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ENERGY AND ENVIRONMENTAL OBJECTIVES

DEPOSITORY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

ENERGY AND ENVIRONMENTAL OBJECTIVES

MAY 6 AND JULY 18, 1974

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ENERGY AND ENVIRONMENTAL OBJECTIVES

MONDAY, MAY 6, 1974

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON THE ENVIRONMENT,
Washington, D.C.

The subcommittee met at 9:35 a.m. in room 5110 of the Dirksen Senate Office Building, Hon. Philip A. Hart (chairman of the subcommittee) presiding.

Senator HART. The committee will be in order.

I think it is generally understood the subcommittee earlier this year began a review or an effort better to understand the relationship between the energy crisis and those efforts which are underway to protect the environment. And today, a continuation of that general study brings us to the question of advertising and its relationship and effect.

To help us better understand that, we welcome as our first witness Mr. Harvey Shulman of the Media Access Project of Washington.

Mr. Shulman?

STATEMENT OF HARVEY J. SHULMAN, ATTORNEY, MEDIA ACCESS PROJECT, WASHINGTON, D.C.; ACCOMPANIED BY ROBERT AND CAROLE KUNSTADT

Mr. SHULMAN. Thank you, Senator Hart.

I am assisted today by our student intern, Robert Kunstadt. Carole Kunstadt will handle some of the displays we have for the subcommittee.

I am an attorney with Media Access Project, a Washington, D.C., public interest law firm specializing in representation of citizen groups and individuals who seek access to the electronic and print media in order to present their views on important controversial issues including the environment, the energy crisis, equal employment and various consumer-related matters.

For some months now Media Access Project has been conducting an in-depth study of corporate advertising which addresses environmental and energy issues.

For example, in January 1974, we filed a petition with the FTC on behalf of six Members of Congress requesting that the FTC require substantiation for many of the claims made in corporate image advertisements which favorably portray the advertiser's environmental and energy performance and record.

Staff member assigned to these hearings: Leonard Bickwit, Jr.

We were concerned that the FTC was permitting businesses to win increased profits by making false or misleading image claims.

In March 1974 we served as counsel to, and joined with, 16 Members of Congress and several citizen groups in requesting this country's 6,000 radio and television stations to provide free air time for spot advertisements which would present consumer-oriented solutions to the energy crisis [in contrast with the hundreds of oil and utility company ads now being aired].

We were motivated by fears that on important public issues the broadcast industry was permitting itself unwittingly to be used as a propaganda mouthpiece for the business community.

I am here today at your kind invitation to talk about another aspect of the massive propaganda campaign being conducted by a large number of America's giant businesses.

In short, our investigation and research has revealed that many oil, utility and other energy-related industries have engaged in massive violations of both the tax laws of the United States and accounting principles established by the FPC.

While the exact amount of money involved cannot be stated at this time, it is clear that we are in the midst of a multimillion dollar scandal involving the failure of the Internal Revenue Service and the FPC to enforce laws regarding the proper tax and accounting treatments of enormous sums of money spent for corporate advertising.

Every citizen, as a taxpayer and as a ratepayer, is suffering financially and politically from this scandal.

As part of our investigation of corporate advertising, media access project began to notice the trend away from soft image advertising toward harder hitting ads which discussed matters of legislative concern.

We were particularly interested in determining whether businesses were improperly treating the costs associated with certain political ads as deductible business expenses under section 162 of the Internal Revenue Code; and whether utilities were treating the costs associated with such ads as operating expenses to be passed along in the form of increased rates to consumers.

During our investigation we were contacted by staff members from this subcommittee who explained that in preparation for proposed hearings on "Advertising and the Environmental Movement," they would appreciate any material we had gathered on that subject.

We turned over an enormous amount of material to this subcommittee, including most of the ads which I will discuss today.

Sometime later, when we learned that Senator Hart had written to many corporate advertisers to obtain their views on the tax treatment of certain of these ads, we requested to see the responses.

The staff, as I understand it, made these responses available to ourselves and others for analysis to the extent that the companies did not request nondisclosure.

We and others were then invited to present our evaluation in this forum.

I would like to lodge with the subcommittee—and I have already done so as part of my written statement—exhibit A, a copy of the letter which Senator Hart sent to 35 selected energy-related companies

that conducted advertising campaigns in major newspapers and on the major television networks.

Among the questions asked were (a) how much the company spent on total advertising in 1973 and (b) how that amount was allocated among product/service advertising, goodwill/institutional advertising and political advertising; the latter being defined as that advertising considered to be, for tax purposes, nondeductible as a business expense under IRS Reg. 1.162-20(c) (4).

Additionally, each company was sent one or more of its advertisements and was asked to classify the ad or ads into one of these three categories.

I would like to submit to this subcommittee copies of those ads, marked as exhibits 1 through 99, as well as a list attached as "exhibit B—Description of Ads Attached to Senator Hart's Letter of January 28, 1974 to Various Companies."

The amount of advertising by the selected energy-related industries is staggering. General Motors, for example, spent \$243 million in 1973. Amounts spent by oil companies varied from \$8.9 million expended by Phillips Petroleum to \$27.1 million spent by Texaco.

The total of advertising expenditures for the oil companies to which Senator Hart wrote—Atlantic Richfield, Exxon, Gulf, Mobil, Phillips, Shell, Texaco, and the American Petroleum Institute—is \$126.0 million.

Since the figures provided by Gulf were held by the subcommittee as confidential, I have estimated Gulf's expenditure at \$15 million, somewhat less than the amount spent by the other companies.

Of this \$126 million the companies contend that 45.5 percent should be classified as product/service advertising, 47.1 percent as institutional/goodwill advertising, 6.4 percent as miscellaneous, and 0.7 percent as nondeductible political advertising.

In absolute figures, the dollar amounts assigned by the oil companies to each category, again estimating for Gulf, are \$58.3 million for product/service advertising, \$59.8 million for goodwill-institutional advertising, \$7.1 million for miscellaneous advertising, and \$.8 million for nondeductible political advertising.

It is most significant, and I will further this throughout my testimony, that only Mobil Oil Co. considers any of its 1973 advertising to be in the nondeductible political category.

Of course, it must be recognized that these dollar totals (\$126 million for the industry companies to which Senator Hart wrote) do not include other major oil companies such as Standard of Indiana, Sun Oil, Standard of California, Getty, Ashland, Hess, Cities Service, and others.

It may be that the oil industry, when considered as a whole, spends a quarter of a billion dollars on advertising in 1973.

The total amount of money spent by utility companies on advertising is more difficult to compute. In 1970 the Nation's utilities spent \$88.7 million on promotional and institutional advertising. Not included in that figure are other sales expenses which totaled over \$300 million.

Neither of these amounts should be expected to have decreased in 1973—in fact, advertising appears to have increased as more utilities

are taking to the airwaves, and the pages of our newspapers and magazines.

Moreover, there has been an expanded campaign by utility trade groups who do not report their figures to the Federal Power Commission, such as the American Gas Association.

1973 advertising totals for the selected 15 utilities and utility-related companies which responded to Senator Hart's letter are \$6.0 million on product/service advertising, and \$0.7 million on miscellaneous advertising, for a total of \$17.6 million.

With the exception of Florida Power & Light Co., none of these companies categorized any of their ads as nondeductible or political.

A more complete analysis of 1973 utility expenditures can be found by referring to the annual accounting reports filed each year with the FPC. It is an enormous task to aggregate and categorize the forms of the over 200 reporting utilities.

Yet to give some idea of the scope of the current utility ad campaigns, we have examined the forms for the seven members of the not especially large American Electric Power system.

These companies spent \$3.6 million on product/service and institutional/good will advertising; stated that only \$18,000 was spent on political activities; and they reported no political ads, although many political ads were sponsored by American Electric Power in 1973.

It would not be too far afield to suggest that utility advertising expenditures for 1973 exceed \$100 million and may, according to estimates of an FTC Commissioner, run as high as a third of a billion dollars.

There will always be problems in attempting to define the various types of advertising that exist in this Madison Avenue era so that every advertisement can be neatly categorized as being of one type or another.

I would like to describe product/service advertising.

We would probably all agree that product/service advertising consists of direct claims about the product or service sold by the advertiser which are intended to sell that product or service.

Product/service advertising which is an ordinary and necessary business expense may be treated as tax deductible under section 162 of the Internal Revenue Code.

Similar "advertising designed to promote or retain the use of utility service" and which does not specifically refer to any appliances sold by a utility advertiser, must be listed as an operating expense under account No. 913 of the FPC's uniform system of accounts.

This accounting system, under which over 90 percent of the Nation's utilities must report their expenses to the FPC, basically classifies expenses as either operating or nonoperating.

The FPC usually considers operating expenses as legitimate utility costs to be passed along to purchasers of electricity or natural gas in ratemaking proceedings over which the FPC has jurisdiction; and even where rates are set by a State utility commission, rather than the FPC, the FPC's recognition of an item as an operating expense often serves to similarly legitimize the absorption of the costs by the consumer-ratepayer affected by State utility commission ratemaking proceedings.

Nonoperating expenses may not usually be passed along to purchasers in FPC proceedings, and a like result is often achieved, though not required, in State proceedings.

Next I discuss institutional/goodwill and political advertising.

There is a greater disagreement about the definition of institutional/goodwill advertising and its treatment for tax and FPC accounting purposes.

The Publishers Information Bureau and Leading National Advertisers, Inc., refer to such advertising as "image advertising."

They define "image advertising" as including advertising which is "devoted primarily to selling the corporate personality"; its first objective goes beyond the direct sale of a single product or service.

A broader definition was offered in conjunction with a major industrial marketing survey in 1967. It defines "image advertising" as "advertising in media, the prime purpose of which is other than a direct influence on the purchase of a product or products, and the motive behind which is the projection of the corporate image—even though such advertising may be 'product' in nature."

To a large extent, all nonproduct/service advertising may be considered as "image advertising" in that it obviously seeks to portray the corporate advertiser's practices and policies in a favorable light.

Yet for purposes of the internal revenue laws and the FPC's accounting procedures, institutional/goodwill advertising is more strictly defined.

Under Internal Revenue regulations, for institutional/goodwill advertising to be considered as a deductible business expense, not only must it be "ordinary and necessary," but it must also be intended to "keep the taxpayer's name before the public" and be "related to the patronage the taxpayer might reasonably expect in the future."

The Internal Revenue regulations also draw a distinction between two different types of institutional advertisements. I think this is the crux of what we will be getting into in the testimony. The Service says:

A deduction will ordinarily be allowed for the cost of advertising which keeps the taxpayer's name before the public in connection with encouraging contributions to such organizations as the Red Cross, the purchase of U.S. Savings Bonds, or participating in similar causes. In like fashion, expenditures for advertising which presents views on economic, financial, social, or other subjects of a general nature, but which does not involve any of the activities specified in paragraphs (b) or (c) of this section for which a deduction is not allowable, are deductible if they otherwise meet the requirements of the regulations under section 162.

The other type of institutional advertisement which Senator Hart has chosen to call "political" is treated in paragraphs (b) and (c), as follows:

Expenditures for lobbying purposes, for the promotion or defeat of legislation * * * for political campaigns (including the support or opposition to any candidate for public office), or for the carrying on of propaganda (including advertising) relating to any of the foregoing purposes are not deductible from gross income.

As an example, the Service gives:

The cost of advertising to promote or defeat legislation or to influence the public with respect to the desirability or undesirability of proposed legislation is not deductible as a business expense, even though the legislation may directly affect the taxpayer's business.

Expenditures for the promotion or defeat of legislation, in the words of the IRS:

Include but shall not be limited to expenditures for the purpose of attempting to: (1) Influence members of a legislative body directly, or indirectly by urging or encouraging the public to contact such members for the purpose of proposing, supporting, or opposing legislation; or (2) influence the public to approve or reject a measure in a referendum, initiative vote on a constitutional amendment, or similar procedure.

Certain "political expenses" which are "in direct connection with appearances before, submission of statements to, or sending communications to, the committees, or individual members" of legislatures "with respect to legislation of direct interest to the taxpayer" were specifically made deductible by Congress in 1962 in section 162(e) of the Internal Revenue Code; but Congress expressly stated that the 1962 law should not be construed as allowing the deduction of any amount paid "in connection with any attempt to influence the general public or segments thereof, with respect to legislative matters, elections, or referendums."

The 1962 law was intended only to eradicate the anomaly by which taxpayers could deduct for direct communications with the Executive, administrative agencies, and courts, but was prohibited from similarly deducting for direct communications with legislatures.

Again, it was not intended to reverse longstanding Internal Revenue policies, continuously applied since 1918 when the Service's rule stated that:

Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising, and contributions for campaign expenses, are not deductible from gross income.

The 1918 regulation underwent various semantic changes, but its substantive provisions remained the same.

In short, the 1962 law was not a license to corporate advertisers to propagandize to the public on matters of legislative concern, or any other controversial matters, through subsidization from the public coffers.

The FPC also treats political advertising in a way distinct from institutional/goodwill advertising. For FPC accounting purposes, institutional/goodwill advertising is to be listed as an operating expense in account No. 930, miscellaneous general expenses.

Although the FPC has never fully defined what constitutes such advertising, it has recognized its purpose is to foster and maintain public goodwill rather than for any immediate and direct promotion of sales for electricity or appliances.

However, where such advertising is political in nature, it must be listed as a nonoperating expense in subaccount No. 426.4 entitled "Expenditures for Certain Civic, Political and Related Activities."

This account includes all expenditures incurred, and I quote:

For the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances); approval, modification or revocation of franchises; and perhaps key in our discussion today, including all expenditures "for the purpose of influencing decisions of public officials."

Expenditures "which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations" are not to be classified in account 426.4. This is similar to the IRS treatment of direct lobbying.

As I have previously indicated, categorization of an expense as operating or nonoperating is often controlling in FPC ratemaking proceedings. It need not be followed by the FPC nor by State regulatory bodies which may permit such costs to be passed along as operating expenses to ratepayers.

Whatever the exact contours of FPC subaccount 426.4, it is obvious that it encompasses a broader definition of "political advertising" than that used by the Internal Revenue Service.

While the cost of advertising which attempts to influence the decisions of public officials in administrative agencies should definitely be classified as a nonoperating expense under FPC rules, that cost might currently be a legitimate business expense under the Internal Revenue regulations to the extent that the advertising does not deal with matters of legislative concern.

What I am going to do now is really get into the crux of the factual presentation, Senator, and discuss our analysis of your letter and the responses which you received.

As I previously stated, with the exception of Mobil Oil Co., none of the companies to which Senator Hart wrote classifies any of its advertising as political—for example, nondeductible under the tax laws. Yet an analysis of the ads enclosed with the Senator's letter reveals that a vast majority of them are clearly nondeductible and, in the case of utilities, should also be listed in a nonoperating expense account.

Although we have examined in detail all of the ads which accompany Senator Hart's inquiry, as well as other ads, it is not feasible to refer to each of over 100 ads in this hearing. Therefore, I will now discuss briefly approximately 36 political ads. And I am submitting with my statement exhibit D, which is a brief written evaluation correlating all of the ads which could be considered political with relevant legislation now pending in Congress.

I would also submit to this subcommittee as exhibit E—attached to this statement—a list summarizing the energy or environmental legislation now or previously pending in Congress to which the political ads in question relate.

For purposes of this presentation only I have divided the ads I will discuss into eight subject matter areas: the Clean Air Act, oil company profits, offshore oil and gas drilling, the Alaska pipeline, natural gas prices, nuclear power, utility rate increases, and general comprehensive schemes for solving the energy crisis.

I will first discuss advertising related to the Clean Air Act. There is no doubt that most oil companies and utilities do not favor the strict controls imposed by the Clean Air Act. Many of these companies have run extended propaganda campaigns urging amendment to that law.

For example, a Phillips Petroleum ad, exhibit 39, which is on the display board; entitled "America's Best Kept Secret: The Cost of Meeting Federal Auto Emission Standards" argues for changing the

Clean Air Act and adopting the less stringent California standards for auto emissions.

The ad ends, and I quote, "Time is running out. If you agree with us that the California standards provide a more practical approach to the auto emission problems, express your viewpoint to your congressional representatives and to the Environmental Protection Agency," end quote.

Most recently, an ad run just last week by the American Electric Power System, which I would like to introduce as exhibit 100, asks, "Are we blind to the real energy crisis?" and argues that, "It is absolutely imperative that the Clean Air Act be amended in regard to sulfur dioxide emission standards applicable to electric utilities."

It is difficult to understand how such advertising could be classified as anything but political for tax purposes in light of the many bills in Congress on this matter, including one that passed the House last week.

Yet, Phillips has stated that it intends to take a tax deduction for its ad.

Significantly, however, Mobil Oil Co. has expressed its intention to treat its Clean Air Act ads, exhibits 30 through 34, as nondeductible. Those are in the record for comparison.

I would next like to get into advertising on oil company profits. We are all familiar with legislation intended to establish an excess profits tax or roll back oil prices because of unprecedented percentage rises in oil company profits.

The industry has been mounting an overwhelming propaganda blitz against this legislation. For example, exhibit 44, a 1974 Shell Oil ad, entitled "How in All Conscience Can Anyone Call These Excess Profits?" states, "There is much talk of an excess profits tax," and presents arguments that any congressional action "should not be a hastily enacted attack on the independent industry which would impose corporate excess profits taxes based on some arbitrarily chosen historical performance."

In its response to Senator Hart's letter, however, Shell remarkably considers this ad to be nonpolitical and therefore deductible.

In sharp contrast, Mobil Oil Co. has indicated that it considers its similar excess profits ads, such as exhibit 22, to be political and therefore nondeductible.

The next subject area of advertising involves offshore oil and gas drilling. Offshore oil drilling has been a controversial issue for many years now, involving environmental questions raised by accidents such as the Santa Barbara Channel oil spill. There have been numerous attempts in Congress to address this matter, including bills to require certain permits for exploring or mining oil and gas underneath the U.S. waters and a bill calling for a moratorium on drilling in the Santa Barbara Channel.

Yet, with the exception of Mobil Oil, which states that it considers such ads addressing this matter to be nondeductible, Mobil Exhibits 19 and 23, all other companies have expressed their intentions to treat similar ads as legitimate business expenses.

For example, and I draw your attention to the display chart, 17 mid-Atlantic utility companies ran a 1973 ad, exhibit 78, entitled, "Energy from the sea. The possibilities are out of sight." The ad urges for rapid development of offshore oil and gas reserves.

All of these companies, including Consolidated Edison and Brooklyn Union Gas of New York, claim the ad to be a deductible business expense. Moreover, the costs for this ad appear to be listed in FPC operating expense accounts rather than in the nonoperating political advertising account, 426.4, with the result that ratepayers may be supporting this political propaganda.

The next subject matter of advertising involves the Alaska Pipeline. I think this subcommittee is probably very familiar with legislation that dealt with the Alaska Pipeline. Ever since the Alaska Pipeline was proposed some years ago, it has been a volatile environmental issue. It finally took an act of Congress amending the Mineral Leasing Act of 1920, and the National Environmental Policy Act of 1969, to authorize construction of the pipeline. And the Senate passed important parts of the pipeline bill by only one vote.

Thus, it seems unbelievable that advertising calling for immediate construction of the pipeline could be classified as anything but political.

Nevertheless, several companies which ran pipeline-related ads have already claimed or plan to claim tax deductions for those ads. For example, several 1971 ads run by Esso Oil, now Exxon, exhibits 9, 10, 11, and 12, have been ruled and this is very significant, in a proceeding before the FCC to have presented the argument for construction of the pipeline.

That same year, in response to legal arguments that a pipeline right-of-way could not be granted by the Federal Government without amending the Mineral Leasing Act, a bill to that effect was introduced in the Senate. Yet despite the FCC ruling and the legislation in Congress, Exxon, in its response to Senator Hart, labels its 1971 pipeline ads as nonpolitical and hence we presume a business expense deduction was taken for those ads.

Similar tax treatment is intended by Atlantic-Richfield for its 1973 Alaska Pipeline ads, exhibits 3- A, B, and C, and 4.

For example, Arco asks, "What stands between our Nation's energy shortage and 10 billion barrels of Alaska oil," and poses the issue in exhibit 3-A, "must it be one pipeline—that is through Canada—or the other?" The ad argues: "Construction of the pipeline is being delayed by a fundamental issue now under consideration by Congress. We need the Alaska Pipeline now. Let's get on with it."

Are we really expected to believe that these ads which ran in the New York Times, the Washington Post, and the Wall Street Journal, are nonpolitical? And who can know what the outcome of the Senate vote would have been if this propaganda blitz had been conducted on a smaller scale for fear that the tax laws would be fully enforced?

The next area of advertising involves natural gas prices. Again, the Senate Commerce Committee is well aware of legislation which has been pending for some time to deregulate the wellhead natural gas prices which are established by the FPC.

The American Gas Association, an industry trade group, has advertised heavily in favor of deregulating so that gas prices will be able to rise.

Exhibit 76, entitled, "The Energy Shortage: What It Means To You," states that, "The Federal Government and its regulatory agencies," must act, "to set prices at a more realistic level so there will be sufficient incentive for producers to risk money in the search for new supplies of gas."

Surprisingly, however, to ourselves and I am sure to Senator Stevenson, who has introduced legislation in this area, the American Gas Association does not classify this ad as political. Thus the portion of dues and contributions to the AGA from member companies which is being used to finance this and similar ads is apparently being treated by each member, relying upon the AGA's evaluation, as a deductible business expense.

In contrast, Mobil Oil's ads calling for deregulation of natural gas prices, exhibits 35 and 36, were properly classified by Mobil as nondeductible.

Another area of advertising which is also extremely controversial involves the use of nuclear power.

The potential hazards and risks associated with the production of electrical energy from nuclear power sources has led to calls for a moratorium on the development of nuclear power plants.

Most recently, Senator Gravel addressed this issue, inserting into the Congressional Record a list of labor, environmental, farmer, and local governmental groups who have called for a moratorium. Senator Gravel stated:

If the moratorium movement could match the millions of dollars which advocates of nuclear power spend on public education, there is no doubt in my mind that the American public would rapidly reject nuclear power. . . .

Persuasion is not a problem for moratorium advocates. Their problem is unequal access to the public's mind. In one word, the problem is money.

On the other side, since at least early 1972, bills have been pending in Congress which call for a more accelerated rate of development and Atomic Energy Commission approval of nuclear powerplants. Not unexpectedly, a massive amount of advertising in support of rapid development of nuclear power has been disseminated by utility and oil companies.

Yet, with the exception of Mobil Oil, which recognizes the costs of such advertising to be nondeductible, all other companies responding to Senator Hart's letter classify nuclear power ads as nonpolitical and properly deductible.

Perhaps the greatest offender in this category is the electric companies advertising program, which I will refer to as ECAP. ECAP's ad is present on the display board. In 1973, over 70 investor-owned light and power companies participated in the ECAP program which brought us such ads as exhibit 53 entitled, "Why shouldn't I be concerned about nuclear powerplants?" The ad strongly argues that nuclear powerplants are safe to operate, and that disposal of nuclear wastes is stringently regulated. The ad ends by stating:

We need your understanding of this fact. And we ask for your cooperation in helping to see that nuclear power plants are developed and built as promptly as possible wherever they are needed.

Another favorite ad run a couple years ago by ECAP is exhibit 55 entitled, "'Mom's Apple Pie Is Radioactive; So Is Mom.' That doesn't make her a dangerous woman. Radiation is just naturally everywhere, in the Earth, in your homes, in your food, in your mom." It shows a picture of mom holding an apple pie which she appears ready to serve to us.

This is the type of nuclear power campaign to which the public is being exposed.

Among the contributors to the ECAP program are the members of the Southern Co. System. Yet reference to the FPC accounting forms filed by some of the System's members—Alabama Power Co., Georgia Power Co., Gulf Power Co., and Mississippi Power Co.—shows that none of these companies listed any political advertising costs.

We are left with the conclusion that ratepayers are supporting this nuclear power campaign through increased rates. Moreover, Georgia Power Co.'s response to Senator Hart's letter indicates that the company did no advertising in 1973 which it considers nondeductible; hence, Georgia Power's view also reflects a clear violation of our tax laws.

Oil companies have also taken up the fight for nuclear power. For example, Exxon states in exhibit 7,

We'd like you to know—Today nuclear power supplies five percent of America's electricity. Tomorrow, it could supply over 50 percent. We need to reach this goal as soon as possible.

Exxon argues that "environmental objections, labor shortages, technical problems," et cetera, have delayed the construction of new nuclear powerplants, and that nuclear power is needed quickly to help make America self-sufficient.

Yet Exxon claims in its response to Senator Hart's inquiry that it does no political advertising and can legitimately deduct this ad as a business expense.

The next area involved utility rate increases. In a 1973 landmark decision, the Federal Communications Commission said what consumers and environmentalists had long been contending: that utility ads which argue for rate increases present only one side of a controversial issue of public importance. In that case, two Georgia television stations were ordered to present antirate increase views.

One of the ads which gave rise to that controversy is exhibit 69 entitled, "This Is A New Day For Joe," and sponsored by Georgia Power Co. The ad argues for rates increases. Yet on Georgia Power's 1973 FPC accounting form, neither this ad nor any other of the many, many on the rate increase controversy in Georgia are listed as non-operating political advertising expenses under subaccount 426.4.

Georgia Power's treatment of the ad must be compared with the similar ad, exhibit 71, by Florida Power and Light Co.—that company told Senator Hart that it considered its rate increase ads to be a non-operating expense, and nondeductible under the tax laws.

Georgia Power is not alone, of course. Our favorite friend, the Electric Companies Advertising Program (ECAP) is sponsoring a nationwide campaign attempting to explain the "combination of circumstances [which] inevitably means increases in electric rates."

Exhibit 51 is entitled, "Ann's job wouldn't exist without electricity; would yours?" It tells consumers that increased plant expansions require increased rates and that, "We ask your understanding of this inescapable fact." Yet, again, none of the members of the Southern System list this ad as a political expense on their FPC accounting forms, though all are members of ECAP.

The correct tax treatment of rate increase ads is more difficult to predict here. In many cases a rate increase controversy often involves a request to the State legislature for loans or grants; that is, Con-

solidated Edison has recently appealed to the New York State Legislature for aid. But if the rate increase controversy seems far removed from a legislative forum and is confined to State utility commissions or courts, a strict reading of the current IRS regulations might seem to permit deductibility.

The last subject matter of the ads which I will discuss involves comprehensive schemes for solving the energy crisis.

Many companies do not focus on any one solution to the energy crisis, but instead offer comprehensive plans which combine most of the aforementioned controversial suggestions plus a few others of similar nature. In such cases, the ads relate to numerous legislative bills on wideranging energy and environmental matters.

Some of these ads are listed on the display chart.

For example, in 1972, the American Electric Power System placed an ad, exhibit 73, entitled, "Mr. President, We Agree With Your Message On The Energy Crisis." The ad calls on the President and the Congress to modify powerplant sulfur dioxide emission standards under the Clean Air Act and permit for strip mining for coal on Federal lands in the Far West.

The ad also endorsed the President's "directive banning the conversion of powerplants from coal to oil" and his "efforts to speed up nuclear powerplant construction and licensing."

It is hard to accept, therefore, that with legislation pending in Congress on all of these areas, American Electric Power classifies this ad as nonpolitical and claims it to be a legitimate business expense.

Gulf, Exxon, Continental Oil, and General Motors have run similar ads which they classify as nonpolitical. Exhibit 14 from Gulf, entitled, "We can't talk our way out of the energy crisis," gives Gulf's proposed solutions to the energy crisis: offshore oil drilling, construction of the Alaska pipeline, deepwater ports for supertankers, increased nuclear energy, and commercial development of Federal energy reserves.

In exhibit 6, Exxon asks, "Why energy is short in the United States" and blames the crisis on a failure to use coal because of tough Clean Air Act standards, delayed construction of nuclear power plants, and delayed offshore oil drilling in the Santa Barbara Channel and elsewhere. The ad concludes, "We need to get on with the job of developing all of the country's energy sources—coal, nuclear power, oil and gas. We've run out of time for debate and delay. Don't you agree?"

In exhibit 5, Continental Oil states that, "America faces serious energy shortages this winter * * *" It calls for "an all-out effort to expand domestic energy resources," including increased strip-mining of coal, relaxed mine safety laws—one wonders how much more relaxed they can be—a reexamination of environmental standards, a temporary freeze on Clean Air Act standards, and mandatory gas and fuel rationing. CONOCO concludes that "it is up to industry to work hand-in-hand with the Government" on these matters. I am sure that is occurring.

In exhibit 93, General Motors advocates—

As a general national policy: (1) de-regulation of the wellhead price of new natural gas; (2) an immediate increase in imports of crude oil and refined products; (3) construction of pipelines, supertankers, deepwater ports and off-

shore terminals; (4) greater domestic exploration and the prudent drilling for oil and gas offshore and beneath public lands; and (5) rapid development and licensing of nuclear power plants.

None of these ads, none of them, and many, many others like them, were classified as political and nondeductible by the companies responding to Senator Hart's letter, with one exception: Mobil Oil Co.

For example, exhibit 29, entitled, "Is Anybody Listening?"—we have a huge exhibit on the chart here which I think most people have seen in the newspapers—advocates many of the aforementioned solutions to the energy crisis.

This ad was categorized by Mobil as political. Yet even Mobil's approach has some defects—exhibit 27, entitled "The Lady Was Listening," is intended to rebut many of the arguments raised by a woman who wrote Mobil in response to the solutions suggested by Mobil in exhibit 29, "Is Anybody Listening." Yet Mobil did not classify "The Lady Was Listening" as political.

At this point perhaps we might wonder if we have any laws regulating the tax treatment and FPC accounting treatment of political advertising. Fairness dictates, of course, that this subcommittee permit the energy-related companies discussed today to respond and justify their apparently incorrect view of the law.

We are not talking about pennies in these cases—millions of dollars in taxable income and nonoperating expenses of utilities are at stake.

This subcommittee must also ask the Internal Revenue Service and the FPC why violations of Federal laws and regulations are apparently going unnoticed or unchallenged.

More importantly, however, we are left with the sorry conclusion that just as the oil companies tried to buy candidates with illegal political contributions, the energy industry is trying to buy the minds of the American people by dominating the marketplace of ideas with political ads apparently financed by illegal tax and FPC accounting schemes.

What policies underlie the tax and FPC treatment of political advertising? What justifies the current laws, even though they don't seem to be enforced?

In its 1962 *Cammarano* decision, the Supreme Court rejected arguments that prohibiting tax deductions for business-related political ads constituted a violation of the first amendment.

A similar conclusion has been reached in regard to FPC treatment of political ads. Thus, leaving the constitutional issue aside, I would like to address one of the main policy arguments against granting tax deductions for political ads: the inherent inequality of access to the minds of the public between business and nonbusiness interests.

In its brief in *Cammarano*, the United States argued that there has been "a continued congressional concern with the use of large sums of money to finance 'the engineering of consent—' to 'make' public opinions on matters of legislation—particularly where large economic interests are all on one side of the controversy."

I don't think anyone would doubt here that that's the situation with the energy crisis.

Moreover, no one could doubt that consumer, environmental, civil rights or similar groups—in contrast to the business community in general—simply do not have the financial resources to conduct massive

national grassroots advertising campaigns on dozens and dozens of important legislative matters.

Although this inequality exists as well in terms of direct lobbying in the halls of Congress, at least there it is more easily safeguarded against through registration and reporting of lobbyists and their activities, a legislative audience which is likely to be more aware than the general public of the facts surrounding controversial issues, and the normal ability of all sides of an issue to present testimony to congressional committees.

This latter safeguard, I might add, is greatly diminished by the prohibition on appearances—such as my appearance today—by charitable organizations unless invitations are extended.

Section 1962(b) of the Internal Revenue Code and regulations thereunder which prohibit deductions for grassroots lobbying reflect a realistic view “that in the twentieth century legislative results can be seriously distorted by influences operating far from legislative halls.”

The effect of massive propaganda campaigns shouldn't be doubted. I was informed by a staff member of Senator Harrison Williams' office that the Senator had received about 12,000 coupons from the bottom of an ad appearing in New York and New Jersey newspapers which called for amendment of the Clean Air Act in regard to auto emissions. So obviously, these ads are at least causing the Postal Service some additional problems and probably are having some influence on congressional decisions.

The desire to alleviate this inequality and its often decisive effect on the legislative process supports the current constitutional tax treatment of political ads sponsored by business interests who engage in debate with nonbusiness interests.

As Justice Douglas, a champion of the first amendment as we all know, said in a recent Supreme Court decision, “A State (or Federal) tax law is not arbitrary although it discriminates in favor of a certain class * * * if the discrimination is founded upon a reasonable distinction, or difference in State (or Federal) policy, not in conflict with the Federal Constitution.”

Justice Douglas, by the way, concurred in the *Cammaramo* decision that prohibitions on tax deduction for political advertising did not violate the first amendment.

Other Federal laws recognize the inequality between business or other large financial interests, on one hand, and individuals, non-profit groups, or other less wealthy interests on the other hand. In some instances, these laws attempt to remedy the inequality by an absolute prohibition on an activity, rather than the more moderate approach under the tax laws whereby the activity is merely made more expensive. For example, Federal law prohibits corporations and labor unions from making certain political contributions to candidates in many Federal election campaigns. Mr. Justice Powell from the Supreme Court, whom one would not identify as being necessarily in favor of environmentalists or consumers on one hand, nor in favor of business groups on the other hand, has reflected on a predecessor to this campaign law, and noted that “public and legislative interest has focused on limiting—rather than enlarging—the influence upon the elective process of concentrations of wealth and power.” Congress has

also recently been considering legislation to prohibit contributions of more than a definite sum of money to candidates for office in order to equalize participation in the political process. The Federal Communications Commission requires broadcasters to provide free airtime to non-wealthy persons to counterbalance one-sided programming or advertising on controversial issues of public importance. This is popularly termed the "Fairness Doctrine." It seems eminently reasonable that these same concerns should be reflected in regard to the ability of powerful financial interests to affect the legislative machinery through intensive propaganda campaigns.

While the same policy also supports the FPC's accounting treatment of political advertising—that is, that the ability of wealthy, well-organized utilities to sway public opinion on controversial matters should be held in check—other important policies are also at stake in dealing with utility advertising. As the FPC recognized in *In re Alabama Power Company*, political expenses have a doubtful relationship to the actual rendering of utility service. Moreover, it would be improper to classify political ad expenses in operating accounts because in the words of the FPC:

It might seem to imply that such expenditures must in due course and without further question be paid by the ratepayer. Such an implication would be unwarranted and possibly unfair, in view of the fact that on politically controversial matters, the pinions of management and the ratepayer may differ decidedly.

The unfairness would seem to be generated by the fact that consumers have no choice in regard to utility service—the States and the Federal Government have sanctioned monopolies to provide necessary services. While we can even question whether such monopolies should do any political advertising at all, at a minimum it seems unjust and discriminatory for these monopolies to use consumers' money guaranteed to flow to utilities by set rates of return, in order to propagandize those same consumers. I think the following is a beautiful example of what we are talking about, Senator. The ultimate absurdity is illustrated when we consider that some companies, like Georgia Power, permit the costs associated with utility ads which attempt to persuade ratepayers that a rate increase is needed to be passed along to ratepayers in the form of increased rates. In other words, we are paying to have ourselves told that our rates ought to go up to finance in part the ads for which we are paying. Constitutional, as well as statutory questions, are raised by this abuse.

Next, I would like to discuss administrative procedures which would help achieve enforcement of the current tax laws and FPC accounting rules.

In light of the importance of enforcing current regulations on political advertising, and the poor job of enforcement apparently being done now, we must consider what better enforcement mechanisms might exist. Several possibilities merit serious consideration by the agencies concerned and by this subcommittee.

First, labeling of advertisements and their submission to the IRS and FPC:

Monitoring the thousands of advertisements sponsored each year by major industries is an enormous task. Even assuming that every ad could be gathered from various sources, there is presently no way to know of the tax or FPC accounting treatment of each ad without an

audit. The undesirability of spending already limited agency resources on such audits is a serious deterrent to enforcement of the law.

These problems could be solved, however, by requiring advertisers to label each ad, at its bottom, for example, as "IRS/deductible" or "FPC/#930" to indicate that the ad is considered to be nonpolitical. Labeling requirements are not new, as evidenced by FTC and congressional treatment of cigarette advertising. Moreover, with their tax returns and FPC accounting forms, each advertiser should be required to submit a compendium of all advertising sponsored by it during the year in question, including a list of all costs associated with the production and dissemination of each ad. A second suggestion involves more specific guidelines to determine whether ads are political. In contrast to rather detailed guidelines and examples of hypothetical cases under other legislation, for example, involving the treatment of estate taxes, the IRS and FPC have done little to delineate the type of advertising campaigns which might be considered political. For purposes of the tax laws, the following factors, some suggested by Professors Weaver and Cooper, might give some guidance:

1. Whether there is a reference, explicit or by implication, to some proposal currently pending before a legislative body.
2. Whether the subject matter is fairly discussed with a presentation of pros and cons on disputable matters.
3. Whether the particular action or activity which the advertisement encourages is one which involves a conflict of business and non-business interests on a question of public importance.
4. Whether the problem discussed is suitable for legislative attention, regardless of whether action or inaction ultimately results.
5. Whether the tone of the advertisement and the manner of presentation is polemical.
6. Whether readers or listeners are invited to express their views.
7. Whether the nature of the activity addressed in the ad is such that the disparate financial and organizational resources of business will normally give business excessive power.
8. Whether the advertiser is pursuing the matter discussed in the ad in other forums, such as legislatures, public meetings, opinion polling, courts, agencies, et cetera.
9. Whether a person of average experience and intelligence would interpret the advertisement as an effort to gain support for the advertiser's position on some issue appropriate for legislative attention.

Drawing upon these factors, no one of which should be controlling, and upon prior decisions, the agencies could offer their views on hypothetical cases.

The third suggestion involves modifying the provision allowing deductions for institutional advertising. Currently, IRS regulations provide that expenses incurred for institutional or good will advertising shall be generally deductible provided that such ads are related to patronage the taxpayer might reasonably expect in the future. Both corporate taxpayers and the IRS appear to be interpreting the "patronage" requirement very broadly. First, the regulations define institutional advertising to include presentation of general social and economic views. Secondly, corporate taxpayers appear to take the position that any ad mentioning the taxpayer's name also satisfies the patronage requirement. This interpretation also seems to have been

adopted by the IRS, which has not challenged the deductibility, it seems, of most of the "institutional" ads.

Professor Cooper recommends reducing the availability of the institutional advertising deduction. Specifically, he believes that in any case where the purported good will advertising presents social or economic views, or deals with a matter which might reasonably be expected to become the subject of legislation, it would probably be appropriate to presume that the ad is generally nondeductible. The burden would then be on the taxpayer to demonstrate that the ad had no substantial purpose other than to promote the sale of the taxpayer's goods or services, or to achieve some other ordinary and necessary business goal that properly supports deductions. This regulation would have the effect of in Professor Cooper's words, "restraining propaganda masquerading as goodwill advertising," which seems to be the situation with which we are faced.

Another area would be better control over treatment of dues and contributions to trade associations or similar industry-oriented groups. IRS regulations do not allow a deduction for a pro rata portion of dues paid by a taxpayer to a trade association if a substantial part of the association's activities involves grassroots lobbying. The IRS at one time indicated that a 5-percent test would be used to determine what constitutes a "substantial amount" of impermissible activities. That is if the industry group was expending 5-percent of its money to do lobbying, deductions to that group on a pro rata basis by corporate members would not be deductible.

Professor Cooper points out that the 5-percent rule does not aid in determining whether the test is based on man-hours, dollars of expenditure or some other criterion. He recommends that the substantiality test be based on multiple factors including dollar amount, man-hours, and absolute amount of grassroots lobbying, and so forth.

Moreover, when oil companies contribute to the American Petroleum Institute, or utilities to the American Gas Association or the electric companies advertising program, the members seem to rely upon their trade associations to properly apportion contributions and dues among deductible and nondeductible categories. Thus, a comprehensive audit must include an audit of the trade group, as well as its individual members. The burden on the IRS of the FPC to conduct such investigations could be eliminated by requiring each trade association to label its ads, report all costs associated with each ad, and file a compendium of its ads with each agency, as the individual members would be required to do.

Next, and perhaps this goes without saying, there is simply no excuse for the FPC to have allowed utility companies to fail to properly itemize their political advertising expenditures in subaccount 426.4. One reason for this might be that the companies have been doing this for years. We have examined the FPC forms that show this. The companies probably see little reason to change. Strict penalties on violators would serve as a deterrent to the current sloppy, or perhaps intentionally misleading, approaches.

Lastly, and I think this is most important, we need a system whereby citizens could challenge treatment of political ads. The ultimate beneficiary of the tax and FPC advertising laws and regulations is the public; citizen input into decisions on important controversial issues

should not be diluted by industry propaganda campaigns financed through tax subsidies or utility rates. Hence, it is imperative that those whom the laws seek to protect should be able to enforce those laws.

Moreover, there is a practical reason for allowing formal citizen complaints: Citizen groups which take a position adverse to that taken by an advertiser are often in a better position than the IRS or the FPC to assess an ad on a legislative matter. Groups like environmentalists or consumers are well aware of pending legislative proposals and the full range of corporate activities which are intended to influence those proposals.

The Federal Power Act and FPC regulations recognize the validity of these views and permit citizen complaints which must be answered by utilities and for which there is appellate review of any adverse rulings. I want you to know, Senator, that we intend to take advantage of these provisions, based on the information we now have, in the very near future and will be acting in regard to the FPC.

In sharp contrast, however, the Internal Revenue Code and IRS regulations do not provide a similar procedure. The only formal means of complaining to the IRS about tax treatment of an advertisement is through the regulations providing for rewards for information relating to violations of tax laws. Under that law persons submitting information leading to the detection of violations are given rewards, which is not and should not be our main concern.

While we intend to send our evaluation to the IRS in accordance with this provision, the regulation is nevertheless inadequate. We will never be able to learn whether the IRS finally agrees with our evaluation, and more importantly, even if that information were available, there is no express provision for judicial review if the IRS decides to permit the costs associated with these ads to be deducted. Only if the IRS decides against deductibility, that is against the advertiser, is there appellate review and that is at the instance of the corporate advertiser.

The inadequacy of the present scheme for citizen participation is illustrated by a 1971 occurrence in which former U.S. Senator Fred Harris wrote to IRS Commissioner Walters urging denial of a corporate tax deduction for dues paid by corporations to "Citizens for a New Prosperity"—CNP—a group organized to promote the economic policies of the current administration. CNP's activities included running full-page ads espousing the success of present policies. The IRS Commissioner, Mr. Walters, replied to Senator Harris' letter stating that "a determination as to the deductibility of amounts contributed must be made on the basis of all the facts and circumstances in each case * * *". According to the Senator, the full response "amounted to a flat rejection of my suggestion." Similar treatment was accorded Mr. Richard Lahn, a member of the Sierra Club, who complained about the deductibility of a Washington Gas Light Co. ad. Mr. Lahn never learned of the eventual IRS treatment of that ad.

There would seem to be no reason why the IRS could not adopt an administrative scheme which would provide for more meaningful citizen enforcement of the congressional policy against deductions for political advertising. If the IRS claims that it does not possess the power to set up that scheme, this subcommittee might consider amendments to the Internal Revenue Code in that regard.

Last, since I have just dealt with the procedural changes, I would like to discuss what substantive administrative and statutory changes would more adequately remedy the problems associated with corporate political advertising. The current laws and regulations, even if fully enforced by the IRS and the FPC, do not adequately protect against possible abuses resulting from an inequality in access to the channels of communication. There are many important substantive changes which should be made in the present laws and rules to further safeguard against the effects of massive business propaganda campaigns and their subsidization by taxpayers and ratepayers. I will outline but a few of these changes now, and will submit to the subcommittee at a later date a more comprehensive memorandum which will also form the basis for action we plan to take before the IRS and the FPC in this regard.

First, the IRS should readopt its pre-1965 regulations prohibiting tax deductions for costs associated with the exploitation of propaganda.

As I have previously indicated, pre-1965 IRS regulations appear to have taken a broader view in favor of nondeductibility. Specifically, expenses associated with "the exploitation of propaganda" were not to be deductible. Thus, a utility which advertises in favor of increased rates or a corporation which advertises in favor of the virtues of private enterprise and a laissez-faire economic theory now could arguably deduct the costs of that campaign as a business expense. This would represent a reversal of the IRS policy which was judicially approved in the *Southwestern Electric Power Co.* case.

In that case, the court ruled that although the advertising in question was not primarily aimed at promoting or defeating legislation, its general arguments in opposition to expanded governmental intrusion into a private utility system constituted "exploitation of propaganda" which was not a legitimate business expense. The 1962 amendment to the Internal Revenue Code did not authorize the IRS to retreat from its rules regarding "exploitation of propaganda," and the IRS must be asked if a retreat has, in fact, occurred; if so, it should justify the change or else reverse itself again.

At a minimum, however, the IRS rules should not permit deductions for ads which attempt to influence the public, or members of administration agencies, on agency matters. While the 1962 amendment passed by Congress was based, in part, on recognition of the then-existing policy that expenses for direct lobbying of agencies were tax-deductible, it left undisturbed IRS treatment of indirect lobbying of these agencies. We cannot doubt that independent agencies and those in the executive branch both exercise and broad legislative-type functions in many areas; even when they act quasi-judicially, their standard is the "public interest," a broad one. The insidious effects of corporate advertising campaigns may be even more pronounced, and less visible, when regulatory agencies are the target than when the target is a more visible decisionmaking body such as Congress.

If the IRS does not agree to amend its regulations to safeguard against these abuses, then Congress should modify section 162(e) of the Code to effectuate these changes.

Next, the FPC's accounting classifications for advertising should be conclusive for ratemaking purposes in Federal and State rate-

making proceedings. Under present FPC accounting rules, an advertising expense listed in a nonoperating account may still be passed along to ratepayers in Federal as well as State ratemaking proceedings. With the advent of national advertising campaigns in newspapers and magazines and on network television, the accounting and ratemaking problems associated with classifying advertising costs have become too difficult for 50 different State agencies to handle. One can only imagine the Idaho Public Utility Commission attempting to audit advertising costs incurred by Idaho Power Co. for ECAP ads which appeared in the New York Times or in Newsweek magazine.

At a minimum, under the present Federal Power Act, as presently constituted, the FPC's ratemaking jurisdiction over interstate transportation or wholesale sales of electricity provides a basis for exercising pendant jurisdiction over the advertising-related costs associated with intrastate consumer sales. If the FPC refuses to so act, Congress can require uniform ratemaking treatment of advertising expenses by States and the FPC according to FPC rules by amending section 205 of the act.

It is quite possible that the FPC already has express jurisdiction to set uniform ratemaking policies which would apply in State as well as Federal proceedings without the need to use the pendant jurisdiction theory. This would be based on a 1972 Supreme Court decision, *Florida Power & Light*. In any event the FPC has not chosen to decide whether it has that jurisdiction. Under uniform rules the FPC could prohibit the cost of all political ads from being passed along to ratepayers and consumers. Rates not reflecting this policy would be classified as unreasonable and discriminatory.

The last suggestion I have for substantive change would require the FPC to require any utility engaging in political advertising to make response time or space available to ratepayers with opposing views at the expense of the utility.

The ability of monopolistic utilities to effectively force ratepayers to subsidize propaganda campaigns with which they do not agree raises serious constitutional questions. As the Supreme Court said in the *Red Lion Broadcasting* case:

It is the purpose of the first amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the government itself, or a private licensee.

In response to these concerns, the FCC and Congress have required broadcast licensees to provide free response time to opponents of one-sided programming or advertising. The FPC should similarly require all utilities subject to its jurisdiction to subsidize response time or space for ratepayers with views contrasting with those expressed in utility company newspaper, magazine, television or radio advertising, or in utility bill inserts. At a minimum, the fairness doctrine should be applied where the costs of such propaganda are borne by ratepayers as the result of State or Federal ratemaking proceedings. Yet, the fairness doctrine might even be applied where the costs of such advertising are borne totally by shareholders, since the utility would otherwise be neglecting its mandate to protect its ratepayers as well as its stockholders if put its prestige behind the advertising of policies which rewarded its private investors at ultimate public expense.

In conclusion, Senator, I would like to say that I think we have posed many questions which are only answered tentatively in this testimony, and there remain many other questions which I have not even addressed, such as the propriety of permitting tax deductions or FPC operating expense credit for advertising which promotes the use of energy when we are in the midst of an energy crisis.

Perhaps if we have learned anything from your inquiry and this subsequent analysis, it is that there appear to be serious shortcomings in the ability or the desire of two important Federal agencies—the IRS and the FPC—to enforce current laws and regulations regarding political advertising. The resultant effect seems to be continued advertising abuses by many giants of American industry who have already caused us to mortgage our bodies and homes for their gasoline and electricity, and yet who now want us to give them our minds as well.

To a large extent, the tools to prevent these abuses are already here; the members of this subcommittee, as well as all citizens, must ask why they are not being used by the agencies authorized to protect our rights. We, as taxpayers and utility rate payers, have an interest in insuring that millions of our dollars are not spent to subsidize one-sided political propaganda, and a greater interest in insuring that our democratic system does not consequently fall into the hands of those with concentrated power and wealth who profess to bring “power to the people.”

I apologize for the length of the statement, Senator, and I thank you for permitting me to present it today.

Senator HART. Mr. Shulman, thank you very much for an analysis of the problem we are considering, an analysis which is, I think, extremely well researched. And comprehensive.

I will unnerve you and our next witness, who I understand is a tax lawyer, by saying that you are talking to a lawyer, who, when the first suggestion of a tax problem surfaced in his practice always ran around the corner to get his partner who was a tax man.

I early understood that I was never going to understand tax law. It would be an utter waste of time for me to try. That's 25 years ago. And I discovered in the passage of time my understanding of it has become even duller.

So while I say that your research is magnificent and you have made a significant contribution to my understanding of the problem, I still identify myself as somebody who, when it comes to tax law, never got beyond, well, 4 or 5 times tables, certainly not up to 9 or 10.

But the things you have discussed are certainly of enormous importance to us as a people as we seek to identify the correct actions to take, both to protect the environment and to avoid disabling ourselves economically by a shortage or wastage of energy.

And you correctly suggest, as I intended that we invite those whose advertising practices have been brought into question here to explain their view of it.

Following that, theoretically, I should have a better understanding, probably I will be more confused than ever in any event. Intelligent readers can then make that kind of judgment.

And I am not suggesting by indicating my desire that we suspend judgment until we have heard from the others any disrespect for your presentation. We welcome and appreciate it.

Before turning to the questions, let me try to clarify a little further for the record some of the responses that have come in to the letter that you have indicated I sent.

Several times you referred to the fact that a company, a given company or group of companies, did not characterize the ad in question as political or nondeductible. While those statements are true, I think it appropriate to add that in a number of situations, the company responding rejected the classifications in my letter.

So in a number of cases while it's true that the company didn't characterize the ad as nondeductible or political, neither did it classify the ad as deductible or political. I just wanted to characterize the ad in fashion—it simply went on to characterize the ad in a fashion.

Also, on a number of occasions, you mentioned that Mobil did not deduct expenses for ads which others characterized as nonpolitical, and again that is a correct, accurate statement. But I would like to have the record include the full text of Mobil's reply to my letter.

Specifically, I would like it to show the following paragraphs of that response. Let me read the several paragraphs which I think are of special significance:

For your convenience, there is enclosed a complete set of 1973 newspaper and periodic public service advertisements divided into four groups, the first three of which we believe and are advised constitute institutional or goodwill advertising. Group IV contains advertising which we believe to be in the public interest, but which contain sufficient legislative potential to be regarded by ourselves and outside counsel as possibly falling in the non-deductible category, and are therefore treated as non-deductible for tax purposes.

Group IV, the non-deductible category, covers a variety of subjects including a number of advertisements grouped under the general category of "the \$66 billion mistake" relating in part to regulatory policies on antipollution control, and general information on the energy shortage.

There are some 23 advertisements or brochures in this group. While none of these, in the opinion of counsel, is clearly non-deductible, no absolute assurance can be given by counsel that a deduction would be upheld and therefore, as noted above, this group of advertisements is treated by the Company as non-deductible.

The letter in full will be presented. I think it will be useful.

Now, I take it that you feel that a large number of the ads which you submit as exhibits are nondeductible. Can you indicate what percentage of the ads, in your judgment should be treated as non-deductible?

MR. SHULMAN. Senator, your letter of inquiry included questions on the tax treatment of 99 ads. Many of those ads which you have submitted, before they were sent out as I understand it, were felt, I know by ourselves when we gave them to the staff, and I believe by your staff, to be properly deductible. Of the pile we originally dealt with (99 ads) we felt perhaps 15 or 20 of those might be deductible.

Some of these are conservation ads, or Middle South Utilities ads which talk about how the South is expanding economically. Let's say, working from a base of 80 remaining ads, in my opinion—based on this analysis, extensive study of the legislation pending in Congress, extensive research of prior IRS decisions and court decisions on the matter—we have come to the conclusion that over 90 percent of those remaining ads probably should be categorized as political and therefore nondeductible.

So we are talking about an awful lot of money.

Senator HART. I am told, and I have not had opportunity to read more than a very few of those ads, that only a few of them explicitly solicit the reader to write their Congressman to support or oppose specific legislation.

Rather, that the bulk of the ads do not mention the Congress or the fact that legislation is pending here on the subject that is discussed in the ad.

Now, someone who would characterize these ads as deductible, I suspect, will say that an explicit solicitation to the reader to write his Senator or Congressman about identified legislation is needed before the ad becomes nondeductible. What test do you apply, how would you answer that argument?

Mr. SHULMAN. As I suggested in my statement, Senator—and two well-known tax professors, Cooper and Weaker, incorporate some of these suggestions in law review articles they have written—one should not find any one factor to be controlling on the question of deductibility or nondeductibility.

So for example—

Senator HART. Yes, but if I understood your testimony don't they suggest that there should be a number of factors considered?

Mr. SHULMAN. Yes, sir.

Senator HART. Aren't they writing on the assumption that those multiple factors are not included and rather that only the solicitation to write your Congressman and the mention of S. 2927 are the only things considered?

Mr. SHULMAN. It is conceivable, although I can't think of an instance now where people would be asked to write their Representatives or Senators on matters not relating to legislation just to show them their views on, perhaps, supporting the President.

Just because an ad said, write your Senator or Representative and let him or her know how you feel, wouldn't make that ad necessarily relate to legislation. So that what I'm saying is that the tag at the bottom is really not controlling.

On the other hand, I think, I hope we would all agree that ads which fall within some of the other factors—for example, that clearly discuss controversial items even though there isn't a tag at the bottom, "write your Representative or Senator"—those ads should be considered clearly to be nondeductible.

Now, some of the ads which we have submitted are in fact of that sort. The Phillips ad, in particular, is of that sort, but more important, Senator. I think that that limited view of the IRS regulations and the Internal Revenue Code just isn't the law today.

In a 1970 decision, the sixth circuit, in talking about advertising by Consumers Power Co., a Michigan utility, indicated that the current IRS regulations which talk about, "In connection with any attempt to influence—"

Senator HART. Are you reading from—

Mr. SHULMAN. I'm reading from my statement.

This is what the Congress passed in 1962, when it said that the new law in 1962 should not be construed as allowing deductions for any amount paid, quote, "in connection with any attempt to influence

the general public or segments thereof with respect to legislative matters, elections or referendum."

Well, in C(4) now, the definition of—of influencing the general public on legislative matters—is included at the top of page 11. And the definition is that "promotion or defeat of legislation includes, includes but shall not be limited to expenditures for the purpose of attempting to influence members of a legislative body directly or indirectly, by urging or encouraging the public to contact such members."

Mr. KUNSTADT. I might point out in the language that section little "i" is the source of the test, the urging of contact of the Senators. Since that is only given as an example, it's an improper interpretation of the regulations to say that that is a necessary test, and unless you meet that test, the ad is nondeductible.

Senator HART. Does that *Consumer Power Sixth Circuit* case say that the—

Mr. SHULMAN. Well, we have—

Senator HART. That it is not inclusive?

Mr. SHULMAN. We have two cases, Senator.

In the sixth circuit, sir, a 1970 case, there were advertisements in which Consumers Power participated; the ads were sponsored, by ECAP, electric companies advertising program.

I will quote in part from the court opinion:

An examination of the materials used show that the advertising campaign had a twofold purpose: Explaining how electricity can make for more comfortable living, and pointing out the bad features of publicly owned electric power companies as compared to privately owned companies.

The advertisements for which the district court disallowed deductions were the ones which in some way attacked public power. Many of the disallowed advertisements made a hard-sell attack on public power, calling it creeping socialism, while others simply suggested that private power companies can provide faster service because, unlike the publicly owned power companies, there was no waiting to have funds appropriated for the needed electrical facilities.

Many of the ads were directed toward the Tennessee Valley Authority. And several (this is important, several, but not all of them) admonished the public to let their Congressmen know how they felt about governmental ownership of electric power companies.

The court recognized that in some instances where no legislation was pending, an advertisement which simply conveyed a competitive message should not be considered to be nondeductible.

Nevertheless, in this case, even though there was no legislation pending, and even though not all of the ads told readers to contact their Congressmen, these ads were in fact ruled nondeductible.

A more appropriate case is a 1965 case in the Court of Claims, *Southwestern Electric Power Co.*, in which the ads, as I noted in my testimony, were intended to ward off further Federal Government intrusion into a private utility system; no legislation at all was involved. The ads talked about socialism and Government ownership.

The court says, referring back to the application of the *Cammarano* case, "legislation had already been passed in this case, so we cannot categorically say that the advertisements here were primarily aimed at promoting or defeating legislation. What then remains in the regulation which could deny deductibility? We think the important lan-

guage is this: The exploitation and propaganda including advertising other than trade advertising."

In those ads, there was nothing that asked members of the public to contact their legislators. Again, though that is under the old regulation, it stands for the principle that to be a nondeductible business expense there need not be necessarily a line on the bottom asking that representatives be contacted.

But, more importantly, as a practical matter, if we required that line to be present on all ads before the IRS would rule them to be nondeductible, we might not even need a tax law in that regard, because companies would use the full text of their ads to lobby to their heart's delight, trying to leave this obvious conclusion in the mind of any intelligent person: if things are the way they are stated to be in the ad, the reader should do what is learned in sixth grade, and write his Senator or Representative and tell him or her to do something about it.

Senator HART. I indicated that we ought to reserve judgment on the specific allegations, if that is a fair characterization, that you have made about some of these ads. There is one point, one statement in your testimony on which I don't have to be tentative or reserved at all. It is that, in your judgment, there is a legitimate function of Government to attempt to remedy the imbalance in the viewpoints that we in Congress do carry between the interests that can readily afford to buy an ad, and interests that some days hasn't the money to buy the newspaper. And I think that it may not be sufficient merely to provide for tax disincentives for lobbying by organizations organized for profit.

We may have to look in the direction of more favorable tax treatment for the lobbying efforts of those not organized for profit. That's a real slow-ball question to throw to you. How do you react to it?

Mr. SHULMAN. I am in agreement, Senator, with your suggestion that charitable and educational organizations who possess vast amounts of expertise on matters pending in Congress should not have to be waiting in the wings somewhere for the golden opportunity that a staff member might find out about who they are and call them up and ask them to submit their comments to a congressional committee on pending legislation. It seems to me that, outside of providing an incentive to such nonprofit groups, it just doesn't make any sense to prohibit people who know an awful lot about matters that Congress is dealing with from being able to express their views.

Outside of that, I do agree that at least as regards direct lobbying, submission of statements to committees or members thereof or testimony before committees, the restrictions on charitable organizations are unnecessary and unwise. And in fact, if Congress was concerned about a disequilibrium situation, unequal access, as you suggested, a good way to remedy that problem would be to open up the avenues to Capitol Hill for charitable organizations.

Senator HART. In your testimony you have this paragraph:

In its brief in *Cammarano*, the United States argued that there has been "a continued Congressional concern with the use of large sums of money to finance the engineering consent to make public opinions on matters of legislation, particularly where large economic interests are all on one side of the controversy."

That is the end of the quote from the case. And you continue—

Moreover, no one could doubt that consumer, environment, civil rights or similar groups, in contrast to the business community, simply do not have the financial resources to conduct massive national and grassroots advertising campaigns on dozens of important legislative matters.

To which anybody around here would say, sure that's true. But you have omitted a group, very large in number, with respect to whom it is dramatically true, and that's the poor. There is the extreme. The elimination of poverty would do more to reduce almost all the problems that confront us in any other one single thing—race relations, health. And that's the one group who, by very definition, never will be able to run an ad to attract a nickel's worth of attention. So surely we should try to figure out a way to get some balance into that imbalance.

Mr. BICKWIT. In your own view, does the media bear any responsibility for the imbalance that exists, and if so, what would you suggest that they do about it?

Mr. SHULMAN. I think we have to distinguish between the electronic media radio and television and the print media. There are different Federal regulations which apply to electronic media, whereas there are virtually no regulations applicable to the print media. I suppose that to a large extent, I believe, the media generally is doing a fair job of reporting both sides of the energy crisis in its news, documentaries, interviews shows, etc. I think the large imbalance results from the infusion of these billions or millions of dollars of commercial advertising by oil and utility companies which are really a different sort of campaign, of information dissemination than the broadcaster-sponsored programs.

You have very, very dramatic ads which are intended to appeal to the emotions, rather than to any necessarily intellectual aspect of the individual. The press, and of course the broadcast media, shy away from presenting in their news similar emotional approaches to the presentation of counterindustry views. I suppose if an environmental group wanted to buy an ad opposed to nuclear power and put it on the television, if it could afford to do so, the station would run it. But the station is doing little to tone down the debate in some of the oil ads which we see on television. And I think it's the same for newspapers.

I suppose the stations could make free advertising time available. This is what we requested in our FCC letter. And out of 6,000 stations we have written to, I think we have gotten responses from about 600, many of whom have agreed to run consumer-oriented spots. But regrettably, two networks, NBC and CBS, I believe, did not find the spots which your fellow colleagues in Congress provided the networks to be appropriate for presenting consumer viewpoints on the energy crisis.

In the print media, as I say, there are no regulations or laws that really apply, although there have been some attempt by environmental groups, such as Environmental Action, to request counter ad space free of charge. A letter was sent from Environmental Action on March 4, to the ombudsman of the Washington Post, requesting that the Post give free space to an environmental group to present views opposed to some of the industry positions that we see on the "op. ed." page or similar places. As far as we know, as recently as last week, the Post hadn't replied affirmatively.

Mr. BICKWIT. I am sorry, I didn't hear that.

Mr. SHULMAN. The Post has not replied affirmatively to this request. We know that some publications such as Playboy, and I believe Time, do devote free advertising space to citizen groups, but they are on generally noncontroversial issues. It's generally not the energy crisis.

There is a vast array of things that could be done. I have just suggested a few that don't involve legislative remedies, but are really voluntary actions that might be taken.

Mr. BICKWIT. If on reflection, some that do involve legislative remedies occur to you, it would be appreciated if you could make those available for the record of this hearing so that the members of this committee could study it.

You have supported tax and FPC accounting disincentives with respect to grassroots lobbying. Presently there is in the Congress committee legislation which would apply the accounting disincentives at least to promotional advertising by utilities in this time of energy shortage. I gathered from a closing remark that you do in fact support that approach. Am I correct in that, and if so, could you elaborate?

Mr. SHULMAN. Yes, most definitely. I can't imagine, I don't see how anyone can imagine, the need for utilities to promote increased use, or any use of natural gas, electricity, or oil in a time when we are having problems keeping people warm in Michigan or Minnesota in the winter because there isn't enough oil to go around. So that an outright prohibition on promotional advertising might even be appropriate. Several State utility commissions have done this. At a minimum, it would seem to me the FPC ought to change the promotional advertising account from operating to nonoperating so that any promotional advertising which does occur would not be subsidized by ratepayers. This could be effectuated by legislation as well. If anyone thinks that utilities are not still promoting gas or electricity, well, one of the ads which the Senator sent out in his inquiry is by the Southern Co., exhibit 98. It's entitled "Misconception." I quote, "Misconception: it doesn't make sense for utilities to promote the use of electricity in the face of an energy crisis. Fact: energy must be available whenever and in whatever quantity needed. Customers require it." I won't read the whole ad, but essentially, what the ad says is that people really ought to use a lot of electricity this winter so that the use won't fluctuate, so that the company could make better use of its existing facilities. This ad was run last September.

Yet as recently as last week, in a far more subtle attempt, the Washington Gas Light Co., ran this ad in the Washington Post. You don't have a copy of it, so I will mark it exhibit 101, and give it to you. The ad is entitled, "Give Up Old Faithful, So You Can Give Up Oven Cleaning with a Modern Gas Range." The general text of the ad encourages people whose old ovens now need replacement to replace them with new gas-powered, self-cleaning ovens. While I don't profess to know very much about self-cleaning ovens, from what I understand, self-cleaning ovens, at least the electric type, require more electricity to do the cleaning in addition to the cooking. I assume it's the same thing with a gas self-cleaning oven. But more importantly, there is masqueraded in the ad a little paragraph at the bottom that says "Eligibility for gas service. In order not to jeopardize the supply of gas for existing customers, no new applications for gas service are

presently being accepted. However, if your home uses natural gas for any purpose, you are entitled to replace or add gas appliances."

Obviously, this is an attempt to sell more gas appliances and to increase consumption of gas in individual households which are already using gas for more limited purposes.

So promotional advertising is still going on. I don't know how this ad is classified. It probably is promotional and will be reported in FPC account 913 and will be a legitimate operating expense and probably passed along to rate payers. I don't think there is any rhyme or reason in that treatment.

Mr. BICKWIT. I gathered from the remark the chairman made that he interpreted your analysis of Cooper & Weaver to support the proposition that under present law, the tag, "Write your Congressman," is the only thing that is considered by the service and the courts in deciding whether an ad is deductible. I don't think that was the impression you meant to convey.

Mr. SHULMAN. No, sir, I think by my quoting from Consumer's Power and Southwestern Electric, I meant to indicate that the tag in many cases is, in fact, irrelevant. The absence of a tag is irrelevant.

Mr. BICKWIT. If I understood you correctly, you didn't mean to convey that Cooper & Weaver think that is the only thing that is considered at this point as a relevant matter in deciding a question of deductibility.

Mr. SHULMAN. That is true; they consider several factors.

Mr. BICKWIT. On the *Consumer Power* case, in that case, the court of appeals deferred to the judgment of the district court on a question of fact, did they not?

Mr. SHULMAN. Yes, that is correct.

Mr. BICKWIT. Do you happen to know what the charge to the jury was at the district court level? I would doubt it, in view of the fact that it doesn't appear in the reported case.

Mr. SHULMAN. Well, do you have the district court opinion, or the cite for the district court opinion? In case you don't, it's 299 Federal Supplement, page 1180. I believe this may not be a jury case. I believe it may have been tried before a judge. In that case, there would obviously be no charge to the jury.

Mr. BICKWIT. If it turns out that it was a jury case, it would be very useful for this record to know what the charge of the jury was. If that could be made available, we would appreciate it.

Mr. SHULMAN. OK. However, looking quickly at the district court case, it says the case has been presented to the court on a stipulation of facts, supplemental stipulation of facts, testimony adduced at trial, and exhibits submitted with the stipulations and those introduced at the trial. The court has also had the benefit of a series of briefs submitted by the parties seriatim. Plaintiff requests findings of fact by the court—that is, the judge. In addition to those contained in the stipulation, a copy of the stipulation of facts and supplemental stipulation of facts is appended to this opinion. I will check, but I don't believe that this was a jury case.

Mr. BICKWIT. Your point is, as I gathered from your remarks to the chairman, that if it was a jury case, the charge could not have been

that, unless you see a tag saying "write your Congressman," this ad is deductible. You can reason that from the holding of the case; is that correct?

Mr. SHULMAN. I think that goes without saying. As I said, just from commonsense. Otherwise, every company that wanted to run a political ad would just omit the words, "write your Congressman." They might put in something, "what do you think?" They might say, "that's bad." There would be so many ways to circumvent the law that there wouldn't be any law to enforce.

Mr. BICKWIT. And if it were a case decided by the judge, or a fact-finding of the judge, then his charge to himself could not have been the charge that I just gave you?

Mr. SHULMAN. I think that's correct.

Mr. BICKWIT. I would like to thank the witness. Thank you, Mr. Chairman.

Mr. SHULMAN. Thank you.

Senator HART. There was one suggestion you had that I wanted to make a comment on. The Power Commission and IRS would have an overwhelming problem in auditing or reviewing the massive amounts of advertising, as you imply. But to permit them a better shot at insuring compliance with whatever the law is, why not require the ads to be labeled and identified, like, "not printed at public expense" on our mailing, which I am not sure is always literally true, either, but anyway, some slug line that would alert the reader as well as the Bureau or the Power Commission as to the deductibility of the ad. Then the companies would be required to include a compendium with their tax return or Power Commission filing of the ads. Also, it seems desirable to encourage IRS to set up a number of hypotheticals to make it a more predictable business for the tax counsel.

I see the desirability of it, but the usual uneasiness exists in promoting the proposition that you should be allowed to go into IRS and argue over the taxpayer's return. This is a very difficult thing to resolve. There is a lot of complication.

If life is ideal you could separate the specifics on the appropriate occasions and insure against abuse and go ahead. But I don't know whether we can. But the suggestion certainly should be considered. Thank you.

Mr. SHULMAN. Senator, just one brief comment in that regard. The FPC already permits the rate pairs to come in and challenge treatment of advertising engaged in by utilities. And there hasn't been a great rush to the FPC door to police these things. Therefore, if that were permitted in regard to tax treatment of ads, and perhaps the incentive for reward removed so that the only basis for the challenge would be a belief that the ad was improperly trying to influence the legislative process, I really can't imagine waiting lines at the district court trying to challenge the services, tax treatment of these things. Thank you very much.

Senator HART. Thank you for your interesting and thoughtfully prepared testimony.

Mr. SHULMAN. Thank you.

[The exhibits referred to follow:]

EXHIBIT A

CORPORATE PUBLIC SERVICE ADVERTISING

JANUARY 28, 1974.

DEAR ———: The Subcommittee on the Environment of the Senate Commerce Committee has received numerous inquiries about what has been termed corporate public service advertising. We have obtained some such advertisements, copies of which are enclosed, which explain our current energy crisis and proposed solutions to it. We would be happy to receive copies of any of your other advertisements which you feel are particularly informative.

After reviewing many of these advertisements, I have a few questions involving overall advertising costs and advertising terminology. Accordingly, I would appreciate your sending me the following specific information about your company's advertising efforts:

- (a) How much money did your company spend on *all* advertising in 1973?
- (1) Please break this down into product/service, goodwill (i.e., institutional), political (i.e., non-deductible as a business expense under IRS Regulation 1.162-20(c)(4)) advertising.
- (2) Please break this down for each medium (i.e., television, radio, newspapers, magazines, pamphlets and brochures, other).
- (b) What does the company consider to be public service advertising?
- (1) Is such advertising to goodwill (i.e., institutional) advertising, thus *excluding* product/service and political advertising?
- (2) How does the company consider each of the advertisements attached to this letter—as product/service, goodwill (i.e., institutional) or political (i.e., non-deductible) advertising?

Would you please reply to this letter as soon as possible, but not later than February 6th. If you have any questions, please don't hesitate to let me know or contact Len Bickwit at (202) 225-9351.

Sincerely yours,

PHILIP A. HART,

Chairman,

Subcommittee on the Environment.

EXHIBIT B

OIL COMPANY ADS SENT TO COMPANIES FOR COMMENTS

OIL COMPANIES OF AMERICA (API)

1. "How Can America Head Off Energy Shortages?" (Advocates offshore drilling and deregulation of natural gas.)
2. "Can America Have Enough Energy . . ." (Alaska pipeline, increased use of coal and nuclear power, have not been implemented because of economic and environmental considerations; the U.S. must take a more realistic approach to environmental problems.)

ATLANTIC RICHFIELD COMPANY

1. "What Stands Between Our Nation's Energy Shortage . . ." (Advocates building of trans-Alaska pipeline.)
2. "Construction of the trans-Alaska pipeline . . ." (Advocates the building of the pipeline which it states has been designed to meet tough environmental standards.)

CONTINENTAL OIL COMPANY

1. "Because of embargoes on petroleum exports . . ." (Advocates conservation of energy, rationing of scarce fuel, a sensible balance between environmental and energy needs, auto-emission remain at present levels, increased strip mining of coal, encourage trade relations for unrestricted trade in energy supplies.)

EXXON

1. "Why energy is short in the U.S. . . ." (Price of natural gas is too low, coal cannot be used because of Clean Air Requirements, nuclear power implementation is being delayed, government policies have discouraged building of refineries.)
2. "Today, nuclear power supplies . . ." (Need nuclear power as soon as possible; it has been delayed, in part, by environmental objections.)
3. "Exxon plans to spend nearly \$16 billion . . ." (Explains where company will invest its capital and why it needs large profits.)
4. "Is North Slope Oil Really Worth the Risk?" (1971.) (Advocates construction of Alaska pipeline.)
5. "Here on the North Slope of Alaska . . ." (1971.) (Broadcast.) (Worth the risk of capital to explore North Slope.)
6. "The Arctic wilderness is not always frozen . . ." (1971.) (Broadcast.) (Tundra can be restored after construction of rigs and roads, and living quarters in Alaska.)
7. "This is the Canadian Arctic near Alaska . . ." (1971.) (Broadcast.) (Pipeline will be environmentally sound.)

GULF OIL CORPORATION

1. "Americans today are living in an atmosphere . . ." (Government regulation caused the shortage; U.S. needs development of nuclear power and research on nuclear fusion, development of fuels from oil shale and coal, geothermal, and solar, balance of environment needs protection and energy demand.)
2. "We can't talk our way out of the energy crisis." (Calls for offshore drilling, Alaskan pipeline, more refineries, deep water ports, increased use of coal, nuclear power, synthetic fuels and environmental needs must be balanced with energy needs, governmental support of long range research programs.)
3. "Ever Since the First Dawn . . ." (Broadcast.) (Nuclear power reactors supply safe, clean energy.)

MOBIL

1. "Anyone who says the energy crisis . . ." (Composite of eight ads: "the gap," "the unnatural gas shortage," "to have and have not," "energy policy must be priority policy," "is anybody listening?" "so much to do, so little time," "Q: a gasoline shortage? A: yes, sad but true," "the unnatural gas shortage revisited.")
2. "An open letter on the gasoline shortage to:" (All statements that the energy crisis are contrived are untrue. Political decisions have produced the shortage. We must build the pipeline, open the continental shelf for drilling, accelerate the construction of nuclear power plants.)
3. "Don't read these ads . . ." (Composite of four ads on profits.)
4. "Far out." (Advocates offshore exploration for oil and drilling.)
5. "Our Clean-seas policy is marine life insurance." (Advocates passage by Congress of a bill amending the International Convention for Prevention of the Pollution of the Sea by Oil.)
6. "So much to do, so little time." (It takes a great deal of money and time to develop energy supplies; we have lost them due to environmental fears concerning the Alaska pipeline and nuclear power.)
7. "We just spent three months' profits in one morning" (Money Mobil invests for federal lease to explore Gulf of Mexico must come from profits.)
8. "Capital formation: the great multiplier" (Profits are needed for investment.)
9. "We're a big company . . ." (Profit is only 2 cents/gallon which is not so much when you consider how much we invest and the risks we take.)
10. "The gap" (To close the energy gap if we drill offshore, build the pipeline, produce synthetic fuels, build nuclear power plants, but environmentalists have stalled these efforts.)
11. "Q: A gasoline shortage? A: Yes. Sad, but true." (Advocates control of auto emissions in a way that won't waste gasoline, build Alaska pipeline, de-regulate natural gas, explore offshore drilling.)
12. "The lady was listening" (Takes position that development of energy resources can be coordinated with environmental goals if people strike a balance in their environmental standards.)

13. "Are oil profits big? Right ... (Need profits for capital investment.)
14. "Is Anybody Listening" (Oil companies warned the regulation of natural gas, delay in construction of pipeline, environmental fears, and delay in off-shore drilling would result in the energy crisis.)
15. "The \$66 Billion Mistake ..." (Grant a one-year extension for emission control and substitute California standards.)
16. "Same—Dangerous curve ahead ..." (Adopt California standards, extend federal emission standards for one year and develop mass transit.)
17. "Same—Clean air and public transportation ..." (Delay imposition of federal emission control standards, substitute California standards, develop public transportation system.)
18. "Same—The right question ..." (Federal adoption of California emission control standards.)
19. "Same—California has a better way ..." (Grant one year extension of federal emission control standards, adopt standards like Calif.; Congress should enact federal mass transportation program.)
20. "The unnatural gas shortage ..." (Calls for deregulation of natural gas and outer continental shelf lease sales.)
21. "The unnatural gas shortage revisited ..." (Advocates deregulation and increased offshore exploration.)
22. "Energy is industrial plasma ..." (Need energy for growth and to maintain standard of living, in order to produce energy we have to intensify offshore drilling.)
23. "Because that's where the oil is ..." (Advocates increased drilling off-shore.)

PHILLIPS PETROLEUM

1. "America's best kept secret ..." (Advocates adoption by federal government of Calif. emission standards.)
2. "Must this be the car of the future?" (People must change driving habits to avoid shortages.)
3. "The Energy Gap" (Solution to energy gap is a unified national energy policy including federal control by one administrative unit; greater encouragement of domestic exploration; balance between energy and environment.)
4. "The energy crisis is no longer a prediction ..." (Federal regulation of natural gas prices has discouraged discovery; environmentalists have slowed down pipeline oil and lease sales; exploration of Atlantic ocean; auto emission standards are too severe. Need to decontrol natural gas and balance environmental and energy needs.)

SHELL

1. "Shell's preliminary earnings report ..." (Explanation of why 1973 profits are up.)
2. "How in all conscience ..." (Defends high profits as necessary for capital investment.)

TEXACO

1. "Texaco earned \$1.3 billion in 1973 ..." (Need increase in earnings for investment.)
2. "We're not holding back anything ..." (Says Texaco is supplying appropriate federal and state authorities with data and the company is not holding back information.)

UTILITY ADS SENT TO COMPANIES FOR COMMENT

EDISON ELECTRIC INSTITUTE

1. "Joseph Zagorski ..." (Says nuclear power plants are *safe*.)
2. "A 10-story air cleaner ..." (Says electricity needed to clean up environment, advocates building new generating facilities.)
3. "Why does my electric ..." (Advocates increased rates.)
4. "What's being done by the ..." (Says more electric power plants should be built as soon as possible, discusses "better ways" to produce electricity.)
5. "Ann's job wouldn't exist without ..." (Advocates increased rates.)
6. "Liquid ... gas ... or solid ..." (Advocates increased rates.)
7. Why shouldn't I be concerned ... (Says nuclear power plants are *safe*, and advocates speed-up in development and construction of nuclear power plants.)

8. "Show and tell at the nuclear power . . ." (Says nuclear power plants are safe and advocates increased construction of nuclear power plants.)

9. "Mom's apple pie is radioactive." (Says nuclear power plants are safe, advocates increased construction of nuclear power plants.)

MIDDLE SOUTH UTILITIES SYSTEM

1. "America is Strong—Enough electric energy for the . . ." (Discusses benefits of expanded utilities system in Alabama to be completed 1975.)

2. "America is Strong—Rationing of electric energy . . ." (Discusses what the system is doing "to prevent rationing of electric energy.")

THE SOUTHERN COMPANY

1. "Water Cooler. (Discusses company's environmental protection facilities.)

2. "Power Playground". (Electric generating plants provide recreation lakes.)

3. "A Fish Story." (Says use of cooling lakes by electric generating plants provides fine environment for fish.)

4. "Misconception . . ." (Promotes electricity consumption in off-peak winter months.)

5. "A Pound of Beef . . ."

VEPCO

1. "The Energy Crunch: Energy Insurance . . ." (Conservation tips.)

2. "The Energy Crisis: VEPCO has invested . . ." (Supports research and development of alternative energy sources, advocates "economic nuclear energy.")

COMMONWEALTH EDISON

1. "Looking for a great fishing hole . . ." (Says electric generating stations attract fish and are good recreation areas.)

2. "Conservation Department" (Advocates nuclear energy.)

3. "Anti-Pollution Device" (Says nuclear energy is safe and non-polluting.)

CONSOLIDATED EDISON

1. "Report to the People of NYC . . ." (Advocates increased rates, off-shore drilling.)

2. "More Power to the People . . ." (Says new Con Ed hydroelectric plant in New York will supply needed energy while protecting environment.)

GEORGIA POWER COMPANY

1. "Two reasons for an electric rate increase . . ." (Advocates electric rate increase.)

2. "This is a new day for Joe . . ." (Broadcast.) (Advocates increase in price of electricity.)

3. "You've probably heard that . . ." (Broadcast.)

FLORIDA POWER & LIGHT

1. "Straight talk from FPL about a rate increase . . ." (From booklet.) (Advocates rate increase.) [Not considered as an operating expense under Federal Power Regulations.]

AMERICA'S RURAL ELECTRIC SYSTEMS

1. "We repeat: In solving America's energy crisis . . ." (Advocates R&D of alternative energy sources, and national policy on energy and resources.)

AMERICAN ELECTRIC POWER SYSTEM

1. "Mr. President, We Agree . . ." (Advocates (1) modifying emission controls; (2) leasing public land in the west for coal mining; (3) speed-up of nuclear power plants; (4) prohibiting the conversion of power plants from coal to oil (Energy Emergency Act § 106).)

AMERICAN GAS ASSOCIATION

1. "The Alaskan pipeline . . ." (Advocates Alaskan pipeline.)

2. "Discover More Gas For America . . ." (Conservation tips.)

3. "The energy shortage . . ." (Advocates offshore drilling, R&D, deregulation of natural gas and rate increases.)
4. "A gas well 5 miles deep— . . ." (Advocates higher prices for natural gas.)

BROOKLYN UNION GAS, LONG ISLAND LIGHTING CO., NEW YORK STATE ELEC. & GAS CORP., IRIQUOIS GAS CORP., ROCHESTER GAS & ELEC. CORP.

"Energy From the Sea . . ." (Advocates offshore drilling.)

MISCELLANEOUS INDUSTRY SENT TO COMPANIES FOR COMMENT

GENERAL ELECTRIC

1. "An attempt to bring the . . ." (Advocates nuclear power and discussion of alternative energy sources.)
2. "Facts that explain . . ." (Advocates and "explains" higher electric rates.)
3. "Zero growth in the electric industry . . ." (Argues that growth in electric industry will raise standard of living and solve pollution problems.)
4. "At a time like this, . . ." (Argues that fluorescent lamps can save energy since they also have effect of heating buildings.)
5. "American Electric Power orders . . ." (Discusses new technology for transmission of electricity.)
6. "The energy crisis you've been hearing . . ." (Advocates goal justification and nuclear power plants, particularly fast breeder reactors.)
7. "The technology that gave you . . ." (Discusses GE's solid state equipment used in electricity transmission lines.)
8. "Less than 1% of the world's water . . ." (Discusses use of GE equipment and technology in fighting water pollution.)
9. "In ten years, . . ." (Advocates GE-designed nuclear power plants and gas turbines to produce electricity.)

BETHLEHEM STEEL

1. "What some people are doing . . ." (Discusses use of steel for construction of nuclear breeder reactors and generating plants.)
2. "We have only one proven . . ." (Discusses proposed legislation on surface mining and says, "if unreasonable restrictions on surface mining are enacted . . . coal users and steel users would be hurt.")

UNIVERSAL OIL PRODUCTS

1. "Let's clear the air . . ." (Discusses benefits of catalysts and properly designed catalytic converters in reducing harmful automotive emissions.)

GENERAL ATOMIC

1. "Introducing the new energy company . . ." (Advocates nuclear energy and discusses nuclear reactors.)

GENERAL MOTORS

1. "The people who assemble GM . . ." (Discusses ways GM is trying to improve conditions of employees.)
2. "Let's respond to the energy question . . ." (Advocates as a national policy: (1) deregulation of wellhead prices of natural gas, (2) immediate increase in crude oil importation, (3) construction of pipelines, super tankers, dry water ports, offshore terminals, (4) greater off-shore drilling, (5) rapid developing and discussing of nuclear power plans, and (6) stepped-up R&D in alternative sources of energy.)

EXHIBIT C

CHARTS OF CORPORATE RESPONSES

MAJOR OIL COMPANY ADVERTISING, 1973 (AS CHARACTERIZED BY COMPANIES RESPONDING TO SENATOR HART'S INQUIRY)

Company name	Total expenditure	Deductible advertising expenditures			Non-deductible
		Product/service	Goodwill/institutional	Miscellaneous	
Atlantic Richfield.....	\$9,739,357	\$3,386,142	\$6,353,215	-----	-----
Exxon.....	25,064,936	12,532,936	12,532,000	-----	-----
Gulf (estimates).....	(15,000,000)	(7,500,000)	(7,500,000)	-----	-----
Mobil.....	16,158,000	9,047,000	6,282,000	-----	\$829,000
Phillips.....	\$8,864,474	4,855,469	3,999,005	-----	-----
Shell.....	22,389,000	11,349,000	3,962,000	\$7,078,000	-----
Texaco.....	27,131,000	9,582,000	17,549,000	-----	-----
Industry trade association: API.....	1,610,000	-----	1,610,000	-----	-----

¹ Approximately.

² Phillips' aggregate expenditure was listed by that company as being \$10,000 higher than the sum of its individual parts.

³ Production costs.

UTILITIES ADVERTISING, 1973 (AS CHARACTERIZED BY COMPANIES RESPONDING TO SENATOR HART'S INQUIRY)

Company name	Total advertising expenditure	Deductible			Non-deductible
		Product/service	Goodwill/institutional	Miscellaneous	
American Electric Power Co.....	\$1,411,689	\$235,000	\$983,000	\$194,000	-----
Brooklyn Union Gas Co.....	81,400	-----	81,400	-----	-----
Columbia Gas of New York.....	31,308	11,940	19,058	310	-----
Commonwealth Edison.....	2,639,783	275,373	2,364,410	-----	-----
Con Ed.....	1,195,000	1,195,000	-----	-----	(¹)
Florida Power & Light.....	869,946	-----	869,946	-----	-----
Georgia Power Co.....	1,410,069	352,802	814,512	242,755	-----
Long Island Lighting Co.....	774,000	380,000	394,000	-----	-----
Middle So. Utilities, Inc.....	453,715	453,715	-----	-----	-----
National Rural Electric Coop. Association.....	229,670	-----	229,670	-----	-----
New York State Electric & Gas Co.....	546,674	77,914	240,751	228,009	-----
Rochester Gas & Electric.....	401,480	27,000	374,000	-----	-----
Southern Co.....	591,399	-----	591,399	-----	-----
Vepco.....	563,402	164,366	399,036	-----	-----
Industry Trade Association: American Gas Association.....	6,374,000	2,834,000	3,540,000	-----	-----

MISCELLANEOUS INDUSTRY ADVERTISING, 1973 (AS CHARACTERIZED BY COMPANIES RESPONDING TO SENATOR HART'S INQUIRY)

Allegheny Airlines.....	\$4,253,284	\$4,092,284	\$161,000	-----
Beech Aircraft.....	1,785,795	1,785,795	9 ² 60,000	-----
Bethlehem Steel.....	(³)	(⁴)	(⁵)	-----
General Atomic.....	230,000	230,066	-----	-----
General Motors.....	243,000,000	\$238,140,000	\$4,860,000	-----
General Electric.....	(⁶)	-----	-----	-----
United Airlines.....	28,070,000	28,070,000	-----	-----

¹ FPL did not deduct the "ad" sent, they considered it a below-the-line deduction.

² Included in fiscal year 1974 accounting.

³ Not provided.

⁴ Two-thirds of advertising expenditures.

⁵ One-third of advertising expenditures.

⁶ Estimate.

EXHIBIT D

ALASKA PIPELINE

S. 2726. To reform the mineral leasing laws, (October 20, 1971.)

S. 970. To deal with the current energy crisis and the serious shortages of petroleum products facing the Nation and to authorize construction of the trans-Alaska pipeline. (February 21, 1973.)

H.R. 8774. To deal with the current energy crisis and the serious shortages of petroleum products facing the Nation and to authorize construction of the trans-Alaska pipeline. (June 18, 1973.)

H.R. 8108. To deal with the current energy crisis and the serious shortages of petroleum products facing the Nation and to authorize construction of the trans-Alaska pipeline. (May 23, 1973.)

H.R. 6756. To deal with the current energy crisis and the serious shortages of petroleum products facing the Nation and to authorize construction of the trans-Alaska pipeline. (April 9, 1973.)

H.R. 9073. To deal with the current energy crisis and the serious shortages of petroleum products facing the Nation and to authorize construction of the trans-Alaska pipeline. (June 29, 1973.)

P.L. 93-153. To amend section 28 of the Mineral Leasing Act of 1920, and to authorize a trans-Alaska oil pipeline, and for other purposes. (November 16, 1973.)

COAL GASIFICATION AND LIQUEFACTION

H.R. 220. To create a corporation for profit to develop commercially feasible processes for the conversion of coal to crude oil and other liquid and gaseous hydrocarbons, and for other purposes. (January 3, 1973.)

H.R. 9694. To further energy research and development by establishing a Coal Liquefaction Corporation; to amend the National Science Foundation Act of 1950 and to authorize and direct the National Science Foundation to fund basic and applied research related to energy and thereby support the objectives of the Coal Liquefaction Corporation; and for other purposes. (July 30, 1973.)

H.R. 9691. To further energy research and development by establishing a Coal Gasification Development Corporation; to amend the National Science Foundation Act of 1950 and to authorize and direct the National Science Foundation to fund basic and applied research related to energy and thereby support the objectives of the Coal Gasification Development Corporation; and for other purposes. (July 30, 1973.)

COAL—INCREASED USE AS AN ENERGY SOURCE

H.R. 12045. To increase the production, transportation, and conversion of coal as a source of energy. (December 19, 1973.)

H.R. 12121. To increase the production, transportation, and conversion of coal as a source of energy. (December 19, 1973.)

CONSERVATION OF ENERGY

H.R. 11714. To provide for the development of improved design, lighting insulation, and architectural standards to promote efficient energy use in residential, commercial, and industrial buildings. (November 30, 1973. Reported with amendment, committed to Committee of Whole House on State of the Union, and order to be printed. December 14, 1973.)

DEREGULATION OF NATURAL GAS

H.R. 2866. To provide for the deregulation of natural gas. (January 24, 1973.)

S. 1549. To amend the Natural Gas Act to provide that provisions of the Act shall not apply to certain sales in interstate commerce. (April 12, 1973.)

S. 992. To amend the Natural Gas Act in order to expand the jurisdiction of the Federal Power Commission under such Act. (February 26, 1973.)

S. 2305. To amend the Natural Gas Act to extend its application to the direct sale of natural gas in interstate commerce, and to provide that provisions of the Act shall not apply to certain sales in interstate commerce. (August 1, 1973.)

ELECTRIC POWER—INCREASED EFFICIENCY

H.R. 5650. To promote commerce and amend the Federal Power Act to establish a Federal power research and development program to increase efficiencies of electric energy production and utilization, reduce environmental impacts, develop new sources of clean energy, and for other purposes. (March 14, 1973.)

H.R. 4997. To promote commerce and amend the Federal Power Act to establish a Federal power research and development program to increase efficiencies of electric energy production and utilization, reduce environmental impacts, develop new sources of clean energy, and for other purposes. (February 28, 1973.)

EMISSION CONTROLS—VEHICLES, SMOKESTACKS

H.R. 9210. To provide information for more effectively dealing with national energy problems by directing the National Science Foundation to conduct a study of emission control equipment and techniques applicable to the smokestacks of coal-burning powerplants and offer recommendations for their improvement. (July 11, 1973.)

H.R. 1773. To amend the National Emissions Standards Act in order to conserve fuel. (December 4, 1973.)

H.R. 11930. To amend the National Emissions Standards Act in order to conserve fuel. (December 12, 1973.)

H.R. 11950. To amend the National Emissions Standards Act in order to conserve fuel. (December 13, 1973.)

H.R. 12062. To suspend motor vehicle emissions and fuel standards for the duration of the energy crisis in order to conserve fuel. (December 20, 1973.)

ENERGY EMERGENCY ACT—VETOED

H.R. 12132. To amend the Economic Stabilization Act of 1970 to eliminate price controls of petroleum and petroleum products. (December 21, 1973.)

S. 2589. To declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes. (December 17, 1973.)

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GEOTHERMAL—RESEARCH AND DEVELOPMENT

H.R. 4413. To promote the exploration and development of geothermal resources through cooperation between the Federal Government and private enterprise. (February 20, 1973.)

H.R. 4963. To promote the exploration and development of geothermal resources through cooperation between the Federal Government and private enterprise. (February 28, 1973.)

H.R. 8628. To further energy research and development by establishing a Geothermal Energy Development Corporation; to amend the National Science Foundation Act of 1950; and to authorize and direct the National Science Foundation to fund basic and applied research related to energy and thereby support the objectives of the Geothermal Energy Development Corporation; and for other purposes. (June 13, 1973.)

H.R. 9658. To further energy research and development by establishing a Geothermal Energy Development Corporation; to amend the National Science Foundation Act of 1950; and to authorize and direct the National Science Foundation to fund basic and applied research related to energy and thereby support the objectives of the Geothermal Energy Development Corporation; and for other purposes. (July 30, 1973.)

H.R. 11212. To further the conduct of research, development, and commercial demonstration in geothermal energy technologies, to direct the National Science Foundation to fund basic and applied research relating to geothermal energy, and to direct the National Aeronautics and Space Administration to carry out a program of demonstrations in technologies for commercial utilization of geothermal resources including hot dry rock and geopressured fields. (October 31, 1973.)

LIQUEFIED NATURAL GAS—IMPORTATION

H.R. 4430. To suspend the importation of liquefied natural gas and the construction of new storage facilities for such gas until such time as a thorough evaluation of the hazards associated with the marine transportation and the delivery and storage of such gas is made and other actions are taken to prevent or minimize such hazards. (February 20, 1973.)

H.R. 5755. To suspend the importation of liquefied natural gas and the construction of new storage facilities for such gas until such time as a thorough evaluation of the hazards associated with the marine transportation and the delivery and storage of such gas is made and other actions are taken to prevent or minimize such hazards. (March 15, 1973.)

NUCLEAR POWER 1972, 1973, 1974

H.R. 13731. To amend the Atomic Energy Act of 1954, as amended, to require applicants for licenses to construct and operate utilization or production facilities to obtain a construction permit from the Atomic Energy Commission prior to commencement of construction, and for other purposes. (March 9, 1972.)

H.R. 13732. To amend the Atomic Energy Act of 1954, as amended, to authorize the Commission to issue temporary operating authorizations for production and utilization facilities under certain circumstances, and for other purposes. (March 9, 1972.)

H.R. 12823. To amend the Atomic Energy Act of 1954 to provide for improved procedures for planning and environmental review of proposed nuclear powerplants, and for other purposes. (February 14, 1974.)

H.R. 11957. To amend the Atomic Energy Act of 1954, as amended, to restructure the hearing process with respect to licenses to construct or operate utilization or production facilities. (December 13, 1973.)

H.R. 13484. To amend the Atomic Energy Act of 1954, as amended to provide for approval of sites for production and utilization facilities, and for other purposes. (March 13, 1974.)

H.R. 11696. To amend the Atomic Energy Act of 1954 with respect to the granting of awards for inventions or discoveries contributing to the development, use, or control of atomic energy. (November 30, 1973.)

H.R. 8867. (Report No. 93-385) To amend the EURATOM Cooperation Act of 1958, as amended. (June 30, 1973. Committed to Committee of Whole House on State of the Union and ordered to be printed. July 19, 1973.)

H.R. 8662. (Report No. 93-280) To authorize appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes. (June 13, 1973. Committed and ordered to be printed. June 14, 1973.)

S. 2724. To establish a Federal Radiation Protection Agency, to transfer certain functions of the Atomic Energy Commission and other departments and agencies to such Agency, and for other purposes. (November 19, 1973.)

S. 1994. (Report No. 93-224) To authorize appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes. (June 13, 1973. Reported without amendment. June 18, 1973.)

P.L. 93-158. To amend Public Law 93-60 to increase the authorization for appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes. (November 26, 1973.)

OIL IMPORT CONTROL PROGRAM

H.R. 4193. To terminate the oil import control program (February 8, 1973.)

H.R. 2674. Relative to the oil import program. (January 23, 1973.)

H.R. 2311. Relative to the oil import program. (January 18, 1973.)

H.R. 429. To terminate the oil import control program. (January 3, 1973.)

H.R. 2732. To terminate the oil import control program. (January 23, 1973.)

H.R. 2818. To terminate the oil import control program. (January 24, 1973.)

H.R. 428. To terminate the oil import control program. (January 3, 1973.)

H.R. 430. To terminate the oil import control program. (January 3, 1973.)

S. 1019. To terminate the oil import control program. (February 27, 1973.)

OFFSHORE DRILLING AND PORTS

S. 2339. To establish the Santa Barbara Channel Federal Energy Reserve. (August 3, 1973.)

H.R. 2288. To amend the Fish and Wildlife Coordination Act to require certain permits for exploring or mining oil and gas underlying the navigable waters of the United States. (January 13, 1973.)

H.R. 11951. To authorize the construction and operation of high seas oil ports, to be located in the offshore coastal waters of the United States, in order to facilitate the importation of petroleum and petroleum products into the United States, and for other purposes. (December 13, 1973.)

H.R. 10701. To amend the Act of October 27, 1965, relating to public works on rivers and harbors to provide for construction and operation of certain port facilities. (October 3, 1973.)

RESEARCH AND DEVELOPMENT OF ALTERNATIVE FUEL SOURCES

H.R. 10640. To establish a national program for research, development, and demonstration in fuels and energy and for the coordination and financial supplementation of Federal energy research and development; to establish development corporations to demonstrate technologies for shale oil development, coal gasifica-

tion development, advanced power cycle development, geothermal steam development, and coal liquefaction development; to authorize and direct the Secretary of the Interior to make mineral resources of the public lands available for said development corporations; and for other purposes. (October 2, 1973.)

H.R. 12027. To establish a National Energy Development Bank to provide loans and grants to finance urgently needed research, exploration, development, production, and delivery of energy resources within the United States. (December 19, 1973.)

H.R. 8404. To establish a national program for research, development, and demonstration in fuels and energy and for the coordination and financial supplementation of Federal energy research and development; to establish development corporations to demonstrate technologies for shale oil development, coal gasification development, advanced power cycle development, geothermal steam development, and coal liquefaction development; to authorize and direct the Secretary of the Interior to make mineral resources of the public lands available for said development corporations; and for other purposes. (June 5, 1973.)

S. 1283. To establish a national program for research, development, and demonstration in fuels and energy and for the coordination and financial supplementation of Federal energy research and development; and for other purposes. (December 7, 1973.)

S. 2636. To authorize supplemental appropriations for National Science Foundation Energy research and development. (October 30, 1973.)

RESOLUTIONS—SELECT COMMITTEE ON ENERGY RESOURCES

INTERNATIONAL ORGANIZATION OF OIL IMPORTING COUNTRIES

H. Res. 194. Creating a select committee of the House to conduct a full and complete investigation of all aspects of the energy resources of the United States. (Feb. 6, 1973.)

H. Res. 80. Creating a select committee of the House to conduct a full and complete investigation of all aspects of the energy resources of the United States. (Jan. 3, 1973.)

H. Res. 44. To authorize a study of national fuels and energy policy. (January 3, 1973.)

H. Res. 127. Creating a select committee of the House to conduct a full and complete investigation of all aspects of the energy resources of the United States. (Jan. 11, 1973.)

H. Res. 403. Requesting the President to enter into negotiations with major oil importing countries to establish an international organization of oil importing countries and to establish common practices and policies affecting oil pricing, importation, and consumption. (May 21, 1973.)

H. Res. 533. Requesting the President to enter into negotiations with major oil importing countries to establish an international organization of oil importing countries and to establish common practices and policies affecting oil pricing, importation, and consumption. (September 5, 1973.)

SHALE OIL

H.R. 9693. To further energy research and development by establishing a Shale Oil Development Corporation; to amend the National Science Foundation Act of 1950 and to authorize and direct the National Science Foundation to fund basic and applied research related to energy and thereby support the objectives of the Shale Oil Development Corporation; and for other purposes. (July 30, 1973.)

SOLAR HEATING AND ENERGY

H.R. 9696. To establish an Office of Solar Energy Research in the Department of the Interior, and for other purposes. (July 30, 1973.)

H.R. 11027. To provide for the early commercial demonstration of the technology of solar heating by the National Aeronautics and Space Administration in cooperation with the National Bureau of Standards, the National Science Foundation, the Secretary of Housing and Urban Development, and other Federal agencies, and for the early development and commercial demonstration of technology for combined solar heating and cooling. (October 18, 1973.)

STRUCTURE OF OIL INDUSTRY

H.R. 9266. To amend the Securities and Exchange Commission Act of 1933 to authorize the Securities and Exchange Commission to regulate the structure of certain corporations and other firms engaged in petroleum refining. (July 12, 1973.)

SURFACE AND STRIP MINING

H.R. 181. To provide for the restoration of all lands located in the United States upon which strip mining operations are being or have been carried out, and for other purposes. (January 3, 1973.)

H.R. 2380. To provide for the regulation of strip coal mining, for the conservation, acquisition, and reclamation of strip coal mining areas, and for other purposes. (January 18, 1973.)

H.R. 12898. To provide for the regulation of surface coal mining operations, to authorize the Secretary of the Interior to make grants to States to encourage the State regulation of surface coal mining, and for other purposes. (February 20, 1974.)

EXHIBITS E-1 THROUGH E-4¹

F.P.C. SUBACCOUNT 426.4 FORMS FROM SELECTED UTILITIES OF THE SOUTHERN SYSTEM

Senator HART. The committee welcomes our next witness, Mr. Lester Fant, a partner in Cohen & Uretz, a tax law firm, and tax specialist.

Mr. Fant, if you were here earlier, I have already identified myself as an illiterate when it comes to the Internal Revenue Code. If I don't respond very promptly to your testimony, it will simply be that I never tried to fight the battle of understanding.

**STATEMENT OF LESTER G. FANT III, ATTORNEY, COHEN & URETZ,
WASHINGTON, D.C.**

Mr. FANT. Mr. Chairman, I think that is a very modest disclaimer for you to make, and I am certain matters we are dealing with are completely within your comprehension, so I have no reservations caused by your disclaimer.

Senator HART. All right, try me.

Mr. FANT. Mr. Chairman, since you have already identified me, I will not further identify myself for the record.

I was asked by the subcommittee to make a study of section 162(e) of the Internal Revenue Code and the Treasury regulations issued thereunder, and to arrive at a judgment as to the application of these provisions to certain advertisements which have been introduced into the record as exhibits 1 through 99.

I am grateful to the subcommittee for this opportunity to express my views. I believe that this matter has implications far beyond the tax provision which I will discuss and the dollars involved, even though the dollars involved could be quite substantial. I believe the subject of these hearings has a direct bearing on the health of our domestic society.

There was a time when influence of each man's voice on affairs of state was determined by the rightness of what he said, and the persuasiveness with which he spoke. It was against this background that the

¹ Were not reproducible and are in the committee files.

first amendment to the Constitution of the United States was adopted, guaranteeing each man the freedom to express his views on political, social, and religious questions.

In this age of modern communications, however, a man's influence upon affairs of state is determined not only by the rightness of what he says, and the persuasiveness with which he says it, but also by the amount of money which he is able and willing to spend in order to advance his views.

The preparation and publication of advertisements, and other uses of communications media, are extremely expensive. And yet, a skillful media campaign is one of the most effective means of influencing the affairs of state. The well-financed supporter of a particular idea can make a more effective presentation, and can reach a greater audience, than an individual of average means who might oppose that idea.

Many subjects of governmental concern have a direct and tangible financial impact on business, whereas their impact on the lives of private citizens is diffuse and intangible. For example, the recreational and esthetic value of an unpolluted stream provides enjoyment to a private citizen, but gives him with no funds with which to finance a campaign to keep the stream clear.

The businessman, who can reduce his costs by dumping untreated wastes into the stream, can use a part of his cost savings to engineer governmental approval of the dumping.

Even governmental decisions which directly affect the finances of private citizens do not generate effective opposition to business publicity and advertising campaigns. For example, a change in the regulation of basic commodities, or the price support levels for agricultural products, might cost 20 million Americans an additional \$10 per year, which is less than 3 cents per person per day.

The same decision, however, generates an additional \$200 million for the producers and suppliers involved. Business might reasonably allocate 10 percent of this amount to a program of public relations and direct lobbying with which to secure the desired decision.

If all business expenditures in such a campaign were deductible for Federal income tax purposes, business would have, in the foregoing example, \$40 million to use to influence the American people and the Federal Government. Of this \$40 million, \$20 million, or 10 percent of the expected return from the decision in question, would come from the treasury of business, and \$20 million would come from the Federal Treasury through a reduction in the taxes which business would otherwise pay. With such funds available, business can virtually overwhelm the will of the American people on any particular question.

Notwithstanding the imbalance of power between business interests and private citizens, a substantive law prohibiting business from expressing its views on governmental questions would seem foreign to a society dedicated to free speech.

I am not prepared to suggest a resolution to the tension between the sound public policy favors equalizing the influence of private citizens and businesses on affairs of government, and the constitutional prohibition against limitations on free speech.

I do, however, suggest that this is a problem which affects the health of our democratic institutions, and that it is a problem which merits further consideration.

Short of a direct prohibition on expenditures by businesses for advertising, there are measures which can reduce the imbalance of power I have described. In the example I gave, business spent \$40 million on advertising campaigns, of which \$20 million came from treasury of business, and \$20 million came from the Federal Treasury as a result of tax deductions to business resulting from claiming a \$40 million deduction for the amount expended.

Historically, in fact, the expenditures outlined above have been nondeductible for Federal income tax purposes, and consequently, none of the expenditures should come from the Federal Treasury.

In the hypothetical discussed above, this means that if business is only willing to spend \$20 million out of pocket, then it could only conduct a campaign which cost \$20 million.

Under section 162(e) of the Internal Revenue Code, expenditures for grassroots lobbying are nondeductible.

I would like first to put section 162(e) into the general context of the tax system, and to briefly review its history.

Under the Internal Revenue Code, Federal income tax is computed by first determining the amount of all income from whatever source derived, received by a taxpaying entity, such as an individual or a corporation. From this gross income, deductions specifically enumerated by Congress are allowed for the purpose of arriving at taxable income. The tax rate is then applied against taxable income, and the amount of tax produced is paid.

It has often been stated by the courts that deductions are a matter of "legislative grace," and that taxpayers have no inherent claim to deduct from their gross income any amount not specifically allowed by Congress.

Many of the deductions allowed under the Internal Revenue Code are permitted for the purpose of computing an amount roughly equivalent to a taxpayer's net income, or net profit. Additional deductions, such as charitable deduction, the rapid amortization of pollution control facilities, and medical deductions, are permitted by the Internal Revenue Code as an expression of a wide variety of public policies.

Section 162 of the code permits, generally, a deduction from income for all the ordinary and necessary expenses paid or incurred during the taxable year on carrying on any trade or business.

The general purpose of this section is to permit taxpayers to deduct all amounts, whatever they might be, which are spent in earning income, so that the tax will only be applied to the taxpayer's net income.

Some expenditures which are made in earning income, however, are specifically made nondeductible under section 162 of the Code. In these instances a taxpayer's taxable income might exceed its net income, or net profit from business.

One example of an expenditure which is paid in connection with a taxpayer's business, but which is nondeductible for income tax purposes is an expenditure for what is generally referred to as grassroots lobbying. Section 162(e), which disallows deductions for grassroots lobbying is not in the Internal Revenue Code for the purpose of determining the taxpayer's net income. Instead, the purpose of section 162(e) is to reduce the disparity between the ability of businesses and private citizens to engage in grassroots lobbying.

Before analyzing section 162(e) in detail, however, I would like to point out the requirements that must be met before section 162(e) becomes even relevant.

In the first place, an advertisement, to be deductible at all under section 162, must be ordinary and necessary business expense.

An example of an advertisement which is not an expense would be an advertisement which is part of a capital expenditure.

For example, if a business published an advertisement urging that a county board of supervisors grant a necessary permit for the construction of a business facility, the cost of that ad might be considered a part of the cost of the facility when it was constructed.

Under these circumstances, the business would not be entitled to a current deduction for the expenditure, but would be required to capitalize the cost of the ad, along with the other costs of the facility and write them off over the useful life of the facility.

The courts have held that the terms "ordinary" and "necessary" require that an expenditure be "appropriate and helpful." An example of an advertisement which would not be appropriate and helpful would be one which did not bear the business name, or which promoted solely the personal interest of the shareholder of the corporation, or any taxpayer other than the taxpayer claiming a deduction for the cost of the ad.

Treasury regulations hold that, in general, goodwill and institutional advertising, even though it does not directly promote the sales of a business product, is to be considered an ordinary and necessary business expense. Treasury regulations section 1.162-20(a)(2) provides that institutional or goodwill advertising which keeps the taxpayers' name before the public is generally deductible as an ordinary and necessary business expense, provided the expenditures are related to patronage the taxpayer might reasonably expect in the future.

An example given in the regulations of goodwill advertising as advertising which keeps the taxpayer's name before the public in connection with encouraging contributions to the Red Cross, or the purchase of U.S. savings bonds.

In addition, the regulations specifically permit deductions for expenditures for advertising which presents views on economic, financial, social, or other questions of general nature, provided such advertising does not involve the type of "grassroots" lobbying which is prohibited under section 162(e).

The regulations relating to goodwill and institutional advertising had their genesis in wartime, when many corporations sold all their products directly to the Government for the military effort, but sought to publish institutional or goodwill advertising in order to keep their corporate name before the public.

It is easy to conceive of expenses for grassroots lobbying that satisfy the foregoing tests were it not for the specific prohibition in section 162(e). An advertisement designed to influence private citizens and, indirectly, legislators, to take some action which would increase a business profit, could easily be said to be an ordinary and necessary business expense for that business. Such expenditures would not be allowable as deductions, however, if they satisfied the tests for application of section 162(e) which prohibits deductions for "grassroots" lobbying.

Before leaving the sections of the regulations related to institutional advertising, I would like to point out that the general language that permits deductions for the cost of presenting views on economic, financial, or social questions does not override the prohibition against deductions for grassroots lobbying. It cannot be argued that the costs of advertisements in a lobbying campaign are deductible as goodwill advertising the advertisement also fall within the definition of grassroots lobbying.

The regulations make clear that the denial of deductions for grassroots lobbying supersedes the allowance of deductions for institutional and goodwill advertising.

I would like also to comment briefly upon the history of section 162(e). Regulations issued by the Commissioner of Internal Revenue in 1918, without specific statutory authority, denied deductions for expenditures for "lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda * * *" The Supreme Court, in *Textile Mill Securities Corp. v. Commissioner*, which was decided in 1941, held that such regulations, as applied to direct lobbying efforts, were valid interpretations of the statutory requirements that a business expense be "ordinary and necessary" in order to be deductible.

In *Cammarano v. U.S.*, which was decided in 1959, the Supreme Court again considered the validity of the regulations which denied deductions for grassroots lobbying. In the *Cammarano* case, the court considered the lobbying efforts of a wholesale beer distributor designed to block enactment of an initiative which would give the State a monopoly on wholesale beer distribution and therefore terminate the taxpayer's business activity.

This was a very clear case in which, from a strictly financial point of view, the expenditures would qualify as ordinary and necessary, because, if the initiative were successful, it would be the end of the taxpayer's business. The Supreme Court, however, held that the amounts for grassroots lobbying spent were nondeductible.

The Supreme Court relied heavily on the regulations. The Court held that since the regulations had been in effect for more than 40 years, and since during that 40-year period the taxing statute had been repeatedly reenacted, the regulations had the force of law. The argument generally was that Congress knew how the Commissioner was interpreting ordinary and necessary, and if Congress disapproved of this interpretation, they would have changed the law in one of the reenactments of section 162.

In *Cammarano* the taxpayer further argued that if the regulation was construed to deny the deduction, the regulation would amount to a limitation upon freedom of speech which would be prohibited by the First Amendment to the Constitution. The taxpayer cited various early cases in which the Supreme Court had held that various types of direct taxes upon the expression of views were unconstitutional.

In response to this argument, however, the Supreme Court held:

Petitioners [the taxpayers] are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the Internal Revenue Code. Nondiscriminatory denial of deductions from gross income to sums expended to promote or defeat legislation is plainly not "aimed at the suppression of dangerous ideas." Rather, it appears to us to express a determination by Con-

gress that since purchased publicity can influence the fate of legislation which will affect, direct or indirectly, all in the community, everyone in the community should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned.

Based upon this interpretation, the Supreme Court explicitly held that the denial of deductions for grassroots lobbying was consistent with the Constitution. The tax provisions we are considering do not bear the same constitutional handicaps that a direct prohibition upon business advertising might bear.

Shortly after the Supreme Court's decision in *Cammarano*, the Treasury Department issued new regulations which provided a greater elaboration of the rules disallowing lobbying expenses, and further provided for the pro rata disallowance of deductions for dues paid to labor unions and trade associations and other organizations engaged in lobbying. The Service, at the same time, began a more vigorous program of enforcement of the regulations.

In the Revenue Act of 1962, however, Congress adopted section 162(e) which repudiated the regulation provisions denying deductions for "direct" lobbying, but adopted into the Code the regulations denying deductions for "grassroots" lobbying. The provisions which made these changes originated in the Ways and Means Committee, and were opposed by the administration.

Under section 162(e) (1), deductions are allowed for "direct" lobbying, which is defined as direct appearances, submission of statements, and sending of communications to committees or members of legislative bodies, with respect to legislation or proposed legislation of direct interest to the taxpayer. Dues paid to membership organizations, such as business leagues and labor unions, which are attributable to "direct" lobbying, are likewise deductible. Under section 162(e) (2) (B), however, Congress drew a clear line between expenditures for direct lobbying and expenditures for grassroots lobbying. Section 162(e) (2) (B) states that no amount is deductible which is paid:

In connection with any attempt to influence the general public or segments thereof with respect to legislative matters, elections, or referendums.

The report of the Senate Finance Committee on section 162(e) (1) stated that it was felt that the deduction should be permitted for direct lobbying, which, as I stated earlier, is defined as lobbying expenses involved in direct contacts with members of the legislative bodies or their committees with respect to legislation which has a direct influence on the business of the taxpayer.

The reason advanced by the Senate Finance Committee was that taxpayers could get deductions for communications with the executive branch of the Government, or litigation before the judicial branch. Section 162(e) (1) equalizes the tax treatment of expenditure for communications with the executive, legislative, and judicial branches, provided they are also ordinary and necessary expenses.

The principal reason for supporting the prohibition of deductions for grassroots lobbying is the desirability, which I discussed earlier, of reducing the disparity between the ability of individual private citizens, and business organizations, to influence the affairs of Government.

The Supreme Court, as pointed out above, described this policy as one of achieving "tax equilibrium." Since the private citizen gets

no deductions for expenditures made in opposition to water pollution, equilibrium is achieved if business organizations, desiring to dump untreated wastes in streams, likewise get no deductions for their publicity campaign designed to achieve that end.

The notion that "tax equilibrium" supports the denial of deductions for grassroots lobbying has been criticized on the grounds that if successful, the private citizen will receive recreational or esthetic enjoyment, but will not have to pay taxes to the Government on these nonfinancial gains. The rewards to business, however, are financial, and the business will pay taxes to the Government if it realizes taxable additional profits as a result of success in influencing the Government. Under this analysis tax equilibrium is achieved by allowing the deductions for grassroots lobbying and taxing the income realized by the business if the lobbying is successful.

The foregoing argument ignores the fact that if private citizens were to receive some financial return, such as a statutory bounty, under the Refuse Act of 1899, this income would be taxable to the private citizen, just as business' financial rewards are taxable.

In other words, the deductibility—the denial of the deduction for these expenditures is across the board and treats private citizens and businesses equally. Likewise, the rewards of such lobbying are treated equally since both business and private citizens pay taxes if they receive financial rewards from their lobbying efforts.

Furthermore, even if it is accepted that the denial of deductions from grassroots lobbying is a deviation from strict tax neutrality, this deviation, as a matter of policy, is appropriate. Since business will receive financial rewards for its success in grassroots lobbying, it has a ready fund for use against private citizens seeking to protect recreational or esthetic interests.

In addition, the rewards to business of favorable governmental action are often direct and measurable whereas the rewards to private individuals are indirect and diffused. For these reasons business has both the far greater motivation, and the far greater ability to conduct effective grassroots lobbying efforts in order to influence governmental actions.

As a matter of public policy it is desirable to reduce business power by denying the deductions for grassroots lobbying, whether such denial results in tax equilibrium or a tax disadvantage to business.

Before ending the discussion of tax equilibrium, I would like to point out the tax treatment of lobbying expenditures by other organizations recognized by the Internal Revenue Code.

As we discussed earlier, a private citizen gets no deductions for either his direct lobbying or his grassroots lobbying. A business, however, is entitled to a deduction for its direct lobbying, but not for his grassroots lobbying.

Tax-exempt organizations are not concerned with the question of whether lobbying expenses are deductible, because they pay no taxes on their income.

The tax treatment of contributions to these organizations is important to the organizations and their donors. Charities and educational and scientific organizations lose their tax-exempt status if they engage in lobbying as more than an insubstantial part of their activity.

Therefore, these organizations are basically precluded from engaging in lobbying.

Action or social welfare organizations can engage in lobbying, but contributions to these organizations are nondeductible.

Labor unions likewise can engage in this type of lobbying. Union dues, if they are ordinary and necessary business expenses, and if the union member itemizes his deductions, are deductible unless the union engages in lobbying as a substantial activity. If so, the union member can still get a deduction for the portion of his dues allocable to direct lobbying, but not for grassroots lobbying.

Business leagues, such as the chamber of commerce, are treated similarly to labor unions. That is, deductions are allowed for dues which are ordinary and necessary business expenses to the member, and bear a direct relationship to the member's business unless a substantial part of the activities of the business league are lobbying.

In that event, the portion of the dues allocable to direct lobbying is deductible, but the portion allocable to grassroots lobbying is nondeductible.

The denial of deductions for grassroots lobbying, as we discussed above, will have a marginal impact at best. The funds used for this purpose must come solely from the business organization itself, with no contributions from the Federal Treasury. The significance of grassroots lobbying is such that businesses will freely spend from their own funds, because of the importance to them of the objectives to be obtained.

I believe that as a matter of policy it is desirable to require business to pay for grassroots lobbying solely from its own funds, and that section 162(e)(2) serves an important function by marginally reducing that amount of grassroots lobbying engaged in by business. This function is only served, however, if section 162(e) is regularly enforced.

With this background, I would like to review section 162(e)(2) and the regulations thereunder, and discuss its application to expenditures for advertising which are the subject of this hearing.

As pointed out above, section 162(e)(2) is a limitation and only has application to expenditures which would otherwise qualify as ordinary and necessary business expenses. Section 162(e)(2) denies deductions for expenditures for grassroots lobbying if this expenditure satisfies the three tests set forth below.

These tests I have determined both from the literal wording of the statute and the regulations, and also from my interpretation of congressional intent at the time of enactment of section 162(e).

1. LEGISLATIVE MATTER

Before an advertisement is considered grassroots lobbying, it must concern "legislative matters."

An expenditure for advertisement would be allowable as a deduction if the advertisement relates to something other than "legislative matters."

In my opinion, the term "legislative matter" refers to matters which are appropriately the subject of legislation.

I believe that an advertisement can relate to "legislative matters" even though no legislation is pending with respect to the subject of the advertisement at the time the advertisement is printed.

The regulations do not define "legislative matters." The regulations which allow deductions for direct lobbying do, however, define the terms "legislation or proposed legislation" to include "bills and resolutions introduced by a member of a legislative body, as well as oral or written proposals for legislative action submitted to a legislative body or to a member of such body."

The term "legislative matters" is literally broader than the terms "legislation or proposed legislation." I believe therefore that "legislative matters" can, under some circumstances, include matters which are not the subject of pending legislation at the time the advertisement is run.

The purpose of the denial of the deduction is to offset businesses' superior financial and organizational strength with respect to legislative matters. The need for this offset is as great when business is preparing the public for anticipated legislation as it is when such legislation is actually pending.

Furthermore, business can, to some extent, control the timing of the introduction of the legislation favorable to the business, and can anticipate the introduction of legislation unfavorable to business.

If section 162(e)(2) were only applicable when legislation was actually pending, it could be avoided by first conducting extensive publicity campaigns to generate interest in the general public in the passage of legislation, and at the conclusion of such campaign introducing the legislation itself.

The fact that legislation is pending, however, is important proof that the subject of an advertisement is a legislative matter.

2. ATTEMPT TO INFLUENCE GENERAL PUBLIC

If an advertisement relates to a legislative matter, the advertisement must be considered in light of the second test, which is found in the statute, "Does the advertisement amount to an attempt to influence the general public?"

Deductions are only disallowed under section 162(e)(2) for expenditures which amount to an "attempt" to influence the general public. The determination of whether an advertisement constitutes such an "attempt" can only be made by analyzing the advertisement itself to determine if, as a whole, a reader of the advertisement might be "influenced" with respect to a legislative matter.

For example, an advertisement relating to a legislative matter could serve a purely educational purpose by fairly presenting all factors which support both sides of an issue, and leaving the public the ability to make up its own mind. An advertisement, however, which presents only one side of an issue, would appear on its face to be an attempt to influence the general public.

The regulations cite attempts to encourage the public to contact members of a legislative body for the purpose of supporting or opposing legislation as examples of grassroots lobbying. The reference to encouraging the public to contact legislators is an example, and I agree with the earlier witness that an advertisement which doesn't directly and literally encourage the public to contact legislators can still be an attempt to influence the general public within the meaning of the statute.

The statute itself refers to attempts to "influence the general public." The general public can be influenced, and the statute can become applicable, even if the public is not directly urged to contact legislators. I feel, however, that an "attempt" can only be found in an advertisement if the advertisement presents only factors which support the selfish interests of business.

For example, exhibit 39 is devoted to costs of clean air. The ad lists a large number of additional expenses which the public bears as a result of the Federal Clean Air Act. No mention whatsoever is made of the benefits which the public derives from the Clean Air Act. As a result, I feel that this ad can be readily classified as an attempt to influence the general public, even though the ad does not directly call for the public to contact the Congressman.

I base this in part upon my confidence in the degree of political education in our society and my belief that if an advertisement encourages an individual to feel great concern about a legislative matter, that individual knows that the way to express this concern is by contacting his legislative representative.

An advertisement which generates such concern has the effect of causing the public to contact its representative even though there is no explicit instruction to do so on the face of the ad. The deductibility of an expenditure for an advertisement should be governed by the overall substance of the advertisement itself and not by the presence or absence of any particular key words such as "contact your legislator."

The fact that an advertisement presents only one point of view and contains a request for the public to contact its legislators would appear to be almost conclusive evidence that these ads are an attempt to influence the general public.

I feel, however, that even absent this evidence, ads can be found to be attempts to influence the general public based on the factors I discussed.

The two tests discussed above are the only ones found in the statute, and the only ones covered by the regulations.

I believe, however, that there is a third factor which can be inferred from congressional purpose, which must be present before section 162(e) is applied to disallow deductions. The tests standing alone, as I have stated them, would deny the Washington Post a deduction for the cost of publishing its editorial page. The editorial page relates often to legislative matters and it is clearly an attempt to influence the general public. Congress did not intend to deny the newspaper the cost of preparing editorials.

For this reason section 162(e) (2) should only be applied to expenditures in connection with matters in which the interests of business and a segment of the public at large conflict, and the advertisement promotes businesses' selfish interests.

An editorial published by a newspaper for the purpose of promoting the newspaper's financial good at the expense of the general public, or of subscribers, could well be subject to disallowance under section 162(e) (2).

On the other hand, an editorial relating to the subject in which a newspaper, as a business entity, has no interest that is distinctly different than any other member of the general public, should not be disallowed.

For example, an editorial urging congressional ratification of an arms limitation treaty would not involve a matter in which the news-

paper, as a business, has an interest different than that of the general public.

A similar example might be an advertisement published by an oil company which urges the enactment of laws relating to automobile safety. In the matter of automobile safety, the oil company has no financial interest which, generally speaking, conflicts with that of the general public.

On the other hand, an advertisement by an automobile manufacturer which opposes such legislation, might well involve a conflict between the financial interest of the business and the general public at large.

It is my belief that the three foregoing tests should be applied to the advertisements published by businesses, and that expenditures for those advertisements which satisfy the three foregoing tests should be disallowed.

There are two procedural points I would like to cover. First, the application of the factors I have outlined is essentially a factfinding process, and I believe that the determination of the initial finder of fact should be given great weight. This was done in the present case of *Consumers Power Company v. United States*, which was decided in 1970.

In this case the U.S. Court of Appeals for the Sixth Circuit considered ads published by private power companies which related to publicly operated power companies. Some also attacked public power as "creeping socialism," and others pointed out that private companies provided better service.

Some of the ads admonished the readers to contact their Congressman, but some did not. There was no legislation pending at this time to which the ads were related. The District Court disallowed the deductions for expenditures on the grounds that these expenditures amounted to grassroots lobbying.

The court of appeals expressed some reservations about the application of the regulations, and noted that in the ads concerned, there were some ads which the court of appeals felt were borderline cases, but the court of appeals deferred to the judgement of the district court and sustained the disallowance of all of the deductions. I believe that it is proper for appellate courts to give some weight to the determination of factfinders in cases such as these.

A second procedural point which I would like to mention is illustrated by some of the ads which have been introduced into evidence into this record. In particular, I make reference to exhibit 66, 76, 81, and 88. These are ads in which the three elements that I have discussed above are present, but only in a portion of the advertisement. I feel that in such cases in which the three elements occupy more than a de minimis part of the ad, that portion of the cost of the ad which can be fairly allocated to the grassroots lobbying should be disallowed.

I have reviewed the advertisements which have been admitted into the record as exhibits No. 1 through 99, and applied to each one of them the three foregoing tests. Of the advertisement I reviewed, it is my opinion that 31 are deductible, 4 require some allocation because a portion of the expense should be deductible, and the remainder not, and there are 9 advertisements for which I felt I needed additional information; that is, information in addition to the ad itself, in order to make a judgment. The remaining 51 ads, I felt were non-

deductible for Federal income tax purposes, based solely on application of the factors that I described above to the ads themselves, and without the benefit of any other knowledge of facts and circumstances which might surround the publication of the ad.

The advertisements for which I felt I needed additional information were 10, 11, 12, 15, 21, 22, 48, 91, and 94.

The advertisements which I felt would be deductible under the three tests I have outlined above are exhibits 7, 9, 27, 40, 49, 51, 52, 56, 57, 58, 59, 60, 61, 62, 67, 69, 70, 71, 72, 75, 79, 80, 83, 84, 86, 87, 89, 92, 95, 98, and 99.

The advertisements which I felt could be subject to some allocation were 66, 76, 81, and 88.

I found all other ads to be nondeductible under section 162(e) (2).

In closing, I would like to say that I recognize the sponsors of these and other ads are subject to all the responsibilities, and have all the rights, which are inherent in our self-assessment system of income taxation. Taxpayers are not required to pay amounts of income tax greater than is required by law, nor are taxpayers required to resolve every question of interpretation against themselves.

On the other hand, taxpayers have the responsibility, in the first instance, to make a good faith determination as to the application of the Internal Revenue laws to their business operations, and to complete their returns and pay their taxes accordingly.

Expenditures for advertisements which represent clear attempts to influence the general public with respect to legislative matters are not deductible under section 162(e) (2). Such advertisements should not be misclassified by taxpayers as goodwill advertising and should not be claimed as tax deductions. The taxpayers are not, under the law, entitled to such deductions.

I also feel that the Internal Revenue Service should vigorously enforce the congressional mandate and the Service's own regulations. It is true that consideration of the deductibility of advertisements might involve some questions which are outside the scope of normal auditing techniques. This is so, however, because the policy of section 162(e) (2) is based upon the broad consideration of public policy as I have outlined above. Because of the importance of these public policies, I feel that the IRS and the taxpayers concerned have the duty to see that this section is carried out and vigorously enforced. Even though the policy does not relate to matters which are normally the subject of income tax audits, the matters are more important, in my opinion than simply raising revenue for the Federal Government. They bear upon the quality of the decisions which are made by the legislative body.

Senator HART. You were right, Mr. Fant. You have made the code understandable to me to the extent to which the code can be made understandable. Let me dispose of something that occurred to me as I listened to your suggestion that a third factor be included determining the deductibility of an ad.

It is the public matter, and seeking to influence opinion and decision. You say that the two tests above standing alone would be applied to deny the *Washington Post* a deduction for cost of writing and printing its editorial page since the editorial page relates often to legislative matters and is clearly an attempt to influence the general public.

You did not intend to deny the newspaper the cost of preparing the editorials. I quite agree with that. For this reason, section 162(e) (2) should only be applied to expenditures in connection with matters in which the interests of business and the public at large conflict.

And the advertisement promotes businesses and selfish interests.

And suggestions that an editorial in a newspaper seeking to promote the newspapers financial good at the expense of the general public or its subscribers could well be subject to disallowance.

That suggestion bothers me, because to take a newspaper, they editorialize against increased mail rates. They have a deep conviction that increasing the rates will drive some publications out of business, and lessen the opportunity to have broad public education.

Who is to decide whether that's an editorial—is in conflict with the public interest or not?

Mr. FANT. Mr. Chairman, I agree with you that this is a tough question. In the example you have given relating to newspaper editorial concerning the cost of mailing, I would first want to determine whether an increase in the cost of mailing would reduce the business' profits, or whether it's the newspaper's view that the increase in the cost of mailing is undesirable because it might, as the chairman pointed out, affect the degree to which the views in the newspaper are disseminated and distributed to the public.

If the latter is the case, I would feel that it would not be subject to disallowance. If the former were the case, that is, that an increase in mail rates could lead the newspaper to earn less profits than they earned before, I think we would have a tough problem, because I think that there would be two elements present, the one element which favors the dissemination of views, broadly, to the people and a second element, that the business is publishing the editorial so that it will make a greater profit. And I feel that it's very hard to say that Exxon cannot deduct the cost of a political advertisement which could increase its profits, whereas a newspaper could get such a deduction simply because the newspaper is a newspaper, and Exxon's an oil company.

I feel that would be a difficult issue to resolve.

Senator HART. There is another kind of ad that presents the same problem, but in a less appealing setting than the newspapers' claim for freedom to discuss ideas. I believe that at least one automobile manufacturer believes it's undesirable for several reasons to permit the law to remain as it is with respect to clean air standards, because the only way they can meet those standards is to add on a device called a catalytic converter.

The ad says that the device is uneconomic, may prove very disappointing because of maintenance problems, and may contribute to an increase in economic concentration in the automobile industry.

It advertises that a change of the law is needed. Now, I'm sure it would be true that if they didn't have to go to the converter, they would make more money or lose less. I think that they also believe that this is an add-on device that we will wish we hadn't hung ourselves with.

This is an example of an ad that would give IRS trouble, isn't it?

Mr. FANT. Mr. Chairman, ads very similar to that are included in the exhibits which are introduced into the record.

I think one of them was published by an automobile manufacturer. My analysis of that situation would be as follows: Although the interests of the business might be something broader than the interest of increasing their profits by doing away with the catalytic converter, doing away with the catalytic converter might well conflict with the interests of the general public.

I am certain that there are some individuals, and there is a viewpoint held which is that the catalytic converter is good.

Senator HART. That's the dominant feeling.

Mr. FANT. And that it is, I think, a pretty good example of the problem which I am discussing which is, I breathe clean air and it's good for my health, but it doesn't put any money in my pocket to try to get a law passed to keep the air that way.

I think that is a case in which the business' selfish interest is advanced.

Now, it's true that the business' selfish interest might coincide with what is perceived by other members of the public as being the broad national interest. But the conflict I think we are talking about is not between business and everyone else, or at least how everyone else perceives their interest, but between business and some identifiable segment of the public which opposes congressional action, which advances the selfish interests of business.

It's possible that business' selfish interest in some cases will coincide with what is everyone's interests. But still, if this is an identifiable segment of the public which opposes business, I don't believe that business should be allowed to deduct the cost of their ads at the expense of those who oppose them.

Senator HART. Well, I am glad I am not a tax lawyer and I am glad I am not the IRS agent that is examining these things.

Mr. FANT. Well, Mr. Chairman, I am glad also that you are not a tax lawyer, because there is a great deal of competition even now, and also because I think we can all be grateful that you are where you are rather than spending your time with other matters.

Senator HART. Let me have Mr. Bickwit direct some questions that have been developed.

Mr. BICKWIT. Just on that last one, then, as I understand it, you are saying that 162(e) (2) should only be applied to expenditures in connection with matters in which the interests of business and an identifiable segment of the public at large conflict.

Mr. FANT. That's right.

Mr. BICKWIT. It needn't be established that the entire public at large is in conflict with the business interest?

Mr. FANT. Well, I think that the problem is that we don't know what the public's interest is, and it's the legislators who must determine that. There is no such thing as the public interest. It's the competing interests within the public. And I think what I intend to refer to is a subject in which the selfish interest of businesses compete with some interest of an identifiable segment of the public.

Mr. BICKWIT. The test that you have given the subcommittee for what would render these ads nondeductible is a broad one. I suspect some will argue upon hearing it, that it would disqualify for deductibility virtually any statement by an advertiser on any matter since virtually any matter could become the subject of legislation.

How would you respond to that?

Mr. FANT. I think you are referring to my interpretation of the words, "legislative matter," which I interpreted as being broader than "legislation." I agree that that is a broad interpretation. I feel, however, that based on the policies which are involved, a broad interpretation is called for.

I also feel that as our society advances and progresses more matters have become legislative matters than were previously. Some things which Federal and the State legislative bodies consider, would be shocking to 19th-century legislatures.

It's possible that in the 21st century there would be even more questions related to our national life that have considered legislative matters. But I feel that that is the way it should be, that if a matter becomes a legislative matter, advertisements related to that become nondeductible. I also feel that it is perfectly possible for business to publish good will advertisements on legislative matters provided they don't amount to an attempt to influence the general public.

Businesses sometime say that an ad promotes their good will because it keeps their name before the public and it wins the sympathy of the general public.

I feel that business can publish ads which have that purpose which present both sides on an issue. In fact, in my opinion, that the goal of increasing business popularity with the public would be advanced by an ad that fairly presents both sides of a legislative matter and is signed by a business. Such an ad would relate to a legislative matter but could be fully deductible.

It's the advertisements which are exclusively on one side of the legislative matters in which there is a conflict that I feel are nondeductible.

Mr. BICKWIT. Are you aware of any private rulings by the IRS which would either support or contradict the test that you have offered to the subcommittee?

Mr. FANT. Well, of course, the private rulings issued by the IRS are confidential at the present time. I might add that such secrecy is subject to litigation at the present time as to whether the rulings granted taxpayers should be made available to the general public.

I would also point out that as I analyze the question, and not necessarily as the IRS would, the questions that we are dealing with are essentially questions of fact. And as a matter of general policy, the IRS does not give rulings in which they determine to be simply questions of fact.

Most of their rulings are designed to answer questions of law or questions of the application of law to facts. This does not mean that there are no private rulings on the subject, it simply means I am not aware of any.

Mr. BICKWIT. How do you feel about not being able to have access to those rulings?

Mr. FANT. Well, as I say, it is subject to litigation at the present time and I personally hope that the court decides that these matters will be available to the public. I cannot say that under the laws which control the litigation, that would be the correct result, because I honestly have not made a study of the laws involved.

Mr. BICKWIT. The staff has attempted rather hurriedly to review the leading cases on the provision of the code that has been discussed today. While it is difficult for us to determine from those cases exactly

what the judge's tests were for nondeductibility, the only case that we can find where the test would apply to be inconsistent with your own is a memorandum opinion of the tax court in *Addressograph-Multigraph Corp.*, cited for the record as 14 P-H, tax court memorandum paragraph 45,058, 1945.

Do you distinguish that case, or do you simply disagree with its holding?

Mr. FANT. Well, first of all, given the facts that are set forth in the opinion in *Addressograph-Multigraph*, I can't be absolutely certain whether applying the tests I have outlined, that different results would be reached or not. The opinion does not set forth the body of the ads, but only describes them in a very summary way.

I believe, however, that I would reach a different result.

Now, the importance of the *Addressograph* case to my analysis is greatly diminished by the fact that the tax court judge in that opinion relied very heavily upon an earlier case, the *Los Angeles & Salt Lake Railroad* case. In fact, the judge relied almost exclusively on the earlier opinion and did not analyze the issues or discuss the factors which should be applied.

The *Los Angeles & Salt Lake Railroad* case was decided in 1929, and permitted deductions for expenditures for grassroots lobbying on the ground that the regulations then in force only applied to unethical or unfair lobbying, and that the advertisements published by the *Los Angeles & Salt Lake City Railroad Co.* were not unethical or unfair.

That view has been thoroughly discredited by later court cases, by the Supreme Court in *Cammарano* and by Congress in the enactment of section 162. Since the court in *Addressograph* relied upon the earlier case, it's my feeling that *Addressograph itself* must be viewed as somewhat discredited.

Mr. BICKWIT. Do you know of any other cases or published rulings which have adopted a test inconsistent with the one that you have presented to the subcommittee?

Mr. FANT. Well, there are no cases or published rulings of which I am aware which explicitly adopt tests that are inconsistent or contrary to what I have set out today.

I feel that what I have set out today is generally supported by the case law.

I have to say, however, that courts in many instances express their opinion in a conclusionary fashion. It is quite possible that factors other than those I have discussed were applied or that some of the factors I discussed were not applied, so that I can't say with exact certainty, but I am not aware of any case which would allow a deduction which, under the factors as I have outlined them, would be disallowed.

Mr. BICKWIT. Have you read the responses of the companies to Senator Hart's letter asking them to characterize their ads?

Mr. FANT. No, I have not.

Mr. BICKWIT. Well, even if not, if you heard the preceding witness I am sure you are aware that generally speaking their characterizations of those ads differ sharply from your own.

If ultimately the subcommittee comes to accept your analysis rather than theirs, what would you suggest the subcommittee do about it?

Mr. FANT. Well, first of all, I would like to reiterate what the previous witness said, that I don't think such a determination should be made without hearing the other side, and without hearing the analysis which might support the characterizations of the ads by those who sponsored the ads.

I also have to say that my analysis was based solely on the four corners of the ad, and that in some instances there might be facts and circumstances of which I am aware that could lead to a contrary result, even under the factors I have presented.

For example, in the regulations that relate to lobbying by private foundations, there is a provision which says that private foundations can engage in publicity campaigns so long as both sides are fully presented so that the reader of the publicity can make up his own mind.

There is a provision that says that this can be applied to a whole series of ads. For example—under this analysis there can be one ad which says water pollution is very good and sets forth the economic reasons why a certain amount of pollution is necessary and which if I looked at it and applied my factors, I might well determine was nondeductible.

However, if the next week in the same publication there was another ad or the sponsor of the first ad that said that water pollution was bad, I might reach a different result.

I give that as a fairly farfetched example, but I think that there are other facts and circumstances which have to be considered.

If the subcommittee does arrive at the judgment that the sponsors of these ads have claimed deductions for expenditures which, in the subcommittee's judgment, are nondeductible, I believe that the first purpose served by these hearings is to bring this to the attention of the sponsors of the ads.

Ours is a system of self-assessment and, hopefully, if my analysis and that of the previous witness and the other facts presented are persuasive, the sponsors of the ads will not claim deductions for these of future ads or conceivably might, if they were persuaded, file amended tax returns.

I disagree somewhat with the previous witness on the role of citizen participation in IRS proceedings.

I do know, however, that the IRS values any information which is helpful to them in making determinations in tax cases, and I would suggest that the record be made available to the IRS for whatever uses they felt were appropriate.

Mr. BICKWIT. I have one final question. In your statement you say that denial of deductions for grassroots lobbying under section 120 (e) (2) of a marginal impact at best, that it will have a marginal impact on the problem of imbalance.

Mr. FANT. That's correct.

Mr. BICKWIT. Personally I tend to agree with that. Does that lead you to the conclusion that if Congress is determined to remedy that imbalance they will have to take on the other side of the equation, to give more favorable tax treatment to those who are organized not for profit.

I don't want to put words into your mouth, but is that a conclusion that you would support?

Mr. FANT. Well, as I pointed out earlier, the problem is one of imbalance, and section 162 (e) (2) does not correct the imbalance. The imbalance still exists and will continue to exist.

I believe you are suggesting that a possible way to further the imbalance would be to provide more favorable tax treatment to either private citizens or to organizations which represent the interests of private citizens.

I would first point out that the most—the greatest imbalance that I find is in the section of direct lobbying, where as a result of the amendments made in the Revenue Act of 1962 businesses can deduct all of their expenses for making presentations to legislative bodies, whereas charitable organizations, educational organizations, cannot do so unless they are specifically invited to do so by legislative bodies or members of committees.

That is the area in which I feel there is the—there is present imbalance.

On the subject of the tax treatment of grassroots lobbying, there shouldn't be any imbalance. Such expenses are not generally deductible by businesses, private individuals, charities, labor unions, nor business leagues.

So that I feel in the first instance that if the law were followed, there would be something approaching tax balance on the subject of grassroots lobbying.

Now, if your suggestion is that possibly charitable organizations or action organizations of citizens be allowed to engage in grassroots lobbying and contributions be deductible, would you allow business a deduction also; to allow charities to engage in grassroots lobbying, but to continue to deny deductions to business would go further to correct the imbalance. But I feel that more immediate and probably more practical result would be to bring equilibrium to the direct lobbying—

Mr. BICKWIT. I don't think I made clear what I mean by imbalance. What I am talking about is the balance in the presentation that Congress is likely to perceive from the various interests involved.

What I read you to be saying, is that even if you enforce the law so that there is balanced treatment of deductions, there will not be balance with respect to the kind of viewpoints that are made available to the Congress.

It is that statement with which I agree and it leads me personally to the conclusion that perhaps other remedial measures from a statutory standpoint ought to be considered in light of the conclusion that the pure endorsement of the law as it exists will not remedy the problem as I see it.

Mr. FANT. Well, that it will not remedy the broad problem, because business, when it is vitally affected, can tap its enormous resources to run all the ads it wants even though such ads are nondeductible. The fact that it will cost business more because the ads are nondeductible will not, in my opinion, deter business from engaging in grassroots lobbying in areas where their interests are at stake.

Mr. BICKWIT. And it probably wouldn't deter them from engaging in direct lobbying even if that were made nondeductible?

Mr. FANT. I believe that is true also.

But what I was saying is that the ability of the tax law to further correct the imbalance, I feel, is somewhat limited. I understood you

to be suggesting that charities or public interest groups be permitted deductions for grassroots lobbying. This suggestion would reduce the imbalance in the ability to influence the general public with respect to legislative matters, but would put the tax law itself into imbalance.

Mr. BICKWIT. Exactly. That is what I am suggesting, that you may need imbalance within the tax code in order to promote a semblance of balance.

Mr. FANT. I think that that would further reduce the imbalance.

Mr. BICKWIT. Thank you very much, Mr. Fant.

Thank you, Mr. Chairman.

Senator HART. Mr. Fant, again, thank you very much for a very helpful explanation.

We like to think we don't operate in a vacuum and I am sure that both the IRS and the FPC should be made aware of some of the comment that has been made today.

But it is my intention that we invite those advertisers whose materials have been identified to make an explanation as to their judgment as to how it should have been treated and any suggestions they may have with respect to the law.

Pending the announcement of that date, the subcommittee is adjourned.

[Whereupon, at 12:55 p.m., the subcommittee hearing was adjourned, subject to the call of the Chair.]

ENERGY AND ENVIRONMENTAL OBJECTIVES

THURSDAY, JULY 18, 1974

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON THE ENVIRONMENT,
Washington, D.C.

The subcommittee met at 10:47 a.m., in room 5110, of the Dirksen Senate Office Building; Hon. Philip A. Hart (chairman of the subcommittee) presiding.

Senator HART. The committee will be in order. I apologize to everyone who was inconvenienced by this delay. It is simply that an unanticipated meeting of the Democratic Conference of Senators was called for this morning, and is still going on. I am sure this is not the only place that has suffered. We resume hearings today on the energy and environmental advertising.

At our last hearings a number of allegations were made with respect to the tax and Power Commission treatment of these ads. The subcommittee invited those against whom the criticisms had been directed to respond. Although most declined, we are grateful to those who have come today to present their side of what is a complicated story.

With an expression of thanks, let me welcome as our first witness Mr. Herb Schmertz, vice president of public affairs of Mobil.

STATEMENT OF HERB SCHMERTZ, VICE PRESIDENT, PUBLIC AFFAIRS, MOBIL OIL CO.; ACCOMPANIED BY DAVID A. LINDSAY

Mr. SCHMERTZ. Thank you, Senator Hart.

My name is Herbert Schmertz. I am vice president for public affairs with Mobil Oil Corp., and I have been extensively involved with my company's efforts to explain its viewpoint on energy problems to the public through advertising in the press, on radio, and on television.

I am accompanied by David Lindsay, our outside tax counsel from the law firm of Davis, Polk & Wardwell.

First, I would like to thank the committee, on behalf of Mobil and myself, for the opportunity to appear before you today. As a company, Mobil takes pride in its communications program, and particularly in the stand for freedom of speech we have taken in the belief that a free marketplace of ideas is essential if the American public is to make informed decisions on major issues. I am therefore grateful for the chance to explain some aspects of this program to you.

I would like to address myself first to some specific tax questions in which you have expressed an interest.

For tax purposes, Mobil divides its institutional advertising into four groups, relying on concepts of public advertising contained in Treasury Regulation 1.162-20. As you are aware, the regulation states that "expenditures for institutional or 'goodwill' advertising" are generally deductible. The regulation provides more specifically that:

A deduction will ordinarily be allowed for the cost of advertising which keeps the taxpayer's name before the public in connection with encouraging contributions to such organizations as the Red Cross, the purchase of U.S. Savings Bonds, or participation in similar causes.

In addition, the regulation states that advertising expenditures are tax deductible if the advertising "presents views on economic, financial, social or other subjects of a general nature providing they do not include expenditures for lobbying, for promotion or defeat of legislation, or for related propaganda.

Based on these considerations, our ads are grouped as follows:

Group I consists of ads of the so-called "Red Cross" variety. Some of them have promoted Masterpiece Theatre, a series of dramas and other programs underwritten by Mobil and shown over public television. We have also taken space to urge support for New York Public Library, for programs of concerns, opera, and theater in New York City parks, and for the activities of the Interracial Council for Business Opportunity, to name only a few.

Group II deals with fuel conservation and safe driving—noncontroversial topics in which we have some expertise and which we feel it is in the public interest to discuss. Ads in this group have dealt with ways of conserving gasoline, driving safely, conserving fuel in the home, and lighting in general.

Group III covers a broad socio-economic field dealing with such subjects as technology in general, conservation efforts, and similar broad topics.

Group IV covers advertisements which relate in part to regulatory policies on antipollution control, or contain general information on the energy shortage, or discuss other topics with sufficient legislative potential to cast doubt on their deductibility.

Our policy, simply stated, is to regard ads in the first three categories, which conform to the wording and intent of the regulation, as deductible. We do not take deductions, however, for ads in group IV. Moreover, we submit all our ads to outside counsel for their opinion on the ads' tax deductibility, and counsel has instructions to adopt a conservative standard in determining deductibility under the statutes, regulations, and case law on the subject.

This decision to take a conservative view of what constitutes tax deductibility has obviously cost us money. For example, our newspaper advertising expenditures in 1973 were as follows:

Product and service ads \$326,000, goodwill advertising \$799,000, nondeductible advertising \$411,000.

In other words, in 1973, out of a total newspaper advertising budget of \$1.5 million, we claimed no tax deduction for a quarter of it. Also, we decided in mid-1973 to discontinue gasoline advertising and redirect our efforts to broad public issues and public information programs. We would therefore expect that our percentage of nondeductible advertising would increase.

Let me explain why we have resorted to institutional advertising on such a scale.

In brief, we believe that we have something important to say, and that we can only get our message across through paid advertising. We came to that decision after it became clear that other more traditional tools were not succeeding. Try to rebut misinformed reporting with a letter to the editor, and you will usually find it appears—if at all—many weeks after the original misstatement. Try to get your view across in a news release, and it may never see the light of day.

Our major point, however, is not that the press is biased but rather that the complexity of the energy issue results in inadequate coverage of it in the news columns.

I would like to reiterate, Senator, we are not saying that the press is biased.

Hence, the decision to advertise, and the corollary decision—that it would be pointless and self-defeating for us to engage in technical discussions of tax deductibility, even if a legitimate case could sometimes be made. As a matter of policy, we prefer to battle on what we consider to be the real issue here—a company's right to be heard in the Nation's marketplace of ideas.

Let me backtrack a little to explain. As you may know, Mobil began a regular program of advertising in the New York Times in January 1972. Our ads, appearing every Thursday, are on the page opposite the editorial page—called the op-ed page. Prior to 1972, we had published an ad in this space in October 1970 in favor of better mass transportation—a highly unusual position, I might say, for an oil company at that time—and had also taken the space to promote Masterpiece Theater, TV's Sesame Street and Electric Co., which we supported, and other public service organizations. But by 1972 we had become sufficiently concerned about the future of U.S. energy supplies to initiate a full-fledged weekly campaign that would be highly visible.

In the light of the present energy situation, I think you will agree that our concern was legitimate. We emphasized the need for increased oil and natural gas production to meet escalating demand. At the same time, we urged restraint in the use of oil products to conserve existing supplies. We drew attention to the roadblocks in the way of establishing a coherent national energy policy. We pointed out that, without such a policy, we as a Nation faced unacceptable dependence on foreign oil.

Nevertheless, for the vast majority, the energy crisis, if it existed at all, was no more than a small cloud on the horizon at that time. Then, of course, the crisis hit home last fall with the virtual quadrupling of oil prices by the major producing countries outside the United States, and the decision by some Arab countries to embargo the export of crude oil to this country.

For the major oil companies, the Arab embargo produced a twofold crisis. First, of course, there was a crisis of supply, which the oil companies surmounted to a large extent by a complex restructuring of logistics patterns on a worldwide scale. Second—and more germane to our present discussion—was a crisis of credibility.

In simple terms, the energy crisis which erupted in late 1973 caught Government, the media, and the public totally unprepared. The growing gap between U.S. energy production and consumption, and the prospect of increased dependence on insecure foreign supplies which might be interdicted at any moment, simply had not been taken seri-

ously. The result was that, when the crisis came and the lines began to form at the service station, the public looked around for a scapegoat. The oil industry was a very visible and very convenient target.

Most people would agree that, during this crisis, the broadcast media deluged their viewers with stories on energy. But how many people could tell you what the answers were to some basic questions that were prominently debated in the media at that time?

For example: Were tankers really waiting offshore for higher prices before unloading their cargoes? Was the energy crisis contrived by the oil companies? Why are oil company profits so high? Why is the United States so reliant on foreign oil? What role did Congress play in creating the oil and gas shortage?

Despite the hours of broadcast time devoted to energy crisis, most people don't have a clear conception of why or whether the energy crisis existed. What they heard or saw didn't help them resolve the issue.

It is my contention that many of the answers or explanations simply didn't make it through the communications networks. In fact, the complexity, scope, and suddenness of the energy crisis combined to overwhelm the media. Television was unprepared to cope with the tremendous volume of information. News on energy broke so fast that nearly each day brought a completely new story on the subject. The problem of keeping up with the news was compounded by the fact that so few reporters, outside the trade and business press, knew anything about energy. Specialists were almost nonexistent.

The result was a breakdown in communications just when communication was critical. In short, the circuits couldn't handle the load.

The basic cause of this failure can be found in the structural limits of television network news. Typically, a television news program has to handle 10-12 stories in the space of half an hour, and for that reason alone was unable to cover the energy crisis adequately.

Again, the networks apparently employ no energy experts to advise on the content of news stories. Finally, television news is at least to some extent entertainment, and broadcast journalists are forced to worry about their ratings in competition with other network journalists.

Against this background, television news failed in its coverage of such recent energy stories as the tanker rumor, the Jackson and Church hearings, the 1973 oil profits reports, why we are so dependent on foreign oil, and the role of Congress. These stories, so important in creating and directing public opinion about energy, in our opinion, were inaccurately and inadequately reported. A medium which stresses topical entertainment and emotion in its news and public affairs programming cannot simultaneously provide in-depth coverage of such complicated and controversial national issues.

Our conclusion is that network news has overdramatized and oversimplified the energy story. The structure of broadcast news is inhibiting rather than promoting full and robust debate on public issues such as energy.

Now it is our belief that the American public deserves more information than this structure allows. We choose to believe that, given the facts, the public will weigh them and make rational decisions. But our own efforts to give the public the facts as we see them,

through television advertising, have run into serious problems. For, while the press has been willing to sell us space, and has hardly ever disagreed with us over the substance or placement of an ad, it soon became apparent that the networks were not only determined to be the arbiter of what we could and could not say, but that they were going to exercise their power in any extremely arbitrary way.

Specifically, we were told that network policy is not to sell time for the discussion of "controversial issues of public importance." One radio station—WTOP here in Washington—said the energy crisis was a controversial issue and therefore they could accept no commercials dealing with the subject. When it became clear to us that the networks might be worried that they might have to provide free time under the law for a rebuttal of Mobil's views, we offered to pay for any rebuttal time the networks were required to provide, as well as for our own message, with the networks having total control over whether a rebuttal is required under the fairness doctrine and the persons or groups doing the rebuttal.

This offer, so far as I know, was unprecedented in the annals of commercial television. But the networks have continued to insist as a general principle that energy issues can best be covered in the news programs, and that journalists should decide what should appear. The final irony, of course, is that the oil industry—not television with its three major networks—is accused of being an oligopoly.

One example will show you what we are up against. In an ad we prepared to run on television, we plan to have the camera focus throughout on a beach and ocean waves while the announcer says:

According to the U.S. Geological Survey, there may be 60 billion barrels of oil or more beneath our continental shelves.

Some people say we should be drilling for that oil and gas. Others say we shouldn't because of the possible environmental risks. We'd like to know what you think.

Write Mobil Poll, Room 647, 150 East 42nd Street, N.Y. 10017.

We'd like to hear from you.

NBC accepted this ad without change. CBS turned it down in a letter which in part read:

We regret that the subject matter of this commercial * * * deals with a controversial issue of public importance and does not fall within our "goods and services" limitation for commercial acceptance.

ABC also turned down the ad in a letter which gave no explanation, but merely said:

This will advise that we have reviewed the above-captioned commercial and are unable to grant an approval for use over our facilities.

We decided that we could not let this capricious behavior go unchallenged. We therefore took out a newspaper ad which gives the proposed visuals and text for our TV spot, together with the three networks' replies.

So far we have received over 2,000 replies to this newspaper ad. While we have not completed a total analysis, a quick spot check indicates that the respondents overwhelmingly favor our right to express our viewpoint on the air.

We feel these letters are the clearest indication yet that the public wants the facts, and support our basic tenet that we as corporate citizens with a special expertise in energy matters should be given the

opportunity to express our views in the marketplace of ideas. This accords with our belief that, in a democracy, one of two things will happen if we are allowed to exercise our rights.

If our views are correct, we will have made a positive contribution to the national debate on energy policy and related issues, and we will have helped the Nation establish the coherent set of priorities and principles it needs in the energy field. If we are wrong, our ideas will be shot down, and we will lose both money and reputation. We are prepared to take our chances.

Indeed, the issue here is one of even greater importance than national energy policy, crucial though that may be. What is at stake here is the principle that debate on national issues be allowed to proceed unshackled by artificial constraints, a principle embodied in the first amendment to the Constitution of the United States.

It is because of our company's commitment to free speech—both for ourselves and our opponents—that we have filed a response with the FTC to the petition submitted by six Members of Congress last January, which would have extended advertising substantiation regulations beyond the realm of product advertising to the fields of energy and environmental ideas.

As we stated in a memorandum filed by our attorneys with the FTC, numerous Supreme Court decisions show that the petition constitutes a serious incursion on first amendment rights of free speech. These precedents show that in the interest of an unencumbered marketplace of ideas, the FTC's regulatory authority should be limited to product advertising and should not extend to corporate statements under public debate.

In fact, we said, the scope of the Congressmen's petition was so broad:

That many forms of speech which are far removed from product solicitation might possibly be covered. For every potential untruthful claim which will be revealed or discouraged by such a rule, the expression of untold numbers of honestly held beliefs will be discouraged.

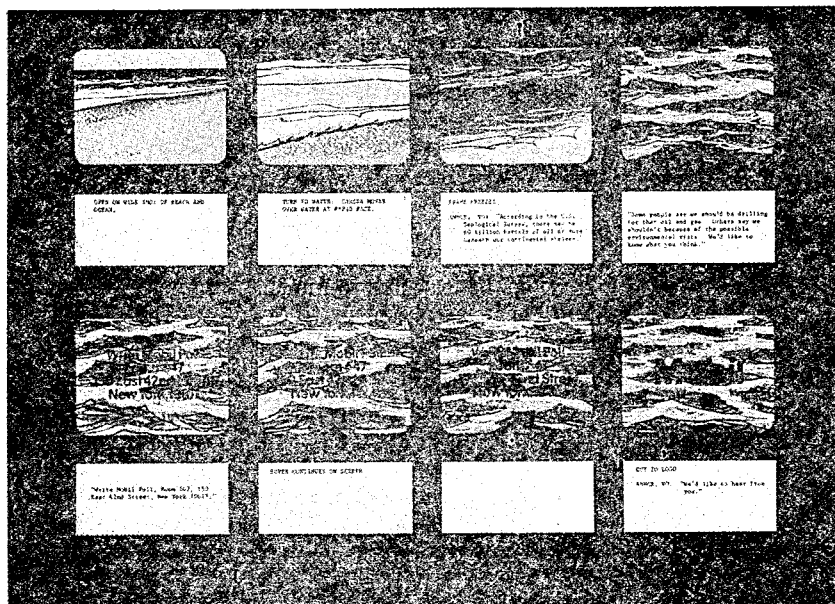
Although Mobil can substantiate all of its advertisements, the company pointed out that the petition is further defective since only oil companies but not their critics would be forced to meet substantiation requirements.

I think I have said enough to shed some light both on the immediate question of tax deductibility for certain types of advertising, and on the underlying policy issues involved. To summarize our position:

We take an extremely conservative view of what constitutes tax deductibility for paid advertising. We take this view in the belief that fundamental issues of national concern are at stake and we feel we would do neither ourselves nor the country a service by losing sight of them. We need a free marketplace of ideas in which those with something to say can say it—untrammelled by redtape, censorship, and petty regulation. And we desperately need the coherent national energy policy which can only come when the public has the facts, and can make a balanced judgment of the issues on their merits.

[The attachment follows:]

Why do two networks refuse to run this commercial?



CBS:

"We regret that the subject matter of this commercial...deals with a controversial issue of public importance and does not fall within our 'goods and services' limitation for commercial acceptance."



ABC:

"This will advise that we have reviewed the above-captioned commercial and are unable to grant an approval for use over our facilities."



NBC:

"Approved as submitted."

As you can see from the storyboard reproduced above, we want to ask the public how it feels about offshore drilling.

But the policies of two national television networks prevent us from asking this question.

This is dangerous, it seems to us. Any restraint on free discussion is dangerous. Any policy that restricts the flow of information or ideas is potentially harmful.

The networks say that the public's need for information is best served in news programs prepared by broadcast journalists.

Behind the networks' rejection of idea advertising may be the fear that demands for equal time will be made. We have a reasonable answer to that. We offer to pay for equal time, when the request is legitimate.

We think more discussion, not less, is needed of vital issues such as the issue of America's energy needs. We're willing to buy the time to say what we should be saying. We're willing to buy time so you can hear opposing views.

But two big networks aren't willing to make time available, in this case.

You know the principle at stake here. You've seen it in writing, more than once:

"Congress shall make no law... abridging the freedom of speech."

You've seen it in the First Amendment to the Constitution of the United States. So have we.

We'd like to know what you think about either of these issues. Write Room 647, 150 East 42nd Street, New York, N.Y. 10017.

Mobil

© 1974 Mobil Oil Corporation

This ad will appear in the New York Times on Monday, June 17, 1974.

Mr. SCHMERTZ. Thank you very much.

Senator HART. Thank you very much for your statement that goes far behind the focus of what we thought we were treating when we had that first day of hearing. I confess I have been on the Communications Subcommittee of this Commerce Committee for several years.

Mr. SCHMERTZ. I am aware of that.

Senator HART. And I have to go back to the first chapter every time this question of what is and what is not required under the fairness rule is raised.

I get lost every time the issue is raised. One of the concerns, of course, is that on important public questions there are usually at least two bodies of opinion. One may happen to have a big wad of money, and the other which may or may not have the better idea, may have little or no money.

Mr. SCHMERTZ. That's right.

Senator HART. What suggestions do you have? Now Mobil picks up the bill for the poor guys; we can't very well legislate that, can we?

Mr. SCHMERTZ. Senator, it seems to me that when the Supreme Court talked about this in the BEM case and the CBS case and the Commissioners talked about it, it seems to me that the networks ought to start to try some experimentation to try to develop a structure that increases the spectrum of views and opinion beyond just those of the journalists. Now I don't know what the ultimate right answer is, but at least the first step ought to be some sort of a national debate on the problem of access, not only problems of oil company access, but problems of so-called public interest groups access and all the rest. Out of that debate, and the networks should really take the lead in this, it seems to me, ought to be some attempt at experimentation to develop a structure. Let's say for the sake of discussion that they did set aside 10 percent of their time or something of that sort. And some might pay, some might have free time within that structure.

Let's say that the network news were expanded to a full hour which the networks apparently have wanted, and the affiliates have resisted and if in that full hour some portion were given over to an access situation. I don't know what the right answer is, Senator. I am not in the network news and television business.

I do know that I have not seen any showing by the networks of a desire to experiment, discuss, and try to develop a structure. I think really the burden is on them to come forth. We have made what we think is a contribution, hopefully, to stimulate that with our offer to pay for the equal time. That was rejected.

We had hoped that perhaps that might stimulate some discussion and debate.

Senator HART. A few years ago I remember a group of us here in the Senate sought to purchase television time to present what was then a minority view about Vietnam. And we couldn't buy it.

Mr. SCHMERTZ. That is the specific case that is relied upon by the networks today; the Businessmen Against the War in Vietnam case and the Democratic National Committee case are the two cases that came to the Supreme Court a little over a year ago at the same time. And that is the law of the land today. You prevailed up through the circuit court.

Senator HART. Yes.

Well, having not solved the problem as it relates to television, how do we solve it as it related to newspapers? Does the fellow who can buy the full page get his idea across? What do we do about the opposing point of view that can't buy the page?

Mr. SCHMERTZ. I think newspapers are a very different situation for two fundamental reasons, at least, Senator. First of all, I don't have to get anybody's permission if I want to start a newspaper. I have economic problems, obviously, but if I have a mimeograph machine I can start a newspaper and really the growth of the underground press is a demonstration of the vitality in the area. So I don't have to get permission in that sense.

Second, newspapers, if you take the whole ball of wax of newspapers, I think you are getting a pretty good diversity of opinion in the print press. I think the print press does a pretty good job.

Now from our standpoint, we have felt that at least during a certain period we were not getting enough information in the unpaid part of newspapers and that is why we felt obligated to try to redress that balance through paid advertising.

But by and large, I don't think there is the major problem of access and adequacy in print that you have in television. Television news to a very large extent is a headline service. And as we all know headlines don't tell the story.

Senator HART. Yes, as you put it, the structure of broadcast news inhibits full and robust debate on public issues.

Mr. SCHMERTZ. I think that's correct. And when poles show that 60 or 70 percent of the people say that television news is their primary source of information, that is a distressing situation. We now have the most powerful communications medium ever developed, and it is not acting as a flow of information to the people.

Senator HART. To react to one specific on the narrower subject of tax treatment of institutional advertising, you tell us that your decision with respect to the category four type of advertising—I take it it was broader than that. You decided to submit your proposed ads to outside tax counsel?

Mr. SCHMERTZ. Yes.

Senator HART. That seems to me a costly, though very responsible procedure.

Mr. SCHMERTZ. I would just recommend one thing, sir. We don't submit them before we run them. We submit them after, so it is not proposed ads.

Senator HART. But before, you determine how you shall handle them financially?

Mr. SCHMERTZ. Yes, sir.

Mr. BICKWIT. Just simply what led you to take that procedure?

Mr. SCHMERTZ. We came to the conclusion that we did not want the issue of deductibility or nondeductibility to really cloud the bigger issue of whether we could communicate adequately or not. There was a much bigger issue involved here and that was the adequacy of information and we just didn't want to get involved in what was a narrower issue of deductibility and nondeductibility.

Mr. BICKWIT. Thank you, Mr. Chairman.

Senator HART. I am sure you sense that the feeling with respect to major oil companies is so sharp that many people have reacted harshly to what you describe as a necessary educational program.

Mr. SCHMERTZ. We are well aware of that, Senator, yes.

Senator HART. In that sense, you are sort of damned if you do and damned if you don't.

Mr. SCHMERTZ. That is true. But when we looked at what we thought our obligations were, we decided we would incur that with willingness.

Senator HART. I am reminded of not that particular ad, but something I heard in my own living room, my own family. A very attractive shot was run, and the message was missed at least by one part of the audience in our house, who had a violent reaction to the ad. They are spending more money than—

Mr. SCHMERTZ. That is a legitimate issue of debate, no question about it. We are prepared to face that. And it is a problem.

Senator HART. Well, as you leave, let me express to you and Mobil our appreciation of the fashion in which you have handled your advertising.

Mr. Lindsay, did you have anything you would like to add?

Mr. LINDSAY. Nothing to add, Senator.

Senator HART. Our next witness is vice president and general counsel of the American Electric Power Service Corp., Mr. Joseph Dowd. Mr. Dowd?

STATEMENT OF JOSEPH DOWD, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN ELECTRIC POWER SERVICE CORP.; ACCOMPANIED BY A. W. D. GRONNINGSATER, TAX COUNSEL OF THE SERVICE CORP.

Mr. Dowd. Good morning, Mr. Chairman.

Mr. Chairman, my name is A. Joseph Dowd. I am vice president and general counsel of American Electric Power Service Corp.

The Service Corp. provides managerial, professional and technical services to the operating companies of the AEP system.

With me today to assist in answering any questions you may have is Mr. A. W. D. Gronningsater, tax counsel of the American Electric Power Service Corp.

The American Electric Power system presently has a generating capability of almost 14.5 million kilowatts and has, or soon will have, about 8.7 million kilowatts of additional generating capacity under construction.

We serve in parts of seven States. Our service area ranges from the Blue Ridge Mountains of southwestern Virginia to the shores of Lake Michigan, and while we are a large system, we do not serve large urban areas—rather we serve primarily a large number of small communities and rural areas.

More than 5,700,000 people depend upon us for their electricity supply—a responsibility that we take very seriously.

We are located to a large extent atop the eastern coalfields. We are, therefore, a coal-based utility with 93 percent of our generating capacity fired by coal.

We have been invited to appear here today to respond to testimony before this subcommittee which was presented on May 6 by Media Access Project.

We understand that this hearing also involves consideration of S. 2532, which is described in its caption as a bill “to promote conservation, reduce wastage, and attain greater efficiency in the generation of electrical energy.”

While we do not propose to comment on the specifics of this bill, I would like to make clear at the outset that the AEP system supports

sensible conservation efforts and has always been opposed and has always done its best to eliminate wastage and inefficient utilization of electric energy.

In fact, one of the ads in our current advertising program is devoted entirely to promoting the concept of energy conservation.

Beyond this, we have distributed booklets and customer bill inserts and radio and TV messages urging our customers not to waste electric power.

Insofar as "efficiency in the generation of electric energy" is concerned, the AEP system ranks first in the Nation, that is, we are able to squeeze more kilowatt hours from a given amount of fuel than any other system.

By way of background to our ad program, I would like to go on in this vein somewhat. While sensible conservation efforts are desirable, we should not be deluded into the belief that such efforts alone can solve our Nation's energy problems.

Total energy has been growing in recent years at a rate of just under 5 percent, and electric power at a rate of 7½ percent.

We must be extremely careful in putting the brakes on, for any attempt to go well beyond eliminating waste in order to curtail energy growth sharply could precipitate a worsening of economic conditions, including widespread unemployment.

Barring mandatory conservation of electric power—either by legislation or by the insufficiency of generating capacity or fuel—we do not foresee any substantial reduction in the historical growth of electric power during the next several years. The reasons for this are as follows:

First, we believe voluntary conservation is at its height in the first flush of enthusiasm and tends to decrease as it results in any real inconvenience or discomfort.

This is merely a reflection of human nature.

Moreover, the elimination of waste is, in large part, a one-shot proposition.

For example, you can replace a 100-watt bulb with a 60-watt bulb only once. Therefore, the effect of voluntary conservation on growth rates after the first year will, we believe, be much less.

Second, putting population growth to one side, the age composition of our existing population alone must inevitably result in new family formations and increased usage of electricity.

Third, there will be demands for an ever-increasing standard of living—particularly by the lower income groups who will insist quite properly upon improving their economic status.

Fourth, there will be new uses for electric power—not the least of which are for environmental controls. A recent survey indicated that such use now represents 7 percent to 10 percent of the electricity demand of large industry.

Fifth, in many cases, electric power is being required to replace other sources of energy which are in short supply, that is, gas and oil.

We can already see this in residential electric space heating which is now growing even faster than in prior years when it was being encouraged by vigorous promotion.

In fact, FEA Administrator Sawhill in a recent speech stated that he expects, and I quote, "... the electric power industry to provide

electrical energy in increasing proportions for end-use activities, such as space heating and transportation."

All forecasts for long-range energy requirements suggest that electric power will have a growing responsibility in supplying the energy needs of the future.

Electric power should, and will, replace gas and oil wherever practicable—to conserve these fuels for uses for which there are no substitutes.

Indeed, as I have indicated, this process has already begun in the field of space heating.

The solution—at least for the short term—and midterm—is greatly to increase the production and use of coal to generate electric power. And this is the basic theme of AEP's current advertising program which was referred to by Mr. Shulman of Media Access in his May 6 testimony.

As an electric public utility, we have a legal and a moral responsibility to anticipate the future demand of our customers and to have available for them at the moment of need an adequate and reliable supply of electric energy.

In order to satisfy this responsibility, we must forecast future demand as accurately as we know how, plan and construct the necessary physical facilities in time to meet our customers' requirements, and insure the availability of the necessary fuel to operate in those facilities.

Fuel supply is our most immediate and our most critical problem—currently and for at least the next 10 to 15 years.

Under existing technology, we can generate significant amounts of commercial electric power only by the use of falling water at hydroelectric plants or by the use of gas, oil, nuclear fuel, or coal.

Hydroelectric sites are limited and can make only a relatively minor contribution to our future power supply. As we all know, gas and oil are in short supply.

There is even some question as to the extent of our nuclear fuel reserves—particularly our domestic reserves—and there is a growing question about the adequacy of our nuclear fuel refining capacity.

But, in any event, the delays associated with the design, equipment, construction, and licensing of nuclear plants make it impossible to count on bringing in a nuclear plant in much less than 8 to 10 years.

Nuclear power is important and can provide some help for the short term and midterm. But at best, such help will represent only a minor part of what will be required.

And then there is coal.

Coal is the key element in the solution of our short term and midterm fuel problem. Our domestic reserves represent a greater Btu content than all of the oil in the Middle East, and can provide a fuel supply adequate to generate our electric power requirements for at least several hundred years.

In this context it is indeed anomalous that coal, which constitutes 93 percent of our fossil fuel resources, provides only 17 percent of our gross energy.

Obviously, we must greatly increase the production and use of coal to generate electric power.

This will not only solve most of the problem for electric power supply. It will also make a major contribution to easing the demand for gas and oil by making them more available for those uses for which there are no substitutes.

Under these circumstances, one would have thought that the Government would have adopted policies to encourage the greater production and use of coal.

But the hard fact is that Government policies have, instead, interposed major obstacles and, at the present time, are, in fact, discouraging the production and use of coal.

The use of coal is being discouraged primarily by those who are not satisfied with compliance with ambient air quality standards prescribed to protect health, but who insist that there must be compliance, as well, with rigid emission limitations, under rigid timetables, which at least in the case of sulfur dioxide emissions, are wholly unrealistic and, indeed, unattainable.

These SO₂ limitations will by mid-1975 have the effect of prohibiting the burning of most of our eastern coal—about 225 million tons, or more than one-third of our Nation's current requirements.

And in connection with the very large amount of low sulfur coal in the west owned by the Federal Government—which could be obtained most quickly and which would be most useful in dealing with the SO₂ problem—we have had the equivalent of a domestic embargo for a year or more with the cold comfort of periodic reports that the matter is under study and that perhaps some decisions will be made by the end of 1974.

The basic purpose—the thrust—of our advertising program is to inform the public as to these facts, and to hopefully bring about an increase in the production and the available supply of coal so that we can meet these electric power needs of the 5,700,000 people who are totally dependent upon us for electricity in their homes and in their jobs.

Without a very substantial increase in the supply of burnable coal, AEP and other electric utilities will not be able to meet the electric power needs of our people.

Our responsibility for energy supply to the more than 5.7 million people who are totally dependent upon us has, in our view, made it not merely appropriate, but imperative, that we inform them and the public generally of the facts of life with respect to energy supply.

Coal—particularly low-sulfur coal—is in very tight supply. As a result, its cost has been skyrocketing—more than quadrupling in the last few years.

During that time, coal prices have shot up from about \$10 per ton to as much as \$40 per ton and more.

In fact, according to a June 7 FPC news release, the price of spot coal jumped by more than 54 percent in just 2 months—from December 1973 to February 1974. And it is still rising.

The AEP system expects to burn about 37 million tons of coal this year—second only to the Tennessee Valley Authority.

To the extent that our advertising program succeeds in bringing about an increase in the available supply of coal, coal prices will be less than they otherwise would be, and this difference would be directly and almost immediately passed on to our customers via the fuel adjustment clauses in our tariffs.

Thus, a saving of \$1 per ton would result in a \$37 million benefit to our customers; a saving of as little as 25 cents per ton would benefit our ratepayers in an amount in excess of \$9 million.

For all of these reasons, it seems clear to us that the cost of these ads are properly chargeable above the line for ratemaking purposes because they are clearly for the benefit of our ratepayers: First, by attempting to assure an adequate and reliable supply of power for them; and second, by attempting to bring about a reduction in the cost to them of that power supply.

With respect to the deductibility of our ads for Federal income tax purposes, such deductibility depends upon the intent and content of the particular ad. This is implicit in much of the testimony at the May 6 hearing.

Prior to 1962, there was no legislation on the subject. It is important to understand that all of the court decisions on the point cited at the May 6 hearing dealt with taxable years governed by the Internal Revenue Code of 1939, and relied on broadly worded regulations. Similar language of broad scope was contained in the original regulations under the Internal Revenue Code of 1954.

Congress legislated on this matter for the first time in 1962 by adding section 162(e) to the Code. The 1962 provision was liberalizing legislation which permitted the deduction of, among other things, costs incurred in connection with legislative appearances—expenses which theretofore were nondeductible.

In 1965, the Treasury Department adopted regulations under new section 162(e). These new regulations do not go so far in the direction of denying deductibility as did the old regulations.

This was admitted by Mr. Shulman, who stated that “* * * pre-1965 IRS regulations appear to have taken a broader view in favor of non-deductibility.”

The point is that it is the more liberal 1962 code and the more liberal 1965 regulations that apply to the ads in question.

On the other hand, the court decisions calling for nondeductibility cited at the May 6 hearing were all decided on the basis of regulations which are no longer in force. There have been no court decisions under the liberalizing 1962 legislation which are in point.

Our guidelines, therefore, are limited to the language of the presently applicable statute and the regulations promulgated thereunder. I have attached for the subcommittee's information as an exhibit to my testimony a tax memorandum by Mr. Gronningsater setting forth our position on the application of the statute and regulations to our ad program. I will only attempt briefly to summarize that position here.

The regulations under section 162(e) of the Code focus upon activities which urge or encourage the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation.

A deduction is denied in such cases. However, the regulations also explicitly recognize that “expenditures for advertising which presents views on economic, financial, social, or other subjects of a general nature,” but which does not involve any of certain activities specified in other subsections of the regulations, are deductible.

In AEP's current advertising program, 20 ads have been published to date. Only one of these ads specifically urges or encourages the public to contact their legislative Representatives.

We do not propose to deduct the cost of that ad for Federal income tax purposes, even though the ad makes no reference to specific legislation.

Of the remaining 19 ads, 11 make no mention of legislation; and their costs, we submit, clearly are deductible. The "Mr. President" ad referred to by Mr. Shulman at page 30 of the May 6 transcript is in this category.

However, I would note for the record that that ad preceded and is not a part of our current advertising program.

The remaining eight ads, one of which was referred to by Mr. Shulman at page 20 of the hearing transcript, do refer to the necessity for amending the Clean Air Act if we and other electric utilities are to continue to be able to furnish an adequate and reliable supply of electric energy to our customers.

However, these ads also refer to a number of other things, and the readers are not urged to contact their legislators or, in fact, to take any action whatsoever.

While the matter may not be free from doubt, it is the considered opinion of our tax counsel that the applicable statute and regulations, which undeniably are more liberal than the old regulations, do permit the deduction of the cost of these eight ads.

I would like to conclude, Mr. Chairman, by saying that it has been our experience that those who oppose the deductibility of advertising costs of their chargeability above the line are generally also opposed to the substance of those ads.

At least in our minds, this gives rise to the inference that those who disagree with what we say, by urging reinterpretation or changes in the tax or regulatory laws, may in fact be attempting to inhibit us from speaking out on issues which we believe are of vital concern to those we serve.

In the case of our current advertising program, tax and ratemaking factors applicable to this advertising were not a consideration.

Presumably, these questions will be decided at the appropriate time by the tax and regulatory authorities.

However, in order to emphasize, in order to bring home the point that these factors really were not a consideration in our ad program, and in order to prevent this very peripheral issue from detracting from the important message that we are trying to convey, we propose, for accounting purposes, to charge the costs of our current advertising program to FPC account No. 426.4—a below-the-line account—even though, as I indicated earlier, we believe that they could properly be accounted for above the line.

Our objective has been to lay the facts regarding energy supply problems before our customers and the American public generally, just as effectively as possible. This, we believe, we are doing—and in the context of our current energy problems, this we believe we have an obligation to do.

Thank you.

Senator HART. Thank you very much.

Mr. Dowd, I confess after reading your statement and listening to your testimony, making some notes, what I had earlier described was a narrow focus, 1-day hearing on an issue I thought I completely understood, raises a whole series of very basic policy questions.

I will ask Mr. Bickwit to sharpen up some of your comments about the specific ads. I think that although it was inadvertent, all of us will be better here in Congress for having opened the broader hearing.

Mr. BICKWIT. Thank you, Mr. Chairman. In your statement you say that the solution to our energy problems, at least for the short and mid-term, is greatly to increase the production and use of coal to generate electric power. What, precisely, in your view should Congress do to achieve that objective?

Mr. DOWN. Basically, it should, in our view, amend the Clean Air Act to make it absolutely clear that it was the intention of Congress to protect the public health and welfare by maintaining the ambient standards and that the owner of an emission source, if he is able to meet the ambient standards, should be permitted to employ whatever method he feels to be most appropriate.

Now, by that I mean the so-called intermittent control strategy should be regarded as a full fledged alternative to emission limitations. On the AEP system, we feel that we can avoid contributing to violations of the ambient standards in our areas through the use of tall stacks which we already have. Through a very sophisticated monitoring system which has already been installed throughout system and through a commitment to reduce emissions when atmospheric conditions create problems.

Now, emissions can be reduced in one of two ways. Either by burning a limited supply of low sulfur coal kept on-site for use during such times or by diverting generation to a plant outside of the area where the atmospheric problems exist.

This is one principal method. Under this program, low sulfur eastern coal continues to be burned. Now, the other major factor and this does not necessarily require congressional action, is to lift the moratorium on the leasing of the coal lands in the West.

There are vast quantities of very low sulfur coal that would meet existing requirements. This can be mined quickly, it can be mined safely.

Mr. BICKWIT. Are you saying that in your view the action you have specified as legislative is essential for the purposes you seek?

Mr. DOWN. Yes; this is our view. I might mention one other thing that is presently before the Congress. And that is the surface-mining legislation. Again it is my understanding that the Udall bill would, in effect, rule out the use of additional large quantities of the Nation's coal. And this is a factor that the Congress ought to look very carefully at in this period of energy crisis.

Mr. BICKWIT. In your statement you say:

The basic purpose, or thrust, of our advertising program is to inform the public as to these facts and hopefully bring about an increase in the production and available supply of coal so that we can meet these electric power needs.

It is your testimony then, as I understand it, that the basic purpose of your ad campaign is to achieve goals which you have also said really cannot be achieved without legislation.

Mr. DOWN. Well, there are two—we have said clearly in a number of our ads that the Federal—that the Clean Air Act must be amended to permit intermittent controls. Insofar as the western coal is concerned, that actually can be done by administrative action. We are

telling the public that unless actions similar to these are taken, we are going to have a very, very difficult situation this time next year.

Mr. BICKWIT. On the coal mining as I understood your testimony you are also saying that if legislation like the Udall bill passes, then your goals cannot be achieved.

Mr. DOWD. That our goals cannot be achieved?

Mr. BICKWIT. Yes.

Mr. DOWD. I would say that a bill such as the Udall bill would compound the situation and make unavailable to us very, very substantial additional quantities of coal that are presently available.

So, it would compound our problem, certainly.

Mr. BICKWIT. Given that the basic purpose of your ad and campaign was to achieve goals for which legislation is needed or for which the opposition—certain opposition to legislation is desirable, is it also your testimony that the ads dealt with in the hearings of this subcommittee were aimed at influencing legislation?

Mr. DOWD. The basic purpose was to inform the public particularly in our service areas as to what we regard the facts of life as to energy supply and the problems we are facing with respect to energy supply. To the extent that we refer to amendments of the Clean Air Act, yes; we were advising them that unless the act were amended to permit intermittent controls, it would be very difficult if not impossible to meet the power requirements next year.

Mr. BICKWIT. So, your testimony is that your ads were aimed at informing the public and that it was the end of those ads to promote the result of expanding the supply of coal for the production of electric power.

Mr. DOWD. This was the hoped for ultimate end of the ad. There was another purpose. We are aware of the situation; we are in the front line so to speak.

We have to think in terms of the future. Where will we get the coal? And in that sense we have an obligation to advise, we feel, our customers of the situation whether they do anything about it or not. Our concern in part is that in 1 year or 2 years from now, they will come back and say why didn't you tell us these things. We will have fulfilled that obligation.

Mr. BICKWIT. But your basic purpose as you say was to bring about an increase in the production and available supply of coal.

Mr. DOWD. I would say yes to that question.

Mr. BICKWIT. In that you were informing the public and that you regarded that as an objective of your ads, and given that the basic purpose of those ads was to expand the supply of coal for electric power, how did you expect that informing the public would lead to the basic purpose being accomplished?

Mr. DOWD. Well, it seemed to us that one method would be to, through administrative action, to release the moratorium, to lift the moratorium on western coal. In one of our ads we specifically asked the public to contact their Congressman.

In the other ads we did not do so, as I say, we lay the facts before the public. We tell them what problem there are. We tell them what we believe the solution to the problem is, and then it seems to me we just have fulfilled our obligation in that sense.

This was what we were trying to achieve.

Mr. BICKWIT. Yes.

Mr. Dowd. Now, they can contact their Congressman and seek amendments to the Clean Air Act, they may not, but at least we have told them what the problem is and we have told them how we think the problem can be resolved.

Mr. BICKWIT. But you have said that it was your intention that by informing the public as to these facts, you would hopefully bring about an increase in the production and available supply of coal.

Mr. Dowd. Yes.

Mr. BICKWIT. My question to you is, How did you expect that to happen?

Mr. Dowd. Well, in two ways. We would hope that the ads would stimulate interest on the part of the public and that they would exert pressure, that they would contact their representatives in terms of the Clean Air Act.

This was a hope and on the other side with respect to the western coal moratorium, this as I indicated is something that can be done without legislative action, that if they would contact the appropriate administrative officials, the ultimate goal really being not so much to increase the supply of coal as to be able to generate electricity to supply their needs in the future.

Again, the increased availability and usage of coal is an essential step to the ultimate goal which is to continue to supply these people with electric power.

Mr. BICKWIT. Well, if you were informing the public to this end, the end that you have just mentioned and you hoped through the informing of them that they would be spurred into contacting their Congressman, the obvious question is why was this not an attempt to influence the public with respect to legislative matters?

Mr. Dowd. Are you talking now on the tax side or the accounting side?

Mr. BICKWIT. Yes.

Mr. Dowd. I will pass this to Mr. Gronningsater but we are operating under specific language statute and specific language in specific regulations.

Mr. GRONNINGSATER. In the first place as Mr. Dowd has pointed out, there are two things involved here. Insofar as releasing western coal for mining is concerned, that is not a legislative matter.

The 1962 legislation refers only to legislative matters in the context of these ads.

On May 6, there was testimony by Mr. Lester Fant who stated they had been requested by this subcommittee to look into these matters, section 162(e). He made an analysis of the present requirements of nondeductibility under the new regulations those were operating under.

First, is that there must be a reference to legislative matters. That does not include, I do not think the administrative action.

The second was that there must be an attempt to influence the general public and that I think, is the point that you are speaking of, Mr. Bickwit.

Then he said, now, these are the only two specific legislative requirements. But I think—he said that he thought that it could inferred from the congressional purpose that there was really a third test, and that was—unless the advertising, unless there was a conflict of interest

in the advertising, between the business of the advertiser and what he called the selfish business of the advertiser and the interest of the public, the cost of the ad should be deductible.

Now, our opinion is and maybe other people will differ with it, these ads are not against the interest of the general public. We think they are in the interest of the general public.

Mr. BICKWIT. Under questioning, Mr. Fant, as I understood him, amended his testimony to say that all that would be required would be some conflict of interest between the business and some identifiable segment of the general public. Now it seems clear from testimony we have received that an identifiable segment of the general public regards it as a conflict of interest.

Mr. GRONNINGSATER. What an identifiable segment of the general public would be. You have an interest contrary to the purpose of our ads. We are of course, primarily concerned with our own service territory.

Mr. BICKWIT. Excuse me, I missed that.

Mr. GRONNINGSATER. We are primarily concerned with our own service territory and our own customers but we are also, in a sense, speaking of the problems of our industry as a whole.

Mr. BICKWIT. Well, the identical segment of the general public I am speaking of are those who do not want to see the Clean Air Act repealed.

Mr. GRONNINGSATER. Well, there is no definition of so many of these terms. I wouldn't have thought that that was a segment of the public. Because here you have, you are speaking of the Nation as a whole. And you have a person here who believes that so and so, and his next-door neighbor believes something else. I would not have thought that that was a segment, an identifiable segment of the general public.

Mr. Fant also, to give an illustration of selfish business interest, spoke of trying to make more profit or, well, one way or another trying to make more profit I think was the thrust of his example.

That is not what we are trying to do here. We are trying to be able to continue to furnish adequate and reliable service. One of the thrusts of our ads is to try to get the cost of coal down. Being a regulated company, if the cost of coal goes down, our rates go down.

Mr. BICKWIT. Is it your testimony that if the cost of coal goes down your rates go down, you make no increase in profit?

Mr. Dowd. That's correct because we have automatic fuel clauses in our tariffs. As the cost of coal goes up, these increases are automatically passed on to the public in the form of higher charges for electricity. Should those costs either go down or not go up as rapidly as they otherwise would as a result of increasing the available supply of coal, then this benefit would almost automatically and immediately inure to the benefit of the ratepayers without the power company itself making a profit.

Mr. BICKWIT. If you sell more electricity, do you make more profit?

Mr. Dowd. I think our rates are subject to regulation, and the answer to that is yes, we get an allowed return. So, the more electricity that is sold, the greater the net income of the company would be under normal circumstances.

Mr. BICKWIT. Wouldn't a lowering of rates bring about an increase in sales?

Mr. Dowd. Well, there is a big, big debate as to the elasticity of demand for electricity. We feel that there probably is some elasticity when you are in the area of pure wastage or when you are in an area where there are substitutes available. But even in the field of space heating we are in a query whether there are substitutes available with coal and natural gas being in such short supply. That is a very difficult question to answer. If the rates were to go down—really what we are talking about is that they would not go up as rapidly as they have been going up; I think as a practical matter that would be the net effect of this.

Mr. GRONNINGSATER. If I might add a word to that, we have testified before, years ago, in other connections, about elasticity of demand. But that was in a period, speaking about making more profit, of relatively stable costs. In fact, all we had was decreases.

We are not in a posture where everything has gone up so, capital costs, the cost of money, the cost of fuel, that may be suspended for awhile.

What we are really looking at is to be able to continue to supply our customers.

Mr. BICKWIT. Are you subscribing to Mr. Fant's analysis in saying that under that analysis your ads are deductible?

Mr. GRONNINGSATER. I am saying under his analysis, I am not saying he is 100 percent right in every respect, but this was his analysis.

Mr. BICKWIT. And under his analysis you believe those ads are deductible.

Mr. GRONNINGSATER. Yes. Of course, there is one ad where we suggested to the reader that if he agreed with us that he get in touch with his Congressman.

As Mr. Dowd testified, we do not propose to deduct the cost of that ad.

Mr. BICKWIT. Why is that? Isn't that motivated by the public interest also?

Mr. GRONNINGSATER. Well, simply because there is so much emphasis in the new regulations on urging the reader to get in touch with his Congressman.

As Mr. Dowd testified, tax was not an important consideration here at all anyhow. But with that emphasis in the regulations on contacting your legislator, we don't want to argue about that.

Mr. BICKWIT. Is it your view that the urging of the public to contact one's Congressman is what makes an ad nondeductible?

Mr. GRONNINGSATER. Well, what the word should be, I don't know. That is something else.

As you say, this whole program of ads, broadly speaking, has the same thrust. This was brought out in the May 6 testimony by Media Access Project. There is an emphasis on that in the new regulations that there was not in the old regulations.

Mr. BICKWIT. Do you feel it is controlling? I guess the better way to put the question is, are you saying that if you don't urge the public to contact a Congressman, that it is deductible?

Mr. GRONNINGSATER. Well, that would depend to some extent on the purpose of the advertising, perhaps. But in the context of our ads, I would say yes. It should be deductible.

Now, the matter of course is not free from doubt. There has been, as Mr. Dowd testified, there has been no case under the—involving

taxable years covered by the new legislation and regulations that really is closely enough in point to cite.

Mr. BICKWIT. Now, why isn't the *Consumer's Power* case covered by the new regulations?

Mr. GRONNINGSATER. It involved the years 1954 to 1957.

Mr. BICKWIT. That's right.

Mr. GRONNINGSATER. It came down in 1970, but involved the years 1954 to 1957.

Mr. BICKWIT. That's right, but which regulations did the court apply in that case?

Mr. GRONNINGSATER. Well, what the court in effect applied was perhaps the old regulations that were promulgated over and over again under the 1939 and earlier years, because the specific language in this field, well, for these years, were not promulgated until 1959.

Now, it is true, let me retract that, because by the time this case was decided those regulations had been promulgated. Even though they were promulgated after the end of the taxable years involved.

As Mr. Shulman emphasized, in the old regulations there was language about propaganda that had no tie-in to do anything else, no tie-in to legislate matters. And that is not so under the present regulations.

Mr. BICKWIT. In the regulations, as I read them, there is—that were applicable to the *Consumer's Power* case—a reference to promoting or defeating the legislation. And there is a definition of promoting or defeating legislation which as I read the regulations is the same definition as applicable to ads run today.

Do you disagree with that?

Mr. GRONNINGSATER. Which language is that?

Mr. BICKWIT. Well, I am looking at 1.162-20B, 1 and 2.

Mr. GRONNINGSATER. That is the present regulations, yes.

Mr. BICKWIT. That is the regulation that was applied in the *Consumer's Power* case.

Mr. GRONNINGSATER. Well, I don't know that I would agree with that. But this—

Mr. BICKWIT. I can read it.

Mr. GRONNINGSATER. Yes, I have it right in front of me.

Mr. BICKWIT. No, but I can read the reference of the court to that regulation which means to me that that was the regulation they applied.

Mr. GRONNINGSATER. OK, if this is B2, and regulation 20, it refers to influence, says, "Expenditures for the promotion or defeat of legislation included but shall not be limited to expenditures for the purpose of attempting to influence members of a legislative body directly, which is not involved here, or indirectly by urging or encouraging the public to contact such members for the purpose of proposing supporting or opposing legislation." There is part of your emphasis on contacting your legislator.

Mr. BICKWIT. Yes, but that obviously is a nonexclusive example. The words, "but shall not be limited to," are there as plain as can be.

Mr. GRONNINGSATER. Yes. But all the examples given in these regulations involve contacting your legislator.

Mr. BICKWIT. That's right, but every example is qualified by the words, "but shall not be limited to."

Mr. GRONNINGSATER. Well, reasonable men can differ.

Mr. BICKWIT. On the meaning of the words, "but shall not be limited to"?

Mr. GRONNINGSATER. No, not on that. On the thrust of the present regulations.

Mr. BICKWIT. Well, the only point that the staff would want to make is that the *Consumer's Power Company* case which applied this regulation, in the view of the staff, stands for the proposition that you needn't contact your legislator, you needn't urge that legislators be contacted in order for the ad to be declared nondeductible, in that under the facts of that case, many of the ads disallowed did not so urge the readers.

And I would agree with you that reasonable men might differ on the meaning of the statute and the regulations. But I have difficulty agreeing with your proposition that after the *Consumer's Power Company* case that reasonable men might differ on this.

Mr. GRONNINGSATER. Well, we are dealing now with a set of regulations which covers both years before 1963 and years after 1962. And when you look at years after 1962, I think you have to look at the regulations as a whole.

Obviously——

Mr. BICKWIT. Excuse me.

Mr. GRONNINGSATER. Those who testified in the May 6 hearing also felt in doubt about the situation. Most of the thrust of what they said was that rules should be changed, the Treasury should go back to its old regulations. And there might be some question whether they could under the new legislation. But they talked a great deal about what they thought the rules should be and not what they are.

Mr. BICKWIT. But in their testimony as to what they were, it was the conclusion of the witnesses that your ads should be classified as nondeductible. And as I understood their testimony they based it in large part on the *Consumer's Power* case which in the opinion of the staff does appear to be applicable to situations such as yours.

Mr. GRONNINGSATER. Well, I don't know how important this is. But one of the factors in the *Consumer's Power* case was that the court, and this was a sixth circuit opinion, was that the—that there had been a factfinding by the lower court and the circuit court felt that it didn't want to disturb, it indicated some doubt in the matter, but did not want to overrule the finder of the facts.

Mr. BICKWIT. That's right, but the finder of fact must have said, "You don't have to say, 'Write your Congressman,' in order for this ad to be declared nondeductible." And I have heard no cases on the other side for the proposition that you do have to say, "Write your Congressman," in order for an ad to be declared nondeductible.

Perhaps we ought to leave it at that.

Mr. GRONNINGSATER. OK.

Mr. BICKWIT. You mention that you have reconsidered the matter of the ads in question for FPC accounting purposes.

Can you tell us what factors account for your not having reconsidered their tax treatment, also?

Mr. Dowd. Well, I think—first let me explain the basic factor with respect to the accounting treatment that we propose to report to these expenditures. It is basically to avoid an element of controversy that we think is very peripheral. We don't want them to cloud the basic message that we are trying to convey here.

Now, it was our feeling that the language under the Internal Revenue Code and the applicable regulations was more liberal than the language in the FPC's, the Uniform System of Accounts. This also is a factor.

I might mention one other thing. As I say, neither accounting for these expenditures nor their deductibility for tax purposes was really a factor or a consideration in the program. If they are all charged below the line, if they are all nondeductible, we would have gone forward with this program in any event.

I might mention one factor. Maybe Mr. Gronningsater could clarify it a little bit. But as far as a nondeductibility for tax purposes for these ads is concerned, whether they are deductible or not, it is almost a moot question.

Last year the American Electric Power system did not pay Federal income taxes, and that particular situation is at least a possibility or a probability this year.

And Mr. Gronningsater could elaborate on the reasons for that.

But whether we deduct them or not is really small potatoes in the whole context here of what we are trying to accomplish.

Mr. BICKWIT. Did Mr. Gronningsater want to elaborate?

Mr. GRONNINGSATER. Only to the extent of emphasizing once again that tax deductibility was not a consideration in this program at all. The first time it was brought to my attention was after the—the first time I heard of it was after the May 6 hearing when we received a telephone call from a magazine about this matter. I then investigated around the company and found that this subject hadn't been raised with anybody concerning the taxes.

Mr. BICKWIT. I would like to close with one final observation. That is your view that the ad was in the public interest or conceived by the company running it to be in the public interest, then under all circumstances, unless you urge your Congressman, it will be deductible, it does strike the staff that there would be very little left of the tax law in question given that, as I read the companies in question, virtually all of them regard that their ads are in fact in the public interest.

Do you react at all to that? Do you have a reaction to that?

Mr. GRONNINGSATER. Yes, I would have a reaction. I have read these ads—I haven't read all the hundred ads mentioned in the testimony, but I have read some of them and personally have the feeling that those involved were trying to carry out their duties and responsibilities. Those, the various advertisers, were trying to lay facts before the public and trying to carry out their duties and responsibilities. And if Mr. Fant is correct, that the cost is deductible, if there isn't a conflict of interest between the advertiser and the public, why, then, and I don't say that he is necessarily, but if these ads are all in the interest of the public and Mr. Fant is correct, then the cost should be deductible.

Mr. BICKWIT. Again for the record, as I understood Mr. Fant, he referred to an identifiable segment of the public. He was not explicit on how you identify a segment of the public, but as I understood him, his view was that if there were a number of interests that reacted adversely to the advertisement, that there would be the needed conflict of interest.

Mr. GRONNINGSATER. Well, I believe—I would suppose Mr. Fant got into that in connection with the statutory language, any attempt to influence the general public or segments thereof.

Now, I don't believe there is any definition of segments thereof. I don't recall Mr. Fant——

Mr. BICKWIT. There is no definition of selfish interest, et cetera.

Mr. GRONNINGSATER. Well, you get into a question of fact as you do on so many tax things.

Mr. BICKWIT. That is true. The one case we have that resolves those facts based on the regulations applicable to your situation seems in my view to have been resolved in contrary to your interest.

Thank you, very much.

Mr. DOWN. Mr. Bickwit, I would only point out one further thing. That is as to 11 of our ads they made no reference to legislation. Not only did they not ask the public to take any specific action, but they made no reference whatsoever to legislation. And our position with respect to those ads is that they are clearly deductible for action purposes.

The area that is muddy in our view is the one where we do make reference to specific legislation, but we do not ask the public to take any action whatsoever.

We feel there is a difference of opinion as to that one under the regulations and under the law. You may disagree, and Mr. Fant may disagree. And the IRS may very well disagree, but that remains to be seen if the issue is actually put to them.

Mr. BICKWIT. And I should add that this disagreement comes from someone who is not a tax attorney and has had very little experience with the tax court.

Senator HART. How or under what procedures does the IRS undertake to audit an issue such as this? Is there any, perhaps I should know, is there some established method?

Mr. GRONNINGSATER. This is true of most large corporations; we are under continual audit, in effect. And the audit is very thorough, and well, let me say that I am in the legal department of our company. We have a separate tax department. And the audit is carried on with the tax department and the head of the tax department. But I have spoken to him about this, and he told me that our advertising all the time, apart from this new program, is very carefully scrutinized.

Senator HART. Scrutinized by the tax department of the company——

Mr. GRONNINGSATER. No, scrutinized by the Internal Revenue Service on audit. In the audit of any one group of years, taxable years, it takes years, it is a very thorough, lengthy audit.

Senator HART. Gentlemen, thank you very much.

Mr. DOWN. Thank you, Senator.

[The exhibit follows:]

EXHIBIT A

DEDUCTIBILITY OF ADVERTISING EXPENSES FOR FEDERAL INCOME TAX PURPOSES

Whether the cost of non-product advertisements is deductible for federal income tax purposes depends upon the content of the particular ad. This is implicit in much of the testimony at the May 6, 1974 hearing before the Subcommittee on the Environment of the Senate Commerce Committee.

Prior to 1962 there was no legislation on the subject. All of the court decisions on the point cited at the May 6 hearing dealt with taxable years governed by the Internal Revenue Code of 1939, and relied on broadly worded regulations. Similar language of broad scope was contained in the original regulations under the Internal Revenue Code of 1954.

Congress legislated on this matter for the first time in 1962. The Revenue Act of 1962 added Section 162(e) to the Code, applicable to taxable years beginning after December 31, 1962.

The 1962 provision was liberalizing legislation. Paragraph (1) of Section 162(e) permits the deduction as ordinary and necessary business expenses of, among other expenditures, costs incurred in connection with legislative appearances, expenses which previously were nondeductible.

Paragraph (2) of Section 162(e) provides that paragraph (1) "*shall not be construed as allowing* the deduction of any amount paid or incurred * * * in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums" (emphasis supplied). It may be of some significance that paragraph (2) does *not* say in so many words that the cost of attempting to influence the public with respect to legislative matters is not deductible. Sections of the Code which disallow deductions typically state explicitly that "no deduction shall be allowed" for certain amounts or expenses; see, for example, Sections 261 through 279, "Items Not Deductible".

In 1965 the Treasury Department adopted regulations under new Section 162(e). These new regulations under the liberalizing statute do not go so far in the direction of denying deductibility as did the old regulations. In his May 6 testimony Mr. Harvey J. Shulman of Media Access Project, after proposing that there be changes in the present statutory and administrative provisions to narrow the field of deductibility, stated (page 48 of the transcript) :

"As I have previously indicated, pre-1965 IRS regulations appear to have taken a broader view in favor of non-deductibility. Specifically, expenses associated with 'the exploitation of propaganda' were not to be deductible. * * *"

The regulation under Section 162(e) of the Code is Reg. § 1.162-20. Paragraph (c) of that regulation is captioned "Taxable years beginning after December 31, 1962". The pertinent part of paragraph (c) (1) is as follows :

"* * * All other expenditures for lobbying purposes, for the promotion or defeat of legislation (see paragraph (b) (2) of this section), for political campaign purposes * * * or for carrying on propaganda (including advertising) relating to any of the foregoing purposes are not deductible from gross income for such taxable years. * * *" (Emphasis supplied)

Paragraph (d) (2), which is referred to in paragraph (c) (1), reads as follows :

"(2) *Expenditures for promotion or defeat of legislation.* For purposes of this paragraph, expenditures for the promotion or the defeat of legislation include, but shall not be limited to, expenditures for the purpose of attempting to—

(i) Influence members of a legislative body directly, or indirectly by urging or encouraging the public to contact such members for the purpose of proposing, supporting, or opposing legislation, or

(ii) Influence the public to approve or reject a measure in a referendum, initiative, vote on a constitutional amendment, or similar procedure."

The only other language in the regulations dealing with Section 162(e) (2) of the Code is paragraph (c) (4). It reads as follows :

"(4) *Limitations.* No deduction shall be allowed under section 162(a) or any amount paid or incurred (whether by way of contribution, gift, or otherwise) in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums. For example, no deduction shall be allowed for any expenses incurred in connection with 'grass-root' campaigns or any other attempts to urge or encourage the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation." (Emphasis supplied)

We are not here concerned, as was the Supreme Court in the *Cammarano* case cited to this Subcommittee in the May 6 testimony, with a matter on which the general public is to vote.

There has been no court decision under the liberalizing 1962 legislation which is helpful in determining the deductibility of the cost of advertisements such as those which have been the subject of these hearings. Our guidelines are therefore limited to the language of the statute and the new regulation thereunder.

This regulation, in denying deductibility in some instances, places very considerable emphasis in paragraphs (b) (2) (i) and (c) (4) on urging and encouraging the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. The regulation, in paragraph (a) (2), allows deductions for "expenditures for advertising which presents views on economic, financial, social, or other subjects of a general nature, but

which does not involve any of the activities specified in paragraph (b) or (c) of this section for which a deduction is not allowable".

American Electric Power System ads fall into three categories:

1. Some of the ads inform the public on certain problems connected with the energy shortage and are concerned with assuring an adequate and reliable supply of electricity. Companies which are subject to regulation are not permitted to cease rendering service, or to limit their services, unless permitted by the regulatory agency or by legislation. Specifically, electric utilities have the duty and responsibility of providing reliable and adequate electric service at reasonable cost. We believe it is clear that these ads, which neither ask the reader to contact a legislator nor make any specific reference to legislation, are deductible.

2. Some of the ads, in addition to making certain other points, state that the Clean Air Act should be amended if the American Electric Power System and the industry as a whole are to be able to furnish the adequate and reliable service which it is their duty to provide. These ads pursue what we view as an educational program to that end. The readers are *not* urged to contact their legislators, or to take any kind of action at all. The ads merely lay the facts before them. We believe that under the 1962 legislation and the new regulations, undeniably more liberal than the old regulations, the costs of these ads are deductible.

3. One ad we have published, urging the necessity to burn coal (of which we have ample reserves) instead of oil or gas (which are in short supply), requests the reader who agrees to send the ad to his Congressman. Even though no legislation of any kind is mentioned, we do not intend to claim a tax deduction for the cost of this ad.

In summary, we believe that the costs of all the ads we have published, with the possible exception of the ad referred to in 3 above, are deductible as ordinary and necessary business expenses.

July 18, 1974.

Senator HART. Next is Mr. E. F. Loveland, vice president of Shell Oil Co. Mr. Loveland.

STATEMENT OF E. F. LOVELAND, VICE PRESIDENT, MARKETING— COMMERCIAL SALES, SHELL OIL CO.

Mr. LOVELAND. Senator, thank you very much. My name is Gene Loveland, vice president of marketing—commercial sales.

I appreciate very much the opportunity to be here on behalf of my company to express our views on this topic.

We have already outlined in written communications to the subcommittee chairman the position Shell intends to take regarding the tax status of the two 1974 advertisements which are questioned in your study. Rather than repeat those statements, which explain why we consider the advertisements to be tax deductible, I wish to comment today on what Shell believes is really at stake in any investigation of this subject.

First, we recognize that the current regulations take the position that no advertising is tax deductible if it attempts to influence the public with respect to legislation.

On one point, we agree with those who testified earlier before this subcommittee. We, too, believe that generally there has been an imbalance in the news and information available to the American public in the mass media today.

But the imbalance tilted not in favor of business, but rather against it.

It is indeed a sad state of affairs when business finds it necessary to resort to advertising to clarify important issues affecting its activities. Advertising is one of the least effective ways of doing this particular job.

Comments printed in editorial columns and aired on daily news programs are far more effective. Lacking ready access to these high-impact media, we chose to publish the two advertisements in question simply because our critics had been eminently successful in using both the print and electronic media to present their views of our profits to the public. Our advertisements thus were essentially a defensive move designed only to properly balance the perspective on the subject. And their exposure, when compared with the printing ink and air time received by our critics, amounted to a bb shot in response to a salvo.

That situation was not unique.

Even today, if both Ralph Nader and a businessman were to hold press conferences in Washington on the same subject, whose comments would predominate in the pages of tomorrow's newspapers and in tonight's newscasts? Critics of business, such as Mr. Nader, have little trouble in getting their views before the public. They don't have to advertise because their views are publicized free.

The businessman would have trouble even getting a reporter to cover his press conference.

We do not question Mr. Nader's right to speak out or the press' right to cover and publish his views. We are only saying that it has been difficult to get all the relevant facts about business published today.

Also, let me make it clear that I am not singling out Mr. Nader. However, his statements are representative of the criticism leveled at business these days. I have brought along a few articles clipped from our daily newspapers as examples of what I mean. In the interest of time, I shall read only a few of the headlines. They represent the gist of the news that was spread across America in January, when our ads were published.

"Nader charges energy scare designed to double oil prices."

"Aspin claims oil companies gouging public."

"Senator claims oil shortage put-up job."

"Jackson says oil firms irk public with evasions."

Often, antibusiness, antiprofit system messages are run on the air free of charge. With your indulgence and permission, I would like to play a tape recording of such a message that was sent to over 400 radio stations across the Nation by a group called Public Interest Communications.

Senator HART. Yes, do.

Mr. LOVELAND. If this won't come through, I will try to read it. [The taped material played is as follows:]

HOST. Welcome to Highway Robbery. The game where giants of industry see just how much they can get away with.

ANNOUNCER. Thanks, Bob. Our first contestant today is Mr. Robert Baron, President of the Windfall Oil Company.

BARON. Howdy.

ANNOUNCER. On our last show Mr. Baron got away with the Alaska Pipeline, the oil depletion allowance, numerous anti-trust exemptions, astronomical price increases and record profits.

HOST. Well, that's quite a haul, Bob! Well, Mr. Baron, what would you like to get away with today?

BARON. Total control of the world's resources, Bob.

HOST. Total control of the world's resources! How about that! And just how do you intend to get away with that, Mr. Baron?

BARON. Well, Bob, I thought I'd sorta stop pumping my old wells and make the public pay to get me a whole bunch of new ones. I'll just tell 'em no money, no oil, know what I mean?

HOST. Oh, ho, sure do, Mr. Baron. Well, Bob, he wants to control the world's resources.

ANNOUNCER. That's right, Bob. Let's see if our audience will let him get away with Highway Robbery!

Senator HART. That is tough.

Mr. LOVELAND. I thank you for your indulgence, but I just wanted you to know how someone like us feels when something like this goes out across the Nation.

Senator HART. Out of curiosity, do you have any idea how many stations picked that up?

Mr. LOVELAND. Our first alert on this was our own employees who called in from various parts of the Nation. And we do have an organization that does media research, a California-based audio-video reporting service, who told us it did go to 400 stations. How many played that, I frankly don't know. But it got pretty good coverage because our people were a little disturbed about it.

This message was not only aired free of charge, but also was funded by contributions which then could be deducted from income taxes since Public Interest Communications is a nonprofit organization. Thus, this message was free of any tax charges.

Is it any wonder that in such circumstances business has turned to advertising in an attempt to tell its story? At times, it seems to be the only way a business has to express its point of view on subjects important to its future.

The American people have nothing to fear from this kind of advertising. In fact, they stand to gain by it. The average citizen is sensible enough to know when he is being sold a bill of goods. But this holds true only if he has the opportunity to consider all sides of the important issues of the day.

In our view, our laws should encourage the free exchange of ideas. Our concern should be not how to further limit the access of business or anyone else to the mass media but rather how to make the mass media more available for the free exchange of information and ideas so vital to the functioning of a democracy.

Why should the people who oppose the ideas of business have the opportunity to express their views free, while more often than not, business must pay for the same right? If the tax deduction for institutional or goodwill advertising is denied to energy-related companies, would we not then be forced to pay nearly a double penalty for the right to free speech and the use of a free press?

One of the issues that precipitated the American Revolution was the Stamp Act. It would have greatly increased the cost of newsprint in the colonies and thereby made the cost of expressing ideas almost prohibitive. The issue facing us today is little different. We should not levy an economic penalty on the business community for expressing its views.

It seems to us that opponents of business are now asking you to penalize business for expressing its views or else to find some way of limiting what it can say in the mass media.

Here, it is appropriate to express another concern. Trying to define what is propaganda and what isn't, what should be said and what should not be permitted, is a difficult matter fraught with risk.

You are being asked to consider ways to limit what business can say in tax deductible advertising. This is the same old problem censors face everywhere: Where do you draw the line? Who will be affected by today's decisions, tomorrow? How do you define what is proper and what is not?

In our textbooks, the only historical guide that had any merit was the prohibition on obscenity, and today even obscenity is proving difficult to define.

In closing let me say that recently, we have been more successful in getting our views across in the mass media—without resorting to the kind of advertising being studied by this subcommittee. The media are being more evenhanded as they gain insight into the complexities of the energy problem.

We do hope, however, that no one has been lulled into complacency regarding the energy problem confronting this Nation. It is a serious problem and one that will be with us for some years to come. Thus, it is conceivable that from time to time we at Shell may again find it necessary to advertise to make the facts of the situation known to the public. Although we do not believe that advertising is the best way of getting our views on vital issues across to the public, we would not hesitate to use it again if there were no other way to do the job.

Shell endorses the idea of an open society in which the ideas of all people may be freely expressed, in which the public has access to the information and facts it needs to have in a democratic society. Only in this way is there any hope that balanced, sensible views will ultimately prevail.

I thank you.

Senator HART. You have heard me say earlier today, one part of the problem, and understandably it is not the one which you face, is that this is an emotionally loaded matter, the impoverished good idea. What can we do? Though the impression may not be very strong, I recognize the desirability of permitting the strongest and the most powerful among us—corporate or individuals—freedom to effectively present their ideas. But how can we insure an effective presentation by the least powerful of their ideas, because the balance sheet doesn't determine who's got the better idea at all.

Mr. LOVELAND. Well, I wonder, Senator, if that is in fact a need. In other words, you have mentioned the impoverished. We are talking here about a climate of antibusiness that is using sensationalism to bang away at them. And I don't know of any media or any newspaper who would take that tack relative to the impoverished. So I am not sure that we can say that this situation does occur or would occur. If they have a particular message and it is of interest, I think we can assume that the media in this case would pick it up, because this is the nature of our country, to play up the little fellow, to—

Senator HART. I think that's an attitude those of us who are more comfortably situated generally accept as valid. But if we were uncomfortably situated, I am sure we could cite to this committee, and Shell Oil, a dozen groups, welfare mothers. Now recently they managed to get a point of view across. But that is typical of a group. I am not sure that given the limitations of time on television and the way you have to put a newspaper together, that the advantage that comes from wealth is not still significant in your ability to get ideas out.

Mr. LOVELAND. I think we have a unique situation here. We had a particular moment in history where we have just waves of this sort of a situation focusing in. And we attempted to push those back and even the waters.

Senator HART. I agree that the roof seemed to fall in on you at that particular point in history.

Mr. LOVELAND. Yes. I think as we had said earlier, we have got to open this up. I think you have recognized today that your committee is getting broader in this activity. And I think somewhere along the lines we have to address ourselves to the media. Because here in our estimation was a segment of our society who neglected their responsibility and resorted to sensationalism which had to be counteracted.

Now maybe we should ask them, as I have many, many times, going back to where I worked with young people, I used to wonder why it was that the Eagle Scout and some of the other do-gooders and scholarship boys hit the last page when the murderers and rapists were on the front page. And I asked that, why are these teenagers here? And usually the answer is well, it sells papers, it creates circulation, it is a better Nielsen rating.

I think these are the things we have to say, that they have a responsibility to present the facts and they have a total responsibility to all people. I think this is the area that we have to open up.

Senator HART. Well, narrowing it a little now, in your advertising program, are you familiar with how Shell determines in the case of a particular ad whether it is or isn't deductible?

Mr. LOVELAND. Well, in our advertising program, we have had two forms of advertising. We have our product advertising, mainly out of our marketing department, and we have had our institutional out of our public affairs area. We have never considered our type of institutional advertising in a tax situation or a tax problem. We do not have, as in the case of Mobil, a long-term dedicated type of message that they are on. Ours was an emergency situation, at the time we ran four ads. We felt that these were public education ads and what they should know. We talked about price and how the Cost of Living Council established the price and why they were paying that price at the service station. We talked about the allocation program. There was tremendous confusion among people and all classes of customers on how that allocation program sorted out and who had priorities and who didn't, and so forth. We ran an ad which graphically described that. Then we ran the ad talking about our profits, and then—which is one of the ads in question. And we ran another one depicting our results and what those results meant. What they meant in cash generation, the need for cash generation, how if this world was going to continue to enjoy the measures of its energy and so forth, that cash generation was a must.

And it didn't occur to us that we were involved in any legislation or lobbying in any way. But we felt that because the media had neglected their particular responsibility, we had to tell the public where this oil was, what it was going to take to get this oil, and what it would mean to them in the way of conservation and other items. It is a public service.

Senator HART. Since then, have you taken a reading on the deductibility or nondeductibility of any of those ads?

Mr. LOVELAND. No; we haven't. Well, I say we haven't with any taxing body. Our own tax people are quite firm, as I have indicated in our letter, quite firm on their position. And as far as a true reading, of course, that will not occur until these are filed coming into next year.

Mr. BICKWIT. On the tape recording that you played, you say that was sent to over 400 radio stations. Do you by any chance know how many of those stations actually played the tape on the air free of charge?

Mr. LOVELAND. No; I don't know whether we could find out. We employed Audio-Video Reporting Services through a Mr. Erickson of Monte Rio, Calif., to tell us how many of these were sent out. And this is what he told us.

Now whether they have a reading, I can try to find out and report to you, whether they have a reading on actual airing of that.

Mr. BICKWIT. It would be useful for the record.

Mr. LOVELAND. We will send you that if we have it.

[The following information was subsequently received for the record:]

SHELL OIL Co.,
Washington, D.C., August 19, 1974.

HON. PHILIP A. HART,
*Chairman, Subcommittee on the Environment, Senate Commerce Committee,
Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR HART: The following response has been provided to me by Shell's Head Office in Houston in reply to your inquiry of July 18, 1974, at the Committee on Commerce, Subcommittee on the Environment, hearings on Corporate Energy and Environmental Advertising.

We refer to the Transcript of Proceedings of July 18, 1974, in which Mr. Bickwit of your staff requested available information on the actual airing of the "Highway Robber" radio tape. We can confirm at least that the following stations aired this tape:

KSFO—San Francisco, Calif.

KFRC—San Francisco, Calif.

WABB—Mobile, Ala.

KPFT—Houston, Tex.

Our own employees reported the above stations to us and, undoubtedly, other stations used the tape, but we have no way of knowing this.

Sincerely,

J. CARTER PERKINS,
Vice President.

Mr. BICKWIT. This is a question that you may have some difficulty with, but I feel it is appropriate to ask. In your view, would a company run ads like the ones in question, even if in your view they were nondeductible?

Mr. LOVELAND. I think they would. I don't think that was the question. The point was, here was a void, and that void had to be filled. If we have to pay for that expense, it would be worth the money. We think it is a matter of principle and not a matter of dollars.

Mr. BICKWIT. In the advertisement entitled, "How in all conscience can anyone call these excess profits?" is it your intent in that ad to influence the public?

Mr. LOVELAND. Well, maybe we have a matter of semantics. You are talking about influence and we are talking about education. We are talking about bringing to the public the facts, and the facts are that this is our profit picture, this is how we attained it and this is why we need it.

Mr. BICKWIT. Do you think influence is an improper characterization?

Mr. LOVELAND. Well, influencing legislation because we were not involved in legislation, I would say influence might be stronger than we felt. We felt it is educational. I think the end of our ad says all we ask is that the Government and the public approach the subject with objectivity and a minimum preconceived—of preconceived notions.

After all, we have basically the same ends in mind, that is, providing for the needs of the American consumer as well and as fully as possible. And these are the educational facts to back that up.

Mr. BICKWIT. Well, I wouldn't go on in semantics except that it is relevant to the tax matter. But when you have got a campaign for an election, you have got two people running against each other and some people support one guy and some people support the other guy. If you go out and give to the public facts with respect to why a particular one of those is better, it strikes me that education is perhaps not nearly as good a characterization of what you are doing as influence.

Mr. LOVELAND. But you are saying influence. And I would have to say influence what or for what reason? Ours was not a matter of influence. We found ourselves in a position in an energy crisis with information about the energy crisis antioil up here and facts about it down [indicating]. So I am saying we needed to educate the people and bring the true facts to them and bring that up here. Now if we go beyond this point and we are trying to peddle some fish, for a particular situation or a particular bill, then we are influencing. But when you bring the people up to a knowledgeable level of understanding of the oil business, which is as I must say, a most difficult job, then to me that is education.

Mr. BICKWIT. So it is the reference to legislation which in your view decides the question of whether there is—

Mr. LOVELAND. Reference to education and influence. I can't understand what we are trying to influence. We are not trying to influence anything, we are trying to educate the people in the very facts of the case. And the facts are, this is the money we made. This is the money that we would have made had there not been inflation. This is the need. And this is what is going to bring you more oil.

Mr. BICKWIT. The problem is that those who perceive those facts entirely different from you—and there are many that do—have difficulty characterizing your role as that of an educator; just as that guy who wants to vote for President Nixon has difficulty conceiving that the guy who is out campaigning for McGovern is educating.

Mr. LOVELAND. I am sure we are equally adamant in our particular positions and probably another forum will resolve it.

Mr. BICKWIT. Again, as was pointed out with the last witness, if your understanding of what is educational, as opposed to influential, were accepted, it is very difficult to see what remains of the law which says that you may not deduct when you are influencing the public with respect to legislation.

Given that, any one who confronted the question of whether he was so doing could, under the way you define the term education, resolve it in favor of the fact that he was educating rather than influencing.

Mr. LOVELAND. Well, I have to start with a point that it would appear that certainly the media had an almost zero knowledge of the oil industry. If they didn't have a zero knowledge, then they didn't

report it very well. So I start from that point that I have an uneducated public and I have an uneducated media, and therefore, I have to put the facts before them. They prefer not to put the facts there, so we put the facts there. Those are facts. Now, I don't consider them influence.

Mr. BICKWIT. You don't consider that educating the public with respect to the nondesirability of certain legislation is in any way trying to influence the public with respect to that legislation?

Mr. LOVELAND. I am talking about these two ads and I am talking about the situation. And I don't know about the noninfluence of legislation. I am not aware of any legislation.

Mr. BICKWIT. There was legislation referred to in the excess profits ad.

Mr. LOVELAND. Well, that is only to establish the entire ad in positioning, and let them know in total what is going on and is, I feel—comes under the category of facts.

Mr. BICKWIT. Again, if we view it that way, Congress may well have legislated a nonlaw.

Thank you very much.

Mr. LOVELAND. Thank you.

Senator HART. The exchange was very interesting. I don't want to acknowledge that Congress has legislated a nonlaw. But I do acknowledge that education by itself, from its Latin derivation suggests influence.

Mr. LOVELAND. Once the man puts the education into practice.

Senator HART. More influence than it is education. As far as the semantics go, I think we ought to acknowledge that the root derivation of the word education is really influence, to lead.

Mr. LOVELAND. Well, I—

Senator HART. Yet I fall back, having said that, that there are identifiable situations where it is more to influence than to inform.

Mr. LOVELAND. I just have to say that we had a bad situation of ignorance prevailing in this country relative to the oil industry. And we felt facts were necessary because one segment did not give them in sufficient quantity to satisfy, let's say, the education of these people. And, therefore, we attempted to fill that void and lay out the facts.

Senator HART. Thank you very much.

Mr. LOVELAND. Thank you, Senator.

[The articles referred to follow:]

[Daily Times News, Mt. Pleasant, Jan. 30, 1974]

NADER CHARGES ENERGY SCARE DESIGNED TO DOUBLE OIL PRICES

(By Dick Westlund, News Editor)

The energy crisis is a fabrication of the oil industry, created to double the price of petroleum products, according to consumer advocate Ralph Nader.

Speaking before 8,000 people at Rose Center Arena last night, Nader indicted the federal government and energy czar William Simon for pursuing policies harmful to the public interest.

"The data that have come out in recent weeks show there are adequate fuel supplies," charged Nader. "The question is if they are being allocated fairly."

He also said that the major oil companies are driving out independent retail distributors, pressuring the government to remove pollution controls and grant tax incentives and moving in on oil lands owned by the United States.

"How could they pull this off?" he asked. "They are exploiting a massive gap in the citizenship."

To stop this trend, Nader applauded the work of consumer groups such as the Public Interest Research Group in Michigan (PIRGIM). He said that the way to regain control over business conglomerates is through citizen action, not bureaucratic regulation.

Nader received half a dozen bursts of applause for his attacks on Simon and major oil companies.

"Washington plays Charlie McCarthy to the oil companies," he said.

Citing Atomic Energy reports on nuclear power, Nader said that it would be "technologically suicidal" to rely on nuclear power as a prime source of energy, as suggested by President Nixon.

"They are fragile nuclear baskets that could bring catastrophic risks to this and future generations," he emphasized in a press conference before the speech.

Although the danger of an explosion is small, he said, the danger of a breakdown in the cooling system, with resulting melting of the nuclear core, could cause release of radioactive fallout throughout an area the size of Pennsylvania.

"Consumers has had serious problems in design and operating deficiencies (in Michigan)," he charged.

Nader said that the public interest research groups and groups of his student "raiders" would be focusing on nuclear plants.

"We have all got to face up to the nuclear plant situation" he stated. "Do we want to live next to these kinds of plants?"

What is the cure for the energy shortage?

First, eliminate the 30 to 40 percent of wasted energy in our society. He said most industrial and commercial plants can and are cutting consumption by 15 to 25 percent just by applying measures of thrift.

In the long run, Nader sees solar energy as being the chief source of electrical energy.

"Why not use the sun? Farmers use it all the time," he commented.

Nader stressed that solar energy programs have not been developed because it is provided free. He said that the U.S. government has spent \$20 million on solar energy research, compared to \$80 billion for the moon program.

"One of the greatest ironies of modern society is that we have put on the shelf terrific ideas for quick, easy energy (from the sun)," Nader added.

Appearing angry at government actions in favor of the oil industry, Nader called for support of a bill to create a federal energy company, along the model of the Tennessee Valley Authority (TVA).

Such a company would provide independent information to the government, serve as a spur to competition with private companies and assure an emergency supply of petroleum.

Such a move would by-pass superficial questions of rationing or granting incentives to private companies, and establish a solid base for citizen involvement, according to Nader.

In this way the nation could be self-sufficient in energy by 1980.

Pollution controls and environmental safeguards are vital to energy development, stated Nader. Gas emission controls should be strengthened and production of Alaskan and Gulf of Mexico oil fields should be safeguarded.

"If little Honda can produce an engine that meets governmental standards, it seems difficult to imagine that a company like General Motors can't," he said in response to a question.

ASPIN CLAIMS OIL COMPANIES GOUGING PUBLIC

(Post Washington Bureau)

WASHINGTON—Rep. Les Aspin, D-Wis., charged Wednesday night that major oil companies are using their "monopoly power to gouge the consumer" on fuel oil and gasoline prices.

Aspin, one of Congress' strongest critics of the oil industry, asked the American Petroleum Institute (API) why fuel oil costs are zooming upward at a time when supplies are higher than last year and demand is relatively unchanged.

Fuel oil supplies, used to heat homes in the East and Midwest, are 28.5 per cent higher now than a year ago, the congressman claimed, and demand is up by only 5.4 per cent. Despite that, he said, API and Labor Department statistics show retail prices climbed by 30 per cent in the first 11 months of 1973.

"The oil companies are taking advantage of the psychology of a fear of shortage to price gouge," Aspin charged.

If petroleum was really a "free market" industry where prices were set by demand, he claimed, fuel oil prices should be going down—not up.

"The fact is," Aspin said, "that the oil industry is basically monopolistic and is holding back and hoarding products to increase profits."

He said gasoline supplies—based on API and Labor Department figures—are 2 per cent lower than a year ago, with demand up by 4 per cent.

Under those circumstances, a "slight" increase in pump prices would be understandable, Aspin said. But gasoline costs are "going through the ceiling," he complained, and are "totally unjustified."

[Lansing, Mich., State Journal, Jan. 25, 1974]

SENATOR CLAIMS OIL SHORTAGE PUT-UP JOB

(By Lee Hickling, Gannett News Service)

WASHINGTON.—Sen. Frank E. Moss thinks he has found out why there was a fuel shortage in the Plains states last winter. He says it was a put-up job.

The Utah Democrat also believes what he says he learned about last winter's shortages has taught him to ask the right questions to find out whether this winter's fuel shortage scare is real.

Moss says he and his staff found out that, while residents of his state and of the Northern Plains were shivering through on a short supply of fuel oil, there were millions of barrels of oil piling up in tanks along a pipeline from Texas to New York City.

Moss doesn't think it happened by mistake. He thinks it was deliberately done for two reasons—to get higher prices traditionally paid in the Middle Atlantic and Northeastern states, instead of the lower price-controlled rates in the Plains, and secondarily, to beef up the big oil companies' case for raising prices on their products as a means of preventing shortages.

What he found out, Moss feels, forms a nearly-perfect example of the way big, vertically-integrated oil companies misuse their power over petroleum from the wellhead to the consumer.

There is a major pipeline from the oil fields of Texas and Louisiana, past Atlanta, Washington, D.C. and Philadelphia, to New Jersey and New York City. It is owned by the Colonial Pipeline Co., which in turn is owned by 10 big oil companies—Texaco, Cities Service, Gulf, Standard Oil of Indiana (American), Mobil, BP, Continental, Phillips, Union and Atlantic-Richfield (Arco). It is a principal carrier of oil products from Gulf Coast refineries to the populous middle and upper East Coast.

In the winter of 1970-71, the refineries moved 79.7 million barrels of Number 2 heating oil through Colonial to market. In 1971-72, it was 83 million barrels, a 4 per cent increase, which was, Moss said, a reasonable increase to expect.

If there had been another 4 per cent increase in 1972-73, Colonial would have carried about 85.6 million barrels. Instead, it carried more than 98 million barrels—so much that nearly two million of it never got to market by April 30, 1973, but remained undelivered in tanks along the way.

There is another big pipeline connecting with the same Gulf Coast refineries that use Colonial, the Explorer Pipeline north past Tulsa and St. Louis to Chicago. At Tulsa, Explorer connects with the Williams Brothers pipeline, a major artery for oil products to the Upper Plains states.

Moss' staff is still trying to nail down the answer to one big question: were shipments over the Williams Brothers pipeline and other routes to Upper Plains fuel oil markets cut by about the amount pumped in excess to tanks along the Colonial pipe?

"We have heard from reliable industry sources," Moss said, "that deliveries from Explorer (to Williams Brothers at Tulsa) ran more than 20 per cent below what was forecast by Explorer shippers no more than 12 months earlier."

Moss's consumer subcommittee of the Senate Interior Committee subpoenaed figures.

Williams Brothers did not dare supply them without a subpoena, for fear of being sued by some of the major oil companies, a striking bit of evidence of the majors' hammerlock on the U.S. oil market. They are still trying to make sense out of the mass of data and see whether the reports Moss heard are confirmed.

More support for his claim that fuel was deliberately shunted from the Plains to the middle and north Atlantic states is found, Moss says, in the production records of refineries operated by a major oil company. Which one, he won't say,

because the information was given him with the understanding it was "proprietary."

According to Moss, this company has several refineries, a big one on the Gulf Coast and others serving the Plains states. But the latter plants, in the face of last winter's regional shortage, did not do what they had done in previous years—change over to produce larger quantities of fuel oil. In fact, they put 800,000 barrels of heating oil into storage tanks and never let it out to market.

Meanwhile the company's Gulf Coast plant increased its fuel output "enormously," Moss said, by 3 million barrels over the previous winter. The fuel was all shipped northeastward over the Colonial pipeline. "Even though the increase in Gulf Coast production would have been adequate to supply the Plains states," charges Moss, "very little, if any, of this fuel ever reached the Williams Brothers pipeline, and thus never reached the Plains states."

Unless there was a plan agreed on by the major oil companies to withhold oil from the Plains states. Moss wants to know, how could they all decide simultaneously to change their supply plans? If there were competition, one company would rush in to grab the market that another was neglecting, he says.

Moss admits that he doesn't have all the figures he needs to prove that the shortage was phony. Most refiners and pipeline companies refused to answer his subcommittee's questionnaires.

But he said the investigation is continuing, and meanwhile we have gained "a glimpse of the phenomenal manipulations which have taken place in the oil industry, manipulations due to the overwhelming power of vertical integration."

Another congressman who has been ahead of his colleagues in trying to understand the operations of the vast, intricate network of interrelations that exist between the major oil companies is Rep. George E. Brown, Jr., D-Calif. Brown took a step almost without precedent for a Congressman last year—he filed a brief with the Federal Power Commission against a request by two natural gas producers and a gas pipeline to raise the price of gas from 26 to 46 cents per thousand cubic feet.

Brown said the evidence is overwhelming that the price was not arrived at the negotiation in a competitive market, but agreed on by "two subsidiaries of the same corporate giant." This is the industry pattern, he said. To attempt to prove his point, he filed a brief that unraveled some of the tangle of relationships between one major firm, Texaco, and other oil and gas producers.

Texaco or its subsidiaries, Brown said, owns Louisiana oil leases jointly with Exxon, Amoco, Shell, Mobil, Atlantic-Richfield, Chevron, Getty and Union Oil. It has an interest in 55 offshore leases from the federal government, and 29 of them are jointly held with Amoco (Standard Oil) of Indiana.

Abroad, Texaco is one of the four big partners in the Arabian-American Oil Co., with Exxon, Chevron (Standard Oil of California) and Mobil. Texaco and Chevron jointly own Caltex, which produced \$2.3 billion worth of oil in 1971. Texaco is one of the major partners in Iranian Oil Participants, the "consortium" that controls oil from the rich fields in Iran. Others are Mobil, Exxon, Chevron, Gulf, BP, Shell, Atlantic, Signal and Getty.

Texaco and other major producers share ownership of many big interstate pipelines, Brown went on: Texaco has 22 percent of Badger Pipeline, 5 percent of Dixie, 34 percent of Laurel, 14 percent of Colonial, 27 percent of Wolverine, 9 percent of West Shore, 40 percent of Wyco, and 45 percent of Texas-New Mexico.

When it comes to oil and gas wells, in the Permian Basin of Texas, Texaco owns 42 jointly with Atlantic-Richfield, 23 with Cities Service, 19 with Continental, 25 with Getty, 23 with Gulf, 19 with Mobil, 18 with Shell, 22 with Phillips, 30 with Amoco, 22 with Exxon, 10 with Standard Oil of Ohio, 23 with Sun and 11 with Union Oil Co., according to Brown's research.

"It can be argued," the Californian conceded, "that there are good economic reasons for the close economic interrelationship of oil and gas producers. There is no question that substantial economic savings can be realized in joint ventures . . . The problem, however, is that these substantial joint interests create an atmosphere of close cooperation rather than competition. We have, in effect, created a cartel."

JACKSON SAYS OIL FIRMS IRK PUBLIC WITH EVASIONS

(By Jack Cleland, Chronicle Washington Bureau)

WASHINGTON.—The Senate permanent investigations subcommittee continued its interrogation of seven major oil company executives today in an attempt to find out if the fuel shortage is for real.

Subcommittee Chairman Henry Jackson, D-Wash., chided the officials Monday for their reluctance to disclose current figures on earnings and stocks of crude oil and refined petroleum products.

He said their less than responsive answers to the questions posed to them, explains the public's general skepticism that the energy crisis is really a contrivance to boost prices.

Jackson released a compilation of the companies' inventory stocks showing that they had an increase of 5.5 percent of crude and products on hand at year-end 1973.

The oil company witnesses took the general position that the 1973 figures do not reflect the tight world crude supply situation, aggravated by the Arab boycott.

Most of the officials were generally pessimistic about the crude supply situation, even if Arab oil is released, citing the growing world demand for petroleum products.

They warned against punitive legislation or taxes against the petroleum industry which would be counter productive to the national goal of making this nation self sufficient in energy.

In response to questions posed by Jackson, each of the officials denied his respective company had a shut-in crude oil capacity it was keeping off the market. They also denied allegations that their companies were keeping oil in tankers offshore waiting for prices to rise even higher.

Jackson singled out Exxon Senior Vice President Roy Baze for the company's refusal to furnish the subcommittee with information about service station closings.

Exxon contended, in response to a subcommittee questionnaire, that this information was proprietary. Jackson noted that the other six companies, Gulf, Mobil, Shell, Standard of California, Standard of Indiana, and Texaco, all answered this question.

Baze said Exxon had no objection to giving the subcommittee this information on a confidential basis but was concerned about discussing it in front of its competitors.

Jackson said Exxon's position was "incredible." "How can we get the facts on this energy crisis if you mark the information proprietary?" he asked Baze.

"I'm not trying to be unfair," Jackson said. "But this is what outrages the public."

Baze finally broke down and recited the figures sought by Jackson. He said of the 12,084 Exxon stations owned or leased by the company since Jan. 1, 1973, 1268 closed but not for a lack of gasoline.

The questioning dealt with oil company profits for 1973 which were generally higher than 1972, especially in the last quarter of last year.

Most of the oil company executives explained that 1972 was a poor year for earnings and comparing 1973 to 1972 did not give an accurate picture of profit trends.

Each executive denied his company was hoarding or stockpiling gasoline at abandoned stations.

They also denied having any knowledge of a black market in gasoline although Baze said that under a mandatory allocation program, like the one now in effect, the elements that breed a black market are there.

SENATOR SAYS OIL FIRMS KNEW CRISIS WAS COMING

SANTA FE, N.M. (A.P.)—U.S. Sen. Joseph M. Montoya, D-N.M., says major U.S. oil companies knew an energy crisis was coming in 1970, but took no real steps to protect the public.

In a speech prepared for a joint session of the New Mexico Legislature Thursday, Montoya said as a result "the nation was unprepared" for the October Arab oil embargo.

"In the three-year period the oil companies built no new U.S. refineries. They continued to plan on filling an ever-larger proportion of U.S. needs with foreign imports," Montoya said.

"One problem we all face is that most of the figures we must work with come from the oil industry itself—no one, either in the administration or Congress—can assure us about statistics," he said.

The senator said the United States imports a sixth of its oil now and by 1985 will import nearly half its needs.

Senator HART. Our next witness is Mr. Sam Black, Tax Analysts & Advocates.

STATEMENT OF SAMUEL BLACK, TAX ANALYSTS & ADVOCATES

Mr. BLACK. Good morning, Senator.

Senator HART. You may proceed.

Mr. BLACK. Thank you.

For the record, my name is Samuel H. Black. I am a staff attorney at the public interest law and research firm, Tax Analysts & Advocates.

Senator, I don't have a prepared statement. I have an outline, which I would like to insert into the record at the end of my testimony. I would like to speak only briefly, and I will then be pleased to respond to whatever questions the committee might have.

I appreciate the opportunity to be here, and appreciate the invitation extended by the committee staff. I am here in part as a neutral party, I think, neither representing a utility nor any of the public interest groups that are involved in the media or broadcasting field.

Senator HART. Where does your money come from?

Mr. BLACK. Tax Analysts, as we call it, is supported by the sale of publications. We have a weekly magazine. We sell other professional publications to tax professionals. We also have foundation grants and we have a national membership.

I want to make just a few points. I have read the transcript of the earlier hearing and heard, of course, the presentations here this morning.

I think that under the traditional way of looking at the corporation income tax or our income tax in general in this country, that it would be improper to characterize the deductible status of business advertising or business lobbying as a tax subsidy. Our corporation income tax is a net, not a gross, income tax. And corporations are permitted—as individuals are permitted—to deduct the costs of doing business as they compute taxable income. If lobbying is seen as a cost of doing business, as it is, for example, for the utility and oil company witnesses who were here this morning, the costs are simply deductible from their gross income. And the fact that it is deductible is not a tax subsidy.

Similarly, with respect to advertising: advertising a product is simply seen as a cost of doing business, and those costs are properly deductible from gross income to reach taxable income.

I would assert, Senator, that if lobbying and advertising are directly related to the generation of income, they should be deductible from gross income in order to reach taxable income, and the deductibility wouldn't be a subsidy. As you know, and as this hearing has pointed out very well—unprecedentedly well—the revenue code does disallow deductions for grassroots business lobbying, usually taking the form of advertising. I would conclude, then, under the traditional way of looking at our tax system, that this is a tax penalty for business lobbying.

Now, contrast that situation, which I view as involving a tax penalty, to the situation of public interest groups.

The charitable deduction and tax exemptions for charities are true tax subsidies. They have little to do with the computation of net income. Many charitable organizations are able to lobby and are able to advertise, and they do so as beneficiaries of tax subsidies, so I would

argue that overall, the Congress has chosen to subsidize the lobbying activities of charities more than it could be said that Congress may be subsidizing the lobbying activities of business.

I prepared for today a very small chart pointing up one aspect of this problem. The chart, which I would like to insert in the record at this point, if I may, shows charitable organizations, their lobbying activities, and their eligibility for deductible contributions.

[The chart follows:]

CHARITABLE ORGANIZATIONS, LOBBYING, AND DEDUCTIBLE CONTRIBUTIONS

Fraternal	Veterans	Large public charities, large religious denominations	Small public charities, public interest law firms	Social welfare organizations
May lobby with deductible donations.	May lobby with deductible donations.	May carry on sizable lobbying programs with deductible donations.	Eligible for deductible donations, but forbidden all but "insubstantial" lobbying.	May lobby, but not eligible for deductible donations.

All these charities are tax exempt. There are some charitable organizations eligible for deductible contributions which may lobby to an unlimited extent. These include fraternal and veterans' organizations.

Some large public charities and large religious denominations may carry on relatively sizable lobbying programs, including advertising programs, if they so wish, with deductible donations.

Small public charities, including public interest law firms and including by far most of the environmental groups are eligible for deductible donations, but are forbidden all but insubstantial lobbying. The effect of this restriction is greatly to impede, and almost prohibit, any kind of legislative activities on the part of the small public charities, environmental groups or public interest law firms.

Last, at the right side of the chart, is the category which the tax code refers to as "social welfare organizations." These groups may lobby, but they are not eligible for deductible donations.

I can give specific examples of how these various and capriciously varying, restrictions work.

The veterans' groups, for example, can lobby against amnesty with deductible money, but a small religious denomination such as, for example, the Quakers, are not able to lobby for amnesty with tax-deductible contributions. The Catholic Church can lobby against abortion with deductible funds, but a woman's rights group would not be able to lobby for abortion with deductible funds.

The Sierra Club is eligible to lobby, but isn't eligible to do so with deductible donations. The principal Sierra organization is not eligible at all for deductible donations, which, I think, was pointed out in the last hearing.

I would argue then that within the class of charitable organizations, the environmental groups and public interest law firms are severely discriminated against vis-a-vis these other kinds of charitable organizations.

Senator HART. This discrimination is the result of the Code itself?

Mr. BLACK. Yes, sir, it results entirely from the statutory framework and not at all from interpretation. Of court, the Code provisions embodied in regulations, but only flesh out the intent of the Congress.

These prohibitions, or their absence, are all contained in the revenue code.

I think that this problem of discrimination among various kinds of charities, and the other problem, the nondeductibility of business grassroots advertising, is a situation with constitutional overtones. I think that to penalize businesses' grassroots lobbying is an embodiment in the tax code of an economic penalty based solely on kind of speech or the forum which is being used for speech. I think that is constitutionally quite questionable. With respect to the situation that the public interest law firms, including the environmental law firms and most environmental groups, the fact that they cannot lobby with deductible funds, whereas other charitable groups can and do, is another situation with constitutional overtones.

I think there is an equal protection problem here, in that otherwise identical charitable organizations are discriminated against on the basis, if you will, of their first amendment activities. And, of course, not only is there a fifth amendment problem, but also a first amendment problem, since after all, what we are talking about here is speech.

I think also that this committee's hearings, especially the earlier session, brought out another constitutional problem which arises not only in section 162(e), but also in the sections which regulate the charities. The terms in the statute are very vague. I would argue, Senator, that the terms in sections of the code which regulate charities, such as references to propaganda, references to influencing legislation, and references to substantial or insubstantial quantities of lobbying, are incapable of the kind of precise definition that the Supreme Court requires when statutes attempt to regulate speech.

In the area of speech, since first amendment rights are so important, the Supreme Court has long held that statutes must be drawn with crystal clarity, if you will, because it is crucially important that the people who are going to exercise first amendment rights have clear notice as to what they may or may not do. And vagueness in statutes regulating first amendment activities serves to chill those activities.

I have no way of knowing down at Tax Analysts what "substantial" or "insubstantial" lobbying is. Years and years of court cases and administrative interpretation have shed no light on this term. In the case of a group as small as we are, in order to stay on the safe side of the Internal Revenue Service, we don't engage in any kind of lobbying activities except those expressly permitted by the revenue rulings, such as my coming here today by invitation. This problem of insubstantial versus substantial just doesn't worry very large organizations such as the Catholic church. The test doesn't apply at all to veterans and fraternal organizations.

I think, to an admittedly lesser extent, that the phrase "legislative matters and grassroots lobbying," et cetera, in the code and regulations doesn't lend itself to any kind of clear definition which satisfies the Supreme Court's tests. In the last hearing Mr. Fant suggested that the term "legislative matters" should refer to any subject capable of being studied by a legislature. Mr. Bickwit challenged him on that, and said that that seemed too broad. Both these gentlemen are experienced attorneys. Mr. Bickwit has plenty of experience in the Congress, and Mr. Fant is a tax attorney. It doesn't augur well for the

constitutionality of the statute that two such attorneys' interpretations could vary so much.

Any administrative prerogative can be taken back by the Congress if that prerogative is granted by a statute. So under Mr. Fant's definition, it might be argued that companies couldn't deduct certain kind of expenditures relative to lobbying in the administrative process because at any point next year or the following year, the Congress might decide that it delegated too much authority and was going to take it back, and that therefore the "administrative" matter is really a legislative matter.

I would have a terribly difficult time defining that term. And I think that is the kind of vagueness problem that the statute embodies.

The impetus that gave rise to these hearings, apparently, was that people among whom a principal concern was the protection of environmental quality observed that there were millions of dollars being paid for advertisements that had to do with legislation, whether they fell under the restriction or not. And it was very unclear as to whether deductions were being taken or not taken for those advertisements.

One of my purposes today is to show that within the class of charities, we have a similar problem with respect to organizations, tax benefits, tax deductions, eligibility for deductible donations, et cetera, all crucially tied up in important first amendment activities, including lobbying with respect to environmental legislation.

It seems to me that one option open to the Congress here, and I think the better option in terms of constitutional policy is not to make the nondeductions rules of section 162 more strict, or expanding the scope of activities which are nondeductible, but rather taking off these two burdens: the lesser burden on business advertising, and the overwhelming burden on legislative activities of charitable groups. The direction the Congress should take, in my opinion, Senator, is to remove these restrictions or these excises, if you will, rather than in attempting to regulate speech more severely or in expanding the scope of the regulations or the statute.

This direction, of taking these references to first amendment activities out of the tax code and out of the hands of the Internal Revenue Service, since the discrimination against charities is so much greater, is the answer, Senator, to the problem you raised—which is a very real problem—of how can the impoverished idea find a forum.

If this committee decides to try to act to solve these problems, that the direction it should take is in changing the tax code to allow charities to carry on reasonable amounts of legislative activities.

And that, of course, would include the environmental charities.

That concludes my remarks, Senator.

Senator HART. I like the way you have phrased your VI, VI point. When one class constitutional rights are burdened relative to another otherwise similar class, the solution lies in expanding the liberties of the burdened class—not in burdening the favored class.

That is a musically written sentence.

Mr. BLACK. Well, thank you.

I do think, though, that that is the way to resolve this conflict that you have articulated so well.

Senator HART. Yes.

Mr. BLACK. And that the relief should flow to precisely those environmental groups for which I know you have particular concern.

Mr. BICKWIT. Is it your view that the IRS should adopt a procedure whereby public interest groups could challenge IRS rulings which they feel grant illegal tax concessions to the taxpayers?

Mr. BLACK. That is really not up to the IRS. It is up to the courts because to allow that is to expand the rules of standing as enunciated by the Supreme Court.

We believe strongly that when the Treasury or the IRS illegally softens the tax treatment on a group of taxpayers, that the public is injured; that there is no question revenues are not collected which would otherwise be collected; that there is resulting economic damage to the public at large and also to individual taxpayers; and that members of the public injured in such a way should, of course, be allowed to sue in order to bring these questions before a court.

If that doesn't happen, there is simply no way for the courts to review this kind of illegal activity.

I would point out there are half a dozen recent decisions in the Federal Court of Appeals for the D.C. Circuit which go to illegal activity by the IRS or Treasury in failing to collect tax.

Mr. BICKWIT. How about at the administrative level? Do you feel the IRS procedures are presently adequate to allow citizens groups to express their views there?

Mr. BLACK. Referring specifically to the section 162(e) problem, the citizens can challenge an ad, for example, by reporting it through the informer channels. If they get a reward, they know that the corporation was trying to deduct something improperly, and they will know that the Revenue Service disallowed the deduction.

There may be no other way of knowing how the Service is enforcing the law against such business interests. At Tax Analysts, prior to bringing most of our suits, we have filed a petition with the Commissioner and explained the rationale for our position.

There have been several instances in which the Commissioner has said this is something we consider has merit, and we will study it and report the results to you.

However, I will point out that we haven't gotten any results yet from these petitions.

It may be that there is something more that needs to be available.

Mr. BICKWIT. As I understand your testimony, you are not opposed to using the tax code to foster certain policy objectives. Your problem, rather, is that the existing taxes which in some way penalize forms of speech are constitutionally questionable?

Mr. BLACK. Well, I agree much more with the latter half of your question than the former.

Mr. BICKWIT. That is my question. Do you agree with the former?

Mr. BLACK. Yes.

Mr. BICKWIT. I can't remember what the former was.

Do you think the tax code should be used for policy purposes?

Mr. BLACK. Yes, it is an instrument of Federal governmental policy just as the budget is. You could point out specific tax subsidies, and I might say this one, or that one, has been proven not to be cost effective. If a subsidy benefits a high income class much more than a lower income class, then I would say that raises serious questions about the particular subsidy, but not about the overall question.

Mr. BICKWIT. Now, if you subsidize the speech of one person or one party to a controversy, do you think you have got constitutional problems in that you haven't given the other side of the controversy similar subsidization?

Mr. BLACK. Yes.

Not only do I think there are constitutional problems with that, but I think that the present tax subsidies to fraternal and veterans' organizations and the large charities as opposed the lack of subsidies to the smaller organizations, is unconstitutional and Tax Analysts has filed a suit to test the constitutionality of just this problem.

And if the committee feels it appropriate, I can insert into the record the complaint in that suit which I have here.

Senator HART. Yes, let it be printed.

Mr. BLACK. It articulates the first and fifth amendment problems as we see them with the existing statutes as they apply to different kinds of charities.

Mr. BICKWIT. But in your view, if you extend that kind of subsidy to all public interest groups, then you don't have constitutional problems? And what does the industry say on the other side of the fence?

Mr. BLACK. Well, I don't think business has articulated a position on the bills to allow charities to do a little more lobbying.

There are such bills, and there were extensive hearings held in Ways and Means in 1972.

Mr. BICKWIT. We would be interested if for the record you might appraise industry's possible constitutional arguments with respect to—

Mr. BLACK. With respect to section 162(e)?

Mr. BICKWIT. No, with respect to the proposal you have made to give favorable treatment to all public interest organizations who speak out on a given matter.

Mr. BLACK. I will be glad to do that.

Mr. BICKWIT. If you could, it would be helpful. Perhaps I am being paranoid, but such arguments, I think, could be anticipated.

[The following information was subsequently received for the record:]

TAX ANALYSTS & ADVOCATES,
Washington, D.C., August 27, 1974.

Mr. LEONARD BICKWIT,
Senate Commerce Subcommittee on the Environment,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. BICKWIT: During the hearings on the legislative propaganda activities of energy and utility companies, you asked me if there was business opposition to recent proposals to liberalize the rules concerning the legislative activities of charities.

A preliminary analysis of the 1972 Ways and Means hearings on such a proposal, H.R. 13720, turns up no indication of business opposition.

The hearings contain several statements by representatives of charitable organizations to the effect that most charitable interests do not conflict with business.

A statement, by one member of Congress who is generally regarded as conservative, argues that foundation managers are people who have been successful in business; the spirit of this argument runs contrary to the thesis that charity and business lobbying would conflict.

A statement by the American Society of Association Executives, indicates no opposition to the bill, even though the organization's membership consists, in part, of business organization executives. The membership of the organization, however, also includes charitable association executives. The Society did suggest that a liberalization of the charity lobbying rules should be accompanied by a

liberalization of the grassroots lobbying provisions of Sec. 162(e) of the Internal Revenue Code.

Business interests would nevertheless have much at stake in a proposal to expand the effectiveness of public-interest groups in the tax, broadcasting, environment, safety, and consumer fields, to name only a few. You may find it useful, therefore, before you publish your hearings, to invite several corporations and trade associations to take a position on the recent action by the Ways and Means Committee, announced on August 1, 1974, in Release No. 20, to lobbying by charities. Alternatively, you might invite these parties to comment on a proposal to liberalize both the Sec. 501(c)(3) (Internal Revenue Code) and the Sec. 162(e) rules simultaneously.

Very truly yours,

SAMUEL H. BLACK.

Mr. BLACK. There wasn't any significant business response to the Ways and Means testimony invitations or to the hearings themselves, as far as I know.

Interestingly, the Treasury Department at the time took what this committee might see as an antibusiness position. They said they would support all charities being able to lobby, but only where there was a business interest already lobbying on the other side.

Then other public charities came forward and said—the example I have in mind is a large mental health charity. They said there isn't any business interest against mental health and yet we cannot lobby either under present law or under this Treasury—this limited Treasury approval of the concept that where there was lobbying on one side, charities should be allowed to lobby on the other.

So they forcefully made the argument, or at least the argument was forcefully made that charities should be allowed to lobby whether there was a business interest opposing them or not, whether it had already been articulated or not. The specter of business opposition to charities' lobbying is something I haven't yet seen.

Mr. BICKWIT. Well, if you conclude that under no circumstances would it be raised rationally, that would also be helpful.

Mr. BLACK. I would also point out there are private hospitals and hospitals run by fraternal orders or veterans' organizations, private veterans' organizations, and the fraternal hospitals and veterans' hospitals are allowed to lobby under present law. And I haven't seen any private hospitals complaining of that.

Mr. BICKWIT. Thank you, Mr. Black.

Senator HART. Thank you very much.

Mr. BLACK. Thank you, Senator, very much.

[The material referred to follows:]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 833-73

Tax Analysts and Advocates, 732 Seventeenth Street, N.W., Washington, D.C. 20006

Taxation With Representation, 2369 North Taylor Street, Arlington, Va. 22207

v.

George P. Shultz, Secretary of the Treasury, 15th Street at Pennsylvania Ave., N.W., Washington, D.C. 20220

Johnnie M. Walters, Commissioner of Internal Revenue, 1111 Constitution Avenue, N.W., Washington, D.C. 20224

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; THREE-JUDGE COURT REQUESTED

1. This is an action to:

a. Declare unconstitutional the restrictions on legislative activities contained in Sections 170, 501(c)(3), 2055, 2106, and 2522 of the Internal Revenue Code of 1954, as amended, "the Code", as violative of the First and Fifth Amendments to the Constitution of the United States, and

b. Enjoin defendants from continued enforcement of those restrictions and of all applicable regulations and rulings thereunder.

JURISDICTION

2. This Court has jurisdiction of this action under the following statutory provisions:

a. 5 U.S.C. Sections 701-706, because this action seeks to hold unlawful agency action found to be contrary to Constitutional right,

b. 28 U.S.C. Section 1331(a), because this action arises under the Constitution and laws of the United States and the matter in controversy exceeds the sum of value of \$10,000, exclusive of interest and costs;

c. 28 U.S.C. Section 1340, because this action arises under the acts of Congress providing for internal revenue; and

d. 28 U.S.C. Section 1361, because this action is in the nature of mandamus to compel an officer of an agency of the United States to perform a duty owed to the plaintiffs.

PLAINTIFFS

3. Plaintiff Tax Analysts and Advocates (Tax A/A) is incorporated under the District of Columbia Non-profit Corporation Act. Tax A/A's organizational purposes are (a) to improve public understanding of the federal tax system, and (b) to improve the administration of the tax laws by conducting a public interest tax law practice. (Affidavit attached)

4. Plaintiff Taxation with Representation (Tax/Rep) is incorporated under the District of Columbia Non-profit Corporation Act. Tax/Rep's organizational purpose is to educate Congress and the public regarding federal tax issues by presenting the testimony of tax professionals at legislative and administrative hearings on tax matters. Tax/Rep has approximately 850 members throughout the United States. (Affidavit attached)

5. The Internal Revenue Service (IRS) has ruled that plaintiff Tax A/A is eligible to receive contributions which are deductible to the donor under Section 170(c)(2) of the Code and that Tax A/A is exempt from federal income tax under the provisions of Section 501(c)(3) of the Code. The IRS has ruled that plaintiff Tax/Rep is *not* eligible to receive contributions which provide tax deductions to the donor, but that it is exempt from federal income tax under Section 501(c)(4) of the Code.

DEFENDANTS

6. Defendant George P. Shultz is Secretary of the Treasury of the United States and is charged by law with the administration of the Code; he discharges this responsibility both directly and by delegation to subordinates. He is sued in both his official and his individual capacity.

7. Defendant Johnnie M. Walters was, at the time the original complaint was filed, Commissioner of Internal Revenue, and, as the delegate of the Secretary of the Treasury, had overall responsibility for administration of the Code. He is sued in both his official and his individual capacity.

8. In administering the Code defendants have enforced the statutory provisions that are at issue in this action, and the regulations and rulings which interpret those statutory provisions. Those provisions are Constitutionally invalid, and defendants' application of those provisions to the detriment of the plaintiffs violates the Constitutional rights of the plaintiffs.

THE STATUTORY FRAMEWORK

9. Sections 170 (c)(2), 2055, 2106, and 2522 of the Code (hereinafter "the Code's charitable deduction provisions") provide for the eligibility of charitable and educational organizations to receive charitable contributions which are

deductible for tax purposes by the payor or donor. Section 501(c)(3) of the Code provides exemption from federal income tax for charitable and educational organizations. Each of these sections conditions its tax benefits on the requirements that "no substantial part" of the activities of these organizations consists of "carrying on propaganda, or otherwise attempting, to influence legislation". This condition will hereinafter be referred to as "the Code's restrictions on legislative activities".

10. Section 501(c)(4) of the Code provides exemption from federal income tax for organizations "operated exclusively for the promotion of the social welfare" and does not restrict their legislative activities. Yet 501(c)(4) organizations of the type exemplified by Tax/Rep are not eligible to receive contributions which provide tax deductions to the donor.

11. The Code grants the benefits of tax exemption and eligibility to receive contributions which provide tax deductions to the payors or donors, without imposing restrictions on legislative activities, to the following organizations:

a. Veterans organizations, contributions to which are deductible for the donor under conditions imposed by Sections 170, 2055, and 2522 of the Code, which sections impose no limits on the use of these contributions for legislative activities.

b. Fraternal beneficiary societies, contributions to which are deductible for the donor under the conditions imposed by Sections 170 and 2522 of the Code, which sections impose no limits on the use of these contributions for legislative activities.

c. Trade associations, chambers of commerce, and similar business associations, payments to which are deductible for the payor under the conditions imposed by Section 162 of the Code and which are free to carry on unlimited legislative activities (other than grassroots appeals to the general public) whenever legislation has a direct relationship to the payor's business interests, and

d. Labor and agricultural organizations, dues contributions to which are deductible for the payor under the conditions imposed by Section 162 of the Code and which are free to carry on unlimited amounts of legislative activities (other than grassroots appeals to the general public) whenever legislation has a direct relationship to the payor's business interests.

INJURIES SUFFERED BY THE PLAINTIFFS

12. Plaintiff Tax A/A desires to engage in substantial legislative activities in support of its charitable and educational purposes. In many cases, such activities are the only available means for pursuing these purposes effectively. However, plaintiff Tax A/A cannot engage in substantial legislative activities without jeopardizing its tax benefits under the Code's charitable deduction and tax exemption provisions.

13. Because the Code's restrictions on legislative activity are inherently vague, plaintiff Tax A/A is unable to establish precisely which, or to what extent, activities are prohibited by those restrictions. As a consequence, plaintiff is forced, in practice, to adopt a very broad reading of the restrictions on legislative activities and to eschew a variety of activities that may not, in fact, be proscribed.

14. Plaintiff Tax A/A is severely injured by the Code's restrictions on legislative activities in carrying out its charitable and educational purposes because many other organizations, such as those described in paragraph 11, *supra*, which are in all pertinent respects similar to plaintiff, but which express viewpoints opposed by plaintiff, are free to engage in legislative activities while enjoying the benefits of tax exemption and eligibility to receive contributions which provide tax deductions to the payors and/or donors.

15. In order to raise funds to support its charitable and educational activities, plaintiff Tax/Rep desires to enjoy the same tax benefits as are enjoyed by other charitable and educational groups, including eligibility to receive contributions which provide tax deductions to its donors. But, defendants have ruled that solely because of the Code's restrictions on legislative activities, Tax/Rep is not eligible to receive contributions which provide such tax deductions.

16. Plaintiffs do not have an adequate remedy at law. Each of them is irreparably injured by the Code's restrictions on legislative activities, which prevent them from carrying out their charitable and educational purposes. Continued enforcement of the challenged restrictions will result in further irreparable injury to the plaintiffs.

GROUND S FOR RELIEF

17. The Code's restrictions on legislative activities unconstitutionally abridge the First Amendment freedoms of speech, association, and press, and the First Amendment right of petition of plaintiff Tax A/A, by conditioning the benefits of eligibility under the Code's charitable deduction provisions, and under the tax exemption, upon surrender of such First Amendment freedoms and rights.

18. The Code's restrictions on legislative activities unconstitutionally deny the equal protection of the laws and unconstitutionally abridge the First and Fifth Amendment rights and freedoms of plaintiff Tax A/A in that:

a. The restrictions condition the enjoyment of tax benefits by plaintiff Tax A/A on the surrender of First Amendment freedoms and rights, while other organizations similar in all pertinent respects to plaintiff may carry on substantial legislative activities without restrictions and still enjoy the same tax benefits, and

b. The restrictions are based on impermissible distinctions of wealth and size because they permit legislative activities which are not a "substantial" part of an organization's total activities, and thus enable organizations subject to the restrictions but having larger budgets and membership than plaintiff, Tax A/A, to engage in more legislative activity than plaintiff while still retaining their tax benefits.

19. The Code's restrictions on legislative activities unconstitutionally abridge the First Amendment rights and freedoms of plaintiff Tax A/A and its right to due process of law as guaranteed by the Fifth Amendment, in that:

a. The restrictions—and specifically the words "substantial", "propaganda", and "attempting, to influence legislation"—are so vague that plaintiff Tax A/A cannot reasonably ascertain what activities are restricted, or the extent of the restriction,

b. The restrictions confer unconstitutionally broad discretion on defendants. Defendants' decision to grant, not to grant, or to revoke tax benefits are based on administrative determinations as to the extent to which plaintiff Tax A/A will engage in legislative activities. Because these determinations are based on unconstitutionally vague criteria, plaintiff, who is subject to this enforcement procedure, is denied due process of law,

c. The restrictions establish an unconstitutional prior restraint on activities protected by the First Amendment. This restraint arises because defendants may grant, fail to grant, or revoke substantial tax benefits based on defendants' determination as to the extent to which plaintiff Tax A/A has or will engage in legislative activities, and

d. The restrictions establish an additional prior restraint on activities protected by the First Amendment because the vagueness of the law forces plaintiff Tax A/A to engage in constant self-censorship, so as to avoid any activity that might cause the defendants to revoke plaintiff's tax benefits.

20. The Code's restrictions on legislative activities unconstitutionally deny the equal protection of the laws and unconstitutionally abridge the First and Fifth Amendment rights and freedoms of plaintiff Tax/Rep, in that:

a. The restrictions preclude plaintiff Tax/Rep from obtaining substantial tax benefits solely because Tax/Rep has chosen to exercise its freedoms of speech, association and press, and its right of petition, and

b. The restrictions deny eligibility to receive contributions which provide tax deductions to donors to Tax/Rep, while other organizations, similar in all pertinent respects to plaintiff Tax/Rep, may carry on legislative activities without restriction and nevertheless receive contributions which provide tax deductions to the payors and/or donors.

21. For the foregoing reasons, the Code's restrictions on legislative activities are unconstitutional, both on their face and as applied.

Wherefore, plaintiff pray:

That this Court convene a three judge court pursuant to 28 U.S.C. Section 2284 to hear the merits of this amended complaint;

That the three judge court declare the Code's restrictions on legislative activities null and void as violative of the First and Fifth Amendments to the United States Constitution;

That the three judge court permanently enjoin defendants from enforcing the Code's restrictions on legislative activities;

That the three judge court enjoin defendants from applying the Code's restrictions on legislative activities when considering whether plaintiff Tax/Rep is entitled to the tax benefits accorded to other charitable and educational groups;

That the plaintiffs be awarded their costs and disbursements, including reasonable attorneys' fees; and

That the plaintiffs be granted such other relief as the Court deems to be just and proper.

Respectfully submitted.

BERLIN, ROISMAN & KESSLER,
ANTHONY Z. ROISMAN,
CLIFTON E. CURTIS.
TAX ANALYSTS AND ADVOCATES,
SAMUEL H. BLACK,
THOMAS F. FIELD.

OUTLINE OF COMMENTS CONCERNING TAX TREATMENT OF BUSINESS EXPENSES RELATING TO LEGISLATION

(By Samuel H. Black, Tax Analysts & Advocates)

SENATE SUBCOMMITTEE ON THE ENVIRONMENT, JULY 18, 1974

I. Does the tax system subsidize business lobbying?

A. The corporation income tax is a net, not a gross, income tax.

B. Deductibility of actual, directly-related business expenses by business is simply the proper method for computing taxable income—not a tax subsidy.

C. If lobbying and advertising are directly related to the generation of income, they should be deductible.

D. Since Internal Revenue Code Sec. 162(e) (2) (B) disallows deduction for "grass roots" business lobbying, the Code *penalizes* rather than subsidizes business lobbying. Advertising and lobbying are exercises of the freedom of speech and the right to petition the Congress for a redress of grievances.

II. Does the tax system penalize lobbying by public-interest groups?

A. The charitable deduction, and tax exemption for charities, are true tax expenditures. These provisions have little to do with the computation of net income.

B. Some charitable organizations are not only tax-exempt, are eligible for deductible contributions, but also may lobby to an unlimited extent.

1. Fraternal charities.

2. Veterans' organizations.

C. Some charities are exempt and deductible and may carry one sizeable, but not unlimited lobbying.

1. Large public charities.

D. Some charities are exempt and deductible but may carry on only minor ("insubstantial") lobbying. This category consists of small and medium-sized public charities. As compared to categories II(B) and II(C), the group of small public charities, including most environmental groups and all public interest law firms, is discriminated against in the ability to lobby. This discrimination is presently the subject of a lawsuit by Tax Analysts and Advocates.

E. Some public-interest groups are tax exempt (but not eligible for deductible contributions) and may lobby to an unlimited extent. This category consists of "Social welfare" groups, organized under Sec. 501(c) (4) of the Internal Revenue Code, including such organizations as the Sierra Club, the ACLU, and the League of Women Voters. As compared to categories II(B) and II(C), social welfare organizations are also discriminated against because of their legislative activities. (This issue is also raised in the lawsuit mentioned above.)

F. Nevertheless, all these organizations may lobby at least to a small extent, and often to an unlimited extent, with tax-subsidized dollars. By contrast, as stated in I(D), above, business' legislative activities are penalized by the nondeductibility rule for grass roots lobbying.

III. Why single out business grass roots lobbying, which should be constitutionally protected, for penalty treatment?

A. Populist view that corporations and big business are intrinsically evil.

B. Know-nothing view that lobbying is evil.

C. View that the public can be fooled by advertising.

D. In a dispute between different interests, one interest is often tempted to censor the other.

IV. Vagueness in statutes can result in rights being placed in jeopardy; this statute is so vague as to be constitutionally suspect.

A. The term "legislative matters" (Sec. 162(e)(2)(B)) is not self-defining, and the regulations under Sec. 162, Regs. 1.162-20(c)(4), do not define this term. It is a fair assumption that there is *no* topic which is not (or could not be) considered by some federal, state, or local legislature each year. Does this mean that no advertisements are deductible at all?

B. This is a statute regulating speech. Is the statute specific enough to define exactly what is permitted, so that citizens will have clear notice of the law and of a "safe haven" of clearly permitted activity?

C. Would a small business think twice before running an ad relating to a matter before a legislature? Doesn't this force taxpayers to censor themselves? Does the statute chill the exercise of the freedom of speech and the right of petition?

D. Could the statute's lack of clarity lend itself to selective harassment of political "enemies" since a business would not be able to cite any "safe-haven" tests to prove to the government (and to reassure itself) that deductions were allowable?

V. If the present law is not to be changed, it could be better enforced.

A. The regulations should be lengthened and clarified, perhaps with examples in a continuum from clearly deductible advertisements to clearly non-deductible advertisements.

B. Coupons in ads, to be sent to legislators, taking a business-advocated position on a "legislative matter," could be prohibited.

C. The regulations could include the name of a specific office in Washington, to which citizen informants could mail "offending" advertisements on legislative matters, to be routed through channels to the appropriate enforcement office.

D. Public interest groups could help enforce the law by sending in offending ads to IRS and publicity demanding "informers' fees" if IRS enforcement led to a higher tax assessment.

VI. When one class' constitutional rights are burdened relative to another otherwise similar class, the solution lies in expanding the liberties of the burdened class—not in burdening the favored class.

A. The Congress could end one discrimination against public interest groups by repealing the lobbying and propaganda clauses in Sec. 501(c)(3) of the Internal Revenue Code (and related sections).

B. This repeal would lessen the apparent disparity between business' and public-interest organizations' ability to participate in the legislative process.

C. The constitutionally sound solution does *not* lie in the direction of censoring business advertising, nor does it lie in making business' access to the executive branch nondeductible.

Senator HART. Our concluding witness is senior vice president of Georgia Power, Mr. Harold C. McKenzie, Jr.

STATEMENT OF HAROLD C. MCKENZIE, JR., SENIOR VICE PRESIDENT, GEORGIA POWER CO.; ACCOMPANIED BY FRANCES PLEDGER, ADVERTISING MANAGER; AND N. UNDERWOOD, GENERAL COUNSEL

Mr. MCKENZIE. I have with me Mr. Underwood, who is a member of the law firm who acts as our general counsel, and Mrs. Frances Pledger, our advertising manager.

I have distributed to the subcommittee and staff the full text of my statement. In the interest of time I will briefly summarize my testimony and then I will be happy to answer any questions.

Senator HART. Thank you, very much.

Let me order that it be printed in the record.

Mr. MCKENZIE. The Media Access Project, in testimony before this subcommittee on May 6, made a number of allegations against the

electric utility industry and several individual companies including the Georgia Power Co. The crux of the allegations which have been directed against my company is that our advertising program—or at least a portion of it—is “political propaganda” and therefore the costs of this advertising should be nondeductible for tax purposes and should constitute nonoperating expenses for ratemaking purposes.

Any legislation—or administrative regulations—which would result in the expenses of advertising of the type I will describe today being classified as nondeductible—or as nonoperating expenses—would seriously undermine the efforts of privately-owned utilities to cope with out national energy requirements.

I have attached some exhibits to my prepared testimony which will enable the subcommittee to see our total advertising program in perspective. I have also set forth in the exhibits our company's media costs as well as our total advertising expenses. In 1973 we spent less than one-fifth of 1 percent of our total revenues for media and approximately one-third of 1 percent of total revenues to carry out our entire advertising and public information program.

For a company involved in an industry as complex as the electric utility industry—to spend less than one-third of 1 percent of its revenues in a good-faith effort to communicate with its customers—investors—and the general public—simply can't be regarded as excessive or unreasonable under any criteria.

The question is often asked: “Does an electric utility need to advertise?” As with most short and simple questions—it's necessary to define the terms of the question before it has any real meaning.

Obviously, whether “advertising” is an appropriate expenditure by a utility depends upon what is meant by the term. Perhaps a better way to state the question would be to ask: “Is it necessary and appropriate for an electric utility to communicate effectively with its customers and the investing public?”

I submit to the subcommittee that if the investor-owned utility industry is going to survive and to supply this Nation with electric energy—it must continue to communicate with its customers and with the investing public. And these communications must be meaningful and go to the heart of problems which affect the industry today—and the costs of these communications must continue to be recognized as an essential operating expense.

I'm sure that every member of Congress recognizes that to be involved in an industry involving energy in the 1970's is “a whole new ball game.” In the electric industry we had two decades of price stability in the 1950's and 1960's when virtually every other industry experienced a steady increase in prices.

But toward the end of the 1960's a number of forces interacted to change drastically the patterns of cost and price stability which utilities and their customers had enjoyed for 20 years.

The underlying cause of the crisis which faces the electric utility industry today is growth. In the State of Georgia the consumption of electricity doubles each 7 years. This means that we have to double this size of our plant each 7 years, as contrasted with an earlier figure used today of 7½ percent nationally. This is a 10½-percent annual growth of the combined rate.

A public utility has a lawful duty to serve the needs of its service area. We don't have the option—during a period of unusually high

interest rates—of deciding to forgo expansion or delay it. We have a lawful responsibility to build generating facilities to serve the needs of the State of Georgia.

In the next 3 years we must spend \$1½ billion for new construction. Nothing illustrates the magnitude of our problems more clearly than the fact that yesterday our company was prepared to open bids on a \$130 million bond issue—and \$60 million of preferred stock—and for the first time in our history, there were no bids.

This means that we now have to look for other ways to obtain this necessary long-term financing—and the cost of this capital is going to be very expensive.

Who is affected by the cost of this capital? Not just the management and stockholders of the Georgia Power Co., but every consumer of electricity in our service area.

The increasing cost of capital is an example of an economic fact of life which affects our customers in a very direct way, and we believe they have a right to be informed about these facts.

We have used our advertising program to inform the public about the economic and technical realities which are changing this industry so dramatically—and we solicit the active cooperation of the public in coping with these problems.

For example, we have devoted a significant portion of our advertising program to encouraging energy conservation. We have explained billing options available to customers. We have explained our rate schedules including the seasonal changes in our rate structure.

What we attempt to convey to the public is a sense of perspective regarding electric service. We have not overstated any of the problems confronting our company, nor have we consciously permitted our customers to remain unaware of the problems which have increased our cost of operation and consequently our customers' rates for service.

We believe dissemination—through advertising—of factual information indicating the nature and extent of future and present problems of a financial nature affecting the company and its customers is good will or institutional advertising of the highest and most responsible order.

Is this political propaganda? Are we misleading the public in any way? Certainly not. I sincerely believe that we would be guilty of dangerously misleading the public if we remained silent during this period and did not inform our customers of the true circumstances of their supplier of electric energy.

If the premise is accepted that the public has a right to information which affects them in a direct and meaningful way, the next question is whether it is appropriate to disseminate this information through the traditional advertising media?

We have found that the use of our institutional and good will advertising is by far the least expensive way for us to communicate. If we sent one individual item of information to each of our customers, the postage cost alone would be more than \$100,000.

The Media Access Project contends there is something sinister about our advertising during a period in which we are involved before a regulatory agency. Apparently this argument assumes that a regulator might be unfairly influenced by the advertising program. Everyone familiar with regulation knows that a regulatory proceeding lasts

several months and involves thousands and thousands of pages of testimony.

It is ludicrous to argue that a regulator who reads one of our advertisements conveying factual information about an economic issue would be unfairly influenced when he has been presented with days of testimony and hundreds of pages of data on that issue in a regulatory proceeding.

It is an exercise in fantasy to pretend that a utility could sustain a meaningful communications program with the consuming and investing public if it suspended its advertising program during the pendency of regulatory proceedings.

Likewise, it would be absurd to modify the advertising program to omit references to the underlying circumstances facing the company which coincidentally may also be factors in the company's regulatory proceeding.

In summary, public utilities are now deeply immersed in the economic and political crosscurrents of our society, in environmentalism, consumerism, uncontrolled inflation, and the energy crisis.

I believe that the failure of a public utility to provide the public with information needed to see utility service in a reasonable perspective would be a dereliction of our responsibility as a public utility.

There can be no serious doubt that to change the current accounting treatment of advertising expenses of utilities would significantly restrict the flow of information from utilities to their customers. This would be one more profoundly disturbing development in our industry and I urge the subcommittee to reject any suggestion which would tend to restrict rather than enlarge the public's right to know.

Senator HART. Thank you, very much.

I won't give you a chance to respond to this because it would keep us here until late afternoon. But an almost throwaway line that you used, the experience on yesterday's market was it, or your efforts—

Mr. McKENZIE. Yes, sir.

Senator HART. It is an item of enormous concern. And it should be to this committee and every committee of Congress.

I know more than one utility in Michigan will have to scale down substantially its projected program because of the difficulty of getting additional—

Mr. McKENZIE. This inevitably means that at some point in time there well may not be enough capacity to meet the demand. Or more expensive short-term solutions will have to be solved.

Mr. BICKWIT. I wonder if you, for the record, could give us an example of the kind of ad which should be included in FPC 426.4 and this treated as a below-the-line expense for ratemaking purposes.

Mr. McKENZIE. I think rather clearly, yes—well, I will give you a specific example.

Several years ago there was quite a legislative battle in Georgia to enact what was known as the Territorial Service Act, which assigned the responsibility to the Public Service Commission to divide territory between municipal suppliers, cooperatives, and private utilities.

Had we run an ad advocating a position on that particular legislation, yes, that certainly would have been appropriate.

Mr. BICKWIT. Your statement speaks of your company's responsibility to keep its consuming and investing public informed as to the problems faced by Georgia Power in providing service. What kind of

benefits do you see accruing to the company as a result of your advertising campaign?

Mr. McKENZIE. Stated most briefly and most succinctly, our basic survival. At the time we are being faced with growth and inflation-producing compound problems for us, and I see no change on the horizon right now on either one. The price of electricity is going up just as dramatically there as it is anywhere else. And we have got to have the public willing to continue to accept us as a supplier if we are going to remain in business.

Mr. BICKWIT. This is a question I should have asked of the representative from Shell, but couldn't find the ad at the time he was on the stand.

We discussed the distinction between influence and educate. Senator Hart pointed out that there may not be, from a pure literal interpretation, any distinction, in that education includes influence.

But the language in the Shell ad said, "We urge most strongly that the type and form of the control be carefully considered to be sure that it will have the correct impact. It should not be a hastily enacted attack on the industry which would impose corporate excess profits taxes based on some arbitrarily chosen historical performance."

Quite apart from whether this meets all the requirements for non-deductibility or deductibility, do you regard the words, "We urge most strongly" to be an attempt to influence as opposed to merely educate? And I should say we will seek a response to that question from the Shell witness as well.

Mr. McKENZIE. Well, I came prepared to discuss our advertising and not Shell's. We have done no advertising falling in that category. So, I am really not competent to express any position on that.

Mr. BICKWIT. That is fine.

Thank you, very much.

Senator HART. Does counsel want to take a shot at it?

Mr. UNDERWOOD. No, thank you, Senator.

Senator HART. Did either of you have anything you would like to add?

Mr. UNDERWOOD. No, we filed a rather lengthy statement.

Senator HART. Thank you, very much.

[The statement follows:]

STATEMENT OF HAROLD C. McKENZIE, JR., SENIOR VICE PRESIDENT
GEORGIA POWER COMPANY

My name is Harold C. McKenzie, Jr. and I am Senior Vice President of Georgia Power Company. I appear today in response to a letter dated June 26, 1974, from the Chairman of this Subcommittee to the President of our Company inviting our participation in today's hearing. Senator Hart's letter indicated that the Committee is considering the "treatment of certain energy and environmental advertising expenses for tax and FPC accounting purposes" and made reference to testimony received on May 6, 1974, from attorneys representing Media Access Project alleging that the cost of some of the advertising considered by the Subcommittee is not deductible under Section 162 of the Internal Revenue Code and has not been properly categorized for FPC accounting purposes.

I have obtained a copy of the testimony submitted to the Subcommittee on May 6, 1974, by Harvey J. Shulman, Attorney with the Media Access Project, Washington, D.C. I will respond to the allegations made by Mr. Shulman against the Georgia Power Company, and while I do not purport to speak for the electric utility industry generally, I am aware of the fact that the circumstances affecting our company today and the relationship between those circumstances and

our advertising program are certainly not unique in the industry. Since the Chairman's letter did not invite comment relative to any specific legislative proposal, I will not comment on any specific pending legislation. However, if the Subcommittee's deliberations encompass consideration of specific legislation including S-2532, which is a proposed Amendment to the Federal Power Act, I would appreciate the opportunity to file a supplemental statement dealing specifically with the proposed legislation. The crux of Mr. Shulman's testimony is that certain firms in the energy-related industries are incurring expenses for advertisements which are either non-deductible under the Internal Revenue Code or should not be permitted as "operating expenses" for ratemaking purposes.

REGULATIONS INVOLVED

The Regulation which Mr. Shulman contends has been violated by certain energy related companies is Treasury Regulation 1.162-20, the applicable portion of which is set forth below:

"Institutional or 'good will' advertising. Expenditures for institutional or "good will" advertising which keeps the taxpayer's name before the public are generally deductible as ordinary and necessary business expenses provided the expenditures are related to the patronage the taxpayer might reasonably expect in the future. For example, a deduction will ordinarily be allowed for the cost of advertising which keeps the taxpayer's name before the public in connection with encouraging contributions to such organizations as the Red Cross, the purchase of United States Savings Bonds, or participation in similar causes. In like fashion, expenditures for advertising which presents views on economic, financial, social or other subjects of a general nature, but which does not involve any of the activities specified in paragraph (b) or (c) of this section for which a deduction is not allowable are deductible if they otherwise meet the requirements of the regulations under Section 162." Reg. 1.162-20(a) (2).

* * * * *

... [C]ertain types of expenses incurred with respect to legislative matters are deductible under section 162(a) if they otherwise meet the requirements of the regulations under section 162 . . . All other expenditures for lobbying purposes, for the promotion or defeat of legislation . . . for political campaign purposes (including the support of or opposition to any candidate for public office), or for carrying on propaganda (including advertising) relating to any of the foregoing purposes are not deductible from gross income for such taxable years." Reg. 1.162-20(c) (1).

It should be pointed out that on pages 10 and 11 of his testimony, Mr. Shulman has significantly misstated the applicable Treasury Regulation by setting forth excerpts from Regulation 1.162-20(b), which applies only to taxable years beginning before 1963. Regulation 1.162-20(c), set forth above, superseded the sections of the Regulation which Mr. Shulman quoted pertaining to taxable years beginning after 1962. For the sake of clarity, therefore, the record of these proceedings should note that the portion of the Regulation quoted in Mr. Shulman's testimony on pages 10 and 11 is not applicable today.

With respect to the treatment of advertising expenses for ratemaking purposes, Mr. Shulman contends that our Company has incurred expenses for advertising which should be listed as non-operating expenses in Subaccount No. 426.4 of the FPC Uniform System of Accounts, which Subaccount includes those expenses incurred

"... for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation or ordinances (either with respect to the possible adoption of new referenda, legislation or repeal or modification of existing referenda, legislation or ordinances); approval, modification or revocation of franchises; or for the purpose of influencing the decisions of public officials . . ."

The advertisements of Georgia Power Company which the Media Access Project characterized as "political propaganda" do not fall within the category of "non-deductible" expenses for tax purposes or "non-operating" expenses of the Federal Power Commission and are in no way violative of the Regulations cited by the Media Access Project.

Moreover, the promulgation of Regulations or the enactment of legislation which would have the effect of classifying as non-deductible or as "non-operating

expenses" those costs associated with advertisements of the type I will describe today would seriously undermine the efforts of privately owned public utilities to cope with our national energy requirements.

GEORGIA POWER CO.'S ADVERTISING PROGRAM

In order for the Subcommittee to see our advertising programs in some reasonable perspective, I have attached some Exhibits which reflect our overall advertising program for 1973.

Exhibit A sets forth Georgia Power's total advertising outlays except for certain appliance advertising by the Retail Appliance Division of the Company which is not related to electric service. This Exhibit shows that the Company's total media costs for 1973 represent less than one-fifth of one percent of total revenues and that total advertising expenditures including salaries of all advertising and public information personnel were approximately one-third of one percent of total revenues.

Exhibit B reflects the division of our advertising program among various types of advertising messages dealing with energy conservation, environment, customer billing, technological developments, utility economics and other subjects. Of course, many of the advertising messages make reference to two or more of these topics in the same advertisement.

Exhibit C¹ is a complete set of the Company's advertisements for 1973. I have included a complete set of the advertisements to accurately reflect the purposes, nature and tone of the advertising program when taken as a whole and I invite the Subcommittee's attention to the overall program as well as to the specific advertisements cited by the Media Access Project in its presentation of May 6, 1974.

OBJECTIVES OF GEORGIA POWER CO.'S ADVERTISING PROGRAM

In discussing the issue before the Subcommittee today, as it relates to Georgia Power, I believe it would be helpful for me to state in general terms the circumstances which underlie our Company's advertising program and to outline briefly the objectives which we seek to accomplish through advertising.

The Georgia Power Company is a public utility corporation holding a franchise to provide electric service in substantially all of the State of Georgia. Our retail rates and service are subject to the regulatory jurisdiction of the Georgia Public Service Commission. The Company is subject to the Federal Power Act and to the jurisdiction of the Federal Power Commission and numerous other regulatory agencies ranging from the Securities and Exchange Commission to the Atomic Energy Commission. I am sure that the members of the Subcommittee and Staff are quite familiar with the Public Utility concept. This is the concept which holds that regarding certain utility services, society is best served by private firms dedicating their property to public service under conditions of a natural monopoly in order for the public to obtain the benefit of high production levels and high levels of efficiency. Governmental regulation is, of course, the substitute for direct market competition.

Since public utilities have long been held to be "affected with a public interest,"² such a company is accountable to the public to a much more meaningful extent than non-regulated firms. It would be naive for the management of our Company not to recognize that the public we serve constantly appraises our performance much more closely than it appraises the performance of companies which provide a service in a directly competitive market.

Our Company, like many other electric utilities, experienced a long period of retail price stability from approximately 1950 to 1970. In fact, we were able to implement a number of retail rate reductions during this period. This was due in part to the fact that generating plants grew in size and the accompanying economies of scale and a number of dramatic technological advancement made it possible for our Company to provide electric energy during these two decades on a descending cost curve. However, as the decade of the 1960s came to a close, a number of economic, technological and social forces interacted to drastically change the patterns of cost and price stability to which electric utilities and their customers had become accustomed.

The underlying catalyst which has affected our Company so dramatically in the 1970s has been the growth in demand for electric energy in our service area.

¹ See p. 199.

² *Munn v. Illinois*, 94 U.S. 113 (1877).

The demand for electric energy in Georgia now doubles each seven years which, of course, means that the Company must double the size of its generation, transmission, and distribution facilities to accommodate this growth in demand.

I would like to illustrate the kind of compounded economic realities which confront our Company because of this growth in demand for electric service. To install a coal-fired unit of generating capacity today costs more than one and one-half times what it cost in the late 1960s. The current unit cost of installing nuclear generating capacity is approximately three times the cost of installing coal-fired generating capacity. But the effect upon our customers of these increased costs is compounded by other economic circumstances of today. The capital which must be attracted from investors to build such plant is twice as expensive as was new capital ten years ago. For example, in January of this year, our Company marketed a \$150 Million bond issue at an interest rate of 8½% whereas, in 1964 the interest rate on our bonds was 4½%. In addition to these obvious economic realities of the 1970s, the commitment to environmental protection, a commitment which our Company shares, means that we are required to invest millions of dollars for equipment used solely for environmental protection.

LAWFUL DUTY TO SERVE

One of the legal responsibilities which distinguishes a public utility from other types of business is the "duty to serve." Under our franchise as a public utility, our Company has a lawful obligation to take the steps necessary to provide the electric power which is demanded by the public in our service area. This distinction cannot be overemphasized in the context of the subject which is under consideration by the Subcommittee, and I would like to illustrate the practical application of this distinction by reference to a recent example involving another industry with which I am sure the Subcommittee is familiar.

You will recall that in 1973, when most of the economy was subject to price regulation, the Cost of Living Council prescribed retail prices for beef at a level which many beef-distributing firms felt to be inadequate. A number of these companies simply announced that they would close down their packing facilities, which they did for a limited period of time. A public utility, regardless of its view of the regulatory policies to which it is subject, never has the option of shutting down its operations nor the option of refusing to construct additional plants having the capacity to meet projected energy demands of its service area. It is my strong conviction that this legal duty to serve carries with it a duty to communicate effectively with the consuming public which we serve as well as the investing public upon which we depend for capital to expand facilities in furtherance of our lawful duty to serve our customers.

It is of crucial importance to the utility industry that the investing public, including those who comprise and support investment institutions, have a basic understanding of the principles of economics which are unique to this industry.

We should never lose sight of the fact that a utility has NOWHERE to turn for capital for expansion except to the investing public, and if this source of capital is lost through a lack of public understanding of the utility industry, the only alternative is government financing and operation of facilities to provide utility service.

CONTENT OF GEORGIA POWER CO. ADVERTISING PROGRAM

In view of the fact that our Company and our customers experienced the long period of price stability which I have described and have had this price stability upset by the economic and technological realities to which I have alluded, we have the responsibility to inform our customers of the implications of these developments. Therefore, we have devoted a substantial portion of our advertising program to encouraging energy conservation. We have used our advertising messages to explain seasonal changes in our rate schedules as well as billing options available to customers. We have tried to give our customers an insight into the nature of the electric utility industry including the basic nature of the economic problems confronting it in the 1970s. Consistent with this approach of providing meaningful information to our customers, in a limited number of advertising messages we have indicated the nature and extent of economic problems that will confront the State of Georgia if our Company is unable to attract the capital necessary to carry out the minimum expansion program which will permit us to supply Georgia with its electrical needs.

In short, what we attempt to convey to the public we serve is a sense of perspective with respect to our Company. We have not over-stated any of the problems confronting our Company and the electric utility industry; nor have we consciously permitted our customers to remain unaware of the profound and vexing problems which drastically have increased our cost of operation and, consequently, our customers' rates for service. The dissemination, through advertising, of factual information indicating the nature and extent of future and present problems of a financial nature affecting the Company and its customers is "good will" or "institutional" advertising of the highest and most responsible order.

In the advertisements which the Media Access Project has labeled as "propaganda" we convey the simple truth that the retail price for electric service in our area will increase, and we indicate why. Is this political propaganda? Is it political advertising, or an attempt to influence legislation? Certainly not. It is an effort to convey the practical implication of facts known to the Company's management which, in all probability, are not known to our customers. There are multiple pragmatic reasons for this. For example, if a customer is contemplating the construction of a new home to be furnished with all electric appliances, we believe we have an obligation to inform him that any estimates he obtains relating to operating costs for these appliances must be based upon the realization that rates will increase. Furthermore, basic notions of fairness strongly suggest to us that the customer has the right to know that his electric bill is about to increase. Advertising is by far the least expensive way for us to convey this message. If we sent an individual item of information to each of our customers through the regular mail, the postage cost would be more than \$100,000. The total media expenditures during 1973 for the advertisements which Mr. Shulman has questioned were approximately \$39,000.

Mr. Shulman characterizes these particular advertisements as "political propaganda" because, during certain periods of time in which these advertisements were included in our advertising program, our Company was involved in rate adjustment proceedings before a regulatory agency. Mr. Shulman implies that there is something sinister about communicating with our customers in the *manner* of the specific advertisements which he cites and at a *time* in which a legal proceeding involving a rate adjustment was in progress. I can think of nothing more fundamental to the survival and well-being of the electric utility industry than the free flow of information of the kind that I have described, and efforts to communicate along these lines with the public would be totally ineffective if they could be implemented only during periods of time in which a company is not involved in legal proceedings concerning rate matters.

During a period of inflation when periodic rate adjustments are essential to survival and in a period in which regulatory rate proceedings are highly complex and require many months to conclude, it is an exercise in fantasy to pretend that a utility could sustain a meaningful communications program with the consuming and investing public if it suspended its advertising program during the pendency of rate proceedings. Likewise, it would be absurd to modify the advertising program during rate proceedings to omit references to the underlying circumstances facing the Company which coincidentally are also factors in the Company's request to the regulatory agency for authority to adjust rates.

The pricing interface between a utility and its customers is a tariff or rate schedule which is filed with the appropriate regulatory agency. Such a rate schedule is necessarily complex, and when there are seasonal or structural modifications in our rate schedules, we have a definite obligation to inform the public we serve in a direct and effective way of the substantive changes in these rate schedules. Another example of the practical value of informational advertising with respect to a regulatory proceeding is a billing practice which the Georgia Public Service Commission has approved for our Company, known as "levelized billing." Because of the widespread growth of air-conditioning in our service area, a typical customer pays significantly more for electric service during the summer months than he does for service during the winter. Recognizing that this disparity of monthly electric charges creates a hardship on some family budgets, we asked the Georgia Public Service Commission to authorize "levelized billing." Under this procedure, an estimate of the customer's total annual bill is made based upon his billing history; and the customer is permitted to make averaged monthly payments based on annual use and their accounts are reconciled annually as to overpayment or underpayment. We alerted our customers to the availability of "levelized billing" and explained its operation through our advertising program.

I cannot overemphasize my sincere belief that electric customers are entitled to know when they will experience rate increases and what are the bases for rate adjustments. For illustrative purposes, let us assume that an electric utility has chosen to inform its customers of an impending energy shortage and the need for reduction in the level of consumption of electricity by customers. Let us assume further that, despite the customers' heed to the plea by the electric utility to reduce consumption, their electric bills increase for the next several months. Naturally, the customers would be highly confused by the fact that their usage of electricity had been reduced and still their electric bills continued to increase.

What the utility customer in the above example would not fully understand, however, was that the energy crisis was the catalyst that effected the changes in the entire economic structure of our society. In other words, economic theory is closely analogous to theories in other specialized fields—to-wit, any single action which causes changes in a complex system will invariably affect the whole.³ Thus, in my example, the energy shortage caused the rising costs of all fuels. This in turn necessitated what is known in the electric utility industry as the "fuel adjustment clause." This is a device which, when approved by a regulatory agency, permits the utility to pass on to the customer the increased cost of fuel on a month-to-month basis without having multiple full-blown rate increase proceedings. Without this explanation of the need to increase rates with a simultaneous need to reduce consumption of electricity, the customer's understanding of the overall economic picture is reduced to an emotional response to his economic plight.

Consequently, the consumer of electricity must understand the need for higher rates or he will be unable to make a rational decision as to the efficacy of such an increase. Should this misunderstanding lead to the utility's inability to obtain a "fair return," then investors who put up some 80% of the capital each year to expand systems such as ours will invest elsewhere. When capital flees, construction must slow drastically. Moreover, if the remaining construction cannot satisfy demand, then many sacrifices must be made by the utility and by the public in general.

Advertising is a utility's one consistent way to present facts to the public. Interfering with an advertising program can hardly be done without sacrificing a well-informed public for one which is ill-informed. In sum, I submit to you that, as my above example illustrates, a public utility must inform its customers of all relevant economic factors pertaining to the utility's present and future needs in order to fulfill its obligations to those citizens whom it serves.

THE DANGERS OF CLASSIFYING ADVERTISEMENTS AS "POLITICAL" IN NATURE

The Media Access Project has utilized circular reasoning in characterizing three of our advertisements as "political" and contending that expenses for these advertisements should be classified as non-operating expenses. In his testimony before this Subcommittee, Mr. Shulman frankly acknowledges that Georgia Power Company's advertisements which refer to rate adjustments are not of such character as to render the monies expended therefor non-deductible for tax purposes. On page 24 of his testimony, Mr. Shulman asserts that, "... if the rate increase controversy seems far removed from a legislative forum and is confined to state utility commissioners or courts, a strict reading of the current IRS regulations would seem to permit deductibility." However, Mr. Shulman contends that such ads represent non-operating expenses, and he cites as support for this thesis the fact that the Federal Communications Commission in 1973 directed two Georgia television stations to "afford opportunity for the presentation of contrasting views on the rate increase issue." I would like to illustrate the circular reasoning which Mr. Shulman has employed to arrive at his conclusion.

In the FCC proceeding referred to, the Media Access Project was representing a group known as the Georgia Power Project. The Georgia Power Project is a

³ Note the biological theory known as "Harding's Law," which holds that "You cannot do only one thing"—that is, any one biological change in a biological system will affect the entire system.

small group of individuals whose spokesmen publicly acknowledge that the Project's primary goals are the political objectives of the ultimate replacement of capitalism with socialism and that the group believes that the first step in this process is to undermine confidence in public utilities and to achieve total public ownership of utilities.⁴ While publicly acknowledging these ultimate goals, the Georgia Power Project has sought to politicize virtually every public statement and position which our Company has taken in recent months. For example, in its advertising program the Company has made the simple factual observation that it must expand its physical plant because the demand for electric energy will continue to increase. The Georgia Power Project has sought to politicize such statements by simply proclaiming that they constitute propaganda intended to increase sales and profits. The Federal Communications Commission, without purporting to pass upon the correctness or incorrectness of our Company's advertising program, directed two Georgia television stations to do more than they previously had done in providing opportunity for contrasting views concerning our rate proceedings.

Ironically, the Media Access Project now points to the FCC case as evidence that the subject advertisements are political. In reality, any political connotation which the advertisements may have acquired has been the result of public statements of a political nature by Media Access Project's client in the FCC proceeding, Georgia Power Project. It is patently obvious that in the case of a group with political goals as broad as those of the Georgia Power Project (such goals being to replace capitalism with socialism), virtually any informational message of substance could be politicized by publicly proclaiming that it is inconsistent with the political goals espoused by such group.

In illustrating the circular reasoning of the Media Access Project, I want to make it clear to the Subcommittee that I am in no way quarreling with the full rights of the members of the Georgia Power Project to criticize capitalism, the private ownership of utilities, or the Georgia Power Company in particular. In fact, I have participated in many television and radio discussion programs in Georgia with members of the Georgia Power Project and I fully respect their rights to articulate their political and economic philosophy. But the point I want to emphasize is that merely because a group such as the Georgia Power Project takes issue with information conveyed in our advertising program, that does not change the essential character of our advertising program from being one of an informational character to one that is political in nature. In a real sense, the acknowledged public efforts of a group of individuals bent upon radical economic change and to undermine public confidence in a particular industry or company makes it all the more crucial to the continued well-being of the Company that it have useful and effective channels of communication with the public it is franchised and obligated to serve.

In summary, public utilities are now deeply immersed in the economic and political cross currents of our society, in environmentalism, consumerism, uncontrolled inflation, and the energy crisis. I believe that the failure of a public utility to provide the public with information needed to see utility service in a reasonable perspective would be a dereliction of our responsibility as a public utility. It is axiomatic that these complex realities do not have a discrete existence apart from the factors weighed by a regulatory agency in a proceeding for a rate adjustment. To seize on this fundamental truth as a basis for characterizing substantive utility advertising as "political propaganda" is to play a dangerous semantical game. It is obvious to me that if the electric utility industry is going to serve the public interest, it must make use of more rather than less sophisticated communications with its customers and with the public in general. I respectfully ask that this Subcommittee not entertain the type of impractical and punitive recommendations presented by the Media Access Project. I strongly urge that this Subcommittee recognize the right and the obligation of a business to inform its customers, as well as the right of the customers to be so informed.

⁴ See Transcript of Georgia Public Service Commission Docket No. 2465U and materials discussed therein.

EXHIBIT A

Year	Gross revenue sales of electricity	Institutional advertising media costs	Institutional media costs cents per gross revenue dollar	Total advertising expenditures including all salaries, expenses and marketing advertising	Total advertising cents per gross revenue dollar
1971.....	\$417,696,151	\$1,034,772	.24773	\$2,154,757	.51587
1972.....	\$506,058,516	947,993	.18733	1,876,794	.37086
1973.....	596,777,465	1,057,267	.17716	2,013,623	.33742
1974 ¹	752,776,660	1,600,214	.21257	2,968,220	.39430
1974 ² (January-May).....	282,086,034	391,936	.13894	784,426	.27808

¹ 1974 budget.² January-May actual.

EXHIBIT B

1973 advertising media expenditures by subject matter:	Amount
Conservation of energy.....	¹ \$215,218
Utility economics.....	² 324,211
Environmental information.....	³ 98,270
Security lighting.....	⁴ 14,666
Other customer information.....	⁵ 162,147
Total.....	814,512

¹ Ads giving factual tips for residential customers on how to conserve electric energy. Examples: "How does 73 differ from 78?" and "Please. Turn it down when you're leaving."

² Ads giving basic economic facts about utility operation. For the 3 advertisements—1 radio, 1 television, 1 newspaper—attached to Senator Hart's letter, referred to in Mr. Shulman's testimony before the subcommittee, media costs were \$39,536.

³ Ads explaining company programs for environmental protection and conservation of natural resources. Examples: "The Chattahoochee River is cleaner this year" and "The Etowah" television spot.

⁴ 1 television commercial on night street lighting.

⁵ All ads are informational in nature, but this category includes those which give information not specifically related to preceding categories. Examples: "Plan. The plant." and "High temperatures may cause a spurt in your electric bill."

Senator HART. This concludes the testimony scheduled on the subject matter. I never was a tax man. I have inhaled enough of this testimony, though, to have the feeling that there are differences in degree at least, in the several ads that have been presented, and the earlier testimony, whether any of them are of such character as should be treated under the Code as not deductible, I don't know. I am sure many people have strong opinions. But I think the responsibility of that is simply to refer to the Bureau the record, and indicate to them that we will expect them to make the judgment which they are qualified to make and which I am not, and as to the treatment that should be accorded each of the several ads.

Mr. Bickwit reminds me that there was some question with respect to the treatment above and below the line on accounting under the Federal Power Commission Act regulations, and I am even less informed in that area.

All I can do is send the transcript to them to make that judgment.

Thank you very much. I am sorry we have held the witnesses for so long.

[Whereupon, at 1:27 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

MOBIL OIL CORPORATION,
New York, N.Y., February 22, 1974.

Hon. PHILIP A. HART,
Chairman, Subcommittee on Environment, Senate Commerce Committee, U.S.
Senate, Washington, D.C.

DEAR SENATOR HART: This is in response to your letter of January 28, 1974 to Mr. William P. Tavoulareas, requesting information with respect to Mobil's advertising. Samples of some advertisements characterized as "public service" advertising are enclosed with your letter. You also state you would be happy to receive copies of any of our other advertisements which we feel are particularly informative. In addition, you request the following specific information about Mobil's advertising efforts.

I. INFORMATION REQUIRED UNDER PARAGRAPH (a)

Under paragraph (a) of your letter you request the following:

"How much money did your company spend on all advertising in 1973?

"(1) Please break this down into product/service, goodwill (i.e., institutional), political (i.e., non-deductible as a business expense under IRS Regulation 1.162-20(c)(4)) advertising.

"(2) Please break this down for each medium (i.e., television, radio, newspapers, magazines, pamphlets and brochures, other)."

1. Total advertising expenditure in 1973

Mobil spent \$16.2 million on all advertising in 1973. This does not include amounts spent by affiliates of Mobile for advertising outside the United States.

2. Breakdown

A breakdown of Mobil's advertising expenditures is shown on Attachment A.

ATTACHMENT A, MOBIL OIL CORP.—1973 ADVERTISING EXPENSE (U.S.)

[In thousands of dollars]

	Tele- vision	Radio	News- papers	Pam- phlets and brochures	Maga- zines and trade publica- tions	Other	Total
Product/service:							
NAD.....	3,007	659	309	573	1,598	276	6,422
Chemical.....	1,232	117	17	-----	1,160	99	2,625
Total.....	4,239	776	326	573	2,758	375	9,047
Goodwill: Corporate.....	5,232	-----	799	36	215	-----	6,282
Non-deductible: Corporate.....	-----	208	411	41	169	-----	829
Total.....	9,471	984	1,536	650	3,142	375	16,158

II. INFORMATION REQUESTED UNDER PARAGRAPH (b)

Under paragraph (b) of your letter you request the following:

"What does the company consider to be public service advertising?

"(1) Is such advertising limited to goodwill (i.e., institutional) advertising, thus excluding product/service and political advertising?

"(2) How does the company consider each of the advertisements attached to this letter—as product/service, goodwill (i.e. institutional) or political (i.e. non-deductible) advertising?"

1. "Public Service" Advertising

The concept of public service advertising is contained in a longstanding Treasury regulation now appearing as Reg. § 1.162-20(a)(2). Under such regulation, "expenditures for institutional or 'goodwill' advertising" are generally deductible. The regulation provides more specifically that "a deduction will ordinarily be allowed for the cost of advertising which keeps the taxpayer's name before the public in connection with encouraging contributions to such organizations as the Red Cross, the purchase of United States Savings Bonds, or participation in similar causes. In like fashion, expenditures for advertising which presents views on economic, financial, social or other subjects of a general nature" are deductible provided they do not include expenditures for lobbying purposes, for the promotion or defeat of legislation, for political campaign purposes or for carrying on propaganda (including advertising) relating to any of the foregoing purposes.

It might be useful at this juncture to illustrate samples of advertisements that Mobil has been advised constitute institutional or goodwill advertising, as well as non-deductible advertising which might be considered to border on a potential purpose for the promotion or defeat of legislation. In assisting Mobil accurately to characterize its advertising for purposes of preparing its tax returns, Mobil has instituted a program under which all of its advertising is submitted to outside counsel under instructions to adopt the most conservative, stringent test against Mobil in determining deductibility under the statute, regulations and case law on this subject.

For your convenience, there is enclosed a complete set of 1973 newspaper and periodic public service advertisements divided into four groups, the first three of which we believe and are advised constitute institutional or goodwill advertising. Group IV contains advertising which we believe to be in the public interest but which contain sufficient legislative potential to be regarded by ourselves and outside counsel as possibly falling in the non-deductible category, and are therefore treated as nondeductible for tax purposes.

Group I consists of ten advertisements of the "Red Cross" variety. Four ("Nine o'clock Scholar", "Oedipus Wrecks", "Great Plans . . ." and "Masterpiece Theatre Invites") relate to the Masterpiece Theatre Mobil-sponsored program on publicly-supported Channel 13 in the New York viewing area. The remainder in this group relate to the New York Public Library, the New York City Parks Administration (Concert, Opera and Theatre program), the Mobil Harlem National Professional Summer Basketball Championship, American Museum of Natural History's West Side Day, British Theatre Season in Brooklyn and a Christmas note to the Skylab astronauts.

Group II consists of 12 advertisements, ten of which deal with ways of conserving gas while driving; one deals with driving safely; two relate to conservation of fuel in the home and one deals with lighting in general.

Group III covers a broad socioeconomic field comprising some 15 advertisements, some dealing with technology in general, an architect exhibit, Middle East peace, New York drug law, conservation efforts, monopoly and capitalism.

Group IV, the non-deductible category, covers a variety of subjects including a number of advertisements grouped under the general category of "the \$66 billion mistake" relating in part to regulatory policies on antipollution control, and general information on the energy shortage. There are some 23 advertisements or brochures in this group. While none of these, in the opinion of counsel, is clearly

non-deductible, no absolute assurance can be given by counsel that a deduction would be upheld and therefore, as noted above, this group of advertisements is treated by the Company as non-deductible.

2. *Specific request under II (b) (1)—Is such advertising limited to goodwill (i.e., institutional) advertising, thus excluding product/service and political advertising?*

The answer to this question is largely illustrated by a Mobil news release published as an advertisement in The New York Times on July 29, 1973 (enclosed as Attachment B). In such release, Mobil announced that it was discontinuing its gasoline advertising and would redirect its efforts towards broad public service and public information programs. Mobil also published an advertisement in The New York Times on July 12, 1973 (Attachment C) listing the headlines from illustrative advertisements. Thus, Mobil has shifted away from product/service advertising to advertising which contributes to public awareness or understanding of a variety of socioeconomic topics, some of which may border on the "political" as noted in Group IV above. Mobil views all of the advertisements submitted herewith as public service advertising, although expenditures for the Group IV advertisements are not deducted.

3. *Specific request under II (b) (2)—Treatment of advertisements attached to letter of January 28, 1974*

All of the advertisements, except one, attached to your letter of January 28, 1974 are regarded by Mobil as in the Group IV non-deductible category. Many of them were 1973 advertisements that are shown in Group IV described above. Some of the 1972 advertisements were not repeated in 1973. One advertisement in particular, namely, "An Open Letter on the Gasoline Shortage to: [named senators and representatives]" was the first advertisement submitted to outside counsel who confirmed Mobil's own views that such advertisement, however informational, touches closely on legislative subjects and should therefore be treated as non-deductible. The one exception to the non-deductible category in the enclosures to your letter is the advertisement entitled "The Lady Was Listening" which, on advice of counsel, is considered as deductible institutional advertising.

If you have further questions or requests for information that may be of assistance to the work of your Subcommittee, we would be pleased to respond and cooperate to the best of our ability.

Sincerely yours,

HERMAN J. SCHMIDT.

Enclosures.

ATTACHMENT "B"

MOBIL OIL CORPORATION,
New York, N.Y., June 21, 1973.

Mobil Oil Corporation today announced it is discontinuing its gasoline advertising, including its "Mr. Dirt" television and radio commercials.

The company said it would redirect its efforts toward broad public-service and public-information programs covering the conservation of gasoline and specific suggestions on more efficient use of available energy.

"The American public must develop a new national ethic with respect to the use of energy," Mobil Chairman Rawleigh Warner, Jr. said. "We as a nation must adopt long-term approaches to conserve energy, because the energy shortage will be with us for some time."

[This ad appeared in the New York Times on June 28, 1973]

ATTACHMENT "C"

OIL IS PRECIOUS. LET'S NOT WASTE IT.
March, 1972

THE GAP.
May, 1972

EVEN IF YOU HAVE MONEY TO BURN, YOU SHOULD SAVE ENERGY.
June, 1972

THE UNNATURAL GAS SHORTAGE.
September, 1972

ENERGY POLICY IS PRIORITY POLICY.
November, 1972

ENERGY IS INDUSTRIAL PLASMA.
December, 1972

IS ANYBODY LISTENING?
January, 1973

SO MUCH TO DO, SO LITTLE TIME.
March, 1973

YOU'VE HEARD GASOLINE IS SHORT. HERE ARE 8 WAYS TO GET ALONG.
April, 1973

LET THERE BE JUST ENOUGH LIGHT.
May, 1973

BECAUSE THAT'S WHERE THE OIL IS.
June, 1973

These headlines are from some of the ads on energy problems we've published in the past year-and-a half. So when people ask us why energy shortages have taken us by surprise, we tell them we're not at all surprised. Just sorry.

For reprints of any or all of these messages, write Room 646, 150 East 42nd Street, New York 10017.

GROUP I



Nine o'clock scholar

Sunday evening at nine, a Victorian classic becomes thoroughly engaging television when the Masterpiece Theatre dramatization of *Tom Brown's School Days* begins on PBS. Channel 13 in New York.

The story, as you probably know, deals with a young boy's adventures during his first years at Rugby in the 1820s. A top hat and frock coat are the classroom costume, but don't let that fool you. The curriculum is plenty tough, and so is the ragging by upper-formers.

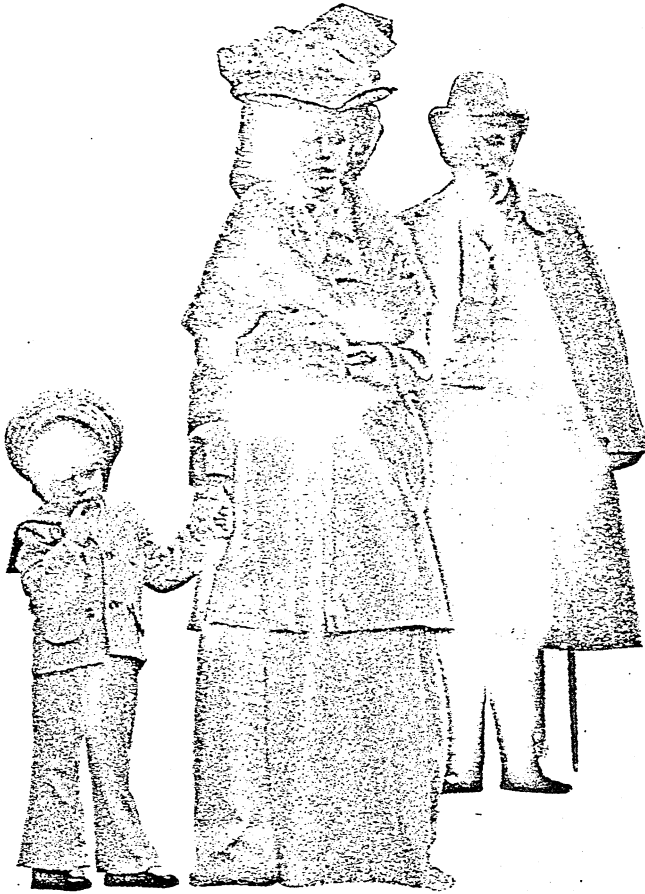
Tom takes a lot from that bully Flashman. He's a plucky tyke, though. He perseveres. And, needless to say, he winds up the better man for it.

Tom Brown's School Days is fine entertainment, produced with the regard for quality that continues to set these Masterpiece Theatre productions apart from so much other television.

We share that regard. We've been getting high marks for quality these past 106 years ourselves.

See truth and bravery triumph. See Tom Brown win out. Be in your seat, and quiet, when the bell rings on Sunday at nine.

Mobil®



Oedipus Wrecks

Maggie Verver is so devoted to her widowed father that even after her marriage, and motherhood, the two continue to see each other almost as much as ever.

That is how master novelist Henry James heads Maggie's marriage for the rocks in *The Golden Bowl*.

Before long, Maggie's marriage seems wrecked. Her best chum, Charlotte, is in love with Maggie's husband.

Charlotte also happens to have wed Maggie's father. Life is a tangle.

Masterpiece Theatre sorts it all out in six episodes beginning Sunday at 9 P.M. on PBS. That's Channel 13 in the New York area.

Pull up a couch and tune in. You'll enjoy some of the finest television anywhere, adapted from one of the most penetrating psychological novels of any period.

Mobil®

This ad appeared in the New York Times on March 22, 1973.

© 1973 Mobil Oil Corporation



There are great plans for him, as soon as he's dead.

Who really knows you're you? That's the life-and-death question in *The Man Who Was Hunting Himself*, a Masterpiece Theatre mystery that starts Sunday evening at nine on PBS-TV.

This is a puzzler for the thinking mystery fiend. It's a drama of impersonation, espionage, murder. It's set in today's Europe. It could be straight out of today's headlines.

Join host Alistair Cooke Sunday at nine for Part I of a first-rate thriller. Like the Peter Wimsey whimsies, which will return in December, this three-episode chiller is made possible by a grant from

Mobil®

Masterpiece Theatre invites you to sit on the edge of your favorite chair.

A Masterpiece Theatre mystery is literate mystery.

A whodidit.

And no less suspenseful for that.

You'll see, when the Masterpiece Theatre Mystery Season opens Sunday, October 7, at 9:00 P.M. on PBS-TV. That's Channel 13 in the New York viewing area.

Be in your chair, ready to watch supersleuth Lord Peter Wimsey's well-bred way with murder in Dorothy Sayers' *Clouds of Witness*.

This is the third Masterpiece Theatre season made possible by a grant from Mobil.

The quality hasn't changed.

Only the plots have changed, to mystify the innocent.

Mobil®

Now a library is one of New York's nicest theatres.

Monday through Friday, next week, the New York Public Library's Donnell Library Center at 20 West 53rd Street will turn its large and comfortable auditorium into a theatre so you can enjoy some of the finest art films you're likely to see anywhere.

The films will be screened at 4:00 P.M. and 6:00 P.M. on Monday, Tuesday, and Thursday. On Wednesday at four, there will be a special program for children. The six o'clock film that day is a special for *adults*—a gorgeous look in color at Java's Borobodur temple.

We don't have room here to give you the week's schedule. But we can tell you it includes films on Gauguin, Edward Munch, Jackson Pollock, Eskimo art, and a lot more.

Best thing to do is stop in at the Donnell between now and Monday for the complete program. It's all free to the public. Of course, it costs the Donnell money, and we were happy to help with some of what was needed.

Go to a movie at the library for a nice way to end the day.

Mobil®

This ad appeared in the New York Times on June 7, 1973.

©1973 Mobil Oil Corporation

Why you can't get tickets to some of New York's greatest shows.

You can't get tickets to some of New York's very best shows because they're free.

In city parks you can see opera, watch a frisbee fly-in, enjoy poetry readings, attend dance festivals, listen to concerts by the Philharmonic, see a Metropolitan Opera performance, watch Shakespeare.

All free.

The New York City Parks Administration wants to remind you that this great entertainment and a lot more is available. And that you find out when and where by calling (212) 472-1003 any day of the week from 10 in the morning until eight in the evening. Parks people at that number will cheerfully tell you about all the superb attractions you can't get tickets for.

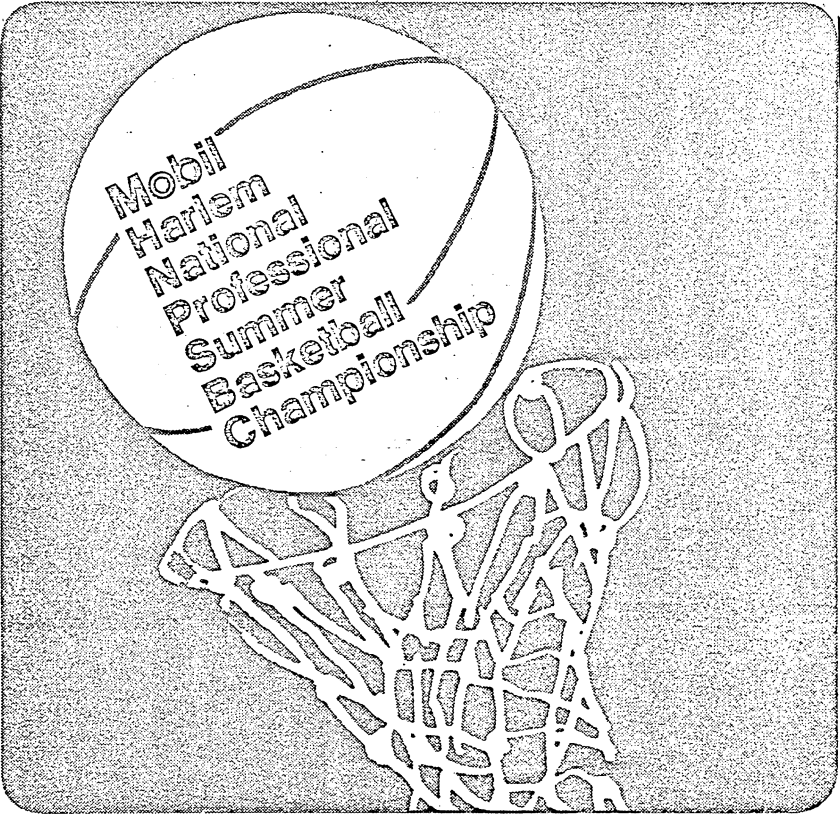
We happen to know about one of the nicest. A visit to Summergarden, at the Museum of Modern Art, is a tranquil way to spend a weekend evening. (A grant from Mobil Foundation makes Summergarden possible.)

There's plenty more all over the city, though. Call 472-1003 to find out about it.

That's the ticket.

Mobil®

This ad appeared in the New York Times on July 5, 1973.



Tiny Archibald. Julius Erving. Dean Meminger. Artis Gilmore. Bob Love. The nation's greatest pro basketball stars playing for a great reason: to support sports and education programs for youngsters in New York and other cities.

Mobil underwrites the costs of the three-day tournament that pits pros against neighborhood hotshots. We also provide a \$2,500 scholarship, and a trophy for the victors.

The tournament begins Friday, August 24th, at Mahoney Gymnasium, City College of New York, 138th Street and Convent Avenue.

Proceeds from ticket sales go to the youth programs.

Get your tickets today at any Ticketron® outlet or at any of these locations: Harlem Professionals, Inc., 2123 Seventh Avenue; Appletown Sporting Goods, 2489 Seventh Avenue; and Small's Paradise, 2294 Seventh Avenue. Or you can pick up tickets right at Mahoney Gymnasium.

Mobil®

This ad appeared in the New York Times on August 23, 1973.

Saturday is West Side Day.

This Saturday the American Museum of Natural History will hold its fourth annual West Side Day.

Last year, 34,000 friends of the museum from all over the city dropped by. Some activities they enjoyed included making Masai jewelry and sculpting dinosaurs out of clay. This year, 100 community groups will set up exhibits and information desks throughout the museum.

West Side Day gives the city a better understanding of what a wonderful resource the museum is. The museum's knowledge of the community grows, too.

We've been friendly with the museum since the early 1940's when Mobil became involved with its Department of Invertebrate Paleontology. The collection of micro-fossils there is invaluable to anyone concerned with oil and gas; and the *Micropaleontology Press*, which Mobil helps finance, provides information on micro-fossils to universities and business scientists throughout the world. That's our business interest.

But we like West Side Day because it's a great way to spend a September Saturday.

We hope New York families agree. And we hope other corporations will consider how they might help support the American Museum of Natural History.

Whether you want to reach the museum for fun or with funds, it's at 79th Street and Central Park West.

See you Saturday.


 The Mobil logo, featuring the word "Mobil" in a stylized, bold, sans-serif font. The letter "M" is particularly large and prominent. A registered trademark symbol (®) is located to the upper right of the "i".

This ad appeared in the New York Times on September 27, 1973.

Brooklyn's giving us the bard.

Think of it: A British Theatre Season in Brooklyn.
The Royal Shakespeare Company. The Actors
Company. The Young Vic. Three of the world's truly
great troupes.

In repertory, in Flatbush.

This spectacular season opens at the Brooklyn
Academy of Music on January 9, with the Royal
Shakespeare Company doing Richard II. It continues
to late April; and, aside from the bard, offers work by
Chekov, Plath, Congreve.

Brooklyn's British Theatre Season has to be one of
the most extraordinary theatre events anywhere. We
congratulate the Academy of Music for putting it
all together.

Tickets are reasonable (they start at \$3.50), and
available at the Academy's Box Office at 30 Lafayette
Avenue as well as at A & S, Bloomingdales, and
Ticketron outlets.

If you enjoy the King's English, you'll love Brooklyn's
British Theatre Season. And you'll thank Brooklyn for
giving you the bard.

Mobil[®]

Merry Christmas Jerry, Ed, and Bill.

Sorry the three of you can't be home for the holidays. Not that you are the first, of course. It's been that way down through the ages. Most of us sit home by the fire, while a few are off on far voyages of discovery.

Jason and his Argonauts, seeking the Golden Fleece. Magellan pressing across the vast Pacific. Or Darwin, cataloging a newfound insect on some bleak Galapagos island. Skylab is all of these.

Skylab is questing for treasure, navigating the unknown, gathering scientific evidence. How delighted Darwin would have been with the thousands upon thousands of photographs of the sun, the earth, the stars, and that heavenly visitor Kohoutek.

Magellan, perhaps, would have been transfixed by the sight of the earth—a huge sphere floating in space, as a handful of his men proved for all time.

And what of Jason? Could he perceive that his Golden Fleece was but a bauble compared with the treasure Skylab and its crew will bring back for all of us?

The treasure is the golden sun itself. The crews of Skylab have collected more detailed information about the sun than man has amassed in all history.

Leave aside the galactic theories that have been warped and recast by the new voyages of discovery. Man has learned to live and work in space. He can loft all kinds of equipment and machinery into orbit, and keep it functioning. He can repair and maintain apparatus for converting sunlight into electricity, or set a delicate sail to trap the solar wind. From beyond the haze and distortion of the atmosphere he can take photographs by the hundreds of thousands, record his observations, conduct experiments.

Electric power generated by solar energy will not be a practical, large-scale reality soon. Certainly not in time to meet the problems of this decade. But one day, all the new knowledge and skills will come together in a project to capture the sun's energy for the use of man. Clean, abundant, economic energy for the people of all nations.

Perhaps the mechanism will be a series of orbiting solar traps that beam energy to earth along microwave or laser beams. Perhaps it will be an earthbound process for converting solar heat into electricity on a massive scale. Whatever the method, whenever it comes, it will be based in no small measure on the knowledge and skills contributed by the crews of Skylab.

So Merry Christmas and thanks, Bill Pogue, Ed Gibson, and Jerry Carr. Have a good voyage and a safe homecoming.


 The Mobil logo, featuring the word "Mobil" in a bold, stylized font with a registered trademark symbol (®) to the upper right. The letter "o" is a circle with a dot in the center.

GROUP II

©1973 Mobil Oil Corporation

How to handle your car in a crisis.

We mean the energy crisis. You can help keep the gap between energy supply and energy demand from getting worse by handling your car in ways that conserve gasoline.

While you're at it, you'll save some money, extend the life of your engine, cut down tire wear, and reduce pollution.

Here are some pointers from Mobil's research and technical people.

- The slower you drive, the less fuel you use. It costs nearly 50 percent more to cruise at 80 than at 50. And at 50, about 11 percent less fuel is used than at 60.

- With a manual transmission, shift from lower gears as soon as the engine will run smoothly in the higher gear.

- Aim far down the roadway when you drive, and let the car slow itself approaching a traffic signal. You'll save on gasoline and your brake linings will last longer.

- Gauge the traffic lights ahead of you so you have to stop as seldom as possible.

- Use low-viscosity oil in the engine, transmission, and rear axle. Heavy lubricants cause unnecessary friction.

- Keep your car tuned. An engine out of tune can easily burn 25 percent more fuel than one that's properly tuned.

- A fast start can drop your gasoline mileage to six miles to the gallon. Smooth, steady driving, on the other hand, can increase mileage.

- When you start out, give your engine time to warm up. A cold engine uses considerably more fuel in driving than a warm engine.

- Don't floorboard it when you start from a full stop. Under full throttle, gasoline literally pours into the carburetor; a lot of it continues through the engine and out the tail pipe. Some of it gets into the crankcase and dilutes the oil.

- Keep tire pressures up. Underinflated tires seriously reduce gasoline mileage.

All this may seem funny advice from a company that sells gasoline. But while the energy gap persists (and it is likely to, for some time), conservation is going to be exceedingly important to us. To you, too.

So save as much gasoline as you can. That's what we're driving at.

Mobil®

You've heard gasoline is short. Here are 8 ways to get along.

There's a lot we all can do to make our gasoline supplies go farther this spring and summer.

If each of America's 85 million cars consumes a little less fuel, we may get through the heavy driving season with only occasional local gasoline shortages.

But that's a big if.

To minimize the gasoline shortage, we need to take action now. Here are eight important ways to help:

1. Slow down to 50

If we limit our maximum speed to 50 mph, the overall gasoline savings can be enormous. The slower you drive, the less fuel you use. At 50, about 11 percent less fuel is used than at 60. Many highway drivers can save as much as one gallon in seven by cutting back to 50. In both mileage and money, "fifty is thrifty."

2. Encourage car pools

Car pooling can be pushed hard by state and local governments, together with business and labor. A third of all automotive travel is to and from work, but most of it involves just one person per car. Reduced tolls on bridges and highways, special parking arrangements, and other incentives can stimulate multiple occupancy of cars used for commuting. Possible savings run to many millions of gallons a day.

3. Improve driving habits

Avoid jackrabbit starts. Drive at steady, moderate speeds without sudden acceleration or braking. Don't let your engine idle more than a minute or so. These and other gasoline-conserving practices should be heavily promoted by public and private organizations. The accumulation of little savings can add up to impressive volumes of gasoline conserved.

4. Go easy on the air conditioning

Don't forget you're paying for that cool

air with gasoline—up to 15 percent more in cars equipped with air conditioners. Avoid use of air conditioning on days when the heat is only marginally uncomfortable. Save fuel by moderating the temperature from the "coldest" setting.

5. Improve car maintenance

Get an engine tuneup for better mileage. Keep tires inflated to proper pressure and wheels aligned. Radial tires save gasoline. Again, the little savings add up to a lot.

6. Plan the use of your car

Cut down on unnecessary trips by combining several errands in one. Get the groceries on the way home from school. Make shopping lists to avoid extra trips. Eliminate short rides by bicycling or walking; the garaged car gets unbeatable mileage.

7. Consider other ways to travel

Before starting a trip, look into alternate means of transportation. Can you take the train, bus, subway, or plane and leave the driving—and fuel problems—to someone else?

8. Stagger work hours in cities

If urban workers didn't all travel at the same time, traffic would flow faster and smoother, thus reducing fuel consumption. Municipal authorities can work with business and labor to accomplish a good deal in this direction.

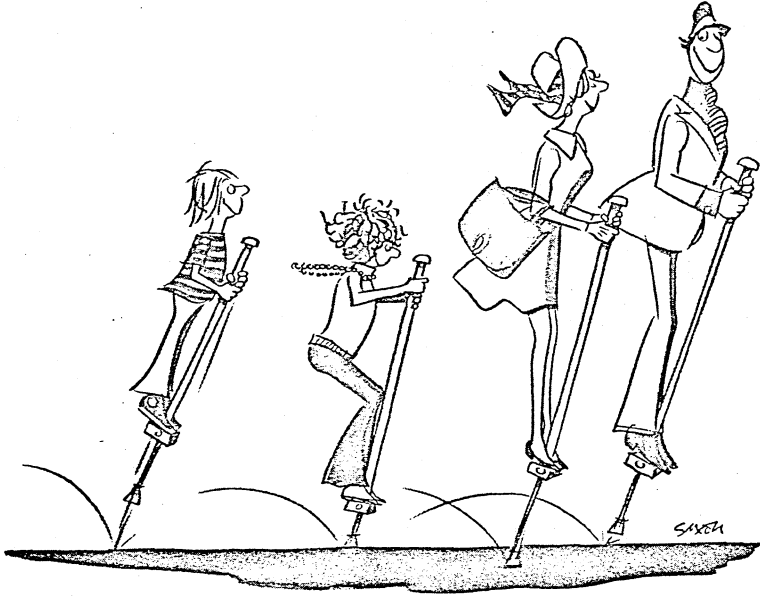
By and large, these are painless ways to reduce gasoline consumption. As dividends, they offer the possibility of attractive money savings, lessened air pollution, and even some preservation of life and limb.

As we enter the vacation driving season, it seems likely that even though gasoline supplies are short, there are things we can do to get along.

Mobil®

This ad appeared in the New York Times on April 26, 1973.

©1973 Mobil Oil Corporation.



Starting today, we want to show you how to get along on less gasoline.

Gasoline supplies will be very tight in some parts of the country this spring and summer.

Not because U.S. refineries are producing less. They're turning it out at record levels, as a matter of fact.

Gasoline will be short because skyrocketing demand has begun outdistancing refinery capacity and crude oil supplies.

There are three main reasons gasoline demand is rising so fast (one-and-a-half times as fast as it did in the 1960s):

- *More cars on the road. New-car sales are at record highs.

- *More and more cars use a great variety of convenience devices that guzzle gasoline. Air conditioners, for instance, and other power take-off devices.

- *The newest cars are equipped with

pollution-control devices that drastically reduce mileage. These devices alone account for half of the increase in gasoline consumption.

If each of America's 85 million cars consumes a bit less fuel, though, we may get through the heavy driving season without real hardship.

So Mobil wants to show you how to get along on less.

Selling less gasoline may seem an extraordinary role for an oil company. But we feel it's the only way to go in this situation.

Here's our first fuel-saving tip: slow down. Go slower than you're used to going, especially on the highways.

Slow down, to 50 and you really cut your fuel consumption. If everyone limited his top speed to 50 miles an hour,

the nationwide gasoline savings could be enormous. Maybe the states should consider new 50-mile-an-hour limits.

Meantime, you can set your own limit. Make it 50.

Mobil engineers figure that at 50, you use about 11 percent less fuel than at 60. On the highway, many drivers could save about one gallon in seven by slowing to 50.

That's for starters.

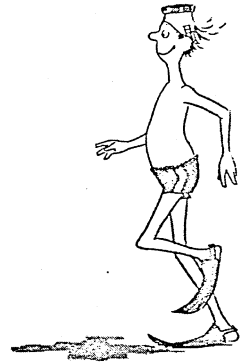
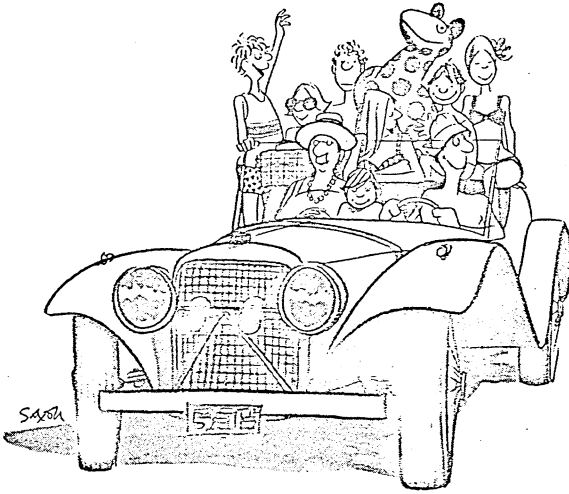
Over the coming weeks we'll have more tips for saving. Pay attention and you'll use fewer gallons, cut costs, reduce air pollution, and become a safer driver.

But one thing at a time.

Right now just slow down, America. Slow down and save gasoline.

Remember, 50 is thrifty.

Mobil



Okay, everybody, into the pool.

The car pool. A sensible way to save gasoline, since more people in fewer cars use less fuel.

You can organize car pools for practically any kind of trip. To-the-plant pools, to-the-station pools, to-the-shopping-center pools, to-school pools. To-the-pool pools, when summer comes.

If you like the pool idea, we'll sell less gasoline. That's all right with us.

Although refineries across the country are turning out more gasoline than ever, they're not able to keep up with demand. Gasoline supplies may be very short in parts of the nation this spring and summer. So we want to help you get more from each gallon.

There are three main reasons gaso-

line demand is rising so fast (one-and-a-half times as fast as it did in the 1960s):

- More cars on the road. New-car sales are at record highs.

- More and more cars use convenience devices that really gulp the gasoline. An air conditioner is the best example.

- The newest cars are equipped with pollution-control devices that reduce mileage. These devices alone account for half of the increase in gasoline consumption.

If each of America's 85 million cars consumes a bit less fuel, though, we may get through the months ahead without real hardship. The car pool is just one idea. Making 50 miles an hour your speed limit on highways is another.

There are still others, and we'll get to them in the coming weeks.

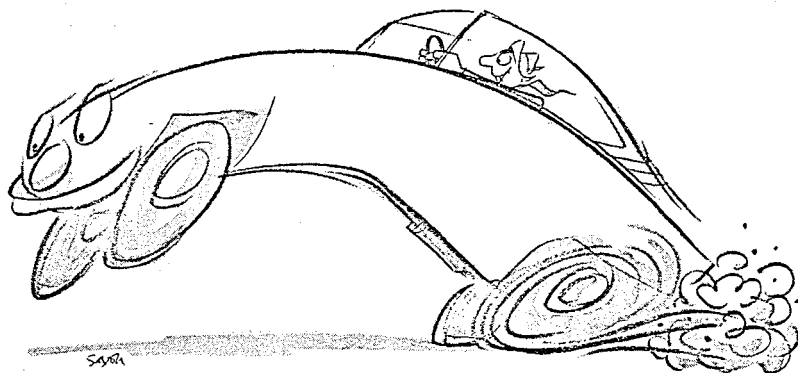
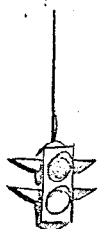
Meantime, consider the car pool, won't you? Talk it up at the office, the plant, the PTA. Maybe you can think of local possibilities for a system like the one in Oakland, California.

The Oakland Bay Bridge Authority there makes a big reduction in the toll for a car carrying three or more people. Since this started, car pools crossing the bridge have almost doubled in number. Gasoline savings—and the effects on traffic, air quality, and highway safety—are important.

Come on. Let's pool our resources. That way, we can get along even if gasoline is short.

Mobil

This ad appeared in the New York Times on May 10, 1973



Dumb bunny.

Jackrabbit starts have always been bad driving, but now that gasoline is in short supply they're really dumb.

To save gasoline, drive at a steady rate without sudden jerks or screeching halts. And slow down on the highways. You use much less gasoline at 50 than you do at 60. If you're just sitting, waiting don't let your engine idle more than a minute or two.

Why are we telling you all this? Because gasoline supplies may be very tight in some parts of the country this spring and summer. We want to show you how to get along on less fuel. That may seem funny to you, coming from an oil company; but we simply think it's the

right thing to do in the circumstances.

Gasoline is short even though refineries across the country are turning it out at record levels. Thing is, demand has begun outdistancing refinery capacity and crude oil supplies.

There are three big reasons for the unprecedented demand:

- More cars on the road. New-car sales are at all-time highs.

- More and more cars have convenience devices that guzzle gasoline. Any power take-off device is a drain on your gas supply, although the air conditioner has the biggest appetite.

- The newest cars are equipped with pollution-control equipment that

reduces mileage. This equipment alone accounts for much of the increase in gasoline consumption.

So gasoline is in short supply. If every motorist uses a bit less fuel, though, we should get through the coming months without real hardship. Good driving habits will be a big help. That's where you come in.

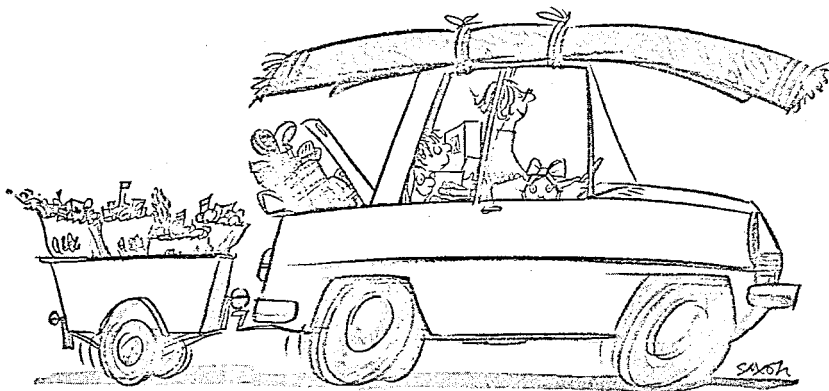
Meantime, we'll be refining gasoline at top capacity; adding to our refining capabilities where we can; exploring for new petroleum reserves; increasing our crude oil imports.

We'll do our part. You do yours, won't you? Shake those rabbit habits.

Dumb bunnies waste gasoline.

Mobil®

This ad appeared in the New York Times on May 17, 1973



She plans to save a gallon a week.

Plans her driving, that is. And the way she's going, there's a good chance she will use less gasoline on her weekly rounds than she used to.

You see what she's doing, don't you? Putting several little trips together to make a big one. Right now she's on the way from the supermarket to the rug cleaner. She'll drop the kids off at school after she leaves the cleaner's. Then she has a golf date.

We dreamed this trip up, of course: nobody needs a trailer for groceries. But you get the idea.

Believe us, it's an important idea. If every driver in the nation saved a gallon of gasoline a week, we could get

through the months ahead with fewer spot shortages. And the country probably could get along without gasoline imports, which would improve our balance-of-payments situation to the tune of \$800 million a year.

In the ordinary way of things, as we hope you know, we work hard at selling gasoline. But right now we think conservation is the thing to sell. We hope you buy it.

Gasoline is short because refineries just can't keep up with a demand that is rising one-and-a-half times as fast as it did during the Sixties.

There are three big reasons for this extraordinary demand:

- More cars on the road. New-car sales are at record highs.

- More and more cars have convenience devices that use gasoline.

- The newest cars are equipped with pollution-control devices that reduce mileage. These account for much of the increase in gasoline consumption, all by themselves.

We're refining gasoline at top capacity. We're adding to our refining capabilities where we can. We're exploring for new petroleum reserves. We're increasing our crude oil imports.

So, do what you can, too, won't you? Plan your driving. See if you can save a gallon a week.

Mobil

This ad appeared in the New York Times on May 24, 1973

Blind spot.

We Americans get excited over lots of things.

The price of food. Watergate. Energy shortages. The environment. The NFL game of the week.

But not over the fact that cars kill over 100 people—and seriously injure 5,800 more—every single day.

The Viet Nam war was an excruciating experience that nearly tore our society apart. Yet auto accidents kill more of our young people *each year* than the Viet Nam war did in nine years. In fact, more people have lost their lives in car accidents than in all the wars in U.S. history. Drop that into a cocktail conversation sometime and you'll get a polite yawn.

56,600 victims died in motor vehicle accidents last year. Half of them in accidents that involved alcohol—and hence were partly preventable. 2,100,000 injured. Cost: \$19.4 billion.

Fortunately, there *is* a bright side to the picture. Although the number of vehicle deaths rises all the time—because more people drive more cars more miles—the motor vehicle death *rate* has consistently gone down. It dropped from 18 fatalities per 100 million vehicle miles driven in 1925, to 4.5 in 1972.

This improvement is due to a combi-

nation of things: Better highways (the death rate on Interstates is only 2.5). Safer cars. Better laws, better enforced. Better-trained administrators and safety educators. Especially, better-trained drivers who *want* to drive more safely.

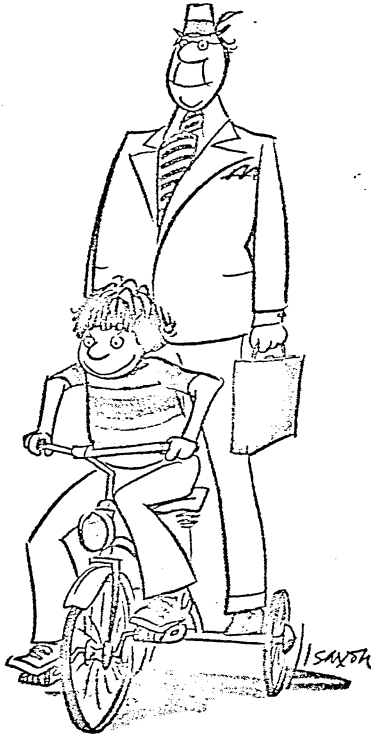
Mobil's concern about traffic safety goes back at least 50 years, when we ran our first ad campaign giving safe-driving tips. In 1966 we began an award-winning series of public service ads with these words: "We feel there is a moral responsibility that goes along with selling gasoline ...We *want* you to live."

We also support with money and manpower the private organizations that work effectively in the traffic safety field: The Automotive Safety Foundation (now a part of the Highway Users Federation) and the National Safety Council. Mobil executives serve on the Boards of Directors of both.

Traffic safety efforts can only do so much. They may improve the national motor vehicle death rate—but statistical improvement is small comfort to the families of last year's 56,600 traffic victims. Let's wipe out the blind spot Americans seem to have about this national scourge.

We *still* want you to live.

Mobil®



Smart drivers make gasoline last.

Gasoline supplies may be tight in some parts of the country this spring and summer, but we can show you how to go farther on less fuel. Nice thing is, you'll save money, too.

Here are some tips:

1. Get out of bad driving habits. Jackrabbit starts, for instance. Drive at steady, moderate speeds (you use much less gas at 50 than you do at 60) without sudden acceleration or braking. Don't let your engine idle more than a minute or two if you can help it.
2. Get into the pool idea. Share a car and you conserve gasoline. Organize shopping pools, work pools, beach pools, school pools.
3. Keep cool without air conditioning whenever you can. You're paying for that artificially cool air with gasoline.
4. Keep your car in good shape. Get the engine tuned regularly. Keep tires at proper pressure, and see that wheels are aligned.

5. Plan your driving. Cut out unnecessary trips by combining several errands. Get the groceries on the way home from school, for instance. Make shopping lists to avoid extra driving. Could you learn to ride a bicycle? Could you learn to walk again?

6. Consider other ways to go. Can you take a train, bus, plane, or subway instead of an automobile? Fuller use of public transportation would cut gasoline consumption.

While you're doing what you can, we'll be turning out gasoline at record levels; exploring for new reserves; adding to our refining capabilities; increasing our crude oil imports.

Fact is, refineries across the country have been producing gasoline at record rates. But skyrocketing demand has begun outdistancing refinery capacity and crude oil supplies, for three main reasons:

- More cars on the road. New-car sales are at all-time highs.

- More and more cars use convenience devices that consume gasoline.

- The newest cars are equipped with pollution-control devices that reduce mileage. These devices alone account for perhaps half the increase in gasoline consumption.

So we're trying to sell you conservation right now, instead of gasoline. We think it's the thing to do while shortages persist. We know, for instance, that if every driver in the United States used just a gallon less gasoline a week, the nation probably could get along without gasoline imports. This would save about \$800 million yearly in foreign exchange payments.

If we pull together, everyone ought to get along without real hardship.

Mobil

This ad appeared in the New York Times on May 31, 1973

Easy riders

By driving on radial tires you can do three good turns for yourself and for everyone else.

Radials, properly inflated, provide a more stable ride—that much is widely known.

But you may be surprised to learn that they also conserve gasoline and reduce automotive air pollution. The reason is that radials roll easier than conventional tires.

Radials do all this while providing you with a new measure of driving ease and comfort.

The reason is in their construction. The radial sidewall provides a more flexible tire than its predecessors, subtly changing shape to hold the road under all kinds of driving conditions.

Take cornering, a critical maneuver. When cornering, or making a turn at speed, conventional tires tend to ride on one side of the tread. But radials lean into a turn, keeping the tread flat on the pavement. Results: better stability, firmer grip, more control than conventional tires.

Radials also improve control on the straightaways. The treads stay full and flat, to give you good traction and handling. So you get less side-

slipping than with conventional tires in crosswinds or on winding roads, and reduced sway and skid under normal driving conditions.

Traction on wet roads is better, too. Because the radial tread has extra traction built into the design and because it remains flat and open; water is dissipated more quickly and the rubber stays in firm, sure contact with the road.

One rule about radials: use them on all four wheels or not at all. Because radials hold the road so much better than conventional tires, mixing tires of different construction could affect your steering. (Radial users installing snow tires should make sure they're radials, too.)

Radials have still other features you'll appreciate. A good radial can deliver up to twice the mileage of a conventional tire, and because it absorbs impact better a radial resists damage from bumps and potholes.

So all things considered—control, comfort, lower gasoline consumption, reduced exhaust emissions—radials are an excellent buy. Consider them when your conventional tires need replacing.

Mobil®

This ad appeared in the New York Times on September 6, 1973.

19 ways to save money and energy without even leaving the house.

Today, more than ever, we want you to save money on home heating. Money-saving ways with heat almost always save fuel, too; and because of the current energy crisis, it's vital that everyone save where he can.

There's no place like home for a start. Look at these ways you can save money *and* energy while you keep warm. (Maybe you should post this ad in your utility room, as a reminder):

1. Close house doors promptly to keep heat inside. Try to keep the children from running in and out unnecessarily. Some experts estimate that fuel bills are three percent higher for every child you have.
2. Don't be a thermostat fiddler. Switching room temperatures back and forth wastes fuel.
3. Open window shades, blinds, or draperies to let sunshine add warmth to the rooms. It's a free source of home heating.
4. Turn off heat in rooms being ventilated or which are not in use.
5. Close fireplace dampers when not in use. If dampers are missing and fireplace is not used, close chimney opening.
6. Lower thermostat at night. Setting it back 10 degrees for eight hours will save 10 percent or more on heating costs.
7. Lower thermostat to 55 degrees when you are going away for a day or longer.
8. Check radiator enclosures to be sure they are not trapping heat. If you paint them, use paint that will allow for the maximum heat escape. Some experts suggest enamel.
9. Remove rugs and furniture from places where they block radiators or registers.
10. Check steam radiator valves for proper function. Replace non-adjust-

able steam radiator valves with adjustable ones. Drain air or water, if present, from steam radiators to allow them to heat up fully.

11. If your garage is heated, keep doors closed and temperature low.

12. Avoid overheating furnace. Overheating wastes fuel.

13. Drain a pail of water from the bottom of a domestic hot water tank monthly. This removes the sediment and improves efficiency.

14. Check and repair leaky hot water faucets. A leak of only one drop a second can mean a loss of 700 gallons of hot water a year. Also, slow leakage will erode valve seats. And it costs money to heat wasted water.

15. Insure clean, better-burning fuel by using oil filters. Be sure to clean them annually.

16. Arrange for your heating fuel dealer to send an expert to clean, adjust, repair, and run an efficiency test on your heating plant at least once a year. You can prevent breakdowns, and pinpoint problems before they get too serious.

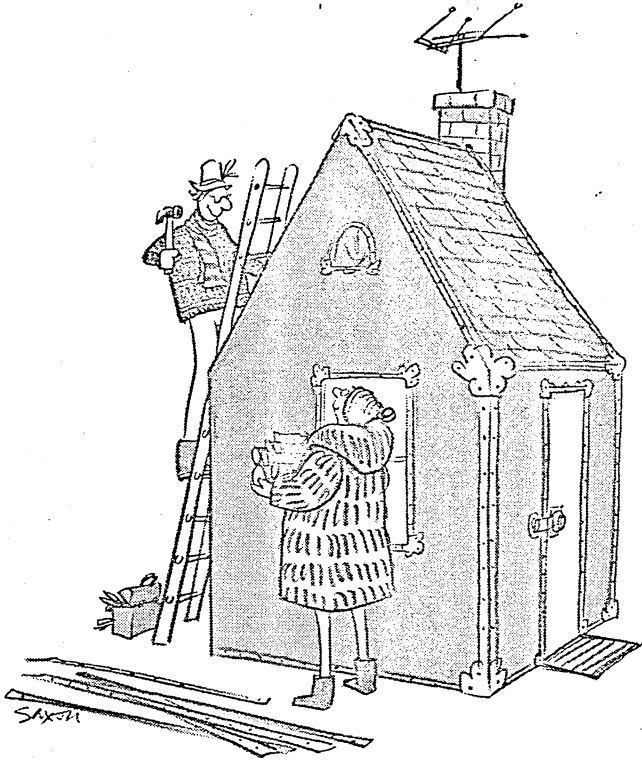
17. You should have at least six inches of thermal insulation over your top floor ceiling. This should pay for itself in about a year if you live in the New York-Connecticut area or north of it.

18. If you have gas heating, shut off the pilot light when the heating season ends. (Ask your gas company how.) The pilot light consumes about 1,440 cubic feet of gas a month.

19. Use weather stripping to seal up air leaks around windows and doors. Storm windows will cut in half the heat that is needlessly lost through the windows in your house.

Nothing difficult about any of those money-saving, energy-saving ideas, is there? Please accept them with our warm wishes.

Mobil®



The heat's on to keep the heat in.

Everyone at one time or another has thought, "Gee, I wish I'd said that."

Which is exactly how we feel about a 10-page article in the October issue of *Popular Science* entitled, "Beating the Energy Crisis: More Heat from Less Fuel."

We wish we'd written the article because it can help almost anyone come to grips with the energy crisis one small bit at a time. The article covers heating-system adjustments, weatherproofing, and other fuel-saving tips. There's something for everyone, ranging

from the person who's competent to tackle a home heating system to the one who cringes at the sight of a screwdriver.

These days, nobody can afford to overlook good suggestions on how to conserve fuel. So if you care to drop us a card (at Dept. PSM, 150 East 42nd Street, New York, N.Y. 10017), we'd be pleased to send you a free reprint of *Popular Science's* words of wisdom.

It's the next best thing to uttering them ourselves.

Mobil®

Let there be just enough light.

You know, you may be too bright for your own good.

In the present energy crisis, everybody needs to look for ways to conserve energy. The sensible use of electric light can help.

About one-fourth of all the electric energy sold goes for lighting. In a high-rise office building, over half of the electrical energy consumed goes into illumination. So whether you're at home or on the job, it's not very smart to be too bright.

Around the house, you can start saving energy by doing what your mother always told you to do: turn off a light if you're not using it. Try getting along without electric lights during the day, in those rooms with windows that let plenty of daylight in. See how nice natural lighting can be. Save a watt wherever in your home you see the opportunity. Common sense will tell you what's wasteful and what isn't.

The situation in buildings is different. And, from an opportunity-to-conserve standpoint, more exciting.

The New York Chapter of the American Institute of Architects takes an urgent interest in energy conservation, and AIA observers see a great many chances to make important savings in the energy used to light city buildings.

First of all, AIA points out that the overall level of illumination in many kinds of buildings has been raised year after year so that now it often is excessive—at least, in terms of energy-responsibility. In these cases, we could be saving lots of watts.

Some examples: New York City

schools used 20 footcandles of light for classrooms in 1952. That was raised to 30 footcandles in 1965, and to 60 in 1971—up 200 percent in 19 years.

Lighting recommendations for libraries rose from 20 footcandles 20 years ago to 70 footcandles last year—an increase of 250 percent.

The suggested light level for office work that requires "reading ink" has been raised from 30 footcandles to 70, over the last 20 years.

The AIA thinks all this brightness may be dumb. It points to studies made a few years ago at California's San Jose College, where it was found that a light level between three and 10 footcandles is adequate for efficient reading. Higher light levels do not increase efficiency, and may even increase fatigue. Earlier research at the University of Minnesota concluded that 10 to 15 footcandles should provide satisfactory conditions when one's eyes are normal and the printing is legible.

Opportunities for important energy savings through reduced or better-planned illumination can be found all through a building. (Do whole floors have to be lighted at night when offices are being cleaned?) And the kicker is that when you cut down your energy consumption, you cut your bills. Conservation can be profitable, and *that* should send business managements running for the light switches.

There are plenty of other ways to conserve energy around the house and at work. Lighting just happens to be one obvious target. We'll go after others in future appearances here.

Mobil®

This ad appeared in the New York Times on May 24, 1973.

GROUP III

43,141 companies have a monopoly on the U.S. oil business.

There are more, actually. We just got tired of counting.

We included companies that produce oil and refine and market their own products, and companies that perform only one or two of those functions.

We included independent wholesalers and fuel oil and liquefied petroleum gas distributors.

We omitted some 220,000 service stations, the vast majority of which are operated by independent businessmen.

But when some Americans think of the oil business, they count only six or seven companies. Cynics count those six or seven as one. And if you don't count past seven, or past one, it's easy to conclude that the oil business is a monopoly.

Funny monopoly. The biggest U.S. marketer of gasoline sells just over eight percent of the gasoline sold in this country. The average motorist can choose from 28 brands competing in his state. The interstate traveler could conceivably choose from among 180 brands of gasoline.

Some 15 of the larger oil companies are usually considered "majors." Each of them faces aggressive competition not only from the other companies in its league, but also from smaller "independents." In this latter competition, the majors have steadily lost ground. The independents' aggregate market position in gasoline, the petroleum product that moves in the largest volumes in this country, is up from 18.5 percent in 1966 to about 29 percent today.

The competition doesn't end—or even begin—with gasoline. Over 7,000 companies are in business to find and produce oil and natural gas, and the largest of them accounts for less than 10 percent of U.S. production.

The cost of a large, modern refinery, which can easily exceed \$250 million, does not encourage thousands to enter that end of the business, but neither does any one firm dominate it. There are 239 refineries in this country, operated by 127 companies. The largest accounts for less than nine percent of total U.S. refining capacity. No other major manufacturing industry is so little "dominated" by any one company. Or any seven.

The oil business does include some of the world's largest industrial companies, Mobil among them. This industry breeds big companies because it takes an enormous complex of men and machines to meet the worldwide demand for energy. U.S. oil demand has more than doubled over the past 20 years, and it will almost double again by 1985. The world will require more oil just in the Seventies than in the past 100 years.

Competition clearly is good for the consumer. It has kept oil products—especially gasoline—among the best bargains in the marketplace. We think competition is good for the companies in the oil industry, too. It keeps us alert and responsive.

We face some of the toughest competitors in the world. We are determined not to let them monopolize the business.



Mobil The Architect and the Energy Crisis

an exhibition opening April 1, 1973
the New York Academy
One American Museum of Natural History

Open: Evening 7:00-9:00
Exhibit Center
11th Avenue and 53rd Street
and through April 22

This ad appeared in the New York Times on March 29, 1973.

The profits of doom

Bad news sells papers.

Dire predictions sell books, too; and some of the best sellers of the past few years have prophesied the ruin of our environment, with doomsday fast approaching.

John Maddox, a physicist who also is editor of Britain's redoubtable scientific journal, *Nature*, has some cogent things to say about the prophets of doom in his own new book, *The Doomsday Syndrome*, published by McGraw-Hill. A few samples:

"The doomsday cause would be more telling if it were more securely grounded in fact, as well as better informed by a sense of history and an awareness of economics. The major defect in the argument that calamity is just around the corner is its imprecision.

"Some doomsdayers fear that the burning of fuel on the scale to which modern industry is accustomed will wreck the earth's climate, but few meteorologists are able unambiguously to endorse such prophecies. Others fear that the use of pesticides will irrevocably damage the human race, but that is an overdramatic statement of the need to carefully regulate the ways in which such chemicals are sprayed on crops. The weakness of the doomsday prophecies is that they are exaggera-

tions. Many of them are frighteningly irresponsible."

About the industrialized society:

"Technology and prosperity are not the inherent nuisances of which the environmentalists continually complain but, rather, the means by which a better environment could be created. One of the most cheerful aspects of technological developments is that the people whose load of misery is lightened are predominantly poor people."

Again on technology:

"One of the most common misconceptions about technology is that it consists entirely of gigantic, tax-supported programs for sending rockets to the moon. In reality, most technologists work toward much less spectacular objectives—building safer and cheaper bridges, for example, or devising ways of drying coffee without loss of flavor. Those who complain about technology and its effects would be on stronger ground if they concerned themselves with devising ways for society to exploit science and technology."

The Doomsday Syndrome bristles with prickly and engaging prose, scrupulously documented, and author Maddox may have a best-seller on his hands.

Even though he is delivering good sense instead of bad news.

Mobil®

This ad appeared in the New York Times on April 5, 1973.

When it's a question of smart shopping, the answer is know.

This is Consumer Information Week.

It's the week to become a tough customer, asking hard questions as you shop. To start getting the facts about what you're buying, so you know you're getting your money's worth.

The Council of Better Business Bureaus sponsors Consumer Information Week to encourage shoppers to get smart. We think it makes sense.

It seems to us a sort of moral contract exists between buyers and sellers. Sellers are responsible for providing worthwhile goods and services at reasonable prices. Buyers are responsible for knowing enough to get what they've bargained for, and for letting the sellers know whether they're doing a good job. We hope people with motoring needs know what to look for in petroleum products—because when they do, there's a good chance they'll come to Mobil. Other responsible businesses feel the same way; that's why they support Consumer Information Week.

These are some of the things the Council of Better Business Bureaus says you should do to be a tough customer:

Read the label. Understand the guarantee. Shop price *and* quality. Know the cost of credit. Read use-and-care instructions. Check the seller's reliability. Read contracts before you sign. Ask about service. Take your time and ask plenty of questions. The tougher the better. Keep it up, all year round.

Consumer Information Week. An idea worth buying.

Mobil[®]

This ad appeared in the New York Times on May 3, 1973.

The lady was listening.

She lives in Manhattan with her husband and two year-old daughter, and she wrote us a gem of a letter about our ad in this space called "Is Anybody Listening?"

Her first few paragraphs were friendly. She agreed that:

- The energy crisis is real—and growing.

- The U.S. needs to develop its own oil resources.

- Deep-water ports are needed to permit lower-cost delivery of overseas oil.

- Fast-rising oil imports will bring major balance-of-payments and security headaches over the next 10 to 12 years.

- We need more refineries along the Eastern Seaboard, to supply the products people need and to help reduce the export of jobs as well as money.

We nodded happily. Then she let us have it:

"I've slowly come to the conclusion, along with what I guess is a healthy segment of the American public, that the effect of the American oil industry on our land is about the same as that of a two-week-old pup on an antique Aubusson—totally destructive and totally irresponsible."

Well. That was clear enough. You didn't even need to know what an Aubusson is, to get the message.

She went on to tell us why she believes the oil industry has brought most of its problems upon itself. She pointed out (with

some logic) that one reason the industry can't build new refineries is because refineries are smelly. The last thing people over in New Jersey want is another smelly refinery.

If we could get a word in edgewise, we'd admit that Mobil does have a refinery down in Jersey, on the Delaware, and that it does smell a bit. But not nearly as much as it did a few years ago. We'd also mention that our brand-new refinery out in Joliet, Illinois, is hardly noticeable to nearby noses. A new or rebuilt Mobil refinery in New Jersey would be as non-smelly as technology could make it. Which is pretty non-smelly.

"You've also got to show people like me," she continued, "that the technology that built offshore drilling facilities can cut down spillage from them."

But ma'am, it's already been done. More than 14,000 offshore wells have been drilled in United States waters over the past 30 years, with only three major oil spills—none of which did lasting damage to the environment. That's past experience. With today's technology and safety practices, the record could be even better in the future.

She said people wouldn't oppose deep-water ports if our ships didn't flush out their oil tanks at sea. That subject will be covered in a separate ad here.

The lady also said:

"You've got to show me that

the industry has enough self-control to admit that the technology is currently not available to render drilling in seismic areas, or a pipeline in permafrost, safe from catastrophe."

All right. We admit it. The technology is not available to render any of man's endeavors absolutely safe from earthquake, tidal wave, or other catastrophe. Many an offshore drilling rig has withstood a hurricane; many a tanker has ridden out a typhoon; many a pipeline has survived many an earthquake. But the technology to support a 100% guarantee on all of mankind's activities may never be available.

And this is the crux of the problem. The lady (like many other people, evidently) believes the oil industry could guarantee perfection if only we cared enough. Last year Mobil "cared" enough to spend over \$180 million on research, equipment, and maintenance in environmental protection. But that doesn't guarantee that some refinery unit somewhere won't spring a leak and put us in bad odor with our neighbors. Technology, to coin a phrase, is only human.

So we stick to the statement we made in our "Is Anybody Listening?" ad. We said people must strike a balance in their environmental demands.

And speaking of a clean environment, who would let a two-week-old pup loose on an antique Aubusson, anyway?

Mobil®

This ad appeared in the New York Times on May 10, 1973.

The U.S. stake in Middle East peace: I

Oil and natural gas supply over three-quarters of the energy used in the United States.

Our society literally cannot live without adequate oil supplies. We could not even grow our own food without oil to power farm machines, much less continue as an industrial society.

U.S. oil consumption is rising rapidly and will continue to, even though we must become much more efficient in our use of energy. Yet domestic production of crude oil is actually declining now. We already have to depend on other countries for over a third of the oil we use. In another seven years, or less, we will be relying on foreign sources for more than half our oil.

This is the prospect even if a pipeline is built to bring oil from Alaska's North Slope to market in this country, and even if large additional oil reserves are found and produced off the U.S. East and West Coasts.

Canada, Venezuela, and Nigeria, among others, are substantial exporters of oil to the U.S., and increasing volumes of their oil will probably come here. The North Sea is a promising area, but this oil will be consumed in Northwest Europe. Additional new oil provinces in various parts of the world will probably be brought into production over the coming years.

However, based on everything we now know, the Middle East is the only region in the world with large enough reserves of oil to meet the inevitable increase in U.S. consumption. Like it or not, the United States is dependent on the Middle East even just to maintain our present living standards in the years immediately ahead.

Of all the countries in the Middle

East, the U.S. must look primarily to Saudi Arabia and Iran for oil. Each of these countries has its own unique needs and problems and opportunities; later in this series, we will have more to say about this.

Of these two countries, Saudi Arabia has the most oil—more, in fact, than any other nation in the world. Its reserves can support an increase from the present production level of about 8 million barrels a day to 20 million barrels daily. Iran's reserves can support an increase in production from about 6 million barrels a day now to around 9 million barrels daily. Mobil has substantial interests in the oil reserves of both countries—and substantial supply obligations to millions of customers around the world.

We in the United States must learn to live with the peoples of these two countries and to understand that they look to us for policies that recognize their legitimate interests and aspirations. If we want to continue to enjoy our present life style, or anything approaching it, then—no matter how much more efficient we may become in the use of energy—we will have to understand the changed and still-changing conditions in the Middle East and in the rest of the world.

If our country's relations with the Arab world (Iran is not an Arab state) continue to deteriorate, Saudi Arabia may conclude it is not in its interest to look favorably on U.S. requests for increased petroleum supplies. The government of that country has the power to decide how much oil is to be produced within its borders. And to what countries that oil can be shipped.

In the last analysis, political

considerations may become the critical element in Saudi Arabia's decisions, because we will need the oil more than Saudi Arabia will need the money. That country could reduce oil exports 3 million barrels a day below present levels and, with its small population, still finance its domestic development programs with a comfortable margin for reserves. Its present reserves of foreign exchange—dollars, pounds sterling, and gold—exceed \$3 billion and will reach about \$5 billion by the end of this year.

Thus Saudi Arabia has no urgent financial incentive to increase oil production to 20 million barrels a day, or even to increase it at all.

It is therefore time for the American people to begin adapting to a new energy age, to a vastly changed world situation, to the realities with which we will have to learn to live. Nothing less than clear thinking, a sense of urgency, and a grasp of what is at risk can lay the base for achieving a durable peace in the Middle East.

So we say: It is time now for the world to insist on a settlement in the Middle East, backed by ironclad and credible guarantees from the United States and the Soviet Union, among others. A settlement that will bring justice and security to all the peoples and all the states of that region. Nobody can afford another war in the Middle East. Nobody. Nobody.

None of us can any longer go on just hoping the situation in that part of the world will somehow resolve itself peacefully. Because the alternatives to a just, peaceful, and lasting resolution have become intolerable.

Mobil®

This ad appeared in the New York Times on June 21, 1973.

43,141 companies have a monopoly on the U.S. oil business.

There are more, actually. We just got tired of counting.

We included companies that produce oil and refine and market their own products, and companies that perform only one or two of those functions.

We included independent wholesalers and fuel oil and liquefied petroleum gas distributors.

We omitted some 220,000 service stations, the vast majority of which are operated by independent businessmen.

But when some Americans think of the oil business, they count only six or seven companies. Cynics count those six or seven as one. And if you don't count past seven, or past one, it's easy to conclude that the oil business is a monopoly.

Funny monopoly. The biggest U.S. marketer of gasoline sells just over eight percent of the gasoline sold in this country. The average motorist can choose from 28 brands competing in his state. The interstate traveler could conceivably choose from among 180 brands of gasoline.

The competition doesn't end—or even begin—with gasoline. Over 7,000 companies are in business to find and produce oil and natural gas, and the largest of them accounts for less than 10 percent of U.S. production.

The cost of a large, modern refinery, which can easily exceed \$250 million, does not encourage thousands to enter that end of the business, but neither does any one firm dominate it. There are 239 refineries in this country, operated by 127 companies. The largest accounts for less than nine percent of total U.S. refining capacity. No other major manufacturing industry is so little "dominated" by any one company. Or any seven.

The oil business does include some of the world's largest industrial companies, Mobil among them. This industry breeds big companies because it takes an enormous complex of men and machines to meet the worldwide demand for energy. U.S. oil demand has more than doubled over the past 20 years, and it will almost double again by 1985. The world will require more oil just in the Seventies than in the past 100 years.

Competition clearly is good for the consumer. It has kept oil products—especially gasoline—among the best bargains in the marketplace. We think competition is good for the companies in the oil industry, too.

We face some of the toughest competitors in the world. We are determined not to let them monopolize the business.

Mobil®

This ad appeared in the New York Times on July 19, 1973.

Capitalism: moving target

The list of things wrong with business in this country is almost endless. Nearly as long, in fact, as the list of what's right with it.

Perhaps the most frustrating thing about business, for those who keep trying to shoot it down, is this: Corporations are so tenacious that they will even do good in order to survive. This tenacity goes beyond the old maxim that man, in his greed for profit, often unavoidably serves the public interest. In times of crisis, business will even do good *consciously* and *deliberately*.

Nothing could be better calculated to confound business's critics than this underhanded tactic. The Marxist dialectic has it that capitalism must inevitably founder in its own inherent contradictions; that it contains the seeds of its own destruction. But business also contains the seeds of its own adaptation and survival.

Businessmen are pragmatists, and with their daily feedback from the marketplace, they readily abandon dogma whenever their survival instinct tells them to. It has become less and less a question of what they *want* to do or might *like* to do, but of what their common sense and survival instinct tell them they *have* to do.

Remember the Edsel? That was one of the fastest plebiscites in history. But it wasn't the American public that took the loss; it was the shareholders of Ford Motor Company. (Then, you'll recall, Ford

changed course and bounced back with the Mustang, which quickly showed its tailpipe to the competition by breaking all sales records for a new make of car.)

Because it is keyed so closely to the marketplace and so responsive to it, private business is necessarily the most effective instrument of change. Some would call it revolutionary. Many of those who attack business fail to comprehend its constructive contributions to responsive change. And this sort of change is one of the basic reasons business manages to survive.

Not *all* businesses survive, of course. The record is replete with companies that expired because they didn't adapt rapidly enough to a new milieu.

While businessmen as a whole are not exactly social reformers, they do respond to criticism and to sustained social pressures. The alert businessman regards such pressures as a useful early warning system. The danger is that criticism can become a mindless reflex action that persists long after the basis for it has been dissipated.

Partly because of its ability to adapt—which is simply another word for responsive change—private business remains the most productive element in our society and on balance the best allocator of resources. If you decide to draw a bead on it, remember you're aiming at a moving target. Because, as we've said here before, business is bound to change.


 The Mobil logo, featuring the word "Mobil" in a bold, stylized, sans-serif font. The letter "o" is a circle with a horizontal line through its center. A small registered trademark symbol (®) is located at the top right of the letter "l".

You could get in trouble because of New York's new drug law. Yes, you could.

Two days from now, the toughest drug law in the country becomes effective in New York State. Its purpose is to force addicts, junkies, and pushers to get help for themselves or get off the streets.

Narcotics are not the only drugs involved, though.

Barbituates, amphetamines, hallucinogens, and other types of drugs also are included in the law.

You may be using prescriptions that have these drugs in them. And as long as you have a legal prescription for them, you won't be affected by the new law. A legal prescription. For legitimate medical reasons. Issued by a physician or practitioner.

But if you don't have a legal prescription for your drugs, you could find yourself in trouble.

Find out more about the new law. Call 246-9300 in New York City. Or write Drugs, Box 8200, Albany, New York 12203.

From now on, when you hear about New York's new drug law, don't just think about the junkies.

Think twice. The second time could keep you out of trouble.

Mobil®

This ad appeared in the New York Times on August 30, 1973.

Lamenting the fallen sparrow

Is technology doing the human race good, or doing it in?

That question persists after more than 200 years of technological innovation. Not many people argue any longer that if God had wanted humans to fly, He would have given us wings. But there are plenty of contemporary alarms against invention.

It won't surprise anyone to learn that Mobil believes technology does a great deal of good. It may surprise some people when we concede that technological advance takes its toll. Like many other things, technology is sometimes a blessing, sometimes a bane.

On this subject, we share the views of Dr. Hans Landsberg, director of the resource appraisal program carried out by Resources for the Future—a nonprofit corporation for research and education in the development, conservation, and use of natural resources.

At a symposium not long ago of the American Academy of Arts and Sciences, Dr. Landsberg said:

"One is apt to view the more disagreeable aspects of modern life, including most prominently those due to the impact of

technology, with partiality—often unconsciously. We take for granted that we may drink tap water, eat uncooked fruit or vegetables, and consume milk with no thought of falling victim to a lurking bug. We are reminded of our good fortune only when we travel in parts of the world that require preventive or remedial countermeasures....

"But, customarily, we fail to do much balancing of pluses and minuses.

"We tend to overlook the fact that the chemical industry produces not only controversial pesticides, but also antibiotics and vaccines; that the automobile whose incomplete fuel combustion fouls the city air does, at the same time, enable us to escape its boundaries and to know the world in a way available a generation or two ago only to the daring or the rich.

"We are quick to lament the fallen sparrow, but slow to celebrate the fall of 'Typhoid Mary.' "

Responsible enterprise, Mobil believes, should not merely lament the sparrow's fall, but try to prevent it. Yet industry should not be—and need not be—deterred from striving to make technology a blessing for the earth and all the living things that inhabit it.

Mobil

This ad appeared in the New York Times on September 13, 1973.

Sherman, Conn., May 9, 1974.

HON. PHILIP A. HART,
*Chairman, Subcommittee on Environment, Senate Commerce Committee, Senate
Office Building, Washington, D.C.*

DEAR SENATOR HART: I respectfully request that I be permitted to rebut the statement made before your Subcommittee on May 6 by Harvey J. Shulman. Please add this letter to the record.

Ads by oil companies are not intended to influence political elections. They are for public information. If Mr. Shulman's proposal is adopted, it will be a gag rule. Companies not favored by the media—and which are?—would be at a loss to put forth their point of view.

I think we need the ads of the oil companies, because consistently the media have omitted to give the truth about the oil situation. They criticize the oil companies for shipping oil to foreign countries when we need it here, without mentioning that our own Government is forcing the international companies to share their crude oil with the domestic companies by selling that oil at a loss to those companies. What right has the Government to do that? What right have the newspapers to conceal that? How dare anyone deprive the companies of the right to purchase space to make their case? It is wicked, indeed, that they should *have* to purchase such space.

Government's role should have been to stand aside and let the market allocate the gasoline. Instead it intervened, caused shortages, imposed prices that forced further misallocation, and generally caused the same unnecessary difficulties that governments always cause when they meddle in the economy.

We are now being told that oil companies are exceedingly and indeed excessively high. We are told nothing about rate of return on equity, which is the proper criterion. We are told nothing about the state of depression from 1969 through 1972 in the oil industry. We are told nothing about the fact that the top eleven oil companies' earnings for 1973 were lower than those of the New York Times, the Washington Post, and ABC. I would have known of none of those things but for oil company ads.

I sincerely hope that the Congress does not take Mr. Shulman's service.

Yours sincerely,

NATALIE SIRKIN.

ASSOCIATION OF NATIONAL ADVERTISERS, INC.,
New York, N.Y., July 15, 1974.

HON. PHILIP A. HART,
*Chairman, Subcommittee on the Environment,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: It has come to our attention that the testimony of some witnesses before your Subcommittee on the Environment can be interpreted as recommending that all advertising which is not exclusively product-oriented should be disallowed as a proper business expense for Federal income tax purposes. While we suspect that such sweeping proposals are not germane to the constructive investigation you are conducting, we feel we should comment at this time in the interest of a balanced record.

Our concern stems from the following:

1. A business, to prosper—even to survive—may be called upon to communicate with a variety of publics on matters which are only indirectly related to the sale of products or services.

2. To discourage such communications—to ban them from all practical purposes in some instances—by censorship through the tax laws and the Internal Revenue Service is not in the public interest.

May I illustrate our concern briefly:

Any business, like any organization, must communicate with many audiences on a variety of possible topics. These, for example, could include:

(a) The financial and stockholder community audience. . . . A business may find it essential to communicate its operating results, its growth potential, steps it is taking to resolve problems or its management's philosophy in regard to foreign trade and our balance of payments.

(b) The employee and plant community audience. . . . An employer may find it essential to communicate on productivity programs, about employee benefits and retirement programs, on local zoning issues, or on ecological questions of interest to the plant community.

(c) The professional or "high technology" audience. . . . In many instances, a company will need to communicate on new developments in science, engineering, agriculture, medicine and the like on which it has information to specialized audiences, including government officials.

(d) The more generalized public on questions indirectly related to the products of the company. . . . Insurance companies, for example, have helped make us aware of safety practices; nutritional guidance is in corporated into food product advertising; health and dental care procedures can be both implicit and explicit in the communications of a variety of companies.

These brief examples of some "audiences" and some communications other than those directly product-oriented which a business may reasonably feel it important or essential to transmit only scratch the surface. Many more, and in far greater detail, could be presented.

This Association, whose membership is comprised of users of national advertising, has consistently recognized a) that advertising expenditures, to be considered as an expense for income tax purposes, have to have a reasonable relationship to the business of the taxpayer; and b) that advertising explicitly designed to defeat or encourage the passage of specific legislative proposals is non-deductible.

It is apparent, I believe, that the examples cited above, as would be true of many others, are reasonable business expenses. It is also apparent that on occasions such communications may relate to matters—safety and health, for example—which could also be the subject of legislation as almost any question would fall in that category. In our judgment, however, it would clearly not be in the public and national interest to so distort the meaning of "lobbying" or "influencing legislation" as to discourage or preclude the inputs to public knowledge and discussion which business organizations can provide.

As I suggested at the outset of this letter, we suspect that the recommendation that all advertising other than strictly product-oriented advertising be disallowed is not germane to your Subcommittee's investigation. Should that not be the case, or should you wish further amplification of our point of view and experience, we would, of course, be more than pleased to provide testimony. Please just have your office let us know.

Very sincerely,

PETER W. ALLPORT,
President.

AMERICAN ASSOCIATION OF ADVERTISING AGENCIES, INC.,
New York, N.Y., July 16, 1974.

Senator PHILIP A. HART,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: The American Association of Advertising Agencies (A.A.A.A.) submits these comments in opposition to certain proposals contained in the statement made by Harvey J. Shulman to the Subcommittee on May 6, 1974 on behalf of Media Access Project. The A.A.A.A. is the national association of the advertising agency business. Its membership consists of 392 advertising agencies, large and small, which are located in all parts of the United States and account for about three-fourths of the national advertising volume placed by advertising agencies.

The Shulman statement challenges the tax-deductibility of a number of corporate advertisements dealing with energy and environmental issues on the ground that they should be classified as political advertising which does not qualify for deduction as a business expense under Section 162(e) of the Internal Revenue Code and the applicable I.R.S. regulations. It also challenges the accounting treatment as operating expense of a number of advertisements by public utilities. Our statement does not relate to the legal status of the particular advertisements under attack, since this is primarily a matter for the advertisers involved, but expresses our concern with proposals that would extend the denial of tax-deductibility for political advertising to institutional advertising generally.

The Shulman Proposals

Our concern arises from statements such as the following: "In short, the 1962 law was not a license to corporate advertisers to propagandize to the public on matters of legislative concern, or any other controversial matters, through subsidization from the public offers." (p. 12)

We are also concerned by the guidelines for denying deductibility which Mr. Shulman suggests on pages 33 and 34 of his statement. A number of these plainly have nothing whatever to do with the question whether advertising advocates the passage or defeat of legislation but would engage the I.R.S. in censorship of advertising style and content: for instance, whether the subject matter is fairly discussed, whether the tone is polemical, whether readers or listeners are invited to express their views, etc.

Summing up his antagonism towards any corporate advertising which deals with issues, regardless of whether it is addressed to pending legislation, Mr. Shulman proposes that regulations should be adopted creating a presumption of nondeductibility for any advertising that "presents social or economic views, or deals with a matter which might reasonably be expected to become the subject of legislation." This would have the effect of "restraining propaganda masquerading as goodwill advertising." (p. 35) Finally, Mr. Shulman recommends that the I.R.S. should reinstate its dangerously vague regulation, discarded in 1965, which disallowed the deduction of expenses associated with "the exploitation of propaganda." (p. 41).

These passages exhibit a hostility not just to political advertising but to any corporate advertising which does not directly promote a product or service. Any other advertising is viewed as "propaganda" which must be discouraged whether or not it is intended to promote or defeat the passage of legislation. The A.A.A.A. believes that this attitude demonstrates a misunderstanding of the nature of institutional advertising and of its importance not only to corporations and their stockholders but to the public at large.

Institutional Advertising as a Corporate Necessity

In today's climate, institutional or corporate advertising has become an unavoidable way of life for more and more companies if they are to stay healthy and grow, or sometimes even stay alive. As an indispensable ingredient of corporate profitability, present and future, institutional advertising is plainly entitled to treatment as an "ordinary and necessary" business expense which may be deducted from before-tax income.

Mergers and acquisitions, diversification, the quick pace of product innovation—these trends which have accelerated so rapidly in the past decade have made it increasingly desirable for many companies to establish an overall identity that will unify their richly varied offering of products and services. To the extent that such corporate sponsorship assures uniform standards of quality and reliability, it meets public as well as corporate needs.

But a reputation for high quality product and services is no longer enough to guarantee their acceptance in the marketplace. People have come to expect companies to be good citizens in every sphere of corporate life. One recent study found that 73% of the group surveyed believed that corporate management should be committed both to earning a profit and to helping solve social problems. A company's failure to live up to the public's growing demands for social responsibility may depress sales of its products and services, excellent though they be. According to Robert Sarnoff: "Other things being equal, a customer's impression of a business can make the difference between a sale or no sale, between profit and loss."

A poor reputation for good citizenship may also adversely affect employee morale and productivity, stockholder relations, the price of the company's stock, its ability to secure financing, and its success in recruiting talented personnel, one of the most critical needs of companies of all sizes. For such reasons it has been said: "A strong corporate reputation with the public at large has become one of the most important assets on a company's balance sheet."

Corporate Communication and Good Citizenship

Corporate advertising may itself be the vehicle of social action. When company ads give tips on how to save gas, show parents how to teach their children to use the telephone in emergencies, offer low cost cooking hints with computer-tailored menus and recipes or tell minority vendors how to make their products known to the company, they are directly demonstrating corporate sensitivity to consumer needs. A campaign devoted to the need for increased productivity to combat inflation and foreign competition both constitutes and displays activity on behalf of the common weal. Companies that have spent millions of dollars to underwrite programs on public TV such as Masterpiece Theater and Sesame Street, advertising only the fact of their sponsorship, have taken action in the public eye to enhance their prestige.

For the most part, however, what a company has done, or plans to do, about conserving energy, reducing pollution, eliminating race or sex discrimination and like matters of public moment will remain unknown to the public unless communicated to it. Corporate advertising is a principal instrument for such communication. To require high standards of corporate behavior but limit the corporation's opportunity to tell truthfully how well it has behaved seems not only unfair but self-defeating. By removing a major incentive for corporate good citizenship, it would not be in the public interest.

The Right of Self-Defense

Those persons like Mr. Shulman who would like to muzzle American corporations emphasize the imbalance between the resources available to the average citizen and the corporate millions that may be poured into advertising to "propagandize" that citizen. Anyone who reads the daily press or listens to the news should know better. Corporations are constantly under attack from every quarter. Charges by consumer groups, Congressional Committee and Subcommittee Chairman, individual Congressmen and the various organs of federal, state and local government set front-page headlines. It is common practice for administrative agencies to launch a complaint with a fanfare of devastating publicity against which a company has little recourse though the charges later prove to be unfounded or even reckless.

Silence by a company in the face of attacks upon its policies and practices is interpreted as an admission of guilt. Corporate advertising provided one avenue of self-defense, but it is a limited one. The Supreme Court has recently ruled that there is no right of access to broadcast media and that no duty to permit response may be imposed on print media. The fairness doctrine, which does impose a duty on broadcasters to fairly present all sides of controversial issues, has restricted freedom of corporate expression by shrinking broadcasters' willingness to accept any but the most innocuous institutional advertising. Thus it is both difficult and expensive for corporations to gain the public ear, even in self-defense.

Conclusion

We respectfully urge that the existing law and regulations should not be enlarged by amendment or interpretation to deny tax-deductibility to institutional advertising which is not for the promotion or defeat of legislation or for political campaign purposes. Corporations have a critical business need to maintain their reputation as good citizens. The public interest in corporate social responsibility requires that corporations have full opportunity to give an account of their stewardship. There is an even greater public interest in uninhibited debate. We have learned that Government is not necessarily right or always accurate and that public interest groups, however sincere, often lack the discipline of accountability. Controversy should not be stifled by prejudgment. The public has the right to hear from all parties.

Sincerely,

JOHN CRICHTON,
President.

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,
Reston, Va., July 19, 1974.

HON. PHILIP A. HART,
*Chairman, Senate Subcommittee on the Environment,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The American Newspaper Publishers Association (ANPA) submits these comments for the record of the Subcommittee hearings on Tax Treatment of Corporate Energy and Environmental Advertising because of our deep concern over the possible adverse effect, even if unintended, on institutional or good will advertising which serves a useful purpose in public discussion of public issues.

ANPA is the national trade association of daily newspapers with a membership of more than 1,100 daily newspapers having more than 90 percent of the total daily and Sunday newspaper circulation in the United States. Institutional advertising is an important element of the total advertising that sustains all newspapers in the United States.

We are concerned that this Subcommittee not initiate action which could eventually lead to the elimination of a large volume of institutional advertising through the adoption of proposals such as that submitted to this Subcommittee

May 6, 1974 on behalf of the Media Access Project. That proposal would revise existing tax regulations concerning institutional advertising in a way that could lead to the virtual elimination of such corporate advertising. It would substantially impair the ability of advertisers to communicate with the public their views on matters heretofore legitimate and allowable under IRS regulations as ordinary and necessary business expenses. As corporate citizens of their communities, their views need to be known on "economic, financial, social or other such subjects of a general nature."

To prevent a taxpayer from deducting expenditures for advertising which comments on any "controversial matters" would constitute a totally unworkable rule for administration by an agency of the government or for compliance by a corporate advertiser. To prohibit tax deductions for institutional advertising dealing with matters which "might reasonably be expected to become the subject of legislation" would make a rule so broad in scope as to make institutional or good will advertising virtually a thing of the past. Virtually no economic, financial or social subject matter is not controversial in someone's mind. Virtually no matter of consequence is not a potential subject of legislation. Such suggestions are virtually proposals to lump all institutional advertising of any nature into the "political" category thus eliminating its tax deductibility and, consequently greatly inhibiting the discussion of public issues. We are confident this is a result you and the Subcommittee would not want to bring about.

ANPA strongly supports the practice of institutional advertising. We contend that there are already sufficient restrictions on its tax deductibility. We urge the Subcommittee to firmly reject any recommendations that would further endanger this necessary business practice for communicating in the marketplace through the media.

With high esteem.

Yours very truly,

STANFORD SMITH,
President.

Exhibit C

GEORGIA POWER COMPANY

A citizen wherever we serve

THEY HOLD THE MUSTARD BUT NOT THE HEART

One hot dog doesn't bring in a lot of profit, but the sale of thousands does. In Rome, Women of the Georgia Power Company serve hot dogs to hungry football spectators. They operate a concession stand to raise money for the Rome Boys' Club, and have donated nearly \$20,000 just to this project.

The Gainesville Women of Georgia Power send monthly gifts to patients at Central State Hospital. Other chapters give their time and energy to projects that include day care centers and nursing homes. These women get no pay for their work. They are employees, or the wives of employees, who enjoy helping people.

Our job goes beyond supplying electricity. The people who work here, and their families, share that belief. Whether dressing a hot dog or organizing an educational loan fund, the Women of Georgia Power help to prove that "A citizen wherever we serve" is more than a slogan. It's a reality.

Who has lower rates than Georgia Power Company?

Hardly anybody.

Check this list of bills in other cities for July, 1973.

Figures show prices for electricity in cities around the nation, not including sales and other local taxes, compared with prices now in effect for Georgia Power.

City	Price for 500 kilowatt-hours	City	Price for 1,000 kilowatt-hours
New York, N. Y.....	\$22.45	New York, N. Y.....	\$41.00
Boston, Mass.	18.99	Boston, Mass.	34.82
Newark, N. J.	17.69	Newark, N. J.	33.09
Philadelphia, Pa.	17.59	Philadelphia, Pa.	32.86
Chicago, Ill.	15.74	Chicago, Ill.	28.64
Tucson, Ariz.	15.68	Cincinnati, Ohio	27.40
Kansas City, Mo.	14.78	Tucson, Ariz.	27.40
Phoenix, Ariz.	14.66	Charlotte, N. C.	26.30
Washington, D. C.	14.64	Kansas City, Mo.	26.03
Cincinnati, Ohio	14.63	Washington, D. C.	26.03
Milwaukee, Wis.	14.35	Phoenix, Ariz.	25.95
Charlotte, N. C.	14.15	St. Louis, Mo.	25.40
Columbia, S. C.	13.51	Milwaukee, Wis.	25.35
Miami, Fla.	13.51	Denver, Colo.	25.26
New Orleans, La.	13.51	Detroit, Mich.	24.68
St. Louis, Mo.	13.50	New Orleans, La.	23.24
Raleigh, N. C.	13.43	Miami, Fla.	23.08
Denver, Colo.	13.26	Raleigh, N. C.	22.55
Gainesville, Fla.	12.84	Dallas, Texas	21.94
Dallas, Texas	12.60	Pensacola, Fla.	21.71
Pensacola, Fla.	12.40	Georgia Power	21.42
Los Angeles, Calif.	12.35	Louisville, Ky.	21.24
Detroit, Mich.	12.34	Los Angeles, Calif.	21.11
Birmingham, Ala.	12.28	Columbia, S. C.	20.74
Jacksonville, Fla.	12.10	Birmingham, Ala.	20.11
Louisville, Ky.	11.77	Jacksonville, Fla.	20.07
Houston, Texas	11.60	San Francisco, Calif.	19.78
San Francisco, Calif.	11.35	Houston, Texas	19.27
Georgia Power	11.27	Gainesville, Fla.	18.86

It's always reassuring to have the good things in life at a bargain — and electricity is no exception. Look at Georgia Power. About one-half of our customers would be in the column for 500 kilowatt-hours a month. And would have the lowest monthly bill on that list. If you use more electricity — 1,000 kilowatt-hours, for example — look at the column on the right. Your bill would still be lower than in most of the cities surveyed.

In fact, our price is more than 20 percent below the national average of all investor-owned utilities. And it's been well below the average for years. But it gets tougher every year to hold prices down, with inflation forcing up the costs of everything we must buy to serve you.

That fact, along with constantly growing demand, has made it necessary for utilities everywhere to ask for increased prices. So we wanted to see how Georgia Power measures up to utilities serving other cities.

And we thought you'd like to know, too.

A GUIDE TO PUTTING THE RIGHT TREE IN THE RIGHT PLACE

A tree can bring you shade, screening, beauty. Select one that will withstand ice and high winds, be insect- and disease-resistant, and complement your home. Avoid pines, which so quickly accumulate ice.

A nurseryman can recommend planting procedures and care, but here are a few tips. Don't plant trees too close to your house. Limbs can mar siding, clog of break gutters, loosen roofing. If it's shallow-rooted or weak, the tree may fall on the house.

The root system usually requires as much area as the above-ground portion. Trees with shallow roots can break sidewalks, lift foundations and damage sewer lines.

If planting near utility lines, consider the tree's mature size. Small trees (15 to 25 feet) are safe near lines. Medium trees (25 to 50 feet) should be 30 feet from lines. Larger trees (50 feet or more) require a distance of 50 feet.

Most power interruptions are caused by limbs rubbing lines or falling on them. Pruning or removing is the only solution for established trees causing these problems. Georgia Power Company has a year-round program for trimming trees, with professional foresters to direct the special crews. With property owners' permission, trimming is done as necessary.

We're working to keep your electric service reliable. This is one important way you can help.

WHAT DOES A TEENAGER KNOW ABOUT BUSINESS?

PLENTY

Thanks to Junior Achievement—a program we, and many companies, have supported for years.

This year, our team learned about business by playing System/360 Management Decision Making Exercise on a computer. They fed data from hypothetical companies into the machine—such as whether to manufacture a greater volume of a product, but risk accruing inventory charges on unsold units. Or to make fewer units and sell them all at a higher price.

The computer digested the information and came back with extensive answers. Down to the last nickel of profits. Or losses.

Our first responsibility, of course, is to provide electricity. We also enjoy our business, as we enjoy kids. Junior Achievement is one way we can communicate our enthusiasm. And show young people that they, too, can succeed in business. If they try.

WHEN IT COMES TO CONSERVATION, WE PLUNGE RIGHT IN

The Chattooga—54 miles of wild river. Georgia Power's land exchange agreement with the National Forest Service means that 6,000 acres along that thundering white water will remain untamed and unspoiled. Preservation of such rivers is vital.

In 1972 we also donated 15 miles of land along the Chattahoochee River for development into a public park by Fulton and Cobb counties. An additional 150 acres were given to the State of Georgia for a wilderness park and access to the river.

Beginning with Georgia Power's land management programs back in the 20s, we've been working to preserve and protect the environment. When it comes to conservation, you won't find us clinging to the shoreline. We plunge right in.

PLEASE

TURN IT UP WHEN YOU'RE LEAVING

ELECTRICITY'S TOO GOOD TO WASTE

Like to save a little money at home when you're going out for the day? Leave the cool inside. Close windows and doors, draw draperies and turn the air

conditioning a few degrees higher. But don't turn it off completely, or extra cooling power will be needed when you return.

For everyday economy, try setting the thermostat at 78 degrees. That may sound a bit warm, but most people find it comfortable. And each degree below that requires five percent more electricity. Remember, air conditioning can consume more energy than all your appliances put together. Electric rates are higher in summer, too, for monthly use above 600 kilowatt-hours.

If you want to cut cooling costs and conserve energy, good insulation is also very important. So are clean filters and proper maintenance of cooling equipment. You can help, as well, by making a conscious effort to use electricity wisely.

It's too good to waste.

PLEASE. CLOSE THE DOOR

ELECTRICITY'S TOO GOOD TO WASTE

A snack between friends is fine. But when it takes place between the refrigerator compartment and its open door, your electric bill may show the results.

Just cutting down on opening and closing the refrigerator door will help save on operating costs. There are other thrifty habits, too, that can help save electricity—and money.

For instance, if your refrigerator must be defrosted manually, do it before the ice becomes one-quarter of an inch thick. Ice buildup makes the freezer work harder.

When adding several unfrozen items to the freezer at one time, turn the control to a colder setting. This will quick-freeze the items. Then turn the control back to normal. A refrigerator located away from heat sources, such as the range or sunshine, will use less energy, too.

It's an open and shut case. Electricity's too good to waste.

PLEASE. DON'T TURN IT ON TILL IT'S FULL

ELECTRICITY'S TOO GOOD TO WASTE

If you make a habit of washing a few dishes at a time, instead of a full day's load, a lot of wasted kilowatt-hours are going down the drain.

A dishwasher can be a real convenience for saving time. But if you want to save on your electric bill, too, operate your machine only when it's full. Once a day may be often enough, or perhaps twice. You'll use less electricity to run the dishwasher and less to heat the water.

Here's another good idea for economizing. Remember that water heaters located near the points of use conserve energy. Then water won't have to travel as far and lose heat along the way.

For spotless dishes, follow the manufacturer's advice on use. And to save on the cost of electricity, put these and other tips to work. In a year's time you might really clean up.

HOW DOES 73° DIFFER FROM 78°?

IT TAKES 25 PERCENT MORE ELECTRICITY

Imagine what that does to your electric bill. Air conditioning can use more power than all your other electric appliances put together. When you set the thermostat lower than necessary for comfort, the extra power is needless expense.

Rates went up last year and will be reflected in cooling costs this summer. But there are ways to use electricity more efficiently and cut down on your bill.

Set the thermostat on 78°. And adjust it 5° higher while you're away from home. Keep filters clean. Clogged ones will overwork the system.

Keep windows and doors shut, and close draperies in sunny rooms. Shade trees help, too. Good insulation and weather stripping can lower operating costs. Air conditioning is even affected by the heat from a light bulb. So turn off unnecessary lights.

Starting to save electricity takes a conscious effort. But it can become a money-saving habit.

THE BETTER THE INSULATION, THE LESS YOUR COOLING COSTS

6" insulation in attic
3" insulation in walls
Unit size 24,000 BTU
Season's cooling \$104.29*

Insulation makes a difference in cooling (or heating) bills. Proper insulation also reduces the size and cost of cooling/heating equipment needed. If the home above had just two inches of attic insulation, it would require a 33,000 BTU unit, and a season's cooling costs would be \$143.39.*

As a barrier to the flow of heat, insulation keeps the heat out during summer and in during winter. So even without air conditioning, it helps keep your house cooler in summer.

Insulation comes in rolls, batts or loose-fill. A six-inch thickness is recommended in the ceiling, three inches in walls and floors. To be more exact, insulation is labeled with an R value showing its ability to resist heat. The better its insulating value, the higher the number. Recommended R values are R-19 for ceilings and R-11 for walls and floors.

Unless you're building, installing insulation can be a little tricky. But it can be added to your attic and basement. An insulating contractor or supplier can advise you on making improvements.

With proper insulation, you should see important savings on cooling (and heating) bills. At the same time, you'll help conserve energy resources. And that's important, too.

THE MORE EFFICIENT YOUR AIR CONDITIONER, THE LOWER YOUR ELECTRIC COSTS.

In hot summer months, air conditioning can account for 50 percent of your electric use. So it's important to choose the most efficient equipment.

All you need is information from the metal plate attached to the unit. Divide the BTU rating by the watts of power used.

For example, if a 12,000-BTU unit used 1,900 watts, its operating efficiency (EER) would be 6.3. Another 12,000-BTU model might use only 1,350 watts. Its EER would be 8.8. This latter unit would cost less to operate because it has a higher efficiency rating.

The smallest unit that adequately cools the space is the most economical. The size, or capacity, of equipment needed is determined by the size and construction of your home. This capacity is measured in BTUs (British thermal units), the amount of heat removed in one hour.

Generally, it takes about 18 BTUs per hour to cool one square foot in an average home. If a unit is too small, it can't do the job. But if it's too big, the unit cools too quickly and then cuts off before properly removing moisture from the air. When choosing between a slightly smaller unit and a larger one, the smaller model will be more efficient. And the smaller equipment costs less to buy initially.

If efficiency ratings are available from your dealer, you can call or come by any Georgia Power office and get the EER for any brand or model. A little simple figuring at the start will add up to long-term savings.

HIGH TEMPERATURES MAY CAUSE A SPURT IN YOUR ELECTRIC BILL

If you have electric air conditioning, your bills are probably running a little higher now. There are good reasons for this.

First, there's the simple fact that air conditioning can account for one half, or even more of your total electric use in the hot summer months. Another reason is the structure of summer rates. They were designed so that air conditioning customers, who are largely responsible for the heavy summer demand and a costly construction program, would pay their fair share. During June through October, if you use more than 600 kilowatt-hours per month (and most air conditioning customers do) the rates go up.

On the other hand, the rate structure offers lower prices during the winter for usage above 1400 kilowatt-hours per month. This helps us to balance the seasonal

*Based on average family with central air conditioning in 1200-square-foot home.

load and get more use out of expensive equipment that's necessary to supply the summer demand. And this, in turn, helps to keep our price for electricity as low as it is. Among the lowest in the nation.

THE CHATTAHOOCHEE RIVER IS CLEANER THIS YEAR

THANKS TO ELECTRICITY

About 2,600 tons of solids and chemicals were removed from Atlanta's drinking water in 1972 by the Chattahoochee Water Treatment Plant. But until last year, the only way to dispose of those solids was to return them to the river.

Then the Settled Solids Facility began operation. Using electric equipment, the facility dewateres the sludge—first by treatment with lime, then by pressure filtration. The result is a dry, sterile cake which is suitable for landfill. The water removed contains lime and alum, which can then be reused in further water treatment.

The Chattahoochee Settled Solids Facility is the first of its kind in the country. It saves water treatment chemicals, millions of gallons of filtrate water, and keeps the Chattahoochee a whole lot cleaner. It's one example of how electricity conserves resources, aids recycling and helps clean our environment.

WHEN JERRY FINISHES TECH, HE'LL STAY IN GEORGIA

WILL YOUR SON STAY, TOO?

There's a job for Jerry in his home state. He'll stay. And join Georgia's work force of more than two million.

How long employment opportunities will last is an urgent question. Nearly all those two million jobs depend on electricity in some way. To light offices. Supply heating and cooling. Run computers. Operate heavy machinery. Refrigerate food. And, as technology brings better working conditions, more electricity will be necessary. Not just for the next generation, but for you.

It's our job to supply the power. But our present facilities won't meet the growing needs of Georgia homes and industries, even for the near future. If Jerry and other young people are going to find jobs and build homes, they'll need the power from plants that are being built now.

This new construction will take a lot of money, over \$500 million this year. Ninety percent of that must be borrowed. A small increase in price will enable us to borrow the money needed to keep construction going, and keep power flowing to you.

Holding down the price of electricity won't help anybody. It will only mean power may not be there when you need it.

Electricity. What would you do without it.

WHEN JOE WAS READY TO MOVE UP, A JOB WAS THERE

WILL ONE BE WAITING FOR YOU?

Better jobs depend on more than hard work and ability. They also depend on resources within, and outside, a company. One of these is electricity. It's vital to better jobs and bigger paychecks in Georgia.

Supplying power for the growing needs of homes and industries in the state is no easy task. It means construction. Which means borrowing money.

That's where your investment in an adequate power supply comes in. A fair increase in price will enable us to borrow the money that's needed for construction—more than \$500 million this year. Construction that will keep the power flowing, to your home and your job.

For many years, the price of electricity went down. Now, to meet increasing demands and inflated costs, it must be more realistic. That's what it will take to keep jobs available in Georgia. To make better ones happen. And to keep homes supplied with energy for everyday needs.

Electricity. What would you do without it?

WHEN SUSAN GOT HER NEW HOME, ELECTRIC ENERGY WAS THERE

WILL IT BE THERE FOR YOU?

Susan's only one of many Georgians of all ages who built or bought new homes last year. And added to the growing residential use of electricity.

Most homes depend on electricity in some way. For lighting. Cooling and heating. Refrigerating and cooking food. Operating the work-saving appliances you rely on. As the standard of living improves, people use more energy. Since 1950, personal income in the state has increased about 170 percent. And our residential customers require almost four times as much electricity as then. That's why more power is needed. For you and your family. Right now.

It's our job to supply that power. But our present facilities won't meet the growing demands. If people are to continue building new homes and finding jobs in Georgia, they must have the power from plants being built today.

This new construction will take a lot of money—more than \$500 million this year. Over ninety percent of that money must come through borrowing and the sale of stocks and bonds. A fair increase in the price of electricity will enable us to raise the money needed. To keep construction going. And keep power flowing to you.

Electricity. What would you do without it?

Customer Report #1

There's plenty of electricity now. Why does Georgia Power need to build more power plants?

We've been able to keep up with your electric needs so far. And there is enough generating capacity in reserve so Georgia probably won't have any brownouts or blackouts this year. But your use of electricity keeps growing, and tomorrow won't take care of itself.

Electricity can't be stockpiled. It must be generated the instant you want it. Unless the necessary plants can be built on schedule, the electricity you need won't be there.

And we must supply electric service to everyone who needs it. Our job is to provide it whenever and wherever you want it, at the lowest price that's economically sound. Georgia Power's prices have been, and still are, among the lowest in the Southeast and in the nation. But inflation and steadily growing demand have put the company in a critical financial position. We have asked for rate increases that would improve that position and enable us to continue supplying reliable electric service to more than 1,000,000 customers.

Rising Costs

Increased rates, however, are not for the purpose of paying for construction. They are needed to cover rising operating expenses. Fuel, wages, equipment, taxes — all have skyrocketed. Rates also pay interest on the money borrowed for construction work. And provide reasonable earnings for investors, who put up the money to build our plants. In fact, more

than 80 percent of construction funds comes from loans and investments.

An added expense in our building program is environmental protection. Millions of dollars must be spent for pollution-control equipment which, like that on your car, decreases efficiency and increases operating costs.

Serious Situation

All these things — unparalleled inflation, growing demands, environmental spending — are factors in our serious financial situation. But we can't just raise rates whenever we need additional revenue. All utilities are strictly regulated. A state commission must approve retail increases. And a federal agency controls wholesale rates. When needed increases are not allowed, construction is affected. Just this year, work was stopped on two generating plants because the money wasn't available.

We realize you're more concerned with the dollars and cents you pay for electricity than with the millions we must spend to supply it. But our problems are also the problems of the people we serve, for electricity plays an essential part in almost every area of your life.

When we ask for rate increases, it's because it is our responsibility to plan for and supply dependable electric energy for all your needs. Just as it's also our responsibility to keep you informed about what we're doing to serve you.

Customer Report #2

"Why is my electric bill higher than my neighbor's? We have about the same size house and number of appliances."

Probably the main reason is that, just as no two individuals are alike, no two families are exactly alike in their habits and ways of living.

Air conditioning can use more electricity than all your appliances put together. Yet, some families insist on a chilly temperature indoors all summer long. Others prefer a moderate thermostat setting, and this could make quite a difference in your electric bill.

It's difficult to estimate how much power your air conditioner may use, because of the many variables involved: size of unit, wattage, climate, length of time used. To give one example, a room-size unit with 1,566 wattage would consume an average of about 1,389 kilowatt-hours annually.

If you're buying an air conditioner, you might want to consider a high-efficiency model. Efficiency is determined by dividing the BTU rating by the watt rating — the higher the resultant number, the more efficient the unit. Extra-high efficiency models will cost more initially, but less to operate.

Air conditioning is largely responsible for the tremendous growth in electric demand, and is the reason for much of our construction. Because of this, electricity costs more from June through October, when you use more than 600 kilowatt-hours a month.

Cut Cooling Bill

You can enjoy air conditioning and help keep costs down if you follow these tips:

1. Set the thermostat at 78 degrees. Each degree lower uses five percent more power.
2. Clean or replace the filters frequently.
3. Keep draperies or curtains drawn on the sunny side of the house. Try thermal draperies, or thermal linings with your present ones.
4. A house without insulation may use up to 50 percent more electricity (or any fuel) for cooling and heating. Six inches is the recom-

mended thickness for ceiling, three for walls and floors. Weatherstrip doors and windows.

There are other ways your family may be using more electric energy than your neighbor. Perhaps you do a lot of cooking, while they bring home fried chicken or pizza. And think about the refrigerator. Each time the door opens, cold air rushes out, causing the unit to run more to replace it. You'll cut down on electric costs if you watch that door.

Or, if you have a frostfree refrigerator and your neighbor doesn't, you'll use 30 to 50 percent more electricity here.

As for small kitchen appliances, such as knives, mixers or coffee makers, it takes very little electricity to operate these. A carving knife, for instance, consumes about eight kilowatt-hours a year in average use; a mixer, about 13. An electric toothbrush will use an average of five. You can see that the increasing demand for electricity isn't based on such appliances. If you enjoy and need them, keep them clean and in good working order.

More Ways to Save

Look at your laundry next. Two families may have the same type equipment, but no two families will have exactly the same amount of laundry. You can save on electricity if you run the washer and dryer only with full loads.

Lights? Television? Hi-fi and radio? Some families keep them on whether they're in use or not. When they're not, turn them off.

All residential customers of Georgia Power Company have the same rates. If your bill is higher than your neighbor's, look around your own home and see how many ways you can save. Just remember these two suggestions:

1. Keep appliances clean and in good working order;
2. If you're not using it, turn it off.

We hope you'll use electricity wisely. It's too good to waste.

Customer Report #3

"Electric rates seem high now. Why does Georgia Power need another retail increase, and why is it an emergency?"

We don't like asking for higher rates, but your electric service depends on it. Here are the facts in this critical situation:

1. Unless construction goes forward, within a few years there won't be enough electricity.
2. About 80 percent of the money for construction must be borrowed.
3. We can't borrow the necessary money without emergency relief to increase earnings.

Admittedly, this is simplification of a complex financial matter. And your first reaction may be that it's the company's problem, not yours. But it is yours, too. Because your electric service through the seventies will be affected by what we do right now.

Think, for a moment, what a power shortage would mean to you personally. If you flicked a switch in the dark of night and nothing happened. If electricity were available only for brief periods during the day, and only for essential uses. If your business could operate only part-time instead of daily. If environmental cleanup programs, such as waste treatment or recycling, were affected because of insufficient power.

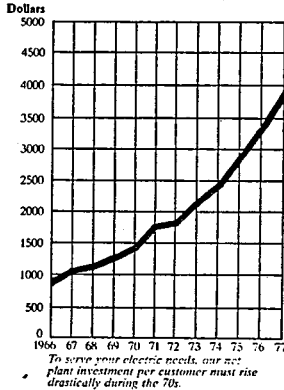
These are not scare tactics. The nation's demand for electric energy is doubling every 10 years. In Georgia, the growth is even faster, doubling about every seven years.

There's another factor that must be considered: the time lag. A steam plant may take six years to complete; nuclear, 10 or even more. We don't anticipate an energy shortage this year, or next. But because of the long lead time for siting and building plants, we must look beyond and plan for future years to assure electric energy for you, your home and your job.

Careful Planning

We have planned what we believe is an adequate construction program: plants to generate power, transmission and distribution lines to deliver it to you. All environmental regulations are being met, at constantly growing costs. Through our parent company and the electric industry, we're aiding research for new fuel sources and cleaner fuels. In short, we've tried our best to look ahead and avoid the possibility of an electric energy shortage in the state.

Such a shortage would go far beyond inconvenience. It would seriously affect the facilities that serve you every day—hospitals, schools, communications, even traffic lights. And industries that provide many thousands of jobs for Georgians. Some phases of our building program already have had to be suspended, due to



lack of funds. If further cutbacks are necessary, many of the 5,000 people employed in Georgia Power's construction work will suffer immediate effects. Long-range consequences of a power shortage would extend to thousands of other workers in industry and business.

In June, 1972, Georgia Power asked for retail rate increases of about 12 percent, or totaling \$47.9 million. That was the minimum needed, at that time, to guarantee reliable service for you and more than one million other customers. However, only about one-third of that amount was allowed. It simply wasn't enough to do the job.

A year has passed, and inflation has continued its spiral. All our costs have continued to climb, but earnings have not. During the year, our bond ratings have dropped, which means we must pay higher interest on borrowed money.

Need for Rate Relief

At a time when money is urgently needed for building, our financial position has become extremely critical, and drastic steps are necessary to improve it. We've been forced to appeal the 1972 ruling, and to seek additional rate relief. We can find no alternative.

In November of this year, we must sell \$150 million in bonds and \$25 million in preferred stock. These sales are absolutely vital to meeting our construction commitments.

Legally, however, we are required to show earnings at specified levels before we can sell securities in those amounts. Current estimates indicate we won't be able to meet the requirements. So we

must ask for emergency rate relief to increase earnings sufficiently before November to meet the legal requirements.

To assure you of electricity to meet your future requirements, a request for the full amount of increase needed, including the amount asked in this emergency, will be placed before the Public Service Commission in a short time.

During last year's rate hearings, some special interest groups intervened, using the case to attack the company on unrelated charges. These small but vocal groups demanded that rates be kept at present levels, without any regard for the adverse effects on your electric service.

Shortsighted demands such as this do not, we believe, represent the thinking of most people. The great majority, we feel, are informed enough to realize that cheap energy is no longer possible. Every day you read and hear about continuing inflation, fuel shortages, environmental costs. It's not too difficult to assess the facts and understand that, when the price of everything else has skyrocketed, it just isn't possible for the price of electricity to be the lone exception.

Of course, nobody likes to pay more for electricity. Or for anything else. And we don't pretend you do. But it has become a choice between higher rates or not enough power.

National Predicament

Georgia is not alone in this unhappy situation. All over the country, utilities are being forced to ask for rate relief. As a regulated industry, we cannot raise prices at will but must go through long, expensive hearings and submit vast amounts of technical and financial data in sworn testimony.

In neighboring states, TVA—government-owned and tax-supported—has increased rates so that residential consumers are paying 44 percent more per kilowatt-hour than in 1967. By comparison, Georgia Power's average residential price has risen only 12 percent in the same period, and still is 22 percent below the national average of all investor-owned utilities.

Dependable electric service is vital to your health, your job, your way of living. And you depend on us to provide that service.

We don't like to ask for higher rates. But we would like even less to run out of electricity. We think you would, too.

Customer Report #4

What are the chances of a power shortage here? Will fuel problems affect my electric service? Are you doing any research on new sources of fuel?

Our fuel supplies and generating capacity appear adequate for this year. But your service may be affected unless much-needed construction can continue and solutions to fuel problems be found.

Coal is the major fuel used by Georgia Power and delivery contracts are firm for this summer, our peak period or time of greatest demand. The most critical factor affecting your electric service is the forced postponements, possibly even cancellations, in our construction program. Existing plants should be sufficient for 1973, with some generating capacity above our customers' needs, barring any unusual events. Beyond this year, the outlook is not good.

Our present customers are using more electricity every year, and new ones are constantly being added. The only way to keep up with this growth is to build new plants. But inflation and reduced earnings have created an extremely serious financial situation. Unless Georgia Power is allowed to increase earnings, the necessary construction can't be continued. Increased earnings would not be enough to pay for the construction itself. But they would enable us to borrow the hundreds of millions of dollars needed from investors.

Shortage Seen Ahead

If generating plants can't be built, there will be a power shortage in Georgia, possibly in a few short years. We are able to exchange power with neighboring utilities in short-term emergencies (after assuring that our own customers' needs are being met) but we cannot depend on buying power from outside sources on a regular basis. Nor is there any way to store up power during off-peak periods and save it for later. It must be generated the instant it is demanded.

Aside from construction, fuel does present problems, too. Obtaining immediate supplies is the job of the fuel industries. Georgia Power and other utilities are, however, engaged in research and development of long-term supplies. Most of our work is cooperative and there's a sound reason for this. If every company did extensive independent research, it would mean a needless and costly duplication of efforts.

Long-term Projects

Technology for utilizing the more exotic energy sources, such as geothermal and solar, may not be available until the next century. So research is being concentrated on energy sources that can be developed sooner. One is the liquid-metal fast-breeder reactor.

Georgia Power is one of 300 utilities joining with governmental agencies in LMFBR development. A pilot project will be constructed in TVA's service area for demonstration and operation.

Successful development of the LMFBR will offer a potentially large new source of economical nuclear energy. But we're not

putting all our hopes in one reactor. We're engaged in other projects that could conceivably put to greater use the available coal supply, the nation's largest reserve of fossil fuel. More environmentally acceptable technology must be devised if coal reserves are to be utilized efficiently.

Cleaner Coal

Scientists are exploring some 30 techniques for removing pollutants from coal. Two of the most promising are double-alkali scrubbing and dry adsorption. Georgia Power, along with other members of The Southern Company, is helping to develop two pilot flue-gas scrubbing plants to study these techniques. Basically, both are methods of removing sulfur dioxide from flue gases when burning coal.

Southern Company members also are building a research plant for studying the possibility of "solvent-refining" coal before it is used as fuel. This would remove sulfur and ash prior to burning.

Environmental Research

In addition to fuel-processing studies, the research department of Southern Services (part of The Southern Company) works on many projects relating to the environment. Georgia Power also has its own Environmental Division in the General Engineering Department, with a full-time staff of 25 biologists, engineers, pollution specialists and technicians. Research and preoperational studies for plant sites are their chief jobs.

Costs Extremely High

Still another way of investing in research is through things we buy. As manufacturers develop improved equipment and materials, either for producing and supplying electricity or for environmental protection, we buy them. The cost of research and development is reflected in the purchase price.

Similarly, the millions of dollars being spent by utilities for research must necessarily be reflected in the price of electricity. There simply is no other source of money to pay for these vital but costly efforts.

For several decades, the electric industry has worked diligently to provide ample, low-cost power for this country's burgeoning needs. Expanding use and the resulting efficiencies of production brought declining rates for many years. Your average residential price per kilowatt-hour is 22 percent below the national average of investor-owned utilities.

It would be wishful thinking to say that rates won't have to go up again, or that they may even come down someday. We must be honest and realistic in assessing the impact of inflation and fuel scarcities on the future price of electricity. It must eventually reflect those pressures, and it would be wrong to tell you otherwise.

SAVE ELECTRICITY

Video

On camera spokesman walking through what appears to be woods. Dressed in very casual, outdoor clothes.

Comes to house (either under construction or finished). Walks in.

Goes through house pointing out and explaining various "Save Electricity" ideas.

Dissolve to printed message (Electricity's Too Good to Waste) with logo underneath.

Audio

Conversation . . . it's usually paired with the environment. But it's important in every aspect of life.

Such as conserving electricity. That helps cut electric bills. Saves fuel and protects the environment, too.

A good place to start saving electricity is with proper insulation. Six inches in the ceiling, at least three inches in walls and floor.

A home *without* insulation takes at least twice as much electricity, or any other fuel, to heat and cool.

Heating and cooling will do their best to escape. So close dampers and block flues in unused fireplaces. Seal cracks around doors and windows. Storm windows and doors are a big help. They can reduce heat loss by 15 to 25 percent.

Heating and cooling. From Georgia Power Company. We hope you'll use electricity wisely—it's too good to waste.

SAVE ELECTRICITY—COOLING

Video

CU of Brooks speaking to camera. Brooks begins to move from

Dissolve to Brooks at thermostat.

Dissolve to Brooks by draperies. Draws them closed.

Moves away (toward kitchen).

Dissolve to Brooks at range. Point out vent. Moves to dishwasher.

In basement. Brooks displays filter.

CU of Brooks. Dissolve to printed message:

ELECTRICITY:
IT'S TOO GOOD TO WASTE.
GEORGIA POWER COMPANY

Audio

Air conditioning can use more power than all your appliances put together . . . I'd like to show you some ways to cut down on that use of electricity.

Try setting the thermostat at 78. Each degree below that uses five percent more electricity.

To trap cool air inside and keep the heat out, close the draperies on the sunny sides of the house. Try thermal draperies—or liners for the ones you have already.

Excess heat and humidity from appliances make the air conditioner work harder. So vent ranges and dryers to the outside. And don't run the dishwasher or dryer until there's a full load.

Make sure the cooling system is in good working order. Wash or change filters as needed. And clean the vents or registers upstairs, too.

Just a few more ideas for saving on cooling. From Georgia Power Company. We hope you'll use electricity wisely—it's too good to waste.

YOUTH ACTIVITIES

Video

Scenes of David playing clarinet in woodsy surroundings.

Stephanie working on science project in school lab.

Janice with her pet squirrels.

Multiple image of three students.

Logo

Audio

Clarinet up then under for announcer

Clarinet Quintet in A by Mozart. It's one of David Tsao's favorites . . .

Stephanie Hinton found that green peppers have the highest concentration of vitamin C . . . but likes a dogwood blossom now

Bede is partial to pecans . . . and then. The gray squirrel starred in Janice Haupt's wildlife project.

David, Stephanie and Janice took part in youth activities sponsored by the Georgia Power Company. We're involved in scholarship programs. 4-H work. Science awards. And many other areas of service.

Because our work goes beyond supplying electrical energy. It includes a special interest in people. Especially kids.

CONSERVATION

Video

Stills of various river scenes combined with live action film in slow dissolves and overprints. (Still photos from Jimmy Valentine's "Guale" exhibit.)

Audio

(Appropriate "River" Music)

The manes of Southern rivers leave the tongue. Like music overflowing common words: Oconee, Coosa, Etowah are sung As surely as the melodies of birds.

Wakulla, Tugaloo, Suwanee, Flint Are sounds of silver rippling through the air; When languidness and muddy flow are spent, These syllables will live for all to share.

Georgia is a state of life-giving rivers. Broad, serene rivers rolling southward. Wild and primitive whitewater, rushing out of the north. These rivers must be protected, as well as enjoyed. At Georgia Power, we've always worked for conservation of natural resources . . .

we still do. (QUIETLY)

Music up and out.

GEORGIA POWER COMPANY

ENVIRONMENT

Video

Various shots of animals in early morning. A rabbit picks up his ears in anticipation.

Alternating shots of farmer and wildlife.

Rabbit picks up ears.

Logo

MOVING UP

Video

Wide shot of man, wife, son at door of home. Pull in tight on wife straightening Joe's tie before he exits. Joe hugs wife, shakes son's hand, gets in car. Dissolve to drive scene.

Joe in car passes construction site. Camera is in car shooting past him. Switch to dolly shot FM. Outside car, construction in B'ground.

Switch to car parking by plant, Joe getting out. Fade to dark screen.

Screen becomes bright as Joe switches on light. Camera pans with Joe. Switch to CU of heavy machinery, overprint of Joe walking through plant. Plant is empty of other employees. MS of various machines.

Dissolve to dark screen, briefly.

Door opens, Joe switches on light. Camera is wide on Joe looking at new sign on door.

Logo

Audio

Sound of Animals in Early Morning

Listen. (Animal sounds continue). More than 40,000 acres under Georgia Power's transmission lines are being farmed—or planted in ground cover and food for wildlife. Not only does this benefit the animals and prevent soil erosion, it helps us serve you better by keeping the lines free from trees and other obstructions. The company pays the cost of the first clearing . . . and advises on planting. This has been one of our services for years. And in that time, we've become experts at pleasing a quail's taste for brown top millet—or a deer's love of oats.

Listen. (Pause with more animal sounds) Supplying electric power is only part of our job. (A bird sings.) That's something we thought you might like to hear.

Audio

This is a new day for Joe. He's moving up to a new job. His family is proud. So is he.

But Joe couldn't have done it alone. His company had to expand.

And that wouldn't have been possible without adequate electricity.

Like most factories, this one runs on electricity. (SFX: footsteps in background.) With these machines, workers make products that somebody needs. As long as these machines are operating, people can earn a living. Work up to a better job. Bring home a bigger paycheck. Electricity helps all this to happen. But, to continue providing the power needed by Georgia homes and industries, we must be able to build. Which means borrowing money. Lots of it. (SFX: door opening, click of light.)

An increase in price will help us borrow the money that's needed, and keep power flowing. To *your* home and *your* job. Electricity. What would you do without it?

FOOD

Video

CAM moves down racks of employees time cards. Dolly with Annor. Walking in front of racks.
 LS factory. It is idle, dimly lighted. He stops at work area and turns on light.

SL Annor. Crossing long aisle, he turns on machine. He crosses aisle again. Another machine starts up. He moves to conveyor belt.

He walks toward heavy pull switch on large electric panel. He pulls switch and entire plant lights up. Workers appear.

MC Annor.

SUPER OPC LOGO

Video

MCU Annor. Standing by tree.

He enters power shed and throws switch.
 Water pours through outlet in irrigation reservoir.
 He is now near row of large irrigation.

Diss. To scenes of peaches.

He walks by filling machine as milk cartons move along.
 Close on freezer items in supermarket. Annor walks to Cam.

MCU Annor. In front of sprinklers . . .
 At peach packing plant . . .
 . . . at supermarket . . .

SUPER GPC LOGO

Audio

Think about earning a living. And think about the part electricity plays in your earning that living.

(Slight echo behind voice.) Electricity provides power to run factories . . . to move assembly lines . . . to power tools . . . to keep workers working.

As population here in Georgia expands, so does the demand for electricity. As industrial production expands, so does the demand for electricity.

To meet these demands, Georgia Power must build additional sources of electric power. And transmission lines to deliver that power. The need is *now*.

If you ever hear somebody say we don't need electric power, or more ways to produce it, just think about your job a minute. And about the future of your job *without* electricity.

Your job and electricity. There's a connection.

AUDIO

Have you ever thought about how electricity puts food on your table?

That's right.

Electricity is vital to your food supply.

Think about how many ways electricity helps you prepare food for your family. Electricity helps grow it.

Electricity helps move it. Electricity helps can it . . . and freeze it . . . and ship it. As the population expands, so will the demand for food.

As food production expands, so will the demand for electricity.

To meet these demands, Georgia Power must build additional sources of electric power. And transmission lines to deliver it. The need is now.

If you ever hear somebody say we don't need more electricity . . . or more ways to produce it . . .

just think about food.

Food and electricity. There's a connection.

JOBS

CONSTRUCTION

Video

Water glass with one straw. Straws are added one by one. Last straw is added as glass almost empties.

Logo

Audio

Funny thing about electricity. Just when we think we've got enough for everybody . . . you need more. For your job. For your home. For hospitals. And shopping centers. For safety lighting on our streets. And for air and water purification equipment.

That's why Georgia Power must build now—to supply your jobs, homes and communities with reliable power for your growing needs. Otherwise, there just might not be enough electricity to go around. And that would really be the last straw.

JOBS AND ELECTRICITY

Video

High angle shot of man walking under conveyor line, cans moving overhead.

Dissolve to MS of man holding ear of corn as cans move in foreground and background.

Switch to CU of on-off switch as finger turns "off" button.

Switch to cans on conveyor stopping.

Dissolve to kitchen cabinet as woman opens door, cabinet is stocked. All food fades out, leaving cabinet bare.

Dissolve to supermarket shelf stocked with cans. Woman with cart reaches for can, and all disappear.

Dissolve to interior of power plant. Tilt down on wide shot of generator from high angle; dissolve to lower angle shot with movement in foreground.

Dissolve to home, pan to lineman on pole. Dissolve to MS. Pull back, then dissolve to CU of lineman.

Audio

What does electricity have to do with the vegetables you eat?

Well, in this case, electric power not only helps in the processing plant, but it also gets vegetables in the can and on the way to you. (SFX)

But without electricity to power machines,

(SFX machinery hum dying)

I'd probably be out of a job . . . and you'd be out of food.

For, eventually, your grocer would run out of things to sell.

(SFX of generator)

The electricity produced by generators like this is needed all over Georgia.

For industries and jobs . . . for hospitals, schools and homes. So, Georgia Power has to make sure there'll be enough electricity to run everything. And since everyone uses electricity

Dissolve to cans starting up again.

Dissolve to man standing by conveyor line of cases coming off the line, man working in background.

Switch to same store shelf as before: Cans appear, women takes can from shelf.

Cut back to man, smiling and friendly.

Logo on black background

(Short pause)

everyone shares in the cost of having enough.

As long as we do, I can get your food processed quick and fresh . . .

(SFX)

you'll have it when you want it . . .

and I can keep working.

(Pause)

Electricity means a brighter future for everyone.

ESSENTIAL SERVICE

Video

CU Switch

Cut out "Equipment"

Symbolic power plant

Symbolic plant, add cooling tower

Equipment belt

Cut out dollar sign

Audio

Flick a switch . . . a light goes on.

But for that to happen, a lot of electrical equipment has to be in perfect working order.

It's easy to take all this for granted. But Georgia Power Company can't do that. To provide you with dependable electricity, we must maintain costly power plants . . . complete with modern pollution controls.

Our people must constantly install new equipment all along the line . . . from the power plant . . . to your light switch.

That's expensive . . . it's one reason the price of electricity has gone up, all over the country.

Dominoes

Dominoes fall

Light bulb

LOGO

FIVE REASONS

Video

Open on black.

Close up as light bulb turn on.

Camera pans around from light bulb to big, white number one.

Pan over big number one (possible cut in quick, almost subliminal photos of subject talked about).

Pan over big number two.

Pan over big number three.

Pan over big number four.

Pan over big number five.

Reverse scan over five numbers.

Close up of light bulb.

For every dollar we earned last year, \$8 must be invested in construction this year.

Planning like this helps assure reliable service and prevent blackouts that might occur without adequate facilities.

As energy managers for the future, electric companies are responsible for providing you with service—service you can depend on.

LOGO

Audio

It's costing more for Georgia Power to keep your lights burning these days. So, your price for electricity reflects that. Here's what you get for the price:

Number one: Adequate equipment and personnel, to assure *dependable* electric service.

Number two: Cleaner air and water. You contribute to the hundreds of millions of dollars required for environmental protection.

Number three: Inflation, unhappily, is something you also pay for. We do, too.

Number four: Construction—for 1974, nearly \$550 million. Most of that comes from outside investors. For every dollar earned year, \$8 must be invested this year.

Number five: Research. Part of your electric dollar helps find new sources of energy, so we'll never run out of it.

It all adds up to this: energy is costing everybody more today. So, more than ever, wise use of electricity makes sense.

AIR CONDITIONING

Maybe you've never realized how much electricity an air conditioner uses—more than all your appliances put together! You can save on cooling costs—and stay comfortable too—if you set the thermostat at 78 degrees. Every degree below that uses five percent more electric energy.

COOKING

Here's an easy way to save. Cook vegetables with just a little water and cover the pot. It takes less electricity . . . and won't cook away all the vitamins. Use flat-bottomed pans that match the size of the unit so heat won't be wasted. You'll save electricity . . . and food value, too!

INSULATION

Good insulation is important. A house without it takes twice as much electricity, or any other fuel, to cool or heat. Use six inches in ceiling . . . at least three inches in walls and floors. If you can't do a complete job, you can insulate your attic. Even that much will help cut cooling and heating costs.

LAUNDRY

Doing the laundry? Full loads are more economical. You'll save water, electricity, detergent . . . and time. Try cold water with cold-water detergent. And short wash cycles. Easier on fabrics, too. The same goes for dryers. Run only for full loads—and only enough to dry.

THERMOSTAT

Don't be a thermostat switcher this summer. Set your air conditioning on 78. And leave it there. Each degree below that takes five percent more electricity. If you go away for the weekend, set the thermostat up five degrees. But don't turn it off completely . . . or extra cooling power will be needed when you return.

WATER HEATER

If your water heater is close to points of use, less heat will be lost along the way. Dripping faucets are another drain on the budget. Just one drop a second adds up to hundreds of gallons a year. And if that's hot water dripping, . . . more energy is being wasted. It's a good idea to stop that drip!

WEATHERSTRIP

Air conditioning uses more electricity than all your appliances put together. Make that power stretch further—and save money—by sealing off places where cooling might escape. Keep doors and windows closed tightly. Add weatherstripping or caulking. Storm doors and windows help trap cool air inside, too.

DRAPERIES

Try thermal draperies—or add thermal liners to the ones you already have—and close them on the sunny sides of your house. Draperies, or blinds, help keep the heat out and trap cool air inside. Then your air conditioning will have less work to do—and you'll save electricity.

DISHWASHER

Your dishwaster saves time . . . and you can save electricity, if you run it only when its full. You'll trim a little off the water bill, too. It takes as much hot water and electricity for a few dishes as a full load. And clean the dishwasher screen often. Build-up food or detergent cuts efficiency.

FILTERS

More power than all your appliances put together. That's how much it takes for air conditioning. Clean the filters often. Twice during the summer should do it. Trapped dirt lowers efficiency. . . and adds to cooling costs. Be sure your equipment is in good working order. Have it checked before the season starts.

HUMIDITY

Humidity makes an air conditioner have to work harder. Help yours out by venting heat and moisture-producing appliances—such as ranges and dryers—to the outside And use them during cool times of the day. Remember, air conditioning uses more power than all your other appliances put together.

SHADE TREES

Shade trees and shrubs will help keep your house cool in summer. Especially on the west side to block the afternoon sun. Drawn curtains and blinds in light colors reflect the sun's rays—thermal draperies help keep heat out and cool air inside. Two good ways to cut down on the use of air conditioning. Two good ways to save.

RATE INCREASE

I'd like to talk with you a minute . . . about a big problem that's facing Georgia Power Company. Now, you may think, that's their problem, not mine. But it's yours, too. Because it affects the supply of electricity for *your* home and *your* job.

People here in Georgia use twice as much electricity now as they did seven years ago. It's our job to supply most of that power. So, new plants must be built, and other facilities, to keep up—this year, more than \$500 million worth. And we have to borrow most of that money. What we get from electric bills just won't cover it.

You see, *that's* the problem. Inflation hit us, the same way it hit you. And, our financial situation isn't good enough to borrow the money that's needed. But a fair increase in the price of electricity will make it possible to borrow that money and build new plants. To keep power flowing to *your* home and *your* job.

Electricity. What would you do without it?

RATE INCREASE

I just ran across some figures that might interest you. Over *two million* people are working in this state. Now, think about *this* for a minute. Practically every one of those two million jobs depends on electricity—in some way or another.

And that's not all. When those two million workers go home, electricity's there, too. Making life better—in a lotta ways. In fact, Georgians are using twice as much electric energy these days as they did seven years ago.

Georgia Power has to supply most of it. And new plants must be built to do it. Right now, we're in a financial bind. Most of the money for construction has to be borrowed—but we're just not making enough to encourage anybody to lend it to us.

That's why an increase in the price of electricity is needed. So we can keep on supplying power, whenever and wherever you need it. Electricity does a lot for you. What would you do without it?

RATE INCREASE

I know you read about the cost of living going up again—more last month than in, oh, about 25 years. Nobody's happy about it. Nobody wants to pay more for *anything*. But inflation's hurt us all. And Georgia Power Company's no different. Everything we buy has gone up, too. Building materials. Operating equipment. Wages.

At the same time, people are using more and more electricity. And plants must be built to supply it. So far, Georgia hasn't had any brownouts or blackouts—and we want to keep it that way. That's why an increase in the price of electricity is needed. It won't pay for construction—most of that money has to be borrowed. But it'll help our financial situation, so we *can* borrow the money that's needed. To keep the power flowing, to *your* home and *your* job.

You know all that electricity does for you. What would you do without it?

RATE INCREASE

You've probably heard that Georgia Power Company's asking for an increase in rates. I'd like to tell you just *why it's necessary*.

Well, for one thing, more than two million people are working in Georgia. Those jobs take a lot of electricity. Young people stay here after graduation. Finding jobs and starting homes. And they need electricity, too. In fact, people in Georgia use twice as much now as they did seven years ago.

That's why new plants must be built, and other facilities, to supply it. We can't wait until the first brownouts start. It's gonna take a lot of money to build those new plants. Over \$500 million *this year*—and most of that has to be borrowed. The income from electric bills just won't pay for construction. But a fair increase in price will make it possible to borrow what's needed. Then we can build plants—and keep power flowing, to *your* home and *your* job.

Electricity. What would you do without it?

"JERRY"

Sound Effects : Buzzer rings, crowd noise up and under.

Voice : "Did you get that assignment?"

Maybe you've got a boy like my son, Jerry. He'll finish college soon. And he's got a good job lined up, right here in Georgia. Will one be ready for your son when he graduates? During the next few years, thousands of young people will be graduating and finding good jobs here in Georgia. Or they may be disappointed.

The kind of future your son or daughter will have depends on how much electricity there'll be. A growing state *has* to have more electricity, for more and better jobs.

Now, to provide more electricity, Georgia Power Company must build power plants. That means borrowing money. To do that, the price of electricity has to be realistic. That's what it will take to keep the power flowing. And make better jobs available for *your* son or daughter. And for *you*, too.

Electricity. What would you do without it?

"SUSAN AND BOB"

Sound Effects :

Door Closes : Man's voice : "I'm home, Susie."

Woman's Voice : "Hi—the new sofa came today."

You may know a young couple like Susan and Bob. They've just moved on our street. It's their first home. And they're really happy with it. When the needed

electric energy, it was there. Will it be there when you need it? Or will you be disappointed?

Most homes *depend* on electricity. Lighting, of course. Cooling and heating. And work-saving appliances, too. As the standard of living improves, people need more energy. Matter of fact, Georgia homes require more than twice the electricity they did just 10 years ago.

Now, to provide more electricity for homes—and for jobs, too—Georgia Power Company has to build power plants. That means borrowing money. To do that, the price of electricity must be realistic. That's what it will take, to keep power flowing. To *your* home and your job.

Electricity. What would you do without it?

"JOE"

Sound Effects:

Sounds of machines, clanging metal, etc. in background.

Maybe you've heard about my friend, Joe. He got a better job last week. When he was ready to move up, the job was there. Will there be one for you, when you're ready?

During the next few years, thousands of Georgians will either move up into better jobs like Joe—or be disappointed. The difference may be how much electricity is available. Electricity runs machines, and machines mean jobs. A growing Georgia has to have more electricity for more and better jobs.

Now, to provide more electricity, Georgia Power Company has to build power plants. That means borrowing money. To do that, the price of electricity must be realistic. That's what it will take, to make better jobs available to Georgians. And keep power flowing to your job and your home.

Electricity. What would you do without it?

"JANE"

Sound effects:

Typewriters, telephone rings, woman's voice: "Just a moment, please."

My wife's friend Jane needed a part-time job. And she found it. When she needed it, a job was there. Will one be there for you when you're ready? During the next few years, thousands of Georgians will be getting part-time work like Jane. Or they may be disappointed.

One of the things that makes jobs available is electricity. Businesses and factories *run* on electricity—it's vitally important for better jobs and bigger paychecks, all over the state.

Now, to provide more electricity, Georgia Power Company has to build power plants. That means borrowing money. To do that, the price of electricity must be realistic. That's what it will take, to keep the power flowing. To *your* home, and *your* job.

Electricity. What would you do without it?

