

Mr. TIERNEY. That is correct, Mr. Chairman.

The CHAIRMAN. Are there any questions from the members of the committee?

Mr. WATSON. May I ask the Chairman of the Commission a question or two in reference to the apparent conflict you have presently, or at least you have had in the past in the decisions relative to the defense of appeals and the conflict between the Justice Department and your agency?

If this bill is passed, is it contemplated the Commission will supply its own defense?

You will move out totally independent of the Justice Department?

Mr. TIERNEY. That is correct. We will be representing in effect ourselves in defense of any of our orders which are contested.

As I have indicated, Mr. Watson, of course the Department of Justice under the bill would have the right to intervene in opposition, for example, to a position taken by the Commission, or support it.

Mr. WATSON. What has been your practice in the past? I must say I can agree with you that you could very well have these conflicts. What has been your experience in the past?

Have you had your attorneys handling these matters or the Justice Department attorneys?

Mr. TIERNEY. When you get right down to it, under the present law, the Department of Justice is the defendant where Commission orders are contested.

Nevertheless, under those circumstances, the responsibility generally always has been for the Commission's staff and counsel to really prepare for the defense of these orders.

The main party defendant is represented in these cases by the Department of Justice. They are the main party defendant.

In those instances, where it disagrees, in effect the United States confesses error to the order which the Commission would defend.

Mr. WATSON. You did not mean the Department of Justice was the main party defendant then, did you?

Mr. TIERNEY. The United States is the defendant but the Department of Justice represents the United States.

Mr. WATSON. As a matter of fact, in the past you have your separate attorneys and you do not call upon any attorneys in the Justice Department to assist in any appeal?

Mr. TIERNEY. There is some assistance. I would like our General Counsel to answer that more in detail.

Mr. GINNANE. They have very little interest in the great majority, run-of-the-mill cases. In most cases, we write the briefs, they rubber-stamp them, and overall I would say lawyers for the Commission handle the oral argument in 24 out of 25 cases.

In an occasional case, a lawyer for the Department of Justice will also appear.

Mr. WATSON. I am sure you understood the thought behind my question. If they are going to supply the lawyers, you would still have the practical problem of a lawyer going in trying to defend a matter on which he does not agree.

Mr. GINNANE. We would not have that problem.

Mr. WATSON. On page 2 of the bill, line 23, you say that upon the filing of a petition within 60 days from the date of the order com-