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OF THE

FEDERAL POWER COMMISSION

A REPORT OF THE
CIVIL RIGHTS OVERSIGHT SUBCOMMITTEE
(Subcommittee No. 4)

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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FOREWORD

As part of its study of the Federal Government's role in the achievement of equal opportunity for all of our citizens, the Civil Rights Oversight Subcommittee has sought to evaluate the Civil Rights responsibilities of the Federal Power Commission. In connection with this evaluation, the subcommittee held hearings on March 2, 1972, receiving testimony from the Honorable John N. Nassikas, the Chairman of the Federal Power Commission. The subcommittee also corresponded with a wide variety of other Federal regulatory agencies to ascertain the extent to which each of them view the nature of its responsibilities under the various Civil Rights Acts. This report is based on the testimony received in the March 2 hearing, as well as the subcommittee's correspondence with various regulatory agencies and other Government officials.

A. Findings

1. The Federal Power Commission (FPC) is required by its enabling legislation to grant licenses only where the public convenience and necessity are served. The FPC interpretation of this standard so as not to recognize the constitutional and statutory mandate for fair employment practices is legally incorrect and unsupported by the policies and practices of other Federal regulatory agencies.

2. Discriminatory employment practices based on race, color, religion, sex, or national origin, are more prevalent in the utilities industry than in most other major industries. For example, the Equal Employment Opportunity Commission (EEOC) has found that: black participation in the utilities industry is the lowest among the 23 industries reporting employment of 500,000 or more; Spanish-surnamed Americans held 3.6 percent of all jobs, while they held 1.6 in the utilities industry; and while women held 34 percent of all jobs, this figure dropped to 15 percent in the utilities industry.

3. Equal employment opportunity is fundamental to the enjoyment of all the other civil rights guaranteed by the Constitution. Unless one is given the opportunity for employment, he cannot attain for himself and his family the minimum economic viability necessary to make meaningful the fruits of citizenship. What good is it for a minority citizen to have the right of equal access to public accommodations if his economic condition prevents him from enjoying the simple pleasure of eating at a restaurant? How can minority citizens benefit from the expanded opportunity for equal access to housing guaranteed by the civil rights laws if they lack sufficient income to purchase decent housing? It is thus fundamental to the enjoyment of all other rights that minority citizens secure the right to employment; discriminatory employment practices destroy this right and make hollow promises of most other civil rights.

B. Background

Title VII of the Civil Rights Act of 1964 is an expression of national policy that an individual shall not be discriminated against in employment on the basis of race, color, religion, sex, or national origin. The passage of this legislation was an important step in the drive for equality for all citizens, but as expected, mere enactment did not abolish discriminatory employment practices.

Four years after the passage of title VII, the National Advisory Commission on Civil Disorders reported, "Unemployment and underemployment are among the most persistent and serious grievances of our disadvantaged minorities. The pervasive effect of these conditions on the racial ghetto is inextricably linked to the problem of civil disorder." [1] The Commission found that arbitrary barriers to employment and promotion must be eliminated and recommended strengthening of efforts to insure equal opportunity in employment.[2]

The Bureau of Labor Statistics has estimated that in April 1972, the unemployment rates for whites is 5.4 percent, compared with 9.6 percent for blacks and other races.[3] The 1970 census indicates that the median income of a black family is only 61 percent of that of a white family.[4]

In looking at the problem relating to equal opportunity in employment, the subcommittee believes that the Federal Power Commission, like each other Federal regulatory agency, should interpret relevant constitutional and statutory provisions in the manner in which they were intended to be interpreted: as the basis for action by the Federal Government to alleviate a serious problem. To give a narrow interpretation to these provisions is only to maintain the status quo.

C. Discrimination in the Utilities Industries

According to the Equal Employment Opportunity Commission, the equal employment record of the "investor-owned utilities industry, which is regulated by the FPC, lags behind most major employers in the utilization of minorities and women at every job level. The problem in the industry is extreme." [5] After hearings on the extent of discrimination in the utilities industries, EEOC Chairman William H. Brown III, stated in his closing remarks that although the EEOC was accustomed to dealing with problems of employment discrimination, it was "stunned by the rampant discrimination" [6] it saw in the public utilities industries.

The Equal Employment Opportunity Commission found, for example: [7]

Black participation in the electric and gas utilities industries is the lowest (6.1 percent, among the 23 industries reporting employment of 500,000 or more).

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[1] "National Advisory Commission on Civil Disorders, Report," Mar. 1, 1968, p. 231.
[2] Ibid., p. 233.
[3] U.S. Department of Labor NEWS, USDL–72–274, April 1972.
[4] U.S. Departments of Labor and Census, "The Social and Economic Status of Negroes in the United States, 1970," BLS Report No. 394, p. 27.
[5] Letter from EEOC Chairman Brown to Hon. Don Edwards, Apr. 20, 1972. See Civil Rights Responsibilities of the Federal Power Commission, Hearings before the Civil Rights Oversight Subcommittee, Committee on the Judiciary, 92d Congress, 2d Session (hereafter "hearings"), p. 121.
[6] Hearings, p. 153.
[7] EEOC Position Paper at Hearings on Utilization of Minorities and Women in Gas and Electric Utilities Companies, Nov. 15, 1971, in hearings, p. 152, 153.

That in 1970 Spanish-surnamed Americans held 3.6 percent of all jobs reported in the Equal Employment Opportunity report nationwide survey, but they held only 1.6 percent of all jobs in the utilities industries.

While women held 34 percent of the positions reported in EEOC's overall survey in 1970, only 15 percent of the utility industry's employees were female.

Nine out of 10 female employees in the utilities industry were clerical workers.

Spanish-surnamed Americans in 1970 held less than 1 percent of the office, managerial, professional and sales jobs and only 1.5 percent of all technicians jobs in the utilities industries.

One-half of all utility establishments filing Equal Employment Opportunity reports with the Equal Employment Opportunity Commission in 1970 had no black employees.

D. Legal Position of the Federal Power Commission

In his testimony before the Civil Rights Oversight Subcommittee, the Chairman of the Federal Power Commission expressed unequivocal support of the national policy against discrimination in employment on the basis of race, color, creed, sex, or national origin. It was his view, however, that neither the Constitution nor the Congress imposed on the Federal Power Commission an obligation to enforce this national policy with respect to companies regulated by it. In fact, the Federal Power Commission was quite explicit that the agency had no discretion in the matter and that it was without legal authority to issue regulations prohibiting discrimination in regulated industries.

The Federal Power Commission stated that the Constitution and title VII provided a limited number of alternative ways with which the Federal Government could deal with employment discrimination and that there was no administrative remedy provided to the Federal Power Commission.

E. The FPC Position Viewed by Other Federal Agencies

The Federal Power Commission stands alone in its restrictive interpretation of constitutional and statutory mandates to secure equal employment opportunities. The Department of Justice, which is aptly referred to as the lawyer of the executive branch, has already stated that the Federal Power Commission possesses the authority to prohibit employment discrimination in regulated industries. In a September 17, 1971, letter to FPC General Counsel Gordon Gooch, Assistant Attorney General for Civil Rights, David L. Norman, stated:

> In our opinion, under the relevant statutes, the Commission has ample authority to issue regulations barring employment discrimination by natural gas companies regulated by the Commission and by electric companies holding hydroelectric plant licenses.[8]

This conclusion was supported by a detailed legal analysis.

The Federal Power Commission's major argument with respect to its limited authority is that the prime responsibility for enforcement

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[8] Hearings, p. 65.

of title VII rests with the Equal Employment Opportunity Commission. The EEOC, however, disagrees with the Federal Power Commission and interprets the Constitution and title VII not only as giving the FPC authority to prohibit discriminatory practices, but as requiring the FPC to prohibit such practices.

In a letter to the Civil Rights Oversight Subcommittee, Equal Employment Opportunity Commission Chairman William H. Brown III, stated:

> I respectfully submit that the law which the FPC administers, as well as the Constitution, requires the FPC to exercise its regulatory authority so as to meet these (equal employment opportunity) needs.[9]

He stated further:

> The FPC has both a statutory and constitutional obligation to prohibit employment discrimination by its regulatees. The fact that the Equal Employment Opportunity Commission has responsibility for eliminating employment discrimination does not exempt the FPC from its equal employment responsibility. The legislative history of title VII made this clear.[10]

The U.S. Commission on Civil Rights, which has long been concerned with implementation of constitutional and statutory requirements relating to civil rights, made clear in its 1971 report, the Federal Civil Rights Enforcement Effort, that the Federal Power Commission had authority to prevent discriminatory employment practices in regulated companies.[11] In a recent letter to the subcommittee,[12] the Rev. Theodore M. Hesburgh, Chairman of the Commission, emphasized a constitutional as well as statutory obligation: "For the FPC to permit these companies to discriminate in their employment * * * places the Commission in violation of the due process clause of the fifth amendment to the Constitution." He summarized the view of the Commission as follows:

> In conclusion, the U.S. Commission on Civil Rights believes that the Federal Power Commission has ample authority to issue regulations prohibiting employment discrimination in the industries it regulates. Furthermore, we believe that both its statutory mandate to regulate in the public interest and its obligation to uphold the Constitution require the Federal Power Commission to issue such regulations and to insure that they are obeyed.

The Cabinet Committee on Opportunities for the Spanish Speaking, also possesses great expertise in the area of civil rights. In discussing the restrictive legal interpretation adopted by the Federal Power Commission, cabinet committee chairman, Dr. Henry Ramirez, stated to this subcommittee that the FPC position was "incomprehensible" [13] in view of legislation, Executive orders, and judicial decisions which currently exist.

The General Services Administration is that Agency which has responsibility with respect to utilities industries for the enforcement of Executive Order 11246, which prohibits employment discrimination by Federal contractors. In addition, the General Services Administration presents the view of the Federal Government in applications by utilities industries for rate increases.

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[9] Ibid., p. 65.
[10] Id.
[11] U.S. Commission on Civil Rights, "The Federal Civil Rights Enforcement Effort, 1971," p. 277.
[12] Hearings, p. 124.
[13] "Federal Employment Problems of the Spanish Speaking," Hearing before the Civil Rights Oversight Subcommittee, Committee on the Judiciary, 92d Congress, 2d Session, p. 51.

In carrying out these responsibilities, the General Services Administration has developed a special expertise in the interpretation of legislation affecting the utilities industry. The Acting Administrator of the General Services Administration, having reviewed the Justice Department's legal analysis of the Federal Power Commission's authority in the equal employment opportunity area, recently informed the Civil Rights Oversight Subcommittee that his agency adopts the Justice Department position that the Federal Power Commission could utilize its licensing procedures to deal with discriminatory employment practices. In addition, GSA takes the position that consideration of employment practices is appropriate when a company applies for a rate increase.[14]

F. Equal Employment Opportunity Activities Undertaken by Other Federal Regulatory Agencies

In granting a license or certificate of public convenience and necessity, the Federal Power Commission is required by law to consider the fitness of the applicant and generally speaking whether the public interest will be served by such grant. These requirements, found in the governing statutes of other Federal regulatory agencies, impose similar obligations on these agencies, and they have responded by recognizing these obligations in the enforcement of title VII. The Federal Power Commission stands alone in its determination that employment practices of an applicant are not appropriate considerations in making decisions concerning these standards. In adopting its restrictive interpretation, the Federal Power Commission seems unwilling to accept a principle recently emphasized with respect to the Federal Power Act by the U.S. Court of Appeals, District of Columbia Circuit:

> The (Federal Power) Act is not to be given a tight reading wherein every action of the Commission is justified only if referable to express statutory authorization. On the contrary, the act is one that entrusts a broad subject matter to administration by the Commission, subject to congressional oversight, in the light of new and evolving problems and doctrines.[15]

Policies of other Federal regulatory agencies are significantly different from those of the FPC. The Federal Communications Commission, for example, has adopted regulations which prohibited discriminatory employment practices in common carriers [16] and in broadcast companies.[17] These actions, taken upon the advice of the Department of Justice,[18] provide that FCC operating licenses could be denied to an applicant who is engaged in discriminatory employment practices.

According to the Federal Maritime Commission, its only licensing power exists with respect to independent freight forwarders. In response to an inquiry from the Civil Rights Oversight Subcommittee, the Chairman of the Federal Maritime Commission stated:

> The specific sanctions that the Commission could employ with respect to freight forwarder operations would be limited to the area of "fitness" qualifica-

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[14] Ibid., pp. 148–151.
[15] *Niagara Mohawk Power Corp.* v. *FPC*, 379 F. 2d, 153, 158 (1967).
[16] 47 C.F.R. sec. 21.307.
[17] 47 C.F.R. sec. 73.125.
[18] Hearings, p. 184

tions that are requisite to the approval of forwarder applications * * *. Failure to comply with these (equal employment opportunity) provisions would be made grounds for revocation or suspension of the forwarder's license, inasmuch as noncompliance would reflect upon his "fitness," or lack thereof, "properly to carry on the business of forwarding and to conform to the provisions of * * * the Shipping Act (1916) and the requirements, rules, and regulations of the Commission issued thereunder. * * *" [19] [20]

The Interstate Commerce Commission and the Civil Aeronautics Board have both indicated that they are considering issuing regulations prohibiting employment discrimination in regulated companies. The Interstate Commerce Commission has already scheduled rulemaking on this subject.[21] The Civil Aeronautics Board has stated to the subcommittee that "recently the Board has determined, in light of the national policy of equal employment opportunity, to reexamine its prior interpretations of the Federal Aviation Act regarding this matter. Therefore, the Board will shortly initiate rulemaking proceedings to determine whether it has jurisdiction to assure that the employment practices of air carriers are nondiscriminatory and, if so, whether it may issue and enforce rules which regulate the carriers' equal employment opportunity practices or may consider a carrier's equal employment opportunity practices as a public interest factor in passing upon the application of that carrier for some benefit." [22]

The Administrator of National Banks,[23] the Chairman of the Federal Deposit Insurance Corporation,[24] and the Chairman of the Board of Governors of the Federal Reserve System,[25] have each reported to the Civil Rights Oversight Subcommittee that in certain situations they have authority to impose sanctions to prohibit discriminatory employment practices of regulated companies.

G. Legal Opinion by Previous FPC Deputy General Counsel

The generally held view that the FPC is taking an unnecessarily restrictive view of its enabling legislation is buttressed by the conclusions and recommendations found in several 1969 memorandums of the Office of General Counsel of the Federal Power Commission. Based upon his legal analysis, the FPC Deputy General Counsel concluded that the FPC could take a variety of actions to effectuate national civil rights policies.[26]

Included in the recommended courses of action was the conditioning of all licenses and certificates of public convenience and necessity to bar employment discrimination.

Thus, though the present FPC General Counsel claims special expertise in concluding that no authority exists to allow the Federal Power Commission to take strong steps to effectuate the national policy against discriminatory employment practices, a previous legal authority with theoretically similar expertise, reached an opposite conclusion.

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[19] 46 U.S.C. 841b.
[20] Hearings, p. 126.
[21] Hearings, pp. 126, 127.
[22] Ibid. p. 127.
[23] Ibid. pp. 131, 132.
[24] Ibid, pp. 145, 146.
[25] Ibid. p. 146, 147.
[26] Ibid, pp. 89–91.

H. Conclusion

The Federal Power Commission has failed to fulfill its constitutional and statutory responsibilities with respect to insuring equal employment opportunities in companies which it regulates. Vigorous action by the Federal Power Commission would have a significant beneficial impact in preventing continuation of the discriminatory employment practices which today characterize the utilities industry.

I. Recommendations

The Civil Rights Oversight Subcommittee recommends that the Federal Power Commission take the following action to fulfill its constitutional and statutory responsibilities in the area of equal employment opportunities:

(1) Issue a policy statement that it will be FPC's policy not to issue (a) hydroelectric licenses or (b) certificates of public convenience and necessity to firms having discriminatory employment practices or to facilities to be built or operated by contractors or subcontractors who discriminate.

The following steps are recommended to implement this policy and to place maximum reliance on civil rights agencies to help call abuses to the attention of the Federal Power Commission:

(*i*) Amend the license and certificate regulations to require all applications to contain (or incorporate by reference to a prior filing) a statement of intended compliance with equal employment policies and to set forth what steps the company is taking to further such equal employment policies. Applicants should be required to state whether any adverse findings have been made against them or whether any actions are pending against them.

(*ii*) Require applicants to state what State and Federal agencies have been informed of the proposed applications and specifically whether local, State or municipal equal employment commissions and the Federal Equal Employment Opportunity Commission, Civil Rights Commission, Office of Federal Contract Compliance and the Civil Rights Division of the Department of Justice have been so informed. Applicants should be permitted to make a statement explaining any actions taken against them or any comments adverse to granting the application. This proposed requirement would inform the Commission when there is reason to believe applicants may be discriminating. It is patterned upon current practices in granting licenses under part I of the Power Act where the Commission requires applicants to advise appropriate State and Federal agencies of applications relating to their respective jurisdictional responsibilities.

(*iii*) Request the Equal Employment Opportunity Commission to institute routine comparisons of applicants' employment (i.e., racial profile) data with others in the industry and with others within relevant standard metropolitan areas for *prima facie* indications of discrimination as a step in the licensing or certificate processes or both.

(2) Issue a notice of rulemaking setting forth its intention to condition all licenses and certificates of public convenience and necessity to bar employment discrimination and to require nondiscrimination clauses in major contracts relating to the construction or operation of

FPC licensed or certificated facilities. Such clauses should be worded to vest private contractual rights in third parties to secure their enforcement. Licensees and certificate holders would be primarily responsible for compliance of the nondiscrimination provisions by contractors and subcontractors.

(3) Require applicants for licenses and for certificates of public convenience and necessity to list the names and addresses of proposed major contractors and subcontractors in their applications. In cases where these are not known at the time of the filing of license or certificate applications, applicants should be required to file such information periodically (e.g., quarterly). The FPC should then ask the Equal Employment Opportunity Commission to make comparisons of contractors' and subcontractors' employment data similar to the requested comparisons of applicants' data. This comparison would give the FPC information as to whether applicants are fulfilling their obligations to contract with firms who are not discriminating and whether contractors and subcontractors are satisfying their contract obligations with respect to license and certificate holders.

(4) Obligate, where not otherwise required, licensees, certificate holders and their contractors to post equal employment notices at places of hiring.

(5) In situations where the FPC has authority to grant rate increases, make a detailed study of the employment practices of a company applying for a rate increase. Where discriminatory employment practices exist, the application for an increase should be denied.

DON EDWARDS.
JOHN CONYERS, Jr.
ANDREW JACOBS, Jr.
JEROME R. WALDIE.
PAUL S. SARBANES.

J. Minority Views

This report makes three findings. We reject findings No. 1 and No. 2 on the grounds that they are contrary to the present law, contrary to the intent of Congress, and unsupported by the facts.

REJECTION OF FINDING NO. 1

Although ambiguous, finding No. 1 seems to hold that the Federal Power Commission has a constitutional and statutory mandate to investigate and regulate the employment practices of the companies under its jurisdiction. This finding erroneously assumes that if such companies fail to measure up to what the Federal Power Commission considers to be compliance with equal employment opportunity practices, then such a company should be denied a needed and fair rate adjustment or denied issuance of license until it complies.

We certainly recognize the critical importance of equal employment opportunities for all men and women, regardless of their race, color, religion, or national origin. Congress has made it clear that our national policy is the elimination of all vestiges of discrimination. We are strongly committed to this end. However, this is not the issue in this report. Rather, the issue is solely a legal one, that is, did the Congress, when it established the Federal Power Commission in 1920, or by subsequent amendments, require or intend that it should regulate the employment practices of the companies that fall under its jurisdiction? The record in this regard is clear. Congress did not so intend.

The Federal Power Commission is charged by the Congress with the administration of two economic regulatory acts, the Federal Power Act of 1920, and the Natural Gas Act of 1938. As with any agency, the Commission is a creation of Congress—created for a specific purpose and charged with specific responsibilities. Its authority is statutory, and its jurisdiction is limited. There is nothing in these acts, nor in their legislative history, which indicates an intent on the part of Congress to grant authority to the Federal Power Commission to oversee the equal employment practices of regulated companies. The Federal Power Commission is an economic regulatory agency with authority to issue long-term licenses and oversee and fix fair, equitable rates for public utilities. This is the position of the Federal Power Commission and it is consistent with the spirit and letter of the law.

The Commission stated in uncontroverted testimony that in several proceedings it has determined that it possesses no jurisdiction to regulate employment practices and that its findings have not been successfully attacked on appeal. Among the cases cited in support of the majority's position none pertain to the authority of the Federal Power Commission to regulate employment practices. *Niagara Mohawk Power Corp.* v. *Federal Power Commission*, 379 F. 2d 153 (1967), the sole case cited by the majority in this report, held that the Federal

Power Commission has statutory authority to assign an effective date earlier than the date of the issuance of the license when the project involved was one constructed or maintained without a license in violation of an applicable law. This case involved the project in question, not the general practices of the licensee.

The jurisdiction of the Federal Power Commission is extensive in the technical area of regulating utilities, but it is not all pervasive. The Congress did not intend for the Commission to enter other jurisdictions such as employment practices, child labor, minimum wage violations or strikes and lockouts. With regard to title VII violations of the 1964 Civil Rights Act, the Congress established the Equal Employment Opportunity Commission. This Agency is the proper forum for compulsory rectification of unlawful utility employment practices associated with civil rights. It has the expertise in the area of equal employment opportunity. The Civil Rights Act of 1964 mentions neither the Federal Power Commission nor the acts which it administers. Congress did not intend all Federal agencies to undertake the enforcement of that act. The ability of Congress to provide for such a mandate with clarity was shown in the National Environmental Policy Act of 1969 which directed all agencies of the Federal Government to comply with the statutory requirements to the fullest extent possible.

Recently, Congress enacted additional legislation to further strengthen the role of the Equal Employment Opportunity Commission (Public Law 92–261). The Congress debated for many, many hours the scope of the enforcement authority to be granted the Equal Employment Opportunity Commission. The majority in this report contend that the Federal Power Commission has, by inference, a greater power than that which the Congress has explicitly denied to the Equal Employment Opportunity Commission. If the Federal Power Commission was already vested with such authority, then the many hours of debate in the House and Senate over the enforcement authority of the Equal Employment Opportunity Commission was meaningless. The question raised by the majority in this report is whether the agencies of the Federal Government are required by reason of the fifth amendment to the Constitution and the 1964 Civil Rights Act to establish a policy of enforcement of equal employment opportunities in the areas in which they are authorized to oversee and regulate. The majority believes this duty exists and must be implied notwithstanding the failure of the legislation creating the agencies and specifying their duties to impose such a responsibility. We do not.

Where the law does not create an affirmative duty to act, we do not believe it is sound policy that administrative agencies should be free to act independently. The obvious consequence of such a policy, if extended to all administrative agencies, would be a civil rights division with many counsels and investigators in each agency. Such a dilution of effort would hinder the goal of providing true equal employment opportunity. In addition, regulatory agencies lack the necessary flexibility to deal with civil rights violations. The present inquiry demonstrates the point. The Federal Power Commission has the power to grant or withhold licenses and to fix rates in a certain class of cases. Presumably, if an order of the Federal Power Commission dealing with employment practices were violated, the Commission would be compelled to impose the only sanctions available to it: withhold the

license or deny the rate adjustment. The far-reaching economic consequence of such a response is not commensurate with the essentially personal nature of the wrong. The wisdom of Congress in creating a special commission to supervise the Civil Rights statute is manifest.

The intent of Congress is clear. The Federal Power Commission is given a very well defined mandate to regulate the energy fields which are technical and highly skilled. If the Congress feels that the statutory authority of the Federal Power Commission should be expanded, the appropriate legislation should be proposed. To interpret the authorizing legislation of the Federal Power Commission as enabling it to investigate and remedy unequal employment opportunities is a back-door circumvention of the legislative process.

REJECTION OF FINDING NO. 2

This finding states that since the utilities industry employs fewer minorities than any other major industry, it is engaged in discriminatory employment practices. For the reasons stated above, we do not view the Federal Power Commission regulating authority as extending to employment practices.

Therefore, we do not view the lengthy discussion of alleged discrimination in the utilities industries as germane to our basic inquiry into the legal question of whether the Federal Power Commission has jurisdiction in this field under existing statutes. If it were germane, however, we would dispute the majority's implication that, because minority citizens are employed in the utilities industries in a smaller percentage than they are represented in the population as a whole, discrimination is thereby established.

We do not believe that the employment of a lesser proportion of any minority group than its numbers bear to the total population is, standing alone, sufficient evidence to support a finding of discrimination against that minority group in hiring policy. At most, it is a suspicious circumstance which should trigger further inquiry by appropriate enforcing agencies.

Moreover, we reject the suggestion implicit in the statement of the majority that there is any duty to hire employees on the basis of their race or ethnic background. Any standard which rejects the personal qualifications of a prospective employee to perform an assigned task in favor of his race or other nongermane characteristics is a type of benevolent racism which violates the entire concept of merit hiring and equal employment.

In the case of regulated power companies, the record of the hearings is clearly devoid of any evidence of an abnormally high number of complaints to any governmental or private agency against the employment practices of the regulated power companies. It also demonstrates that many of the companies under examination have pursued aggressive hiring policies intended to recruit qualified members of minority groups. We encourage the industry to continue such practices and if an investigation should uncover discriminatory practices, then proper legal action should be taken forthwith by the appropriate agency.

CHARLES E. WIGGINS.
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