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NOMINATION—SEPTEMBER

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HEARINGS

BEFORE THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE
NINETY-FOURTH CONGRESS

FIRST SESSION
ON

SEPTEMBER 8, 1975

JAMES G. WATT, TO BE A MEMBER OF THE
FEDERAL POWER COMMISSION

SEPTEMBER 23, 1975

ABBOTT WASHBURN, TO BE A MEMBER OF THE
FEDERAL COMMUNICATIONS COMMISSION

SEPTEMBER 26, 1975

RICHARD L. DUNHAM AND JAMES G. WATT, TO BE MEMBERS
OF THE FEDERAL POWER COMMISSION

Part 3

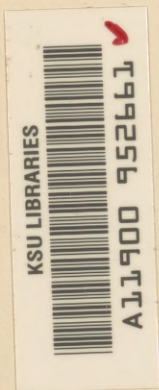
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THE NATIONAL BUREAU OF STANDARDS

WASHINGTON, D. C. 20540

1. The purpose of this report is to provide a summary of the results of the investigation of the physical properties of the material under study. The investigation was conducted in accordance with the procedures outlined in the preceding report.

2. The material under study was found to exhibit a number of interesting physical properties. The most significant of these are the high degree of crystallinity and the high melting point. The material was found to be highly resistant to chemical attack and to have a high thermal stability.

3. The results of the investigation are summarized in the following table. The table shows the values of the various physical properties of the material under study. The values are given in both the SI and the CGS systems of units.

4. The results of the investigation are in good agreement with the results of previous studies of similar materials. The high degree of crystallinity and the high melting point are characteristic of the class of materials under study.

5. The investigation was conducted in accordance with the procedures outlined in the preceding report. The results of the investigation are summarized in the following table.

6. The results of the investigation are in good agreement with the results of previous studies of similar materials. The high degree of crystallinity and the high melting point are characteristic of the class of materials under study.

NOMINATIONS—SEPTEMBER

MONDAY, SEPTEMBER 8, 1975

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

The committee met at 10:45 a.m. in room 5110, Dirksen Senate Office Building, Hon. Norris Cotton, presiding.

OPENING STATEMENT BY SENATOR COTTON

Senator COTTON. The committee will come to order.

The acting chairman finds himself somewhat embarrassed. There is no other Senator, Democrat or Republican, available this morning for this hearing. And, as some of you know, I have only been back on this committee for about 15 minutes.

However, this nomination came up April 9 and has been pending ever since. The office in question, in view of the situation on energy, is vital.

I have been informed by both the majority and minority staff that there are at least two Senators on the committee who have some questions that they would like to ask the nominee. But, on the other hand, it was decided that we would listen to the statements of our colleagues, Senator Hansen and Congressman Roncalio from Wyoming, and any statement that the nominee might wish to make.

The nominee has already filed his financial statement which will not go into the hearing record but which will be kept in the committee file open for public inspection. I'm informed by the staff that neither side of the aisle finds any apparent conflict of interest in the financial statement. The nominee also has submitted his answers to several written interrogatories prepared by the committee staff, and these will be inserted without objection into the hearing record.

In view of those facts and in view of the fact that this nomination has been pending all this time and so it should not be unnecessarily delayed, it was suggested that I call the meeting to order as the chairman.

We'll now hear from our distinguished colleague, Senator Hansen, and Congressman Roncalio, both of whom have been waiting for an opportunity to be heard. Then we will adjourn subject to the call of the Chair, which I presume could be within the next couple of days. I'm sure the chairman will call a hearing and wind this thing up so it won't be delayed unduly.

But, we can gain a little time by taking care of these statements now and then the Senator and the Congressman will not have to come back again.

Therefore, the committee will be delighted to hear from our friend and colleague, Senator Hansen, at this time.

STATEMENT OF HON. CLIFFORD P. HANSEN, U.S. SENATOR FROM WYOMING

Senator HANSEN. Thank you very much, Mr. Chairman.

Mr. Chairman, as you've observed, I'm delighted to note also the presence of my good friend and a very good friend of the nominee, Congressman Roncalio from Wyoming, who is here also to speak and to present along with me, a Wyoming man of whom we're very proud.

It's a real pleasure to introduce James Watt to you and the members of the Senate Commerce Committee and although all members aren't present at the moment, I know that through you they will be apprised of my feelings.

It is my belief that Jim's extremely well qualified to fill this position. After receiving his juris doctor degree from the University of Wyoming, College of Law, 1962, he assisted in establishing a successful political organization for a Senator Milward Simpson and went on to be the Legislative Assistant and Counsel.

In 1966 he became Secretary to the Natural Resources Committee and the Environmental Pollution Advisory Panel of the Chamber of Commerce of the United States.

Later, as Special Assistant, he counseled the Secretary of Interior.

As Deputy Assistant Secretary for Interior, he was responsible for water and power resource activities of the Department and acted as administrative spokesman for water resource matters before Congress.

At present as Director of the Bureau of Outdoor Recreation, he manages a \$300-million-a-year fund.

Senator COTTON. Of the State of Wyoming?

Senator HANSEN. For the Federal Government.

Senator COTTON. Under what Department?

Senator HANSEN. Bureau of Outdoor Recreation of the Department of the Interior.

Senator COTTON. Sorry to interrupt you.

Senator HANSEN. I appreciate you clarifying that.

He manages a \$300 million a year fund for Federal agencies, State government and local agencies to acquire and develop recreation lands and facilities.

To him we can credit the first nationwide outdoor recreation plan.

I am satisfied, Mr. Chairman, that James Watt will bring dedication, enthusiasm, and analytical skills to his role as a member of the Federal Power Commission.

It is also my hope that the committee can carefully consider James Watt's excellent qualifications and move to report his name to the Senate for confirmation.

Thank you.

Senator COTTON. Thank you, Senator Hansen.

We'll be very glad to hear from the distinguished member of the other party from Wyoming, Congressman Roncalio.

STATEMENT OF HON. TENO RONCALIO, U.S. REPRESENTATIVE FROM WYOMING

Mr. RONCALIO. Thank you, Mr. Chairman.

I'm happy to join my college Senator Cliff Hansen in recommending to this committee the confirmation of the President's appointment of my friend Jim Watt to the position of the FPC.

I come before you to let you know of my support for the nomination and respectfully urge that the appointment be confirmed without delay.

Mr. Watt has a commendable record of public service and 13 years of valuable Washington experience. He is a native of Wyoming and received his law education from the University of Wyoming, which is my alma mater.

He began his career as a legal assistant to one of the most respected men, Senator Milward L. Simpson, former Governor and former Senator.

Upon Senator Simpson's retirement, he became Secretary to the Natural Resources Committee, a very important position with one of the most important organizations downtown.

In 1969, after 2½ years in that capacity, Mr. Watt returned to Government service at the Department of Interior where he broadened his experience in conservation and national issues.

He served 3 years as an Assistant Deputy Secretary of Water and Power Resources before the appointment to the Bureau of Outdoor Recreation, which he has so ably managed.

He is a man of ability and character, along with his record of accomplishment leaves no doubt in my mind that he possesses the necessary qualifications to serve on the Federal Power Commission.

I'm confident he will serve the country well in that capacity and I'm happy to support Cliff Hansen in support of that nomination.

Senator COTTON. We thank you, Congressman, for your very excellent statement and the Senator for his.

We have before us the biographical sketch of James G. Watt of Wyoming. I note, Mr. Watt, that you are still a legal resident of the State of Wyoming?

STATEMENT OF JAMES G. WATT

Mr. WATT. Yes, that is correct.

Senator COTTON. Where is your legal residence?

Mr. WATT. My legal residence is just north of Chugwater, Wyo., in Wheatland, Wyo., Platte County.

Senator COTTON. Your biographical sketch will appear at this point in the record.

Mr. WATT. Thank you, sir.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF JAMES G. WATT

I was born in Lusk, Wyoming, on January 31, 1938, and attended the public schools there and in Wheatland, Wyoming. My B.S. Degree (with Honors) was earned in 1960 from the University of Wyoming, College of Commerce and Industry. My J.D. was received from the University of Wyoming, College of Law, in 1962.

While attending Law School, I served as Wyoming Law Journal Editor for two years and taught several courses in the College of Commerce and Industry. After graduation from Law School, I served former U.S. Senator Milward L. Simpson (R-Wyoming) as Legislative Assistant and Counsel. (1962-1966)

At the end of Senator Simpson's term, I became Secretary to the Natural Resources Committee and the Environmental Pollution Advisory Panel in the Chamber of Commerce of the United States. (September 1966-January 1969)

In January 1969, I went to the Department of the Interior as Special Assistant to the Secretary and Under Secretary.

In May of 1969 through June 1972, I served as Deputy Assistant Secretary for Water and Power Resources. In that capacity, I had policy and oversight responsibilities for the agencies of the Department which designed, constructed and operated reservoirs, water distribution systems and electric power transmission systems, and the marketing of electric power generated at Federal dams.

In July 1972, I was appointed Director of the Bureau of Outdoor Recreation of the Department of the Interior. The Bureau works with other Federal, State and local agencies in land use planning for conservation and recreation purposes, and manages a \$300 Million a year Land and Water Conservation Fund.

Both my wife, the former Leilani Bomgardner, and I maintain our legal residence in the State of Wyoming where we were both born, reared and educated. Our two teenage children, Erin and Eric, are likewise natives of the State of Wyoming.

JAMES G. WATT—CANDIDATE FOR FEDERAL POWER COMMISSIONER

James G. Watt is a 37-year-old Wyoming lawyer who has served in several key Government positions. As a Government official, he has worked with industry leaders and has a basic familiarity with the broad issues coming before the Federal Power Commission. In addition, he has established a reputation as a conservationist that brings his candidacy a balance of some importance.

Watt has never worked for a company and states that he has absolutely no conflicts of interest or incidents in his past that would bring embarrassment to the President, the Republican Party or himself.

A quick review of his qualifications for the appointment are as follows:

Natural resource policy maker: Deputy Assistant Secretary, Water and Power Resources, Department of the Interior (1969-1972).

Conservationist: Director, Bureau of Outdoor Recreation, Department of the Interior (1972-Present).

Lawyer: Admitted to practice before all State and Federal courts in Wyoming and the U.S. Supreme Court.

Industry contacts: Head of U.S. Chamber of Commerce's Department of Natural Resources (1966-1968).

Capitol Hill experience: Legal Assistant and Counsel to former U.S. Senator Milward Simpson (R-Wyoming) (1962-1966).

Senator COTTON. As noted earlier, you have filed a financial statement of whatever property and holdings you have with the committee. It will not go into the hearing record, but as is customary with this committee, it will be held in the committee files available for examination by anyone who cares to see it. But, I think probably it is merely a matter of form that I should ask you whether you yourself are conscious of having any financial interests, properties, or securities that in your opinion could in any way be regarded as a conflict of interest with respect to duties as a member of the Federal Power Commission for which you are nominated?

Mr. WATT. Mr. Chairman, in my opinion I have no investments or associations or interests that would create a conflict of interest on the FPC.

Senator COTTON. Careful reading of your financial statement and the opinion of this member certainly bears that out.

Now, you have also responded to interrogatories prepared by members of the committee and/or the staff and those materials, as previously noted, will appear in the hearing record.

Also, my attention has been called to a letter addressed to Senator Warren G. Magnuson, Chairman, from the General Counsel of the FPC with reference to your financial statement.

Without objection, that, too, will be inserted in the hearing record.
[The information follows:]

ANSWERS TO QUESTIONS SUBMITTED BY THE SENATE COMMITTEE ON COMMERCE

I. BIOGRAPHICAL

- a. Name and address: James G. Watt, 5407 Keppler Road, Camp Springs, Md.
- b. Date of birth: January 31, 1938.
- c. Marital status: Married, November 2, 1957; maiden name of wife: Leilani Bomgardner.
- d. Names and ages of children: Eric Gaius Watt, born February 14, 1962—13 years, 7 months; Erin Gaia Watt, born August 14, 1960—15 years.
- e. Education background: Names of institutions attended, dates attended, degrees received:

Wheatland High School, Wheatland, Wyoming, 1952-1956.

University of Wyoming, Laramie, Wyoming College of Commerce & Industry, 1956-1960, B.S. with honors.

University of Wyoming, Laramie, Wyoming, 1959-1962, J.D.

f. *Employment record:* List all positions held since college, including the title or description of the job, name of employment, location of work and dates of such employment.

July 1972 to Present—Director, Bureau of Outdoor Recreation, U.S. Department of the Interior, Washington, D.C. Chief Executive of a major bureau of the Interior Department, U.S. Government (Washington and seven regional offices). The Bureau assists Federal, State and local agencies in land-use planning, and manages a \$300 million a year fund for Federal agencies and State governments (on a matching basis) to acquire and develop recreation lands and facilities. Produced the first Nationwide Outdoor Recreation Plan; developed the first Management-By-Objectives/Financial Management System Program in the Department. A principal Administration spokesman on recreation and conservation matters before Congress and interest groups.

May 1969 to June 1972—Deputy Assistant Secretary, Water & Power Resources, U.S. Department of the Interior, Washington, D.C. Responsible for water and power resource activities of the Interior Department, U.S. Government. Line officer over 7 agencies of the Department which designed, constructed, and operated reservoirs, water distribution systems and electric power transmission systems; marketed electric power and water; and conducted desalting research and development. Shared in the decision making aspects of program and policy formulation, budget review and personnel management. An Administration spokesman for water resource matters before Congress and interest groups. Contracting Officer for the construction of a power-desalting plant in Saudi Arabia. U.S. Delegate, Economic Commission for Europe, Committee on Power, Geneva, 1971. U.S. Delegate, Israeli Desalting Conference, Dead Sea, 1971.

January 1969 to May 1969—Special Assistant to Secretary and Under Secretary of the Department of the Interior, Washington, D.C. Assisted in the change of Administrations; coordinated the activities relating to the Secretary's Senate confirmation. Counseled on legislative matters and wrote speeches. Assisted in establishment of the Nixon Administration control of the Department.

September 1966 to January 1969—Secretary to the Natural Resources Committee and the Environmental Pollution Advisory Panel, Chamber of Commerce of the United States, Washington, D.C. Responsible for coordinating the activities and interests of the National Chamber in the fields of mining, public lands, energy, water and environmental pollution. Principal spokesman for the National Chamber on these issues. Developed policies and programs.

November 1962 to September 1966—Legislative Assistant and Counsel to former U.S. Senator Simpson (R-Wyo.). Advised on legal, legislative and political matters. Responsible for all legislative activities in his Senate Committees and on the Senate Floor. Wrote most of his speeches. Answered all correspondence dealing with legislation, politics and the legal problems of the constituents. Conferred with and screened all those who sought to see the Senator.

July 1962 to November 1962—Personal Assistant to Milward L. Simpson, Wyoming. Assisted in establishing a successful political organization for the Senator's election.

g. Government experience: List any experience in or association with Federal, state, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

See above employment record.

h. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, public interest, and all other organizations.

Member of the Wyoming State Bar, 1962–Present.

Member of the Bar of the U.S. Supreme Court, 1965–Present.

Full Gospel Businessmen's Fellowship International, 1964–Present.

Church of the Assembly of God, 1964–Present (Board of Deacons 1975).

i. Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Registered in State of Wyoming as a Republican.

Senator Hansen Campaign Committee—1972—\$100.

CRP—Nixon-Agnew—1972—\$110.

On Staff, Committee to Elect Milward L. Simpson to U.S. Senate—1962.

While on former Senator Simpson's staff, worked in Wyoming for Goldwater Presidential and Congressman William Henry Harrison's campaigns—1964.

j. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Who's Who in American Politics—1971–72, 1972–73, 1973–74.

Wyoming Law Journal Editor (2 years).

Phi Kappa Phi—National Scholastic Honorary Society.

Who's Who Among Students in American Universities & Colleges (2 years).

Thomas Arkle Clarke Award (Outstanding ATO in Rocky Mountain Region).

President of University of Wyoming Honorary Societies: Phi Epsilon Phi (Sophomore), Iron Skull (Junior), and Omicron Delta Kappa (Senior).

k. Speeches and writings: List the titles, publishers, and dates of books, articles, reports and other published materials you have written and attach a copy of such materials to this questionnaire. Attach copies of all speeches or addresses given before any organization or mass media over the past 5 years.

See Exhibit 1 for attachment of the following:

"Federal Tax Liens; Divestiture," Vol. 16, Wyoming Law Journal, p. 88, Fall 1961.

"Economic Implications of Pollution Control," Industrial Water Engineering, Jan. 1968.

Speeches—Given while Deputy Assistant Secretary—Water and Power—DOI and Director, Bureau of Outdoor Recreation.

Full Gospel Business Men's International. Have spoken and continue to speak frequently at meetings all over the country—Christian Testimony (printed material not available—speak extemporaneously).

l. Qualifications: State what, in your opinion, qualifies you to serve as a Federal Power Commissioner.

The Federal Power Commission was established as an environmental and consumer protection agency. As such, its Commissioners ideally should be persons who are intellectually and emotionally prepared to deal with the legal, economic, social, and governmental issues encompassing the matters presented before the Commission.

I believe my education and experience has prepared me for this assignment. I have spent 11 of the 13 years since graduating from the University of Wyoming's College of Law (undergraduate degree in Business Administration) in public service. The first four years after law school were spent as Legislative Assistant and Counsel to a U.S. Senator. This broadening experience exposed me to the National point of view on social, economic and natural resource issues of the day. From there I went to the U.S. Chamber of Commerce where I was involved in natural resource issues. After two years with the Chamber, I came back to public service to work in the Department of the Interior, where I have been for the last six and one-half years. I have held high level policy and decision-making positions within the Department. For the first three and one-half years, I was responsible for development of our resources—water and power. For the last three years, I have been responsible for the preservation of our resources—parks, rivers, trails, etc.

These experiences have developed my abilities to make good decisions in a timely fashion and with a balanced perspective. Experience has shown me that almost every major decision we make affects the environment, the consumer, jobs, and the development of supply.

II. FINANCIAL DATA

a. Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and all other financial holdings) and all liabilities (including debts, mortgages, loans, and any other financial obligations) of yourself, your spouse, and other immediate members of your household. All assets and liabilities should be separately itemized and fully described.

b. List sources and amounts of all income received during each of the last three years, including all salaries, fees, dividends, interests, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more in value. (If you prefer, copies of Federal Income Tax Returns for these years will suffice, but their submission is not required.)

c. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from current or previous business relationships, professional services and firm memberships, employers, clients, and customers.

(a., b., and c.)—Materials have been supplied to you under separate cover and opinions have been sent to the Committee from the General Counsel of the Federal Power Commission and the Department of Justice. Attached are copies of Federal Income Tax Returns for the past three years, plus a financial statement of August 18, 1975. (See Exhibit 2.)

III. FUTURE EMPLOYMENT RELATIONSHIPS

a. Will you sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate?

Yes.

b. Do you have any plans after completing Government service to resume employment, affiliation, or practice with your previous employer, business firm, association or organization? Has anyone made any offers or a commitment to employ your services in capacity after you leave Government?

No.

c. If confirmed, do you expect to serve your full term of office?

Yes.

d. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

None.

e. Indicate any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interests with your duties as a Federal Power Commissioner.

None.

f. Describe any business relationship, dealing or financial transaction which you have had during the past 10 years, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with your duties as a Federal Power Commissioner.

None.

g. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

During the last 10 years my three different employers (a U.S. Senator, U.S. Chamber of Commerce and U.S. Department of the Interior) have charged me with spending a substantial portion of my time directly and indirectly to influence legislation and public policy.

h. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

None.

i. Written opinions should be provided to the Committee by the General Counsel of the Federal Power Commission and by the Attorney General or his designate concerning potential conflicts of interest or any other legal barriers to your serving as member of the Federal Power Commission.

No conflicts.

j. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense for which the fine was less than \$100?

No.

k. Please advise the Committee of any additional information favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

IV. MAJOR POLICY ISSUES FACING THE FPC

A. Energy Conservation and Consumer Protection

(1) Rate designs and governmental policies have in the past encouraged additional energy consumption by providing larger users with quantity discounts. In light of the energy supply problems facing the nation, do you feel that FPC policies should be revised to discourage growth in electricity and natural gas consumption?

The FPC should provide leadership directly and indirectly in order to encourage better use and conservation of energy resources. I am informed that several rate studies are underway that need to be concluded and appropriate action then taken. I am advised that there are pending rate making proceedings concerning this issue which will soon come before the Commission. If confirmed, I would be required to address the specifics of this question at that time.

(2) Electric utility rate structures promote consumption rather than conservation, often discriminate against low-volume energy consumers, and do not always reflect the full cost of generating, transmitting, distributing and using electric energy. In response, support is growing to ban such practices and some utility commissions have moved to revise such rate structures. For example, the Virginia Corporation Commission recently ordered the Virginia Electric and Power Company to implement a system of peak load pricing. Additionally, the Federal Energy Administration has endorsed peak load pricing and its Administrator announced in June that load management and related conservation programs can lead to capital savings and more incentives for the conservation of electric energy. Do you believe that policies of utility commissions should require the conservation, rather than promotion, of electric energy? Specifically, as a member of the FPC, would you encourage the use of peak-load pricing and discourage the use of declining block rates?

I believe the policies of the Commission should support and encourage wise use and conservation of electric power. Several studies, the studies of the FPC and the FEA financed studies, are underway. As soon as these studies demonstrate which are the more effective methods of conserving energy, strong leadership should be given by the FPC. I am advised that rate making proceedings are pending before the Commission on this matter. Therefore, it would be improper for me to address the specifics of this question.

(3) With the rising cost of energy, some residential customers, especially the poor and elderly, suffer unusual hardships. This has led to social equity proposals for lifeline rates or energy stamps. Is it your opinion that all Americans are entitled to a minimal amount of electric energy to meet essential needs, and if so, what role do you think the FPC should play in encouraging plans such as lifeline rates, energy stamps, or other similar proposals?

The FPC has definite responsibilities set forth in the statutes. If Congress wants to make major subsidies to any special interest group, it should so legislate.

(4) During the past two years, the rates for electric energy have increased enormously. Much of this increase was due to fuel adjustment clauses, which are permitted by many utility rate structures. The President has submitted legislation to the Congress which would prohibit regulatory commissions from banning fuel adjustment clauses. However, if utilities continue to use these clauses, how will consumers be assured that utilities are employing cost reduction efforts in their purchase of fuel? What would be your opinion of a federal requirement that such a clause could be used only if a utility engages in competitive bidding and that the pass-through of fuel costs have a percentage limitation?

It is the responsibility of the regulatory commissions to assure that cost reduction efforts are being pursued by the utilities. That is a role to be carried out by a regulatory agency in protecting the consumer's interest. Limiting the pass through of proper fuel cost increases may weaken the financial ability of the utility to serve the consumer. Proper fuel costs are the result of a competitive system. The utility should be required to justify its costs on that basis. It is questionable whether competitive bidding for all fuels is essential to establish that fact.

(5) A recent report by the Federal Energy Administration on the productivity of electric power plants found that generating units are forced out of service more than 15 percent of the time, are unavailable for service more than 25 percent of the time, and operate at less than a 60 percent capacity factor. What regulatory incentives do you think would be appropriate in light of the poor reliability of electric power plants? Would you favor a requirement that each utility institute a quality control program to assure the reliability of its plants and major equipment? Do you think there is a role for the Federal Government to play in specifying minimum reserve generating capacity margins for specific power pools? Should electric equipment manufacturers be required to provide equipment warranties and meet reliability standards?

Each utility should have a quality control program. Such a program will reduce the amount of "down time." The FPC can and does give guidance on minimum reserves.

(6) Consumers often do not have the funds or capability to adequately challenge rates proposed by utilities. As an FPC Commissioner, would you favor (1) a voluntary check-off on utility bills which would authorize funds for consumer advocates and (2) federal grants for setting up local offices of consumer services to assist in consumer advocacy before utility rate proceedings? What additional steps would you recommend to assure the adequate representation of these customers?

The primary role of the FPC and state regulatory agencies is to protect the consumer. These agencies should be properly staffed and managed to do the proper job. Another layer of Government will not necessarily help the consumer.

(7) As you know, the siting of bulk power supply facilities has long been a matter of public controversy. What steps do you think should be taken to encourage long-range regional planning with full public participation for these facilities?

State and regional planning agencies need to be more aggressively supported by and responsive to decision-makers. Without proper land use planning, we may experience serious damage to our environment and possible power supply shortages because of the inability to build the necessary facilities. The Governmental process must provide in a timely fashion for the resolution of these conflicts inherent in power plant siting. The States need to set up planning agencies to handle these land use and plant siting issues. The Federal agencies should better coordinate their clearance processes. The Federal Power Commission has provided some direction on this matter. If confirmed as a Commissioner, I will take a special interest in this subject and pursue it more fully.

(8) During the fuel shortage of the last two winters, the President appealed to the nation to conserve energy in an effort to avoid major disruptions. Many persons did succeed in reducing their fuel usage, and as a reward, many electric and gas utilities have sought rate increases not only to recover higher costs, but to compensate for lower sales volume. The consumers which saved energy are rewarded by even higher rates per unit. What steps should be taken to end such disincentives to energy conservation?

Several studies on rate design and experiments with use of electricity, i.e., staggered shifts, night work, new processes, etc., are underway which may allow the conservation of energy to be fully considered in setting the proper rates and construction of projects needed to meet new demand. Stability of the regulated industry must be secured if we are to protect the consumer's interest. I am advised that there are several cases pending before the Commission on which I will be called upon to make a decision, if confirmed. Therefore, it would be inappropriate for me to specifically comment on this subject matter.

(9) Rapidly rising costs, particularly rising energy costs, are placing a severe strain on some of the nation's electric utilities because some state regulatory commissions are not permitting a passthrough of all rising costs. There have been suggestions that they should receive some form of assistance to insulate them from extraordinary fuel price increases, or some form of federal guarantee of the bonded indebtedness for certain new public utility equipment. What is your view regarding such possible federal assistance to electric or gas utilities facing severe financial difficulties?

Under circumstances existing now and in the foreseeable future, I believe Federal direct financial assistance to the utilities would be very costly and counter-productive to the Nation, its consumers and the industries. Investment tax credits and depreciation write-offs approved by Congress may help the industry.

(10) Even during the current fuel shortages and heightened concern about the environment, some utilities are continuing heavy promotional advertising campaigns at their customers' expense. In your view, should consumers pay for such advertising, or should the company's shareholders bear the expense?

I do not favor mass promotional advertising campaigns at the consumer's expense. Efforts do need to be made to encourage basic users to shift their use to off peak hours.

(11) It appears that substantial expense, in both monetary and environmental terms, can be saved by the establishment of an improved national grid system for electricity and natural gas transmission. What steps, if any, should the FPC take to encourage the establishment of a national natural gas and electricity transmission system as opposed to continuing the current practice of individual companies simply serving their individual customers?

The industry with full support of the State and Federal regulatory agencies should continue to strengthen and build our interregional grid systems. A growing and improving intertie system can promote and improve reliability and bring certain economies.

(12) Many utilities have argued that there is not now an adequate balance between meeting the nation's energy needs and protecting the environment, and that some relaxation of certain environmental standards is required if the Nation is to meet its electricity requirements. What is your view with respect to the feasibility of implementing current clean air standards administered by the Environmental Protection Agency?

The primary standards necessary to protect the public's health should never be relaxed. Those standards which require extensive capital investments and bring marginal results are a burden on the consumer and the capital requirements of the industry. They should be under constant review to determine if their costs are justified by the environmental protection they are supposed to provide.

B. The Regulation of Natural Gas

(1) Do you feel it is desirable to promote the increased manufacture of liquefied natural gas and synthetic natural gas in the face of increasingly smaller additions to domestic reserves? What price level would you feel is appropriate for these specialized fuels?

I believe it is desirable to promote the increased manufacture of LNG and SNG. The price should be determined by cost of production, with a fair rate of return.

(2) If liquefied natural gas is imported or other costly gas substitutes are developed, do you feel that the users of such expensive gas pay its full price, or should its price be averaged in with the price of relatively inexpensive conventional natural gas supplies?

This question, I am advised, is one of the basic issues in at least two cases which are soon to come before the Federal Power Commission. Therefore, it would be inappropriate for me to respond to this without a good deal more study and an understanding of the cases soon to come before the Commission.

(3) Since nearly 40 percent of the natural gas consumed in the United States is not subject to FPC regulation, do you feel that the regulatory authority of the Commission should be extended to include intrastate natural gas production and transportation and curtailment?

It is not wise to continue an artificial distinction between these two markets.

(4) In spite of much higher new natural gas prices in the intrastate market, increasing quantities of natural gas are being used for low priority utility and industrial boiler fuel. Do you feel that this is wasteful and inefficient of the unique properties of natural gas? Should natural gas be phased out as a large industrial and utility boiler fuel, freeing gas for use by residential and small commercial customers, and for essential agricultural and industrial purposes for which there is no substitute?

Boiler fuel use of natural gas should be phased out through the market system or through Federal or State regulation and legislation.

(5) A number of major pipelines are now forced to curtail deliveries of natural gas below their firm contractual commitments. Which classes of customers should be curtailed, and who should decide how the burden of the natural gas shortage should fall?

The FPC or an agency charged by Congress for administering a total energy program should make the decision on curtailments. Those heavy industrial users

which have or should have the ability to convert to other fuels should be curtailed first. Industrial boiler and other low efficiency uses of natural gas should be phased out as soon as practicable.

(6) Under the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration is authorized to allocate available supplies of oil among various customers. What do you feel should be the role of the federal government in allocating the increasing shortage of natural gas? Should the FPC be given the authority to allocate gas among pipelines in cases of severe curtailment or unemployment, provided adequate compensation is made, or should market forces determine where the gas goes?

The Federal Government does have a responsibility to allocate shortages of natural gas. Factors of safety, jobs, economics and the environment need to be considered in allocating gas supplies to beneficial uses. At this time, I don't have a firm view on allocating gas between pipelines. However, my tendency would be against shifting gas from one pipeline to another. I think end uses should be the determining factor in allocating natural gas.

(7) The Federal Energy Administration currently administers the mandatory petroleum allocation program, regulates the price of petroleum products, and takes other measures designed to deal with energy shortages facing the nation. Since the availability and price of all energy resources are closely related, it has been suggested that the Federal Power Commission's curtailment and certain other authorities be transferred to the FEA or that the functions of both agencies be integrated into a new, separate federal agency to centralize and coordinate the management of energy shortages. What is your view of this approach, and if you do not favor such a centralization of authority, how should the FPC coordinate its activities with the FEA?

If Congress were to develop a National Energy Policy, it would be best to have one Agency coordinate the management of energy shortages. This would allow for more substitutability of fuels and resources. If there is not to be a new energy policy, the FPC should continue exercising its authorities and communicate fully and completely with FEA and the ERC.

(8) Do you feel that it is desirable for the FPC to continue the regulation of natural gas prices at the wellhead? Do you support or oppose deregulation of natural gas prices?

From a philosophical point of view, I am of the opinion that in the long term more additional sources of natural gas will be developed and thus consumers served, if the price of natural gas is not regulated at the well-head. This issue is presently before the Congress and I, of course, will abide by and carry out the law.

(9) Some economists have suggested that higher prices and/or increased taxes on energy use are the most effective way to reduce energy consumption. Do you agree? What steps, other than pricing, if any, would you propose the government take to encourage conservation among energy users?

Yes, I do believe the most effective way to reduce energy consumption is with higher prices and/or increased taxes. In addition, Federal and State governments should take steps that would encourage better building codes, better transportation systems, better working schedules, and better manufacturing and processing systems.

(10) Since the Arab oil embargo of October, 1973, the prices of unregulated domestic fuels have been steadily rising to the price of imported oil, set by the Organization of Petroleum Exporting Countries, exacerbating the severe economic problems which our nation faces. Do you feel that it is necessary or desirable for domestic energy prices to rise to these levels? What, in your opinion, should determine the prices of our domestic fuels? What should be the relationship between the price of oil and the price of natural gas?

It is essential that America develop its own sources of energy so we will not be dependent on the Exporting Countries. We should produce our coal, develop nuclear energy, increase exploration and drilling for oil and natural gas, plus increase our research activities for other sources of energy.

There are so many variables that determine the price of our domestic fuels, it is impossible to control one aspect of the pricing system without having impacts elsewhere in our economy. The market place takes into account the controls of Federal and state governments as well as the other factors which determine the price of domestic fuels. There is always a need to have flexibility so that changes can be made to protect the environment, jobs, and the consumer. This flexibility can only exist if there is some comparability in the pricing of fuels.

C. Improving Competition

(1) In order to further encourage vigorous bargaining between the purchasers and producers of natural gas, it has been suggested that natural gas pipelines in the future be treated as common carriers. What is your opinion of this possibility?

Today's problem is getting enough gas to fill the lines. The common carrier issue is one I would need to study further. It would take legislation to create that situation. If confirmed as a Commissioner, I will get prepared on this issue and give my views at any Congressional hearings that are held on the proposed legislation.

(2) A major factor within the petroleum industry tending to increase entry barriers and reduce competition is the existence of pervasive vertical integration. Historically, however, the natural gas industry has been characterized by different companies controlling production, pipeline transportation and distribution. In recent years, however, many pipelines have established their own production subsidiaries, thereby reducing competition and any incentive for vigorous bargaining between pipelines and producers. Do you feel that such vertical integration in the natural gas business is desirable, or would competition be better served by discouraging such vertical integration?

I do not believe vertical integration is bad in and of itself. We need to encourage more drilling for natural gas. If the pipeline companies will do the exploration and drilling, it would probably be a good thing. However, if huge entities were able to dominate the whole industry and limit competition, the Government would need to step in and break up the entity or entities. This is an issue to be addressed through anti-trust enforcement by the Department of Justice and the Federal Trade Commission.

(3) To provide incentives for deconcentration of the gas producing industry, would you favor or oppose welhead prices that are higher for independents than for major producers?

This issue is now before the Congress. If Congress continues the regulation of well-head pricing, higher prices for independents could possibly stimulate more drilling. However, I am not well enough versed at this time on the inter-relationships between the majors and the independents to come down hard on a position. I need to study the issue.

(4) Many natural gas producers are also oil producers since the two resources are often found in conjunction with each other. Some major natural gas producers also own other competing fuels such as coal and uranium, as well as other unrelated businesses. Do you feel that major oil companies should be engaged in the supply of all competing energy sources?

Multiple ownership or control of competing energy sources is not bad in and of itself. However, if that control limits competition, the Federal Government must break up the corporate holdings. This is an issue to be addressed through anti-trust enforcement by the Department of Justice and the Federal Trade Commission.

(5) It has been suggested that substantial new natural gas production is possible from federal lands. However, many smaller independent companies have not been able to engage in the development of oil or gas from federal lands because of the high entry barriers erected by the current system of bonus bidding. Would you favor a revision in existing federal leasing policies to a royalty bidding or some other system in order to permit more than just the largest oil companies to participate in the development of such resources?

Yes, I believe we should consider other methods of leasing the Federal lands because the huge front-end payments do limit competition and restrict the financial capabilities of the successful bidding companies.

FEDERAL POWER COMMISSION.

HON. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Old Senate Office Building, Washington, D.C.

DEAR CHAIRMAN: Pursuant to your request I have reviewed the personal statement and exhibits of James G. Watt, who has been nominated by the President to be a Commissioner of the Federal Power Commission, to determine whether any conflict of interest prohibited by the Federal Power Act or the regulations and Commission's standard of conduct would exist. The statement (and exhibits) I have reviewed is the one supplied to you by Mr. Watt.

Section 3.735-5(b) of the Commission's Standards of Conduct for employees provides as follows:

(3) Commissioners are subject to the following prohibition of the Federal Power Act which is applied as a matter of Commission policy to like interests in natural-gas companies, as defined in Section 2 of the Natural Gas Act (15 USC 717(A)). "... No person in the employ of or holding any official relation to any licensee or to any person, firm, association, or corporation engaged in the generation, transmission, distribution, or sale of power, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold the office of Commissioner. Said Commissioners shall not engage in any other business, vocation, or employment ..." (16 USC 792)

(5) (i) An employee or the spouse, minor child, or member of the immediate household of an employee shall not own directly or indirectly or participate in the purchase of any securities of any public utility, licensee or natural gas companies subject to the jurisdiction of the Commission or of any person engaged in the distribution or sale of electric energy or natural gas or of a parent corporation of any of the foregoing.

Mr. Watt owns directly or indirectly only the securities and property listed on the enclosed attachment.

One of the securities held by Mr. Watt, the Neuwirth Fund, Inc., as part of its investments, currently holds energy related securities. In my opinion Mr. Watt has no control over the funds investment policy and therefore the holding would not create any conflict of interest with his holding the position of Commissioner of the Federal Power Commission. The existing Commission regulations prohibit neither Commissioners of employees from holding interest in mutual funds.

In my opinion, Mr. Watt's financial holding would not create any conflict of interest with his holding the position of Commissioner of the Federal Power Commission which would violate the requirements of U.S. Statutes, 18 USC 208; 16 USC 792; 15 USC 717(A) or the Commission's regulations thereunder.

Very truly yours,

DREXEL D. JOURNEY,
General Counsel.

Senator COTTON. The letter states that in the opinion of the general counsel there is no apparent conflict of interest.

Now, Mr. Watt, I note that you have a family—a wife and how many children?

Mr. WATT. Two teenagers—boy and a girl.

Senator COTTON. Are they present?

Mr. WATT. Yes, they are.

Senator COTTON. Would you ask them to rise so that we may have the opportunity to meet them. We welcome you, Mrs. Watt, and your two children here at this hearing this morning.

You haven't a very big audience as far as the members of the committee are concerned. But, you'll have another opportunity to be before the committee to respond to questions of other members of the committee which we hope to be soon. Now, Mr. Watt, is there anything you would like to put into the record yourself in the manner of a statement this morning?

Mr. WATT. Mr. Chairman, I have no prepared statement but I would like to submit myself to questions. I would like to say it's nice to have you back in the U.S. Senate and I would like to thank my two friends, Senator Hansen and Congressman Roncalio for joining with me. Indeed, it is an honor to have those two men come and say the nice things they did.

Senator HANSEN. If I could be permitted a personal observation. I would like to note also the presence here today of Mr. Watt's mother and father who have come all the way from Wyoming to be present.

So you have made the hearts of all of us very glad indeed with your chairing this hearing this morning so that Jim's mother and father might be present.

Senator COTTON. We would like to have them rise so that we might make their acquaintance. You are most welcome to this committee and we appreciate your coming.

I have a question which has always been asked every nominee and I think perhaps I should ask you, Mr. Watt. Do you intend, if confirmed, to serve your full term on the FPC for which you have been nominated?

Mr. WATT. Yes; I do intend to do so.

Senator COTTON. It is your present intent?

Mr. WATT. Yes.

Senator COTTON. Well, I will end by saying I'm glad I had the opportunity to meet you and see your fine family. I'll be a Senator for a week or so. I hope that you will be confirmed and I hope I will have the opportunity to vote for your confirmation.

I also hope that your stay on the FPC will be a lot longer than my current stay in the U.S. Senate. I'm sure that if the other members of the committee were here, they would express their regret that you have been kept waiting so long and on their behalf I wish to convey this to you, your fine family, your father and mother, and the very distinguished Members of the Senate and of the House of Representatives here today.

I regret that you only had this member of the committee in attendance who is the newest member with the shortest term and probably the shortest life expectancy. But, we thank you for being here and I'm sure that the one more short hearing will be as soon as possible. With that understanding, if there's no one else who desires to be heard, I declare this meeting adjourned, subject to the call of the Chair.

[Whereupon, at 11:05 a.m., the hearing was adjourned, subject to the call of the Chair.]

NOMINATIONS—SEPTEMBER

TUESDAY, SEPTEMBER 22, 1975

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

The committee met at 10 a.m. in room 5110 of the Dirksen Senate Office Building; Hon. John O. Pastore presiding.

Senator PASTORE. We are meeting today to consider the nomination of Abbott Washburn to be a Commissioner on the Federal Communications Commission. Last year Mr. Washburn was nominated and confirmed as a member for a term which ended July 1, 1975. He has been renominated for his second term. We are honored this morning to have as our witnesses two of our very distinguished Senators, and I will recognize Senator Scott first.

STATEMENT OF HON HUGH SCOTT, U.S. SENATOR FROM PENNSYLVANIA

Senator SCOTT. Thank you, Mr. Chairman.

I am delighted once again to recommend Mr. Abbott Washburn to serve as a Commissioner of the FCC. Last year, it was my pleasure to give my highest recommendation of Mr. Washburn when he was nominated to fill an unexpired term on the Commission. Today, this committee is considering his qualifications to serve a full 7-year term as a Commissioner of the FCC, to which he has been renominated by President Ford.

Mr. Washburn brought to the Commission an outstanding record of achievement in the field of telecommunications, and over this past year he has demonstrated great expertise in dealing with both the current considerations and future planning of the FCC. His record of service has been superb, and I recommend him without reservation to continue as a Commissioner of this vital regulatory agency.

I have known Abbott Washburn a long time. He has been both a friend and an adviser to me on the complex matters involving the FCC. I have known him always to be forthright and knowledgeable in his field; and, indeed, in every endeavor of his professional career he has brought the enthusiasm to keep on learning and to get the job done. As he himself says in his statement today to this committee, he views the field of telecommunications as "always a fascinating and fast-moving field" and one that is "in a period of unusual activity." I have no doubt that he will succeed in meeting the challenges he faces.

Commissioner Washburn has a distinguished record of public service. He is a former Deputy Director of the U.S. Information Agency and special consultant to the Director of the Office of Telecommunica-

tions Policy. In 1950 he was named executive vice chairman of the Crusade for Freedom, an arm of Radio Free Europe. He worked on the Eisenhower Presidential campaign in 1952 and served on the White House staff until President Eisenhower appointed him to the USIA post in late 1953. He was the recipient of USIA's Distinguished Service Award for his work on the 1959 American National Exhibition in Moscow. At President Kennedy's request, he served as Acting Director of USIA until the confirmation of Edward R. Murrow in March 1961.

Mr. Washburn then became vice president for international operations of Carl Byoir Associates, Inc., and in 1962 he formed his own international public affairs counseling firm of Washburn, Stringer Associates, Inc.

In 1969 he was appointed deputy chairman of the U.S. delegation to the Intelsat Conference on definitive arrangements for the global satellite system. After the resignation of Hon. William Scranton as Chairman, he was appointed Chairman of the U.S. delegation with the personal rank of Ambassador. Delegates to the 79-nation negotiating Conference elected him overall Conference chairman. In 1971, with the signing of the Intelsat agreement, he joined the White House Office of Telecommunications policy as a special consultant to the director.

Commissioner Washburn is married, the father of two sons and a daughter, and lives in Washington, D.C.

Mr. Chairman, I have the highest regard for Commissioner Washburn both professionally and personally, and I very gladly recommend his appointment to a full term as an FCC Commissioner. He is a public servant with excellent credentials and an individual of unquestionable integrity.

I understand that he will submit his own biographical statement following his general statement.

Senator PASTORE. Thank you very much. Mr. Mondale?

STATEMENT OF HON. WALTER F. MONDALE, U.S. SENATOR FROM MINNESOTA

Senator MONDALE. Thank you. Mr. Chairman, Senator Scott, Mr. Washburn, I am very pleased to be here this morning to support the nomination of Abbott Washburn, this time for a full term in the FCC. In June, last year, I had the pleasure of supporting him for the short-term FCC appointment. And, I am glad to say that his record on the Commission makes him, I think, a splendid candidate for the full term.

I knew Abbott Washburn as a fellow-Minnesotan and as the possessor of a truly distinguished record in public service and experience in the broadcasting area. I felt sure he would perform with distinction on the FCC. I say as a Minnesotan, and I speak for the citizens of my State when I say, we are proud of him. I am proud to say in the year he has been a member of the Commission he has been an active and forceful and creative member, and, I may say, a courageous one.

He has particularly distinguished himself in an area which has concerned the chairman, I realize, in helping to assure our Nation's

parents that violence on television during children's peak viewing hours is greatly reduced. We are indebted to him for his efforts.

Mr. Chairman, I hope the committee will approve this nomination.

Senator PASTORE. Thank you. I have letters of recommendation from Senator Humphrey and from Senator Stevens; and they will be made part of the record.

[The letters referred to follow:]

U.S. SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C., September 22, 1975.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Committee on Commerce, Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: As one of his sponsors before your Committee in June 1974, I have kept in touch with Commissioner Abbott Washburn's accomplishments during his one-year recess FCC appointment. It is an impressive record of service in terms of scope, workload and constructive approach to telecommunications problems. I am delighted that President Ford has renominated Commissioner Washburn for a full seven-year term and warmly endorse his early confirmation.

Abbott Washburn is a native of Duluth, Minnesota. His grandfather, Jed L. Washburn, was for many years one of the State's most respected attorneys. I have known Abbott as a friend for 30 years and am personally acquainted with his career in business and Government and his broad experience in the field of communications.

The Government is fortunate to have the service of men of his background, integrity, and dedication.

Best wishes.

Sincerely,

HUBERT H. HUMPHREY.

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., September 9, 1975.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Committee on Commerce, U.S. Senate.

DEAR JOHN: As the Subcommittee on Communications will soon be considering the nomination of Commissioner Abbott Washburn to serve an additional 7 year term on the Federal Communications Commission, I would like to bring to your attention recent efforts on Commissioner Washburn's part which have had a great bearing upon the development of Communications within the State of Alaska.

Following a May trip to Alaska, Commissioner Washburn became instrumental in helping to resolve an ownership dispute between the State of Alaska and its common carrier, RCA/Alascom, which was holding up the delivery of emergency medical links and telephone service to remote Alaskan communities.

At his behest, negotiators from the State and RCA held two productive meetings in the Commissioner's office during June and July. These meetings produced an agreement to proceed with the construction of 20 satellite earth station sites for delivery of these much needed communications. This agreement was later extended to an additional 80 sites in rural Alaska.

It is my sincere hope that the members of the Committee and the Committee staff will familiarize themselves with these recent accomplishments of Commissioner Washburn prior to the hearings on his nomination, set for September 23rd.

With best wishes.

Cordially,

TED STEVENS,
U.S. Senator.

Senator PASTORE. Mr. Washburn, last year when you appeared for your 1-year term, you submitted to the committee a financial statement. I would hope that you would bring it up to date.

STATEMENT OF ABBOTT WASHBURN

Mr. WASHBURN. Yes, Mr. Chairman, I did dispose of any holdings I had in the communications field.

Senator PASTORE. Would you file that with the committee?

Mr. WASHBURN. Yes.

Senator PASTORE. Now I realize this is a purely superfluous question; but I have to ask it. You come on the Commission as a Republican; is that correct?

Mr. WASHBURN. I do, Senator.

Senator PASTORE. I don't want to dwell today too much on the functions of the committee. But, Mr. Wiley appeared before our committee not too long ago on another matter. And, he brought up this matter of the Fairness Doctrine being waived for radio in several communities; that is, the top market of the country. Tell me, what is the genesis for all this? Why are we getting into this at this time; hasn't fairness always been the established policy in light of section 315?

Mr. WASHBURN. Frankly, Mr. Chairman, I have to be from Missouri on this one. We have not had this before us. There are no proposals in writing before us. But the idea has been proposed in the past in one form or another. And as I told our chairman, I have yet to be persuaded it would be a good move.

The overwhelming majority of broadcasters have no trouble with the Fairness Doctrine. The overwhelming majority of broadcasters do their best in being fair in presenting the vital issues of the community and the Nation. It is the small group of broadcasters who are unfair in their coverage and blatantly one sided. And it is useful to have, very useful to have this rule in force to take care of those few; and they are not located in any particular market, large or small.

I don't want to appear to have a closed mind because, as I say, we haven't discussed it. But at this point, I don't think it is an area where we should reregulate. The fairness rule is a good regulation; and it is working and it is not working a hardship on the vast majority of broadcasters. In the year that I have been on the Commission, not one broadcaster has come into my office to complain that his first amendment rights are being eroded by this rule.

Senator PASTORE. I quite agree with you. I think there has been a maturity developed within the broadcasting industry which compares favorably with any other development in any other industry in this country. And I have found fault from time to time in some of the things that happened. And maybe they have found fault with some of the things I have said and done. None of us are perfect.

But the point is, there was a good reason for the institution of this rule; and it was a protection to the public to a large measure. And I think that by and large, rule or no rule, most of the broadcast industry would adhere to it. But here and there, you might have that one unscrupulous person who gets the grand idea that his license could be a vehicle for him to advance particular notions and issues that are close to his heart without regard, of course, to the public's interest in hearing both sides of any agreement.

The argument that has been made is that where you have many stations in one community, there would be competition among them. Well, that may be so. But you don't listen to all of them at the same

time. One may be in the habit of tuning one particular station, I find this to be true even in my case. There are certain things on one station that naturally attract you more than something else.

One thing that concerns me more than anything else, and I pointed this out to Mr. Wiley at the time, there has to be a strict reading of the law. And if you read the law, as the Supreme Court read it in the *Red Lion* case, you will find that the Fairness Doctrine has statutory affirmation under section 315 of the act. It says explicitly that when a broadcaster presents a controversial issue, opportunity must be given to all sides. That is the Fairness Doctrine, pure and simple.

There is nothing in the law that says that there may be a Fairness Doctrine exemption in the nature we are talking about. And I would hope that the Commission would look at this thing very, very carefully. I congratulate you for having an open mind on it. But, I was wondering what the genesis of all this is. I don't think it is overregulation, really. I think the rule has worked up to now. But there have been some bills filed here. There have been hearings before this committee. And I hope that whatever we do, we don't do it because we are being frightened into anything or pressured into anything because that would be bad all around.

Is there anything else you want to say for yourself, Mr. Washburn?

MR. WASHBURN. I have a statement, Mr. Chairman. It is rather long.

Senator PASTORE. You had better put it in the record.

MR. WASHBURN. I would be happy to put it in the record.

[The biographical sketch and statement follow:]

BIOGRAPHICAL SKETCH OF ABBOTT WASHBURN

Abbott Washburn, former deputy director of the United States Information Agency and special consultant to the director of the Office of Telecommunications Policy, was sworn in July 10, 1974, as a member of the Federal Communications Commission, to fill the unexpired term of H. Rex Lee. (Commissioner Lee resigned in December of 1973, eighteen months prior to the expiration of his term.)

Commissioner Washburn was born in Duluth, Minn., on March 1, 1915, and was graduated cum laude from Harvard in 1937. He spent 13 years with General Mills, Inc., with three years out for service in the U.S. Navy during World War II, and was director of public services of the company when he became executive vice chairman of the Crusade for Freedom, an arm of Radio Free Europe, in 1950.

Washburn worked on the Eisenhower Presidential campaign in 1952 and served on the White House staff until the President appointed him deputy director of the U.S. Information Agency in late 1953. He received the Agency's Distinguished Service Award for his work on the 1959 American National Exhibition in Moscow, site of the "kitchen debate" between Richard Nixon and Nikita Khrushchev. At President Kennedy's request, he served as Acting Director of the USIA until the confirmation of Edward R. Murrow in March 1961.

He then became vice president for international operations of Carl Byoir Associates, Inc. and in 1962 formed his own international public affairs counselling firm of Washburn, Stringer Associates, Inc.

In 1969 he was appointed deputy chairman of the U.S. delegation to the INTELSAT Conference on definitive arrangements for the global communications satellite system. Following the resignation of William Scranton as chairman, President Nixon appointed Washburn chairman of the U.S. delegation with the personal rank of Ambassador. The delegates to the 79-nation negotiating Conference elected him overall chairman of the Conference.

In 1971, with the signing of the INTELSAT agreement, Washburn left the Department of State and became associated with the White House Office of Telecommunications Policy as special consultant to the director.

He is married, the father of two sons and a daughter, and makes his home in the District of Columbia.

On June 18, 1975, he was renominated by President Ford for a full seven-year term on the FCC.

STATEMENT OF ABBOTT WASHBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: This past year has been one of the busiest and most interesting I have been privileged to spend in public service. Telecommunications, always a fascinating and fast-moving field, is in a period of unusual activity:

Communications satellites—both global satellites and domestic satellites—are playing an ever-increasing role.

Broadcasting is more pervasive than ever—with TV, the most powerful medium ever devised, reaching more and more people and dominating the delivery of news and opinion.

Cable-TV continues to grow, despite its difficulties, and holds the latent potential to provide a multitude of new communications services to the home. Regional satellite networking of cable-TV systems is just now coming into being for the distribution of pay/cable programming.

In the common carrier field, fiber optics and other new developments are destined to increase dramatically the number of available telephone circuits. Computers, teamed with satellites, are transferring vast amounts of data across oceans in minutes. New forms of competition have begun to enter the common carrier market. The day is not far away when you will be able to direct-dial a friend or associate in almost any other country on Earth for but a few dollars.

RE-REGULATION

Sound and sensible regulation plays a vital role in all this activity: establishing necessary rules of the road, building, enforcing, encouraging and refereeing. The broadcasting industry, of course, was *created* as a regulated industry. At the same time the rules should be no more burdensome than absolutely necessary. There must be a continual modernization process. To date, the Commission's Re-Regulation Task Force, which was formed in 1972 under former Chairman Dean Buesh and vigorously carried forward under Chairman Wiley, has simplified or eliminated nearly 300 broadcast rules. A similar group is at work on the Commission's cable-TV regulations.

FAIRNESS DOCTRINE

After a year of observing the Fairness Doctrine in action, I am even more convinced that, without imposing an undue burden, the Doctrine provides useful guidelines for broadcasters in carrying out their public trust of assuring that contrasting sides of important issues are fairly presented.

Rather than inhibiting freedom of speech, as the proponents of S. 2 and S. 1178 claim, the Fairness Doctrine ensures that more views, and opposing views, are given to the public over the air. It does not cut out or censor anything. Rather, its purpose runs *parallel* to that of the First Amendment as stated by the Supreme Court in *Red Lion*: to "preserve an uninhibited marketplace of ideas in which the truth can ultimately prevail."

The great majority of broadcasters try to be fair and objective in presenting both sides of local issues. The fairness rule helps them accomplish this purpose. It is a set of practical guidelines. It works. My Grandfather used to say: "Never tinker with a machine that's running well."

CHILDREN'S TV

Responding to a written question from this Committee in June 1974, I expressed the view that children's television was one area of broadcasting in need of reform. As the father of a 10-year-old daughter with whom her mother and I had watched television consistently since 1967, I felt that efforts were needed to improve the quality of programming and to protect young viewers from over-commercialization. I was happy therefore, during the fall of last year to be able

to work on the draft of the Commission's milestone Report and Policy Statement on Children's Television. This Statement, issued in October 1974, sets forth, for the first time, clear guidelines for TV programming and advertising designed for the child audience.

Television stations, the Report states, will be expected to carry a reasonable amount of programming for children, will make sure that some of this is informational and educational in character, and that the special needs of younger children will be given appropriate attention. In addition, such programming should be scheduled throughout the week rather than concentrated on weekends. With respect to advertising, the volume of commercial messages is reduced in accordance with the standards recently adopted by the National Association of Broadcasters.

In a statement of "Additional Views" I said that I would have liked to see more protection for pre-school children by requiring the clustering of commercial messages before or after programs directed to this audience. Very young children have greater difficulty distinguishing the difference between program content and commercials, and interruptions likewise present more difficulty for very young viewers.

TELEVISED VIOLENCE

Also in the area of added protection for children, I spent much time reviewing the massive volume of mail coming to the Commission regarding the high level of violence on TV programs in prime time, in reviewing the Surgeon General's Report and the other studies of televised violence made at the instance of this Committee, and talking with broadcasters in different parts of the country. All this reinforced my earlier view that the excessive amount of televised violence coming into the home was having a harmful effect, particularly on young viewers, and that remedial action was of great and immediate importance. I devoted my first public speech as a Commissioner to the subject (before the Texas Association of Broadcasters in Dallas on November 4, 1974), gave press interviews and wrote articles on the subject ("Violence for children: an American heritage?". *Television/Radio Age*, March 31, 1975), and, in general, did whatever I could to support Chairman Wiley in his exploratory discussions with the leaders of the broadcasting industry in their search for a solution to the problem. (The latter discussions were held in response to instructions from this Committee to the FCC to report in writing what steps would be taken.)

"FAMILY VIEWING"

Speaking to the International Radio and Television Society in New York on February 5, 1975—the day following the NAB TV Code Board approval of "family viewing"—I referred to the plan as "a constructive self-regulatory action . . . Self-regulation is the best route, as was the case with the NAB Code action on children's TV commercials earlier."

Certain TV critics and other skeptics have busied themselves smothering family viewing in its crib even before the new TV season has fairly begun. Some predict it will turn all prime time programming into bland pabulum. Others say the only result will be to load up the second two hours of prime time with violence and sex, 9 to 11 p.m., when large numbers of young people are still watching.

To this we say: the plan deserves a chance to work. It is the first positive action to counter a serious danger which was first highlighted *twenty years ago* by the Kefauver crime investigations. It does not remove from parents the responsibility for carefully monitoring what their children see on television; but it does mean that they can feel free in their minds about letting youngsters watch TV during the first two hours of prime time. For this, millions of parents across the land will be grateful to the broadcasting industry.

Whether family viewing will, in the end, be successful depends upon the reasonableness and good faith with which the broadcasters implement it. At this early stage, the Congress, the FCC and the public are just beginning to get some first impressions of how the plan is being applied.

THE PRESENT COMMISSION

The present Commission and its staff are a very hard-working team, functioning under a dynamic Chairman. Deadlines are set; thorough preparation is required; and there is vigorous debate on every important issue amongst and between

the individual Commissioners and between the Commissioners and the FCC staff members.

I have been impressed by the very real desire of the Chairman and the other Commissioners for contact and dialogue with the public and broadcasters around the country. Regional public meetings, some lasting for as long as four hours, have been held in Atlanta, Chicago and Washington, D.C. Similar public meetings in the next few months, are scheduled for Boston, Denver and San Francisco. In addition, the practice of *en banc* Commission meetings with the public is being re-instituted this fall.

MAJOR COMMISSION ACTIONS

In addition to children's TV and televised violence, mentioned above, some of the "big ticket" items on which the Commission acted during the past year include:

- Broadcast/newspaper crossownership,
- Pay/cable anti-siphoning rules,
- Prime time access rule changes,
- Revised community ascertainment guidelines,
- Broadcaster/citizens agreements,
- Network programming non-duplication rules for cable systems,
- Distant signal sports importation by cable systems,
- Equal employment opportunity guidelines for broadcasters,
- Regional concentration of broadcast ownership,
- Declaratory order on the broadcast of indecent and obscene language,
- Milestone decision denying renewal of eight licenses of the Alabama Educational Television Commission for racial discrimination,
- Action on AT&T's \$717 million rate increase tariff filing,
- Options for Comsat/IBM domestic satellite entry,
- Expansion of the potential for increased land-mobile radio services,
- Steps toward extension of Western Union's Mailgram service to Hawaii,
- Extension of satellite communications to assist in off-shore oil drilling.

SATELLITE COMMUNICATIONS IN ALASKA

As Space Commissioner it was my privilege to visit four regions of Alaska during 10 days in May, meet with Governor Hammond and telecommunications officials, and gain a firsthand understanding of the telecommunications requirements of the State. This vast mountainous State, with hundreds of small widely-dispersed communities, is uniquely suited to satellite communications. Following the visit, we arranged for two meetings at FCC headquarters here in Washington—participated in by officials of the State's Office of Telecommunications and representatives of RCA Alascom. At the second meeting, held on July 3, agreement was reached to proceed as soon as possible with the construction of small 15-foot earth stations at 20 agreed-upon remote Alaskan communities. These facilities, working with a U.S. domestic satellite, will provide emergency medical links and telephone service.

I have given special attention to communications satellite agenda items and have followed the continued progress of Intelsat (which now has 91 member countries), the development of Marisat (which has scheduled its first satellite launch for later this year), and the multi-national planning conferences in connection with the establishment of Aerosat and Inmarsat.

Since April of this year I have been serving as Chairman of the Radio Technical Commission for Marine Services. The RTCM is a non-profit body composed of four Government Agencies and some 80 private organizations voluntarily working together for the improvement of maritime communications. Commissioner Robert E. Lee formerly held the RTCM chairmanship.

The challenges in this field are manifold, Mr. Chairman, as are the opportunities for useful public service. I wish to thank the Committee and pledge to you my wholehearted commitment to the task ahead.

Senator PASTORE. Is there anybody in this room that is for or against this nomination and wants to testify?

[No response.]

Senator PASTORE. We thank you all for coming.

Mr. WASHBURN. Thank you, Mr. Chairman. Could I just say that I am deeply grateful to the minority leader, Senator Scott, and to Senator Mondale of my native State for their very generous words this morning and for taking time away from their busy schedules. Thank you.

[Whereupon, at 10:25 a.m., the hearing was adjourned.]

WASHINGTON, D.C.,
September 25, 1975.

Senator JOHN O. PASTORE,
Chairman, Senate Commerce Committee, Subcommittee on Communications, Senate Office Building, Washington, D.C.

DEAR CHAIRMAN PASTORE: Please include this letter, Access column and article regarding Washburn in your hearing record.

Sincerely,

NICHOLAS JOHNSON.

Enclosure.

[From Access magazine, July 14, 1975]

"I DISSENT": NICHOLAS JOHNSON

WHERE DOES A SITTING COMMISSIONER STAND?

President Ford has said he'll nominate FCC Commissioner Abbott Washburn to a full seven-year term beginning July 1. At press time, the nomination had not been sent to the Senate.

In last issue's column we discussed the impact of communications policy appointments generally. Recently changing hands are Counsel of the Senate Communications Subcommittee, the Director of the Office of Telecommunications Policy, eight new members of the Board of the Corporation for Public Broadcasting, and the Washburn seat on the Commission.

There are so many folks coming and going that Washington looks like a football field at platoon-changing time. We can't tell the players without a scorecard. And who they are makes a lot of difference to the media reform movement. So here's our evaluation of Commissioner Washburn.

Abbott Washburn, 60, is a Republican in good standing who is experienced in communications. He has been serving as a Commissioner of the FCC since July 10 of last year. Twenty-five years ago he was with Radio Free Europe. In 1952 he was on President Eisenhower's campaign staff, following which he was Deputy Director of the United States Information Agency. In the Democratic 1960s he operated out of a counseling firm in Washington. But by 1969 he was back in government as a member, and then Ambassador, with the Intelsat delegation. He served as consultant to OTP for the four years prior to his appointment to the FCC.

As the father of an 11-year-old daughter, he has been watching children's television for the past eight years. He's probably right when he claims to have watched more than almost anyone at the Commission. He can talk knowledgeably about ABC's "Korg," CBS's "In the News," and some he doesn't like. He would like to have seen the Commission do more for the preschool child but is generally pleased with the headway they've made with children's TV.

He has spoken out on TV violence and will be watching the networks' response this fall. He has taken a strong stand in opposition to Senator Proxmire's effort to repeal the fairness doctrine—along with all other FCC jurisdiction over advertising and programing matters. And his was the deciding vote in the Alabama public broadcasting license revocation (AETC).

Overall, however, it has not been Commissioner Washburn's style to become identified with much of any position on any issue. Those who follow the Commission most closely from inside and out use words like "subdued," "bland," and "faceless" to describe him. "I really couldn't tell you what he stands for," said one highly respected communications attorney.

Our analysis of some 700 votes since he has arrived indicates that these judgments are well grounded in the statistics. On cable and broadcasting issues Commissioner Washburn has almost always voted with the majority. If the majority votes for a renewal hearing, so does he; if it does not, he's with the broadcaster, too.

I asked him about these characterizations. He protests it's coincidence. He hasn't been lying low during his one-year appointment in order to be reappointed, he says. We cannot expect anything much different if the President and Senate give him seven years more. Nor is it his view that dissenting is somehow inappropriate to a collegium, another possible explanation I offered. He just generally agrees with his colleagues, he contends.

The one issue where he disagrees gives me chills. He thinks the Commission has gone too far in regulating ownership of broadcasting stations! Thinking that this FCC has been too strict on ownership standards is like thinking that President Ford has been too tough on oil company profits.

So where do we come out?

A sniping critic of President Kennedy, in a paraphrase of his book, *Profiles in Courage*, once said he'd like to see less of his profile and more of his courage. In the case of Abbott Washburn we've seen very little of either. Given an ideal world (compare, for example, "Oh, Canada!" in *access 6*) we'd like to see more independence, diversity, and outspoken advocacy of public interest positions from our FCC Commissioners. Given the inclinations of the Ford Administration, perhaps we should be grateful Commissioner Washburn hasn't been given an ax for radicalism.

The National Citizens Committee for Broadcasting and National Citizens Communications Lobby have taken a consistent interest in who gets appointed to the Washington positions that influence communications policy. None is more important than who sits on the FCC.

But Commissioner Abbott Washburn leaves us at something of a loss. Perhaps that's the secret of his successful longevity in Republican and diplomatic circles. It just may be that President Ford, Senator Pastore, and the National Association of Broadcasters are as befuddled as we are, and that Abbott Washburn's low profile will enable him, once again, to slip under the limbo bar of life as a winner.

access 16

In Search of Dissent at the FCC:

The Commission That Sails Together Fails Together

"The minute you reach unanimity on every subject and issue, I think you are a failure."

—Senator John Pastore, July 22, 1975 (on diversity on the board of the Corporation for Public Broadcasting)

There is incredible unanimity at the FCC.

What everyone suspected—that the FCC commissioners *always* vote together—was confirmed by an access survey of voting records of commissioners for the first nine months of the just-concluded fiscal year (July 1974–April 1975).

- No commissioner voted with the majority less than 96.3% of the time. Commissioner Hooks was the chief dissenter at 3.7%. Surprisingly, Commissioner Robinson—the object of speculation before he took office that he would be the Commission's "troublemaker"—dissented the least frequently—0.9%.
- Commissioner Reid missed the

most votes because of absence—15.3%. On the other hand, Chairman Wiley was present for 99.9% of the votes.

- Industry insiders often count the Reid and Lee votes as "hip pocket" votes for Wiley. Change that to Robinson and Washburn, who agreed with the Chairman 98.6% and 98.5% of the time, respectively.



NB.

	total FCC votes	absent	abstain	"not participating"	votes cast	% of votes absent	majority opinion	concurring in result	% of time with the majority	dissents	"concurring & dissenting"	% of votes in agreement with Chairman Wiley	broadcast	satellites	telephones	CATV	administrative	citizen band
WILEY	885	1	2	3	879	0.1%	804	66	98.9%	8	1†	—	3	2	2	1	0	0
LEE	835	81	1	3	800	9.1%	779	11	98.8%	9	1	97.8%	6	1	0	2	0	0
REID	885	136	1	1	747	15.3%	642	88	97.8%	16	1	97.3%	8	0	1	7	0	0
HOOKS	885	56	1	4	824	6.3%	706	87	96.3%	30	6	96.0%	21	0	1	4	1	2
QUELLO	885	33	1	4	847	3.7%	811	23	98.5%	12	0	97.5%	6	1	2	3	0	0
WASHBURN	885	34	0	31*	820	3.8%	800	10	98.9%	9	0	98.5%	3	4	0	2	0	0
ROBINSON	835	46	0	36*	803	5.1%	781	14	99.1%	7	4	98.6%	4	2	0	1	0	0

* Early in their terms, Commissioners Washburn and Robinson declined to participate in a number of matters, preferring gradually to learn the Commission's processes before actually voting on items

† "concurring and dissenting" votes count as votes for "absent/present" purposes but do not count toward majority, concurring, or dissenting totals

[compiled by Geoff Aronow]

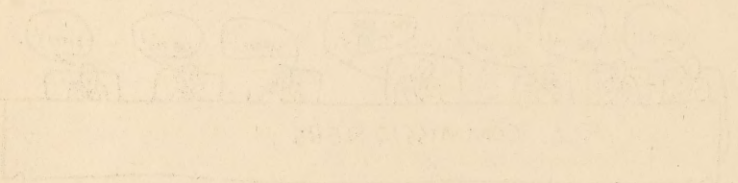
THE COMMISSIONER OF THE GENERAL LAND OFFICE

The Commission That Stays Together Stays Together

It is the policy of the General Land Office to sell the public lands of the United States in the most advantageous manner possible, and to the highest bidder.

The Commission on the General Land Office, created by the Act of March 3, 1879, Chapter 22, Section 1, has the honor to acknowledge the receipt of your letter of the 10th inst., and to inform you that the same has been forwarded to the proper authorities for their consideration.

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NOMINATIONS—SEPTEMBER

FRIDAY, SEPTEMBER 26, 1975

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

The committee met, pursuant to notice, at 10:13 a.m., in room 5110, Dirksen Senate Office Building, Hon. John O. Pastore (chairman of the committee) presiding.

Senator PASTORE. For the purposes of the record, we are now considering the nomination of Richard L. Dunham to become a member of the FPC.

He will be introduced by our distinguished colleague from New York, Mr. Javits.

Mr. Javits, we are very happy and honored to have you here, and you may proceed.

STATEMENT OF HON. JACOB K. JAVITS, U.S. SENATOR FROM NEW YORK

Senator JAVITS. Thank you, Mr. Chairman.

Mr. Chairman, though Mr. Dunham is a relatively young man, I have known him for two decades. We first met when he was assigned to me by the then Governor of New York, Thomas E. Dewey, to help in my research when I ran in 1954 for attorney general of New York.

I have observed his actions since. He was very active under Governor Rockefeller in respect of budget matters and was deputy director of the budget from 1967 to 1971, was appointed director in 1971, then reappointed by the new Governor in 1973, and acted until 1974.

So he had about 6 years as the director and the deputy director of the budget.

Before then he served in the budget division.

He has had a long experience—as I say, he is a young man; he's 45—he has had an experience going back to when he was 23 years of age in public administration, starting as an intern in the New York State Division of the Budget in 1952.

He has a fine education, with degrees from the University of Rochester, one of our best not only in New York but in the country, as well as the University of Michigan. And he spent, really, his adult life in the government service and essentially in areas having to do with budget, finance, and areas of that kind.

I have read with the greatest interest his answer to the questionnaire given to him by this committee, and I find what I expected—a thoughtful, experienced, and highly motivated potential public servant in the Federal Establishment.

I might say too, Mr. Chairman, that I am full of admiration at the thoroughness with which the committee examines into the views of its nominees, not waiting for the hearing but actually having before it in respect of the hearing his own philosophy on the particular job for which he is nominated.

I shall commend it to the committee of which I am the ranking member. I think it is an admirable way to proceed.

In total as to Mr. Dunham, I have the profound conviction that he will make a fine member of the FPC and will bring new values, new insights and a new sense of character to its proceedings, and I commend him highly to the committee.

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

Mr. Dunham, we have here your biography, which will be made part of the record.

Senator PASTORE. We also have your financial statement, which I understand has been studied by the Justice Department and they find it to be in order and no conflict of interest, but I should like to ask you this question.

What kind of business is Dunham & Son in?

STATEMENT OF RICHARD L. DUNHAM

Mr. DUNHAM. That at one time was a corporation essentially formed to purchase a building to house the other two businesses referred to in my statement, M. A. Luscher Corp. and Rochester Computer Service. Both of those businesses were sold. And the sole purpose of the corporation at the present time is holding a mortgage on the building that was sold to another firm.

Senator PASTORE. It has no connection at all with power in any respect?

Mr. DUNHAM. No. It just holds a mortgage.

Senator PASTORE. All right. You may proceed now with your statement.

Mr. DUNHAM. Thank you very much, Mr. Chairman. I have just a brief statement.

I appreciate the opportunity to appear here today to answer any questions you and the members of this committee may have in connection with my nomination to serve as a member of the FPC. I am honored to have been selected by the President to head this important Commission, and although I am not now an expert on the technical areas and regulatory responsibilities of the Commission, I feel that I can bring to the Commission many years of governmental experience, an unbiased attitude and a fresh viewpoint on the solutions to many of the problems the Commission has faced in the past and will face in the future.

I have supplied to the committee the materials requested in Senator Magnuson's letter of September 11, and I am ready to answer any questions you and your colleagues have for me at this time.

Once again I thank you for scheduling this hearing so promptly.

This concludes my prepared remarks.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF RICHARD L. DUNHAM

Mr. Dunham served in the New York State Division of the Budget on a full-time basis since 1967. He was appointed Deputy Director of the Budget in 1967 and Director of the Budget January 1, 1971, by Governor Rockefeller, and was reappointed by Governor Wilson in December 1973.

He is presently Deputy Director of the Domestic Council and was appointed to that position by the President in March 1975.

Mr. Dunham began his public service as a Public Administration Intern in the New York State Division of the Budget in 1952 following his graduation from the University of Rochester in 1951 with a major in government, and his earning of a Master of Public Administration degree at the University of Michigan in 1952.

From 1955 to 1957, Mr. Dunham was employed by the Ohio Legislative Service Commission of the State of Ohio. From 1957 to 1960, he was a Public Administration Advisor for the U.S. AID Mission to the Government of Cambodia.

From 1960 until 1968, he was engaged in family businesses in Rochester, New York; M. A. Luscher, Inc. and Rochester Computer Service, Inc.

Mr. Dunham was a member of the State Housing Finance Agency, City University Construction Fund, New York State Dormitory Authority, Crime Control Planning Board, Community Facilities Project Guarantee Fund, State Municipal Bond Bank Agency, New York State Veterans Affairs Commission, and the New York State Committee on Public Access to Records.

He is presently a member of the State Board of Equalization and Assessment, the New York State Mental Hygiene Council and the City University Construction Fund.

Mr. Dunham is married to the former Evelyn Lutz of Circleville, Ohio. They have three children: Jennifer, Marilyn and David.

Senator PASTORE. The chairman of the special subcommittee, Mr. Stevenson, has submitted certain questions to you. I was wondering if Mr. Stevenson would like to pursue that matter.

Senator STEVENSON. Thank you, Mr. Chairman.

I don't want to repeat questions that have already been asked in the questionnaire which we sent you. I do think, Mr. Chairman, that these responses should be made a part of this hearing record.

I do have a few questions that I would like to ask Mr. Dunham, and in particular about the price and supply of natural gas, which, as you know, is a continuing and serious concern of this committee and a matter before the full Senate now.

The Nation faces serious natural gas shortages. The administration and others are proposing decontrol of so-called new natural gas as a means of increasing natural gas supplies and to some extent decreasing consumption of natural gas.

Others, myself included, feel that some protection must be afforded the economy against arbitrary OPEC pricing of domestic energy at the wellhead, including natural gas.

We are concerned that if uncontrolled and the interstate market has unlimited demands placed on these supplies, that the price will rise from a high in interstate commerce now about 52 cents to perhaps \$3 or more, as Chairman Nassikas testified it would a short time ago in this committee.

And so we feel that there ought to be some form of ceiling of protection in the form of FPC price controls, some protection against such shock to the economy from price increases of such a magnitude for the energy which supplies roughly of third of the Nation's requirements.

Where do you stand?

Mr. DUNHAM. Well, of course, any projections in terms of price rise essentially deal with probabilities. I have done quite a bit of reading recently from a number of economists and econometricians who have also modeled what would happen in case of taking the ceiling off of the price of natural gas. There is a wide range of diversity, if you will, in the econometric models which project the increases that would occur, so that it is really impossible to tell exactly where it would go.

The point of deregulation or taking the ceiling off prices, of course, is to increase supply and perhaps at the same time achieve some conservation. In terms of which higher price will ultimately do that—and I don't think there's any great disagreement—the problem is at what point and at what point are the marginal supplies increased to offset the downside of the increased cost? And that's, in my opinion, highly speculative.

There's been various suggestions in terms of phase deregulation. There's been suggestions in terms of keying the price of natural gas to the equivalent Btu content of competing fuels. The problem, of course, that you have with that is that some other alternative fuels are not truly competitive.

I mean there are many uses for which natural gas is uniquely usable, fertilizer production for example, and several other areas.

So, of course, we are dealing with a speculation to some degree.

The difficulty is really dealing with the probabilities. If we were talking about deregulating the market, the energy market, as a whole, oil and various other things, I think a different set of circumstances would occur. It is very difficult to be precise on that.

It seems to me that we have to be careful and cautious of shocks—you know, immediately, enormous increases that could have all kinds of reverberations, et cetera.

So that I think that the President's proposal in terms of deregulation of natural gas at the wellhead for new gas, leaving the old gas and that gas under contract, which of course is another form of automatic control in terms of the contract, not breaking the contract price, is a realistic proposal at this stage.

Senator STEVENSON. You say it's realistic. You also say that the economy shouldn't have to suffer any unnecessary shocks. The realistic proposal will lead to a shock, won't it, if the intrastate price hits on a spot basis \$2—which it has—and you add a demand of all the major consuming States to the demand of the producing States, some 46 additional States? It is certainly going up above \$2, isn't it?

Mr. DUNHAM. Again we are dealing with probabilities. Let me follow—

Senator STEVENSON. Wait a minute. You mentioned a lot of economic and econometric models. I have seen those econometric models come and go before this committee the last 2 years. Most of them are in the trash bin. They started out with assumptions about the OPEC price. It was going to go down to \$7. In the next couple of days it's going to go up another \$1.50. At the moment it's all a matter of degree.

And Project Independence, talking about assumptions, concluded that beyond a price of 85 cents you don't get any more gas or just marginal increases in gas for that higher price.

Well, do we need \$2? Do we need \$2.50? \$3? You say it's realistic, but you also say you can't tell where it's going to go.

Mr. DUNHAM. Of course, that's absolutely right. I think \$3—

Senator STEVENSON. How can you be realistic unless you can also tell us what the consequences of that realistic policy are going to be?

Mr. DUNHAM. Well, as I pointed out, there are so many differences of opinion as to where it will go that I think what I suggested is we have to monitor the situation very carefully, that it doesn't get out of line.

The point that is proposed by the people who discuss deregulating and price-fixing aspects of deregulation is to produce more gas. The people who are not now getting gas or having cancellations or reductions cannot help but be better off. There may be a marginal point. There may be a point where at \$2 or \$2.50 or some other price they are not marginally improved.

But at some point and within that range the fact that they can get gas, it seems to me that that would assist them if you also protect the people on the downside.

Senator PASTORE. Would the Senator yield?

Senator STEVENSON. Senate Pastore.

Senator STEVENSON. You say that you endorse—you have a perfect

Senator PASTORE. You say that you endorse—you have a perfect right to do it—the President's program to deregulate new gas and keep the old gas already under contract under control. I think that is precisely what we did with oil. That is what we did. We said new oil is not going to be controlled but we'll sell the old oil at \$5.25 per barrel.

And, lo and behold, the administration now comes along and says let's decontrol the old oil.

Isn't there an inconsistency there?

Mr. DUNHAM. Well, yes, to a certain extent. The problem—

Senator PASTORE. I mean the program you are advocating is the program we have in oil, and now that wants to be changed.

Senator STEVENSON. If the Senator will yield to me for a moment, to finish out this thought, the administration seeks to decontrol old oil, but it has also finally recognized in the case of oil the need for a ceiling to protect against arbitrary OPEC pricing by finally accepting too high in my judgment a ceiling on new oil, a ceiling of \$11.25.

If that is right for oil, why isn't it right for natural gas, which, as you point out, has some unique characteristics? It's a premium fuel. It has qualities in addition to very critically short supply which will price it at a higher level than the OPEC price for oil.

Mr. DUNHAM. For those particular uses. I mean for the unique—

Senator STEVENSON. On a spot basis. But those particular uses, whatever they are, can drive the price up. The equivalent price is roughly about \$2.10, and Chairman Nassikas said it would go on a spot basis instantly, let alone next year, up to \$3.

Mr. DUNHAM. Of course—

Senator STEVENSON. Why not a ceiling? You set the figure. If it's good for oil, why not for natural gas?

Excuse me.

Senator PASTORE. Of course, we admit these are decisions you are not going to make.

Mr. DUNHAM. That's right.

Senator PASTORE. The matters will have to come before the Congress. But it is the prerogative and the responsibility of this committee to

find out how a nominee feels about certain things because it will reflect itself in decisions made. How a man feels about deregulation or regulation has a lot to do with what happens let's say when a company like Montaup—we're going to have the Rhode Island Commission testify here—filed for an increase in rate with a 5-month suspension period. They granted it in 1 month. There were no hearings held.

It puts the State of Rhode Island in a very difficult position because that starts as the floor and they have to build upon that. There isn't a great deal they can do to change it.

I would hope Mr. Dunham would stay here to listen to Mr. Harsch as to what he has to say, because I think he makes a lot of sense.

You see, now, this idea of suspending a rate increase only for a period of 5 months was instituted in the beginning with the philosophy that within the 5 months a determination would be made. It is no longer that simple. These requests are so complicated and have so many ramifications that they can't possibly make a decision in 5 months that would stand up in court. It wouldn't be subject to review.

And the point is that this has become so complex, and yet the rules are still old fashioned so that the public is being hurt.

And I think that if the utility company is entitled to an increase, it ought to have it. But, on the other hand, to leave it up to them to say, "This is what the increase should be," and let it go into effect, and then, "Maybe some day if we are found to be wrong we will pay you back," I don't think is good policy. I don't think it's good policy.

I realize too that some of these cases take a long time to decide, and it hadn't ought to go on ad infinitum, because, after all, the utility companies do have to exist too.

The fact still remains that this 5-month period is ridiculous, and what even adds insult to injury is the fact they grant the increase within 1 month.

And it is a serious problem, a very, very serious problem.

I think we ought to put the questions and answers in the record at this time, don't you?

Senator STEVENSON. Yes.

Senator PASTORE. Without objection, that will be ordered.

[The questions and answers follow:]

MAJOR POLICY ISSUES FACING THE FPC

A. ENERGY CONSERVATION AND CONSUMER PROTECTION

1. Rate designs and governmental policies have in the past encouraged additional energy consumption by providing larger users with quantity discounts. In light of the energy supply problems facing the nation, do you feel that FPC policies should be revised to discourage growth in electricity and natural gas consumption?

Yes, certainly wasteful growth in electrical and natural gas consumption should be discouraged and until alternative and substitute sources can be developed. Every effort should be made, however, to develop alternative energy sources and more efficient use of existing energy supplies. If the economy is to grow, however, it is quite obvious that there will have to be some increases in total energy use and a shifting of electrical generation from oil and gas generation to more abundant generation from coal, nuclear or more esoteric sources.

2. Electric utility rate structures promote consumption rather than conservation, often discriminate against low-volume energy consumers, and do not always reflect the full cost of generating, transmitting, distributing and using electric energy. In response, support is growing to ban such practices and some utility commissions have moved to revise such rate structures. For example,

the Virginia Corporation Commission recently ordered the Virginia Electric and Power Company to implement a system of peak load pricing. Additionally, the Federal Energy Administration has endorsed peak load pricing and its Administrator announced in June that the load management and related conservation programs can lead to capital savings and more incentives for the conservation of electric energy. Do you believe that policies of utility commissions should require the conservation, rather than promotion, of electric energy? Specifically, as a member of the FPC, would you encourage the use of peak-load pricing and discourage the use of declining block rates?

Yes. Peak-load pricing is certainly an economic tool that should be used to encourage conservation. Declining block rates, if used discriminately and off-peak periods, however, are really the obverse of peak-load pricing and may also encourage conservation and managing the use of electrical generating equipment.

3. With the rising cost of energy, some residential customers, especially the poor and elderly, suffer unusual hardships. This has lead to social equity proposals for lifeline rates of energy stamps. Is it your opinion that all Americans are entitled to a minimal amount of electric energy to meet essential needs, and if so, what role do you think the FPC should play in encouraging plans such as lifeline rates, energy stamps, or other similar proposals?

I do not believe that the FPC should encourage the establishment of yet another categorical program to meet a special and what is likely to be a changing economic circumstance. If special economic recognition should be made to the disadvantaged, the poor, elderly, etc., I would prefer that the Federal, State or Local governments meet this problem through existing programs such as minimum wage, social security, aid to families with dependent children, supplemental social security, unemployment insurance, etc.

The FPC must focus on the supply side and proposals such as discussed here are, first, not the responsibility of the FPC and, secondly, do nothing to solve the fundamental problem of short supplies.

4. During the past two years, the rates for electric energy has increased enormously. Much of this increase was due to fuel adjustment clauses, which are permitted by many utility rate structures. The President has submitted legislation to the Congress which would prohibit regulatory commissions from banning fuel adjustment clauses. However, if utilities continue to use these clauses, how will consumers be assured that utilities are employing cost reduction efforts in their purchase of fuel? What would be your opinion of a federal requirement that such a clause could be used only if a utility engages in competitive bidding and that the pass-through of fuel costs have a percentage limitation?

If state regulation works perfectly, then, of course, fuel adjustment clauses are desirable to assure the economic well-being of the regulated utility and avoid the economic loss to the regulated utility by the historical and usual lag in rate-structure adjustment.

In a monopolistic situation created in part by the international cartelization of oil supplies and in part by the general shortage of energy supplies, I am not sure that a requirement that utilities use competitive bidding procedures will in fact result in any real savings. I would assume that in those cases where a truly free market on the supply side exists, such as in some geographic areas near coal supplies or excess natural gas supplies, it would be in the economic interest of the utility to use competitive bidding if such a process, in their opinion, contributes to maximizing their rate of return.

What I would be concerned with here is the imposition of yet another regulation on an industry which would not really be meaningful given the limited supply side. If sold to the public as holding high promise of rate reduction or an amelioration of increases which would in fact not occur, there would be a consequent disillusionment and loss of credibility in the institutions doing the rate regulation, whether Federal or State.

5. A recent report by the Federal Energy Administration on the productivity of electric power plants found that generating units are forced out of service more than 15 percent of the time, are unavailable for service more than 25 percent of the time, and operate at less than a 60 percent capacity factor. What regulatory incentives do you think would be appropriate in light of the poor reliability of electric power plants? Would you favor a requirement that each utility institute a quality control program to assure the reliability of its plants and major equipment? Do you think there is a role for the Federal Government to play in specifying minimum reserve generating capacity margins for specific power pools? Should electrical equipment manufacturers be required to provide equipment warranties and meet reliability standards?

I do not believe I could satisfactorily or safely answer this question until I knew a lot more than I now do about the causes of the "poor reliability of its plants and equipment." Is, for instance, the "poor reliability" caused by the manufacturer and his standards, maintenance standards at the plant, inadequate replacement of equipment due to lack of capital reinvestment by the utility?

6. Consumers often do not have the funds or capability to adequately challenge rates proposed by utilities. As an FPC Commissioner, would you favor (1) a voluntary check-off on utility bills which would authorize funds for consumer advocates and (2) federal grants for setting up local offices of consumer services to assist in consumer advocacy before utility rate proceedings? What additional steps would you recommend to assure the adequate representation of these customers?

It seems to me that the sole and singly most important purpose of the Federal Power Commission, and in fact, of State regulatory commissions, is to represent the general public, i.e., the consumer. I do not see how adding yet another method of intervention or another agency could help assure "more equitable representation." In fact, it can easily be argued that the establishment of such additional mechanisms would hurt the cause of representing the public interest because it would enable regulatory bodies to represent that the public was being protected by such a check-off or agency and thus escape its responsibility for representing the public interest to the particular legislative body or Chief Executive.

Such propositions, it seems to me, presuppose that the position of "consumers" and "industry" are antithetical and that the regulatory body is the arbiter between the two. It seems to me that regulation should have the goal of attempting to assure that one common goal is accomplished, namely "adequate energy supplies at the lowest possible cost."

7. As you know, the siting of bulk power supply facilities has long been a matter of public controversy. What steps do you think should be taken to encourage long-range regional planning with full public participation for these facilities?

It is my opinion that the greatest possibilities for gaining public acceptance for the siting of public power sites lie in improved design of facilities, incorporating better safety, ecology and esthetics standards and gaining public acceptance of those standards.

8. During the fuel shortage of the last two winters, the President appealed to the nation to conserve energy in an effort to avoid major disruptions. Many persons did succeed in reducing their fuel usage, and as a reward, many electric and gas utilities have sought rate increases not only to recover higher costs, but to compensate for lower sales volume. The consumers which saved energy are rewarded by even higher rates per unit. What steps should be taken to end such disincentives to energy conservation?

The role of the Federal Power Commission would be principally to encourage the State regulatory commissions to incorporate rates which provide incentives for conservation and disincentives for wasteful power use.

9. Rapidly rising costs, particularly rising energy costs, are placing a severe strain on some of the nation's electric utilities because some state regulatory commissions are not permitting a pass-through of all rising costs. There have been suggestions that they should receive some form of assistance to insulate them from extraordinary fuel price increases, or some form of federal guarantee of the bonded indebtedness for certain new public utility equipment. What is your view regarding such possible federal assistance to electric or gas utilities facing severe financial difficulties?

Since adequate energy and power production is a matter of national concern of the first order, the Federal government will, it seems to me, at least experiment with whatever mechanisms are appropriate to accomplish the goal.

10. Even during the current fuel shortages and heightened concern about the environment, some utilities are continuing heavy promotional advertising campaigns at their customers' expense. In your view, should consumers pay for such advertising, or should the company's shareholders bear the expense?

I am not sufficiently informed about the components of rate making by State regulatory commissions to judge this question. The base question, it seems to me, however, in view of energy shortages, is whether any promotional advertising designed to encourage increased energy use should be undertaken before the question of who should pay for it is faced.

11. It appears that substantial expense, in both monetary and environmental terms, can be saved by the establishment of an improved national grid system for electricity and natural gas transmission. What steps, if any, should the FPC

take to encourage the establishment of a national natural gas and electricity transmission system as opposed to continuing the current practice of individual companies simply serving their individual customers?

To the extent that a national grid system for the transmission of electricity or natural gas accomplishes conservation and flexibility, it should be encouraged, if only from a national defense standpoint. The goal of a grid system should be to enable shifting of supplies when grave shortages or outages occur between individual companies, but I would doubt that it would be economic to set up duplicative or parallel distribution systems to individual customers.

12. Many utilities have argued that there is not now an adequate balance between meeting the nation's energy needs and protecting the environment, and that some relaxation of certain environmental standards is required if the nation is to meet its electricity requirements. What is your view with respect to the feasibility of implementing current clean air standards administered by the Environmental Protection Agency?

This is first a legislative matter which must be resolved through that process. Secondly, I suspect that such an allegation may be made because of the process of resolving conflicts. Several agencies are involved at several levels of government with consequent irresolution, delay and conflicting orders. A great deal can and should be done to improve and expedite the process, clarify standards and minimize the layers of review at all levels of government and between all the agencies involved in each level.

I am not sufficiently informed about the individual clean air standards administered by EPA to respond, but each standard will have to be judged by all who are involved as to the extent to which it achieves a balance between conflicting national goals including "clean air", "adequate energy" and "low prices for the consumer."

B. THE REGULATION OF NATURAL GAS

1. Do you feel it is desirable to promote the increased manufacture of liquefied natural gas and synthetic natural gas in the face of increasingly smaller additions to domestic reserves? What price level would you feel is appropriate for these specialized fuels?

Yes, the production of liquefied natural gas and synthetic natural gas should be encouraged, first to determine whether or not these sources are economic as replacement for dwindling natural gas.

Unless the price is subsidized by the taxpayer, the price will have to be based on the actual costs of production of synthetic fuels.

2. If liquefied natural gas is imported or other costly gas substitutes are developed, do you feel that the users of such expensive gas pay its full price, or should its price be averaged in with the price of relatively inexpensive conventional natural gas supplies?

Short-term, yes, to get past emergency shortages.

In the long run, we must avoid the foreign dependency problem (suppliers will be Algeria, Indonesia, Russia, etc.).

3. Since nearly 40 percent of the natural gas consumed in the United States is not subject to FPC regulation, do you feel that the regulatory authority of the Commission should be extended to include intrastate natural gas production and transportation and curtailment?

The present situation of partial price regulation is clearly the worst of the two alternatives—total regulation or no regulation. I personally prefer a phased system of price deregulation at the well head for economic reasons, but also because many knowledgeable people believe that the interstate regulation hasn't worked; therefore, it is quite unlikely that total regulation would work much better, and it would launch the Federal government into a whole larger area of price fixing and processing.

The matter is, however, a legislative subject and must be resolved by that process.

4. In spite of much higher new natural gas prices in the intrastate market, increasing quantities of natural gas are being used for low priority utility and industrial boiler fuel. Do you feel that this is wasteful and inefficient of the unique properties of natural gas? Should natural gas be phased out as a large industrial and utility boiler fuel, freeing gas for use by residential and small commercial customers, and for essential agricultural and industrial purposes for which there is no substitute?

The way this question is stated, there is no question in my mind that the answer is "yes." The determination of priorities is, of course, a very difficult process.

5. A number of major pipelines are now forced to curtail deliveries of natural gas below their firm contractual commitments. Which classes of customers should be curtailed, and who should decide how the burden of the natural gas shortage should fall?

If there is to be continued price regulation of interstate natural gas, the legislative process will have to decide which classes of customers should be curtailed and who should bear the burden of natural gas shortages.

6. Under the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration is authorized to allocate available supplies of oil among various customers. What do you feel should be the role of the Federal government in allocating the increasing shortage of natural gas? Should the FPC be given the authority to allocate gas among pipelines in cases of severe curtailment or unemployment, provided adequate compensation is made, or should market forces determine where the gas goes?

I see no alternative, in view of the curtailments already announced and assuming either continued price deregulation, to some form of government allocation of scarce supplies. It is, of course, debatable whether the allocation of function should be a responsibility of FEA or FPC.

7. The Federal Energy Administration currently administers the mandatory petroleum allocation program, regulates the price of petroleum products, and takes other measures designed to deal with energy shortages facing the nation. Since the availability and price of all energy resources are closely related, it has been suggested that the Federal Power Commission's curtailment and certain other authorities be transferred to the FEA or that the functions of both agencies be integrated into a new, separate federal agency to centralize and coordinate the management of energy shortages. What is your view of this approach, and if you do not favor such a centralization of authority, how should the FPC coordinate its activities with the FEA?

I agree with the premise that the availability and price of all energy resources are closely related. I also agree that the coordination of all related allocation and price regulation of energy supplies is desirable. There are several possible organizational solutions, including using the Energy Resources Council as the coordinative mechanism.

8. Do you feel that it is desirable for the FPC to continue the regulation of natural gas prices at the wellhead? Do you support or oppose deregulation of natural gas prices?

As a prospective member of the Federal Power Commission, I do not believe it is proper for me to comment on this matter since the question is now before Congress. The responsibility of the Federal Power Commission is to administer the laws, and I support as a staff member of the Domestic Council the position of the President.

9. Some economists have suggested that higher prices and/or increased taxes on energy use are the most effective way to reduce energy consumption. Do you agree? What steps, other than pricing, if any, would you propose the government take to encourage conservation among energy users?

I agree that price is the most important tool to achieve more effective use and conservation of energy. In addition, the government should assist in development of new and alternative energy sources, assist on the conservation side by developing new technologies for conservation and provide public education on the need for conservation.

10. Since the Arab oil embargo of October, 1973, the prices of unregulated domestic fuels have been steadily rising to the price of imported oil, set by the Organization of Petroleum Exporting Countries, exacerbating the severe economic problems which our nation faces. Do you feel that it is necessary or desirable for domestic energy prices to rise to these levels? What, in your opinion, should determine the prices of our domestic fuels? What should be the relationship between the price of oil and the price of natural gas?

In view of the fact that we continue to import greater amounts of imported oil, domestic energy prices will automatically rise to meet the imported cost. The cartelization of foreign energy is already determining the price of domestic energy supplies and we really have only two alternatives—achieving a greater degree of energy independence or subsidizing the price of energy. In this latter alternative, it just means a different group of people pay the increased costs and the relationship of user to costs is destroyed.

C. IMPROVING COMPETITION

1. In order to further encourage vigorous bargaining between the purchasers and producers of natural gas, it has been suggested that natural gas pipelines in the future be treated as common carriers. What is your opinion of this possibility?

By nature of the fact that interstate pipeline transmission costs are now regulated, they are in fact treated like common carriers.

2. A major factor within the petroleum industry tending to increase entry barriers and reduce competition is the existence of pervasive vertical integration. Historically, however, the natural gas industry has been characterized by different companies controlling production, pipeline transportation and distribution. In recent years, however, many pipelines have established their own production subsidiaries, thereby reducing competition and any incentive for vigorous bargaining between pipelines and producers. Do you feel that such vertical integration in the natural gas business is desirable, or would competition be better served by discouraging such vertical integration?

I am not sufficiently informed about this subject to try and give a definitive answer. In general, however, I believe that any steps which encourage true competition are desirable.

3. To provide incentives for deconcentration of the gas producing industry, would you favor or oppose well head prices that are higher for independents than for major producers?

Since I do not know how "independent" or "major" producers could be defined, I can see no basis for fixing different prices for each producer. If we are here concerned with concentration or monopoly, the responsibility for deciding those issues should remain with the Department of Justice.

4. Many natural gas producers are also oil producers since the two resources are often found in conjunction with each other. Some major natural gas producers also own other competing fuels such as coal and uranium, as well as other unrelated businesses. Do you feel that major oil companies should be engaged in the supply of all competing energy sources?

The question here, with the use of "all competing energy sources," it seems to me, is an anti-trust question which is the responsibility of the Department of Justice.

5. It has been suggested that substantial new natural gas production is possible from federal lands. However, many smaller independent companies have not been able to engage in the development of oil or gas from federal lands because of the high entry barriers erected by the current system of bonus bidding. Would you favor a revision in existing federal leasing policies to a royalty bidding or some other system in order to permit more than just the largest oil companies to participate in the development of such resources?

This is a subject that could be better covered by inquiry to the Department of Interior. In general, however, I personally favor whatever system encourages meaningful competitive bidding with as many responsible bidders as possible.

Senator PASTORE. If you have no further questions at this moment, I would like to have Mr. Harsch testify, and then we will ask a few questions of Mr. Dunham, if you don't mind.

Senator STEVENSON. You said the administration proposal was realistic, Mr. Dunham. Does that mean you support the administration proposal, or would you support it with the qualification that in principle there ought to be some protection against OPEC pricing of new natural gas?

Mr. DUNHAM. Well, No. 1, I support the administration proposal. The qualification that I put on that was that I think we have to monitor the situation very closely.

Now, as Senator Pastore mentioned, essentially that decision is a legislative decision, and so I think the monitoring has to be on everybody's part. If the spot prices go—or some spot prices or extensive spot prices go way out of the ceiling, then I think everybody has to look at the situation again and be prepared to act.

But the problem is not knowing exactly what will happen. I wish we did. As you pointed out, the econometric models are all over the lot. There really isn't any good projection that we all would have total confidence in their reliability.

Senator PASTORE. Mr. Harsch, will you please take a seat there? You may remain there, Mr. Dunham.

I am very happy to have you here, Mr. Harsch. You may proceed. Identify yourself first.

STATEMENT OF WILLIAM W. HARSCH, CHAIRMAN, RHODE ISLAND PUBLIC UTILITIES COMMISSION; ACCOMPANIED BY EDWARD WOOD, PROGRAM COORDINATOR, DIVISION OF PUBLIC UTILITIES AND CARRIERS

Mr. HARSCH. For the record, my name is William Harsch, and I am the chairman of the Rhode Island Public Utilities Commission and administrator of the Division of Public Utilities and Carriers. I have with me Mr. Edward Wood who is the program coordinator for the Division of Public Utilities and Carriers.

With your permission, Mr. Chairman, I would like to read a statement in regard to the nomination of Mr. Dunham.

Senator PASTORE. Please proceed, sir.

Mr. HARSCH. Before I begin my short statement today, I would like to thank the distinguished senior Senator from Rhode Island, Senator Pastore, for inviting me to bring my concerns to this committee.

I would like to make it a matter of record that Senator Pastore has been particularly helpful to me and to the Commission and to the citizens of Rhode Island in energy and regulatory matters. His long experience and senior position in the Senate combined with his intimate knowledge of the State make him particularly effective in key areas such as this.

Also, when you combine this background with the fact that he served as Governor, I do my homework very carefully before making a statement such as this one before him.

Although I speak for myself alone, I think many of the issues I will focus on are troublesome to other State utility commissioners in New England and across the country as they are to me as chairman of the Rhode Island Commission.

I would also like to say in opening that my purpose in testifying here today is not to attempt to advise the distinguished members of this committee on the qualifications of Mr. Dunham to assume the vitally important position of chairman of the FPC. The Senators are far more able to make those judgments than I.

Rather, I approach the confirmation process as an opportunity for the Congress to discuss with the nominee how he intends to carry out the responsibilities of the office and to review the past operation of the agency under consideration.

I would like to bring to the attention of this committee and the nominee some very serious concerns regarding FPC policies and procedures.

I became chairman of the Rhode Island Public Utilities Commission on March 31, 1975, and it did not take very many days on the

firing line to gain a real appreciation for the depth of the problems that we, as legislators and regulators, jointly face.

At the height of the heating season last winter—and, remember, this is in a State that we affectionately call “Little Rhody”—my office received as many as 100 calls a day from angry, confused, and—frankly—frightened consumers. That was even before we began an active consumer program in the agency which we now have in place. The level of calls has continued at a high level all summer long, and I look forward to the coming winter with trepidation.

We could deal fairly easily with those who complain that electrical, gas, and other energy prices are too high. I have become rather adept at listening sympathetically to complaints in the past 6 months. But, unfortunately, many calls which come into my office are not merely complaints. They are pleas from individual consumers, businessmen, and officials of small industries who no longer have the resources to pay their bills at all.

Anyone who accepts a position as public utility commissioner today accepts a role as part social worker, part regulator, and—so it seems at times—part public enemy No. 1. I accept the responsibility for those first two roles, but it will take an effective partnership of regulatory agencies along with the legislative bodies to which they are primarily responsible to overcome the public mistrust that can put us all on the enemy list. And that is what my testimony is mainly about today.

It did not take me long after taking office, either, to figure out that if I was to adequately guard the interests of the individuals, families, businesses, and industries who depend on adequate and economical supplies of gas and electricity, one of the biggest payoffs for my efforts would come from insuring that the Federal Power Commission is pursuing its duties at least as diligently as I hope to pursue mine.

Rhode Island is perhaps unusually impacted by FPC decisions, but I feel what I have to say is applicable in some degree to all States in the United States.

Because of the FPC's jurisdiction over the wholesale price of electricity and the pattern of corporate organization which has flowed from the Utility Holding Company Act, about 70 percent of the average Rhode Island utility bill is now determined by the FPC rather than by the State Public Utility Commission.

Last year, the electrical distribution companies of Rhode Island collected about \$182 million in revenues, of which more than \$125 million was immediately paid over to the power companies which provided electricity to them at FPC approved rates.

Some of this electricity was produced within Rhode Island for Rhode Islanders, and yet it still fell within Federal rather than State jurisdiction because it was purchased wholesale, typically from a power company affiliated with a utility holding company which also owned the retail distribution company.

The options of a State public utility commission faced with a retail company whose bills have been increased under FPC approved rates have appeared severely limited. If the economic health of the local retail company is not to be totally sacrificed, commissions have felt they had to allow the companies under their authority to pass those increased costs along to the ultimate consumer.

Basically, my biggest concern with FPC procedures as they affect the consuming public of the State of Rhode Island today is the undue amount of "regulatory lag" which is practiced by that Commission. That term, of course, has become a byword in the utility industry, used with some justification to convince legislators and regulators that a quicker resolution of rate increase proposals is necessary.

In my view, however, the FPC has turned regulatory lag around, too often at the expense of the ultimate consumer.

As you know, the Federal Power Act and the Natural Gas Act provide that the FPC may suspend rate filings for up to 5 months, after which the proposed rates must be put into effect subject to refund. It has appeared from my vantage point that the recent history of the FPC has left this 5-month suspension period written into the law by Congress with very little meaning at all.

I think your question earlier, Senator Pastore, directed itself precisely to this point, and it is a matter of extreme importance to State regulators.

Of the FPC cases that we in Rhode Island follow actively, suspensions for a period of 1 month and even 1 day seem to be the rule rather than the exception at the FPC right now. And I know of no rate case of any magnitude which has been investigated, heard, and decided within the 5-month suspension period in recent times.

The result of this lag is that a sizable portion of the average utility bill in my State and elsewhere is now being collected without even a rudimentary investigation by responsible officials to insure that it is fairly based and appropriately effected, and certainly without being subjected to a public hearing.

For example, in recent months the New England Power Co., which is based in Massachusetts and is a subsidiary of the New England Power System, selling power in several New England States, has been collecting more than \$80 million of its annual revenue subject to refund from a total of four proposal rate increases—filed in 1973 and 1974—without any of these four cases having been finally disposed of in an FPC investigation and hearing procedure.

My Commission now has pending before it a request by the Narragansett Electric Co. to be allowed to pass through about \$6.3 million from the latest of these rate increases. In regard to this proposed increase, which was filed with the FPC on November 29, 1974, an official of the New England Power Co. with wide experience before the FPC filed testimony with my Commission recently in which he said—and I quote—"My best guess is that a final decision by the FPC will not be reached in (this) docket until the spring of 1977."

SENATOR PASTORE. Will you stop there for a few moments? I have to go down and vote. It will only take me 5 to 10 minutes. I will be right back.

[Recess.]

SENATOR PASTORE. You may proceed.

MR. HARSCH. I would like to continue reading my statement, Senator.

If we do not have a decision until 1977 in a rate case filed in November of 1974—and I have no reason to believe that estimate is off by very much—I think we have reached a point where the FPC's ability to do the job assigned to it by Congress is seriously in question.

It should be standard regulatory policy that rates are not put into effect until after they are thoroughly investigated, tested in a public hearing, and ruled upon by the regulatory body in question.

It is my reading of the relevant statutes—and this was confirmed this morning by you, Senator, I believe—that Congress intended the 5-month suspension to provide a reasonable period for the FPC to give full consideration to proposed rate increases before they are put into effect. Only in unusually difficult cases, I suggest, did Congress expect the 5-month suspension role to allow proposed rate increases to be collected by the positioning company before they are fully investigated.

The FPC "regulatory lag" provides a special dilemma to my Commission which operates under a State statute which I believe you are fully familiar with, Senator, in your past role as Governor, prohibiting approval of any rate increase unless a public hearing is held, and only upon completion of an investigation into the appropriateness of the requested increase.

We are presently faced with several requests for rate increases premised on the necessity of paying increased wholesale power costs which the FPC has allowed to go into effect before a single public session has been held before a hearing officer. It is impossible for my Commission to insure that an investigation of the propriety of these rates has been completed, as is intended under our State statute, and yet we are confronted with the necessity of taking some action if the economic viability of the local distribution companies is not to be threatened. I understand other States have similar statutory responsibilities which cause similar problems.

So in this situation, essentially, we have both a statutory and a procedural conflict inherent in the differences in administration and differences of language between Federal statute and State statute.

In sum, I feel that some method must be found to move the FPC calendar in a reasonable manner, that rates cannot be allowed to increase without regulatory oversight before they are put into effect, and that the full 5-month suspension period should be invoked by the FPC as a matter of policy during an interim while administrators develop a method to get the calendar under control.

I would hope this committee and Mr. Dunham could agree that attention to the regulatory lag problems I have highlighted should be given a high priority.

The FPC's frequent rubberstamping of rate increases with minimum suspension and cursory investigation is only part of a larger problem I would like to discuss briefly—the serious erosion of confidence in the regulatory process. Public credibility, in my view, is a very definite part of the equation which will make regulation work, as it must work if the consumer is to be adequately protected and privately owned utilities are to function effectively as a monopoly industry in a system which depends on competition.

The FPC now sits on top of a relatively invisible process which stands between ever increasing energy prices on a global and national plane and the ultimate consumer at the other extreme. The FPC carries out its functions in relative obscurity, but I don't have to tell the members of this committee that the decisions made daily over on North Capitol Street can have a heavy impact on the lives of elderly

and low-income citizens across the country and on the industries and businesses of every State in the Union.

In every aspect of the regulatory process at local, State, and national levels, elected officials and members of regulatory agencies must be particularly sensitive to ensuring that meaningful opportunities for public participation are provided, that appointments to regulatory commissions are made with a great deal of care, and that the members and employees of regulatory commissions are extremely vigilant that their relations with regulated industries are beyond reproach or suspicion. Nowhere are these principles more important than at the FPC.

In Rhode Island, we adopted the phrase and the goal of "bringing the regulatory process out of the closet." We search for every opportunity to educate the people about what we are doing and how we are doing it, and attempt to bring individuals, consumer groups, and business organizations into the process as partners. I think this thrust is vital in the activities of every regulatory body, and respectfully suggest that increasing public visibility and credibility become a major goal of the new administration of the FPC.

One of the most effective ways for the FPC to begin to achieve this goal, I believe, would be for the commissioners and hearing officers of the Agency to leave Washington regularly and hold field hearings in areas of the country affected by their decisions. While this policy would increase the visibility of the FPC to the public, it would have the equally important effect of increasing the FPC's awareness of the public's needs and desires.

For example, if the commissioners could find time to convene a hearing in some medium-sized New England town on increased electrical rates, the fuel adjustment charge, or any of the problems they daily deal with here in Washington, I can assure them they would get a far different feeling for the mood of the country than they now get from a room full of lawyers in Washington.

Senator PASTORE. Mr. Dunham, without committing you to the merits of that statement, would you have an off-the-cuff reaction to it?

Mr. DUNHAM. I certainly would. I would intend to follow that. I agree completely with Mr. Harsch that—you are referring to the last statement, on field hearings?

Senator PASTORE. Yes.

Mr. DUNHAM. In fact, I think that is an excellent methodology and device, and I would support that.

Senator PASTORE. I am very happy to hear you say that.

Mr. HARSCH. Along these same lines, Senator and Mr. Dunham, it appears to me that one of the most useful opportunities for the FPC to hold field hearings would be to adopt a policy of more readily implementing the sections of the Federal Power Act which provide for joint hearing boards with State regulatory commissions.

I note the sections of the Federal Power Act to which I refer are not now mandatory. They are permissive. And this, in my view, is part of the problem.

The Governor of Rhode Island and the Rhode Island Consumers' Council twice recently have joined to request that the FPC convene a joint board in the New England area to investigate corporate relationships with holding company systems which do business through-

out the six States. I believe this effort is necessary to effectively regulate companies that are essentially regional rather than statewide in scope.

The FPC, however, turned down the requests to convene a joint board, apparently primarily because of a policy decision not to use this very important provision Congress wrote into the law.

I intend to request such a joint board again, and I hope that our plea will fall on more receptive ears.

In conclusion, I would like to say that I believe strongly that the regulatory process can be made to work, that with the cooperation of the Congress and State legislative bodies, and the understanding of the regulated industries and the consuming public the process can be made to do the job historically assigned to it. I believe we have begun to fine tune the process sufficiently in Rhode Island, and that other State commissions across the country are beginning to do likewise.

It is my hope that the suggestions I have made in the spirit of cooperation with the Federal process will prove helpful to the committee and to the nominee, and I wish to sincerely thank the committee and you, Senator Pastore, for this opportunity to speak.

Senator PASTORE. I want to congratulate you, Mr. Harsch, on a very excellent statement. It is temperate and cogent and, frankly, I think it brings to the surface a problem which is of serious consequence.

Not too long ago Mr. Wiley came before my committee—I'm chairman of the Subcommittee on Communications—with relation to more or less the same subject on the question of the telephone rates. And he suggested that the period for suspension be prolonged—as a matter of fact, I think it went as far as 9 months—and within that period to give to the commission the right to make a partial grant after a study.

As it stands now, it's either take it or leave it as it is submitted.

Now, as I understand in this particular case—I don't want to bind you in any way because it is a pending case. We follow the policy here not to in any way interfere with the impartial process of making a determination that would be equitable, fair, and just.

Well, at any rate, the point is that this period of 5 months strikes me in today's world to be a little too short. Now, that is nothing that you are responsible for at the Commission. That's the law.

At the time that this law was instituted, I repeat again we were living in a kind of world where a determination could be made in the 5 months, and that's the reason why the Congress set the period, in order not to allow, you see, delay either on one side or the other.

But now it has gotten to the point, you see, where these rates are filed and objection is being made—I understand there are many parties to this—who feel that the figures that have been submitted by the company that is asking for the increase have been underestimated as to the amount of money it's going to cost the consumer, and in some instances, as I get the information, almost one-half as much. And this is a serious question.

Now, I think in these times of high unemployment—and in my State it is 16 percent—to allow a company to reach into the pockets of the consumer, who is already distressed, and take away from him money that maybe some day you will have to pay back to him is not the way that in a democratic society we feel that due process works.

There was a reason for this in the beginning. When I was Governor of the State, I ran up against the same thing. The telephone company levied a tremendous increase on the consumers, so much so that I had the law changed.

You know, we adopted the principle here in the Congress "fly before you buy." And the whole philosophy behind this is "buy before you fly."

And it strikes me that something needs to be done about it. Would you give us a reaction without committing yourself as to a final determination as you look at this presentation just made by Mr. Harsch?

Mr. DUNHAM. Of course. I think it was a very useful presentation and very provocative, and, as you pointed out, I would like to comment on that at some later time in detail and with consultation with everybody, and so forth.

But I think there are several points that are made that I think are important here that I do intend to concentrate on. One is the process itself, the procedures, and the mechanisms whereby the final determinations are made.

Now, some of those are purely, obviously, within administrative control, and I think a lot can be done in that respect, and I hope to do so after I have had an opportunity to familiarize myself with both the staff and the process and procedures.

The second aspect of it too, which I think is important and which I hope that the full Commission can do in a period of time, is that only a part of that is probably due to process and part of it is the basic law itself, and I hope that the Commission after a certain period of time will be in a position to make recommendations to Congress and others involved in the legislative process for appropriate changes.

I agree completely that perhaps the basic law—certainly, the policies and procedures of commissions, regulatory commissions in general, may very well have over a long period of time grown up with an encrustation that—maybe that's not the right word—but a policy or a procedure that might have been germane at some earlier period of time in the 1930's and 1940's and the 1950's and the 1960's. With the rapid economic changes, with the shortages in energy, for instance, that occur today, those policies and procedures may not be rapid enough.

I was very interested because I am somewhat familiar with the remark that you made, Mr. Chairman, in regard to partial rates. This was a procedure that was permissive in the State of New York. And in the State of New York now the Public Service Commission makes temporary determinations subject to final determination by the full Commission. And I am familiar with that. In some cases the final determination has been to award a higher rate and in some cases a lower rate, which required rebates to the people.

But it seemed to me that that is a process that should be experimented with, because if you have undue lag, then, obviously, there are financial penalties to the industry if they truly justify the need in that respect.

So, I think that is an area that certainly ought to be looked at.

I was also interested in another part of Mr. Harsch's testimony in regard to the Federal law which permits—permissive—joint hear-

ings. I think that's a rather interesting and worthwhile procedure and one that certainly should be experimented with.

I would not be prepared at this time to recommend that it ought to be mandated, but I think certainly there must be reasons that are very good reasons to try it to see if it could work or can ameliorate the situation, and so forth. Because, quite obviously, the overlaps between Federal and State jurisdictions require coordination. I was very interested that Mr. Harsch brought that up.

Senator PASTORE. That matter was gone into quite extensively by the committee. As a matter of fact, I think I introduced the resolution at the time. The commissioners came to see us. They wanted a better cooperation between the Federal agency and their own agencies. And we finally worked that out.

That had more to do, of course, with this thing of allocation of cost of assets between intrastate and interstate—

Mr. DUNHAM. Right.

Senator PASTORE [continuing]. And where the burden was being placed. And in many cases, of course, there was no precision involved. It was a matter of philosophy or a matter of policy.

And we are living in an instance where we are reducing the long distance calls at the same time we are filing for an increase on the local calls, and that didn't suit me at all. Because we were making it easy for people who use long distance lines, and yet we were making it tough for the elderly who have to call up either their children or the grocery store or taxicabs once in a while.

That was the origin of it. And we had worked out a cooperative effort. And I think once we worked it out it ought to be employed, ought to be implemented.

I want to thank you very, very much, Mr. Dunham. The thing bothers me that we get into pileups, as Mr. Harsch brought out. We are still in the process of not determining cases filed in 1973 and 1974, which means \$80 million is being paid and nobody has determined yet whether or not it's fair or unfair.

I would hope too you would discuss with the commissioners if you are confirmed—and I have every belief that you will be—I mean there's no need kidding you or kidding ourselves about it. As far as I know—Is there anybody in this room objecting to this nomination?

I don't hear any.

So I really think this matter of a partial grant and seeking the authority under the law to do that after a good scrutiny—

Mr. DUNHAM. We have to look at everything possible.

Senator PASTORE. I wouldn't want to see the thing denied in toto any more than I would like to see it approved in toto without some very, very careful study. And that's the name of the game.

I want to thank everyone for coming and especially those in the audience, and we will recess this until the call of the chairman.

Mr. DUNHAM. Thank you, Mr. Chairman.

Senator PASTORE. Now, is Mr. Watt here?

Mr. WATT. Yes, sir.

Senator PASTORE. Mr. Watt, I understand that there has been a previous hearing and —

Mr. WATT. Yes, that is correct.

Senator PASTORE [continuing]. Certain questions were presented to you. I am not familiar with them, so if you will be patient, we will try to get Mr. Stevenson.

Mr. WATT. Excuse me?

Senator PASTORE. We are going to try to get Mr. Stevenson.

Mr. WATT. OK. Fine. Thank you.

Senator PASTORE. We'll get him over here as soon as we possibly can.

[Recess.]

Senator STEVENSON. The meeting of the committee will come to order.

Mr. Watt, were you here earlier when I questioned Mr. Dunham about natural gas pricing?

Mr. WATT. Yes, I was.

Senator STEVENSON. Then I won't repeat that rather lengthy question.

What is your own opinion about the price of new natural gas?

STATEMENT OF JAMES G. WATT

Mr. WATT. I anticipated that you might ask that same question. I feel that it's important that we bring stability to the economic scene. The consumers demand it, and the industry demands it, and I think all of us are agreed that what we now have is not working well.

It's important that we adopt a new program. I recognize that you are one of the leaders in trying to do that, and I respect you for that—to draw up a program that will bring some stability without bringing any shock to the Nation's economy.

I think there must be, in the long run, an interrelationship of fuel prices so that we can have some substitutability.

And so, therefore, from a philosophical point of view I think that more new gasfields will be brought into existence, and therefore consumers served, if in the long run we do not regulate the price of natural gas at the wellhead.

Senator STEVENSON. You say in the long run. I don't know of anybody who wants as a theoretical matter at least in the long run, for anything, to regulate. But what about the short run? Should there be some protection against regulation by foreign oil producers of domestic wellhead prices?

Mr. WATT. Yes, there needs to be some protection, and I think the best protection that we can give for that is full development of the resource potential that we have.

Being a Wyomingite, I am familiar with the vast coal supplies that we have. We need to adopt a national energy policy that will bring into production with the proper environmental safeguards coal production. We need to create an economic environment that will let oil and gas be produced, nuclear supplies developed, as well as, the new fuel energy sources that might come into being. We need to bring about a total energy program.

Senator STEVENSON. To do that—we are discussing natural gas and I would hope to do so without indulging in such cliches. I don't know of anybody either who isn't for developing domestic sources of energy. But to do so in the case of natural gas, what is necessary? A \$2 price? A \$3 price? A \$4 price?

Mr. WATT. Senator, I bring no expertise on that subject before your committee or to the Federal Power Commission. As you pointed out in your questioning of Mr. Dunham, there are so many econometric programs, and most of them have been thrown away.

The area of probability in this is such that my predictions wouldn't be as good as other people's, and we have discarded many of those predictions. I don't know the answer to that.

Senator STEVENSON. Well, there has to be an answer, and it has to be made on the basis of the evidence that we have.

Mr. WATT. Yes.

Senator STEVENSON. And the evidence is imperfect because we have never experienced such a phenomenon before.

Faced with the necessity immediately of making a decision, which is exactly what we are faced with now in the Senate, what would your decision be? Would it be to decontrol all natural gas prices, to continue the existing regulation—well, which you're not for—you have indicated the status quo is not acceptable, and I agree with that—or would you favor some other form of protection against arbitrary pricing of natural gas which we know will cause more inflation and consequently more recession?

We are not living in a theoretical world. We have realities to face. And I think before you can expect us to approve your nomination you ought to be able to give us the benefit of some opinion, some—

Mr. WATT. Well, I certainly have an opinion. I sure don't present that as the answer because I do not bring before you technical background in this area. I have not spent a lifetime studying it. But I am certainly willing to give an opinion.

And my opinion is that there needs to be an interrelationship where there would be a relationship between natural gas and oil and other fuels. And I think that is an important point that sometimes we miss in this emotional argument about the deregulation of natural gas.

I also think it is important that we abolish the distinction between the interstate and intrastate market system for natural gas. I think that's an artificial thing that brings on real problems.

I favor the legislation that would deregulate new natural gas at this time so that we would have stability in that area and that we would phase out the control of the pricing at the wellhead of natural gas for old gas over a long period of time in concert with the price of oil and other fuels.

Senator STEVENSON. The old contracts, of course, will phase out, will expire. So what you are saying is that for the sake of stability we ought to immediately decontrol all the new natural gas. That is your reason. What is the stability that you expect to follow from decontrol of natural gas? For the sake of stability. What is the stability?

Mr. WATT. I wouldn't want to have the record show that is the only reason you're doing it. I think the motivation for deregulating the price of new natural gas is to allow the price to go up so that there will be proper incentive for attracting the capital to do it.

The stability that I am concerned about is that right now we don't—we as consumers don't know what we can expect in the long run for supplies, and on the industry side of it they really are having problems dealing with capital and getting the proper investment and the facilities needed to do the exploration and drilling.

There is so much uncertainty now because of the OPEC situation, and the recognized need to change the legislative format. Congress is now addressing that issue. I think we need to make a national energy policy.

That is what is needed. And with the announcement of that policy that you and many others are working on, we will then know where we are. That's the stability I'm talking about. It's the uncertainty in our economy that causes problems.

Senator STEVENSON. Here we go again. We're all against uncertainty. And I would suggest to you that with our formula that gets [inaudible to reporter] all those inherent uncertainties and establishes a new format starting with \$1.30 which is the average present intrastate price, and the equivalent of an average price that we also establish and permit increases up to the GNP inflator would create certainty.

If, on the other hand, you were to let natural gas prices be determined in effect by the oil price, which, of course, is determined by foreign oil producers, you would have, as you conceded yourself a moment ago, instability. You referred to the uncertainties about OPEC pricing.

Now, if stability is a critical factor—and I think it is—why wouldn't you support the ascertainable price ceiling as opposed to the unascertainable OPEC formula for natural gas?

Mr. WATT. I'd like to respond to that in two or three points.

No. 1, if confirmed to the FPC, I of course will take the oath, and as a professional lawyer I would be going over there to administer the law as Congress determines it. Of course, whatever Congress does, whether they do anything or not even if they don't do anything, we will operate under the laws. If the law is changed, of course, I will adhere to that.

No one wants to be put in the position of supporting the OPEC instability. They are having their own problems, as we read in the newspaper today.

I'm not able to say that your \$1.30 figure is right or wrong. I do not know. I don't know the answer to that. There are many variables. If that price is what will attract the necessary capital to bring about the exploration, development, and production that is needed, great.

But we need to know what the supplies are so that we can have proper conservation and meet the needs of the people.

Senator STEVENSON. Now, to move to another subject, the committee has received a letter from Senator Childs acting in his capacity as chairman of the Senate Government Operations Committee—a subcommittee—which raises some questions about your relationship with a Mr. Donald A. Thoren, and similar questions have been by a GAO report which has been received by this committee.

Can you tell us a little about your relationship with Mr. Thoren before you went to the Bureau of Outdoor Recreation?

Mr. WATT. Yes. My relationship with Don Thoren is a long one. I know him professionally and I know him personally and have for a good number of years.

Senator STEVENSON. There was a social relationship?

Mr. WATT. And socially. Professionally, personally, and socially. I know him well.

Senator STEVENSON. Can you describe your professional relationship with Mr. Thoren or your former professional relationship?

Mr. WATT. Well, we have, of course, worked together in the Department of Interior. I have hired him in the instances you referred to. I have kept close contact with him in other employment that I had where we were together. I knew what he was doing. He knew what I was doing. We shared a lot of our professional growth through the years, maintained close contact in those ways.

Senator STEVENSON. You have never had a financial interest in any business entity controlled by Mr. Thoren?

Mr. WATT. No financial relationships at all in any capacity or any way at any time.

Senator STEVENSON. The questions deal with a sole-source negotiated contract between the Bureau of Outdoor Recreation and Mr. Thoren which was entered into while you were Director of the Bureau, and we are told that this contract was negotiated in a way that was unusual if not unprecedented for that agency.

Would you first of all describe what this contract was for, what kind of services were to be rendered under it?

Mr. WATT. Yes, I would be glad, to Senator, if I might comment on that.

The type of contract is not unusual at all. It happens to be the one that they looked at. In my administration we have had in the 3 years I have been there 27 such contracts. In the lifetime of the Bureau, a 10-year period, 72 such contracts—since I have been there about a third of them.

The unusual thing about it is I did it with a friend. And one of the newspaper stories that covered this says that the GAO raises its eyebrows at this contract. I think that is an appropriate headline. I am embarrassed by it because I violated my own standard.

I have adopted the standard, and I think others must that are in Government service, that you do what is right and you do what appears to be right. In this situation I have memoranda showing I have done what is legally right. I have articles and plenty support showing it was a fantastically successful result. I'm very proud of what was accomplished with Mr. Thoren and the Bureau. We have got studies showing that economically it was tremendous. Competitively, it was better—as good as, or better than anything else.

But it does raise eyebrows because he's a friend. And I am embarrassed about that and have been embarrassed by the press and the accusations that have gone on in that situation.

I can blanket the situation with memos if you want to address any aspect of it.

The question comes up then: In light of the 3-year history—you're looking back on it with hindsight, post-Watergate era—our standards have changed—would you do it again? I have given that question a lot of thought. The answer is no.

And the reason I have given it so much thought is I am a little embarrassed about the answer because it calls for discrimination against friends.

In dealing with contractual matters when you are trying to get results and you are trying to get motivated you go to the people you can trust.

There are three types of people you can go to. People that you know and don't trust. People that you don't know. And people that you do know and do trust.

And that's what I did. It has caused this embarrassment. And I'm sorry about that, of course, because I'm the one who is embarrassed.

Senator STEVENSON. Mr. Watt, our standards haven't changed. They were corrupted for a short period of time in our history. They never changed. Most public officials have always recognized that the appearance of misconduct can just as effectively erode public confidence as its actuality, and have conducted themselves accordingly.

Now, in this case you say that you went to a firm that you were familiar with instead of one that you were not familiar with.

Mr. WATT. That's correct.

Senator STEVENSON. And I understand that. But did you undertake to survey other possibilities? Was there effort on your part to examine the alternatives to this?

Mr. WATT. Yes, we did, Senator.

Senator STEVENSON. If so, can you describe those efforts for the record?

Mr. WATT. We reviewed the situation in every instance, considered in-house activities. We considered hiring civil service persons because they have people that do some type of this work. We considered going outside. And we determined that the best interests of the Government, the best interests of the Bureau were to hire a known commodity, one that you knew you could get results.

And our information was, one, that he knew us. He knew me. He knew the philosophy I wanted to put into this new Bureau that I was just taking over. And we determined that those were the best values to be realized and acted accordingly.

Senator STEVENSON. Well, did you have such discussions with other firms?

Mr. WATT. We did not discuss it with other firms; no. That was internal conversation within our staff.

Senator STEVENSON. Did you also consider the in-house capability?

Mr. WATT. Yes, we did. We had used in-house capabilities for an automated accounting system we developed in concert with the MBO program and recognized that that was not the proper way to go.

Senator STEVENSON. Why were the inhouse capabilities inadequate?

Mr. WATT. Because they didn't have the training capability to go out into the field—I'm talking about the Bureau of Outdoor Recreation. We did not have the capability at all. We didn't have the personnel. I'm talking about the Department of Interior. They didn't have the training personnel to go out into the field and do the actual training of the people needed.

Senator STEVENSON. Why could they not have been acquired in order to conduct this—

Mr. WATT. I assume they could have been acquired. Of course, that's a wrong assumption because of personnel ceilings. But let's say ceilings were not a problem. Had they been hired, you would have to have them a long time. They would have to be trained. They wouldn't have had the expertise we had the ability to get through contracting. So we determined contracting was the best way to go.

Senator STEVENSON. When did you make the determination that the management of BOR was in need of strengthening?

Mr. WATT. That determination was made before I went there, and that's one of the principal and prime reasons I was given that assignment. And, indeed, that was the case. The Bureau is a very small and unique bureau, fewer than 500 employees. It had very talented people in their recreation resource and wildlife disciplines, but they were not managers. That is the discipline I brought.

We had an assignment that had to be done within a definite time frame, and it took expertise that we were able to hire through outside contracting. We got the results done, and I am very proud of those results.

Senator STEVENSON. What was the cost of the contract with Mr. Thoren's firm? Was there more than one contract?

Mr. WATT. There was more than one contract. There were two basic contracts totaling over the period of time over \$60,000.

Senator STEVENSON. Over how long?

Mr. WATT. Over a couple years' period of time, starting in the fall of 1972 and finishing in the summer or late fall of 1974.

Senator STEVENSON. These contracts were related?

Mr. WATT. Yes, they were. One dealt with the MBO program—management by objective program—and then the second phase was the program for developing the career employee's personal progress, how to develop and mature on the job.

Senator STEVENSON. And the firm received, did you say, \$60,000 for the 2 years?

Mr. WATT. Total over this basically 2-year period.

Senator STEVENSON. And I think you ought to also describe the benefits that the Government received for that expenditure of \$60,000.

Mr. WATT. Good. I'm glad you asked that because we had to focus on results, what we were getting.

The management by objective program is designed to better utilize the manpower that you have so that you can define what is going to be realized in the time frame that you seek to have it realized, and you have your checkpoints to get it done.

We're managing many programs. We distribute over \$300 million a year to different agencies for acquisition of land and development of recreation resources. We do studies of natural resource areas. It was those type of planning activities, working with other governmental agencies, Federal and State, that were slipping and were not getting done.

And by putting an MBO program into being, we could marshal our people and accelerate the programs for wild and scenic river programs, national trail programs, the distribution of these moneys that I have talked about, and the assistance, technical assistance, given for such things as urban recreation needs.

Then the second. Do you want me to also comment on the second contract?

Senator STEVENSON. Yes.

Mr. WATT. The second contract was really the second half of this, because our motto was getting work done through people and people done through work. So we needed to take care of the personnel end of it.

The problems of the previous administration of PPBS and things like that were they were always trying to get the work and never rewarding the people. So we had to allow the people to enhance their careers, their education and their job opportunities and see that they were objectively evaluated for promotions and the like.

I am advised by our professionals in the personnel end as a result of this contract that we have one of the best systems in government. They are very proud of that product, something I can't give personal evaluation on, but they are very proud of it.

Senator STEVENSON. How was the \$60,000 for those contracts determined? Was it a negotiated figure?

Mr. WATT. That's a negotiated figure. He had a daily rate, and we compared that rate with those charges made by other professional consultants that would be used by the Department and by the Civil Service Commission, daily costs for comparable work, and those were reviewed in that way.

Senator STEVENSON. And did you consider other firms and compare—

Mr. WATT. Their costs?

Senator STEVENSON [continuing]. Their costs?

Mr. WATT. Yes, we did.

Senator STEVENSON. Could you tell us what other firms were considered and whether you have any documentation concerning your evaluation of those other firms?

Mr. WATT. I don't have the names with me, Senator, and I am not sure what the documentation is on that.

Senator STEVENSON. Could you supply the committee with the names of the firms?

Mr. WATT. We did not go out and seek them. We went to the Department and reviewed what they were being paid. Our staff was reviewing the records in the Department and in the Post Office Department. We had a man from there. And so they are not in our files.

Senator STEVENSON. But you did say a moment ago that you did consider the qualifications of other—

Mr. WATT. Yes, we did.

Senator STEVENSON [continuing]. Firms?

Mr. WATT. The GAO people did pick up the qualification and costs as it related to the Civil Service Commission.

Senator STEVENSON. You keep coming back to cost. I'm just talking about the qualifications—

Mr. WATT. Excuse me.

Senator STEVENSON [continuing]. And trying to find out what other firms were considered.

Mr. WATT. OK. We had firms that had been working for the Department of Interior—not for the Bureau of Outdoor Recreation but the Department of Interior—and we knew what they were doing and determined it was better to go with our known commodity.

Senator STEVENSON. I think what you are saying is you never entered into negotiations with any other firm?

Mr. WATT. That is correct. If I may comment on that so there is no wrong inference. These were professional personal service contracts. It's not the policy of the Department of Interior now, nor was

it then, that we advertise and award professional personal service contracts to the lowest bidders. That's not the way we do it in Government.

Senator STEVENSON. I see. I don't think that is the issue here.

Mr. WATT. OK.

Senator STEVENSON. It's really not customary in awarding contracts for services to conduct them by bid. At least it hasn't been in my experience.

Mr. WATT. That's right.

Senator STEVENSON. And I don't think that's the question that has been raised. It's whether in negotiating for conduct of these services other firms were considered, and if not, why.

This you say was a friend. There was no political pressure brought to bear?

Mr. WATT. No, none at all.

Senator STEVENSON. The document from the Childs subcommittee states that it is unusual if not unique for the Director to sign contracts and contract modifications at the BOR. You acknowledge signing these documents?

Mr. WATT. I signed some of them, yes.

Senator STEVENSON. Some of them?

Mr. WATT. And that is not unusual. If this were a normal agency I think that statement would be correct. This is not a usual agency. As I have commented, in the 10 year history of the Bureau we have had only 72 of these contracts. I have had 27 of them. Any contract of this nature above \$10,000 must have the director's approval. And in every instance of these 27 contracts I have personally approved them.

And there are only three people in the Bureau that have the authority to sign for them. That's myself and my deputy and the assistant director for administration. Only those three persons.

Senator STEVENSON. You said you had 27 other such contracts?

Mr. WATT. That's correct.

Senator STEVENSON. That you personally approved them?

Mr. WATT. Yes.

Senator STEVENSON. Did you sign any of those other 27 contracts?

Mr. WATT. I did not. My deputy signed some and the assistant administrator signed some.

Senator STEVENSON. Well, the obvious question is why did you sign this but not the others?

Mr. WATT. Good. This is an MBO program. There are two answers to that question. This is an MBO program. MBO—Management by Objective—only works if the top man is supporting it, and you had to demonstrate that.

The second reason is that I was aware that he was a friend and the that it was well known in the Bureau he was a friend. So that there wouldn't be any criticism of it I said let's leave it under me—(inaudible to reporter) so we know what we are doing. This is one of those situations if you want criticism you can say, as the memorandum you're referring to does, he signed the one because the subordinate was afraid to and he forced someone to sign the other one, I don't like that talk.

I made the decision. I'm responsible for all the decisions in the Bureau. And I'm willing to sign them. It's immaterial who signed those papers. I was responsible for all the decisions.

Senator STEVENSON. You're also quoted as saying, and I quote, "I was advised that the costs were less or no greater than if we hired the Civil Service Commission to do the training. I was advised and believed Thoren and his associates would probably do a much better job."

Who advised you on those matters?

Mr. WATT. My personnel staff.

Senator STEVENSON. Your personnel staff in BOR?

Mr. WATT. Yes. Now, the experience on why I thought Civil Service Commission would not do as well is that we had hired them in some of our regional offices and we knew what kind of work product they produced.

Senator STEVENSON. Was that advice oral?

Mr. WATT. Yes.

Senator STEVENSON. There is no documentation?

Mr. WATT. No documentation on that.

Senator STEVENSON. Names of individuals who gave you such advice?

Mr. WATT. Yes. Harry Owings, my chief director of personnel.

Senator STEVENSON. I will insert at this point in the record a letter from Senator Childs and a staff memorandum, also a copy of the opinion of the Department of Interior's Solicitor's office dated November 27, 1972, and that opinion was delivered 3 weeks after the larger of these contracts was signed as I understand it.

Mr. WATT. Yes; that's correct. In the situation of the memorandum you're talking about there is no requirement to get the Solicitor's opinion on these matters. Matters of going sole source are discretionary and vested within the Director's office. But because of the nature of this I asked for that Solicitor's opinion. It was worked out and we were given the word on it. And then when signature came through it had that date on it.

[The documents referred to follow:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 9, 1975.

HON. WARREN G. MAGNUSON,

*Chairman, Senate Committee on Commerce, Dirksen Senate Office Building,
Washington, D.C.*

DEAR CHAIRMAN: In the course of my Subcommittee's broad efforts to reform the Federal Government's contracting and grant procedures, many cases are brought to my attention which demonstrate the weaknesses in the current system of laws and regulations and, in some instances, also touch on suspected violations.

Specifically, in the course of our efforts to draft new Federal contracting legislation, one such case was brought to my attention to demonstrate how sole-source awards without competition could perhaps be abused under existing law. The case involves contracts awarded by the Bureau of Outdoor Recreation, Department of Interior, and its Director, Mr. James B. Watt.

I understand Mr. Watt has been nominated by President Ford on April 9, 1975 for a seat on the Federal Power Commission and that his nomination is presently pending before your committee.

The Subcommittee staff has done some preliminary investigation of the allegations we received concerning this matter and, I believe, you may want to consider this material during your confirmation process. I have, therefore, directed the Subcommittee staff to turn over all pertinent material to the committee.

The Subcommittee staff has met with Mr. Watt and he has been apprised of the material being made available to you.

Please feel free to give me a call on this matter or have your staff contact Mr. Les Fettig, Chief Counsel, for further details.

With best personal regards,

Sincerely,

LAWTON CHILES,

MEMORANDUM

JUNE 6, 1975.

To : Les Fettig.

From : Edward Roeder.

Subject : James G. Watt, Director of Bureau of Outdoor Recreation of Department of Interior ; contracts with Donald A. Thoren firms.

A list of points worth noting or following up follows. These should be regarded as allegations rather than statements of fact, since we have not as yet discussed them with Mr. Watt and Mr. Thoren. Nonetheless, these points are the fruit of more than two days of investigation, and we have supporting information for each of them. The several allegations for which no supporting information was found are not included.

(1) Thoren apparently is a close personal friend of Watt. We have been told that when Thoren came to Washington in the Fall of 1972, at Watt's request, he worked out of Watt's personal office at BOR and stayed at Watt's home. This would indicate that at least part of the proposal development work which led to the first Thoren contract was performed with special considerations and assistance from the government.

(2) The first contract, with a firm called D. A. Thoren & Associates, (#3-14-07-2) was awarded on November 6, 1972, for an amount not to exceed \$37,500. Through three subsequent change orders, the amount of the contract was ultimately increased to \$41,500. The contract was for management consulting, specifically the development of an MBO program for BOR.

(3) This contract was awarded without advertising or competitive bidding, by negotiation. The "Determinations & Findings" document which authorized the sole-source procurement was signed by Watt. (See copy, dated November 6, 1972.)

(4) The first contract was signed by Watt, as were two of the three change orders. We are told that it is unusual if not unique for the Director to sign contracts and contract modification at the BOR.

(5) We are told that the contract, and the idea for procuring the service of developing an MBO program for the BOR, both originated with Watt personally. (A subjective observation, based upon talks with several people within DOI: it is quite arguable that management improvement was needed for BOR, and that MBO programs are an acceptable way to accomplish this. The problem is this: Watt determined the need for management improvement, Watt determined that MBO was the way to meet it, Watt determined that the MBO program would be contracted out rather than done in-house, and Watt determined that the sole organization worthy of consideration for this contract was the firm of his friend, Thoren.)

(6) The second contract (# 4-17-07-2), awarded on May 13, 1975 in the amount of \$15,700 and later modified upwards to \$18,640, was signed by Stanley W. Hulett, Deputy Director of BOR. Hulett also signed the Determinations & Findings which authorized the sole-source procurement. While there was at least a *pro forma* removal of the contract award process from the personal actions of the director, there was again no advertising and no competitive bidding. Watt simply directed his deputy to arrange and sign the second contract. Further, the design of the first contract largely dictated that the second would go to the same contractor.

In a memo to the Division of General Law (corresponds to Office of General Counsel at other agencies), Hulett sought legal approval of the second Thoren contract, for work to "... conclude the managerial development program initiated by the Bureau last year with assistance from the Thoren firm ... Because ... the contractor possesses valuable knowledge of Bureau programs, employees, and management systems, we believe it appropriate to ... contract with the Thoren firm, which we believe to be uniquely qualified." In

response to that memo, the DOI attorney allowed the sole-source contract, but noted that "The Bureau should . . . be aware that negotiated procurement is to be competitive to the maximum practical extent. Here the Bureau appears to have locked itself into a non-competitive situation based upon prior agreements."

(7) Prior to award of the first contract, Watt was apparently told by Charles E. Carlson that the contract should be advertised and put out for bids. Carlson is a GS-14 "Management Operations Officer" within the BOR. Watt apparently ignored this advice, and Carlson apparently didn't push the point.

(8) There are no documents in the contract file other than Watt's Determinations & Findings statement that give any indications of the Thoren firm's background or qualifications to perform the work. Watt's finding on the firm's qualifications is contained in a single paragraph which reports that the firm specializes in management training and that the firm's clients "characteristically experience substantial improvements" in several areas. Watt says this finding is "based on prior personal experience and a review of the firm's record of achievements . . ." No description of the personal experience or the review process or the form in which the record of achievements was presented was provided. Thus, there is no record of the Thoren firm having made any claims about its capabilities.

(9) According to Watt, this has been his business relationship with Thoren and his firms:

As Deputy Assistant Secretary of Interior, Watt hired Thoren as a consultant "for a day or so."

In October, 1972, at the BOR, Watt gave Thoren a letter contract for \$1,050 for a three day seminar.

Watt gave D. A. Thoren & Associates the aforementioned contract referred to here and above as the first contract, without competitive bidding.

In December, 1973, BOR, Watt gave Thoren another letter contract of \$1,350.

Later in December, 1973, Watt gave Thoren another letter contract for \$2,450.

In January, 1974, Watt gave to Thoren still another letter contract for \$2,500.

In May, 1974, Watt gave Thoren the second major contract for Appraisal Involvement in Management (AIM).

(10) Watt arranged all of the above contracts for Thoren. Watt did so, he says, because Thoren is a friend and therefore he (Watt) personally knew Thoren to be competent. No efforts were made to engage in competitive bidding at any point.

NOTE.—This memo was revised after a two-hour meeting with Watt this morning. All of the above points were accepted by him as statements of fact, but Watt maintains that he has done nothing wrong. He says his signatures appear on the Thoren contract documents because he wanted to establish an audit trail reflecting his personal responsibility for the contracts. He says that the potential for conflict of interests—in appearance if not necessarily in legal fact—was discussed and considered prior to his decision to go ahead with each Thoren contract.

The first letter contract was awarded, Watt says, because he knew Thoren and knew of Thoren's ability. The subsequent major contracts and letter contracts were awarded to Thoren without competitive bidding, Watt says, because Thoren had developed familiarity with the BOR, its problems, personnel, and programs. Further reasons Watt gave for awarding each subsequent grant to Thoren without competitive bids were that Thoren had done a good job, and that Watt wanted to "stick with a winner."

Watt's primary concern, and our primary areas of discussion and potential disagreement, was not the *facts* of the above memo, but the *implications* or innuendo which he felt abounded in the memo and were unsupported by fact. In part, the memo has been adjusted to accommodate his concern. But it seems likely based upon our discussions this morning, that Watt would find innuendo in the memo as now written. I think the memo is a fair presentation of the situation, and so it is written to you as it is.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., November 27, 1972.

Memorandum

To: Management Operations,
Bureau of Outdoor Recreation.
Attention: Mr. C. Carlson.

From: Associate Solicitor, Procurement and Patents.

Subject: Proposed Award to D. A. Thoren and Associates; Legal Review.

The subject proposed contract and supporting Determination and Findings have been reviewed and found legally sufficient subject to inclusion in the contract of the following clauses:

1. Examination of Records by the Comptroller General. General Provision 10 of the SF-32 has been superseded.

2. Price Certification. Temporary Regulation 23 has been amended and should be deleted.

3. Payment of Interest. This is a newly required clause.

4. Notice of Maximum Permissible Escalation in Wage and Price Standards. This is a recent supplement to the provision in the proposal.

Copies of the aforementioned clauses may be found as Tabs 5, 12, 13, and Supplement II respectively of the enclosed Recent Contract Clause Amendments and Additions. Inclusion of these clauses will necessitate appropriate revision of Section 4, Related Documents of the contract as well as execution by the contractor of the revised document.

M. R. TIDWELL,
(For the Associate Solicitor,
Procurement and Patents).

Enclosure.

NOVEMBER 28, 1972.

Mr. DONALD A. THOREN,
D. A. Thoren and Associates,
Phoenix, Ariz.

DEAR MR. THOREN: The Solicitor's Office has asked us to update or modify certain clauses in the General Provisions in Contract No. 3-14-07-2. These clauses do not entail any substantive change in the scope, timing, dollar amount or performance required under this contract. In general, the changes represent a relaxation of the stringent restrictions imposed by Temporary Regulation 23, which has now been superseded, and which will be deleted from the contract.

Note that billings against this contract must bear the price certification contained in the Change order.

Please sign the enclosed Change Order No. 1 and return to this office no later than December 5, 1972.

Sincerely yours,

CHARLES E. CARLSON,
Management Operations Officer.

Mr. WATT. I also have, if you would be interested in having in the record, a memorandum probably dated yesterday commenting on these same things.

Senator STEVENSON. That is a memorandum from whom?

Mr. WATT. From the Solicitor of the Department of the Interior.

Senator STEVENSON. We would be glad to have that memorandum.

Mr. WATT. OK. If it would help your record.

I assume the materials you are putting in the record—is that the Roeder memorandum?

Senator STEVENSON. Yes.

Mr. WATT. Roeder was the consultant hired by that committee to do this.

Senator STEVENSON. Yes.

Mr. WATT. I think it would be proper that I also supply for your record, if you want the Roeder memorandum in your record, the answers to it. I obviously am not well pleased with that memorandum. When the GAO reports the facts, we don't contest the facts. The Roeder memorandum is something else that needs some answers.

Senator STEVENSON. Now, we have your answers, do we not, to the Roeder memorandum?

Mr. WATT. I'm not aware that you do or don't have them. If you do I would like to have them put in.

Senator STEVENSON. OK. They will be entered in the record——

Mr. WATT. OK.

Senator STEVENSON. And if you are suggesting additional answers——

Mr. WATT. I don't know what you have.

Senator STEVENSON. It's what you sent to the——

Mr. WATT. I have not sent those to your committee at all. I did give them to GAO.

Senator STEVENSON. I beg your pardon. We obtained them from GAO.

Mr. WATT. OK. I think that makes a complete story.

Senator STEVENSON. Well, if there is any doubt——

Mr. WATT. I'd like to look at them just to be sure you're right.

Senator STEVENSON. We'll make certain we have the right response, and if not we will keep the record open.

Mr. WATT. If that's what it is, I don't need to add any more. The record is there. I do have the Solicitor's opinion. If that would be helpful, I would like it put in the record.

Senator STEVENSON. It will be entered in the record.

[The documents referred to follow:]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., September 26, 1975.

Memorandum

To: James G. Watt, Director, Bureau of Outdoor Recreation.

From: Associate Solicitor, Division of General Law.

Subject: GAO Memorandum on Thoren Contracts.

This memorandum is in response to your request for a review of the referenced September 5, 1975, GAO memorandum and the two procurements cited herein.

Question 1 addressed by the GAO's Assistant General Counsel deals with two procurement issues, 1) the authority to negotiate contracts and 2) the need to synopsize procurements in the Commerce Business Daily.

The Assistant General Counsel goes to some length to point out that procurement by negotiation, rather than formal advertising, is authorized by statute and not agency memorandum. This obvious conclusion is not an issue as the contract records provided the GAO clearly indicate that the Bureau of Outdoor Recreation negotiated the subject contracts pursuant to statutory authority: i.e., the contracts and accompanying Determinations and Findings reference Sections 302(c) (4) and (10) of the Federal Property and Administrative Services Act of 1949, (41 U.S.C. 252(c) (4) and 10)). The real issue is whether proper authority existed for use of negotiation procedures. BOR's position was not challenged or even addressed. (See Question 2). The only point made in the memorandum was the minor point that Survey and Review's memorandum of October 31, 1969 was not in and of itself authority to negotiate.

As to the synopsizing requirements of the Federal Procurement Regulations, the Assistant General Counsel concludes that neither the statute (15 U.S.C. 637(c)) or the regulations (Federal Procurement Regulations) require the

synopsizing of personal or professional service procurements. The October 31, 1969, memorandum from the Director of the Office of Survey and Review indicates clearly that it was the Department's policy to not synopsize procurements for personal and professional services. You were, thus, following Department procurement policy.

A review of the points and issues raised in Question 1 leads us to reaffirm that there was no violation of procurement statutes or regulations.

Question 2 addresses the issue of whether BOR's contract documentation justifies sole source awards to the Thoren firm.

It must be understood that at the time of these procurements no Federal or Interior Procurement Regulation or any federal statute required a written justification for noncompetitive (sole source) procurement. The required written Determination and Findings authorizing negotiation under exception (10) was prepared. As such, it is not surprising that GAO's review of the written file did not produce a document stating the reasons for noncompetitive procurement.

It should be noted that a decision to make a procurement sole source is within the discretion reserved to the contracting officer. It has been held by the GAO that the decision of the contracting officer should not be disturbed unless abuse of discretion is clear from the written record, 44 Comp. Gen., 590, 593 (1965), B-166325, May 28, 1969. GAO found no such abuse and it is our opinion that there was none.

The Solicitor's Office reviewed both Thoren contracts prior to award. In both cases, we concluded that the procurement actions were legally sufficient. In the case of the second contract, our memorandum reflects that we specifically considered the issue of competition in the procurement. The language in our memorandum was, as explained to you, not a condemnation of the procurement but was solely to trigger your thinking regarding whether there should be *future* sole source awards.

Considering the fact (1) that at the time of the procurements no written noncompetitive procurement justification was required, (2) that the Contracting Officer must necessarily use his discretion in making the determination and, (3) that the Solicitor's Office found the procurement actions to be legally sufficient, we find it difficult to understand how the Assistant General Counsel at GAO could reach his conclusions. Discussions with the Solicitor's Office and your staff should have occurred before any final conclusion by GAO was placed in writing. The Assistant General Counsel's memorandum indicates that because of a lack of sufficient time he was unable to go beyond the written file supplied by their audit staff and to discuss the matter with Interior Department officials. This is regrettable in that we have had in the past a good working relationship with the GAO. We were quite surprised that these "legal questions" were not discussed with us at least informally as we had been assured would be the case by the auditors.

The GAO memorandum states that Interior's comments should be obtained if the memorandum is to be used officially. The fact that the GAO opinion was released as its official position without obtaining Interior's comments is most disturbing especially in light of the limitation on use contained in the memorandum itself. Should you find it necessary, we believe that the memorandum will suffice as a statement of the legal position of the Office of the Solicitor in this matter. Please advise if we can be of further assistance.

MOODY R. TIDWELL III.

SEPTEMBER 5, 1975.

Thru: Assistant Director, REDD—Frank V. Subalusky.

Associate General Counsel—Paul Shnitzer.

Assistant General Counsel—Richard R. Pierson.

NOMINATION OF JAMES G. WATT FOR SEAT ON FEDERAL POWER COMMISSION (RED6-50)

In connection with the pending nomination of Mr. Watt before the Senate Commerce Committee, you requested our views respecting the procurement procedures used by the Bureau of Outdoor Recreation (BOR), Department of the Interior in awarding contracts to D. A. Thoren and Associates and Thoren Consulting Group, Inc. The awards were made during Mr. Watt's tenure as Director, BOR.

Because of the time factors involved, we were unable to solicit the Department of Interior's official position on these specific legal questions. General informa-

tion concerning the contracts was provided GAO by the Bureau of Outdoor Recreation. Our answers are based entirely on this documentation. Should you choose to make official use of our response, we recommend that we first obtain the response of the Department of Interior.

Question 1. What was the legal effect, either on synopsisizing personal and professional procurements in the Commerce Business Daily or on the authority to negotiate for such services, of a memorandum from the Director of Survey and Review, Department of Interior, dated October 31, 1969, that views the synopsisizing of personal and professional services "unfavorably"?

Answer. The 1969 Director's memoranda presents no legal impediment to synopsisizing the specific procurements leading to the contracts awarded to D. A. Thoren and Associates and Thoren Consulting Group, Inc. on November 6, 1972 and May 13, 1974, respectively. Also, the memorandum did not constitute authority for the negotiation of a contract for personal and professional services. However, the relevant statute on this subject explicitly excepted professional services contracts from the general requirement for synopsisizing, and the pertinent regulation called for such publication only when it would be feasible, practicable and in the best interest of the Government.

Question 2. Does the documentation from BOR that you provided us justify two certain sole source awards made to the Thoren firms?

Answer. Clearly not in one of the two contracts.

Our answers are more fully explained in the attachment.

Attachment.

ATTACHMENT

Question 1. What was the legal effect, either on synopsisizing personal and professional procurements in the Commerce Business Daily or on the authority to negotiate for such services, of a memorandum from the Director of Survey and Review, Department of Interior, dated October 31, 1969, that views the synopsisizing of personal and professional services "unfavorably"?

Answer. On November 6, 1972, the Bureau of Outdoor Recreation (BOR) awarded a contract to D. A. Thoren and Associates. On May 13, 1974, BOR awarded a contract to the Thoren Consulting Group, Inc. Neither procurement was synopsisized in the Commerce Business Daily but each was in excess of \$5,000.00 and each resulted in a sole source award after negotiation.

An unsigned document entitled "Fact Sheet on Anonymous Charges" presumably prepared, judging from its terminology, by Mr. Watt states:

The memorandum also omits the fact that a Department of the Interior directive in effect at the time of these contracts, called for the direct negotiation of professional service contracts rather than synopsisizing in the Commerce Business Daily and inviting competitive proposals.

Our audit staff advises that the referenced "Department * * * directive" was a memorandum issued on October 31, 1969 by the Director of Survey and Review to the Heads of Bureaus and Offices. It concerned the use of the Commerce Business Daily for the dissemination of procurement information. After calling attention to the fact that the October 28, 1969 Federal Register contained GSA Bulletin FPR 13 and a statement of new policies and procedures concerning the use of the Commerce Business Daily, the memorandum continued:

* * * Your conformity with the proposed procedures is recommended except that the synopsisizing of procurements for personal and professional services is regarded unfavorably by the Department as an attempt to put a commercial aspect upon the employment of professional people whose codes of ethics do not countenance open competition such as is contemplated in the use of the Commerce Business Daily. The 'feasibility and practicability' referred to in paragraph 4(b) of the GSA Bulletin will be considered by the Interior Procurement Regulations Committee with regard to writing Departmental procedures."¹

¹ Paragraph 4(b) of GSA Bulletin FPR 13 states: "Procurement activities should be instructed to synopsisize procurements for personal and professional services when feasible and practicable for reporting in the CBD in the same manner as other procurement items. (Criteria as to the feasibility and practicability for synopsisizing such procurements will be governed by agency procedures.)"

We have found no regulations by the Department of Interior that address this matter.

The statutory basis for synopsisizing procurements is 15 U.S.C. 637(e), which provides:

It shall be the duty of the Secretary of Commerce, and he is empowered, to obtain notice of all proposed defense procurement actions of \$10,000 and above, and all civilian procurement actions of \$5,000 and above, from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily publication "United States Department of Commerce Synopsis of the United States Government Proposed Procurement, Sales and Contract Awards", immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements * * * (7) which are for personal or professional services * * *.

By January 1, 1972, some ten months prior to the awarding of the first Thoren contract, the Federal Procurement Regulations included the following requirement on personal and professional service contracts:

(b) Personal and professional services: Advance notice of procurement for personal or professional services shall be published in the Synopsis when it is feasible and practicable to do so and the best interest of the Government will be served. § 1-1. 1003-3, Title 41, Code of Federal Regulations (1972 Ed., revised as of January 1, 1972.)²

The same Federal Procurement Regulations requirement, stated in slightly different terms, is found at the same citation in both the 1973 and 1974 editions of the Code of Federal Regulations. The 1973 edition was revised as of July 1, 1973; the 1974 edition, as of July 1, 1974.

Neither the statute nor the regulation require the synopsisizing of personal or professional service procurements. Such procurements can be synopsisized, however, when publication of the procurement is determined by the contracting activity to be feasible, practicable or in the Governments' best interest. The October 31, 1969 memorandum, that recommends against synopsisizing personal and professional service procurements would not be a legal impediment to synopsisizing, since the procuring activity nevertheless could certainly determine in an individual procurement that the requisites stated in the regulation had been met. In this instance, Mr. Watt apparently considered the memorandum to indicate that the Governments' interest would not be best served by synopsisizing the procurements.

In our judgment, the reasons set forth in the Director's memorandum for restricting information to the public about an anticipated procurement are not convincing. See, for example, 41 C.F.R. 1-1.1003-3(C), which provides for the synopsisizing of Architect-engineer contracts where fees are expected to exceed \$10,000. However, the law did not place upon the Bureau any affirmative obligation to synopsisize the procurements in question.

The Director's memorandum also, in our view, did not constitute authority at any time for the negotiation of the Thoren contracts. Procurement by negotiation rather than by formal advertising is authorized by statute, 41 U.S.C. 252(c), and not by agency memorandum. The Director's memorandum may well have reflected the view that personal and professional service contracts should be negotiated on a noncompetitive basis, but it cannot be considered adequate justification of individual sole-source procurements.

Question 2. Does the documentation from BOR that you provided us justify two certain sole service awards made to the Thoren firms?

Answer. With regard to a contract awarded on November 6, 1972, the determination and finding executed by Mr. Watt in connection with this contract indicates that the subject matter of the instant contract was to be professional services. The finding goes on to state (1) that the firm of D. A. Thoren and Associates specialized in the training of top level managers by means of a management by objective concept; (2) that managers who have been afforded such training have experienced substantial improvement in efficiency, productivity and in the quality of their work; (3) based on Thoren and Associates' previous work, significant increases in the Bureau's productivity and responsiveness to the policies and goals of the administration were forecast.

² § 1-1.1003-3 became an effective part of the Federal Regulations, 41 C.F.R. on April 15, 1970. 35 Federal Register 3070, February 17, 1970.

Based upon these findings it was determined to negotiate on a sole source basis with D. A. Thoren and Associates.

As our office has indicated in the past, in examining the propriety of contracts such as these awarded under negotiated procedures, the agencies must obtain the maximum degree of competition permitted by the circumstances. See Winslow Associates B-178740, May 8, 1975; also see generally Piasieski Aircraft Corp., B-181913 June 27, 1975. Further, § 1-3.101 of the Federal Procurement Regulations provides:

(c) Whenever property or services are to be procured by negotiation, proposals shall be solicited from the maximum number of qualified sources * * * consistent with the nature of and requirements for the supplies of services to be procured * * *.

(d) Negotiated procurement shall be on a competitive basis to the maximum practicable extent.

The only bases for negotiating the contract with only one firm disclosed by the records you have provided us were that the firm had the ability to do the job, had done excellent work in the past and would produce the desired results for the Bureau of Outdoor Recreation. We have not been presented with any information which would indicate that Thoren was the only experienced firm capable of superior performance in this type of work. Indeed, the file document referenced as BOR Comments on the June 6 Roeder Memorandum indicate that there were in fact other firms capable of performing the services required, but that the Bureau decided, without the benefit of information it might have obtained by soliciting competitive proposals, that Thoren was the best qualified for the job. The presumed superiority of one among several admitted competitors is not a sufficient basis to avoid testing the presumption by inviting competition. Nor do we have any information indicating some other justification for sole-source procurement. In short, the documents before us do not present a reasonable basis for restricting the procurement to a sole source.

With regard to the second major contract awarded to Thoren's firm, we note that it was negotiated in accordance with 41 U.S.C. § 252(c) (10) (impracticable to obtain competition by formal advertising).

The Determination and Findings written by the Bureau of Recreation for the instant contract make the following findings:

(1) That the Bureau of Outdoor Recreation had a specific need for the services of a firm which specialized in the training of managers and supervisors in a management by objective system.

(2) The Thoren Consulting Group, Inc., specialized in this area and they had achieved substantial successes in the past in improving the efficiency, productivity and quality of work for their clients.

(3) Based on this past record of successful work both for the Bureau and commercial firms significant and continuing increase in Bureau productivity was projected.

The Findings also went on to state that the Thoren firm was uniquely qualified to perform this work for the following reasons:

(a) The firm had a history of successfully implementing management-by-objective programs;

(b) The work previously performed by the contractor for the Bureau was completed successfully and in most cases exceeded the expectations of Bureau management;

(c) The principals of the Thoren firm had worked with Bureau employees and had established meaningful relationships;

(d) No time would be lost in duplication of materials previously covered and the incidence of misunderstanding would be negligible if the firm were to have continued training managers and supervisors as begun in the previous year.

Based on the above noted findings, the Bureau concluded that the contract should be negotiated under 41 U.S.C. § 252(c) (10) with the Thoren Consulting Group, Inc., since (1) that firm possessed the unique capability to perform the work and was intimately familiar with the Bureau's managerial personnel and program as well as the sophisticated management-by-objective system used by the Bureau and (2) the training of executives, managers, and supervisors in the evaluation of employee performance and potential is based on objective criteria but the techniques and methods involved contain elements of art which *defy the drafting of details and specifications*. Indeed the D&F stated that the specifications for the work to be performed could be defined in writing in only a relatively general manner.

As noted above, the negotiation of a contract on a sole source basis is permitted where a reasonable basis exists for concluding that acceptable performance cannot be obtained from any other source. In this regard, the Bureau indicates in its D&F that the Thoren firm was uniquely qualified to perform these services. However, the file document referenced as BOR Comments on June 6 memo, while indicating that Thoren as the holder of the first contract had an advantage, also clearly indicates that there were in fact other firms capable of performing the services required and that the award of the first contract did not dictate that the second go to Thoren. Therefore, we do not believe that negotiation on a sole-source basis under § 1-3.201(a)(1) of the Federal Procurement Regulation, *supra* could be justified solely on the grounds of Thoren's unique capabilities.

The second basis cited as justification for the sole-source procurement was the inability to draft specifications. See FPR § 1-3.201(a)(13) *supra*. As set out in the D&F, the Bureau concluded that the required training program contained elements which defied the drafting of detailed specifications. Indeed, they determined that the work to be performed could be defined in only a relatively general manner. The applicable provision of the Federal Procurement Regulations upon which the Bureau is presumed to have relied indicates that the use of negotiation is permissible when it is impossible to draft adequate specifications or any other adequately detailed description of the required services.

The record presented to us does not provide any information upon which we can conclude that the BOR did in fact have the ability to describe adequately the job which it required in such detail as to permit any competition. However, we question the Bureau's implied position that it could not describe its needs sufficiently so that (1) the contractor could understand what to offer and (2) the contracting officer could assess whether the offered performance would satisfy the needs. Given a description meeting the standards of adequacy, the test is whether there is more than one source which can meet the Government's needs and is interested in submitting an offer. The offer which will best serve the agency's interests can then be established through the competitive process. We do not believe that it is consistent with the law or regulations to select a firm—without competition—for sole-source negotiation on the basis that it is *best* qualified or in a position to submit the *best* offer.

BOR COMMENTS ON THE JUNE 6 ROEDER MEMORANDUM

1. We are not sure what the inference of this point are. Watt and Thoren are friends. Watt requested Thoren to present a three day training program to the Bureau in October 1972. Because of identified needs, Watt and Thoren did spend considerably time after the training sessions in discussing capabilities, approaches, techniques and the scope of an MBO (Management-by-Objectives) program as related to Government entities. Conversations did take place in Watt's office and in his home during late hours at night in order to identify the complete needs of BOR. Thoren was given no compensation for the time he committed to these discussions.

2. The points made are basically true. However, the contract was not for management consulting, but rather for the development of an MBO program and its implementation through training, all of which resulted in an identifiable work product.

3. An accurate statement.

4. Watt did sign the documents. In small agencies such as the Bureau of Outdoor Recreation, the Director frequently signs matters when he has a personal interest in the program. In matters such as this, it matters not who signs the document—the Director is responsible and accountable.

5. We are not sure of the point being made in No. 5. As earlier stated, Watt is responsible for the Bureau's activities and ultimately for the decisions relating thereto. While Watt made the decision, he was eager that it be supported by his management team so that the new management programs being introduced to the Bureau would be successful. If broad support from the management team and by the employees would not have been given, these programs which turned out to be successful would have failed.

The Bureau did consider contracting with other entities within and without Government for carrying out the work. But in each instance, it was determined to go with a known quality so that success could be more predictable.

6. It is true that there was no advertising and no competitive bidding on this contract. This was a professional services contract which does not lend itself to formal advertising and competitive bidding. The regulations governing procurement by the Bureau of Outdoor Recreation contemplated that professional service contracts be awarded by negotiations rather than by formal advertising and awarded on the basis of the lowest bid. The first contract did not dictate that the second go to the same contractor. However, as a practical matter, the experiences gained by the professional services contractor did give him an advantage. One of the advantages was the credibility and confidence that the employee of the Bureau had vested in him because of his earlier successes. These factors no doubt influenced members of the management team and Watt in making the determination to again go with a successful developer and implementer.

Once the decision was made to go on the second contract, Mr. Hulett, the Deputy Director and frequently Acting Director, assumed responsibility for assuring that the contract was properly executed in conformance with the law and regulations.

The second paragraph of point No. 6 is correct and points out the changing standards that have been sweeping over Government in the last few years. No professional service contracts have been awarded by the Bureau of Outdoor Recreation since receiving that Solicitor's memorandum.

7. Point No. 7 is inaccurate and is denied by both Director Watt and Mr. Carlson. Regulations governing procurement by the Bureau of Outdoor Recreation contemplate that professional service contracts be awarded by negotiation rather than by formal advertising and awarded on the basis of the lowest bid. Mr. Carlson so advised Watt and, in addition, suggested consideration of other sources. The Bureau did consider other sources. We were looking for known competence, and the ability to interrelate with our management team. We were looking for competent persons who could develop management programs and help implement them through the training of our personnel. At each instance, members of the management team discussed all the alternatives, including the hiring of persons from the Department of the Interior, Civil Service Commission, and private management consulting firms. As to the private sector, staff and Watt gathered relevant information as to the capabilities, recent experiences of the Department, potential cost ranges, etc., of firms capable of providing the needed services. After evaluating these factors and weighing them against Government offered services, it was concluded that Bureau expectations could most effectively be met by Don Thoren & Associates.

8. This is basically a correct statement. The first letter of contract was awarded to Thoren and his associates based solely on personal knowledge that Watt had concerning Mr. Thoren's competency. The success of that training experience with the Washington Office of the Bureau of Outdoor Recreation was one of the factors taken into consideration by Watt in concluding that he was well qualified to handle the next contract. One success led to another.

9. This recitation of facts is accurate.

10. The innuendo of these statements is more than interesting. The facts are that Thoren was granted contracts because of personal competency. Thoren performed admirably with each and every contract. He was awarded the contract not because he was Watt's friend, but because he was a competent, experienced program developer and trainer. His professional services were needed. No efforts were made to engage in competitive bidding at any point because that is not the way that professional service contracts are handled within the Department of the Interior. They are negotiated. The Note suggests Watt accepted all of the points as statements of fact. That obviously is not true by reason of the earlier comments.

With regard to paragraph two of the Note, it is obvious that Watt did not stress the fact that professional service contracts are not the subject of formal advertising and competitive bidding. The statements presented in that paragraph are correct but are not broad enough in their nature in showing that the Bureau of Outdoor Recreation did not formally advertise and make the award on the basis of the lowest bidder.

FACT SHEET ON ANONYMOUS CHARGES

This is written in response to the letter and memorandum sent under date of June 9, 1975, to Senator Magnuson by Senator Chiles. The memorandum concerning anonymous allegations regarding some BOR contracts was written by Edward Roeder, a consultant to Senator Chiles' Committee and a former newspaper reporter.

Without "nit-picking," I want to point out the deficiencies of the memorandum, present a brief description of the facts as they relate to BOR-Thoren contracts, and, by attachment, comment on the specifics of the Roeder memorandum.

While the Roeder memorandum is carefully written so that no specific charges of wrongdoing or misconduct are made, it omits the fact that these professional service contracts were carried out within the laws, and regulations.

The memorandum also omits the fact that a Department of the Interior directive in effect at the time of these contracts, called for the direct negotiation of professional service contracts rather than synopsizing in the Commerce Business Daily and inviting competitive proposals.

Mr. Roeder has stated in his memorandum that "all of the above points were accepted by him (Watt) as statements of fact." That is not true. Several statements are misleading. Point number seven (7) is inaccurate and is denied by both Mr. Carlson (our Management Officer) and me. Regulations governing procurement by the Bureau of Outdoor Recreation contemplate that professional service contracts be awarded by negotiation rather than by formal advertising and awarded on the basis of the lowest bid. Mr. Carlson so advised me and, in addition, suggested we should consider other sources. And we did. We were looking for known competency, and the ability to interrelate with our management team. We were looking for competent persons who could develop management programs and help implement them through the training of our personnel. At each instance, we discussed all the alternatives, including the hiring of persons from the Department of the Interior, Civil Service Commission, and private management consulting firms. As to the private sector, the staff and I gathered relevant information as to the capabilities, recent experiences of the Department, potential cost range, etc. of firms capable of providing the needed services. After evaluating these factors and weighing them against Government offered services, we concluded that our expectations could most effectively be met by Don Thoren and Associates.

In June of 1972, when Secretary Morton asked me to take over the Directorship of the Bureau of Outdoor Recreation, he directed me to improve the management of the organization and produce the Nationwide Outdoor Recreation Plan which was then four years overdue to Congress.

This Bureau of fewer than 500 persons was staffed with bright, well qualified natural resource persons, but for the most part had not been well managed for several years. This was recognized by the Department. I was directed to get results.

In October of 1972, I invited a successful management consultant, who I had known for many years, to give three days of management training to the Washington Staff. He did an excellent job that was well received by BOR employees.

After long conversations with Thoren, members of the management team and members of the Secretariat, we decided to develop and implement an MBO (Management-by-Objectives) program within the Bureau. The personal services of a professional trainer were demanded. Thoren had established credibility with the BOR employees and they supported his involvement in the training process. I was advised that the costs were less or at least no greater than if we hired the Civil Service Commission to do the training. I was advised and believed that Thoren and his associates would probably do a much better job.

We implemented a model program that has received much favorable comment from Government officials and the National Press. The success of our MBO program was featured in the April 1974 edition of Government Executive magazine and the August 18, 1973, (Vol. 5, No. 33) edition of National Journal Reports.

In December of 1973, our professional personnel people recommended that we develop and implement an extension of the MBO program to provide for career employee development and the proper evaluation of employee performance. After considerable discussion, it was decided to hire Thoren to develop such a program. He knew the Bureau and he had proved his effectiveness. After I was personally satisfied, the recommended program (AIM) was a good investment, we decided to implement it.

Because of friendship with Don Thoren, I took special care to ensure that the decisions I was responsible for were not made in isolation and against the best interests of the Bureau. In addition, although not required, we asked the Office of the Solicitor to review the proposed major contracts. In both instances, the Solicitor's Office cleared the contracts.

This second thrust in our outside professional contracting was also successfully implemented. I am now advised by the professionals in Personnel Management that our program (AIM) is well received by other professional personnel officials in the Department of the Interior and Office of Management and Budget.

Results: Two thrusts—two successes. A good investment of the taxpayers' dollars that will save money for years to come.

The Roeder memorandum does not comment on our adherence to the regulations and law, nor the cost effectiveness of the programs, nor of the outstanding work realized by the efforts. It infers that BOR should not have contracted with Thoren—because Watt and Thoren were friends. Should we discriminate against competent professionals from small businesses because they know someone in a high position?

In contracting for professional services, within or outside Government, you are looking for competent, skilled, persons who can identify with your objectives and relate to your people. As with all decision-makers, I acted with the knowledge I had. I knew Thoren and his associates were good. And they proved that as they did their training. With hindsight, I see more documentation of our decision-making process would have been helpful. In final analysis, however, the results were good. We are proud of our accomplishments.

Because so many of these decisions which I am personally responsible for were discussed with members of the Executive Management Group and our lawyers, I have asked them to review this letter. They have done so. I stand ready to discuss these matters with you and your staff.

Senator STEVENSON. I'm sorry I was late. We have your financial statement I believe.

Mr. WATT. Yes, you do.

Senator STEVENSON. It will not be put in the record, but will be kept in the files as is the custom.

I don't know if this question was asked. It is a standard question. Do you have any economic interests which could conflict with your duties as a member of the FPC?

Mr. WATT. No; I do not, Senator. I think for the purpose of the record I need to be sure that my financial statement is amended. After getting clearance and even after the last hearing the Department of Justice raised questions about a mutual fund that I had and a municipal investment trust fund I had—\$3,000 and \$5,000, respectively. Those have been liquidated.

Senator STEVENSON. The committee has just received—

Mr. WYATT. OK. You have received it? Fine.

Senator STEVENSON [continuing]. A letter from the Justice Department dated September 25 which concludes that there are no apparent or potential conflicts of interest, with one possible exception. I have just seen this letter and I have not had a chance to study it.

Mr. WATT. I have not seen it so I don't know what they are referring to. As you can see by my financial statement it's not that grand. I'm willing to liquidate anything the committee asks that I liquidate. There's not much to liquidate, but whatever you ask for me to do I will do so.

Senator STEVENSON. I'm sorry. I haven't had a chance to read this either. Oh, I think it refers to the mutual fund shares.

Mr. WATT. If that's the reference, that has been done.

Senator STEVENSON. Mr. Watt, that I believe concludes it unless you have any additional statements you would like to make for the record.

Mr. WATT. I don't have anything, Senator.

Senator STEVENSON. We also have your written responses to the questions that were submitted to you, which also will be entered in the record.

Mr. WATT. Good.

Senator STEVENSON. Thank you.

Mr. WATT. Thank you very much.

Senator STEVENSON. The meeting is adjourned.

[Whereupon, at 12:10 p.m., the committee adjourned, subject to the call of the chairman.]



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