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NOMINATION OF RICHARD M. FREEMAN

GOVERNMENT
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HEARINGS

BEFORE THE

COMMITTEE ON

ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

THE NOMINATION OF RICHARD M. FREEMAN TO BE A MEMBER
OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY
AUTHORITY

SEPTEMBER 26, 28, AND OCTOBER 4, 1978

SERIAL NO. 95-H78

Printed for the use of the Committee on Environment and Public Works



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1978

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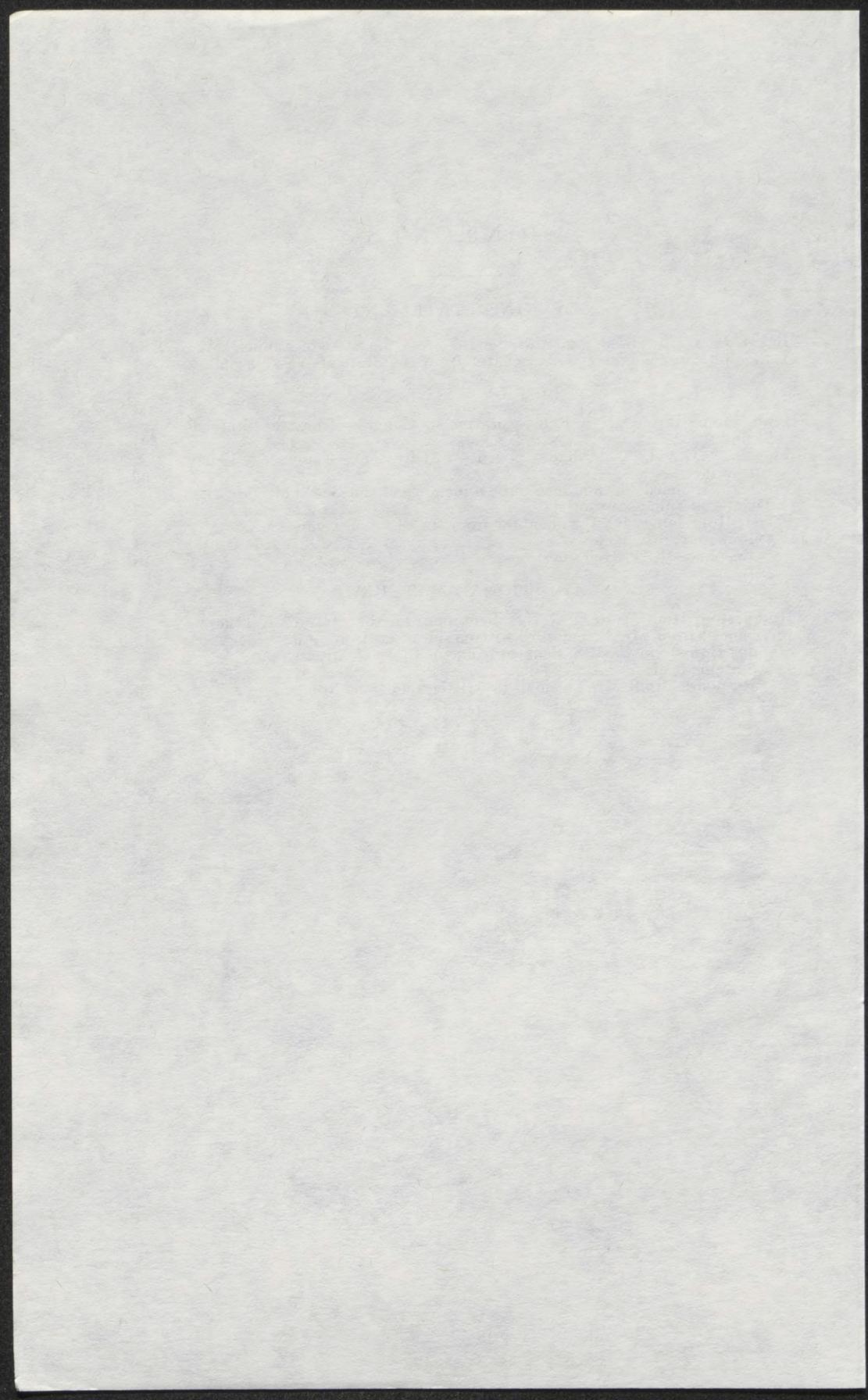
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NOMINATION OF RICHARD M. FREEMAN

TUESDAY, SEPTEMBER 26, 1978

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C.

The committee met, at 10:09 a.m., pursuant to call, in room 4200, Dirksen Senate Office Building, Hon. Jennings Randolph (chairman of the committee) presiding.

Present: Senators Randolph, Baker, McClure, and Chafee.

OPENING STATEMENT OF HON. JENNINGS RANDOLPH, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. Good morning, ladies and gentlemen. The committee this morning is meeting to consider the nomination of Richard Freeman to become a member of the Tennessee Valley Authority. This nomination, as we know, was submitted by the President, and it would be for the 9-year term which will expire in 1987. Aubrey Wagner, formerly holding that position, retired in May as the TVA Chairman.

Regretfully—and I underscore the word “regretfully”—there is but one member of the three-member Board of the Tennessee Valley Authority operating that important agency at the present time. In my personal opinion I think that such a Board should have the full complement of all of its members.

And so, we are going through these nominations very carefully as we have in the past; even on occasion not reporting the nominations of the White House.

But there is absolutely no partisanship in reference to the consideration of the nominations. Certainly not from the standpoint of the chairman, and I believe no member of the committee.

The Board of Directors of TVA has to have at least two members to qualify for a quorum and therefore the ability of that Board to function is impaired with only one member currently serving. As we know, the Tennessee Valley Authority, if not the largest, certainly is one of the Nation's largest utilities.

It is not of interest, but it is a remembrance of mine that I voted for the Tennessee Valley Authority, and I am the only Member serving in the Congress today who was there then.

There was controversy then about bringing it into being. The United Mine Workers of America were adamantly opposed to the Tennessee Valley Authority, feeling it would siphon off the use of coal and become the competitor through hydroelectric power. But that is in the past.

So the decision I took was not popular in certain quarters.

Mr. Freeman, would you come and sit at the table, please.

Mr. FREEMAN. Good morning, Mr. Chairman.

Senator RANDOLPH. Good morning.

The position for which you have been nominated carries with it not only policymaking but the management of the Tennessee Valley Authority on a day-to-day basis.

As the Director, you would have the responsibility for the around-the-clock operations of this giant electric utility.

There is in many quarters, understandably, a serious concern for our programs, or lack of programs, in energy and conservation. TVA certainly can be a very important factor as a leader in this specific area of energy conservation and the use of energy.

If you are confirmed by the Senate, after your nomination being reported by this committee you would be working on matters such as I have mentioned.

I think Senator Baker will make his own remarks, of course. He feels, as do I, the importance of the assignment that you, if nominated and confirmed, will have.

There are critical decisions, of course, not only in the conservation of energy but in the supplies of energy; and the raw materials used to produce electricity.

Senator Baker forgives me, at least publicly, when I talk too much about coal. But we have no problem there except to say, once again, it is our most abundant resource in America.

And under the energy measures that are now before us, and we hope going to pass the Congress as a package and/or part of a package—we already have the coal conversion situation in place—we are seeking to expand the use of this greatest of our fossil fuels.

I would urge, as I have urged others who sat where you sit, that as a member of the Board of Directors, you consider the availability, the marketability, and the consumer uses to which coal can be made. These will be very important decisions which we would be a part.

We will discuss with you today some matters necessary, your background, your expertise or qualifications, your dedication to such an assignment as the President has nominated you. And I think that it would be necessary to rather be definitive in your views. Although, at times, perhaps, that is impossible. But you do know the TVA and you know what the TVA was created for. You do know what has happened in its history, and you do know in your own mind what you think the future will be.

There is a mission for the TVA, as there was a mission at the outset and one that, frankly, has too often been sporadic in being carried forward.

Senator Baker, I know that you want to talk at this time.

**OPENING STATEMENT OF HON. HOWARD H. BAKER, JR.,
U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator BAKER. Mr. Chairman, thank you very much.

There are few issues that are of greater concern to me than the future of the Tennessee Valley Authority. It has a greater impact on the daily lives of people in Tennessee and the other valley area States than, I believe, any other agency or department of Government.

It regulates not only the cost of our fuel, in many cases the heat for our homes and the energy for our commerce and industry, but also the economic and industrial development of the region. The social consequences of TVA's operations over the past years have been extraordinary.

It has truly been a partnership effort and remarkably successful in its first 40 years of existence.

Mr. Chairman, I am pleased that today we have begun public hearings on the nomination of Mr. Freeman to fill a vacancy on the TVA Board. This is a vacancy created by the resignation of Aubrey Wagner, the former Chairman, former Board member, former General Manager, lifetime employee, virtually, of the Tennessee Valley Authority, and I believe a colleague of Richard Freeman.

While I have not yet reached a final judgment and determination on my vote in respect to the reporting of this nomination, I state now, as I previously stated to Mr. Freeman, that it is urgently important that we proceed with the confirmation of this nominee. Moreover, I urge anew that the President submit a name for our consideration for further vacancies as well.

A small Board and an agency of profound importance to the people of my region, make it imperative that we have at least a quorum at the TVA at this important time.

I am interested in knowing, Mr. Chairman, where we are going next.

While the accomplishments of TVA have been great, it is also abundantly clear that future direction of the agency will change, either as a result of changing circumstances or a change in policies. Of the two, the change in policy, obviously, is preferable.

I suspect that none of us fully understand the nature of the changes that will occur, but we can see now some of the factors that will affect the future policy of the agency. For instance, as the world's largest utility company, what is the future policy of TVA with respect to generation of power from hydroelectric sources, from fossil fuel and nuclear power?

What is the role of TVA with respect to the development of new and exotic energy sources? How much of the revenues of the resources or the appropriated funds to TVA should be committed to research and development? What is the role of TVA regarding development and demonstration of a breeder reactor, if there is a role for them to play?

What is the role of TVA with regard to regional planning, the evolution and development of new partnerships consistent with the modern units of Government? What is the position of TVA with respect to its ownership of vast amounts of property that are not now subject to ad valorem taxation, but rather are used only with compensation and voluntary tax payments prescribed in a general way by the act itself?

What is the view of TVA regarding the development of appropriate environmental protection devices? How about lime sand scrubbers for burning of coal solvents, refining and other techniques that I am not familiar with and the nominee has greater resourcefulness with than I do.

What other new systems can TVA examine regarding the creation of an energy system that will be socially and environmentally acceptable? What is the position of TVA regarding existing law, particularly statutes such as the Endangered Species Act? More narrowly focused and defined, what should be the TVA position with respect to the Culver-Baker amendment pending in Congress, which I believe creates a degree of flexibility in the Endangered Species Act?

What new projects and undertakings, and what new missions might TVA undertake? Has the agency grown old in the traces? Is TVA overbureaucratic? Does it require a new technique?

How do we assess the equity of the direct passthrough of increased fuel costs? What are fuel cost adjusters? What are the rate policies of the agency?

Have we reached the point where the Board itself is not an appropriate forum to set the rates? Should there be congressional oversight of the ratemaking power? Should there be congressional veto authority, as some have suggested in legislation—including my distinguished colleague Senator Sasser—of TVA policy that would substantially and severely impact on the people of our State. What is TVA's future role with respect to the Tellico Dam, the Columbia Dam, and other water conservation projects?

Mr. Chairman, all of these matters spell out a situation which clearly shows TVA to be at a crossroads. In many ways, TVA is beginning its second decade of development. Therefore, the examination of this nominee and the ones yet to follow is critically important to the welfare of the people of the Tennessee Valley region.

I approach the nomination with absolute neutrality. I hope that the nominee can give us as much detail as possible on his insight and views and philosophy affecting these and other issues. I hope he can speak with particularity.

I have spoken to Mr. Freeman previously, and we have had an opportunity to visit on many of the subjects that I have identified here.

Mr. Chairman, I look forward to these hearings. I think they will be highly useful, and I hope that we can proceed to the conclusion of these hearings at an early time.

I thank the Chair.

I will say one other thing. You mentioned I forgave you, at least in public, for your devotion to coal. I am devoted to coal, too, but I am also devoted to nuclear power. So I have a twin set of affections which I am sure the chairman does not begrudge me.

Senator RANDOLPH. No.

Senator BAKER. He has always insisted, though, that all nuclear plants should be heated by coal.

Senator RANDOLPH. I am cautious about the use of nuclear power. I make that statement over and over again. I am not in any way an expert in the field, but I am a constant student on the problem.

It is fraught with, as every question now is fraught with, so many concerns. We used to be able to say there are two sides to every question. And Senator Baker knows, as I do, that the two sides are not there anymore. There are just as many sides as there are parties and issues and concerns that never surfaced before.

Senator BAKER. I told the chairman that my wife is needlepointing a sampler for me which I am going to hang in my office. It says: "Some day someone will bring me a problem for which there is a solution."

Senator RANDOLPH. With the cooperation of Senator Chafee, we will have Senator James Sasser make his statement now. And this is very agreeable to the Senator from Rhode Island.

You can remain and just be comfortable.

STATEMENT OF HON. JAMES R. SASSER, U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator SASSER. Mr. Chairman, my distinguished and able colleague, Senator Baker, Senator Chafee, I want to first thank you for allowing me the privilege of testifying this morning.

This committee is considering the nomination of Richard Freeman to be the second member of the three-member Board of Directors of the Tennessee Valley Authority. This nomination is of particular importance because, if Mr. Freeman is confirmed by the Senate, the Board will have a quorum for the first time in 4 months.

This will mean that the Board of Directors of the Tennessee Valley Authority can transact business legally for the first time in 4 months. Since the business of TVA affects everyone in the Tennessee Valley area, it is important the member of the board be especially sensitive to the needs and problems of the people of the valley.

I would like to take a very few minutes to raise some specific concerns, which I hope the committee, and I am confident the committee will, explore in greater detail during this hearing.

With your permission and the members of the committee, I would like to submit questions to the nominee, questions for answers in writing.

Senator RANDOLPH. Yes, that will be permitted. (See p. 18.)

Senator SASSER. On August 1, 1977, in my testimony before this committee on David Freeman's nomination, I said that my most pressing concern is that TVA continue supplying electricity to the people of the valley at the lowest cost possible.

This, of course, remains my top priority. I have been looking for ways in which to decrease the amount or rate increases. I will continue looking for such ways, and I call on Mr. Freeman to lend his energies and best efforts to this priority matter for ways that lower or maintain rates. In my search, I have found one culprit in the rate increase situation.

I have discovered that one of the reasons that the rate for residential use of 1,000 kilowatt-hours has risen \$12.63 in 4 years, is that the automatic fuel adjustment clause has raised the rate by \$6.30 without public discussion or vote by the Board of Directors.

This is 50 percent of the total increase.

To cure this problem and to require an affirmative vote of the Board of Directors of the TVA before a rate increase may become effective. I have introduced S. 3503. The purpose of this legislation, and this bill, is to prevent any increase in the cost of power without a vote by the Board of Directors of TVA. It is my feeling that the Board should vote, up or down, on any change in electrical rates.

If the Board must approve every increase, it is my feeling that the Authority will take extra efforts to curtail costs and hold down rate increases. This bill is pending in committee, and I urge, Mr. Chairman, expeditious and favorable action.

While curtailing rate increases is my primary concern, there are other matters about which I am much concerned.

I am concerned that the Tellico Dam project be completed—and soon. The Endangered Species Act amendments which originated in this committee, sponsored by my able colleague Senator Baker, should help in this regard, but the commitment of the Board of Directors of TVA is necessary also.

And I might say, Mr. Chairman, I am advised that the snail darter is now flourishing and breeding in other habitats other than the waters of the Tellico Dam.

I am concerned that the Columbia Dam, for which Congress has this year appropriated \$26 million, be completed quickly and fully.

I am concerned that the TVA maintain its commitment to the Clinch River breeder reactor project.

I am concerned that the nuclear reactors now under construction be completed as soon as possible.

I am concerned that the TVA continue to cooperate, for the benefit of the people of this country, with other Federal and State agencies.

I am concerned that the TVA regain its traditional position as the yardstick for American utilities with regard to electrical rates.

But, most importantly, I am concerned that the TVA act at all times with compassion and effectiveness for the benefit of the people of the Tennessee Valley.

We need a new determination to ease the rate load on the back of the people of the Tennessee Valley and the area served by TVA.

Mr. Chairman, having said these things, I will submit questions, as I stated earlier, and ask that the committee request Mr. Freeman to respond.

I wish to thank the committee for its indulgence. I know that the decision it will make on this important matter will be fair, equitable. And I have every confidence in the members of this able committee to pose to this nominee those questions and propositions which, I think, will fully illuminate the great decision before us and the decisions of the Tennessee Valley Authority in the coming years.

Senator RANDOLPH. Were you going to submit in writing the questions, or do we have them here?

Senator SASSER. You already have my questions, Mr. Chairman, or you should have.

Senator RANDOLPH. Yes, we do have them.

Senator SASSER. Thank you very much.

Senator RANDOLPH. Are you necessarily asking this committee to ask these questions while you are present so that you might comment on them? We want to accommodate you, Senator, in this matter.

Senator SASSER. Mr. Chairman, I appreciate that.

And I might say, the chairman is known in the Senate for his willingness to accommodate all Senators. But in this case, and in the interest of saving time, I would suggest that these questions be submitted to the nominee in writing and he respond in writing.

Senator RANDOLPH. That is, I think, practical and agreeable, and it will be done in that manner.

And, Senator Sasser, this is not gratuitous to you and Senator Baker, but there are no members of the Senate that I think are more interested, and rightfully so. There are others, of course, who are going to follow very carefully what we do in reference to the present nominee.

Are you in agreement with the necessity of the President at the earliest possible moment, to nominate two additional qualified members to serve on the Board?

Senator SASSER. Yes, very much so, Mr. Chairman. My personal view, which I stated many times, is that the vacancy on the Board has existed for too long. And I am eager to see the Board up to strength and up to the legal strength as prescribed by law.

Senator RANDOLPH. I have no further comments except to say that we would want you, Senator Sasser, to continue to keep in contact with the committee in following these hearings and having reports from us of what is being done.

Senator SASSER. Thank you very much, Mr. Chairman.
Thank you, Senator Baker.

Senator RANDOLPH. Thank you.

[Senator Sasser's prepared statement and responses from Mr. Freeman to written questions follow:]

Statement of Senator Jim Sasser

MR. CHAIRMAN, MY COLLEAGUE, SENATOR BAKER, AND MEMBERS OF THE COMMITTEE, I WANT FIRST TO THANK YOU FOR ALLOWING ME THE PRIVILEGE OF TESTIFYING THIS MORNING.

THIS COMMITTEE IS CONSIDERING THE NOMINATION OF RICHARD FREEMAN TO BE THE SECOND MEMBER OF THE THREE-MEMBER BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY. THIS NOMINATION IS OF PARTICULAR IMPORTANCE BECAUSE, IF MR. FREEMAN IS CONFIRMED BY THE SENATE, THE BOARD WILL HAVE A QUORUM. THE BOARD CAN THEN TRANSACT BUSINESS FOR THE FIRST TIME IN FOUR MONTHS. SINCE THE BUSINESS OF THE TVA AFFECTS EVERYONE IN THE TENNESSEE VALLEY, IT IS IMPORTANT THE MEMBER OF THE BOARD BE ESPECIALLY SENSITIVE TO THE NEEDS AND PROBLEMS OF THE PEOPLE OF THE VALLEY.

I WOULD LIKE TO TAKE A VERY FEW MINUTES TO RAISE SOME SPECIFIC CONCERNS, WHICH I HOPE THE COMMITTEE WILL

EXPLORE IN GREATER DETAIL DURING THIS HEARING. WITH THE PERMISSION OF THE COMMITTEE, I WILL ALSO SUBMIT QUESTIONS (IN WRITING) TO THE NOMINEE.

ON AUGUST 1, 197⁷~~8~~, IN MY TESTIMONY BEFORE THIS COMMITTEE ON DAVID FREEMAN'S NOMINATION, I SAID THAT MY MOST PRESSING CONCERN IS THAT TVA CONTINUE SUPPLYING ELECTRICITY TO THE PEOPLE OF THE VALLEY AT THE LOWEST COST POSSIBLE.

THIS, OF COURSE, REMAINS MY TOP PRIORITY. I HAVE BEEN LOOKING FOR WAYS IN WHICH TO DECREASE THE AMOUNT OF RATE INCREASES. I WILL CONTINUE LOOKING FOR SUCH WAYS, AND I CALL ON MR. FREEMAN TO LEND HIS ENERGIES AND BEST EFFORTS TO THIS PRIORITY MATTER. IN MY SEARCH, I HAVE FOUND ONE CULPRIT IN THE RATE INCREASE SITUATION.

I HAVE DISCOVERED THAT ONE OF THE REASONS THAT THE RATE FOR RESIDENTIAL USE OF 1,000 KILOWATTHOURS HAS RISEN \$12.63 IN FOUR YEARS IS THAT THE AUTOMATIC FUEL ADJUSTMENT CLAUSE HAS RAISED THE RATE BY \$6.30 WITHOUT PUBLIC DISCUSSION OR VOTE. THIS IS 50 PERCENT OF THE TOTAL INCREASE.

TO CURE THIS PROBLEM AND TO REQUIRE AN AFFIRMATIVE VOTE OF THE BOARD OF DIRECTORS OF THE TVA BEFORE A RATE INCREASE MAY BECOME EFFECTIVE, I HAVE INTRODUCED S. 3503. THE PURPOSE OF MY BILL IS TO PREVENT ANY INCREASE IN THE COST OF POWER WITHOUT A VOTE BY THE BOARD OF DIRECTORS OF TVA. IT IS MY FEELING THAT THE BOARD SHOULD VOTE, UP OR DOWN, ON ANY CHANGE IN THE RATES.

IF THE BOARD MUST APPROVE EVERY INCREASE, IT IS MY FEELING THAT THE AUTHORITY WILL TAKE EXTRA EFFORTS TO

CURTAIN COSTS AND HOLD DOWN RATE INCREASES. THIS BILL IS PENDING IN COMMITTEE, AND I URGE EXPEDITIOUS AND FAVORABLE ACTION.

MR. CHAIRMAN, WHILE CURTAILING RATE INCREASES IS MY PRIMARY CONCERN, THERE ARE OTHER MATTERS ABOUT WHICH I AM CONCERNED.

I AM CONCERNED THAT THE TELLICO DAM PROJECT BE COMPLETED -- AND SOON. THE ENDANGERED SPECIES ACT AMENDMENTS WHICH ORIGINATED IN THIS COMMITTEE WILL HELP IN THIS REGARD, BUT THE COMMITMENT OF THE BOARD OF DIRECTORS OF TVA IS NECESSARY ALSO.

I AM CONCERNED THAT THE COLUMBIA DAM, FOR WHICH CONGRESS HAS THIS YEAR APPROPRIATED \$26 MILLION, BE COMPLETED QUICKLY AND FULLY.

I AM CONCERNED THAT THE TVA MAINTAIN ITS COMMITMENT TO THE CLINCH RIVER BREEDER REACTOR PROJECT.

I AM CONCERNED THAT THE NUCLEAR REACTORS NOW UNDER CONSTRUCTION BE COMPLETED AS SOON AS POSSIBLE.

I AM CONCERNED THAT THE TVA CONTINUE TO COOPERATE, FOR THE BENEFIT OF THE PEOPLE OF THE COUNTRY, WITH OTHER FEDERAL AND STATE AGENCIES.

I AM CONCERNED THAT THE TVA REGAIN ITS TRADITIONAL POSITION AS THE YARDSTICK FOR AMERICAN UTILITIES.

BUT, MOST IMPORTANTLY, I AM CONCERNED THAT THE TVA ACT AT ALL TIMES WITH COMPASSION AND EFFECTIVENESS FOR THE BENEFIT OF THE PEOPLE OF THE TENNESSEE VALLEY.

WE NEED A NEW DETERMINATION TO EASE THE RATE LOAD ON THE BACK OF THE PEOPLE OF THE TENNESSEE VALLEY AND THE STATES SERVED BY TVA.

MR. CHAIRMAN, HAVING SAID THESE THINGS, I WILL
SUBMIT QUESTIONS AND ASK THAT THE COMMITTEE REQUEST
MR. FREEMAN TO RESPOND.

I THANK THE COMMITTEE FOR ITS INDULGENCE. I KNOW
THAT THE DECISION IT WILL MAKE ON THIS IMPORTANT MATTER
WILL BE FAIR.

ATTACHMENT (QUESTIONS)

QUESTIONS SUBMITTED BY SENATOR SASSER

1. ARE YOU COMMITTED TO THE PRINCIPLE THAT TVA ELECTRIC RATES SHOULD BE AS LOW AS POSSIBLE, AND THIS INCLUDES EXPLORATION OF ALL POSSIBLE OPTIONS TO HIGHER RATES?
2. DO YOU FAVOR ABOLITION OF THE AUTOMATIC FUEL ADJUSTMENT CLAUSE, EITHER BY BOARD ACTION OR AS PROPOSED IN S. 3503?
3. ELECTRICITY RATE INCREASES HAVE PLACED A GREAT BURDEN ON LOW- AND FIXED-INCOME CONSUMERS, PARTICULARLY THE ELDERLY. WHAT OPTIONS ARE AVAILABLE TO THE TVA TO PROVIDE ASSISTANCE TO THESE PEOPLE AND TO ENSURE THAT THEY HAVE HEAT AND LIGHT?
4. DO YOU SUPPORT THE CONCEPT OF FULL AND OPEN BOARD HEARINGS ON ALL RATE INCREASES?
5. DO YOU FAVOR COMPLETION OF THE TELLICO DAM PROJECT AS ORIGINALLY PLANNED?

6. DO YOU FAVOR COMPLETION OF THE DUCK RIVER PROJECT,
AS ORIGINALLY PLANNED?

-7. THE DUCK RIVER PROJECT HAS BEEN DELAYED BY THE CORPS
OF ENGINEERS' "404" PERMIT APPLICATION REQUIREMENTS.
WHAT STEPS ARE AVAILABLE TO TVA TO EXPEDITE THIS
APPLICATION?

8. DO YOU FAVOR COMPLETION OF THE CLINCH RIVER BREEDER
REACTOR PROJECT? THE CONSTRUCTION OF THE TVA NUCLEAR
POWER GENERATORS HAS RESULTED IN MILLIONS OF DOLLARS
OF COST OVERRUNS. WHAT CAN BE DONE TO ELIMINATE SUCH
COSTLY OVERRUNS AND TO HOLD CONSTRUCTION COSTS WITHIN
CONTRACTUAL LIMITS?

9. WHAT ENERGY ALTERNATIVES DO YOU THINK THAT THE TVA
SHOULD PURSUE? THE CONGRESS HAS APPROPRIATED INCREASED
- FUNDS IN FY-79 FOR THE ENERGY DEMONSTRATION PROGRAM

TO ALLOW FOR ENHANCED SOLAR AND FLUIDIZED BED
DEMONSTRATION ACTIVITIES BY THE TVA. WHAT IS THE
APPROPRIATE ROLE FOR TVA TO PLAY IN DEVELOPMENT OF
ADVANCED TECHNOLOGIES SUCH AS THESE?

10. WHAT AREAS OF ENERGY RESEARCH DO YOU THINK WILL YIELD
THE MOST PRACTICAL RESULTS FOR THE PEOPLE OF THE
TENNESSEE VALLEY BY THE END OF THIS CENTURY?
11. ARE YOU COMMITTED TO AGGRESSIVE AND CONSUMER ORIENTED
PURCHASING PROCEDURES?
12. ARE YOU COMMITTED TO STRENGTHENING TVA'S PURCHASING
PROCEDURES WITH REGARD TO SMALL BUSINESSES?
13. THE EPA AND TVA HAVE PROPOSED TO SETTLE THE CLEAN
AIR LAWSUIT. WHAT IS YOUR JUDGMENT ABOUT THE NEED
TO SETTLE THE LAWSUIT AND THE NEED TO COMPLY WITH
FEDERAL CLEAN AIR STANDARDS?

14. THE BOARD CHAIRMAN, DAVID FREEMAN, HAS DISCUSSED THE POSSIBILITY OF TVA'S BUILDING A SPENT FUEL STORAGE FACILITY IN EAST TENNESSEE. WHEN PRÉSIDENT CARTER AND I VISITED TVA AND ORNL LAST SPRING, THE POTENTIAL FOR COOPERATIVE EFFORTS BETWEEN THE TWO WERE POINTED OUT TO US. WOULD YOU ENCOURAGE THE INTERACTION OF TVA WITH THE OAK RIDGE NATIONAL LABORATORY, AND DO YOU SEE WAYS OF INCREASING THE COOPERATIVE EFFORTS WITH ORNL?

RESPONSE TO QUESTIONS SUBMITTED BY SENATOR SASSER

1. ARE YOU COMMITTED TO THE PRINCIPLE THAT TVA ELECTRIC RATES SHOULD BE AS LOW AS POSSIBLE, AND THIS INCLUDES EXPLORATION OF ALL POSSIBLE OPTIONS TO HIGHER RATES?

Yes.

2. DO YOU FAVOR ABOLITION OF THE AUTOMATIC FUEL ADJUSTMENT CLAUSE, EITHER BY BOARD ACTION OR AS PROPOSED IN S. 3503?

I favor a review of the wisdom of the fuel adjustment clause. TVA must recapture, through its rates, all costs, including all fuel costs. But insofar as an automatic pass-through tends to make an institution -- public or private -- less alert to the need to control fuel costs, it can become undesirable.

3. ELECTRICITY RATE INCREASES HAVE PLACED A GREAT BURDEN ON LOW- AND FIXED-INCOME CONSUMERS, PARTICULARLY THE ELDERLY. WHAT OPTIONS ARE AVAILABLE TO THE TVA TO PROVIDE ASSISTANCE TO THESE PEOPLE AND TO ENSURE THAT THEY HAVE HEAT AND LIGHT?

The first option, of course, is for TVA to control its costs, which dictate the level of its rates; another option is for TVA, through technical assistance and loans, to permit low- and fixed-income people to install heat and light-conserving devices; ultimately, it is TVA's option to move into the forefront in cost-saving energy developments for the benefit of all its consumers, most certainly including those on low and fixed incomes.

4. DO YOU SUPPORT THE CONCEPT OF FULL AND OPEN BOARD HEARINGS ON ALL RATE INCREASES?

Yes.

5. DO YOU FAVOR COMPLETION OF THE TELLICO DAM PROJECT AS ORIGINALLY PLANNED?

Until I have had a chance to review in depth the issues raised by the joint TVA-Interior Department Study dated August 10, 1978, as well as the public responses to that study, I cannot make a determination on the Tellico Dam Project. I favor providing some flexibility -- a safety valve -- in the Endangered Species Act.

6. DO YOU FAVOR COMPLETION OF THE DUCK RIVER PROJECT, AS ORIGINALLY PLANNED?

I am not prepared to give a definitive answer to this question until I have had an opportunity to review all the facts.

7. THE DUCK RIVER PROJECT HAS BEEN DELAYED BY THE CORPS OF ENGINEERS' "404" PERMIT APPLICATION REQUIREMENTS. WHAT STEPS ARE AVAILABLE TO TVA TO EXPEDITE THIS APPLICATION?

The Corps should be pressed by every legitimate method to progress the application. Elected officials may be more effective than TVA in accomplishing this objective.

8. DO YOU FAVOR COMPLETION OF THE CLINCH RIVER BREEDER REACTOR PROJECT? THE CONSTRUCTION OF THE TVA NUCLEAR POWER GENERATORS HAS RESULTED IN MILLIONS OF DOLLARS OF COST OVERRUNS. WHAT CAN BE DONE TO ELIMINATE SUCH COSTLY OVERRUNS AND TO HOLD CONSTRUCTION COSTS WITHIN CONTRACTUAL LIMITS?

(a) This question cannot be answered definitively until it is clear what direction the Clinch River Breeder Project will take. I certainly favor effective federally supported research and demonstration in nuclear plant design;

whether that should be through the Clinch River Breeder Project as currently planned or through a different design will depend in large measure on the views of the Department of Energy and the Congress.

(b) Cost overruns are the inevitable result of delay. The most effective way to eliminate overruns is to complete the nuclear projects expeditiously; this requires good management, as well as the cooperation of other governmental bodies.

9. WHAT ENERGY ALTERNATIVES DO YOU THINK THAT THE TVA SHOULD PURSUE? THE CONGRESS HAS APPROPRIATED INCREASED FUNDS IN FY-79 FOR THE ENERGY DEMONSTRATION PROGRAM TO ALLOW FOR ENHANCED SOLAR AND FLUIDIZED BED DEMONSTRATION ACTIVITIES BY THE TVA. WHAT IS THE APPROPRIATE ROLE FOR TVA TO PLAY IN DEVELOPMENT OF ADVANCED TECHNOLOGIES SUCH AS THESE?

TVA should use the flexibility permitted it under the Act to pursue any and all energy alternatives which hold any promise -- including the so-called "soft energy" approaches -- solar, biomass, co-generation and others. Clearly, the fluidized bed is one reasonable demonstration for TVA to pursue. TVA can best do the demonstrating, as opposed to the research, which the Congress has assigned in substantial measure to the Department of Energy.

10. WHAT AREAS OF ENERGY RESEARCH DO YOU THINK WILL YIELD THE MOST PRACTICAL RESULTS FOR THE PEOPLE OF THE TENNESSEE VALLEY BY THE END OF THIS CENTURY?

I am tempted to let my imagination run in predicting future energy technology, but I believe it is prudent to refrain from doing so. Clearly, TVA should be in the fore-

front in identifying useful research possibilities.

11. ARE YOU COMMITTED TO AGGRESSIVE AND CONSUMER ORIENTED PURCHASING PROCEDURES?

Yes.

12. ARE YOU COMMITTED TO STRENGTHENING TVA'S PURCHASING PROCEDURES WITH REGARD TO SMALL BUSINESSES?

Yes.

13. THE EPA AND TVA HAVE PROPOSED TO SETTLE THE CLEAN AIR LAWSUIT. WHAT IS YOUR JUDGMENT ABOUT THE NEED TO SETTLE THE LAWSUIT AND THE NEED TO COMPLY WITH FEDERAL CLEAN AIR STANDARDS?

I believe (1) in the need to settle the lawsuit, and (2) the need to comply with Federal Clean Air Standards. Whether the precise settlement terms which I have reviewed in summary form are those which I would endorse depends on a much more detailed study I would have to make if I am confirmed.

14. THE BOARD CHAIRMAN, DAVID FREEMAN, HAS DISCUSSED THE POSSIBILITY OF TVA'S BUILDING A SPENT FUEL STORAGE FACILITY IN EAST TENNESSEE. WHEN PRESIDENT CARTER AND I VISITED TVA AND ORNL LAST SPRING, THE POTENTIAL FOR COOPERATIVE EFFORTS BETWEEN THE TWO WERE POINTED OUT TO US. WOULD YOU ENCOURAGE THE INTERACTION OF TVA WITH THE OAK RIDGE NATIONAL LABORATORY, AND DO YOU SEE WAYS OF INCREASING THE COOPERATIVE EFFORTS WITH ORNL?

I would encourage the interaction of TVA with the ORNL; the development of a spent fuel storage facility should be only a start in renewed cooperation.

Senator RANDOLPH. Senator Baker and I have both been told personally by Senator Stennis of Mississippi, that he wished to be present this morning. In fact, he was scheduled, as you will notice, as our first witness.

There is legislation for which he is responsible that keeps him in the Senate. He has indicated his intense interest in this nomination and in the work of the TVA. He will submit questions, and he will also have a statement, Senator Baker and I know, which will be filed.

He would like to have those questions analyzed by you, Mr. Freeman. And they would, of course, become a part of the printed record.

Mr. FREEMAN. That will be fine, sir.

[Senator Stennis' prepared statement and responses to written questions follow:]

STATEMENT OF SENATOR JOHN C. STENNIS BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, UNITED
STATES SENATE, SEPTEMBER 26, 1978

MR. CHAIRMAN and MEMBERS OF THE COMMITTEE, I appreciate the opportunity that you have extended to me to appear here today. I will make a brief statement and then I have some questions to be submitted to the nominee, Mr. Richard M. Freeman.

This Committee knows that it is difficult to overstate the importance of the Tennessee Valley Authority to the region which it serves and, indeed, to the country as a whole. I consider it to be a national asset and a national resource.

Its purposes include a unified program of resource development and supply of electric power in the Tennessee Valley region. It is the wholesale power supplier for about 160 local municipalities and cooperative electric systems serving about 2.5 million residential customers in parts of seven states. It also supplies power to serve Federal installations and industries in its area whose power requirements are unusual. In addition to its electrical power program, the activities of TVA include flood control, navigational development, fertilizer development, recreational improvement, and forestry and wildlife development.

From this it is seen that TVA has a broader objective than merely building dams, or generating power, or improving agriculture. This broader objective is to work with the people of the region to improve the quality of their lives and their standard of living.

The partnership between TVA and the people has paid handsome dividends. Today the per capita income of the region is nearly 80 percent of the national average. Not long ago it was less than one-half. Employment in industry is

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nearly five times what it was in 1933. As a result people no longer have to leave the region in search of work. The great out-migration that deprived the Southeast of more than three and one-half million people from 1940 to 1960 need not be repeated.

This economic, industrial and cultural development in the TVA area must be continued. It will be continued as long as TVA keeps providing an ample supply of electricity at affordable prices. This, as we know, is the very backbone of an industrial society.

It is my considered opinion that the Tennessee Valley Authority today is approaching a very important -- and perhaps critical -- crossroad. The course and direction which it will take hangs in the balance.

I say this because there are now two vacancies on the Authority's three-man board of directors. Mr. Richard M. Freeman has been nominated by the President to fill one vacancy but we do not know who will be selected for the other.

Certainly for the near term, and perhaps for the long run, the objectives, purpose and direction of TVA will be determined by the beliefs, policies and philosophies of these who fill the two vacancies on the board. This is of very great importance to the people of the regions. It is, of course, important to TVA itself because the two new board members will determine just where TVA goes and what it is in the future.

Therefore, I believe that, before the Senate acts on Mr. Freeman's nomination, it is entitled to know who will be nominated for the remaining vacancy. Only in this manner can we make an intelligent assessment of TVA's future course and direction. I feel very strongly about this and I hope that the Committee will agree.

I have previously written to President Carter expressing the same views that I have just outlined.

I have been familiar with the operations and the growth and development of the Tennessee Valley Authority for many years. It serves a significant portion of the State of Mississippi. It not only furnishes electricity for the residences and farms but it provides power for industrial users in Mississippi and in the portions of the other six states in which it operates.

I look upon it as a national institution and resource which is uniquely equipped to make a major contribution to the economic and industrial growth of the area which it serves. It has made such a contribution in the past and it is my hope that it will continue to do so in the future. As a matter of fact, it is my hope that its contributions in these areas will be increased, enhanced and diversified as the years go by.

I have had another reason to become familiar with TVA and its operations. Until last year I served as Chairman of the Public Works Subcommittee of the Senate Committee on Appropriations. In that capacity it was my responsibility for several years to conduct hearings on TVA's appropriated fund operations. This experience gave me a broad overview and a much more complete understanding of TVA and its widespread activities and operations.

With these remarks as a background, I have a few questions to ask Mr. Freeman. He and I have had an opportunity to meet and discuss his nomination and he knows that I have no personal objection to him. I do think, however, that we have an obligation to explore his general policy, philosophy and thinking about the present and future role of TVA. It is from this standpoint that I ask these questions. They are as follows:

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1. There has been some suggestion that TVA and the Valley should become a model for a low growth, non-energy intensive, post-industrial society. What are your views on this?

2. To state the question another way, if you should be confirmed, would you favor and work for a policy and course of action by TVA which would contribute to a realistic and aggressive program of economic growth and development in the area which it serves?

3. The needs of the environment are important, of course. However, human needs for food, housing, clothing and employment are important also. Sometimes these needs come into conflict. In such cases of conflict, how would you balance and rank the needs and how would you resolve the matter?

4. Energy conservation is important, of course, and is a necessary national goal. If overdone, however, it can strangle growth and development. Would it be your purpose to provide the leadership for a program which would balance the need for conservation with the need for growth and development which would result in a better life and standard of living for those who are served by TVA?

5. As I have said, TVA is a national institution. However, it exists primarily to promote and serve the welfare of the region and the people who reside there. Will the welfare and better of the region and its people be one of your prime objectives as a Member of the Board of Directors if you should be confirmed?

6. Private investment along the Tennessee River area was \$252 million in 1975 alone. This brought the total private industrial development since mid-1935 to \$2.8 billion. The industries involved employ well over 44,000 people. These industries and these employees cannot be abandoned to a no-growth or slow-growth policy. The progress will only continue if there is an enlightened, affirmative and constructive policy of growth and development. Would you give us your thinking on this?

7. In addition to the generation and distribution of electrical power, TVA has a number of other important programs with which I am familiar. One of these is its very valuable and productive National Fertilizer Development Center. The success of this program has resulted in it being said that most of today's fertilizers are based on technology developed as improved by TVA. What is your thinking on the future course of this program?

8. TVA also has an extensive forestry development program which has made a very valuable contribution to forestry in the region. What is your attitude about this?

9. You would join the TVA Board after the present Chairman has served for several months as the only Director. Historically, the TVA Chairman has been the main spokesman for the Board, and has played a strong leadership role. How do you see your relationship, as one of three TVA Directors, with the Chairman? Would you speak out on policy issues on your own, or should the Chairman enunciate policy? Do you believe, as a practical matter, that the Chairman will be the dominant member of the Board?

10. I would be interested in knowing the extent of your personal acquaintance with the present TVA Chairman. I raise the question because inevitably people have suggested that there might be a "Freeman axis" forming on the TVA Board, what with two Freemans on the Board, and since you and the Chairman were both members of the TVA legal staff some years ago.

11. As I understand it, you did not do extensive work on electric power matters when you were a member of the TVA legal staff. Do you see the three members of the TVA Board each specializing in specific policy areas--in your case, perhaps transportation--as was the case in the early days of TVA?

RESPONSE TO QUESTIONS SUBMITTED BY SENATOR STENNIS

1. THERE HAS BEEN SOME SUGGESTION THAT TVA AND THE VALLEY SHOULD BECOME A MODEL FOR A LOW GROWTH, NON-ENERGY INTENSIVE, POST-INDUSTRIAL SOCIETY. WHAT ARE YOUR VIEWS ON THIS?

I certainly do not believe that TVA and the Valley should become a model for a low growth, post-industrial society -- at least if that means some kind of an effort to limit or discourage economic improvement in the Valley area.

2. TO STATE THE QUESTION ANOTHER WAY, IF YOU SHOULD BE CONFIRMED, WOULD YOU FAVOR AND WORK FOR A POLICY AND COURSE OF ACTION BY TVA WHICH WOULD CONTRIBUTE TO A REALISTIC AND AGGRESSIVE PROGRAM OF ECONOMIC GROWTH AND DEVELOPMENT IN THE AREA WHICH IT SERVES?

I would regard it as mandatory to work for a policy and course of action which would contribute to economic growth and development of the TVA area.

3. THE NEEDS OF THE ENVIRONMENT ARE IMPORTANT, OF COURSE. HOWEVER, HUMAN NEEDS FOR FOOD, HOUSING, CLOTHING AND EMPLOYMENT ARE IMPORTANT ALSO. SOMETIMES THESE NEEDS COME INTO CONFLICT. IN SUCH CASES OF CONFLICT, HOW WOULD YOU BALANCE AND RANK THE NEEDS AND HOW WOULD YOU RESOLVE THE MATTER?

I indicated in my opening statement that I believe the TVA Act put the needs of development (food, clothing, etc.) and conservation together and challenged the TVA Board to harmonize the claims of this generation (development) with those of succeeding generations (conservation).

4. ENERGY CONSERVATION IS IMPORTANT, OF COURSE, AND IS A NECESSARY NATIONAL GOAL. IF OVERDONE, HOWEVER, IT CAN STRANGLE GROWTH AND DEVELOPMENT. WOULD IT BE YOUR PURPOSE TO PROVIDE THE LEADERSHIP FOR A PROGRAM WHICH

WOULD BALANCE THE NEED FOR CONSERVATION WITH THE NEED FOR GROWTH AND DEVELOPMENT WHICH WOULD RESULT IN A BETTER LIFE AND STANDARD OF LIVING FOR THOSE WHO ARE SERVED BY TVA?

As my answer to the question immediately above suggests, it would be my primary objective to harmonize the needs of conservation and development.

5. AS I HAVE SAID, TVA IS A NATIONAL INSTITUTION. HOWEVER, IT EXISTS PRIMARILY TO PROMOTE AND SERVE THE WELFARE OF THE REGION AND THE PEOPLE WHO RESIDE THERE. WILL THE WELFARE AND BETTER OF THE REGION AND ITS PEOPLE BE ONE OF YOUR PRIME OBJECTIVES AS A MEMBER OF THE BOARD OF DIRECTORS IF YOU SHOULD BE CONFIRMED?

Although being mindful of the fact that TVA is a national institution and that it relies in its non-energy activities on federal tax dollars, I would be faithful to the focus of the TVA Act on the welfare of the TVA region.

6. PRIVATE INVESTMENT ALONG THE TENNESSEE RIVER AREA WAS \$252 MILLION IN 1975 ALONE. THIS BROUGHT THE TOTAL PRIVATE INDUSTRIAL DEVELOPMENT SINCE MID-1935 TO \$2.8 BILLION. THE INDUSTRIES INVOLVED EMPLOY WELL OVER 44,000 PEOPLE. THESE INDUSTRIES AND THESE EMPLOYEES CANNOT BE ABANDONED TO A NO-GROWTH OR SLOW-GROWTH POLICY. THE PROGRESS WILL ONLY CONTINUE IF THERE IS AN ENLIGHTENED, AFFIRMATIVE AND CONSTRUCTIVE POLICY OF GROWTH AND DEVELOPMENT. WOULD YOU GIVE US YOUR THINKING ON THIS?

TVA must pursue an aggressive program of regional economic development.

7. IN ADDITION TO THE GENERATION AND DISTRIBUTION OF ELECTRICAL POWER, TVA HAS A NUMBER OF OTHER IMPORTANT PROGRAMS WITH WHICH I AM FAMILIAR. ONE OF THESE IS ITS VERY VALUABLE AND PRODUCTIVE NATIONAL FERTILIZER DEVELOPMENT CENTER. THE SUCCESS OF THIS PROGRAM HAS RESULTED IN IT BEING SAID THAT MOST OF TODAY'S FERTILIZERS ARE BASED ON TECHNOLOGY DEVELOPED AS IMPROVED BY TVA. WHAT IS YOUR THINKING ON THE FUTURE COURSE OF THIS PROGRAM?

I spent a large proportion of my time between 1948 and 1957 in advising with TVA's Chemical Engineering Division. TVA's fertilizer program was then important to the nation. I am certain that it should be even more so in the future.

8. TVA ALSO HAS AN EXTENSIVE FORESTRY DEVELOPMENT PROGRAM WHICH HAS MADE A VERY VALUABLE CONTRIBUTION TO FORESTRY IN THE REGION. WHAT IS YOUR ATTITUDE ABOUT THIS?

This is another one of the areas to which I was assigned between 1948 and 1957. TVA's forestry program has helped to change the face of the Valley's landscape, but the job is far from completed.

9. YOU WOULD JOIN THE TVA BOARD AFTER THE PRESENT CHAIRMAN HAS SERVED FOR SEVERAL MONTHS AS THE ONLY DIRECTOR. HISTORICALLY, THE TVA CHAIRMAN HAS BEEN THE MAIN SPOKESMAN FOR THE BOARD, AND HAS PLAYED A STRONG LEADERSHIP ROLE. HOW DO YOU SEE YOUR RELATIONSHIP, AS ONE OF THREE TVA DIRECTORS, WITH THE CHAIRMAN? WOULD YOU SPEAK OUT ON POLICY ISSUES ON YOUR OWN, OR SHOULD THE CHAIRMAN ENUNCIATE POLICY? DO YOU BELIEVE, AS A PRACTICAL MATTER, THAT THE CHAIRMAN WILL BE THE DOMINANT MEMBER OF THE BOARD?

I would expect to exercise my voting power with complete independence, relying on my experience, judgment, intelligence. I would hope that in most, if not in all, instances, the TVA can speak with one voice. When it cannot, I shall speak my mind in my own way. The history of the TVA indicates that the Chairman has not always been the dominant member of the Board.

10. I WOULD BE INTERESTED IN KNOWING THE EXTENT OF YOUR PERSONAL ACQUAINTANCE WITH THE PRESENT TVA CHAIRMAN. I RAISE THE QUESTION BECAUSE INEVITABLY PEOPLE HAVE SUGGESTED

THAT THERE MIGHT BE A "FREEMAN AXIS" FORMING ON THE TVA BOARD, WHAT WITH TWO FREEMANS ON THE BOARD, AND SINCE YOU AND THE CHAIRMAN WERE BOTH MEMBERS OF THE TVA LEGAL STAFF SOME YEARS AGO.

I first knew David Freeman when we both were with TVA in the mid-1950's. We have seen each other on occasion since 1957, as former TVA lawyers living in or visiting Washington would meet together from time to time.

11. AS I UNDERSTAND IT, YOU DID NOT DO EXTENSIVE WORK ON ELECTRIC POWER MATTERS WHEN YOU WERE A MEMBER OF THE TVA LEGAL STAFF. DO YOU SEE THE THREE MEMBERS OF THE TVA BOARD EACH SPECIALIZING IN SPECIFIC POLICY AREAS-- IN YOUR CASE, PERHAPS TRANSPORTATION--AS WAS THE CASE IN THE EARLY DAYS OF TVA?

Most of my work was in the resource development programs -- chemical, engineering, forestry, agricultural and navigation. In the latter years, however, I assisted in developing alternatives to federal tax funds to finance TVA's power program. I do not favor each of the members specializing in specific policy areas and, in any event, I would not limit my interests to transportation.

Senator RANDOLPH. Would you like to add to that?

Senator BAKER. Mr. Chairman, I have a communication from Congressman Harold Ford that I will submit at a later point in the proceedings.

I also communicated with each member of the Tennessee House delegation who have suggested certain areas of inquiry, which I also will cover in the course of interrogation.

Senator RANDOLPH. Thank you.

So there will be for the record the comments and the position of many, many Senators, apparently, and Representatives, in reference to your nomination.

We are ready, Mr. Freeman, for you to make a statement in your behalf.

STATEMENT OF RICHARD M. FREEMAN, NOMINEE TO BE A MEMBER OF THE BOARD OF DIRECTORS, TENNESSEE VALLEY AUTHORITY

Mr. FREEMAN. I am pleased, Mr. Chairman, to have this opportunity.

And I have listened intently to the remarks you made, and the remarks that Senator Baker made, and you may be sure I will take those remarks quite seriously.

I was born in Crawfordsville, Ind. My lineage on one side is Baptist-Democratic, and on the other side is Methodist-Republican.

And I am not trying to straddle the fence, and I will say, with due reference to the Republican leader, I am a Democrat.

Senator BAKER. I find that information startling in the extreme.

Senator RANDOLPH. It will only slow you down for 20 seconds.

You said you were a Baptist; is that right?

Mr. FREEMAN. Yes, sir. On my mother's side, I am Baptist-Democrat.

Senator RANDOLPH. What is the other side?

Mr. FREEMAN. Republican-Methodist.

Senator RANDOLPH. Which has been greater for you?

Mr. FREEMAN. Well, on the religious side, I am a member of an interdenominational church.

Senator RANDOLPH. I am a Baptist, my wife and our two sons are Episcopalians. I have discovered that is a much more expensive religion.

I am sorry would you proceed.

Mr. FREEMAN. I am afraid I am responsible for the digression.

I spent the first 22 years of my life in Indiana, attending the public schools and Wabash College. After the outbreak of World War II, I joined the U.S. Navy, in which I served as an officer aboard ships in the Atlantic and Pacific theaters. Following the war, I enrolled in Columbia University Law School, graduating in 2 years under an accelerated program.

In early 1948, I succumbed to the blandishments of Joe Swidler, then General Counsel of the Tennessee Valley Authority and joined TVA's Division of Law.

During much of the 9 years I was with TVA, my assignments were directed toward the resource development activities; that is, the agricultural program, the forestry program, the chemical engineering program, and the navigation program.

It was in the latter context that I became quite familiar with the work of Aubrey. We called him "Red."

In the latter years, I was assigned to assist in developing alternatives to Federal tax funds to finance TVA's power program.

In 1957, I left TVA to join a law firm in Chicago which was engaged in administrative law practice. Our firm represented barge lines, motor carriers, railroads, and industries, which had transportation legal problems.

During a good portion of the 10 years I was with the firm, which became Belnap, Spencer, Hardy, and Freeman, I was engaged in handling for the Middle West railroads their interests in the *Trans-continental Divisions* case before the Interstate Commerce Commission,

At that time, the case was one of the largest, in terms of money and longest on record.

In 1967, I joined the Chicago & North Western Railway Co. as vice president-law. When it became clear in 1969 that the principal owners of the railroad wished to sell the railroad and retain their nonrailroad interests, the then president of the railroad, Larry Provo, and formed a corporation to buy the rail assets.

After long negotiations, culminating in a contract of purchase and after approval of the Interstate Commerce Commission, our corporation was authorized to purchase the assets of the railroad.

In June 1972, we offered common stock in the corporation we had formed to all the railroad's employees. Some 1,000 employees purchased stock and the new company began business on June 1, 1972, as the only employee-owned railroad and the largest employee-owned corporation in the United States.

I serve this company as one of three trustees who will, until June 1, 1982, vote all of the common stock. In our 6½ years of corporate existence, we have made money in all but the deep recession year of 1975, while the other two large railroads in the Midwest have gone into reorganization.

It was also during this period, from about 1969 to 1975, that I helped formulate plans for and promoted creation of a regional public transportation agency to assume responsibility for the movement of people within the Chicago metropolitan region. Such an agency, the Regional Transportation Authority [RTA] was authorized by the State of Illinois some 3 years ago. Students of the TVA Act who read the RTA Act will recognize some familiar clauses.

I appear before you today to seek your approval for another turn in my career. As a 27-year-old attorney, I went to work for TVA because I believed in the—to use the words of the act—"feasibility and wisdom" of the TVA Act. I wish to return for the same reason. Possibly I can best explain where I come from—give you my approach—by stating what it means to me to express fealty to the TVA Act.

It means to me a belief in the integrated development of the Tennessee River Valley—that implies more than merely a series of dams on the Tennessee River and its tributaries. An integrated development required and requires that the needs of navigation, flood control,

power generation, and other purposes be brought into a harmonious relationship.

It means to me the production and sale of electric power, again in the words of the act, "at lowest possible rates," and, stated again, "at rates as low as are feasible." The emphasis by repetition in the act is not lost on me.

It means to me the demonstration of the "proper use, conservation and development of the natural resources" of the region.

It means to me the research and development in new fertilizers—the operation of the Nation's fertilizer research and development facility—but going beyond the usual research and development function to the demonstration of the practical application of fertilizers on the farm as part of an integrated farm conservation and development program.

It means to me the encouragement through experimentation and demonstration of reforestation and the proper use of marginal lands.

And it means to me the encouragement through demonstration of the recreational resources of the Tennessee Valley Authority.

But there is something larger in the TVA Act that ties all these pieces together. It is the recognition that there must be harmony between conservation and development.

It is almost as if the drafters of the act in 1933—the principal one, of course, being the great Midwestern Senator—this time, a Republican, George Norris—anticipated the environmental concerns that have occupied so much of our national attention in the 1960's and 1970's.

There is more than an implication in the TVA Act that conservation, an old-fashioned term that reflects many of the environmental concerns, and development can and must live side by side. I doubt that it is a coincidence that the act uses words of "development" and words of "conservation" in almost equal number. The drafters of the act mandated that the TVA Board help to find and demonstrate ways, in the Tennessee Valley at least, for man to develop—improve his or her economic lot—and do it in harmony with nature.

So, while TVA may largely have completed its integrated river development, for which it has received worldwide plaudits, it has not completed the job of encouraging economic development in harmony with nature.

The TVA region, while much ahead of its position in 1933, still lags behind the rest of the Nation in economic well-being. Per capita income in the TVA region was only 45 percent of the national average in 1933; it was 77 percent in 1975, the latest date for which data are available. Although an important improvement over 41 years, the level of economic well-being is still unacceptable, to me at least.

And while tremendous progress in controlling soil erosion has been made, one need only travel through the valley, as I did 2 years ago, to see that the job is far from complete.

The energy issues confronting TVA place this imperative for harmony between man and nature—conservation and development—environmental protection and energy production—in sharp focus. In concrete terms, the TVA area must have abundant energy, as Senator Sasser so clearly indicated, produced in a way which does not improperly foul the environment and at a cost which does not stifle economic development and overburden the region's people.

I am not in a position to judge whether the TVA Boards of the past 20 years have paid attention to this imperative, or whether they have

acted wisely. My interest is in looking ahead to the opportunity to deal with the issue which goes to the heart of what TVA is all about. It will take all the creative imagination, good judgment and aggressive followthrough that the TVA can muster to search out and effect a harmonious relationship between conservation and development. I am prepared to dedicate whatever talents and experience I have to this assignment.

I conclude by quoting from a letter I recently wrote to a leading citizen of the valley who had expressed to me his concern when a news article indicated, to use his words, that I "may not state fully (my) philosophical position," until after confirmation. I responded:

I agree with you that it is important for the people of the valley to know my attitude toward continued growth, the cost of pollution control and the cost of energy. I have no reluctance about stating my "philosophical position" before confirmation.

I can best sum up my philosophy by saying that I expect to take the oath "to faithfully and impartially perform the duties imposed" under the Tennessee Valley Authority Act without any reservations. To me that oath means a pledge, in the words of the act, to support "the physical, social, and economic development" of the TVA area. This admonition to the Board bears directly on the power program and means a commitment to the production of energy.

The Act also is explicit that the Board must fix power rates "as low as are feasible." Again, I accept that charge with full understanding of its significance to the Valley.

I simply cannot imagine the TVA Board finding itself with the limited choice you pose—

And the choice posed was—

"between energy production and environmental protection." If it comes to that, I expect the world condition will be such that this choice will make little difference.

Finally, I was in the valley long enough—some 9 years—to learn to love the area and its people. When I assume responsibility as a member of the Board, I expect to listen to the people of the valley who are, as you say, at least some of the "stockholders" of the TVA.

I am pleased, in conclusion, to have this chance to answer questions which members of this committee may wish to put to me.

Senator BAKER [presiding]. Mr. Freeman, thank you very much.

The chairman was called away, necessarily, for a brief time and in his absence I will proceed with a few questions.

Some of the items that are of concern to me that I identified in the opening statement, you and I have already had an opportunity to discuss. I would like to go over them again, if you don't mind, and see how we can illuminate that question and discuss our respective views.

The first one, of course, has been mentioned, not only by me but by Senator Sasser as well. And that is the cost of electricity. Of all the issues, I believe, in the valley, that is clearly the most important one—the price of electricity.

And the Tennessee Valley rates—that is, the wholesale rate—has increased almost 350 percent since 1967. The figures I have here are that the wholesale rate was 4.28 in 1967. In that 10-year period, the wholesale rate has gone up by almost 350 percent. That is an extraordinary dislocative effect on the average budget. We had hearings in this committee not long ago, under the chairmanship of Senator Randolph, to try to understand the social and economic impact of those rate increases. We had witnesses here who could not pay their bills. Two-bedroom houses that had \$200-a-month electric bills. That is bad, and especially when part of the mission of TVA over the years to encourage low electric power for home heat.

Senator RANDOLPH [presiding]. Could I interrupt? I wouldn't want to, personally, except for a matter of illustration.

The most recent electric bill Mrs. Randolph and I received was \$240. The home is rather modest. It causes one concern, as you can understand.

Thank you for allowing me to speak.

Senator BAKER. Mr. Chairman, I explained you were necessarily called away from the table for a moment, and I will proceed.

Since you had an opportunity to return—

Senator RANDOLPH. You go ahead.

Senator BAKER. What I was about to say was to ask this in three parts.

First, in view of that extraordinary increase in the cost of electricity in the Tennessee Valley area, do you have any idea, any recommendations, any points of view which you can share with us on how that increase can be contained or even reduced?

Mr. FREEMAN. As some of the comments of Senator Sasser indicated and, as you well know, a good part of the reason for that increase is the cost of fuel. And that, of course, raises the very basic question whether TVA should do as many of the utilities do and as it has done historically and simply passthrough the fuel increases.

That clearly is a matter that must be reviewed by the Board. I would propose to address that question early on.

As you know, Senator the TVA Act required the Board to see that all the costs of the production of electricity are fully covered and to make payments to the U.S. Treasury to pay for some of the past appropriated funds.

But the basic question is how can TVA produce power at a lower cost. And in large measure, that is an issue of fuel. It also is an issue of efficiency.

Certainly another one of the reasons for the increase in cost has been the delay in completing some of the nuclear plants that are in process. Certainly one of the first jobs that I would see as a member of the Board is to review some of the reasons for the apparent slowness in completion of construction, and do everything I can to see that those plants which are in process are completed expeditiously.

We are paying interest costs—excuse me for saying “we”—the TVA is paying interest costs, in effect, and receiving no revenue. That has to be passed on to the ratepayer.

So in sum, in the final analysis, the only way the cost of electricity can be kept low is by reducing the cost of producing the electricity through measures of efficiency. That means intelligent buying of sources of fuel. It means expeditious and efficient construction, it means paying attention to all of those elements that go into cost.

That is an area I think I know a little bit about, and to which I would hope I could bring some experience to bear.

I would be remiss if I didn't add that one of the ways to reduce the cost of electricity to the consumer is, of course, to conserve. It is my understanding that the TVA has embarked on such a program, and I would hope that we could give that kind of program additional prominence.

Senator BAKER. Mr. Freeman, I have two other questions—you have touched on both of them in a way—I would like to pursue a little further.

Specifically, do you have any recommendation on how the rate structure might be modified in order to give a more favorable treatment to residential consumers, or do you agree there ought to be more favorable treatment to residential consumers?

Mr. FREEMAN. The TVA Act requires that preference be given to residential and domestic use of electricity. I am not that familiar with the structure in its relationship between the industrial rates and the domestic rates to know whether or not it is due for a change or not.

As you well know, the balance is not only in that narrow sense entirely. Anything that raises industrial rates can be a factor in discouraging industrial development—discouraging industrial development of a nature that requires electric power.

So that one must be aware of the impact of power to economic development, which is also one of the mandates of the TVA Act.

The short answer to your question is: I do not know whether that relationship is proper today. I certainly agree that is a relevant issue and one that should be reviewed very quickly.

Senator BAKER. In reviewing it, would you consider the so-called upside-down rate concept?

Mr. FREEMAN. Well, the short answer to that is, certainly, I would consider that, because I would consider everything. I am not certain that that is the way to achieve conservation. I think it has some unfortunate results in human terms.

More rewarding, I think, if the problem can be resolved of the cost of metering, is not upside rates, but attempting to scale the rates by time of day.

But as I am sure you are aware, that causes problems with respect to measuring time of use. I don't discount offhand upside-down rates, as you say. But I think that has to be looked at with some care in terms of the impact in human terms.

Senator BAKER. In terms of your views on the fuel adjustment concept, you have indicated already in your testimony that you plan to examine that concept.

Is it your view that is or is not an equitable way to treat increased cost of fuel?

Mr. FREEMAN. Well, the cost increase of a fuel must be passed through, if it is a necessary increase in cost. I think that the concern, as I understand it, that has been expressed about the automatic passthrough is it causes any utility, whether it is TVA or whether it is a private utility, to be careless and less cost-conscious than it might otherwise be if there were no such automatic—

Senator BAKER. It really sort of amounts to modern-day cost-plus arrangement?

Mr. FREEMAN. Yes, precisely. And the concern is that does not encourage efficiency.

Senator BAKER. Do you agree with that?

Mr. FREEMAN. I think there is great merit to that concern.

Senator BAKER. Is it your intention to examine the propriety of the automatic fuel adjustment concept if you become a member of the Board?

Mr. FREEMAN. It is.

Senator BAKER. I gather from what you said, that you are at least critical of it—well, that is not quite right. You at least have concerns about it.

I infer from that, Mr. Freeman, that there is some likelihood that you might want to consider other alternative ways of diffusing the cost of fuel rather than passthrough?

Mr. FREEMAN. Every possible way of controlling costs, whether construction costs, whether they are fuel costs, whether they are the level of staff costs, ought to be reviewed. And every incentive should be given by the Board to its own people and, indeed, by the Congress, to be sure we keep our costs low. And that is, indeed, a direction to the Board in the TVA Act.

Insofar as the fuel adjustment, the automatic passthrough clause tends to get in the way, something should be done about it, if that is the case.

Senator BAKER. How do you feel about suggestions sometimes made that TVA has outlived its ability to regulate its own rates and instead rates should be established by some other outside independent agency?

Mr. FREEMAN. Well, I think I can answer that dispassionately, because I am not yet on the Board, and I think I would have given the same answer 5 years ago.

I think it would be a mistake to superimpose on the TVA Board another agency that would have a regulatory function. Indeed, in economic affairs, you won't be surprised when you hear me say that I am not certain that economic regulation works very well in any area of our economy, and especially in the case of a governmental agency where the problem is clearly not one of excessive profit, but one of is the agency cost-conscious and as efficient as it should be.

I think regulation which is essentially negative cannot be effective. The only way TVA's rates can be kept down is to keep its costs down. And you keep its costs down by having good management, and not by having the kind of negative regulation that comes with any kind of an oversight function.

That is not to say that I do not think that it is appropriate for this Congress to review what the TVA does. That is a function that Congress has exercised from time to time. Certainly it did in the days I was there.

Senator BAKER. TVA has, I believe, a fairly unique set of contracts with its distributors, municipal distribution systems, co-ops, and I believe in one or more cases, private power companies.

One of the provisions of those contracts is the sole-supplier provision. Not only is there a sole-supplier provision, but in the contracts themselves, TVA retains the right to approve or disapprove of rates and investments.

How do you feel about that, in light of today's circumstances? Do you feel, for example, that TVA ought to consider changing those concepts to permit local cogeneration of electricity, or the purchase of electricity, of electricity by local distributors from other sources?

Mr. FREEMAN. I think that in the large sense, in the overall that is—I am not excluding in my answer that there could or should be exceptions—I do believe that the basic contract should not be changed. I think that it is necessary if we are going to achieve the kind of cost consciousness, cost savings which you and I were discussing, that TVA have an integrated system. And that means, of necessity, that somebody has to be the integrator, and that, of course, is the TVA.

Now, there can be exceptions to that. I don't know whether there have been in the last several years. There could be exceptions, but,

basically, I think the structure which requires or permits the TVA Board to control the basic actions of the distributors is——

Senator BAKER. I know of one case in one city where there is an active proposal, I believe, for a steam plant primarily to sell steam and steam service to others in the area. It seems on the surface to be highly attractive to have a certain degree of generating capacity. This, I believe, would be a typical example of cogeneration arrangements.

Would you look favorably on such a proposition if it were made, or would you feel it unduly changed the fundamental relation between TVA and its distributors?

Mr. FREEMAN. I do not exclude the possibility of arrangements of that nature. And, indeed, I would think that one of the advantages of the flexibility that the act gives the Board, looking ahead to some of the needs, some of the opportunities for experimentation and demonstration, would be using various of the distributors who are interested in various kinds of different approaches to the energy problem to do so.

I guess I come down pretty heavily on the side, however, that that should be part of the total TVA program.

Senator BAKER. There is one, I believe, in Memphis. And I gather from what you have said that you are willing to consider such proposals, if appropriate to the general energy requirements of the region, of TVA's general policies, and don't unduly change the relationship between the distributors and the agency?

Mr. FREEMAN. Precisely.

Senator BAKER. Thank you.

Mr. Chairman, I have a number of other questions on power and power rates. Would you like me to break at this point, or shall I continue?

Senator RANDOLPH. If agreeable, I might enter in a question just temporarily.

Senator BAKER. This is a good place. As I said earlier, I have encroached on your time and prerogative. And this is a good place for me to break, and I would like to do that.

Senator RANDOLPH. Thank you.

Mr. Freeman, you have a substantial amount of stock in the Chicago & North Western Railroad. Is there any potential conflict of interest that exists because of your ownership of that stock in reference to your pending nomination?

Mr. FREEMAN. Mr. Chairman, it is my judgment—I have reviewed the question factually of course—that there is not. I asked our traffic department to determine for me for the last 2 years for which we had data, and that was 1976 and 1977, what, if any, traffic of the Tennessee Valley Authority we moved.

They identified \$20,000 worth in 1 year, and \$20,000 or \$25,000 in another year. And it wasn't clear that the TVA controlled the routing even with that small amount.

The North Western Railroad is in the process of attempting to gain access to coal in the Powder River Basin in Wyoming. The North Western has an application before the Federal Railroad Administration to construct such a line and to reconstruct some 500 miles of railroad between Wyoming and Nebraska.

If that development should go forward, I would expect that that coal would go predominately into the Southwest and into the Midwest, being most unlikely that any of it would reach the Southeast.

Indeed, I understand that the present member of the Board and Chairman, before this committee, did comment he thought it was unlikely that TVA would ever be bringing coal from those Western sources. And I certainly would share in those views—TVA having abundant coal surrounding it, including coal in your State of West Virginia.

So I cannot foresee any possible conflict between my ownership of stock in the Chicago North Western, which I propose to keep, and the Tennessee Valley Authority.

Senator RANDOLPH. Thank you, Mr. Freeman.

I can only speak for myself. The committee members will make a determination on the response to the question. I agree with you that I see no conflict of interest, at least at this time.

Would you describe what your position would be if you were serving as Director of TVA in connection with the purchases of Western coal? You have been a railroad executive, and what would be the problem of the transportation on the railroad on which you have an ownership?

You have discussed it, but I want that question to follow the other question.

Mr. FREEMAN. Yes, sir.

As I am sure the committee knows, certainly the chairman knows, Western coal, Wyoming coal in particular, is low-sulfur coal. It is also low in Btu content. The cost of transportation for coal of that low Btu content makes transportation a much more significant factor, as a receiver looks, of course, at delivered cost per Btu.

So that I cannot foresee Western coal moving much east of the Mississippi River in any great quantity, where there are such abundant supplies of coal. And some of the legislation that this Congress has passed which requires the use of best available technology, of course, will tend further to encourage the use of the Eastern coals in the East and not to bring coal some 1,500 miles across prairie into the Midwest and southeast.

I would share the views that were expressed by the other Mr. Freeman. We are going to have to find a better way to do it than that. When he was before this committee, when he forecast he thought it unlikely TVA would be buying much of the Western coal.

I would share those views, from my knowledge of the transportation cost and some knowledge of coal.

Senator RANDOLPH. Mr. Freeman, there has been discussion about the growth of TVA moving in outside its original area. I realize the flexibility and the purchase of property and development.

But would you discuss it? We remember in years past when Senator Cooper was the ranking minority member of this committee. He used to discuss TVA moving into other States.

I recall that he said that TVA was, in part at least, a yardstick, and he didn't think that it was a walking stick, and that its purpose was not addressed immediately to begin to move into the contiguous States.

Would you comment?

Mr. FREEMAN. Yes, sir, Mr. Chairman.

I thought that question was largely put to rest with the Revenue Bond Act of 1959. But, in any event, if the matter was not put to rest, I think TVA will have its hands full, and does indeed have its hands full, in serving well the area it now serves, which is now well defined within the Tennessee Valley area.

And I would not recommend any substantial, at least—I suppose there is always a possibility of modest changes—but any substantial change in the boundaries of the territory served by the TVA operation.

Senator RANDOLPH. That is a satisfactory answer.

Would you want to support the purchase of coal from TVA's region rather than move out in other sections of the country for this buying policy, whatever it might be at the time?

Mr. FREEMAN. The answer to that is an unequivocal yes. And I regard that as part of the mandate of the TVA Act.

And I say that because of the TVA Act. Part of TVA's job is the development of the region. And the region produces a substantial amount of coal. And, although the State of West Virginia is technically not within the region, certainly it is part of the Appalachian area, and I would see no reason for TVA to go outside the Southeast and the areas of Appalachia to purchase coal.

Senator RANDOLPH. Thank you.

You have spoken about it being outside the area, but whereas you have indicated a neighbor in the sense of production of coal in the East.

Mr. FREEMAN. I should say, you have one advantage. You have low-sulfur coal in West Virginia.

Senator RANDOLPH. We do. And how do you compare that with Western coal?

Mr. FREEMAN. Your coal has a higher Btu content, which is one advantage. Unfortunately, it is more expensive to mine.

It is my understanding in recent months, or recent years, that TVA has bought some of the low-sulfur coal. Certainly in order to meet some of the environmental requirements, it is going to have to blend higher sulfur coal in the region. That is going to mean burning some of the low-sulfur coal in the area.

Senator RANDOLPH. The record does show that until very recently coal was not being bought in West Virginia, is that correct?

Mr. FREEMAN. I am not sure what the history was. When I was there, and a long time ago, we were not buying West Virginia coal. I do understand, recently there has been some West Virginia coal bought.

Senator RANDOLPH. That is correct. TVA now is purchasing coal in West Virginia. We hope that TVA will not only continue, but increase its purchases in our State when coal is adaptable to its uses.

Would you have an estimate, Mr. Freeman, in reference to the Coal Conversion Act, which I mentioned very briefly in my opening comments, the effect of that coal conversion part of the energy package on the future construction of TVA plants?

I will couple that with how many existing, if you know, powerplants in the TVA system are fired with coal? How many are fired with oil, and how many are fired with nuclear? Are there plans to convert these existing coal-fired plants or plans to keep them coal-fired?

Mr. FREEMAN. My understanding is currently there are no oil-fired plants. TVA has several coal-fired plants. I am not aware of the precise number.

It has one nuclear plant that is functioning and supplying energy. Six in various stages of incompleteness.

And that, as I indicated in one of my responses to Senator Baker, is one of the cost problems. It is simply not technologically possible

to cross the nuclear and coal-fired plant. I think the job of the TVA Board is to initially get those nuclear plants completed at the least possible cost, and as quickly as possible.

The next question is, What should the plants that are not under construction be? And I certainly don't know the answer to that question. And it is, indeed, one of the most important questions the Board will have to address.

And I would propose, after we get rid of some of the emergencies that have backed up and the kind of decisions that have to be made, to address the question of what kind of plants should be constructed to meet the future demands in the TVA region, and, indeed, what are these demands, to what extent can these demands be tempered by conservation methods, and whether TVA can do some demonstrating in that area, as it has in some of the other conservation areas, that will moderate the demands.

But once those demands are found, they have to be met. The TVA can act very quickly, and I, as a member of the Board, would address that question forthrightly. And as soon, as I say, some of the emergency matters are resolved.

Senator RANDOLPH. Mr. Freeman, I think your responses to this subject are very realistic. I think they are well reasoned.

I wouldn't want to be held to these figures exactly, but in my study, we would think that the nuclear-fired plant would cost \$200 million, and the coal-fired plant would cost \$125 million. These are figures that are subject to size and so forth.

But you might care to just give some attention to the pricing of the two forms of TVA plants.

Oftentimes we have a method of buying called spot purchasing. That is when you get into an area where you have no longstanding purchasing program. I ask this specifically as a West Virginian, a State with coal, where there could be both long-term and spot purchases. Which would be desirable?

Mr. FREEMAN. If I understand your question, we would look to West Virginia just as we look to any other part of the eastern region as a proper source, both for contract coal and spot coal.

I am aware of the difference in initial cost of coal-fired plants and nuclear plants. And I am sure that Senator Baker is going to remind us before we finish that there are differences in the operating costs.

Senator RANDOLPH. Thank you, Mr. Freeman. I have no further questions.

We are going, as I understand it, Senator Baker, to have a second hearing on the nomination. Not that there is a desire to just continue the hearing process if it isn't necessary. But we do have members that wish to be part of the hearing process.

And I don't know whether we can set a time now. I believe you and I could be present Thursday morning; is that correct?

Senator BAKER. That is correct, sir.

Senator RANDOLPH. So we will think in terms of 9:30 for Thursday morning.

And I will ask Senator Baker now, because I know he has other questions that he perhaps would like to ask.

Mr. FREEMAN. I will make myself available at that time.

Senator BAKER. Mr. Chairman, I notice it is 11:30, and I have one or two more questions. However, I have a commitment that requires me to leave.

What I would like to do, if I may, is turn out a sequence, as it were, since I want to complete my questions on power rates and related issues later.

I would like to turn at this point to a communication from Congressman Harold Ford, which the witness might consider before he returns on Thursday, if the hearings are resumed on Thursday.

Congressman Ford wrote to me on September 19 as follows—and I will supply you with a copy of the letter:

This Thursday, the Senate Environment and Public Works Committee will begin hearings for Richard Freeman on his pending appointment to the Tennessee Valley Authority (TVA). I would appreciate it if you could establish Mr. Freeman's perspective about minority participation in TVA matters and economic development programs.

Because I am the only minority in a representative role in the entire TVA area, I am very concerned about securing a positional statement from Mr. Freeman on his interest in enhancing the activity of people from poor backgrounds in TVA's operation. Historically, it can be clearly documented that people from such backgrounds have been categorically denied entry into the mainstream of TVA. This, needless to say, is in spite of the fact that TVA impacts significantly on everyone's life in the Valley.

A specific concern I would appreciate your raising regards Mr. Freeman's posture on the development of a minority resource center which would serve as a mechanism to increase TVA's capacity to make more productive use of minority resources—institutions, businesses, et cetera. The center could also fulfill the need for new minority corporate ventures and business development activities which create and sustain jobs. Such a center is compatible with current chairman Dave Freeman's thinking.

If you would be kind enough to pursue this line of questioning, you will provide a major constituency in the TVA area with an understanding of the future direction of TVA on minority issues.

I think Congressman Ford has raised a highly important question. I think in the brief time we have remaining, it would be unfair to you, and to the seriousness of his inquiry, to pursue it at this point.

I wanted to let you know of that letter so that you might give it some thought and be prepared, hopefully, on next Thursday.

Mr. FREEMAN. I would be pleased to address myself to that matter on Thursday.

Senator BAKER. Thank you very much.

If no objection, Mr. Chairman, I would like to reserve the balance of my questions until Thursday.

Senator RANDOLPH. Thank you, Senator Baker. That will be done.

Senator Huddleston of Kentucky has 13 questions that he would like to have answered. We will submit them to you and you can answer them for the record.

[Responses to Senator Huddleston's questions follow:]

RESPONSE TO QUESTIONS SUBMITTED BY SENATOR HUDDLESTON

1. MR. FREEMAN, WHAT ARE YOUR VIEWS ON THE NEED FOR NEW GENERATING CAPACITY FOR T.V.A. IN THE IMMEDIATE FUTURE?

The immediate need is to get all the nuclear plants in process on stream as quickly as possible.

2. DO YOU SUPPORT THE SETTLEMENT OF THE E.P.A. SUIT WORKED OUT BY CHAIRMAN DAVID FREEMAN?

I believe (1) in the need to settle the lawsuit, and (2) the need to comply with Federal Clean Air Standards. Whether the precise settlement terms which I have reviewed in summary form are those which I would endorse depends on a much more detailed study I would have to make if I am confirmed.

3. WHAT KIND OF CHANGES IN BASIC RATE STRUCTURES DO YOU FORSEE AND SUPPORT?

I believe that the overall TVA rate structures may need a complete review, but I have no preconceived views on what that review should produce in terms of changes.

4. WOULD YOU SACRIFICE ECONOMIC GROWTH IN THE VALLEY FOR THE SAKE OF ENERGY CONSERVATION?

The short answer is no. To elaborate, I believe that development (economic growth) and energy conservation can come together in harmony.

5. DO YOU THINK THE TELlico DAM SHOULD BE COMPLETED?

Until I have had a chance to review in more depth the issues raised by the joint TVA-Interior Department Study dated August 10, 1978, as well as the public response to

that study, I cannot make a determination on the Tellico Dam Project, I favor providing some flexibility -- a safety valve -- in the Endangered Species Act.

6. WHAT KIND OF PERSON DO YOU THINK SHOULD BE SELECTED TO FILL THE THIRD VACANCY ON THE BOARD?

Someone who is intelligent, who has sound judgment and who is dedicated to the "feasibility and wisdom" of the TVA Act.

7. DO YOU THINK T.V.A. SHOULD GET OUT OF THE CONSTRUCTION BUSINESS?

No, if it is meant to discontinue constructing its own facilities. There, however, may be a role for outside contractors where they are competitive with "force account" construction.

8. DO YOU SUPPORT "LIFELINE" RATES?

I wish to look seriously at "lifeline" rates, but I am not prepared to commit to "lifeline" rates before more study.

9. DO YOU SUPPORT THE FLUIDIZED BED COMBUSTION PROJECT FOR HIGH SULFUR COAL?

Yes.

10. DO YOU SHARE MY VIEW THAT T.V.A. SHOULD BUY ITS COAL FROM WITHIN THE APPALACHIAN REGION.

Yes.

11. ARE YOU RETAINING ANY INTEREST IN THE RAILROAD YOU LEFT, AND IS THAT RAILROAD ENGAGED IN HAULING WESTERN COAL TO THE EAST?

I plan to retain my stock interest in the Chicago and North Western Transportation Company. It is hauling coal from Wyoming to plants in the Midwest, the easterly-most being 30 miles east of the Indiana-Illinois border. I do not foresee the Chicago and North Western hauling any coal from the West or otherwise to TVA.

12. HOW COMPATIBLE ARE YOUR VIEWS WITH THOSE OF DAVID FREEMAN?

I certainly hope our views are compatible, but I do not know.

13. HAVE YOU MET WITH THE T.V.A. DISTRIBUTORS, AND DO YOU FEEL YOU WOULD HAVE A COMFORTABLE WORKING RELATIONSHIP WITH THEM?

I have met with several members of the Executive Committee of the Tennessee Valley Public Power Association. We had a delightful (from my standpoint) exchange of views. I look forward to a most pleasant working relationship with the distributors.

Senator RANDOLPH. Thank you, Mr. Freeman, for your cooperation today. We will hope to come back on Thursday, but for the time being we will not go further in the hearing process.

Thank you very much.

[Whereupon, at 11:32 a.m., the committee recessed, to reconvene at 9:30 a.m. Thursday, September 28, 1978.]

NOMINATION OF RICHARD M. FREEMAN

THURSDAY, SEPTEMBER 28, 1978

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C.

The committee met at 9:55 a.m., pursuant to call, in room 4200, Dirksen Senate Office Building, Hon. Howard H. Baker, Jr., presiding.

Present: Senators Randolph, Burdick, Baker, and Stafford.

Senator BAKER. The committee will come to order.

The chairman asked me, in view of the hour and because of his necessary temporary absence, to begin the hearing.

Mr. Freeman, we are glad to have you back with us today. Thank you very much for returning.

I might say that because of a special meeting of the Republican Conference, which convenes at 11, we will have only just over 1 hour this morning to proceed.

During the last session, Mr. Freeman, we were talking, during the time I had available for questioning, about rate policy. I would like to talk a little today about environmental policy, and particularly your views and the attitude toward pollution control techniques, scrubber technology, and the pending litigation or pending settlement between the Tennessee Valley Authority and EPA.

Rather than put specific questions to you in that respect, I wonder if you would care to give us your views on that general subject?

Mr. FREEMAN. As I indicated, Senator, in my opening statement, I find it clear in the TVA Act that TVA must be mindful—and that was written in 1933—must be mindful of conservation which, as I indicated, was the old-fashioned word for environmental concerns, as well as for development.

So that in the broad sense, I have no doubt that TVA must, whether it has in the past or not—I will not pass judgment—but it must be conscious of environmental concerns. That, of course, in the energy area means that it must be conscious and it must deal with the emission problem from coal-fired plants.

I think that the disturbing thing at the moment is that the present technology, with respect at least to removing SO², is not as far advanced as I suppose anyone would like it to be. So that, one, it is expensive. And, two, it produces a large waste product of its own.

Nevertheless, as I understand the settlement that TVA has worked out, the settlement calls for TVA to install scrubbers to remove the SO₂. And, of course, at most if not all plants, to remove particulate matter.

I have read a summary of the settlement of the lawsuit. I certainly am not in a position to express either agreement or disagreement with the details of the settlement. There are a lot of questions I would

want to ask about whether or not in every respect if, one, it is effective so far as solving some of the pollution problems; and, two, whether in all respects some of the solutions are necessary.

If I am so satisfied, I think that it would be highly desirable to get that settlement made and get that issue behind us and get on with new sets of problems.

I suppose it is fair to say, I believe as a general proposition, it would be desirable to settle that lawsuit and to dispose of that issue. But, of course, that is not a permanent solution to pollution problems.

It is a long, rambling answer. I don't know if I am responsive or not. Senator BAKER. I think you responded very well.

The lawsuit is essentially a question of scrubbers versus low-sulfur fuel. As I understand the settlement and the litigation, it involves a question of how best to mix those two strategies and techniques. I believe TVA has agreed to install, at least preliminary at Johnsonville, a total of 7,000 megawatts, which I believe is the largest commitment to scrubber technology in the entire world.

Do you have an estimate of what that will cost?

Mr. FREEMAN. I do not. I have seen the estimates. I simply do not have them at my fingertips. It is a very, very large number.

Of course, that is one of the disturbing things about dealing with the pollution issue. The ratepayers are going to bear that burden in the final analysis.

Senator BAKER. I am told the capital costs for that will run \$1 billion.

Mr. FREEMAN. Sounds correct.

Senator BAKER. It sounds frightening.

Mr. FREEMAN. It sounds correct and it sounds frightening.

Senator BAKER. As I understand your answer, Mr. Freeman, you have read a summary of the proposed settlement?

Mr. FREEMAN. Yes. I think it must be a TVA staff summary of the settlement, including some of the estimates of cost.

Senator BAKER. And you are not entirely satisfied with the level of performance or adequacy of structures but, in any event, your primary objective is to see this matter resolved on a satisfactory basis?

Mr. FREEMAN. You summarized it very well.

Senator BAKER. Mr. Freeman, do you have any idea how the capital cost of 1 billion dollars' worth of scrubbing equipment will be reflected in charges to the average ratepayer in the Tennessee Valley region?

Mr. FREEMAN. The summary I saw, dealing not only with the cost of the scrubbers but also the additional cost that would result from purchasing low-sulfur coal, which is more costly because largely of the origin as well as the Btu content—the summary indicated that at the high point the increase in percentage terms, as I recall, was 12 or 13 percent over present. That level, as I recall, tapered off to 7 or 8 percent in the 10th or 11th year.

Please don't hold me to those numbers. That is all of the measures taken together.

Senator BAKER. Are you speaking now of the proposed settlement?

Mr. FREEMAN. Yes. All the features of the settlement. I wasn't just focusing on the \$1 billion, but all the features including other measures required in the settlement.

Senator BAKER. Would it be fair to say that on average over a period of time it would represent about a 10-percent increase?

Mr. FREEMAN. Since it ranged between 7, 8, and 12, it probably would have averaged about 10 percent.

Senator BAKER. Thank you, sir.

There is always a question raised in these discussions about the reliability of scrubbers, particularly with respect to the early scrubber technology. I wonder if you have any views on the reliability and on the probability that this can be a satisfactory permanent solution to the environmental problems?

Mr. FREEMAN. As I understand it, there is still a question about the reliability of the scrubbers. The settlement, as I understand it, calls for TVA to use its best effort to assure that scrubbers that are installed are effective.

Clearly, scrubbers, as we know them, cannot be the final answer to the SO₂ problem.

Senator BAKER. There is an element of risk involved, but you have weighed that in the balances in arriving at a judgment?

Mr. FREEMAN. I will weigh that in the balance. As I say, I haven't reached a final conclusion on this particular settlement.

But, clearly, TVA has reached the stage that something must be done, and this is the best technology now available. So in the final analysis, it may be that I will conclude, as others have, that this is the only choice today.

Senator BAKER. Turning now, Mr. Freeman, to the nuclear policy of the Authority, in addition to breeder projects, which I will discuss a little later, TVA is deeply involved in an extensive construction program for new nuclear capacity.

I believe you pointed out in your statement that TVA presently has in operation 3,500 megawatts of nuclear generating capacity at Brown's Ferry. And TVA is constructing approximately 20,000 megawatts, or has advanced planning for construction of 20,000 megawatts of power which is scheduled to be on line by 1985 of the conventional or light-water type.

Do you have any reservation about completing those projects now planned?

Mr. FREEMAN. I have no reservations whatsoever. And I think I indicated in my brief comments, I think one of the problems, as best I have been able to determine sitting where I am, that has given rise to the increases in cost has been the delay in completing some of those projects.

And clearly, the best way to control cost of construction is to get the job done in a timely fashion. I have been involved, not in that kind of construction, but other kinds, and nothing is more costly than delay.

And I have no reservation at all that those projects should be completed and completed in a timely fashion.

Senator BAKER. Is it your general view, then, that if confirmed to this appointment, you will try to expedite completion of this 20,000-megawatt capacity?

Mr. FREEMAN. Yes, sir.

Senator BAKER. What is your view on future light-water reactor capacity for the Authority?

Mr. FREEMAN. In all candor, I can only answer that question by saying what TVA should do to meet future demands, whether it should be a continuation of the traditional or, as you say, the light-water nuclear plants, whether it should be coal-fired plants, whether it should

be other kinds of combinations, certainly, we should do some demonstration of the so-called soft-energy projects, I am not prepared to answer at this time.

I also include the option of the heavy-water plant. So clearly, after some of these immediate problems are resolved, that we have discussed, and I am sure we will discuss, such as the settlement of the lawsuit and the Tellico Dam, when some of these immediate issues are disposed of, clearly the larger issue is what does TVA do to meet the demand for the future.

I am not prepared to indicate how that all comes out, Senator.

Senator BAKER. At one point earlier in TVA experience with nuclear power, as I recall, the agencies solicited bids for either coal-fired or nuclear plants; and awarded their contracts on the basis of the lowest 10-year cost.

How do you feel about that plan?

Mr. FREEMAN. Well, I am not familiar with that experience. That does not sound as if one is looking out far enough. But I suppose I really should reserve judgment on it.

Senator BAKER. Maybe I didn't state it very well, because it sounds attractive to me. The idea of soliciting bids on generating capacity, either nuclear or coal-fired, and comparing the cost of that plant, plus the cost of, say, 10 years' worth of fuel to decide which is the lowest unit cost of electricity produced.

Mr. FREEMAN. You have to look further out than 10 years. My concern was with the period of time expressed.

Both kinds of plants have a longer life. I suppose if one were going to load the answer in favor of coal-fired plants, he would take the short span.

Senator BAKER. I am not trying to load it either way, I am just trying to find out what your views are with respect to the principle of nuclear versus coal-fired with relation to the cost of service.

Mr. FREEMAN. My suggestion is any such comparison should go beyond the 10-year span.

Senator BAKER. Are you saying you have no present disposition to install nuclear or coal capacity except as it best serves to lower the cost of electricity in the valley.

Mr. FREEMAN. Yes. Except I would include environmental considerations. Cost and environmental considerations.

And that goes back to what we talked about at the outset. I suppose in the final analysis, looked at in the larger sense, and if one is to internalize the environmental cost, then it can all be reduced to cost. But sometimes people do not separate or do not internalize the environmental cost.

If one does not, then the environmental impact should be included.

Senator BAKER. Do you have a present disposition in favor or against either coal-fired or nuclear plants for TVA?

Mr. FREEMAN. I do not.

Senator BAKER. How do you feel about the development of facilities and technology to complete the nuclear fuel cycle? I am speaking now of fuel waste, fuel-treatment facilities and storage facilities.

Mr. FREEMAN. I have been interested—and I am sure I am not as well informed as the Senator—I was interested to read, and indeed pleased to read that the TVA apparently is taking some leadership in dealing with that problem.

And I certainly think it is a proper role for TVA to play. The fact that the Oak Ridge Research Center is there, and that that area has become accustomed and understands nuclear energy, I think it gives the Tennessee Valley region an opportunity to be a leader in solving the waste problem.

And if, as I understand it, TVA is beginning to exercise some leadership, I would applaud that and certainly would like to see that kind of an effort continue.

Senator BAKER. Including Chairman Freeman's recommendation that we consider a regional bulk storage facility at Oak Ridge?

Mr. FREEMAN. I am not familiar with the fact the chairman has made such a statement, but basically, the answer to your question is I think that if, as I understand it, the people in east Tennessee have a little greater understanding of nuclear development and are prepared to accept some storage facilities, I think that would be a grand experiment.

Senator BAKER. You spoke earlier of cost to the consumer, of the delay in construction and completion of nuclear powerplants in TVA's region.

Do you know what that has cost today?

Mr. FREEMAN. No, I don't. But from what I understand in terms of delay, it would have to be in the hundreds of millions of dollars.

Senator BAKER. That has been occasioned by delays in completion?

Mr. FREEMAN. Yes.

Senator BAKER. Do you have any views how we can eliminate those delays and move faster? And particularly, do you have any views on how, if at all, we should amend and change the licensing procedures?

Mr. FREEMAN. There are two elements of the delays, and you put your finger on one of them. One element of delays is other governmental involvement. And the answer is no, no I do not have specific recommendations.

There are changes in the law that I guess now have been enacted that should be helpful. But that is not the only cause of delay.

The other cause of delay is on the construction site once you have the permit.

There are two elements, and both are important.

Senator BAKER. How do you feel about the Clinch River breeder project?

Mr. FREEMAN. The Clinch River breeder project—and I have a question about that in one of the written questions—I do not regard myself as competent to deal with the issue of whether or not the Clinch River project, as presently designed, as opposed to whether or not the technology that is built into that design, is adequate under today's standard.

I am simply not equipped to answer that question. As I understand it, Congress has or will be dealing with the question of whether or not that project goes forward as designed, or whether further research will be authorized and money appropriated. And I certainly—putting the Clinch River project aside—I certainly believe that the Federal Government, and I suppose in this instance it must be the Department of Energy, should vigorously pursue research.

At what stage actually building the plant is called for is a matter I simply am not prepared to express an intelligent opinion on.

I may say, I have done some—not research—but I have talked to a number of people. I have been fascinated by the opinions I experienced.

I sought out the opinion of Commonwealth Edison, because they were a partner of TVA in the project, as you well know. Commonwealth people still feel that that project should go forward, and they have good reasons for feeling that it should.

But sitting where I am, I can't come down to a conclusion.

Senator BAKER. Mr. Freeman, I understand your dilemma, but I am sure you understand mine.

I played a somewhat permanent role in trying to convince President Nixon, first, and later President Ford, that a project of this sort should go forward, and that it should be located in Tennessee.

It involves some 3,000 jobs in Tennessee; it involves about three-quarters of \$1 billion. We have spent \$592 million so far. And it is estimated that it would cost over \$1 billion to finish. It would cost about \$155 million to terminate.

So, you see, it poses a dilemma for me as well. Those of us in Congress, on both sides of the aisle from Tennessee, have uniformly resisted the efforts of this administration to cancel the project.

When Chairman Freeman was here sitting where you are, we had a colloquy on this point.

If, in fact, Congress determines it to be the policy to complete the project, would you go forward with that undertaking?

Mr. FREEMAN. If it is the view of the Congress, that TVA should go forward, and ratified by the President, or if not, Congress should override a veto, if there is one, and if Congress, at the same time, provides for TVA's participation in it, the answer is clearly yes, I would.

Senator BAKER. And in the meantime, as a member of the Board, would it be your position that you should or should not try to affect the opinion of Congress in that respect?

Mr. FREEMAN. Once I have been able to formulate an intelligent view on the subject, yes, I think as to that issue, I would express an opinion to the Congress, for whatever it is worth.

Senator BAKER. What I am trying to find out is if I have an adversary, a friend or a neutral Board member.

If you are confirmed, let's assume for the moment that you do what Chairman Freeman did and give the same answers you just gave and then go to Knoxville and say the Clinch River breeder is a turkey. Since that time I have seen lobbying by Chairman Freeman to try to kill this project. I want to know what your position will be in that respect.

Mr. FREEMAN. My current position is one of neutrality. I think we have established that.

I guess your next question is if I should conclude one way or the other, would I feel it incumbent on me to speak out or be silent? And I suppose on that issue, just like any other, I would feel I should speak to the issue.

Senator BAKER. I don't think that is what I am driving at. In fact, I would be critical if you didn't speak your views as a member of the Board.

What I am asking is, are you going to be an active adversary of this project?

Mr. FREEMAN. Based upon what I now know, I will not be an active adversary of the proposal. I simply don't know enough about it to be an adversary, nor do I expect in the next 2 to 3 weeks I will be in a position to do so.

Hopefully, this matter may be resolved by the Congress.

Senator BAKER. We all hope that.

Broader than your views on the future of the Clinch River breeder, is that an appropriate role for the Director of the TVA? Obviously, in hearings you are under an obligation to give us your views and opinions.

It is quite a different thing when a member of the TVA Board begins to lobby in Congress to affect the future legislation of this body. I have grave doubts that the activities of Chairman Freeman in that respect are appropriate.

I am asking you to express your views from the position of a Director of TVA. I asked President Nixon to appoint Chairman Wagner, knowing he was a Democrat, because I wanted to reinforce the idea that TVA was nonpartisan. But it is close to the line when the TVA Board members begin to lobby for the administration's point of view.

Mr. FREEMAN. Let me work in reverse order.

I share your very strong views, apparently, that the TVA Board should be nonpolitical. I am a Democrat, but I share your views that the TVA Board should be nonpolitical and should so behave. It is a national agency.

The original drafter of the act was a Republican, as I pointed out in my statement—Senator Norris.

I am not as familiar as you are with the statements that you say the Chairman has made, so I will refrain from commenting specifically on those, but address myself to the general question I now understand you are asking. I suppose it is a difficult line sometimes between "lobbying" on the one hand and expressing one's views.

I guess I come down where you do, Senator Baker. I would feel it was my obligation to express my views, once I had views on this or any other subject. On the other hand, I would distinguish that from, as you say, lobbying for views in an area of this nature. That is, I suppose, on the wrong side of the line.

Is that more responsive?

Senator BAKER. I think that is a good answer and one which I approve of.

Just to make sure we don't misunderstand each other, I believe the Director of the TVA owes to the Congress and country the responsibility to provide his best judgments on every issue and provide it to every agency of Government.

I do not believe, however, that the TVA Board is an extension of administration policy. I do not believe a TVA Board member should exceed the scope of public statement and make statements of a political nature. I do not believe a TVA Board member should lobby for the administration position, but rather for a TVA position. I believe the TVA Board member should abide by the judgment of a quorum of that Board.

If you disagree with any part of that statement, I would appreciate your expressing it now.

Mr. FREEMAN. The TVA Act is clear that the Tennessee Valley Authority reports not only to the President but to the Congress. So it is not an agency of the administration, as that concept is usually thought of.

So, in broad outline, the answer is yes, I agree.

Senator BAKER. Thank you, sir.

Is there any arrangement between you and Chairman Freeman on any policy or position that you will take after you become a member?

Mr. FREEMAN. There is not. And, indeed, I am not all that familiar with his positions except as I have read about them. And because I am in Chicago and he is in Tennessee, and only once in a while do we get word of what the TVA is doing—because it still is an agency of which people have some interest—I am not all that familiar with his views, so I don't know. I certainly have no arrangement. And I was asked one question in writing, Senator, and I will answer for the public record. I was asked whether I thought our views were compatible, and my answer was, "I hope so, but I don't know."

Senator BAKER. The next questions are meant to see how you were chosen and not meant to impune Chairman Freeman's service or responsibility, nor yours, but to put things in perspective.

Did you talk to Chairman Freeman about the possibility of a nomination to this Board in advance of the nomination?

Mr. FREEMAN. I did talk to him about the possibility of my nomination before the nomination was announced, because I wanted to be certain—I haven't seen David Freeman all that much—that if I were nominated, that at least I would not be objectionable to him. He assured me he would be pleased to have me as a member of the Board.

Senator BAKER. Who initiated that conversation?

Mr. FREEMAN. I initiated that conversation.

Senator BAKER. Are you aware or do you know whether or not Chairman Freeman interceded in your behalf and recommended that you be appointed to the Board?

Mr. FREEMAN. It is my understanding—of course, I am now operating on the basis of secondhand information—it is my understanding that he communicated to the White House the fact that I would be satisfactory.

Senator BAKER. Do you know whether he did that in advance of talking to you about it?

Mr. FREEMAN. I do not know.

Senator BAKER. Do you know whether he communicated other names or not?

Mr. FREEMAN. I do not know.

Senator BAKER. It wouldn't affect my judgment of you, Mr. Freeman, because I intend to do that on the basis of our conversation and the general record. However, I want to find out the degree of cooperation between you and the Chairman on each other's positions prior to the appointment, because I think it does reflect on the likelihood of your cooperation and agreement or disagreement after you become a Board member, if indeed you do become a Board member.

What I am asking is, Were you David Freeman's candidate for this job?

Mr. FREEMAN. I don't know the answer to that, Senator. I suppose there are others who could answer that.

I might give you this about background, if it is of any value. I did advise the White House 1½ years ago, shortly after President Carter was elected, that I would be interested in a governmental appointment. I understand I was considered for one or two other positions.

And I assume that the White House has had my name for some time, and whether it has been at the top of the pile or bottom, I don't know. But whether I was David Freeman's candidate or somebody

else's candidate is something I can't answer because I don't know the processes that well.

I do know, because I have talked to David Freeman, that I am satisfactory to him.

Senator BAKER. Do you know of any recommendations for the third Board member?

Mr. FREEMAN. I do not.

Senator BAKER. Have you discussed this with Mr. Freeman?

Mr. FREEMAN. I have not.

Excuse me, I gave you an incorrect answer. We did discuss the third Board member. And he did tell me that there were a large number of people who wished to be considered, and I am not sure whether he mentioned anybody or not. He is apparently aware, because apparently there are a lot of candidates from your area of people who have expressed interest. And most of them, I just don't know.

Senator BAKER. Do you know any of them?

Mr. FREEMAN. No. I think the answer to that is no.

Senator BAKER. Do you recall any of the names that he suggested would be considered for a third Board membership?

Mr. FREEMAN. No, I don't recall the names.

Senator BAKER. Mr. Freeman, on Tuesday I gave you a copy of Congressman Ford's letter, or rather I asked that it be given to you. Did you receive a copy?

Mr. FREEMAN. Yes.

Senator BAKER. Are you in a position now to reply to that?

Mr. FREEMAN. Yes, I would be pleased to.

I think the matter the Congressman is raising is the extent to which TVA has been an effective minority employer. But I think there is probably a broader import, and I will try to deal at both levels. Again, without expressing views on what TVA's history may have been, because I am simply not that informed.

I have strong views that TVA should be in the mainstream of our cultural development in the country, and that includes having an effective minority affirmative-action program in its own hiring and promotion practices. I hope to see that is done, if indeed it has not been done.

And I am certainly not in a position to express judgments on whether TVA has been deficient in this respect.

Second, a broader import is: Does TVA have some responsibility for seeing that not only minorities but—I think he puts it—people from poor backgrounds are given greater opportunities? And it is in that sense that he refers to a minority resource center. I am not precisely familiar with that program or that center, but that sounds to me like a particularly attractive way of getting at the problem.

My general reaction is one of looking at it favorably.

Senator BAKER. I take it, then, that you are generally in favor of the creation of a minority resource center?

Mr. FREEMAN. It sounds like an attractive idea. I am not familiar with the details, of course. But the idea sounds attractive to me.

Senator BAKER. Well, I think that it is a good idea.

How do you respond to that statement in the second part of Congressman Ford's letter, which reads as follows:

Historically, it can be clearly documented that people from such backgrounds have been categorically denied entry into the mainstream of TVA. This, needless to say, is in spite of the fact that TVA impacts significantly on everyone's life in the Valley.

Have you looked into that?

Mr. FREEMAN. I clearly am not familiar with what has happened in the last 20 years. I suppose that was true.

Although we had two or three—and given that population, I suppose that is nothing to brag about—we had two or three professionals doing very fine work in the economics area while I was there, black professionals. But that is not a good record.

Senator BAKER. Mr. Freeman, I have taken all the time so far this morning. Senator Burdick is with us now, and Senator Stafford had to leave. I apologize for both of them.

Senator BURDICK. Keep going, you are doing fine. I just have one or two questions. Go right ahead.

Senator BAKER. All right.

I would like to talk about the TVA Self-Financing Act for a moment. Particularly the debt burden for the Authority and future prospects.

Section 15(d) of the TVA Act authorizes the TVA to borrow up to \$15 million on bonds. I believe you indicated either in your opening statement or in your previous testimony that you were involved in the legal department in formulation of that legislation?

Mr. FREEMAN. I did some of the work that led to that legislation, Senator.

We were looking at other alternatives, as well.

Senator BAKER. I might say parenthetically, as I have said on previous occasions, my father and former Senator John Sherman Cooper of Kentucky were involved in that act.

You are aware, of course, that the original bond ceiling has been raised a number of times?

Mr. FREEMAN. It presently is \$15 billion.

Senator BAKER. I think it would be a good place to stop there and let you give us your views, if you have any, about whether the debt ceiling should be raised, how much, and when?

Mr. FREEMAN. It doesn't need to be raised in the immediate future. The time will come, unless alternative financing proposals are developed, to raise that ceiling.

There are some alternatives which should be reviewed. This may not under today's conditions be the lowest cost way to raise capital for the Tennessee Valley region.

The other possibility, of course, is the use of State and local governmental revenue bonding power. And I think of the advantage of the Federal tax laws that favor State and local agencies.

Senator BAKER. Are you saying that TVA ought to consider, either with new authority or on the basis of the existing authority, the issuance of Federal tax-free bonds?

Mr. FREEMAN. That certainly should be looked at, given the cost of money today, yes.

Senator BAKER. Do you have an idea what the administration policy is toward that?

Mr. FREEMAN. No.

Senator BAKER. Or the Treasury Department's views?

Mr. FREEMAN. I have no idea.

Excuse me, I do know that others, as I am sure you are aware, other cooperatives and municipal distributors have actually issued such obligations.

Senator BAKER. Do you propose or do you contemplate the possibility of authorizing TVA to issue tax-free bonds, or doing it second-hand through local units of government?

Mr. FREEMAN. I am not proposing either. I am suggesting that the full financing question should be looked at. And the obvious device which would require no legislation initially, would be one we have discussed, the distributors to put together a financial package.

Senator BAKER. It is an intriguing prospect, particularly in view of the fact that since 1960 the average interest costs have gone up 4.4 percent to a high of 8.7 percent in 1975.

Mr. FREEMAN. Becoming a very significant part of the ratepayer's bill.

Senator BAKER. Can you think of any other devices or programs that could produce the interest cost for future capital financing?

Mr. FREEMAN. I think TVA has made a proposal—indeed, I guess it passed the Congress and was vetoed in years past—to equalize the apparent advantage that private utilities hold in financing pollution control devices where they have tax advantages. That legislation did pass the Congress at one stage.

Senator BAKER. I can tell you firsthand it did pass, it was my bill and it was vetoed.

Mr. FREEMAN. Maybe we can get that done again.

Senator BAKER. The bill has been reintroduced. Senator Sasser and I have both introduced it in this session.

In all fairness, I don't think it will be up in this session of Congress, but I have every hope it will be up in the next session of Congress.

Just so the record is clear, the fact that TVA does not pay Federal income tax is a disadvantage in the installation of a pollution control equipment because the entire cost of that must be paid directly by the consumer. And yet, in the case of a private power company which does pay taxes, approximately half of that cost or a little more is subsidized, in effect, by the U.S. Treasury by reason of a tax advantage.

It is an anomaly. It is hard for people to understand and hard for some of my colleagues on the committee to understand.

Mr. FREEMAN. You were apparently successful.

Senator BAKER. Only after the second try, and you would be surprised at some of the things that happened.

But another anomaly is that in certain instances, TVA pays higher interest than private companies who benefit from tax-exempt borrowings undertaken by their publicly owned distributors, which TVA has not done.

Mr. FREEMAN. That is correct.

Senator BAKER. And that is a matter that should be examined carefully, and vastly different from the time the act passed in the thirties.

Mr. FREEMAN. Precisely. And that was in my opening comments.

Senator BAKER. You and I have found an area upon which we have enthusiastic agreement.

Mr. Chairman, I want to apologize to you, as I have to Senator Burdick and previously Senator Stafford. I have used all the time this morning.

As I indicated at the beginning of the hearing, there is a continuation of a Republican conference which, as you know, is a conference of all the Republican Senators. That begins in about 10 minutes.

Senator RANDOLPH [presiding]. And it is important.

Senator BAKER. I think it is important.

I would like now to yield and thank you for permitting me to chair this hearing to this point, and thank Senator Burdick and Senator Stafford for letting me monopolize the questioning so far.

I thank you, Mr. Freeman, for the forthright answers and very good exchange of views this morning.

I have other questions, Mr. Chairman. Depending on how the committee decides to proceed, I will either submit them or ask them in another session.

Senator RANDOLPH. Thank you. It is my feeling that the questions by you, Senator Baker, or other members of the committee, if you wish to bring additional matters to the attention of the nominee, that could properly be done by letter or through any methodology you desire.

Senator BAKER. I have two items that I hope to cover that might be better covered in a hearing than in questions, but I will leave that up to the chairman. One is the future of the Tellico Dam project. And I would like to talk about strip mining policy.

Senator RANDOLPH. I will think it through and talk it through at this point. I think that if we are to act in this committee, favorably reporting the nominee, Mr. Freeman, to the Senate, we continually are under the time pressure that you are very cognizant of.

Senator BAKER. I talk about it all the time. I just don't get results all the time.

Senator RANDOLPH. I think we will contact the members of the committee. I have no objection to a polling of the committee members.

I only have two questions that I must ask here rather than by letter.

Senator BAKER. I am perfectly willing to abide by the committee's judgment on whether my remaining questions are submitted or the subject of another hearing day.

I would hope, however, that rather than poll, we could have a brief meeting in executive session. I am thinking of colleagues not on this committee but Senators who have expressed a keen interest in the subject.

Senator RANDOLPH. I would share that.

Senator BAKER. I see Congressman Harold Ford has joined us, Mr. Chairman. I would invite him to come to the table with us.

Senator RANDOLPH. Representative Ford, would you care to come and sit with us here?

I believe, Senator Burdick, that you have a question or questions; is that correct?

Senator BURDICK. Just one or two.

Senator RANDOLPH. If I might, because of the time picture, Quentin, I would like to ask a few questions which we ask of all nominees.

Is that agreeable?

Senator BURDICK. That is fine.

Senator RANDOLPH. Mr. Freeman, do you have any financial interests other than those that have been discussed which would present a potential conflict of interest?

Mr. FREEMAN. I do not now have any financial interests other than those that we have discussed, to wit, my stock in the Chicago & Northwestern Transportation Co., which could in any way be con-

sidered a conflict of interest. As we discussed in connection with the Chicago & Northwestern Transportation stock, I am certain that that does not constitute an issue of conflict of interest.

I did own as a trustee for a trust, family trust, I did own stock in a Southern railroad, a Southern utility, and an oil company that the TVA might have had dealings with. I have sold that stock and I am waiting for a determination of what I should put that into be certain that whatever funds I invest in as a trustee, since this is a matter of which I have fiduciary responsibility, are areas where I can invest that money where there can be no possible conflict of interest.

I might say on that subject, I wish to make clear, I, of course, will continue to hold my stock, but resign as trustee and director of the Chicago & North Western Transportation Co., not because of a conflict problem but because a TVA Director has a full-time job and I could not discharge my responsibilities as a TVA director and at the same time continue as a trustee and director of the railroad.

Senator RANDOLPH. Thank you, Mr. Freeman. We appreciate the matter you discussed at both the hearings and also with members of the committee.

The final question: If confirmed, are you in the attitude of agreeing today if you are called to testify here in the Senate or before the Congress and the appropriate committees, would you on request be ready to do that?

Mr. FREEMAN. I would consider it a privilege, Mr. Chairman.

Senator RANDOLPH. Thank you, very, very much.

And if there are further questions that I would have, we would submit them to you in writing and have the responses also in writing.

Now, I will have my remarks in questions at the close of the hearing. Indeed, this is the close. But Senator Burdick and Representative Ford, do you desire to make a comment?

STATEMENT OF HON. HAROLD E. FORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Representative FORD. Mr. Chairman, I will be very brief. And I want to thank you and the other Senators for this opportunity to appear before the hearings today.

I want to bring out, I think Senator Baker pretty well covered it. I wanted to echo one thing. When we talked about a minority business resource center, we were basically talking about economic development. And the hearing practices of TVA, yes, we are concerned with that, but we want to go beyond that.

In the past, minorities have only been able to acquire 400,000 to 500,000 per year of contracts. You know, the black population in the valley is approximately 18 to 23 percent. Nowhere in that percentage point are blacks, you know, gaining contracts with the valley.

And we have very little participation at all with the Tennessee Valley Authority.

And I will, again, thank Senator Baker for calling it to your attention, because we have been in contact with the Chairman, Chairman Freeman, in regard to this.

We have talked with him.

We are in the process now of working up a program for TVA where we will have minority participation in the valley itself.

Senator RANDOLPH. Thank you very much.

Mr. FORD. Thank you very much Mr. Chairman.

Senator RANDOLPH. I believe you are the Memphis District?

Mr. FORD. Memphis District, right.

Senator RANDOLPH. We are gratified that you could come to this hearing and discuss the matter with us.

I will ask Senator Burdick to continue to chair the hearing.

Senator Burdick, I expect that it would be best to keep ourselves in the posture of not saying that the hearing has actually concluded, but we just adjourn and that can, of course, be sufficient if we desire.

I thank you very much.

Senator BURDICK. Recess the hearing?

Senator Randolph. Yes, subject to call. Thank you.

Senator BURDICK [presiding]. Welcome to the committee, Mr. Freeman.

I have gone over your résumé and it is very impressive. I have just got one question: You went to Columbia Law School—1948. What was wrong with Minnesota?

Mr. FREEMAN. Minnesota is a very, very fine law school, Senator.

Senator BURDICK. You gave the right answer. Stop.

I notice that in 1948 to 1957, you were in the Law Department of the Tennessee Valley Authority. 1957 to 1967 you were in the legal department of the Belnap, Spencer, Hardy & Freeman firm dealing mainly with transportation.

And from 1967 to the present, you were with the Chicago and North Western Transportation Co.

And all of these instances, you were there as an advocate and as a lawyer, weren't you?

Mr. FREEMAN. Except my later tenure with the railroad, when I have been in an administrative capacity and a policymaking capacity. But with the Tennessee Valley Authority, yes, as an adviser on programs and as an advocate in the courtroom.

And with the law firm, I was a legal adviser and an advocate. In the earlier years with the railroad, I was a legal adviser and an advocate.

In the last 6½ years, I have been in a policymaking and administrative capacity.

Senator BURDICK. Although you represented these areas as a counsel, did you pick up any, shall I say, philosophy or understanding of the worth of TVA along the way?

Mr. FREEMAN. One cannot have spent 9 years of his life with TVA without that making an impact. So that I have continued, although from a distance, to follow the Tennessee Valley Authority.

I think as I go back, if I do that I have had the wealth of experience, I have dealt with people who have helped me to grow. I think if I go back to the TVA, I will be in a position to make the kind of contribution I was not able to make when I was there in the first 10 years of my career.

Senator BURDICK. Do you know how the TVA interacts to work with another regional institution known as the Appalachian Regional Commission, which also has economic, humane resources responsible for much of the same area that TVA serves?

Mr. FREEMAN. I am familiar with the Commission. That is, familiar in the general sense with the Commission.

I am not familiar to what extent TVA has been able to work out effective cooperative arrangements with the agency.

One of the strengths of the original TVA program and development of the resource area was the extent that TVA did work effectively with the State and local agencies, but not always so effectively with other Federal agencies.

And I think that if TVA is not working effectively with the Appalachian Regional Commission, certainly it should do so. But I am not in a position to express a judgment on whether it has been proficient in trying to work out cooperation. We were a little selfish in our early years in dealing with Federal agencies.

Senator BURDICK. Do States in the TVA area have a substantial partnership responsibility with TVA?

Mr. FREEMAN. Yes, sir. TVA can only do its job if those relationships are strong or mutual and both sides deal openly with each other.

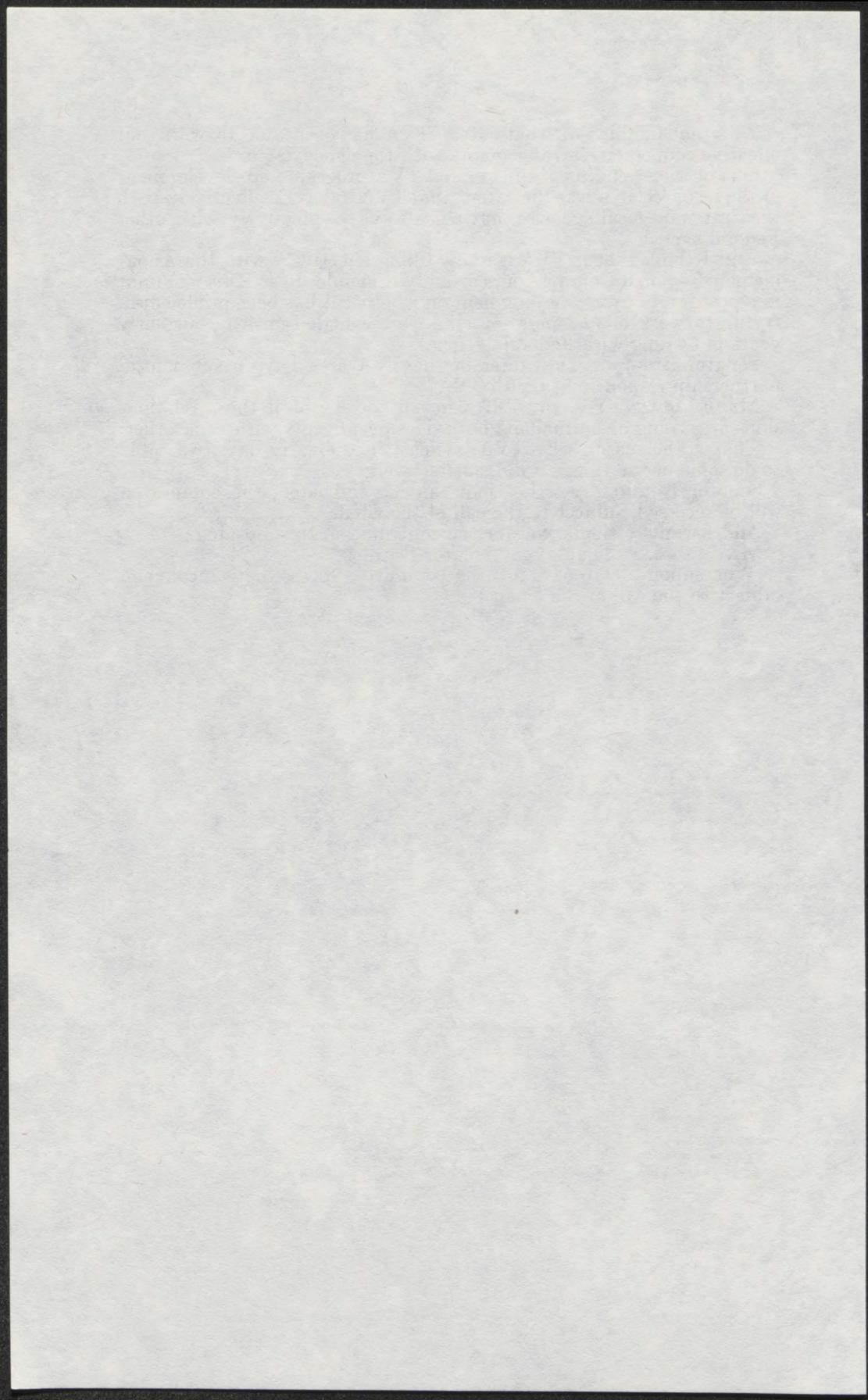
That is the reason why TVA, at least in the early days, was able to do some of the things it did so effectively.

Senator BURDICK. As the chairman has indicated, the committee will be recessed, subject to the call of the Chair.

And I want to thank you for the contribution this morning.

Mr. FREEMAN. Thank you, Senator Burdick.

[Whereupon, at 10:58 a.m., the committee recessed, to reconvene subject to the call of the Chair.]



NOMINATION OF RICHARD M. FREEMAN

WEDNESDAY, OCTOBER 4, 1978

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C.

The committee met at 9:40 a.m., pursuant to recess, in room 4200, Dirksen Senate Office Building, Hon. Howard H. Baker, Jr., presiding.
Present: Senator Baker.

OPENING STATEMENT OF HON. HOWARD H. BAKER, JR., U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator BAKER. The committee will come to order.

I just received word that Chairman Randolph found it impossible to be here for the hearing this morning and that he asked us to proceed.

I notice that Mr. David Freeman, Chairman of the Board of Directors of the TVA, is present in the hearing room. He is here at his own request and voluntarily. I rather suspect that the chairman read of my queries to the other Freeman about the nature of the proceedings in the selection of the second nominee. As a matter of fact, I know that to be the case. Chairman Freeman and I talked on the telephone after the last hearing.

But I am delighted that David Freeman is here. I think it gives us an opportunity firsthand to examine the situation in respect to the selection of Richard Freeman to be the second director of the Board and to clarify any other matters in terms of their general relationship.

So I would at this time, if I may, invite Chairman David Freeman to come to the witness stand.

Mr. Chairman, welcome. We are happy you are here. I know you have a fairly short statement. Let me set the framework for this proceeding.

First of all, this is the third day of hearings. I believe most people will agree that the hearings have been thorough and exhaustive, in the public forum as well as the inquiry that preceded it, both by the White House and the staff of this committee.

Second, it is an unusual and special circumstance, not repeated since the first Board was born; that is to say, there is not a quorum of Board members at the present time.

Third, it is vitally important that we ascertain in advance, to the maximum extent, the nature of the relationship between the chairman and the second Board member.

In that case, then, I think it is entirely pertinent and proper to find out how Richard Freeman's nomination was recommended to the President and what part, if any, David Freeman played in it.

It surely is not over obvious to say that if Richard Freeman were David Freeman's handpicked candidate, that that would be an important part of this consideration. It is also obvious, I think, that if Richard Freeman is a free agent and the process involved was that of recommendations to the appointing authority in a general way, that it would be an entirely different situation.

But with that background, Mr. Chairman, I would be pleased to hear any statement that you care to make at this point.

**STATEMENT OF DAVID FREEMAN, CHAIRMAN, BOARD OF
DIRECTORS, TENNESSEE VALLEY AUTHORITY**

Mr. FREEMAN. Thank you.

Mr. Chairman, members of the committee, I appear before you today at my own initiative upon learning from the press that you, Senator Baker, were questioning the relationship between Richard Freeman and me. I believe I can set the record straight without violating confidentiality of any conversations that I may have had. In any event, I am here to answer your questions.

I am aware that there is a certain amount of natural curiosity about the relationship between the two Freemans because of the coincidence of our last names being identical.

While my appearance here today is to my knowledge unprecedented, it seems to me that the relationship between two Board members who might be serving together for many years in directing one of the Nation's most important enterprises, may be a matter of interest and is relevant to this committee.

I have known Richard Freeman since the 1950's when I was going to law school in my senior year and working part time on the TVA legal staff. Richard Freeman was a member of that staff.

We have remained friends over the years but see each other only infrequently. Richard Freeman, as I am sure this committee has sensed, is the kind of person who makes lasting friendships.

Richard Freeman and I have absolutely no agreements on any TVA issues. I do not know how Richard Freeman will vote on any matter pending before TVA or likely to arise. In fact, at this moment the committee has more knowledge of the nominee's views than I, because I have read only the newspaper summaries of his testimony.

I do know Richard Freeman well enough to say that he is intelligent and public interest oriented. I also know him well enough to be certain that he is fiercely independent, and if confirmed will vote his own mind.

As you well know, every member of the TVA Board has an equal vote. Richard Freeman will provide an openminded, independent check on what TVA is now doing. He will also provide an independent check on the ideas and initiatives that I may have in mind.

I endorse President Carter's nomination of Richard Freeman and urge this committee to confirm him as promptly as their constitutional responsibilities may permit. There may be considerable controversy about the issues facing TVA, but I can assure you that there is near unanimous agreement that TVA needs a quorum on its Board, and needs it now.

I know that Chairman Randolph and you, Senator Baker, and the other members of the committee are well aware of this need and shall my hope that this confirmation process can be swiftly completed.

I am here today to do whatever I can to facilitate that urgent objective.

Senator BAKER. Mr. Chairman, thank you very much.

Getting down to the fundamental issue at hand, what role did you play in the selection of Richard Freeman? For example, did you submit to the White House any names? Did you submit one name, or more than one name?

Mr. FREEMAN. I responded to questions, and over the course of the period involved I commented on names. I did mention names in response to questions and I did not know whether they previously had these names or not.

In regard to this nominee, I was asked if there were any businessmen that I knew that I thought would be particularly well qualified and interested in serving on the TVA Board. In response to that question from the President, I mentioned Richard Freeman's name.

There were other categories of people that were being considered, and other names that I mentioned from time to time. I am not sure that it would be necessary or useful to go into the names of people who didn't get nominated.

Senator BAKER. No, it would not. I am not asking for that. I think you have answered my question. That is, did you submit names. I think the answer to that is in a way, I suppose. Your point of view was solicited and you made suggestions of possible names to be considered. Is that a fair statement?

Mr. FREEMAN. That is a fair statement, sir.

Senator BAKER. And that there were several categories of names, and that Richard Freeman was the only businessman name that you submitted.

Mr. FREEMAN. That is correct.

Senator BAKER. I think that covers the point. The point of the matter is he has not the sole and only nominee that you recommended to the White House.

Mr. FREEMAN. That is correct. Nor, I might say, was he the first name.

Senator BAKER. Nor was he the first; is that what you said?

Mr. FREEMAN. Yes, sir.

Senator BAKER. Did you talk to Richard Freeman—I am not going far into this, and it is not in the nature of an inquisition, but I think this is relevant. Did you talk to Richard Freeman in advance to advise him that you were going to submit his name for that position?

Mr. FREEMAN. Yes. I believe that we had a conversation—I don't recall whether it was at his initiative or mine—dealing with the question of a fellow running a railroad being interested in coming down and taking on the opportunities and the headaches of helping run the Tennessee Valley Authority and living in that part of the country. It went to questions of personal interest of that nature.

We had that conversation I am almost sure, before I mentioned his name to the President. As a matter of fact, I am sure, because I wouldn't have mentioned his name, I don't think, if I didn't have some idea that he might be available. I wouldn't have wanted to do that.

Senator BAKER. You have already covered in your testimony the other points I had in mind to ask. That is, is there any previous arrangement on major policy issues between you and Richard Freeman. I believe your statement says there is not.

Mr. FREEMAN. That is correct; unequivocally.

Senator BAKER. You have no preexisting agreement on how TVA should be conducted.

Mr. FREEMAN. None whatsoever.

Senator BAKER. You don't know in advance how he might feel on particular issues from time to time?

Mr. FREEMAN. I do not.

Senator BAKER. On any issue?

Mr. FREEMAN. On any issue. Except to the extent I have learned something from the summaries in the newspaper on this hearing. I understand, for example, that he agrees with the Eastern coal policy of TVA.

Senator BAKER. Have you made further recommendations to the White House for the third appointment?

Mr. FREEMAN. No, sir, I haven't. To my knowledge, that selection has not been made as yet, and I have not been asked to comment on particular names.

There have been some conversations about the type of person that might fit. But those have just been sort of general background conversations where ideas were tossed out. But I have had no conversations that dealt with names, except for the fact that everyone that was considered for the Richard Freeman spot—and as you know, there were a large number of people interviewed and considered—they are all, to the extent they are interested, in the running. So those names are there.

But I have not had any conversations with the White House staff, and certainly not with the President, dealing with particular individuals for the third spot, except that what we all share is the feeling you have expressed that the sooner we can get a full Board, the better. But as of this morning, I will settle for a quorum.

Senator BAKER. I think that is important. I would like to see a full Board. There have been some suggestions in some quarters that we withhold confirmation of this nomination until we know who the third one will be. I can understand the reason for that. I confess to being tempted to do that since it is so important. But I don't think we can afford that.

Mr. FREEMAN. No, sir, we can't.

Senator BAKER. I think we have to proceed with a nomination for the second nominee as soon as possible.

Mr. FREEMAN. I think it is relevant to note the TVA Board functioned for 2 years with two members—not by its own wish but through some unfortunate circumstances. That is a far different situation when you have a legal quorum, people confirmed by the Senate, than the situation we have now where, for example, the agency's 1980 budget has been submitted to the Office of Management and Budget and we need a quorum in TVA to pass on our budget process, which is the heart of our next year's nonpower activities. So in a sense it is in abeyance.

Senator BAKER. In the hearings the other day I took you to task, David, for your statements about the Clinch River breeder. Did you read that in the newspaper, too?

Mr. FREEMAN. Yes, sir. That kind of made the front-page story down in Tennessee. Your views on the breeder are very important to the people in Tennessee.

Senator BAKER. So are yours.

The question was whether or not a member of the Board of TVA ought to be actively involved in trying to bring about the cancellation or bring public disfavor to a project of this sort.

Do you have any further comments in that regard?

Mr. FREEMAN. Yes, Senator.

First of all, I think in my confirmation hearing last year you were quite aware of the fact that our views differed not on breeder technology generally, and the need for research and development but on whether time had passed by the Clinch River project or not.

I did promise that I would not, in a sense, pull the plug on the Clinch River project by any action that I would take; that if you could persuade the President or override his vetoes and the Clinch River project was approved and was going forward, that I, as a board member, would not take actions to in effect pull the plug on it.

I have not only honored that commitment, but I have gone beyond it. TVA has 25 people in the Clinch River project at the moment. We belong to the Breeder Reactor Corp. We are part of the triangle that is essential to it. I have not lifted a finger to disturb those relationships. I have deliberately declined serving on the Board of the Breeder Reactor Corp. and permitted one of the TVA staff who agrees with you on the breeder project to serve.

I did not want to inject myself in creating dissension within those ranks.

I have not approached any member of Congress on this issue. I tried to duck a question when Barry Goldwater put it to me in a hearing over on the House side the other day.

The press down in Tennessee are extremely interested in this issue. I have never made a public speech in which I led with that issue, but I have never had a public appearance where there was a question and answer session where someone didn't ask me my view on it afterwards.

I think that I have scrupulously honored my commitments to you. I do not apologize for the fact our views differ, Senator. As I said at the hearing, this is an issue on which people legitimately differ.

I do not believe that it is inappropriate for me to answer questions on an issue where I have earned, I think, over a 10-year period, the right to have an opinion.

I have always put the qualifications in there. After your comments, I got out the article which had this big headline saying that the Clinch River breeder is a technological turkey.

Senator BAKER. August 16, 1977.

Mr. FREEMAN. Yes. I think I would like to describe that. I stopped by the editorial offices of the Knoxville Journal when I came to town and had a long conversation with the editors of the Journal. They had a young reporter there also.

I am not saying that it was an off-the-record conversation. But it was a long get-acquainted conversation in which I explained to them that I am going to take a look at issues as a member of the TVA Board, when I went to work after a vacation that ended on Labor Day.

At the end of the conversation, after trying to explain to them why I personally thought that the breeder project was no longer necessary or useful, I said, and I quote from the article itself: "Freeman said his former boss and Energy Secretary James Schlesinger closely

examined the project and concluded that as currently conceived it is a turkey from an R. & D. point of view."

I don't apologize for the manner in which I have expressed my views. I will concede that I may be wrong. I certainly respect the vigor and the effectiveness with which you are pursuing your point of view.

I am not in a debate with you on the issue. I feel that it is your issue and the President's issue. And as a TVA Board member, I have not been trying to inject myself in that debate.

But I hope you sympathize with the fact it is a matter of vital interest. I continue to be pressed, and I am just not a person that is very good at ducking questions. I will be glad to have any advice from you that I might get on that score.

But I feel kind of dutybound to answer questions. When I do, the press tends to picture what I say and perhaps more colorfully than I say it.

Senator BAKER. The only advice I would give to you after 52 years, a fair part of that in public life, is that the least productive pursuit I have ever discovered is trying to claim the press mistreated me.

Mr. FREEMAN. I am not suggesting they mistreated me. I am suggesting they paint me bigger than life.

Senator BAKER. Let me put this in perspective from my standpoint and then I think we will move on to the matter at hand.

The question of this country's policy toward the construction of the Clinch River breeder as an important demonstration is a policy decision to be made by the President of the United States and by the Congress of the United States.

The TVA Board, of course, can, and you are entitled to, have and may state your position on that.

But it is my view that an agency and arm of the Government of the United States should not try directly or indirectly to subvert the decision process or to materially affect that decision process of this Government in reaching that point.

The debate is ongoing, as you point out. President Carter wants to cancel it. Secretary Schlesinger wants to cancel it. Many of us in the Congress do not want to cancel it. There is, as a matter of fact, today before the House of Representatives a bill that materially affects the future of that project. I am speaking of the Public Works Appropriations bill. And the question of a House override of that will have considerable effect or whether funding is continued at the previous level for the Clinch River breeder. There is about \$170 million in that bill for the breeder.

That bill, if it in fact is overridden by the House of Representatives, will probably come to the Senate today, or later this week.

But these are decisions to be made by the Congress and by the White House. I don't wish to deprive you of your views. I don't even criticize you for saying them. But as the old saying goes in Tennessee, if you can't help me, don't you help that bear.

This is an ongoing debate between me and others in the Congress and the White House on this project. Maybe I get more excited about it than most because I had more to do with getting it authorized and located than most.

Mr. FREEMAN. Senator, I respect your excitement and the vigor with which you pursue your views. I would just like to state for the record I have not approached the U.S. Congress or any member thereof directly or indirectly.

I would like to quote from a public hearing where Congressman Goldwater was questioning me. If I could just read this.

Mr. GOLDWATER. You probably then support the President on doing the Clinch River Breeder Reactor, and at the same time——

Mr. FREEMAN. I have tried my best not to get into that this morning. I think that my views are perhaps too well known on that score.

He assumed that I had an inconsistency in my testimony.

Mr. GOLDWATER. You can't have it both ways. You can't kill processing on the grounds of proliferation and then turn around and support Clinch River or the breeder reactor for some other particular reason.

Mr. FREEMAN. Don't misunderstand me.

Mr. GOLDWATER. They are all based on the same principle: We want to set an example for the rest of the world and they are going to follow us. Which they are not.

Mr. FREEMAN. Mr. Goldwater, you misunderstand me. I am opposed to the Clinch River breeder reactor.

Mr. GOLDWATER. You are opposed to it?

Mr. FREEMAN. Yes. I am trying my best not to get into that issue.

Mr. GOLDWATER. OK. At least you are consistent.

That is not the record of someone lobbying the Congress. That is perhaps, other than the colloquy with you and a direct answer to Mr. Bevel of a question put to me at the appropriations hearing where he asked Mr. Wagner and myself for our views, the only contact. I had no contact except in the public record. That is the only contact I had.

I understand what you say and I think that I have been conducting myself pursuant to the conversations we had at my confirmation hearing and pursuant to the finest tradition of nonpolitical involvement by the TVA Board, and I will continue to do so.

I think that you can be assured that even though my promise was to not disturb this relationship until after the debate was over, I have not been disturbing the relationship during the debate and have no intention to do so.

We will continue to spend \$1 million a year of TVA money on the Clinch River project because I think it is important that the status quo be preserved. In the broadest sense, I understood that as your question.

I appreciate your saying that you think that it is appropriate for me to answer questions, because I would find it difficult not to do that. I think we have a meeting of the minds on this. I appreciate your bringing it up and clearing the air on it.

Senator BAKER. I think that is far enough on this. There are other episodes relating to the breeder that we could discuss, but there is no point. You understand my view. My view is that until the Congress and White House make a policy decision finally on the breeder, that the TVA Board ought not to be in the business of affecting the outcome of that decision.

Mr. FREEMAN. Yes, sir. And I could also appreciate when you pick up a newspaper and see big headlines coming out of me, attributed to me, that this can be irritating on that score. I just wanted to explain myself.

I think in all fairness they weren't so irritating when the Chairman of the Board was making statements backing up your point of view. But I am not trying to be the opposite of my predecessor. I really on this issue have been trying ——

Senator BAKER. That is sort of an unfair lick, because at the time Red Wagner was supporting the breeder, that was the policy of the

Government of the United States, both the Congress and the White House. Now clearly there is a dispute over that policy.

What I am saying is when there is a dispute, as there is now clearly, I think that an administrative department of the Government, let alone an independent agency, ought to stay out of that fight.

We can go on with this as far as you like, Mr. Freeman, but I have stated my view and I think I understand your view.

Mr. FREEMAN. I understand your view. I hope and trust that I have conducted myself—I think I have conducted myself in accordance with my commitment.

The point I have been trying to make is I feel that if anything, I have leaned over to try not to get into this issue. I will try to continue to do that in a more effective manner in the future, if I could put it that way.

I think you are right. I think that TVA should not take sides in this issue. I think you are right in the sense that it is very difficult for me to answer questions giving my personal views based upon past experience without it being attributed to TVA.

I have tried to make that distinction unsuccessfully. I think I get the message. I just hope you appreciate that I have been conducting myself on this issue pursuant to our understanding, I think properly so. And perhaps that disposes of it.

Senator BAKER. Mr. Freeman, thank you. I appreciate your testimony. It has been very helpful.

I might say in conclusion that the questions I raised on the previous day about your involvement in the selection of Richard Freeman have been answered to my satisfaction.

Mr. FREEMAN. Thank you, sir.

Senator BAKER. I am grateful for your volunteering to be here and to continue this colloquy on matters that were not directly related.

Thank you very much.

Mr. Richard Freeman, would you be willing now to continue with your examination?

Mr. FREEMAN. Good morning, Senator Baker.

Senator BAKER. Good morning, Mr. Freeman.

I think we have almost completed the range of questions I had in mind. I would like to go into these subjects: Your view on the Tellico Dam and its completion; your view on the Endangered Species Act as it relates to the Tellico Dam and as applied to TVA policy in general; and more specifically, your views, if you care to give them, on the Culver-Baker amendment to the Endangered Species Act.

I would then like to discuss with you the situation with respect to TVA's policy on in-lieu-of-tax payments as it presently exists. I would like to talk a little about the mining of coal, particularly surface mining and reclamation. I would like to talk about the breeder reactor at the Clinch River project. Finally, any other new and different ideas, for the future of TVA that you care to volunteer.

That, in general, is what I would like to cover. I don't think it will take us terribly long.

Could we start first with your view on the completion of the Tellico Dam?

Mr. FREEMAN. With respect to the Tellico Dam, I have been asked that question in some of the written questions from Senators from the valley. I have answered them as I will answer you. That is, at this time

I have no specific view as to whether the Tellico Dam should be closed in the form in which it is now, the condition in which it is now found, or whether there are alternatives which should be reviewed more seriously.

I have read the report of the General Accounting Office of a little more than 1 year ago which I am sure you know is quite critical of the cost-benefit ratio. I have read the joint preliminary report of the Department of the Interior and the TVA which raises a number of questions. As I understand that report, comments have been requested from those who are interested, in and out of the valley. Certainly it would be very important to see those comments, to have access to those comments.

To continue your question along the same vein, so far as the Endangered Species—

Senator BAKER. Before we get to that, let me interrupt you on the Tellico Dam project. I think it is no secret to most people, I suspect not to you, that I think we ought to finish and close the dam.

Mr. FREEMAN. I understand, sir.

Senator BAKER. I must frankly say, as I have said previously, I am not sure I would now vote for the dam. But now is not then. And we did do that. We have spent a lot of money, and I think we ought to finish it. I have proceeded on that basis since I have been in the Congress. The dam as a project precedes my service in the Congress.

Do you have any feeling at all as to whether or not the percentage of completion of that project would weigh in favor of completion or against it? Do you have any view?

Mr. FREEMAN. Certainly I do indeed have views. I think the fact that the structure is there is a very relevant fact. Indeed, if I may say, if I may elaborate, one of the things that disturbed me, as someone interested in history, is to have that structure standing there for centuries as a monument to something that I wouldn't be very pleased to have been a part of.

That is a fact and an important fact. I am not saying it is dispositive, but it would weigh and weigh heavily.

Senator BAKER. I think that is far enough on that. I agree with you. I think that the fact and reality of the situation is that the dam is virtually complete and that that should be taken account of in the final resolution of the issue by the Board. I understand from your testimony that you will take that into account. Is that correct?

Mr. FREEMAN. Yes, sir.

Senator BAKER. Thank you, sir.

On the Endangered Species Act, you began and I interrupted you.

Mr. FREEMAN. Yes. Well, I think that that legislation, like many other kinds of legislation, could be and was interpreted quite strictly. I think it is important that that legislation, possibly as well as others, have some kind of safety valve.

I am aware there are bills—a bill has been passed in the Senate and, of course, it is working its way through the House—with another kind of safety valve.

I express no particular views as to whether the bill as passed in the Senate is the proper way to provide for a review of particular projects or whether the kind of procedure that was provided in the House version is preferable.

I do endorse the principle of some kind of an exemption procedure in the Endangered Species Act. Whether it should be an interagency committee or some kind of procedure along the lines in the House version, I have no particular views.

Senator BAKER. I think that is very good.

I would ask one further question in that respect. If in fact some sort of exemption procedure is enacted by the Congress and TVA has the option to use or not use that exemption, do you have any predisposition to using or not using it? Is there any philosophical bias for or against the use of it?

Mr. FREEMAN. I have no philosophical bias yea or nay. If the procedure was made available by the Congress, it was done so for a purpose. That is certainly again a heavy consideration. That is, assuming once the determination by the Board is made as to which direction to go.

Senator BAKER. Mr. Freeman, the Congress passed the Surface Mining Act which I think was a piece of landmark legislation. There is heavy involvement by coal producers for TVA purposes, so I would hope that the agency and the members of the Board have considerable interest in the effectiveness and the equity of that act and its success.

Are you familiar with the act as it was passed by the Congress?

Mr. FREEMAN. I am generally familiar with the act, Senator. If it is appropriate, I will indicate, as I think I did in my opening statement, that one of the responsibilities of the Tennessee Valley Authority, as expressed in the act, is conservation.

I include in conservation reclamation of lands that have been fouled as a result of mining activities, as well as other kinds of conservation. So I am in sympathy with the Surface Mining Act.

Senator BAKER. You have no difficulty with the concept of restoration to approximate original contour?

Mr. FREEMAN. No, sir.

Senator BAKER. Would you also be dedicated to the notion that this as a new program and a new piece of legislation should be fairly and equitably administered?

Mr. FREEMAN. I share that view.

Senator BAKER. I suggest to you, Mr. Freeman, that that is worthy of some examination by the Board. There are many, many complaints to the Representatives and Senators from the valley area regarding the formulation of rules and regulations for the administration of the act.

As I say, much of that relates to coal being produced from TVA.

Would you be willing to look into the efficiency of the administration of that act as a member?

Mr. FREEMAN. Yes, sir.

Senator BAKER. CRBR has been covered to a point. However, what is your view on the Clinch River breeder project?

Mr. FREEMAN. As I think I indicated to you before, at this stage I have no view yea or nay on the Clinch River breeder project.

Senator BAKER. What is your attitude toward the ongoing debate in the Congress and the administration about the future of that project? Do you feel it is the function of TVA to involve itself in this dispute, or do you feel it is, rather, the function of TVA to carry out a policy of the Government when it is established?

Mr. FREEMAN. Well, the way you formulated the question gives me pause. Let me try to restate what I think I stated before.

If I were to have a view on that project, and if I thought that project had a definite impact upon the Tennessee Valley Authority, I would feel that I should express my view. At the same time, I certainly believe that it is part of the role of the TVA Board to carry out the will of the Congress as expressed from time to time. I would take that charge very seriously.

Whether that is responsive to your question, I don't know, but I think that is substantially the way I answered your question at the last session and is certainly in accordance with the way I feel.

Senator BAKER. I guess I ought to put the question to you that I put to David Freeman during his confirmation hearings. That is, if it is the clearly established policy of the Government of the United States to continue with the construction and development of the Clinch River project, would you have any difficulty or hesitation as a Board member in implementing that decision?

Mr. FREEMAN. No, sir.

Senator BAKER. TVA, of course, is enormously important to people in the Tennessee Valley region. One of the problems that is very important, indeed, beyond the services rendered by TVA and the protection afforded, is the question of how they treat local agencies of government.

Could you give me your views on the in lieu of tax policy as it exists and any suggestions for future policy?

Mr. FREEMAN. The role of TVA in making in lieu of tax payments is, of course, standing in effect as an umpire between the ratepayer and the Government units. The 5 percent of gross which is now provided in the statute is, I think, at least as high, if not higher, than private utilities are paying in other parts of the country.

That policy, the policy as embodied in the TVA Act, is generous to the local units of government. And these are payments which, of course, the ratepayers, the users of electricity, are in effect paying.

I would have no objection to a complete review of the equity in the relationship between the ratepayers of the Tennessee Valley and the governmental units as to the in lieu of tax statute.

I was unaware, Senator, that there was any great amount of controversy about it, but it may be the time has come some 30 years later that the amounts should be reviewed.

I may say—and this may be the thrust of your question—there is another element in TVA's activities that impinge upon local governmental units. That, of course, is the nonrevenue kinds of activities.

The Congress has otherwise provided for impact money for units of government which are adversely affected by governmental activities. It may be that some of the nonrevenue activities of TVA have impacted governmental units in such a way that some kind of a review is called for.

That is a different issue than the in lieu of tax payments which are designed basically to provide for TVA, where it stands in the place of a tax-paying private enterprise, to provide equitable treatment for the units.

Senator BAKER. Mr. Freeman, I have no other questions. Is there any further remark you would like to make before we conclude the hearings?

Mr. FREEMAN. No; except to say that I have been quite impressed with the interest which I knew you held in TVA. Your questions have been perceptive and have shown that you do indeed have a definite knowledge about the agency that matches your interest in the agency.

I would hope that if I am confirmed I can do what I have set forth in my statement. I hope to find an accommodation between the very strong statements in the TVA Act that are conservation directed and the very strong statements in the TVA Act that are development oriented. As I indicated, I think the framers did not see those two as necessarily antithetical. I think they have become so in the last few years. I think it is the challenge of the TVA to find an accommodation. I would hope to share in that.

Senator BAKER. Thank you very much, Mr. Freeman. I have no further questions at this time to direct to the witness. The record will remain open for the balance of this day so that additional statements can be included by members of the committee.

It is my intention to suggest to Chairman Randolph that the committee be convened in executive session reasonably soon to consider reporting this nominee.

The hearing is adjourned.

[Whereupon, at 10:25 a.m., the committee was recessed, to reconvene subject to the call of the Chair.]

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