock.

Unless postponed, all bids for the purchase of the unsubscribed Stock must be submitted to Applicant at Room 2033, Two Rector Street, New York 6, New York, before 11:00 a.m., New York Time, on April 5, 1962. Each bid must be accompanied by a certified or official bank check or checks in the aggregate amount of $250,000, payable in New York Clearing House funds. Each of the bidders must agree that in case any shares of unsubscribed Stock are acquired and sold prior to the expiration of thirty days following the day upon which the subscription period expires for a price in excess of the purchase price plus $1.00 per share, the bidder will pay to the Applicant, in addition to the purchase price, a sum equal to 50 percent of such excess. Unless Applicant rejects all bids, which it reserves the right to do, or excludes a bid or bids for reasons specified in the statement of terms and conditions relating to bids, Applicant will accept the bid which provides for the lowest aggregate amount of compensation to be paid by Applicant to the bidder or group of bidders.

Applicant will utilize the proceeds of approximately $19,900,000 to be obtained from the proposed issuance of additional Common Stock, together with proceeds of approximately $35,000,000, to be obtained from the proposed issuance of First Mortgage Bonds (Docket No. E–7024), to repay an estimated $42,000,000, principal amount of Promissory Notes, which Applicant has already issued or will have issued under the authority granted by this Commission in Docket No. E–7011,* and toward the cost of its current construction program, which is expected to require the expenditure of approximately $44,000,000 for 1962 and $56,000,000 for 1963.

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*By order issued October 6, 1961, in Docket No. E–7011, Applicant was authorized to issue up to $45,000,000, principal amount of Promissory Notes, under a Credit Agreement of August 15, 1961 between Applicant and various banks. The notes were to be dated as of the dates of the borrowings; were to mature eleven months after dates or on March 31, 1963, whichever should be earlier; and, were to bear interest at the New York prime rate. The notes were to be issued for the following purposes: to discharge notes aggregating $10,000,000 issued by The California Oregon Power Company and assumed by Applicant in the merger of California Oregon into Applicant; to discharge notes aggregating $18,000,000 issued by Applicant to obtain construction funds; and, to provide additional funds required for Applicant's construction program. The application for the issuance of the notes stated that Applicant's construction program had an estimated cost of $30,034,000 in the last six months of 1961 and an estimated cost of $12,000,000 in the first three months of 1962.

Applicant's estimated construction expenditures for 1962 and 1963 include $250,000 for completion of the Iron Gate Hydroelectric Project in 1962, and $3,000,000 in 1962 and $15,000,000 in 1963 for installation of a 150,000 KW unit at the Dave Johnston Steam Plant at Glenrock, Wyoming. Applicant allocates $5,500,000 to the Salt Caves Hydroelectric Project—subject to obtaining required regulatory authority permits. Other items, for 1962 and 1963, respectively, are: electric transmission facilities, $14,265,000 and $6,600,000; other facilities, $5,031,000 and $4,500,000; electric distribution facilities, $15,383,000 and $17,000,000; additions to steam heating, water and telephone utility systems, $1,827,000 and $1,540,000; and, other plant facilities, surveys and investigations, $1,845,000 and $5,160,000.

Written notice of the application has been given to the Public Utilities Commission of California, the Idaho Public Utilities Commission, the Public Service Commission of Montana, the Public Utility Commissioner of Oregon, the Washing Utilities and Transportation Commission, and the Public Service Commission of Wyoming, and to the Governor of each of those States. Notice of the application has also been given by publication in the Federal Register on March 8, 1962 (27 F.R. 2259), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before March 21, 1962 with the Federal Power Commission, Washington 25, D.C. No protest or petition or request to be heard in opposition to the granting of the application has been received.

On March 13, 1962, the Public Utilities Commission of California; on March 7, 1962, the Idaho Public Utilities Commission; on March 6, 1962, the Public Service Commission of Montana; on March 16, 1962, the Public Utility Commissioner of Oregon; on March 16, 1962, the Washington Utilities and Transportation Commission; and on March 9, 1962, the Public Service Commission of Wyoming approved the proposed issuance and sale of Common Stock by Applicant in the manner and for the purposes described above.

The Commission finds:

(1) Applicant, a Maine corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is transmitted between the States of Oregon and Washington, from the State of Oregon to the State of California, and between the States of Montana and Wyoming, and is consumed outside of the States in which it is generated. These facilities are in addition to and do not include facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Applicant is, therefore, a public utility within the meaning of that term as used in Section 204 of the Federal Power Act.

(2) The proposed issuance of Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of Common Stock is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Common Stock, upon the terms and conditions and for the purposes specified in the application, as described above, is hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Common Stock at competitive bidding shall not be consummated until—

(i) Applicant shall have ammended its application pursuant to the requirement of Section 34.2(k)(3) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(k)(4) of the Regulations resulting to affili-

ation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegram as contemplated by Section 34.9 of the Regulations;

(ii) The Commission, by further order, shall have approved the subscription price per share to be received by Applicant for the Common Stock and the compensation to be paid to underwriters under the proposed arrangement as described above.

(C) This authorization shall expire unless the transactions hereby authorized are consummated within 60 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever which is now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any securities to which this order relates.

By the Commission. Commissioner Morgan dissents on the grounds that the period of pub'ic notice was unreasonably short, that the notice of application was deficient and that the construction of one of the facilities to be financed from the proceeds of the securities authorized herein—the Oregon-California inter-tie as proposed by Applicant—has not been shown to be compatible with the public interest and should not be authorized pending policy decisions relative to such an inter-tie scheduled by the current session of the Congress. A Commission opinion and Commissioner Morgan's dissent will be issued later.

JOSEPH H. GUTRIDE, *Secretary.*

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. SWIDLER. I am not through—excuse me. Certainly.

Mr. ROGERS of Florida. I will let you finish in just a minute.

Is it a normal procedure for individual Commissioners to issue press releases?

Mr. SWIDLER. No, sir; it was the first time this had happened. This was a great shock. The Commission has never been the same.

Mr. ROGERS of Florida. I would think maybe some Governors and other people mentioned in the press release might not be the same.

What I want to know, the point I want to make, in your press release, do you comment on matters outside the purview of the actual order?

Mr. SWIDLER. No, sir.

Mr. ROGERS of Florida. In press releases?

Mr. SWIDLER. No, sir.

Mr. ROGERS of Florida. Was this done with the concurrence of the other members?

Mr. SWIDLER. No, sir.

Mr. ROGERS of Florida. I am rather amazed.

I yield back.

Mr. Moss. Will the gentleman yield?

Mr. BROTZMAN. Yes.

Mr. Moss. I think we should recognize here that we are dealing with something other than content. There were complaints made to my Subcommittee on Information, and in all respect, Mr. Chairman, the levity you are attempting to engender you did not attempt to engender when you visited my office to discuss it.

The Commission acted here and suppressed a dissent, and I am going to request permission to put into this record the chronology and the fact of the suppression and the fact that the Commission subsequenly acted by appropriate minute to make certain that this type of suppression not occur again.

As a result of it, we interrogated other Commissioners and we found one other where rules tended to suppress dissents.

So we are not dealing with content here and my committee was not concerned, as I told you very definitely, with either your opinion or Mr. Morgan's, but we were gravely disturbed over the suppression, the difficulty, the refusal to make available after it was really ready, the material which people had a right to expect they could receive and did not.

And I think you should make the record here on your own abundantly clear and not try to mislead. Because I think inherent in what you are saying is an attempt to deal with content and with avoidance of the procedural problem which was involved here, the rather outrageous conduct of the Commission in that instance.

Mr. SWIDLER. I told Mr. Rogers I had not finished. I am going to try to tell the whole story.

Mr. MOSS. I am taking it in the way you intended. You were attempting to distort here what in my judgment was a serious act by the Commission.

Mr. SWINDLER. Maybe we did wrong, but I will tell you what the whole story was.

Mr. ROGERS of Florida. May I ask one question if the gentleman will further yield?

The CHAIRMAN. Comments and reflections are being made on the Chairman of the Commission, and I think he should be given an opportunity to get the whole picture here before he is taken under attack. I think the members should give him an opportunity to get the story to us.

Mr. ROGERS of Florida. I agree with you. I just wanted to fix in my own mind the exact phraseology of the press release. I thought the press release said "I shall write a dissenting opinion."

Was that true?

Mr. SWIDLER. "I shall file a full and vigorous dissent."

Mr. ROGERS of Florida. I shall file. The press release was issued, evidently, before he had filed this dissent.

Mr. SWIDLER. Yes.

This was a part of the order. We had had no chance yet to prepare a formal dissent.

Mr. BROTZMAN. The purpose I yielded was to clarify statements you had made down to that juncture relative to press releases. I think you were about to continue on with the rest of the transaction. It is entirely new to me. I know nothing about this and was merely asking for information, so the other insertions I know nothing about at this juncture. But I think I can clear down to the press release.

You intend to proceed at that point?

Mr. SWIDLER. I intend to proceed and intend to tell the whole story.

I wonder if this would be a convenient time, Mr. Chairman, for a short recess?

The CHAIRMAN. Yes. The committee will recess for 5 minutes.

(Short recess.)

The CHAIRMAN. You may proceed, Mr. Brotzman.

Mr. BROTZMAN. Before the recess, Mr. Chairman, by your testimony, you had established the fact that there was a press release, a press release that went to the Northwest, I think you said, and you were going to proceed to tell the rest of the story in your words as to what happened.

Mr. SWIDLER. Yes, sir.

Mr. BROTZMAN. Then I yielded and we kind of got off the track for a moment.

We are back to that point.

Mr. SWIDLER. Well, the next event in this chronology was that Mr. Morgan completed his draft of dissent on April 3 and lodged a copy with the Secretary, who held it. This was in accordance with the usual procedure in the Federal Power Commission and all other regulatory agencies of which I am aware, that opinions are issued together.

However, Mr. Morgan—I am now referring to nothing off the record. He has said this in statements that he has made—had 50 copies mimeographed which he sent to Members of Congress. And he supplied at the time a copy of a typical letter of transmittal. This one is dated April 4 and is addressed to the Honorable Maurine B. Neuberger, U.S. Senate, Washington, D.C.—

DEAR SENATOR NEUBERGER: The enclosed material refers to a most important controversy affecting your State, as well as affecting questions now being considered by the Senate Committee on Interior and Insular Affairs.

I am confident that a few minutes spent reading this material will be of great value to you.

Very truly yours,

HOWARD MORGAN, *Commissioner.*

This is 1 of 50. I offer this for the record.

The CHAIRMAN. You read its whole content, didn't you?

Mr. SWIDLER. I read its whole content.

The CHAIRMAN. Yes.

Mr. SWIDLER. Subsequently, when word of the dissent became known, in response to a request from the press, another 50 copies were distributed to the press. This was in the period from April 4 to April 11, 1962.

On April 11, Mr. Morgan, for the first time, raised with me the question about the suppression of his opinion and the same day, as I recall, Mr. Moss raised the same question.

I responded, as I recall, to Mr. Morgan that this was my understanding—and the entire Commission's understanding—of the arrangement that was made at the meeting that both opinions would be issued together.

I might say that I believe now that Mr. Morgan had a different understanding and did not think that he was bound by any obligation or promise not to release his opinion earlier.

Mr. BROTZMAN. Do I understand that the dissent was issued prior to the majority decision?

Mr. SWIDLER. Yes, sir; and I am about to give more details of that.

Now, this dissent had now been published all over the country and, of course, from April 3 on, everybody knew what the situation was and there had been not only the summary of his dissenting position in the order, but also the statement in the press release, and his own press release and from April 3 on he had sent out 100 copies to the press.

So that you had a fairly narrow question, which was whether the failure to issue the formal dissent by our own Information Office constituted suppression.

Up to this point we had said not one word, sir, in defense of our order.

I told Mr. Moss, in response to his inquiry, what he considered to be a case of suppression, that I would take it up with the Commission, and at our regular meeting on April 12 we took the matter up and we officially released the dissent.

This, of course, created no sensation because everybody had it anyway, but we officially released it on April 12.

I think I said that the question was first raised with me on April 11. I think it was April 10, sir, just to correct the record.

On April 17, after his opinion had been in circulation for exactly 2 weeks, the majority first issued its own opinion explaining its reasons for issuing its order.

Now, this is the case of the suppression of Mr. Morgan's opinion.

Mr. BROTZMAN. When was the majority opinion——

Mr. SWIDLER. What is that, sir?

Mr. BROTZMAN. When was the majority opinion first ready?

Mr. SWIDLER. On the 17th, sir. It took a while to write.

Mr. BROTZMAN. That was the first time it was ready?

Mr. SWIDLER. Yes, sir.

Mr. BROTZMAN. So you couldn't have published it earlier had you wanted to?

Mr. SWIDLER. No, sir. There were four of us. We all had to agree on it and circulate it.

Of course, we had no opportunity to persuade Mr. Morgan because he had already issued his.

I think that this was not good practice; that in an agency no opinions should be issued, if possible, until they are all issued.

Mr. BROTZMAN. Well, let me ask you——

Mr. SWIDLER. But I do think there is a special point here, that Mr. Moss made and which has merit: This was a case where an order was issued first.

I think that in such a case perhaps there is reason for permitting a statement of the reasons for the dissent in an exceptional case promptly.

Our present regulations which we adopted after the intervention of Mr. Moss, provide that as a matter of agreement among us, that in the circumstances in the future, a dissenting opinion may be issued on 24 hours' notice to the others, unless the dissenter happens to think that this would be unwise in a particular situation, in which case he may—he doesn't need to give even the 24 hours' notice, but I might say that since that time there have been no further instances of opinions being issued separately, and the majority and minority opinions have always been issued together.

Mr. BROTZMAN. Now let me ask you this:

Now, normally, when your Information Office issues a press release, do you do this on a limited basis, and by that I mean, do you send it to a particular locale where it is particularly involved with the issue presented, or do you send it out on a general basis?

Mr. SWIDLER. Oh, we send it out on a general basis.

We have a list of people who get all of our press releases and it goes out to everybody.

Mr. BROTZMAN. I would like to move on to one other area——

Mr. SWIDLER. Our press releases are all issued about 3,000 copies, ordinarily, and they are the bread-and-butter type of releases which

go around to the people in the industry, who want to know what we are doing.

Most of them get very little attention from the general press but, of course, they are quite important in the natural-gas and electric-power and associated industries.

Mr. BROTZMAN. Now, we have listened to almost 2 full days of testimony and there seems to be some debate as to whether or not this particular letter was an attack or whether it was not.

However, taking the letter and the record, I think we can pin it down to one specific, and this is one sentence, and that is basically this:

Ordinary men yield too quickly to the present-day urge toward conformity, timidity, and personal security.

Mr. Morgan, in his testimony, on two occasions has stated in one way or another that an example of this was the *Idaho Power* case.

You have been in the hearing room, have you not?

Mr. SWIDLER. Yes, I heard that; yes, sir.

Mr. BROTZMAN. Now, also originally he stated that the decision in that case was predicated upon a set of facts or certain principles stated in the decision, but that this, in fact, was not the reason for the decision.

You heard that statement?

Mr. SWIDLER. Yes, sir.

Mr. BROTZMAN. One reason he gave, I believe, was that someone, some Commissioner, had stated it would disturb the industry.

Yesterday I think when I was questioning him he added to that that there was some other reason given by a Commissioner, which he didn't think was tenable, namely that the Idaho Power Commission was studying the matter or had the matter under consideration.

Now, pinning it down to this particular point, I ask you this question:

Does this decision, the *Idaho Power Company* decision, state the reasons for the opinion in that particular case?

Mr. SWIDLER. The *Idaho Power* decision is a formal order. The majority did not undertake in that case to respond to the dissent. The formal order had already been issued, and we thought that our differences in approach with Mr. Morgan were already adequately stated in the two opinions that had been filed in the *Pacific Power and Light* case.

So that there is no majority opinion replying to the dissent in the *Idaho Power* case.

But I have explained in my testimony here at some length, evidently when you were out, what the considerations were in that case and how the point of view that we took in the *Pacific Power and Light* case applied under the facts of the Idaho situation.

And in substance, this was a case where there was no reason to question the soundness of the securities or the need of the company for the money or the capital structure of the company, where we felt it would not be an appropriate use of our authority over the issuance of securities to initiate the numerous collateral investigations which were proposed on the company's rates, which were already under investigation by the State Commission, not because they were high, incidentally, but because they were too low; its depreciation practices, not because they charged too much depreciation but

because they charged too little; whether it was violating the terms of its license for the construction of the lower Hells Canyon project, its problems with fish passage and various other things that we thought we could handle in a more orderly way or which did not represent a provident use of staff or which went entirely beyond our province.

And we declined to use this security issue proceeding as the fulcrum for these investigations.

Mr. BROTZMAN. So you predicated that order on those reasons and not on a desire to conform or the fact that you were timid or had a desire for personal security?

Mr. SWIDLER. Yes, sir; I have no fear whatever of the Idaho Power Co.

Mr. BROTZMAN. And one other thing: When you write these decisions and these opinions, you predicate them upon the evidence that has been presented to you and the facts adduced in evidence, and not on some other hidden purpose or meaning, is that correct?

Mr. SWIDLER. We try very hard, Mr. Brotzman, to decide a case on the record and to be a model of impartiality and handle it with administrative justice.

Mr. BROTZMAN. The reason I am interested in this matter particularly, of course, as the chairman stated initially, is we are trying to improve the process and having had a small bit of experience in this general area at the State level, it is of great importance, of course, to the attorneys and to the people and to everyone concerned that we know why you are deciding a decision a certain way.

It is of great importance.

Mr. SWIDLER. Well, I think you can be assured, Mr. Brotzman, that we are doing our level best on the record.

I don't claim that we are not making some mistakes; I am sure that we are.

Mr. BROTZMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Swidler, you have in my judgement presented a very vigorous defense in behalf of yourself and the Commission and have fairly given the committee your feeling about this entire matter.

I gather from the overall picture that this is a matter that developed rather competitively within the Commission, culminating in the action that was taken. I gather that you take your work very seriously.

From my observation you have made a very great effort to do your job as chairman as you see it, with the organization and personnel at your disposal and with the Commission in carrying out its duty and responsibility.

Do you feel that your actions have been in the public interest?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. Do you feel that your administration and actions in the Commission have been in the interest of the consumers?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. You have had that in mind as you have worked in an effort to serve the people who have appeared before you?

Mr. SWIDLER. To the best of our ability, sir.

The CHAIRMAN. Do you feel that the industry must have the decisions of the Commission before it can serve the public?

Mr. SWIDLER. I am sorry, sir; I didn't hear the question.

The CHAIRMAN. Do you feel that the industry must have decisions of your Commission on the matters under your jurisdiction before they can adequately serve the public?

Mr. SWIDLER. Yes, sir. I think that a good many of the business decisions of the industry are dependent upon our moving; that we can either make the industry stronger or we can hold them back and make them weak.

And I don't think it would be to anybody's interest if we should not attempt in any way we can to help them at the same time that we help the consumer.

The CHAIRMAN. In other words, you feel that we have got to consider the problems of the industry in line with your duty as a member of the Commission in order for it to be able to serve the public?

Mr. SWIDLER. Yes, sir. All segments of both industries.

The CHAIRMAN. Now, you have had some observations in the past with similar matters, as to how it affected other boards or commissions, have you not?

Mr. SWIDLER. I have worked for the Tennessee Valley Authority, sir, for many years.

The CHAIRMAN. When you were a young lawyer, did not a similar situation develop among the TVA Board?

Mr. SWIDLER. Yes, sir. There was another "Morgan" case, I might say, in the TVA, Arthur E. Morgan.

The CHAIRMAN. Ironically the one who dissented in that was named "Morgan," too?

Mr. SWIDLER. Yes, sir, Arthur E.

The CHAIRMAN. And didn't Mr. Leland Olds have something to do with the Tennessee Valley Authority back in those days?

Mr. SWIDLER. No, sir.

The CHAIRMAN. Was Mr. Lilienthal——

Mr. SWIDLER. Mr. Lilienthal, yes, sir.

The CHAIRMAN. Then, from your experience as to what can happen to a board or a commission, you of course felt this even more keenly?

Mr. SWIDLER. Yes, sir. I think it is a matter that effects each member of the commission very deeply.

The CHAIRMAN. As a matter of fact, didn't that instance provoke a joint congressional committee investigation?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. More far reaching than this has been, wasn't it?

Mr. SWIDLER. Yes, sir. This was an investigation that Mr. Francis Biddle was employed to head and occupied the time of the joint committee for a number of months, and it came out with a 20 or 30 volume report.

I don't know that I want to carry the parallel any further, Mr. Chairman.

The CHAIRMAN. No, I know that is true, but I merely mentioned that to let the record show that even as a young man in public service you had occasion to observe what happened in a situation such as this that affected the particular board involved.

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. Now, I know there has been a lot of discussion and many questions asked about the interpretation of the letter that provoked publicity on this matter, and it is not my purpose to rehash that again, but I hold in hand an article which I believe was the first article on it.

And it is dated on Saturday, January 26.

The headline is "FPC Member Raps Agencies For Conformity."

Now, that was the interpretation that was placed by the publicity on this letter that was called to your attention?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. You felt that pretty deeply, didn't you?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. The very first paragraph:

> A fellow Power Commissioner announced yesterday that he would not accept reappointment because of "the urge for conformity, timidity, and personal integrity" in the regulatory agencies.

Do you feel that that was directed to you, among other Commissioners?

Mr. SWIDLER. Yes, sir; I so understood it.

The CHAIRMAN. And it is the interpretation that the press placed on it then that strengthened your feeling that this was an attack on the Commissioners themselves?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. Now, Mr. Swidler, you started a year and a half ago, did you not, approximately?

Mr. SWIDLER. I became Chairman, sir, on September 1, 1961. I had served on the Commission as a member for 2 months before that date.

The CHAIRMAN. One of the things that this committee has tried to bring about in the last several years is a policy to do something about the long, unnecessary delays before the various regulatory agencies.

Did you start with the intention of trying to do something about such unnecessary delays and long, drawnout decisions before the Commission?

Mr. SWIDLER. Oh, yes, sir. This was the great challenge of the job, to see whether I couldn't help improve the administration of the Federal Power Commission.

Hhe CHAIRMAN. And you feel that you have done that?

Mr. SWIDLER. I feel we have made a lot of progress, yes, sir.

The CHAIRMAN. Well, I must say so far as the administration of the program is concerned I am strongly of the opinion that you have.

Do you know, in dollars and cents, how many pipeline applications have been approved since you went down there in the last year and a half or a little more?

Mr. SWIDLER. I think it was over $600 million last year.

May I put that figure in the record, sir.

The CHAIRMAN. Yes. Well, until we get it more nearly correct, you estimate it about $600 million last year?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. 1962?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. You kept in mind the interest of the public in each one of those, I believe you said?

Mr. SWIDLER. Oh, yes, sir.

The CHAIRMAN. Is it not a fact that with the approval of $600 million in construction, uniform throughout the United States, that it helped the economy of the country to that extent?

Mr. SWIDLER. Yes, sir, it is particularly important in the steel industry, sir.

A lot of that is pipe.

The CHAIRMAN. Well, isn't it also important, insofar as employment is concerned, too?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. Now, how many applications, in dollars and cents, approximately do you have pending before the Commission today?

Mr. SWIDLER. That figure is in the quarterly report which is part of the record. It is appendix A to my statement, and I believe it is about $800 million.

I can now give you the exact figure for the pipeline certificates, sir.

In 1961 the amount authorized was $309 million. In 1962 it was $628 million and for January 1963 it was $66 million.

The CHAIRMAN. Well, I for one want to compliment you and the Commission for your efforts in bringing about a decision in these matters in order that the public can be served and protected and the economy of the country improved to that extent.

I have before me, as of January 30, 1963, recent activities of the Federal Power Commission. I am talking about the reports, and in which there are set out, insofar as the natural gas industry is concerned 18 items.

You are familiar with that, are you not?

Mr. SWIDLER. Yes, sir. I would hope that you would see fit to put that in the record, Mr. Chairman.

The CHAIRMAN. Well, I was going to ask you if it was included in your report that you submitted to us this morning.

Mr. SWIDLER. Not in as complete a way, sir.

The CHAIRMAN. Well, I should like to include this in the record because I think it contains positive facts as to what has been accomplished by the Commission.

In the same report, in the electric power industry, it will be noted 12 specific items. You are familiar with that, are you not?

Mr. SWIDLER. Yes, sir.

The CHAIRMAN. Well, I think that that should go into the record, too, in order that it might be available to see what has been accomplished respecting these problems before the Commission

And I would like to submit it for the record at this point.

(The report mentioned above follows:)

RECENT ACTIVITIES OF THE FPC

NATURAL GAS

1. In the past 18 months the Commission has disposed of two-thirds of the billion-dollar backlog of pipeline rate cases it inherited and has ordered interstate pipelines to refund $350 million and reduce their rates for the future by over $62 million annually.

2. The rapid increase in the wellhead price of gas sold in interstate commerce has been halted. The average price has been virtually stabilized in the past year.

3. The Commission has wholeheartedly carried out its responsibility for regulating sales of gas in interstate commerce by independent producers. We have ordered producers to refund over $30 million.

4. The Commission has underway a comprehensive study in cooperation with the State commissions to determine the extent to which natural gas rate refunds reductions are being passed on to the ultimate consumer.

5. The Commission has pushed forward with area rate proceedings to fix just and reasonable rates for producers, and the hearing in the lead case involving hundreds of producers in the Permian Basin of Texas and New Mexico is well along toward completion.

6. The interim area ceilings for sales of new gas in the important producing areas of southern Louisiana and Texas Railroad District 4 were reduced by 2 cents per thousand cubic feet.

7. The Bureau of Natural Gas was reorganized to pinpoint responsibility and assure that cases were speeded to a prompt conclusion.

8. The Commission adopted a rule requiring pipelines to file complete backup information with rate increase requests, thus eliminating field investigations and enabling the Commission to set cases for hearing at once and dispose of them promptly.

9. The Commission adopted a rule which outlaws new contracts for the sale of gas by producers that contain indefinite escalation clauses, such as the so-called favored-nations clauses, which have caused much of the inflation in the price of gas in the past.

10. The Commission adopted a rule prohibiting ex parte communications dealing with the merits of contested cases.

11. The Commission has taken many steps to ease the burden of regulation on the small independent producer.

(*a*) We have devised a one-page form in which they can file for increases which are not in excess of our ceilings.

(*b*) Our area rate policy, in which the rates for all the producers in an area are determined in a single proceeding, relieves the small independent producer of the burdens of individual rate proceedings.

12. A field office has been established in Houston, Tex., to insure closer supervision of personnel working in the field and serve as a clearinghouse for the problems of the producers in the area.

13. We have established an Office of Economics to assist the Commission in planning the future course of regulation of the natural gas industry because economic problems go to the core of regulatory policy.

14. The Commission has established guidelines which limit the evidence in producer certificate cases and will enable the Commission to hold the line on the price for new gas and at the same time dispose of certificate applications expeditiously.

15. In opinion No. 369, issued November 30, 1962, the Commission rejected a price increase by H. L. Hunt and others that would have created a new, higher price plateau for natural gas in southern Louisiana and Mississippi. The decision was the present Commission's first decision in a litigated gas producer rate case and demonstrated our determination to hold the line against unjustified increases in natural gas prices.

16. In opinion No. 348, issued October 23, 1961, the Commission held that it had jurisdiction over the sale of all of the gas moving in interstate commerce, even though some of the gas was consumed in the producing State. The Commission thus prevented possible increased costs to interstate customers by the use of contractual arrangements purporting to segregate certain volumes of gas from the interstate stream and thus to avoid FPC jurisdiction over the price paid to the producers.

17. In opinion No. 351, issued January 22, 1962, the Commission decided the famous *CATCO* case on remand from the Supreme Court. The decision reduced the initial price for this large sale of gas in southern Louisiana from 21.4 cents per thousand cubic feet down to 18.5 cents and ordered refunds of the higher amounts previously collected.

18. In opinion No. 366, issued October 19, 1962, the Commission decided the rate of return issue in four rate cases involving El Paso Natural Gas Co. pending before the Commission since 1955. The case was set for hearing in July 1961 and the interim order procedure, which the Supreme Court recently approved an described as "not only entirely appropriate but in the best traditions of effective administrative practice," was used by the Commission to expedite

the decision. The Commission ordered refunds which will total over $68 million, exclusive of interest, on the rate of return issue alone and ordered rate reductions of $15.8 million annually which were made effective before the end of 1962 over the protest of El Paso. The reduced rates were, therefore, in effect in time to lower the 1963 price of intrastate gas in California which is controlled by the January 1 price fixed by the FPC for interstate sales.

ELECTRIC POWER

1. The Commission is conducting a national power survey to encourage the voluntary interconnection and coordination of the Nation's power systems on a regional and interregional basis. The Commission's objectives are to promote the maximum use of the latest technology in the electric power field to provide lower rates to consumers. The survey has already stimulated many new interconnections between companies. The advisory committees we have formed have provided a forum for all segments of the industry—public, private, and cooperative—to meet and discuss their expansion plans in light of the national interest in providing low cost electricity in all parts of the country.

2. When the present members of the Commission took office the Commission's electric rate regulation functions were practically nonexistent. There were only four professional people engaged in electric rate work. The Commission took immediate action to exercise its responsibility to regulate the wholesale rates of electric utilities in interstate commerce which is one of the primary consumer protection functions of the Federal Power Act.

3. The Commission transferred the electric rate staff from the Bureau of Natural Gas where it was buried and made it a prominent part of a new division in the Bureau of Power. We have built up the electric rate staff within the limits of existing manpower and we are seeking funds to enlarge the staff to the minimum required to carry out effective rate regulation.

4. Many utilities did not even have their wholesale rates in interstate commerce on file with the Federal Power Commission. We are requiring that these rate filings be made and where necessary have issued a show-cause order to require the filings. Over 1,000 electric rate filings were made with the FPC in the last 6 months of 1962.

5. The FPC has issued a proposed rule that will require electric companies to support their rate filings with cost information to facilitate meaningful Commission review.

6. The Commission is preparing a list of all the public utilities subject to the Commission's jurisdiction which we will publish shortly.

7. The Commission has announced a proposed rule requiring strict and detailed accounting for political expenditures by power companies. (The rule applies also to natural gas companies.)

8. The Commission has taken action to carry out its responsibility for collecting the money owed the U.S. Treasury from downstream hydroelectric projects that benefit from upstream Federal developments.

(*a*) A provision is being inserted in all new licenses which will require annual payments for headwater benefits based upon a formula.

(*b*) We have announced a rule which will accomplish the same purpose for existing projects.

In this fiscal year we are collecting $1,750,000 in headwater benefits for the Federal Treasury which is three times as much money as has been collected in the entire history of the FPC. We estimate that in the next year we will collect $4 million.

9. The Commission in opinion No. 356 on April 19, 1962, ruled that a pumped storage hydroelectric project was subject to the Commission's jurisdiction. The Commission emphasized that the Federal Power Act conferred broad authority on the Commission to insure the most comprehensive use of the Nation's water resources.

10. The Commission in opinion No. 357 on April 25, 1962, spelled out a new policy in issuing licenses for non-Federal hydro projects built prior to 1935 and still operating without a license. The FPC concluded that these projects should not be given the benefit of the maximum 50-year licenses allowed under the Federal Power Act but should be licensed for a shorter term. We are making a concerted effort to bring these projects under license.

11. We have accelerated the pace of our hydroelectric licensing work. In the last 6 months of 1962 licenses were issued for projects whose construction will add $260 million to stimulate the Nation's economy.

12. We have proposed a rule requiring all licensees to submit a comprehensive plan for public recreation with their license applications to assure that the general public obtains the full benefits of the recreation potential of hydroelectric projects built under FPC license.

The CHAIRMAN. Now, I think it would not serve any purpose for me to try to rehash any of the questions and answers further.

You have made yourself clear as to how you felt about it. The facts, I think, are very well recorded.

As far as I am concerned, the facts speak for themselves. I can appreciate your feeling.

My hide may not be quite as thick and tough as Mr. Moss', because I have some feeling when I am spread all over the press in what I think to be a rather critical vein and, being a person who has been elected several times by the public, I am quite sensitive to it.

So I have some sympathy with your feeling, too. But we are concerned with the administration of laws. That is our business. That is our problem and our responsibility, and when these matters of these regulatory agencies come up, this committee has made it very clear over a period of time that we are going to concern ourselves with them.

That is the reason that we are maintained as an organization, to do what we can in carrying out our responsibility.

We do not want at any time to interfere, and it will never be our purpose to do that.

But it will be our purpose, so long as I have anything to do with it, and I think I can speak for every member of this committee, to be concerned with these matters with respect to these agencies, as the Congress, as we interpret it, intended it and the law provides, too.

I think you have given a good account of yourself here and I am glad to have had the opportunity of getting the report of the activity of the Commission from you as Chairman of the Commission.

I regret that it has developed this way because the feeling, as I see it, is pretty strong.

It is my hope that with any or all of the implications that anyone might have, that they will not in any way have any affect on the future work of the Commission, and that you and all members of the Commission will continue to do your jobs and assume your responsibilities as you see fit.

It is my hope that you will continue to do so in the future.

With the thanks of the committee——

Mr. Moss?

Mr. Moss Mr. Swidler, getting back to the matter of the so-called suppression of dissents——

Mr. SWIDLER. Yes, sir.

Mr. Moss (continuing). You read the press release Commissioner Morgan issued and characterized it as having been written by him personally.

Mr. SWIDLER. Yes, sir.

Mr. Moss. You characterized it as "unusual"——

Mr. SWIDLER. Yes, sir.

Mr. Moss (continuing). As being an unusual thing in this matter.

There was another unusual thing, the issuing of an order where a dissent was indicated without holding it until the dissent and the

majority opinions could be released. That was unusual, too, was it not?

Mr. SWIDLER. No, sir, not in a——

Mr. Moss. So my staff informs me——

Mr. SWIDLER. Not in a security issues case, sir.

Mr. Moss. And you so informed me.

Mr. SWIDLER. Not in the security issues case, sir. I said it would be unusual——

Mr. Moss. Let me now tell you the instant case.

This is one which admittedly differs from a difficult case in that the Commission orders in this case were issued in advance of the opinion——

Mr. SWIDLER. Yes, sir.

Mr. Moss (continuing). So there was a difference here.

How many days does an interested party have to take exception to one of these orders?

Mr. SWIDLER. I forget the notice period, sir.

Mr. Moss. Thirty days?

Mr. SWIDLER. I forget the notice period.

Mr. Moss. Thirty days is the period.

Mr. SWIDLER. Or whatever it is.

Mr. Moss. Or we confirmed this——

Mr. SWIDLER. Yes, sir.

Mr. Moss. The order was issued on the 28th day of March. I received a complaint in my committee on the 7th day of April and at that point your staff and my staff started discussions, culminating on the 11th of April by my directing a letter to you of the fact that I expressed grave concern.

I said that I firmly believe that the Commission's refusal—now, this involved, incidentally, my effort to secure from the Secretary of the Commission, a proper official, a copy of the dissent, not because I was interested in the dissent but because I had received a complaint that it was not available.

I firmly believe that the Commission's refusal to make the dissenting opinion available to the public demonstrates a callous disregard for the right and the need of the public to be informed about the activities of the Commission. Under the Commission's rules, only 30 days are available for interested persons to seek reconsideration of the decision.

Now, finally on the 12th, your Commission met. The dissent was redated from April 3 to April 12, and at that time it was issued.

This was 15 of the 30 days during which interested parties could not have secured copies either of the dissent or of the majority opinion.

Mr. SWIDLER. Except that there were copies of the dissent floating all around the town.

He had given 50 to the press.

Mr. Moss. Now, look, 50 copies in a nation of 180 million people, where an interested party wants to find out where one of those copies is, is not much.

How does he do it? Does he call the Commission?

Mr. SWIDLER. Well, 50 will—1 copy will. You see, sir, the news papers spread all-out. Fifty will cover the whole country.

Mr. Moss. There were——

Mr. SWIDLER. I only brought 50 copies of my statement here, and I hoped for national coverage.

Mr. Moss. Well, I expect you do.

If I was an interested party—incidentally, it was an interested party who called me and complained. It was not Mr. Morgan. I never met Mr. Morgan.

I was called and given a complaint. "How do you get this thing? I called the Secretary and I couldn't get it."

I would assume you should be able to call the Secretary of the Commission and get this type of information and not have to go out on a hunt to find 1 of the 50 copies or a copy of a press story which might or might not embody the whole——

Mr. SWIDLER. Well, Mr. Moss, we have discussed this——

Mr. Moss Yes, we have discussed it——

Mr. SWIDLER (continuing). And I have explained to you the great importance of the minority and the majority discussing their views together and trying to write their opinions, each in the light of the other.

Mr. Moss. I think the record should reflect that there was a period of 2 weeks, and that this was unusual, not only in the issuance of the individual press release but in the fact that the order was issued 2 weeks before there was available from the Commission a copy of the dissent, and longer than that before there was a copy of the majority opinion.

Mr. SWIDLER. Well, I have explained—agreed with you that in the case where an order must be issued first that there is room for an exception.

Our rules now make it. But I tried to explain to you that under the particular circumstances of this case it was ridiculous to talk about suppression when 100 copies were in circulation.

Mr. Moss. Sir, I don't recall ——

Mr. SWIDLER. Excuse me, sir; I am trying to finish my explanation.

Mr. Moss. All right; go ahead.

Mr. SWIDLER. When the original order carried a summary of the dissent and when the press release, on March 28, carried a summary of the dissent, and when a separate press release, of which 3,000 copies went out, also noted——

Mr. Moss. You know, sir, one of the things——

Mr. SWIDLER (continuing). The dissent——

Mr. Moss (continuing). I criticize news reporting most vigorously for today is the acceptance only of that which is included as a summary in a press release.

I don't think that press releases, summaries of press releases, give us the totality of the information we should seek and upon which we should act.

Now, let's just take one other area and I will be very brief.

I listened with care to this discussion of the *Idaho Power* case. Do I understand that it is your view that anything other than a pro forma finding of the feasibility of the financing plan, that that is as far as you and the Commission should go?

Mr. SWIDLER. No, sir.

Mr. Moss. Do I understand you to say, and I noticed here a number of times that you have played very, very skillfully on words—you

have emphasized that these discussions of rates were had because they were too low, not too high; too low rates can be as dangerous to a business.

They can be uneconomic and as infeasible as rates too high. They can be damaging and destructive and if they, in fact, exist they can also be highly preferential between consuming groups.

This normally is not contemplated by law.

Is this no matter of concern to the Commission?

Mr. SWIDLER. It could be. It just didn't seem to us that this was that kind of a consideration.

Mr. Moss. All right. Well, then, it is not idle to raise the question?

Mr. SWIDLER. It seemed to us to be a very unprofitable way to use our staff.

I could think of many better ways to use them.

Mr. Moss. You think that where a firm is producing a total of 20 percent of surplus of its needs, undertaking to develop further capacity, that that should be disregarded?

I noticed that the examiner stated in his report that this additional capacity would not be feasible until around about 1975——

Mr. SWIDLER. Well, this may become an issue in the proceeding, Mr. Moss, and I don't know that I want to say something——

Mr. Moss. Well, this was part of the dissent.

You have been rather harsh in characterizing some of these dissents. But again, was this in Idaho, this excess capacity?

Mr. SWIDLER. Our staff had made a report to us that the extent of the Idaho capacity was not abnormal.

Every company, to a degree, staggers its construction program——

Mr. Moss. Well, of course, they should.

Mr. SWIDLER (continuing). And they should, and we had no indication that this was a situation which warranted the diversion of staff that would have been required.

Mr. Moss. Up my way they project and they build and they have a tough time keeping up with demands.

They grow faster than they hope to expand to meet all of the needs.

Mr. SWIDLER. I have not said——

Mr. Moss. But these are not idle points, are they?

Mr. SWIDLER. No, sir, and——

Mr. Moss. And are they properly within the jurisdiction of the Commission?

Mr. SWIDLER. No, sir, and I would not——

Mr. Moss. Well, now——

Mr. SWIDLER. I think there were proper points to have been made and I would not have objected in any way to a proper dissent.

I think there is ample room for reasonable men to disagree in the *Idaho* case and perhaps also in the *Pacific Power and Light Company* case.

This is not my point.

Mr. Moss. Well, then you made a great play that they were depreciating too slowly, not too fast.

Mr. SWIDLER. Yes, sir.

Mr. Moss. You know, I was in business before I came here and I think if you have a too-slow depreciation, you are under rather bad management. This can be a problem, too.

Mr. SWIDLER. Well, they were using a method of depreciation which conformed with our system of accounts and with the requirements of the Idaho Public Utilities Commission.

Now, the big question is going to come when they want to change, after a number of years, to a different system of accounting, and that is a reserved question.

I think the real question is not one of too high or too low but of consistency.

This is a question we will reach in due course and which must come to us before they change.

Mr. Moss. Well, I mentioned it because it seemed to me that the impact of your testimony was that the dissent was idle——

Mr. SWIDLER. No, sir——

Mr. Moss (continuing). And that you were trying to use a leverage for something improper. Yet these are proper areas to concern the Commission, are they not?

Mr. SWIDLER. We thought—I think the majority thought that this would be going too far.

Mr. Moss. In this instance——

Mr. SWIDLER. I think it was perfectly in order for Mr. Morgan to have a different opinion expressed in a way that was not disruptive.

Mr. Moss. This is my question—In this instance was it not a proper area for concern of the Commission? They are, as a matter of fact, the Commission's business, are they not?

Mr. SWIDLER. Yes, sir, some of them were.

Mr. Moss. You didn't use——

Mr. SWIDLER. Some were; some were.

Mr. Moss. Well, which ones were not?

Mr. SWIDLER. Well, I think the level of the intrastate rates was a doubtful one.

Mr. Moss. Well, most of this, being wholesale, was an interstate, wasn't it?

Mr. SWIDLER. No, sir, I think——

Mr. Moss. A fair amount——

Mr. SWIDLER. Some of it was.

Mr. Moss. As I recall Mr. Morgan's discussion the other day, it was tied to the triggering effect of the Utah Light & Power.

Previous Commissions indicated that they might be in need to review these rates at that point.

Was that, in substance, what the previous Commission had observed?

Mr. SWIDLER. I think that so far as the level of interstate rates is concerned that this is a proper subject for the Commission and——

Mr. Moss. It went to interstate rates as well as intrastate, didn't it?

Mr. SWIDLER. What's that?

Mr. Moss. It went to interstate rates as well as intrastate, didn't it?

Mr. SWIDLER. There were some interstate rates, oh, yes, sir.

Mr. Moss. That is all I have, Mr. Chairman.

I just wanted to have the record reflect what I think is accurately involved here.

Mr. YOUNGER. Mr. Chairman?

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. I would like to state after listening to this testimony for the last 2 days I think you, Mr. Chairman, and the Commission, did a very good job in spite of all of the internal knifing, and I want to compliment you from our side of the fence.

Mr. SWIDLER. Thank you.

The CHAIRMAN. Mr. Swidler, I would suggest that one of the lessons we have learned from the experience of this matter is that in the future you should try to have your opinions ready at the time you issue all of them.

Mr. SWIDLER. Well, sir, this is not easy to do in a security issue case.

We didn't see the dissent and weren't able to address ourselves to the problems of the dissent until April 3, and it is true at that time that it took us 2 weeks to get our opinion out.

Now, this is not the only thing that we were working on, and I don't think 2 weeks——

The CHAIRMAN. In my judgment, it isn't the businesslike procedure for the majority opinions to have to be written to direct themselves to the dissent.

It seems to me as though the normal procedure should be for the majority opinion to be issued and then the dissent.

Mr. SWIDLER. Well, sir, this was a securities issues case where normally it would have been routine except for the problems raised in the dissent.

The CHAIRMAN. Well, I realize it was difficult.

Well, the record is rather replete on what the facts are. It certainly speaks for itself, as I said before.

Again, I want to thank you again on behalf of the committee for your presentation here and your discussion of the problem, which should be helpful all around.

Mr. SWIDLER. Mr. Chairman, may I say just one word?

I think that this hearing has been not only a privilege for me but of great benefit to the Commission.

This is the way to find out just how much is solid in the information that comes to you as to the workings of the Commission and the members of the Commission, and for you to sift and reduce the charges to their proper size, and then find out what the answers are, if any, and arrive at an appraisal.

It is very hard to come to an issue on these things on the basis of newspaper stories alone, and I believe that this hearing has cleared the air.

I am happy that you gave me the privilege of testifying, Mr. Chairman.

The CHAIRMAN. You have a tremendous responsibility in your job, not only as Chairman but as a member of the Commission, as all of you have.

Of course, as you indicated this morning, electric power is the No. 1 industry from a dollars-and-cents standpoint and natural gas is about fifth or sixth.

The consumers of America are depending upon your service.

It was the intent of this Congress to establish it that way and to give you an opportunity to provide the people a service at a rate that they can afford and that would be appropriate to the economy of the United States.

So we can only wish all of you, regardless of who is down there at any given time, the best, and that you undertake the responsibilities, and that, whether you might be ordinary men or exceptional men, everyone do the best job that he can.

Mr. SWIDLER. Thank you.

The CHAIRMAN. The committee will adjourn.

(Whereupon, at 4:40, p.m., the subcommittee was adjourned.)

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