A few weeks before the date scheduled for oral argument the Court of Appeals of the District of Columbia in the *Panhandle* case handed down a decision saying that the Commission had no discretion with respect to the treatment of liberalized depreciation.

In view of that cloud hanging over the proceedings, the argument was postponed.

In the meantime, the Commission applied for rehearing in the *Panhandle* case. Rehearing was granted before the court of appeals en banc. The matter was argued and is now before the full court for decision. We await that decision. If we have discretion to review rulings on liberalized depreciation we shall do so. The hearings in Alabama-Tennessee have been suspended, they have not been called off.

This is the full story, Mr. Chairman.

The CHAIRMAN. Congress provided the depreciation in such cases, didn't it?

Mr. SWIDLER. The question as to what Congress intended is apparently one not free from doubt. And we have set this matter for hearing so that we can get oral argument on every phase of the liberalized depreciation question.

The CHAIRMAN. Did not the court say that Congress has not provided, that with respect to utilities, ratepayers are entitled to share in the temporary benefits resulting from the use of liberalized depreciation in computing income taxes?

Mr. SWIDLER. I think there have been a good many court rulings, and they are not all consistent. We think that we have some discretion as to the treatment of liberalized depreciation. And if the court sustains us in that view, we will exercise that discretion.

The CHAIRMAN. Yesterday I asked Mr. Morgan about the most recent provision of the 1962 7-percent investment credit.

Mr. SWIDLER. That is involved in a rulemaking proceeding, Mr. Chairman.

The CHAIRMAN. And therefore I would not ask you questions about it.

But on the general broad policy, does not the Commission take into consideration the language that is in the legislation itself, together with the legislative history behind it?

Mr. SWIDLER. Of course, Mr. Chairman. That is controlling. The trouble is, lawyers don't always agree what the words mean and what the legislative history points to. But if we can find any clear expression of congressional will we follow it.

The CHAIRMAN. I think that is commendable for all Commissions to do that. Some of these problems could be minimized.

Mr. SWIDLER. Yes, sir.

Mr. Morgan mentioned tax consolidation, but said that it was now pending for consideration. I don't know why it was brought up. It is involved in a pending case. And we will decide it.

Mr. Morgan criticized the technical advisory committees which he said were—I quote—I think I am quoting, these are from my notes—"Set up with my reluctant concurrence." He says they should either be abolished or broadened.

Well, let's take the advisory committees on the national power survey first. We have an advisory committee on the gas side, and