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

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

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

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

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

Now, this does a great deal of damage, Mr. Chairman, to a very important, very successful program. It is absolutely untrue that the staff recommends $210 million. This was the position at the initiation of the negotiations. This was a bargaining position. Every one of these settlements was negotiated by staff and recommended by staff—every one. It is a calumny on the Commission which Mr. Morgan is a member of to imply that the Commission rejected staff advice and approved settlements at lower figures than staff recommended. Every one of these settlements, so far as I know, and I think I know, represents the staff's best judgment as to the most that could be obtained under litigation.

That got the headlines, Mr. Chairman, and a lot of people in this country think that the Commission is not doing its job because of this figure lightly tossed off during the hearings yesterday.

I would like to read, if I may——

The CHAIRMAN. You may proceed.

Mr. SWIDLER. The Administrative Conference of the United States made a study of the Federal Power Commission's procedures. The reporter was Prof. Roger C. Crampton, of the University of Michigan. His report on the settlement program I shall read in part.

The potential of settlement devices in disposing of a large number of cases, once they have been fully prepared by the staff, is very great.

I may say that all these were fully prepared by the staff.

During a 6-month period in 1961–62, the Commission entered settlement orders in 29 major pipeline rate cases involving refunds to consumers of over $100 million. The amounts refunded in particular cases varied from approximately 70 percent of the amount subject to refund in one case to a low of 4 percent in another, depending upon a prediction of the results that could reasonably be expected if the cases went through the decisionmaking process and the other ingredients of the bargaining situation. Settlements were coordinated and supervised by a special group of top-level personnel. The pipelines had been under considerable pressure to settle their outstanding rate increase applications because the extraordinary delay has pyramided various increases and left them with huge amounts collected subject to refund. The staggering amount of contingent liability involved has threatened their ability to obtain new financing. On the other side, the distributors have generally been willing to settle providing a moratorium on new increases for a new significant period was involved and the bargain was sweetened with a substantial cash refund. There tends to be greater readiness on all sides to settle as the amount collected subject to refund increases. The presence of numerous intervenors in some cases, one of which might attempt to hold up a settlement for special treatment from the pipeline on an unrelated matter, is said to have complicated some settlements. It is possible that the peculiar backlog and other conditions which created pressure for settlement by all parties may not continue to provide as favorable an environment for settlement once these special conditions are eliminated. However, it seems more than likely that further clarification of substantive standards which the Commission has promised—