HIOS states that the commodity rate is obtained by dividing the difference between the total cost of service and the total demand revenues by the volumes projected to be transported for such year.

With respect to the staff's alternative transportation systems, HIOS contends that such alternatives are not based upon cost data, that they would not handle the volumes of gas available, and that they would delay delivery of gas to the ultimate consumers. Further, existing pipelines in the general area which might be used for transporting gas from the High Island Area filed letters stating that either there was no capacity available or that present plans involve the commitment of any unused capacity. (See Tr. 7,8,10). With respect to the memorandum of Ms. Zabel, HIOS stated that the large investment involved herein is not a basis to deny modification of the June 4 order, that the lack of gas purchase contracts has been covered by the Commission in the June 4 order, and that HIOS has not disavowed its reserve estimate of 5 Tcf.

At the oral argument counsel for HIOS summed up its position that in the rate calculation it recommended substituting 3.2 Tcf for 5.0 Tcf, and needed a minimum bill or a demand charge to assure the financing (Tr. 95). HIOS further emphasized the importance to consumers of delivering the gas, which he compared to the much higher prices of oil, coal gasification, SNG and LNG.

Upon reconsideration of this matter, we are impressed with the need for this gas in the light of the national gas shortages, the high price of alternate fuels, and the lack of opposition and participation by the numerous intervenors. A new element has been introduced: the HIOS contention that the project cannot be financed on the basis of the unit-of-production rate prescribed in our order of June 4, 1976. Nevertheless, we shall not adopt the 100 percent contract--demand rate proposed by HIOS, in order to prevent the entire burden of the cost of low volumes being transported to be placed on the shippers of gas and the ultimate consumers. For the same reason the cost of service rate proposed by HIOS is inappropriate. We find that the rate should be a modified unit-of-transportation rate with a demand charge. This will provide a sufficient revenue to cover service on the debt and operating expenses but will not place the entire risk upon the shipper.

One of the most important elements in designing such a rate is the amount of available gas reserves. HIOS' consultants estimated ultimate reserves to be 8.5 Tcf or 8.6 Tcf, and that proved and probable reserves amounted to 3.2 Tcf with additional potential reserves. In its estimated cost of service HIOS utilized a depreciation rate 8.33 percent which at the delivery rate of 988,000 Mcf per day reflects a production life of 12 years. However, their estimates did not include two areas where the reserve data was confidential and apparently did not cover other areas leased and to be leased which could bring the amount up to 8.5 Tcf. While we do not believe that the amount of reserves claimed for certificate purposes must be the same as that used for rate purposes, the amount of 5.0 Tcf is reasonable in view of the expert opinions and the data in the record. We shall, therefore, use 5.0 Tcf. Of course, HIOS has the right to file for changed rates under Section 4 of the Natural Gas Act to reflect lesser reserves if future estimates so indicate.

However, if reserves of 5.0 Tcf are used, the production life of the reserves would be approximately 14 years. We find the 14 year life to be proper and have used it in computing depreciation of $25,244,000 and a total cost of service of $89,913,000. 6/ In computing the cost of service we utilize a 12 percent rate of return with related income taxes, for the purposes of this certificate proceeding.

HIOS proposes to amortize its debt over a 10 year period, which is two years less than its depreciation period of twelve years. We are of the opinion that this differential is reasonable for the protection of the debt holders. Therefore, using a depreciation period of 14 years the debt should be amortized over twelve years and the demand charge computed as follows:

Interest	$29,150 7/
Sinking Fund	$22,083 8/
Operating Expenses	$ 6,255
Total Demand Cost of Service	$57,488
Contract Demand	988,000 Mcf per day
Demand Rate (Per month per Mcf of contract demand)	$4.85

6/

	(000)	
Operating Expenses	$ 6,255	(Ex. P to Application)
Depreciation $353,414/14	25,244	
Federal Income Tax	15,851	(Ex. P)
Return	42,563	(Ex. P)
	$89,913	

7/ $265,000,000 x 11 percent.
8/ $265,000,000/12

As noted above, HIOS would determine the commodity rate by dividing the difference between the total cost of service and the total demand revenues by the volumes projected to be transported for such year. However, this formula places the risk of transporting less than the projected volumes of 988,00 Mcf per day on the shippers and consumers. This has the same effect as the original proposal of covering all costs through a demand charge.

We shall assume that 988,000 Mcf per day will be transported for the purpose of computing the commodity rate. If less than that is transported, the demand charge will remain the same. However, the commodity charge will be computed on the basis of the assumed 988,000 Mcf per day regardless of the volumes actually transported. Consequently, in our estimated cost of service, $57,488,000 will be covered by the demand charge and $32,425,000 will be covered by the commodity charge. Assuming a flow of 988,000 Mcf per day, the commodity charge will be 8.99 cents per Mcf. 9/ This does not give effect to the tax deductions that would be available in the first years of operation and would be subject to adjustment therefor.

We find a rate computed in this manner will permit a sharing of the risks by the HIOS partners. In contrast, a rate that is entirely a demand charge would not do so. Nor would a rate with a commodity charge computed on the basis of volumes projected to be transported in any given year. Under the rates prescribed above, HIOS will have its financial costs and operating expenses covered regardless of the amount of gas delivered but it will bear the risk of less than 988,000 Mcf flowing each day. The fact that the return to equity will depend on the actual volumes transported through the facilities should provide an incentive to the pipeline-owners of the project to encourage dedications and the commencement of flow of dedicated gas.

In its comments Trunkline expresses its concern with respect to the form of rate and tariff which would be applied to non-affiliated shippers. Trunkline explains that it has an interest in reserves located close to the proposed connection between HIOS and Stingray and proposes to utilize the Stingray System rather than the transmission facilities of HIOS. It contends that the length of haul should be given effect in prescribing the rate for HIOS' services especially where transmission will be performed by another connecting offshore pipeline. It attached correspondence between Trunkline and HIOS in which HIOS says that shippers whose gas will be transported

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9/ $\frac{32,425}{365 \times 988} = .0899$ Compare computation submitted by Staff Counsel (Tr. 89).

only in the mainline laterals south of the High Island Block A-264 junction platform will contract to pay a charge designed to recover HIOS' cost of service on such laterals. HIOS also says that a prospective shipper must make arrangements with Michigan Wisconsin Pipeline Company, operator for HIOS, which will conform to the requirements of HIOS' Management Committee. In reply Trunkline asks for opportunity to discuss contractual arrangements with HIOS. The Commission can understand that particular arrangements may be necessary or desirable for shippers using only part of the HIOS system. The order as amended below in effect provides for the filing of rate schedules with an appropriate allocation of costs, subject, of course, to the approval of the Commission. This should meet the needs of Trunkline and others making use of only part of the HIOS system.

FEA in its letter to Chairman Dunham agrees with this Commission that domestic sources of natural gas should be expeditiously developed to alleviate current and projected curtailments. It is hopeful that the matters in controversy can be clarified and resolved promptly although it shares the FPC's concern regarding the necessity to insure reasonable prices to the consumer. The Commission realizes the importance of this proceeding in view of the shortage of gas and other fuels and has sought to bring this proceeding to a close as rapidly as possible. In view of the various submissions by Commission staff and the lack of objections from intervenors it has been possible to proceed without an evidentiary hearing before an Administrative Law Judge, but with oral and written presentations directly to the Commission, and it is hoped that this order will resolve the very legitimate questions raised by SOD and BNG and permit the project to go forward and, at the same time, protect the shippers and consumers.

Because of the importance of the HIOS project in the development of additional gas supplies the Commission is requiring that the certificate issued to HIOS shall be accepted within 10 days of issuance of this order instead of 30 days as provided in Section 157.20(a) of the Commission's Regulations. If not accepted within ten days, subject to the provisions of Section 157.20(a), the Commission will set a hearing in the proceeding for a full evidentiary presentation.

The Commission further finds:

Subject to the above discussion and as provided below the Commission's order issued June 4, 1976, issuing a certificate of public convenience and necessity to the HIOS Project and granting interventions should be confirmed as the decision of the Commission.

The Commission orders:

(A) Finding paragraph (7) and ordering paragraph (C) of the Commission's order of June 4, 1976, shall be amended to read as follows:

"Within 60 days of the issuance of this order HIOS shall file rate schedules for the transportation of natural gas by its proposed project as discussed above subject to the approval of the Commission. The rate to each shipper shall consist of a demand charge designed to recover on its debt and operating expenses and a commmodity charge designed to cover the remaining cost of service based upon transportation of 988,000 Mcf per day. This charge shall be applied to the volumes actually transported. Within 60 days HIOS shall also file a study to cover annual costs of service and allocations thereof which will enable it to recoup its expenses, recover its investment, earn a 12.0 percent overall return on average rate base, and recover the associated taxes over volumes estimated to be transported during each year from total recoverable reserves of 5.0 Tcf. HIOS shall file for Commission approval a study showing a production schedule which will enable it to deplete the 5.0 Tcf of recoverable reserves using the design capacity of 988 MMcfd. The study shall also show on an annual basis its computation of operating and maintenance expenses, rate base, return, taxes [giving effect to Paragraph (F)] 10/ and costs allocated to the transportation of liquids and liquefiables. At such time as the 5.0 Tcf of reserves are produced and transported HIOS will be required to file rates which will enable it to recover the costs associated with the transportation of the remaining reserves."

10/ The reference in finding paragraph (7) shall be to paragraph (10).

Mr. Moss. We shall resume at 10 o'clock on Monday morning next.

[Whereupon, at 3:40 p.m., the hearing adjourned, to reconvene Monday, March 14, 1977.]

ADVERSE PERSONNEL ACTIONS AGAINST PROFESSIONAL STAFF MEMBERS AT THE FEDERAL POWER COMMISSION

MONDAY, MARCH 14, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2325, Rayburn House Office Building, Hon. John E. Moss, chairman, presiding.

Mr. Moss. The subcommittee will be in order.

This morning we will hear from Mr. Curtis Fee, Executive Director of the Federal Power Commission, and Mr. Jon G. Lotis, Assistant Litigation Counsel of the same agency.

According to the March 9 testimony of Mr. Edward Minor, an attorney in the Office of the General Counsel of the FPC, within a few weeks after testimony by then Assistant General Counsel Lewnes before the Subcommittee on Energy and Power and this subcommittee, he was ordered by Mr. Fee to find a way to fire Mr. Lewnes.

On that same day we heard how another attorney with 11 years of special expertise in the important area of offshore gas supply, Mr. Russell Mamone, who had also testified before both subcommittees, was suddenly transferred to hydroelectric licensing, an area in which he had no particular expertise.

Mr. Lewnes and Mr. Mamone had testified before the Subcommittee on Energy and Power on January 15, 1976, regarding a diversion of natural gas from the interstate market by Tenneco Oil Co.

Two weeks later they appeared before this subcommittee and testified that Mobil Oil Co. should have delivered natural gas to the interstate market during the winter of 1975 and 1976 and that there was a rebuttable presumption that Mobil was withholding natural gas from the interstate market.

The subcommittee subsequently learned that these and other examples of apparent personnel manipulation may have been related to the High Island Offshore pipeline application and to the congressional testimony of certain of the witnesses which was embarrassing to the FPC and contrary to the interests of the producers of natural gas.

These lines of inquiry will be continued. In addition, the subcommittee will explore events in a new and equally important substantive area within the FPC, and particularly in the Office of the General Counsel, the handling of gas and pipeline rates. Such cases represent

about 70 percent of the litigation at the FPC and determine an important portion of many consumers' utility bills.

Rate case backlogs and what to do about them have been the subject of subcommittee hearings and a management survey performed on the FPC by Touche Ross and Co., which has become a part of the alleged justification for the questionable personnel actions we are investigating.

We will now hear from Mr. Fee.

Mr. Fee, will you stand and be sworn?

Do you solemnly swear that the testimony you are about to give to this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FEE. I do.

Mr. MOSS. Will you identify yourself for the reporter and for the record?

TESTIMONY OF J. CURTIS FEE, EXECUTIVE DIRECTOR, FEDERAL POWER COMMISSION

Mr. FEE. I am J. Curtis Fee. I am Executive Director of the Federal Power Commission.

Mr. Chairman, thank you for the opportunity to appear before the subcommittee. I brought a written statement.

If it pleases the subcommittee, I would like to read it at this time.

Mr. MOSS. Mr. Fee, I think at this time we shall proceed with counsel's examination of you. We will permit the formal statement when you return on Friday with Mr. Dunham and after we have had an opportunity to review the personnel files the subcommittee requested on Friday and again this morning at 8:30.

Mr. FEE. Sure, if that is your pleasure.

Mr. MOSS. I think at that time the two would be matters relevant to each other, and we shall be pleased to receive the statement then.

Mr. FEE. Fine.

I also brought a small entourage of staff specialists with me to help the committee in developing a record.

Mr. MOSS. Will any of them be testifying?

Mr. FEE. Only if the question is asked that I cannot answer and to which you would like the answer immediately.

Mr. MOSS. Then you can introduce them to the subcommittee for the purpose of the record, and, if they are subsequently called upon to testify, they will at that time be sworn.

Mr. FEE. Thank you.

The Assistant Executive Director, Mr. Joseph DiMarino.

My special assistant, Mr. Paul Feine.

A Commission lawyer, Danny Boggs.

I also have Director of Personnel Operations, Lois Schutte.

Mr. MOSS. Mr. Lemov?

Mr. LEMOV. How long have you been with the Federal Power Commission?

Mr. FEE. Fourteen months roughly.

Mr. LEMOV. In the position of Executive Director?

Mr. FEE. Yes, sir.

Mr. LEMOV. What was your previous job?

Mr. FEE. I was the assistant director of the Presidential personnel office, that is, on the administrative staff of the President.

Mr. LEMOV. The White House personnel office?

Mr. FEE. Yes.

Mr. LEMOV. Did you handle general personnel assignments for the White House in that position?

Mr. FEE. My responsibilities were, I guess, best defined as responsible for the Presidential appointees across about 25 percent of Government in the energy and natural resources part of Government.

Mr. LEMOV. When you considered the appropriateness of a person for a Government position you considered his past experience and his qualifications, I presume.

Mr. FEE. Yes.

Mr. LEMOV. Did you also consider his political compatibility with administration position?

Mr. FEE. Without question.

Mr. LEMOV. That was a requirement, was it not?

Mr. FEE. It depended on the job. But certainly in most high-level policy jobs.

Mr. LEMOV. Did you ever work for an independent regulatory commission before?

Mr. FEE. No, I have not.

Mr. LEMOV. When you came to the Federal Power Commission the first job you took there was as Executive Director?

Mr. FEE. Yes.

Mr. LEMOV. Who appointed you?

Mr. FEE. The Chairman.

Mr. LEMOV. Did the Chairman instruct you on the nature of an independent regulatory commission?

Mr. FEE. He did.

Mr. LEMOV. What did he tell you?

Mr. FEE. He told me that it was an independent regulatory agency and, as such, we would conduct ourselves accordingly.

Mr. LEMOV. Anything else?

Mr. FEE. I can't recall the exact conversation now.

Mr. LEMOV. By the way, your professional background is what in terms of training?

Mr. FEE. Well, I am essentially a businessman. I came to Government from the Aluminum Co. of America. I worked there in the professional employment office. I was an industrial sales representative. I was a college recruiter. I was the personnel manager of a subsidiary.

Basically it is that type of business, corporate staff, personnel.

Mr. LEMOV. How many years did you have in corporate personnel work before going to the White House?

Mr. FEE. Five and one-half years.

Mr. LEMOV. How many years in the White House in the political personnel area?

Mr. FEE. I was there 18 months.

Mr. LEMOV. Did Chairman Dunham say anything about the tradition of independent handling of cases by the Federal Power Commission legal staff when he appointed you as Executive Director?

Mr. FEE. I don't remember a specific conversation in that regard. However, that certainly was implied.

Mr. LEMOV. Why do you say it is implied?

Mr. FEE. Just an understanding that I have always had.

Mr. LEMOV. When you were with corporations for which you worked—who did you say you worked for?

Mr. FEE. Aluminum Co. of America.

Mr. LEMOV. Alcoa?

Mr. FEE. Alcoa.

Mr. LEMOV. Their lawyers did not have any statutory provisions applicable to their functioning as attorneys, did they?

Mr. FEE. Not that I would be aware of.

Mr. LEMOV. The Federal Power Commission attorneys are referred to in the Federal Power Act and the Natural Gas Act?

Mr. FEE. That is correct.

Mr. LEMOV. And at the White House, if you were considering the appointment of an attorney you would consider his political compatibility with the administration position? You told me that that was so in all cases.

Mr. FEE. The only jobs we would deal with in the White House were jobs which were high level policy type jobs—not all high level but all policy jobs. That certainly was not a requisite but a desirable characteristic of a political appointee in an administration.

Mr. LEMOV. Did Chairman Dunham point out to you when he appointed you as Executive Director that political considerations had no relationship whatsoever to the staff of an independent regulatory agency?

Mr. FEE. I believe he did.

Mr. LEMOV. You believe he did?

Mr. FEE. Yes.

Mr. LEMOV. What did he say to you?

Mr. FEE. I don't recall the specific conversation or if there were conversations, but it was certainly implied.

I recall also when I was in the White House we had a memorandum from White House counsel that was strict instructions to White House staff about our conduct in relation to independent regulatory agencies.

Mr. LEMOV. You were in charge of the implementation of the reorganization of the Federal Power Commission staff pursuant to the Touche Ross study?

Mr. FEE. That is correct.

Mr. LEMOV. And that included the reorganization of the legal staff which already has been discussed at these hearings?

Mr. FEE. That is correct.

Mr. LEMOV. Is there anything in the Touche Ross study that recommended a reassignment of attorneys who had specialized in natural gas work to hydroelectric work?

Mr. FEE. No.

Mr. LEMOV. Is there anything in the Touche Ross study regarding reorganization of the Office of the General Counsel?

Mr. FEE. Yes.

Mr. LEMOV. What was that?

Mr. FEE. Two comments, two observations that the consultants made, one of which we pursued and one of which we did not.

The first was to preserve the distinction between the trial attorneys and the attorneys who would eventually be advising the commission on matters before them. It was recommended that these should be separated.

The study recommended that we set up a commission counsel and a separate litigation office to enforce that distinction.

Second, that the work flow and the accountability within OGC was not particularly good, did not reflect the other organizations which it served, and I think their exact words were that "it should be realined to mirror the organizations they serve."

Mr. LEMOV. Do you remember a comment in the Touche Ross study that "personnel assigned to cases should be revised so that their experience and skill level are more appropriate for the task requirements?"

Mr. FEE. Yes, that is an exact quote.

Mr. LEMOV. That would suggest that experienced personnel in any area should be used commensurate with their experience and not transferred to other areas, wouldn't you say?

Mr. FEE. I would not agree with that wholesalely. There are certainly instances where a senior attorney, just by virtue of the fact that he had been in the agency for many years, was used to the work, was used to the tenor of the order writing—I suspect you refer to the Mamone transfer from one place to another?

Mr. LEMOV. That is correct, that and the Wofsy transfer.

Mr. Moss. Let us discuss the underlying policy which is implicit in the question which was asked and not personalize it by getting into a specific case.

Mr. FEE. Certainly. I apologize.

I am sorry. I lost the question.

Mr. Moss. Let us have the question read.

[Question read.]

Mr. FEE. I think my answer was that as a general rule you could not make that statement. I think you would have to examine each case individually and leave a lot to the judgment of the General Counsel who is held responsible for the productivity of the Office of General Counsel.

Mr. LEMOV. There is no question at this time that there is a major natural gas shortage in this Nation; is that correct?

Mr. FEE. That is correct.

Mr. LEMOV. And that shortage existed on October of 1976 when these transfers took place?

Mr. FEE. The shortage existed.

Mr. LEMOV. And it existed in the spring of 1976 when Mr. Lewnes was permitted to leave as Assistant General Counsel and become an administrative law judge?

Mr. FEE. It existed.

Mr. LEMOV. Mr. Lewnes was the most experienced lawyer at the Federal Power Commission in natural gas producer and pipeline matters; was he not?

Mr. FEE. I am not competent to make that judgment.

Mr. LEMOV. You are not?

Mr. FEE. I am not.

Mr. LEMOV. Were you not instrumental in the reorganization?

Mr. FEE. I was technical director of the Touche Ross study.

Mr. LEMOV. You do not know who the most competent natural gas lawyer was?

Mr. FEE. That is correct.

Mr. LEMOV. He certainly was a ranking lawyer in terms of his position; was he not?

Mr. FEE. If you are equating seniority and competence, yes.

Mr. LEMOV. Assistant General Counsel in charge of natural gas producer and pipeline certificate matters; is that correct?

Mr. FEE. Yes.

Mr. LEMOV. That is the area of the shortage; is that correct?

Mr. FEE. That is correct.

Mr. LEMOV. Mr. Wofsy, the man who moved in right after him and who quit, was also extraordinarily knowledgeable in these matters having worked on them for many years. Is that correct?

Mr. FEE. That is my understanding.

Mr. LEMOV. And he went to the Electric Rates Section?

Mr. FEE. Yes, sir.

Mr. LEMOV. And Mr. Mamone, who testified he had 11 years of specialized work on natural gas producer and pipeline certificate matters, was shifted during the same period of time to the Hydroelectric Section. Is that correct?

Mr. FEE. Yes.

Mr. LEMOV. Mr. Mamone would be one of the two most experienced trial lawyers in the Natural Gas Producer and the Pipeline Rate Section: is that right?

Mr. FEE. That is correct.

Mr. LEMOV. Do you think that is good personnel management, at a time of natural gas shortage and crisis, to move three of your top four men who were staffing that area?

Mr. FEE. That is a judgment for the General Counsel. I could not second guess the General Counsel's actions on that.

Mr. LEMOV. On March 9, Mr. Mamone testified that since September 1974, also during a period of natural gas crisis, the career certificate legal staff had been drastically diminished. Between that date and January 1977 only 8 of the 26 original attorneys remained in this section. Of these 18 departed: 12 resigned from the Commission, 6 transferred elsewhere in the Commission. This represents an extraordinary rate or attrition.

Do you think that is a significant management problem when the Natural Gas Section is subject to an extraordinary rate of attrition in the middle of a natural gas crisis?

Mr. FEE. Number——

Mr. LEMOV. Excuse me. The gentleman in the first row seems to be whispering to the witness. He is not under oath.

Mr. MOSS. Are you counsel for the witness?

Mr. FEE. He is counsel for me.

Mr. BOGGS. I was asked to serve in that capacity.

Mr. MOSS. You are counsel for the witness. Why don't you accompany him to the counsel table?

Mr. BOGGS. If the Chair chooses.

Mr. Moss. The Chair does choose. The gentleman has been before committees of Congress enough to know that you are supposed to be identified and if you are going to testify that you are to be sworn. If you are going to act as counsel you have a rule book before you which tells you the role you are to fulfill as counsel.

Are you familiar with those rules?

Mr. Boggs. I have seen them; yes, sir.

Mr. Moss. Are you familiar with them? That is the question I asked you. I want an exact answer.

If you are not familiar with them, then take the book and familiarize yourself with them.

Mr. Boggs. I am familiar with them.

Mr. Moss. You are familiar with them. Very well.

Then you are supposed to respond to the request of the witness for your advice on matters when he seeks it. You are not to volunteer.

Mr. Boggs. I do not find that statement in the rules.

Mr. Moss. Let us put it to you very promptly, then, my friend. You said you were familiar with the rules.

Mr. Boggs. It states I may advise him on matters of his constitutional rights. It does not say he has to ask me about it first.

Mr. Moss. Were you advising him on a constitutional question?

Mr. Boggs. That would be a matter between myself and him.

Mr. Moss. Were you advising him on a constitutional question?

Mr. Boggs. That would be a matter between myself and him.

Mr. Moss. Let us just see whether that is so. You are directed to respond to that question. Were you advising on a constitutional matter?

Mr. Boggs. That is a matter between myself and him.

Mr. Moss. It is not a matter between you. That is the only matter that these rules permit you to advise him on. Then he has to seek your advice.

I am asking you whether you were advising him, in view of the fact no constitutional question was before us, were you advising him on a constitutional matter?

Mr. Boggs. If I am his counsel that is a matter between myself and him.

Mr. Moss. That is not a matter between him and you. I have not asked you what you advised him on. I have asked you only the area. That is a permissible area of inquiry by this Chair.

Let me point out to you, my friend, I have chaired committees for 23 years with witnesses far more skillful than you, and you will answer that question.

Mr. Boggs. I recognize that, your Honor.

Mr. Moss. You will answer that question.

Mr. Boggs. My——

Mr. Moss [Rapping his gavel]. You will answer the question and you will do it promptly.

Mr. Boggs. I believe that to the extent Mr. Fee asked me to serve——

Mr. Moss [Rapping his gavel]. You will answer the question promptly. You will do it now.

Mr. Boggs. The subject of the conversation between——

Mr. Moss [Rapping his gavel]. You will get up and you will leave this hearing room and you will not come back until you come back prepared to answer to this committee.

You are not, first of all, the counsel to the gentleman seated here. You are an assistant to the Chairman of the Federal Power Commission. You are acting here in an extra-legal manner and irregular manner, and you are acting in an impertinent manner.

You will now leave this hearing room and we shall discuss our disposal of your situation at a later date.

You will leave the hearing room.

[Chairman raps his gavel.]

You will leave the hearing room, and you will leave promptly.

Mr. MARKS. I wonder whether we might have a recess for just a moment or two so we can discuss this problem.

Mr. Moss. No. The Chair has exercised his prerogative. The Chair is required to enforce the rules. He has done so.

Mr. MARKS. May I have permission to speak with the Chairman for a moment?

Mr. Moss. When the hearing is over this morning you may speak with me personally.

We shall continue with the witness.

Mr. FEE. I apologize for the pause in the response to your question. The reason I am pausing is that when we saw that statement in the record we tried to research the personnel situation in that section and it did not comport with the testimony. I think the document before me shows that not to be true.

Mr. LEMOV. You are speaking now, Mr. Fee, that there was not an attrition in the producer and pipeline certificate section?

Mr. FEE. I would like to enter in the record, if it pleases the committee, a chart which was put together which shows over a period of time what the manning level in that section was.

There were changes but they were not drastic changes at all.

Mr. LEMOV. What section are you talking about now?

Mr. FEE. The Office of General Counsel certificate group. Onboard professional staff at the end of pay periods designated here.

Mr. LEMOV. What pay periods are you talking about?

Mr. FEE. The chart starts with fiscal 1975–1976 and goes through to the first quarter of 1977.

Mr. LEMOV. Does it include 1974 as well?

Mr. FEE. It includes most of the calendar year of 1974.

Mr. LEMOV. How about 1973?

Mr. FEE. It does not.

Mr. LEMOV. Mr. Chairman, in response to the witnesses' request that the chart be incorporated in the record, I would ask that a chart should go back at least for a period of 5 years to 1970 to show staffing of the Certificate Section before it goes into the record.

That would be a fair evaluation of the gas regulatory function rather than the last 2 years. The last 2 years are the very years when the attrition is asserted to have taken place, so a chart showing 1975 and 1976 substantially will show just what the existing management

of the Federal Power Commission chose to be the staffing for that section.

Mr. Moss. We shall receive the chart and have the updated material submitted and included in the record at this point.

[The following letter and attachments were received for the record:]

FEDERAL POWER COMMISSION,
Washington, D.C., April 5, 1977.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The General Counsel indicated in his letter to you dated March 29, 1977 that I would be providing additional information to the Subcommittee. Attached are the following:

Attachment I.—The on-board professional staff in the Office of the General Counsel for Fiscal Years 1970 through the second quarter of 1977.

Attachment II.—Attrition in the Office of the General Counsel for Fiscal Years 1970 through the second quarter of 1977.

Attachment III.—Promotions in the Office of the General Counsel for Fiscal Years 1970 through the second quarter of 1977.

Attachment IV.—Replacements and new hires in the Office of the General Counsel for Fiscal Years 1970 through the second quarter of 1977.

This data is provided pursuant to Mr. Lemov's request during the March 14, 1977 Hearings before the Subcommittee (TR 18). Since none of this data was available in mechanized form, the above attachments had to be developed from whatever manual records were available. In particular, transfers from one section to another in the Office of the General Counsel had not been documented; therefore, those records were constructed from the collective memory in the Office of the General Counsel. Also, the following assumptions were necessary in order to construct a consistent record:

1. A "professional" is considered to be either an attorney who is a member of the bar or a law clerk (trainee) who is not a member of the bar but who has been employed less than 15 months.[1]

2. All data is as of the close of business of the indicated pay period.

Since this data had to be hand-compiled, involved over 300 individuals, and was partially dependent on memory, some inaccuracies may result. I estimate the overall data to be 95% accurate, with greater accuracy attained in FY–1975, 76, and 77, and less accuracy in earlier years. I believe this data to be sufficiently accurate to permit assessments of trends. Moreover, because of time constraints, the average tenure and average grade trend charts were not developed. The average tenure chart would require approximately 61,000 separate calculations, and the average grade chart would require approximately 15,000 separate calculations.

So that this data may be audited, the following is also attached:

Attachment V.—Personnel Action Record in the Office of the General Counsel from FY–70 through the first two quarters of FY–77. [Retained in subcommittee files.]

Attachment V is the basic data from which Attachments I, II, III, and IV were extracted. In addition, average tenure, average grade, and employees eligible for promotion can be ascertained from Attachment V.

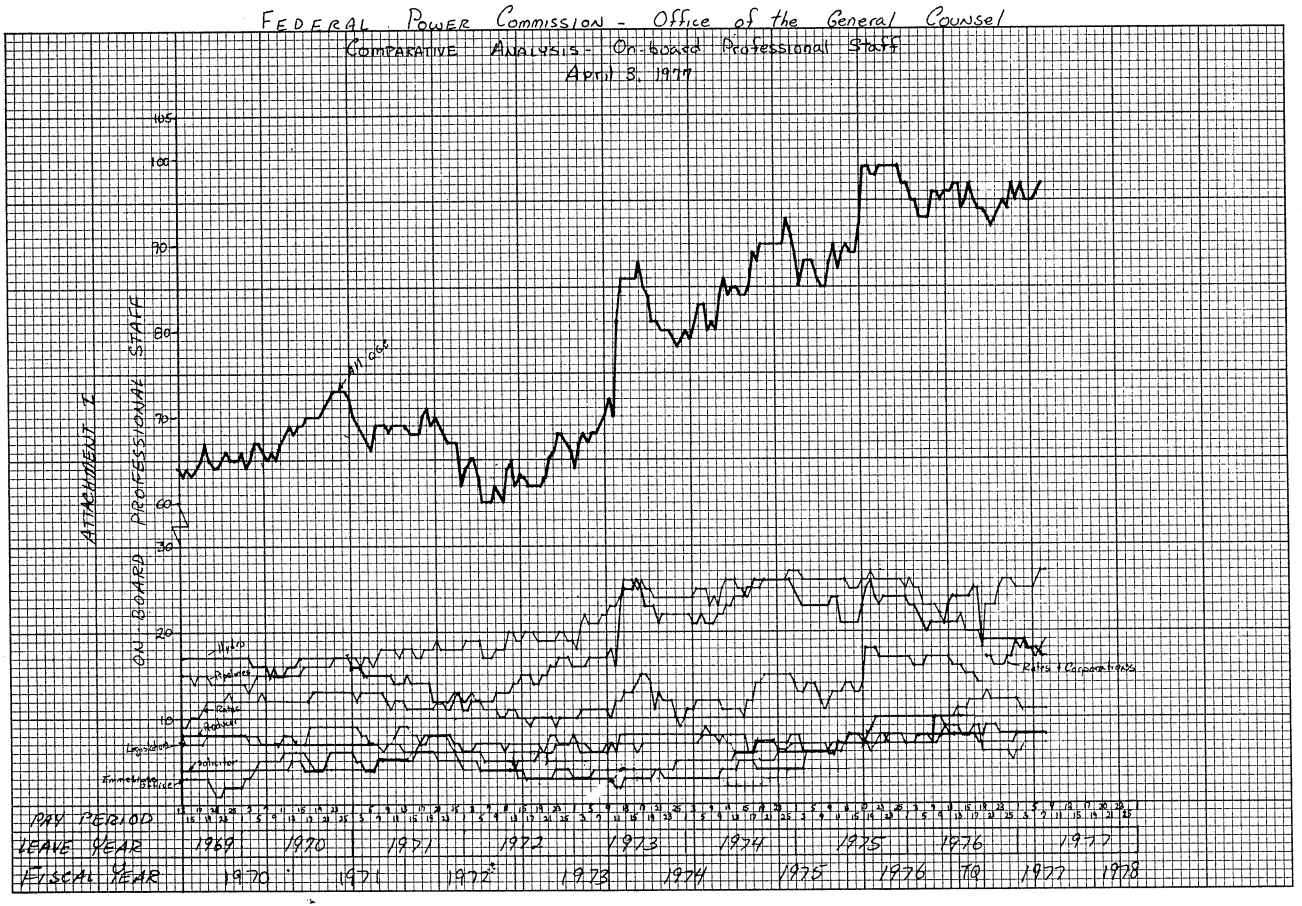
I hope this data will provide the most accurate information possible to the Subcommittee. If I may be of further assistance, please let me know.

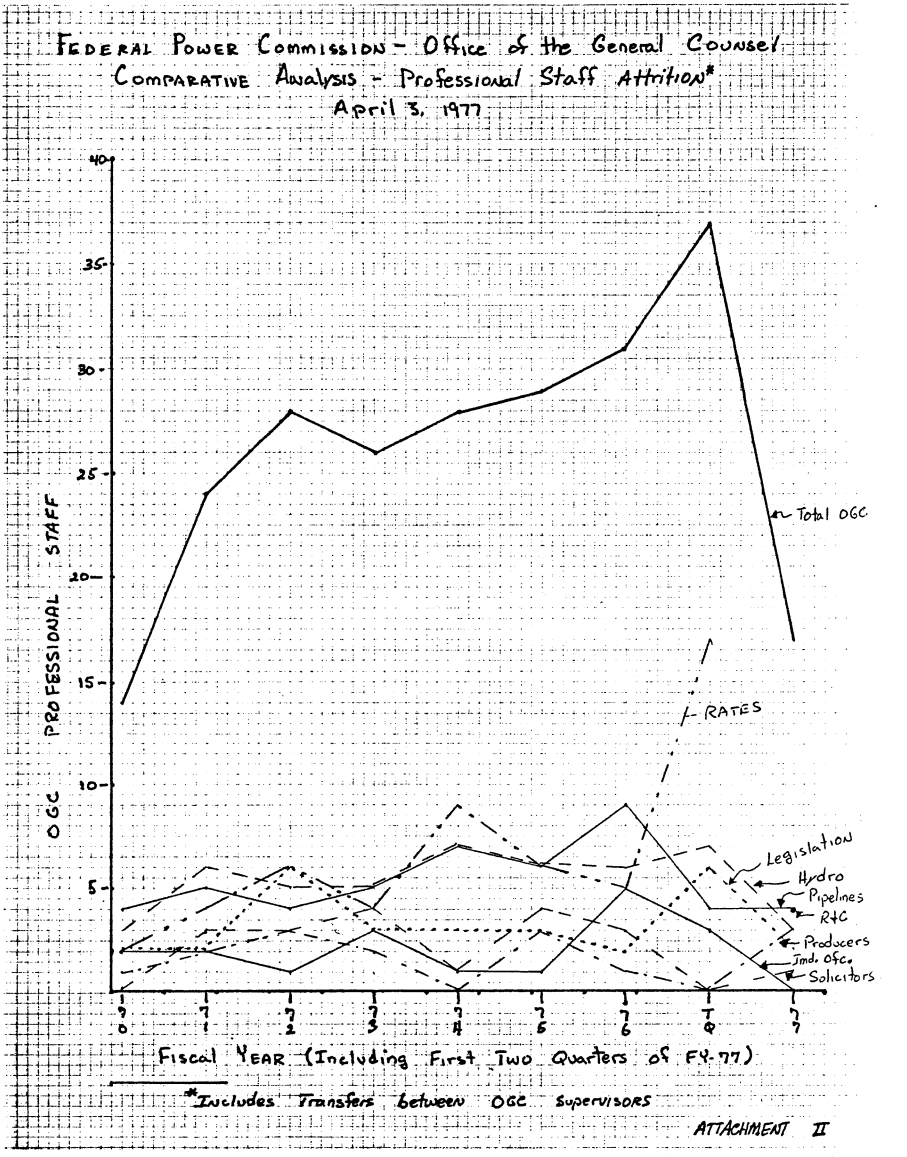
A copy of this letter has been sent to the Subcommittee's Chief Counsel, Michael R. Lemov and to the Minority Counsel, Bernard Wunder.

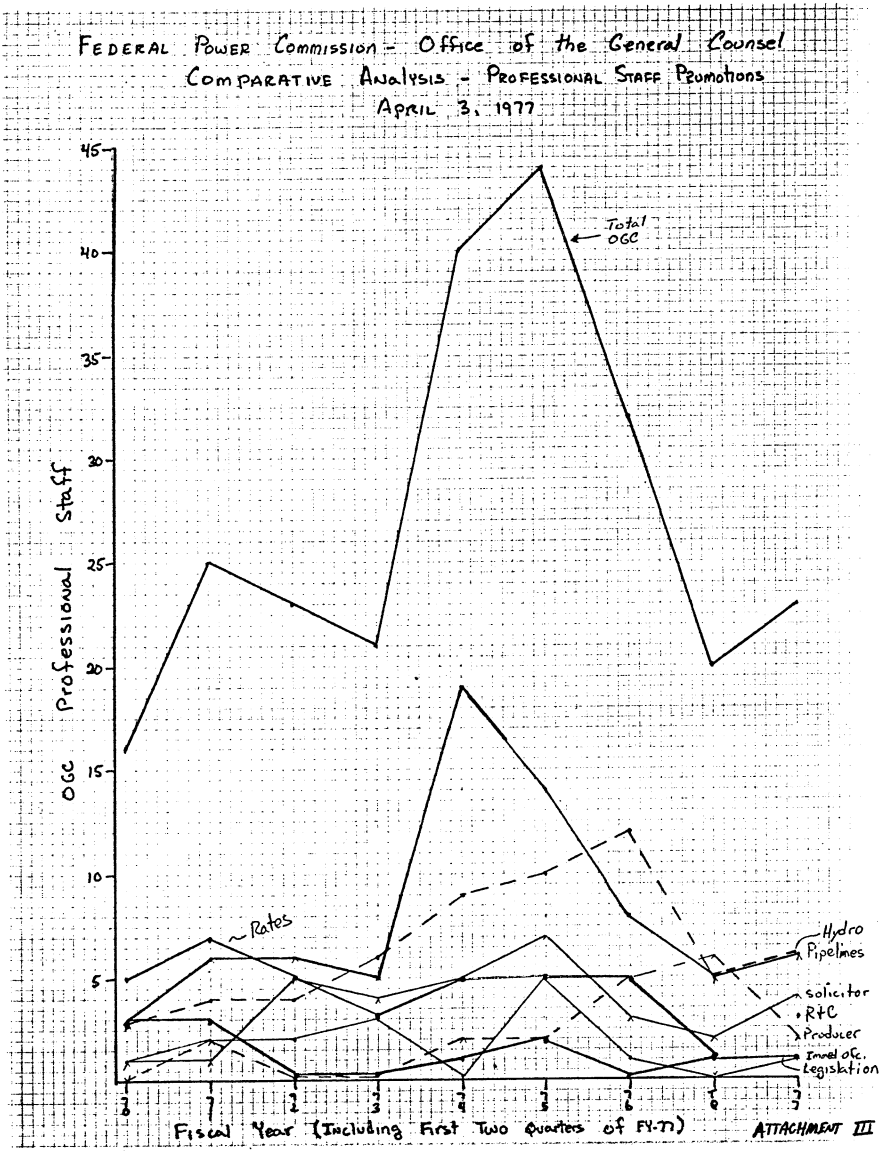
Sincerely,

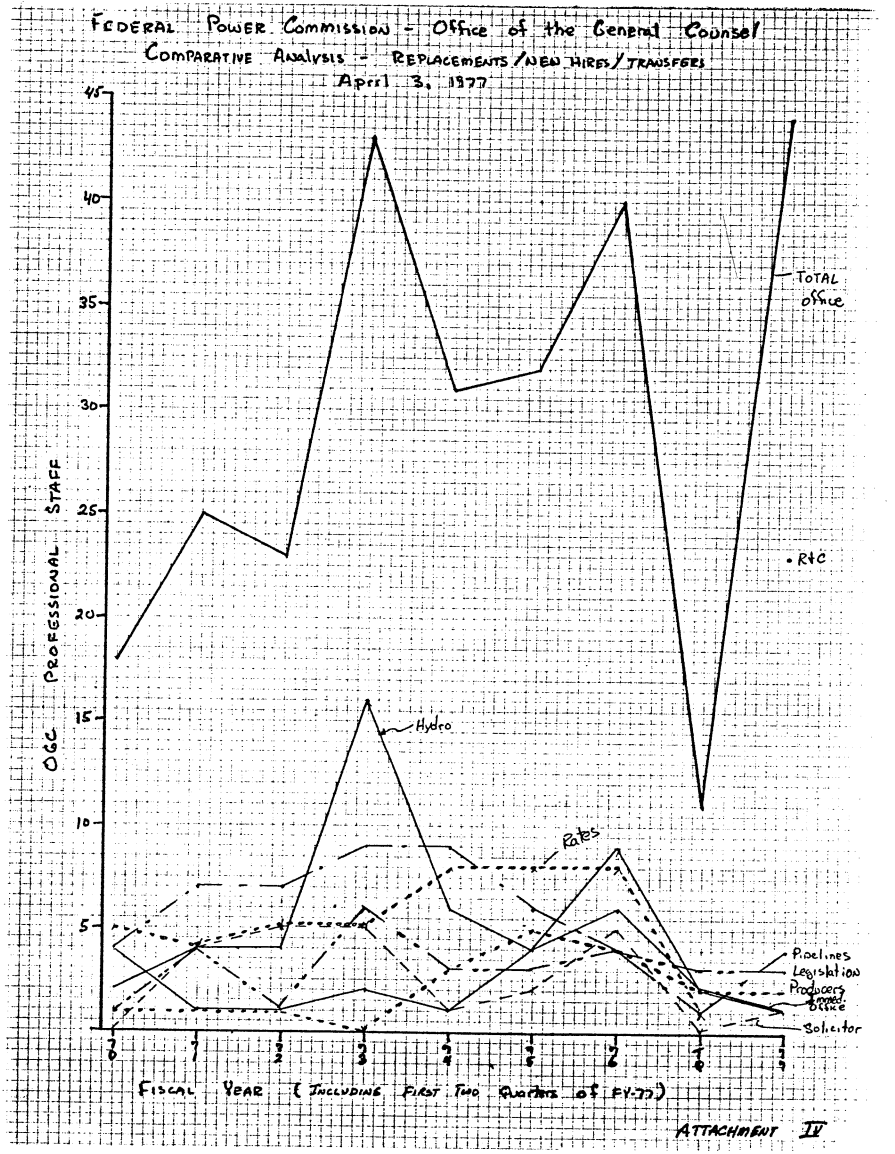
JOHN R. GRIFFIN III,
Administrative Officer.

[1] At the end of 14 months' service, a law clerk (trainee) who has not passed the bar is converted to a non-professional job until such time as bar membership is attained.


FEDERAL POWER COMMISSION - Office of the General Counsel
COMPARATIVE ANALYSIS - On-board Professional Staff
April 3, 1977
ATTACHMENT I
ON-BOARD PROFESSIONAL STAFF
105
100
90
80
70
60
30
20
10
All age
Hydro
Pipelines
Rates
Producer
Legislation
Solicitor
Immediate Office
Rates + Corporations
PAY PERIOD
LEAVE YEAR
1969
1970
1971
1972
1973
1974
1975
1976
1977
FISCAL YEAR
1970
1971
1972
1973
1974
1975
1976
TQ
1977
1978


FEDERAL POWER COMMISSION - Office of the General Counsel
COMPARATIVE Analysis - Professional Staff Attrition*
April 3, 1977
OGC PROFESSIONAL STAFF
40
35
30
25
20
15
10
5
Total OGC
RATES
Legislation
Hydro
Pipelines
R+C
Producers
Ind. Ofc.
Solicitors
70
71
72
73
74
75
76
TQ
77
Fiscal YEAR (Including First Two Quarters of FY-77)
*Includes Transfers between OGC supervisors
ATTACHMENT II


FEDERAL POWER COMMISSION - Office of the General Counsel
COMPARATIVE ANALYSIS - PROFESSIONAL STAFF PROMOTIONS
APRIL 3, 1977
OGC Professional Staff
45
40
35
30
25
20
15
10
5
Total OGC
Rates
Hydro
Pipelines
solicitor
R+C
Producer
Invest ofc.
Legislation
Fiscal Year (Including First Two Quarters of FY-77)
ATTACHMENT III


FEDERAL POWER COMMISSION - Office of the General Counsel
COMPARATIVE ANALYSIS - REPLACEMENTS / NEW HIRES / TRANSFERS
April 3, 1977
OGC PROFESSIONAL STAFF
45
40
35
30
25
20
15
10
5
TOTAL Office
R&C
Hydro
Rates
Pipelines
Legislation
Producers
Appeals Office
Solicitor
FISCAL YEAR (INCLUDING FIRST TWO QUARTERS OF FY-77)
ATTACHMENT IV

Mr. FEE. It goes back to April of 1974.

Mr. LEMOV. By the way, does the chart also go into the question, in addition to staffing generally, of grade level and the experience of the attorneys in the Certificate Section?

Mr. FEE. That chart does not. It deals with just numbers. We have other information about the average grade level and average tenure in that section over a period of time.

Mr. LEMOV. We would like to have that for our review, Mr. Chairman, if we may, that is, for the review of the staff.

Mr. Moss. It will be received for the committee records.

Mr. FEE. I have it with me someplace. It is in very rough form.

Mr. Moss. Let us note in the record that the material is to be received for the committee record.

Mr. FEE. Thank you.

Mr. LEMOV. When did you first become aware that Mr. Mamone and Mr. Lewnes had testified before the Subcommittee on Energy and Power and the Subcommittee on Oversight and Investigations of this committee?

Mr. FEE. Mr. Lemov, my recollection of that is very unclear. I honestly don't know.

I have read so much about it in the record. I think there were newspaper accounts at that time, perhaps.

I think the most honest thing I can say is that I was vaguely aware of it at the time and subsequently occasionally.

Mr. LEMOV. So that in January of 1976, you testified, you believe you were aware of the fact Mr. Lewnes and Mr. Mamone had testified before this subcommittee and the Subcommittee on Energy and Power?

Mr. FEE. I honestly don't know. I was very new to the Commission at that time.

Mr. LEMOV. You said there were newspaper articles about it.

Mr. FEE. I think there were. I just think I read them. I just am not sure.

Mr. GORE. Mr. Chairman?

Mr. Moss. Mr. Gore.

Mr. GORE. I would like to interpose a question here if I might.

You are testifying that the personnel actions during the period following Mr. Lewnes' testimony were due primarily to budget restrictions which constrained promotions as well as hirings; is that correct? That is what is indicated on this graph.

Mr. FEE. I am not sure I understand your question. That the grade level——

I think the answer is yes. There was a freeze, I think President Ford announced a freeze, on Government salaries, and promotions, or something like that, at some point. That had an adverse effect on Mr. Lewnes' section and, indeed, the entire Commission.

Mr. GORE. And to the entire Commission?

Mr. FEE. Yes.

Mr. GORE. The point I was getting at is this.

This graph will be updated for the record. For the period that it does cover it has written on here, "Lewnes' testimony before Congress." There is a certain period mentioned.

Right after that the certificate group becomes understaffed—perhaps that is a subjective opinion—but we have all sorts of curious personnel actions following that.

Underneath is written "Period of constrained hiring and promotions due to budget and average grade restrictions."

You say that affected not only this group but the entire Commission.

Did it also affect the producers section in the Office of General Counsel?

Mr. FEE. I believe it did.

Mr. GORE. I have an exhibit H. Is this already in the record?

I understand it is not. I would like to introduce this in the record.

Mr. Moss. Without objection, it may be inserted.

[Exhibit H referred to follows:]

EXHIBIT H

March 7, 1977

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Rate of Promotion by Section, Office of General Counsel

(From FPC Data)

The Rates section, which Lotis headed, had the lowest rate of promotions of any of the sections headed by an Assistant General Counsel in the General Counsel's Office between October 1975-October 1976:

Section	Promotion Rate	No. Promoted	No. Eligible
Solicitor	40%	2	5
Certificates	46.2%	6	13
Legislation	25%	1	4
Hydroelectric	38.5%	5	13
Producers	100%	7	7
Rates	20%	2	10

Comparison of Promotions in Grades 9-13 October 1975-76

Section	Promotion Rate	No. Promoted	No. Eligible
Solicitor	33%	1	3
Certificates	75%	6	8
Legislation	33%	1	3
Hydrolectric	50%	4	8
Producers	100%	4	4
Rates	22%	2	9

Note: Personnel Data Tabulated from Information Supplied by the Federal Power Commission.

Mr. GORE. It indicates during the period of October 1975 through October of 1976 that 7 out of 7 employees in the Producer Section were promoted for a 100 percent promotion rate compared to a 46.2 percent promotion rate in the certificate section.

Mr. FEE. Yes. I am just not familiar with those figures, Mr. Gore. I have a copy of it.

Mr. GORE. Is there any special circumstance that you are aware of which would make that section different from the others and mean that the budget constraints that you referred to were not applied to that section?

Mr. FEE. I just have no specific knowledge of it, sir.

Mr. LEMOV. Going back to your knowledge of the facts in this situation, Mr. Fee, I would like to show you exhibit D, which was entered into the record of these hearings on March 9 [see p. 25].

Did you ever see that letter before? That is a letter from Chairman Dingell to Chairman Dunham advising that Mr. Lewnes and Mr. Mamone had appeared at a congressional hearing and were subject to the protection of the committee and should not be discriminated against.

Did you ever see that letter before?

Mr. FEE. Yes, sir; I have seen it before.

Mr. LEMOV. When did you see it?

Mr. FEE. Just in the last—I just don't remember. I think I have seen it recently. I may or may not have seen it. I knew it existed. I don't know specifically whether I read it within a few days after it was written.

Mr. LEMOV. You knew it existed?

Mr. FEE. Yes.

Mr. LEMOV. All right.

Mr. FEE. That could be recently. I don't know whether I knew it existed within a month after it came out.

Mr. LEMOV. Was there a meeting with Mr. Perdue, Assistant General Counsel, Commissioner Watt, General Counsel Journey, and Chairman Dunham in either January or February of 1976 after the Lewnes and Mamone testimony when the testimony or this letter was discussed?

Mr. FEE. I don't know, Mr. Lemov.

Mr. LEMOV. You were not present at such a meeting?

Mr. FEE. I do not recall being present at such a meeting.

Mr. LEMOV. Might there have been such a meeting?

Mr. FEE. It is very possible there might have been.

Mr. MARKS. Was there such a meeting?

Mr. MOSS. We are trying to determine that.

Mr. MARKS. I think there was a remark by counsel.

Mr. MOSS. It would be inappropriate to have counsel on the stand at this time. We are eliciting information from the witness, Mr. Fee.

At an appropriate time, if the Chairman feels that the counsel's line of questioning should be in the record, he will so direct. At this moment, he does not feel that is appropriate.

Mr. LEMOV. Mr. Fee, on March 9 Mr. Minor, an attorney in the Office of the General Counsel, testified before the subcommittee as follows.

Mr. Chairman, I can either read the questions and answers or I can summarize them.

Mr. Moss. Whichever is most useful.

Mr. LEMOV. These were the questions and answers from that hearing on March 9.

Referring to subcommittee investigators speaking with Mr. Minor —page 91 of the transcript, Volume 1:

Did they discuss with you an assignment you had received or a direction you had received regarding Mr. George Lewnes who at that time was an Assistant General Counsel of the Federal Power Commission?

Mr. MINOR. Yes, Mr. Lemov.

Mr. LEMOV. They did do that?

Mr. MINOR. Yes, sir.

Mr. LEMOV. From whom was that assignment? Who gave you that assignment?

Mr. MINOR. The assignment came from the Executive Director, Mr. Fee.

Mr. LEMOV. And Mr. Fee is the Executive Director of the Federal Power Commission?

Mr. MINOR. Yes.

Mr. LEMOV. He was in charge of this reorganization we have heard discussed this morning?

Mr. MINOR. That is correct.

Mr. LEMOV. What did Mr. Fee say to you?

Mr. MINOR. He asked me to look into the procedures to be followed in separating an attorney from service.

Mr. LEMOV. Separating—firing?

Mr. MINOR. Yes, sir, firing.

Mr. LEMOV. Firing an attorney?

Mr. MINOR. Yes.

Mr. LEMOV. Did he give you any reasons?

Mr. MINOR. No, he did not.

Mr. LEMOV. No reasons at all?

Mr. MINOR. No reasons.

Mr. LEMOV. Who was the attorney involved in this?

Mr. MINOR. Mr. Lewnes.

Mr. LEMOV. Mr. Fee asked you how to go about firing Mr. Lewnes?

Mr. MINOR. Correct.

Mr. LEMOV. When did he ask you?

Mr. MINOR. I would say this came about the latter part of February or early March of 1976.

Mr. LEMOV. Right after Mr. Lewnes' testimony before this subcommittee and the Subcommittee on Energy and Power; is that correct?

Mr. MINOR. I don't know what the dates were with respect to Mr. Lewnes' testimony.

That is the end of the quotation.

Did you give Mr. Minor that instruction and, if so, what was the purpose of it?

Mr. FEE. I gave him that instruction. In my written statement I chose my words very carefully so that you would understand exactly what I knew and what I didn't know.

The purpose of the instruction was to find a resolution for what was becoming an untenable personnel situation. I refer to it as a festering personnel situation.

The Commission, for reasons—some I understand and some I do not understand—was becoming displeased with Mr. Lewnes.

Mr. LEMOV. Let us stop right there. Did you have any evidence in your possession of an adverse personnel action taken against Mr. Lewnes or Mr. Mamone or Mr. Wofsy? I refer to a formal adverse personnel action.

Mr. FEE. Absolutely not.

Mr. LEMOV. Absolutely not. Did you have an opportunity to review the personnel file of Mr. Lewnes, Mr. Mamone, and Mr. Wofsy?

Mr. FEE. I certainly had the opportunity but I did not.

Mr. LEMOV. You never looked at the personnel file?

Mr. FEE. No.

Mr. LEMOV. Were you aware of whether there was any criticism whatsoever of Mr. Lewnes' competence and ability, Mr. Mamone's competence and ability, and Mr. Wofsy's competence and ability?

Mr. FEE. I didn't understand the question.

Mr. LEMOV. Are you aware of any criticism whatsoever in the official personnel file as to the competence and ability of the three men I referred to?

Mr. FEE. I am not aware of any.

Mr. LEMOV. When you gave this instruction to Mr. Minor did you have any knowledge of that?

Mr. FEE. I had the knowledge fairly specifically—specifically is wrong. I had general knowledge that the Commission was displeased with him. The Chairman was displeased with them——

Mr. LEMOV. I am talking about ability now and not displeasure. Was there any evidence you had of incompetence on the part of any of these men?

Mr. FEE. Absolutely none.

Mr. LEMOV. Do you have any today?

Mr. FEE. Absolutely none.

Mr. LEMOV. Absolutely none.

Mr. FEE. I have very little knowledge of Mr. Wofsy, Mr. Mamone, or essentially Mr. Lewnes. I have never worked with these men on a one-on-one professional situation and I would not be competent to judge.

Mr. LEMOV. You passed on to Mr. Minor the instruction I read from the transcript of March 9?

Mr. FEE. That is correct.

Mr. LEMOV. "Find a way to fire Mr. Lewnes."?

Mr. FEE. That is correct.

Mr. LEMOV. Who gave you that instruction? Who gave you that order?

Mr. FEE. If I may go back to make the record clear on one thing.

Mr. MOSS. Yes, you may.

Mr. FEE. I do not recall my words to Mr. Minor as "Find a way to fire Mr. Lewnes." Mr. Minor is my House counsel. He really doesn't work for me, but he is two offices away. I consult with him on an almost daily basis on a variety of personnel matters.

The object of my conversation was to find out just what management rights were, what his rights were. It was an untenable situation. I knew it had to be resolved in some way and this was part of my——

Mr. LEMOV. Your recollection is quite clear about that conversation with Mr. Minor. You are under oath now, remember, subject to penalties of perjury.

Mr. FEE. I understand that.

Mr. LEMOV. You do not remember your exact words. Is that what you are saying?

Mr. FEE. I don't remember my exact words. One facet——

Mr. LEMOV. But the import was separation, find a way. How could management separate an attorney?

Mr. FEE. Separation is word in the art of the Commission. That could have been one of the remedies. We were trying to examine remedies.

Mr. LEMOV. Remember now, Mr. Minor, testifying under oath on March 9 before this subcommittee, said:

> He asked me to look into the procedures to be followed in separating an attorney from service.
> Mr. LEMOV. Separating, firing?
> Mr. MINOR. Yes, sir; firing.

Mr. Minor's recollection is that he was testifying under oath, and you are also. Are you saying he was lying?

Mr. FEE. Not at all.

Mr. LEMOV. All right. I wanted that answer on the record. But you do not remember your exact language?

Mr. FEE. I don't remember my exact words. Mr. Minor's testimony is fairly accurate except I don't remember my exact words.

Mr. LEMOV. Who gave you the order to direct Mr. Minor to look into the procedures for separating or firing an attorney?

Mr. FEE. My mind is not clear on that. I don't mean to cloud the issue to protect somebody.

I had conversations with Mr. Braun and Dr. Galloway sometime in August when they interviewed me on the subject. I don't think my memory was clear then and it is not now.

I was aware the Chairman was displeased, the General Counsel was displeased, at least one of the other Commissioners was displeased. I, either at the Chairman's direction or at my own initiative, set out to find out what the remedies could be so I could go to the Chairman with solutions rather than problems.

My best recollection is that I did this on my own initiative, but it was certainly not without the Chairman's general awareness.

Mr. LEMOV. Mr. Dunham was generally aware of the situation?

Mr. FEE. Yes, indeed.

Mr. LEMOV. On the 9th of March, Mr. Chairman, two documents were ordered incorporated in the record. We have Mr. Braun's notes relating to interviews with Mr. Minor and those of Mr. Scallon. They have now been typed up.

I wonder whether they can be distributed now and shown to the witness.

Mr. Moss. Yes; and to all members.

Mr. LEMOV. Yes; and to all members.

I will point out that Mr. Braun's simultaneous memorandum, made immediately after interviewing Mr. Minor, states that Mr. Minor was asked orally how to go about "Getting rid of G. Lewnes."

Also Mr. Minor testified that Mr. Lewnes' testimony before this subcommittee "Could have entered into it, the decision to get rid of Lewnes."

Finally, Mr. Chairman, Mr. Minor stated to the staff investigators that he came up with a suggestion to reorganize Mr. Lewnes out of his position.

Mr. Fee, do you remember Mr. Minor telling you that was another option, to reorganize Mr. Lewnes out of his position?

Mr. FEE. I honestly don't. After I had the conversation with Mr. Minor, I think several days went by, 1 day or so, and I remember he briefed me on some fairly technical resolutions to the problem that I presented.

Clearly one of the options was how could I solve that problem. I don't remember that specifically, no.

Mr. LEMOV. You don't remember that specifically?

Mr. FEE. No.

Mr. LEMOV. Mr. Minor testified that——

Mr. FEE. I am not denying he said it.

Mr. LEMOV. He told you this, he says:

Mr. LEMOV. Did you suggest Mr. Lewnes could possibly be reorganized out of his position as well as fired?

Mr. MINOR. Yes; that is another possibility. You may reorganize someone out of a position. However, you would have to establish that the reorganization was not for the benefit of or in the best interest of the Office of General Counsel or of the commission.

So it is fair to say Mr. Minor told you of that option. You do not remember it, though?

Mr. FEE. I don't remember it specifically, but I certainly won't deny it.

Mr. LEMOV. Finally, in the memorandum of our staff's interview with Mr. Scallon, Scallon went to his notes of a telephone call from Mr. Minor and this is what the note said: "Removal of excepted attorney who is not a preferential eligible for conduct verging on insubordination."

Did you direct Mr. Minor that the ground for removal was insubordination?

Mr. FEE. No, sir.

Mr. LEMOV. Do you know of any ground of insubordination regarding Mr. Lewnes, Mr. Mamone, or Mr. Wofsy?

Mr. FEE. Yes, sir. My information is secondhand. I think some of the problems the Commission had with Mr. Lewnes could be classified broadly—I don't know whether it would hold up——

Mr. LEMOV. By insubordination I refer to Civil Service grounds for removal for insubordination, and we understand from Mr. Scanlon that is contemptuous disobedience, one contemptuous of authority and frustrating authority.

Mr. FEE. That is clearly not the case with Mr. Lewnes nor the problems the Commission had with Mr. Lewnes.

As I say, in my judgment, after I heard the possible remedies open to us from Mr. Minor, I immediately dismissed them as being far too harsh for the circumstances. It was just an untenable situation and it should be resolved in an amicable way.

Mr. LEMOV. And, in fact, Mr. Lewnes was thereafter offered a promotion to administrative law judge. That is right; is it not?

Mr. FEE. Not offered—no, that is not exactly right.

Mr. LEMOV. He reactivated his application in March 1976 and thereupon the chief administrative law judge offered him an administrative law judge position. Is that not correct?

Mr. FEE. That is correct, but some things happened in the middle. That is a strictly controlled procedure in the Civil Service Commis-

sion. Mr. Lewnes' qualifications to be an administrative law judge are without question. The Civil Service Commission rated him highly.

When Judge Zwerdling needs a new ALJ he sends over a list. Mr. Lewnes' name came back at the top three of the list from which the judge must choose.

As I say in the prepared statement, I supported him for it. I think he is a very competent and knowledgeable attorney. If we could solve the problem that we had, which we thought was an untenable personnel situation, and at the same time salvage a great deal of experience for the taxpayers and Commission, we should do that.

Mr. LEMOV. It is true that Mr. Lewnes, the gentleman you say was involved in some sort of untenable problem in his job as Assistant General Counsel, was recommended from that same position for the Tom C. Clark award as one of the outstanding Federal lawyers in 1973 and in 1974 by the Federal Power Commission. Is that not correct?

Mr. FEE. I saw that in the testimony. I assume it is correct.

Mr. LEMOV. Chairman Nassikas signed that recommendation and forwarded it to the appropriate officials to reward Mr. Lewnes for outstanding performance about 2 years before you say this problem evolved.

Do you have any information which would contradict that statement?

Mr. FEE. I do not want to say. No. 1, I am very cynical about awards like that. In my "in" box, there is not a day which goes by where we are not solicited for one award or another. It is almost a public administration problem in itself. I don't put a great deal of credence in these awards as a reflection of professional performance. I certainly would not question Chairman Nassikas' judgment, however.

I know that problems existed with the present Commission and that was the problem.

Mr. LEMOV. Thank you.

I have no further questions at this time, Mr. Chairman.

Mr. Moss. Mr. Marks?

Before recognizing you, Mr. Marks, I shall now state that the gentleman who was expelled from this hearing room, Mr. Danny Boggs, is an assistant to the Chairman of the Federal Power Commission and not personal counsel to the witness before us.

He was expelled not because of any request that he breach a client-attorney privilege. I did not ask him what he advised him about, but I asked him merely: "Was it a constitutional question?"

As the chairman of this subcommittee, I am to enforce the rules of the subcommittee. He may advise on matters involving constitutional rights.

My question was certainly most appropriate under the circumstances where the gentleman leaned forward and volunteered to coach the witness, advise, or whatever.

My inquiry as to whether or not it dealt with a constitutional matter was appropriate at the time.

The gentleman now is recognized and may proceed.

Mr. MARKS. My concern, Mr. Chairman, and my desire to talk personally with you and members of the subcommittee at that point,

was not because I did not think that the chairman was not trying to keep tabs on the committee, as he should be; but I was concerned over the fact that the gentleman now testifying has an absolute right to have someone with him as counsel.

If he desired it I feel we ought to give the gentleman the right to have counsel. I think it is up to him to ask for that.

If he desires to have somebody sitting next to him, we ought to provide him that right within the rules.

Mr. Moss. I will make it clear that the Chair wanted him to have that right and to have his counsel seated next to him but not behind him where he was not immediately available.

However, I am charged also with maintaining the order and enforcing the rules and I may punish breaches of decorum and professional ethics on the part of counsel by censor and exclusion from the hearings. I found it necessary to exercise that right for only the second time in some 23 years as chairman because of the conduct of counsel.

I understand that Mr. Minor, who according to Mr. Fee is counsel to him, is in the room, and certainly the gentleman is entitled to counsel if he wants counsel.

If there is not counsel in the room we shall wait until he has counsel.

Mr. FEE. I appreciate your concern, Mr. Marks. I do not particularly need counsel and I do not want to delay your proceedings any longer.

If it would help if I waived my right to counsel, I shall be happy to do that.

Mr. MARKS. Mr. Fee, you stated either orally or at least in the statement I am looking at that you knew that several members of the Commission were becoming increasingly displeased with Mr. Lewnes.

I ask you, sir, who were those members of the Commission who were displeased with him?

Mr. FEE. My recollection is again a little fuzzy. I hope this is not construed to be conveniently fuzzy because it happened so long ago.

I know the most important member of the Commission who was displeased with Mr. Lewnes was the Chairman.

At one point I believe I had a conversation with Commissioner Smith to the same effect, and I am vaguely aware that Commissioner Watt had similar problems.

Mr. MARKS. What were the problems that these three gentlemen you now mentioned had with Mr. Lewnes?

Mr. FEE. I would like to qualify my answer to the extent that I was not dealing with Mr. Lewnes professionally. The basis for the displeasure was not an evaluation that I made based on first hand experience.

The impression that I was given in my conversations with the Chairman and with Commissioner Smith was that on occasions Mr. Lewnes was given instructions by the Commission about the way certain things should be drafted, certain things should be done, and he was not complying with those instructions.

Mr. MARKS. Were you informed, sir, at the same time as to how long this had been going on? Was it a matter of a month or 2? Had it been going on for 6 months? For how long a period of time?

Mr. FEE. My impression is, and the reason I spoke to Commissioner Smith is because of his additional years on the Commission, that it had been going on for some time.

Mr. MARKS. You state also you were aware of the incompatibility and strife between Mr. Lewnes and Mr. Journey?

Mr. FEE. Yes.

Mr. MARKS. Did you get that directly from Mr. Journey?

Mr. FEE. I am not sure how I came across that information. If you had been at the Federal Power Commission for 4 or 5 weeks, as I had been at that time, or a month or 2 months, you certainly would have been aware of the strife.

Mr. MARKS. I asked you specifically, sir, because your statement is specific—I was also aware of the incompatibility and strife between Mr. Lewnes and Mr. Journey. That is not a hedging remark.

Mr. FEE. No.

Mr. MARKS. I ask you to recollect whether that information came to you from Mr. Journey directly if you remember.

Mr. FEE. I think it came from both Mr. Journey and Mr. Lewnes. I am sure of the statement. How I got the information, Mr. Marks, I am just not sure.

Mr. MARKS. If it came from Mr. Journey and Mr. Lewnes, I assume your statement indicates it came before you went to Mr. Minor. Is that right?

Mr. FEE. I was aware of it certainly.

Mr. MARKS. So your discussion, then, with Mr. Journey and Mr. Lewnes concerning the problem between Mr. Journey and Mr. Lewnes took place before you went to Mr. Minor. Is that correct?

Mr. FEE. There wasn't one specific discussion. Mr. Journey did not call me down and say, I have a problem with Mr. Lewnes or Mr. Lewnes say I had a problem with Mr. Journey.

I had occasion to talk to them both rather frequently. I was aware of the problem and I was aware of it before I had my talk with Mr. Minor. That was certainly part and one of the reasons for my inquiry and conversation with Mr. Minor.

Mr. MARKS. You state, sir, that the Chairman's assessment of the problem was that although Mr. Lewnes seemed to be a very competent and knowledgeable attorney he did not appear to be contributing to the ultimate conclusion of the Commission's work. What did that mean?

Mr. FEE. I am not sure. The best answer would come from the Chairman on that. I had discussions with the Chairman to that effect. I am sure of that statement. I believe it goes back to the Commission giving orders for Mr. Lewnes to do certain things which he did not do, and therefore the Commission could not resolve the issue before it that day. It had to be held over until another day.

I believe that is the derivation of the Chairman's impression.

Mr. MARKS. And you have no recollection of what those specific matters were, or any of the specific matters involved in making that up?

Mr. FEE. That is correct. I did not have perspective to know.

Mr. MARKS. After your conversation with Mr. Minor, which you suggest this morning you do not remember saying, find a way to fire Mr. Lewnes, as I recall your testimony; is that right?

Mr. FEE. I don't remember my specific words. Clearly that was my intent. Fire is too strong a word. If we wanted to initiate an adverse action of Civil Service proceedings we would have done that. Fire is not the right word although I could have used it.

Mr. MARKS. Whatever, you had a conversation with Mr. Minor. He got back to you and he suggested there were certain procedures that would have to be followed.

According to the statement here you did not find them appropriate. Is that correct?

Mr. FEE. That is correct.

Mr. MARKS. You did not find them appropriate because you felt that they would be too harsh under the circumstances?

Mr. FEE. That is correct.

Mr. MARKS. So whatever the problem was with Mr. Lewnes, Mr. Journey and others, the problem was not so very great that it called for the suggestions Mr. Minor made as to how you might get rid of Mr. Lewnes; is that correct?

Mr. FEE. That is correct.

Mr. MARKS. Now, then, you did have a conversation with Mr. Lewnes subsequent to talking with Mr. Minor?

Mr. FEE. That is correct.

Mr. MARKS. And that conversation took place in your office, I assume with just the two of you present?

Mr. FEE. That is correct.

Mr. MARKS. And that conversation came about by Mr. Lewnes' coming to you?

Mr. FEE. That is correct.

Mr. MARKS. You did not get in touch with Mr. Lewnes after speaking with Mr. Minor, did you, and ask him to come to your office?

Mr. FEE. My recollection again is not clear on that. By reading Mr. Lewnes' testimony he says that he came to me. I believe that is what happened. He came to me first.

Mr. MARKS. To your recollection did he come after you had spoken or gotten feedback from Mr. Minor concerning what alternatives you had?

Mr. FEE. After.

Mr. MARKS. After?

Mr. FEE. After.

Mr. MARKS. Can you tell us what that conversation was generally between yourself and Mr. Lewnes?

Mr. FEE. Mr. Lewnes came in and was visibly upset. That would be the best way to state it. He understood some people had some problems with him. I said: George, that is the case.

He said:

> If that's the case, if you don't want me, I want to get out of here. I don't want to stay in a situation like this anymore than you want me to stay in a situation like this. I want you to know that I have put my name in to become an administrative law judge.

That is the summary of it. We talked for a long time. I have been in the personnel business for quite a long time and I have counselled with high-ranking professional type people over a period of years on job changes. I was trying to be helpful in his potential job search and anything he wanted to do.

Clearly this was not a vendetta. This was a situation we wanted to solve by mutual agreement so that the best interests of all parties would be preserved.

Mr. MARKS. Mr. Fee, during the course of your conversation with Mr. Lewnes, did he inquire of you as to who the people were that were dissatisfied with him?

Mr. FEE. I don't think he did. I don't specifically remember. I am almost positive he did not.

Mr. MARKS. Did he ask you, sir, what the problems were that brought about the untenable position he apparently felt he was in?

Mr. FEE. I am sure he did not.

Mr. MARKS. He did not?

Mr. FEE. He did not.

Mr. MARKS. Did you suggest to him what those specific problems were?

Mr. FEE. I did not.

Mr. MARKS. Is there some reason as to why you have—although you cannot be explicit with it as to the problem as such—why you remember or why you have such a good recollection of the fact there were major problems?

Mr. FEE. I guess it was one of the first significant events in my career at the Federal Power Commission. It is my knowledge of the fact there was dissatisfaction with Mr. Lewnes and that is pretty clear. Why the dissatisfaction was there, I was not in a position to judge firsthand. Clearly the situation was festering. If I had not done this on my own initiative I probably would have been asked to at some point.

Mr. MARKS. Were you aware of any conversations whatsoever or any gossip whatsoever, concerning the fact that people being upset with Mr. Lewnes was brought about by the fact that he had testified in January of that year?

Mr. FEE. No, I was not.

Mr. MARKS. Did that come up during the conversation that you had with Mr. Lewnes at the time?

Mr. FEE. It did not.

Mr. MARKS. When was the first time in your conversation that the matter did come up, that the dissatisfaction was as a result of the fact they may have testified before congressional committees?

Mr. FEE. My recollection is unclear. The first specific event, I think, is when Mr. Braun and Dr. Galloway interviewed me in August as to the circumstances surrounding Mr. Lewnes' change. That is the first specific recollection I have of that issue.

Mr. MARKS. I have nothing further.

Thank you very much, Mr. Chairman.

Mr. MOSS. Mr. Gore?

Mr. GORE. Thank you, Mr. Chairman.

Mr. Fee, you came from Alcoa to the White House in June of 1974 or thereabouts?

Mr. FEE. I was working for Secretary Morton in the Department of the Interior. The date that I came to the White House was a little fuzzy because I went to the White House on a detail which had to do with recruiting for the new Energy Research and Development Administration.

Mr. GORE. When did you first enter the executive branch?

Mr. FEE. I think it was September 1 of 1974. I believe that was my entry on duty into the White House.

Mr. GORE. Was the Commerce Department your first assignment in the executive branch?

Mr. FEE. No, this was the Department of the Interior. I had worked for Secretary Morton as special assistant for 18 months prior to going into the White House.

Mr. GORE. For 18 months prior to that?

Mr. FEE. Yes.

Mr. GORE. So you came shortly after 1972 election?

Mr. FEE. Yes. I started to work for the Government on January 8, 1973.

Mr. GORE. After some service with the Interior Department you went to the White House and handled political personnel work. Then you went over to the Federal Power Commission about a year ago January?

Mr. FEE. Yes.

Mr. GORE. When you handled political personnel work for the White House, did you have occasion to interview any people for the Federal Power Commission?

Mr. FEE. Yes. I did.

Mr. GORE. Who did they include? How many people?

Mr. FEE. My recollection, Mr. Gore, is very faint on that.

Mr. GORE. By any chance, did you interview Chairman Dunham for his job?

Mr. FEE. Yes.

Mr. GORE. Later, when you went to the Federal Power Commission, Chairman Dunham appointed you Executive Director?

Mr. FEE. Yes. He asked me shortly after, after it was decided that he would be nominated and was confirmed, whether I would go with him as his executive director.

Mr. GORE. When you interviewed Mr. Dunham for the job of Chairman of the Federal Power Commission, you stated earlier political considerations were quite frequently brought up. Did you inquire as to his feelings about deregulation of natural gas, for example?

Mr. FEE. I have no recollection of that at all. Interview was probably the wrong word. I was not a great participant in the decision for Chairman Dunham to become Chairman of the Federal Power Commission.

Mr. GORE. There were others present?

Mr. FEE. I think by the time that he and I ever had a chance to talk privately, it was pretty much a fait accompli. I certainly did not participate in the screening process. In the President's staff you participate in some things to a great extent and other things to a much lesser——

Mr. GORE. Was it a social occasion at which you talked to him?

Mr. FEE. I had met him on several——

Mr. GORE. I mean in connection with your job at the White House. You say you interviewed him in your capacity of doing political personnel work. Yet you say you did not participate in the screening process.

Mr. FEE. The reason I said yes, I interviewed him, is because I have a recollection of a meeting we had in my office where he and I were there alone. I don't remember whether that was after talking about my going over as Executive Director. I am just not clear.

Mr. GORE. Another thing you are not clear on is whether or not you asked Mr. Minor to look for a way to separate Mr. Lewnes on your own initiative or Mr. Dunham's request. Is that correct?

Mr. FEE. That is correct.

Mr. GORE. It seems as though there is a big difference between those two things. It could have been that Chairman Dunham asked you to go about that procedure; is that correct?

Mr. FEE. Yes, I have never denied that. Clearly if I had not done it that day the Chairman was very much aware of the problem and he could have asked me the next day or the day after, or indeed, he could have asked me at the time. I am not clear on it.

My best recollection is that I did it on my own initiative.

Mr. GORE. As all of this happened you are not clear whether he asked you or not?

Mr. FEE. That is correct.

Mr. GORE. But you think either he did or you anticipated such a request as being imminent from Chairman Dunham?

Mr. FEE. Yes.

Mr. GORE. All of this took place after Mr. Lewnes testified before the subcommittee. Is this correct?

Mr. FEE. I believe so. That is the impression I get from reading the record.

Mr. GORE. That is the impression I am getting, too.

In the interview that you gave the staff last August, I don't know whether this is in the record, Mr. Chairman.

If it is not I request permission to insert this.

Mr. MOSS. Under the consent given on Friday last all of the exhibits are in the record.

Mr. GORE. Might I request staff to provide the witness with a copy of this summary? This is the Fee interview of August 9, 1976.

In the second paragraph I see the statement, "Fee had conversations with Dunham regarding Lewnes—Dunham said there is a problem here."

Then it goes on, "Fee was told by Dunham: 'Curt, look into it—see if we can get George Lewnes out of that job.'"

"Dunham asked Fee to talk to Lewnes." I skipped a sentence there.

"Fee came away from Dunham conversation with a consensus feeling. Dunham asked Fee to talk to Lewnes. So Fee went to Ed Minor and asked Minor, 'If we want to get rid of George Lewnes, how do we do it?'"

This, of course, was some time ago. At the time of this interview you seemed to be a little bit clear as to whether or not the Chairman, Chairman Dunham, had requested you to find a way to separate or to fire Mr. Lewnes from his position.

Could your recollection have been fresher then at the time of this interview?

Mr. FEE. Without question, Mr. Gore. This is the disadvantage I am under. This was an event which took place over a year ago.

I didn't think about it again until I was interviewed in August. Clearly my recollection was better then. I have no problem with this statement.

Mr. GORE. Further down in the summary of this interview, the last paragraph on the first page, "Fee met with Lewnes several times—Fee says the first conversation was at the behest of Dunham to inform Lewnes that things weren't quite right."

We have talked about a number of conversations during your testimony this morning. I am particularly interested in that one.

It occurs to me that that one necessarily came sometime before you had your conversation with Mr. Minor. Is that correct?

Mr. FEE. That is the impression this would give me. The first time I spoke to Mr. Lewnes definitely was not the time after I had talked with Mr. Minor.

Mr. GORE. Right.

Mr. FEE. If I left that impression I did not mean to. My recollection is that I had several, a few, many conversations with George in that time span.

Mr. GORE. And all of them after the testimony; is that correct?

Mr. FEE. I just don't know. My best recollection of the testimony business is that either I didn't know it was going on or went on or I was only vaguely aware of it.

Mr. GORE. As you were Executive Director of the Federal Power Commission at the time——

Mr. FEE. That is correct.

Mr. GORE [continuing]. And a subcommittee of the Congress was investigating the agency or the Commission of which you were Executive Director, and employees under you were testifying as to matters involving the work of the Commission that you were in before the investigating committee of the Interstate and Foreign Commerce Committee, you might not have been aware of that?

Mr. FEE. That is correct. I had been in the agency a very short period of time. It is very possible and likely that I was not aware of it.

Mr. GORE. You say in your prepared statement that it will be reviewed in conjunction with the personnel records which are relevant to this case, that the work coming from Mr. Lewnes was inadequate in certain ways in your opinion.

Does it make sense to promote someone to the position of administrative law judge with a record such as could be characterized in the way you characterized it?

Mr. FEE. Mr. Gore, if I may correct your statement. I don't think I ever said his work was inadequate in any way.

Mr. GORE. All right.

Mr. FEE. Clearly I was not in a position to judge and would not be competent to judge.

Mr. GORE. As far as you were concerned his work was entirely adequate?

Mr. FEE. As far as I am concerned, I don't know. I knew of problems that the Commissioners and his boss had with him—not his boss had. I did not know of specific problems they had. I knew there was incompatibility and strife, as I say in my statement, but I never had

a piece of his work before me and I was not judging the quality of it.

Mr. GORE. You say you might not have been aware of the testimony that they were giving to the subcommittees of Congress at that time?

Mr. FEE. That is right.

Mr. GORE. Would you think it was a safe bet that the Commissioners were aware of that testimony?

Mr. FEE. I could not speak for the Commissioners, Mr. Gore. Testifying in front of congressional committees is a very common event at the Federal Power Commission. I suspect there are lots of times when staff are subpenaed to testify that the Commissioners or I have no knowledge of it.

Mr. GORE. After Mr. Minor came back to you following this request to find out ways to separate Mr. Lewnes from the Division, and explained that it looked as though that would be too difficult, did you discuss that report from Mr. Minor with Chairman Dunham or any of the other Commissioners?

Mr. FEE. I believe I discussed it with the Chairman.

Mr. GORE. And you told him that according to Mr. Minor it would be impossible to fire Mr. Lewnes?

Mr. FEE. I don't remember that.

Mr. GORE. You discussed his report back. I assume you communicated the substance of his report.

Mr. FEE. To the Chairman, yes; I would have done that.

Mr. GORE. Did he then make an alternate suggestion, express frustration? What was his response?

Mr. FEE. I don't recall.

Mr. GORE. If you took this on your own initiative and then got a report back from Mr. Minor on a matter which was initiated by you without any prior communication with Chairman Dunham, why would you feel it necessary to report back to Chairman Durham on the results of Mr. Minor's inquiry?

Mr. FEE. Clearly I understood that the Chairman had a problem with Mr. Lewnes and that the problem was to be resolved, and that it would fall on my shoulders as Executive Director.

My intention was to find out what the possible avenues of resolution were and report back to the Chairman.

Mr. GORE. I think it is an important point because, if immediately following embarrassing testimony before a subcommittee of the Congress the Chairman of the Federal Power Commission asked you to find a way to fire the person who gave that testimony, I think that is a pretty important point to establish, whether it happened or not.

You are unclear on that specific point. But, after you made the inquiry, whether it was at your own initiative or that of the Chairman, then you immediately reported back to the Chairman as to the results of that inquiry.

Mr. FEE. I don't remember specifically doing that, Mr. Gore. It would make sense that I would, so I assume that I did because the problem was something that he and I were talking about.

When I found out some of the legalistic remedies, Civil Service Commission remedies, we certainly did not apply and if we wanted to apply them I am sure I had a conversation with the Chairman shortly thereafter.

Mr. GORE. You are sure you did?

Mr. FEE. I am not sure I did. I am assuming I did.

Mr. GORE. One thing that interested me in the testimony of the other day. It may seem like a minor matter compared to the other testimony. It had to do with this business about Mr. Lewnes' chair being moved away from the Commissioners'. That interested me.

It was sort of symbolic of the problems he was experiencing there. Do you remember that episode, by any chance?

Mr. FEE. I don't remember that episode. We certainly rearranged the Commission room. It happened just prior to a Commission order 158, which basically expressed the Chairman's frustration at the conduct of the Commission meeting. He was not trying to stifle any free expression but there just had to be a line drawn between i dotting, t crossing, and conversations between staff in the same organization as to what their position was.

The Chairman thought that by rearranging the room we could cut down the number of people that were participating in the conversations all at once, as was often the case. It was certainly not done vindictively against Mr. Lewnes.

Mr. GORE. How long had it been done the other way?

Mr. FEE. I have no idea of that. I would guess for years.

Mr. GORE. Were you aware that at least one of the large gas and pipeline companies had expressed a complaint about the testimony of Mr. Lewnes and others?

Mr. FEE. I am aware of it now. I don't think I was aware of it when it was going on. I am just not sure.

Sure, I am aware of it now.

Mr. GORE. It is important, I think, to make sure that the independent regulatory commissions are insulated as much as possible from pressure from the industry.

Mr. FEE. Yes.

Mr. GORE. And those industries which might not like the conduct of specific staff members who are advocating the public interest in cases involving that industry ought not to be able to exert pressure on them to be removed or reorganized or harassed until they quit.

Mr. FEE. Without question.

Mr. GORE. You agree with that. That is a matter of general principle.

Mr. FEE. That is correct.

Mr. GORE. It seems to me there is more than one way to deregulate natural gas, and one way might be to just disseminate the regulating personnel until the regulation becomes difficult to perform.

Do you think that the removal of these people from the Certificate Section and the attrition within that section made it substantially more difficult to comply with the mandate to regulate natural gas matters?

Mr. FEE. Mr. Gore, I would suspect not. I don't have any firsthand knowledge as to whether that is the case or not. Mr. Journey, the General Counsel, would have to address that.

Mr. GORE. On another subject, are you familiar with the work of Mr. Mamone?

Mr. FEE. No. I know nothing about Mr. Mamone. I don't even know who he is. I have heard his name a lot recently. I know he is a staff attorney. I have never met Mr. Mamone.

Mr. GORE. You were not aware of any friction, personal or otherwise, regarding Mr. Mamone; is that correct?

Mr. FEE. That is correct.

Mr. GORE. I have no further questions, Mr. Chairman.

Thank you.

Mr. Moss. Mr. Lent?

Mr. LENT. Thank you, Mr. Chairman.

Mr. Fee, you have been asked some questions here as to your opinion on whether or not one employee or another of the Federal Power Commission did good work. I believe you have been asked as to whether you had any knowledge regarding the quality of work of Mr. Lewnes, Mr. Mamone, or Mr. Cockrell at one point or another during the period I have been in the hearing room.

In most cases you indicate that you cannot say whether they did good work or bad work because this was not something which was under your direct supervision. Is that correct?

Mr. FEE. That is correct.

Mr. LENT. You are the Executive Director of the entire Federal Power Commission?

Mr. FEE. That is correct.

Mr. LENT. Aside from these individuals who were all in the Office of the General Counsel, approximately how many employees do you supervise or are you the Executive Director over in the Federal Power Commission?

Mr. FEE. My role is a little confusing. If you look at an organization chart you would see me superimposed between the Commission and the entire staff of some 1,376, I think it is today.

When I came to the Commission, the Chairman and I looked at the landscape and decided that the greatest need and my greatest service would be on the administrative side of the agency. I am not, consequently, superimposed organizationally over the entire Commission or the Office of the General Counsel.

However, I have responsibility for administrative operations, the Office of Regulatory Information Systems, the Public Information Office, the Comptroller and the finance part of it, and the Office of Personnel Operations.

I work on the administrative side of the agency which probably will clear up some of the bewilderment about why I have no knowledge about certain things.

Mr. LENT. How many employees approximately are involved in all these agencies?

Mr. FEE. The total Commission onboard staff as of today is 1,376.

Mr. LENT. I am reading now from the August 9 interview sheet which was previously put into evidence and which was referred to by Mr. Gore in his conversation with you just a few moments ago. This is the fourth paragraph.

Fee says "Lewnes is an energetic, knowledgeable guy." From the general problem that Journey and the Commissioners were dissatisfied with Lewnes, Fee deduces that the quality and quantity of work coming out of Lewnes shop was inadequate. Fee says Journey was not particularly happy with Lewnes.

Journey told Fee that the attorneys working for Lewnes were dissatisfied with Lewnes. Fee does says that "Lewnes" general demeanor at Commission meetings left something to be desired. Fee says Lewnes had gathered the ire of the Chairman, each Commissioner and the General Counsel. Fee says, "I can't imagine that the problem with Lewnes was contrived."

Let me ask you whether that general material I just read comports with your recollection of the facts as they actually were.

Mr. FEE. It does, Mr. Lent. I am somewhat at a disadvantage. It is the first time I have had an opportunity to look at something I said 6 months ago.

I am a little surprised at some of the statements, but I don't have any great problems with anything in the interview notes.

Mr. LENT. Let us talk about some of the problems some of the Commissioners had. I think you referred to Commissioner Smith earlier, that he had problems with Mr. Lewnes. Is that correct?

Mr. FEE. Yes. My recollection is that at one point I talked with Commissioner Smith about the problems to corroborate, whether there was a problem. My recollection is that Commissioner Smith saw the same problem.

Mr. LENT. I would like you to spell out what this problem was with Mr. Lewnes. Particularly we are interested as to whether this problem was linked to his testimony before various committees and subcommittees of the Congress, or did he have some other problems?

Mr. FEE. Mr. Lent, I am very certain that the action taken, if you want to use the word "against" Mr. Lewnes, was not linked in any way to the testimony he gave in front of Congress.

Mr. LENT. I have listened to the testimony for several days now and I really am not convinced from what I heard from the witnesses, frankly, that there is any evidence that would seem to infer a link between the testimony and the changes in job assignment, or the fact that Mr. Lewnes is now a judge. I am sure some of the other members of the committee do not share my skepticism with the basic thesis of these hearings.

However, I would like the record to indicate what the trouble was then, what the problem was then with Mr. Lewnes, if it did not have to do with his testimony before these committees.

This may be embarrassing, but I think the reputation of the Chairman is at stake, and that of Commissioner Smith, and Commissioner Holloman, as to why these things were done, why Mr. Lewnes was on the carpet and someone on the staff was looking into a way to fire him or to get rid of him in some way.

Mr. FEE. I have to retreat to my earlier statement, Mr. Lent. My information is secondhand.

The problem, as I best understood then, as I reconstruct it now, was that he was given instructions by the Commission which he did not enthusiastically or thoroughly follow. This was upsetting to the Commission. It was delaying the process in certain cases they had before them.

I was aware, also, of the strife he was having with his boss, the General Counsel.

Mr. LENT. He did not get on with Mr. Journey?

Mr. FEE. That is correct.

Mr. LENT. And Commissioner Smith spoke to you about his work performance or lack of it? Do you recall this?

Mr. FEE. I spoke to Commissioner Smith.

Mr. LENT. And he confirmed that Mr. Lewnes was a bad actor, so to speak, as an employee in the Office of General Counsel?

Mr. FEE. I don't think "bad actor" was the term.

Mr. LENT. That was my language.

Mr. FEE. My recollection is that he corroborated that he was displeased, as was the Chairman, as was Commissioner Watt.

Mr. LENT. Having nothing to do with his testimony before committees of the House?

Mr. FEE. Absolutely nothing.

Mr. LENT. Turning now to the Mamone transfer, I know you indicated in your testimony that you have no specific knowledge as to either Mr. Mamone or Mr. Wofsy's work, but you do know that there was a general reorganization of the Federal Power Commission in late 1976. Is that correct?

Mr. FEE. That is correct.

Mr. LENT. Can you tell us—well, we know already from previous testimony—that these two gentlemen both received transfers as a result of that reorganization?

Mr. FEE. That is correct.

Mr. LENT. How many other employees of the Federal Power Commission roughly were transferred in one fashion or another as part of that general reorganization of late 1976?

Mr. FEE. There was a total of 163 people who were affected by the reorganization and that transcended eight organizational units.

Mr. LENT. Mr. Mamone was transferred from within the Office of General Counsel, as I understand it, from pipelines to hydroelectric?

Mr. FEE. That is correct.

Mr. LENT. There is some question as to whether there was a need or someone of Mr. Mamone's particular talents in the hydroelectric division. Is it a fact that there was a substantial backlog of cases which had built up in the hydroelectric division?

Mr. FEE. That is correct.

Mr. LENT. Would you say that backlog was somewhere in the neighborhood of 500 cases?

Mr. FEE. That sounds familiar.

Mr. LENT. Is it your testimony, then, that Mr. Mamone was transferred because of the fact that his talents, if you will, were required to help wipe out that backlog?

Mr. FEE. My testimony, Mr. Lent, would be that I am not aware of the reasons that he was transferred from one part of OGC to the other. Clearly the General Counsel is responsible for those decisions. The General Counsel does not report to me and I have no awareness other than what I read in your transcript of the hearings last week.

Mr. LENT. Is there anything in your background or in any of the conversations you had with any of the Commissioners or any of the other people, including Mr. Journey, which would lead you to believe that the Mamone transfer was in any way related to his prior testimony before this subcommittee or any other subcommittee of the House?

Mr. FEE. No, sir; none.

Mr. LENT. Did you ever have conversations about this transfer with Mr. Mamone?

Mr. FEE. No. I have never met Mr. Mamone.

Mr. LENT. Let us go on to the Cockrell testimony. Mr. Cockrell is referred to on page 3 of your testimony. You indicate that one or more members of the Commission expressed displeasure with Mr. Cockrell's work performance. Is that correct?

Mr. FEE. That is correct, but not to me. They expressed it to Mr. Journey.

Mr. LENT. You say:

> Later I learned that one or more members of the Commission expressed similar displeasure with the work of Mr. Cockrell on this case and asked Mr. Journey to assign a more experienced attorney to the case.

Mr. FEE. That is correct.

Mr. LENT. But none of these Commission members ever expressed their displeasure to you directly?

Mr. FEE. That is correct.

Mr. LENT. Is it a fact that Mr. Cockrell entered into an unauthorized statement of agreement with the Department of the Interior that precipitated his transfer?

Mr. Moss. The Chair will have to state that Mr. Cockrell is not the subject of inquiry by this committee. His name has been injected by members of the Commission but not by this committee.

I think that unless the committee undertakes to make an investigation of Mr. Cockrell the gentleman from New York is rendering a distinct disserve to the man.

I know nothing about him. I don't know what relevance this would be to the hearings now in progress.

Mr. LENT. If I have the assurance of the Chairman that Mr. Cockrell's transfer is not one of those we are pointing to as some sort of indication of skullduggery at the Federal Power Commission, I shall withdraw my question.

It is my recollection that Cockrell's name came up during the testimony of Mr. Wofsy.

Mr. Moss. I stated to the gentleman that the name of Mr. Cockrell was mentioned by persons from within the Commission, not by the committee. It is not a matter of investigation by this committee at this time.

Mr. LENT. Fine.

Getting back, then—I will withdraw that question—getting back to the matter of Mr. Lewnes, did you talk to Commissioner Watt as well as Commissioner Smith about Mr. Lewnes' work performance?

Mr. FEE. I don't remember having a specific conversation with Commissioner Watt.

Mr. LENT. Did you have a conversation with Commissioner Holloman about the work performance of Mr. Lewnes?

Mr. FEE. I do not recall. I am almost certain that I did not.

Mr. LENT. But you did have conversations with Commissioner and Chairman Dunham?

Mr. FEE. Commissioner Smith and Chairman Dunham.

Mr. LENT. As to his work performance?

Mr. FEE. That is correct.

Mr. LENT. Can you give us any particulars as to what it was about Mr. Lewnes' work performance or lack thereof that Chairman Dunham referred to specifically?

Mr. FEE. I cannot. I have to retreat back to the same things I have said.

Mr. LENT. Did you have any conversations with Mr. Journey, Mr. Lewnes' immediate superior, about the quality or quantity of Mr. Lewnes' work?

Mr. FEE. Yes, I am sure I did. My recollections are very fuzzy except to say that I knew there was a problem there. I knew that Mr. Journey was displeased. Why I could not be specific.

Mr. LENT. You are specific enough to say it had nothing to do with his testimony before this committee?

Mr. FEE. It is simply a value judgment I draw from what I know of the situation.

Mr. LENT. If it did not have to do with his testimony before this subcommittee you cannot help us out by telling us what his difficulty was or what gave rise to these problems which he had with Mr. Journey?

Mr. FEE. No, I cannot. Let me say, Mr. Lent, I understand your frustration. I should direct these questions at Chairman Dunham and the General Counsel, Mr. Journey. I just don't have the firsthand knowledge which would be useful to the committee.

Mr. LENT. Do you have any knowledge as to whether or not Mr. Lewnes was interested in obtaining Mr. Journey's job as Chief General Counsel?

Mr. FEE. I have a general awareness that when the General Counsel's job became opened under Chairman Nassikas that there was some competition within the Office of General Counsel for that job, and that Mr. Lewnes would certainly be considered a candidate, Mr. Journey, Mr. Lotis, Mr. Gilmore, the ranking people. I suspect those were the ones Mr. Nassikas was thinking of choosing between. This is strictly a guess.

Mr. LENT. When you had these several conversations with Mr. Lewnes about his work problem, did the question of his prior testimony before this committee ever come up? Was it ever cited by Mr. Lewnes as a reason why he was no longer in favor at the Federal Power Commission, why his chair had been moved, and so forth?

Mr. FEE. Never.

Mr. LENT. He never cited that as a reason?

Mr. FEE. Not that I recall.

Mr. LENT. Commissioner Smith, who you indicated backed up the fact there was a problem with Mr. Lewnes, do you know what political party he is a member of?

Mr. FEE. A Democrat from Arkansas.

Mr. LENT. And Commissioner Watt—this is not fair because you did not speak to Commission Watt?

Mr. FEE. I did not.

Mr. LENT. Is there anything that you would like to add that we have not asked you, Mr. Fee, which you think might help us to understand what the problem was here at the Federal Power Commission, vis-a-vis Mr. Lewnes, Mr. Mamone, Mr. Wofsy, or any one of them?

Mr. FEE. Only a sort of common sense observation that in a professional staff as large as the Office of General Counsel at the Federal

Power Commission, with people who have been around for years and years, that bad feelings and strife built up over a period of time, and I believe we were seeing a residue of some of that today.

Mr. LENT. I have no further questions.

Mr. Moss. I have a few questions at this time, Mr. Fee.

The term here was used as to Mr. Lewnes' work problem. What work problem existed?

Mr. FEE. Mr. Chairman, I understand the committee's frustration in trying to get at——

Mr. Moss. I am not frustrated but I am seeking information. I asked what work problem existed.

Mr. FEE. The work problem, as best I understand it, Mr. Chairman, was a failure to respond to Commission directions for preparation of documents. I just really don't know. This was not complied with, and it caused problems in the conduct of the——

Mr. Moss. You were asked to determine whether or not an action could be taken, as Executive Director of the Commission you were not sufficiently interested to take the personnel record of the person who would be chastised, I suppose you would say, and examine it to determine whether there was anything there supporting the request for such radical treatment?

Mr. FEE. Mr. Chairman, the conversation that I had with Mr. Minor was certainly a predecisional conversation, and before——

Mr. Moss. It is not predecisional. You decided you would get rid of him if you could, and how do you do it. Mr. Fee, if you had gone to house counsel and asked, How do I go about getting rid of someone generally, that would be one thing. But you went there with a specific man in mind. You had a human being in mind and he has a personnel file. That personnel file reflects everything that is supposed to be good or bad about his record in the Federal service.

You were not sufficiently interested to make any kind of an inquiry as to whether or not there was a single item in this file which would be supportive of a move to get rid of him; is that correct?

Mr. FEE. The assumption, the fact is correct but the assumption is incorrect.

Mr. Moss. Tell me how it is incorrect.

Mr. FEE. It is incorrect because I have never done anything against a person in my career in the Government service without doing it with a great deal of sensitivity, research, and knowledge of the alternatives and in fairness to all concerned.

Mr. Moss. Part of that fairness does not extend to determining whether the person who is going to be treated adversely is entitled to be treated in that fashion?

Mr. FEE. I don't quite understand the question. I am also not sure——

Mr. Moss. You were not interested before finding out whether you could fire the man, whether his record would even support your firing him. Is that a fair characterization?

Mr. FEE. No, sir.

Mr. Moss. You did not seek out his personnel file, did you?

Mr. FEE. I am not sure that I did. I am not sure I didn't.

Mr. Moss. You have the damndest memory I have ever heard in my life, sir. It is highly selective. You have very precise recallability and

very imprecise recallability depending on the degree of embarrassment the answer to the question might have if responded to. That is not unusual. I see many witnesses with that kind of selective memory.

However, let me say, sir, that I do not believe that. I believe that you have very clear recall, and I believe you are hedging. I think you know whether you went through this personnel file.

You don't really want me to believe that you are so inattentive to detail that you did not go through this personnel file, do you?

Mr. FEE. I just don't recall.

Mr. Moss. You just don't recall?

Mr. FEE. My best answer is no, I did not at the time I had the conversation with Mr. Minor.

Mr. Moss. Have you ever gone through it?

Mr. FEE. I believe I have at one point.

Mr. Moss. Do you know——

Mr. FEE. I do not specifically as to whether I have gone through it or not.

Mr. Moss. You do not know. Well, that is a case of unusual competence, sir, unusual competence.

Now I understand that Chairman Dunham came aboard in October of 1975.

Mr. FEE. That is correct.

Mr. Moss. With the Federal Power Commission.

Mr. FEE. Yes.

Mr. Moss. And in roughly three months he determined that Mr. Lewnes, who had been there for years, was a what—a troublesome person?

Mr. FEE. It would not be fair for me to characterize the Chairman's thoughts on that.

Mr. Moss. Well, it would certainly be fair for you to assess the period of time as roughly 3 months.

Mr. FEE. Yes.

Mr. Moss. From October of 1975 until January of 1976.

Mr. FEE. The answer to that question would be yes, Mr. Chairman.

Mr. Moss. And in the intervening time we have testimony before congressional committees. I am a great believer in coincidences. They happen all the time. But somehow there is quite a bit of it here.

I do not share the view of Mr. Lent. I still find that I am troubled when there is the possibility that, one, an agency which had a larger backlog of more significant cases in natural gas than the hydroelectric, that the natural gas should be given a lower priority in the Commission as to the matter of senior personnel, because while we look at all these personnel actions, when we get to Mr. Mamone we find an exception, the only senior attorney expert in one field moved to another field where he had no expertise. All the other attorneys were juniors and employees of the Commission for a relatively short period of time. Only in Mr. Mamone's case was it different.

We have another instance there. He testified before this subcommittee and before the subcommittee chaired by Mr. Dingell. We have two coincidences. Mr. Lewnes suddenly became somewhat troublesome, as you characterized it, or, as Mr. Lent characterized it, a bad actor.

Was there anything in his personnel file or in any other file of the Commission indicating that he had contributed to a backlog?

Mr. FEE. Not to my knowledge.

Mr. MOSS. You did not inquire there to determine whether there was or was not?

Mr. FEE. I did not.

Mr. MOSS. Remember, you are an executive director of an independent regulatory commission where I believe we have gone through some pains to assign the staff certain functions and the Commission certain functions. Yet you had no interest when you were asked to take this unusual step of seeing whether you couldn't get rid of the guy.

Mr. FEE. Mr. Chairman, I had been in the Commission at that time a very short period of time.

Mr. MOSS. You had been there a short time; Dunham had been there a short time; Watt had been there a short time; Holloman had been there a short time. Yet all of them suddenly discovered that this troublesome fellow, who had appeared before two committees of Congress and given testimony which was somewhat at variance with their convictions or their views, ought to be removed. It seems to me this is a very interesting coincidence here.

I have not made a final decision as to whether I am going to regard them forever and ever as coincidences, but at this moment I shall be tolerant and try to resolve my doubts in that direction.

You stated that you do not know whether this matter of going into seeking a way around Mr. Lewnes was done at your own initiative or because of an order of your superiors.

Mr. FEE. That is correct. My recollection is not clear. I will take responsibility for the action.

Mr. MOSS. I know. You have to take responsibility for the action. I did not ask you that question. That is easy to answer.

Who directed you to take that action? Clearly you didn't do it. You had not even looked at his personnel file. You had been there only—what did you say, 3 months?

Mr. FEE. At that point 2 months, 1 month.

Mr. MOSS. Two months. My God. And you were able to get the initiative to go after this guy who was so troublesome, and you became aware of it in 1 or 2 months?

Mr. FEE. Mr. Chairman, as I said——

Mr. MOSS. Not as the result of an order or direction? Let's be a little more reasonable. Tell me who told you. We will find out.

Mr. FEE. I am not trying to cover for my boss. I have testified all along that I don't remember who or if I was given an instruction, but I will say straight away that the Chairman and I had talked of the situation often. It was clear that he was going to rely on me or direct me soon or may have even have directed me at the time.

Mr. MOSS. Now we don't really know whether he directed you or did not direct you.

Mr. FEE. Mr. Chairman, I just do not remember.

Mr. MOSS. Well, I hope the Chairman has a better recollection than that.

Have you had a meeting since this testimony to determine whether or not the two of you had ability to recall what occurred?

Mr. FEE. No, sir.

Mr. Moss. You have not discussed this with the Chairman?

Mr. FEE. None.

Mr. Moss. Not at all in the last week?

Mr. FEE. Discussed——

Mr. Moss. Either the inquiry here in this committee or the matter of Mr. Lewnes, or the matter of Mr. Mamone.

Mr. FEE. We certainly did not discuss the matter of whether or not he directed me or whether——

Mr. Moss. Have you had a meeting to discuss the general subject matter?

Mr. FEE. Of the hearings?

Mr. Moss. Yes.

Mr. FEE. Yes, I have.

Mr. Moss. Yet the two of you were not able to come up with any recollection.

You said as far as his work, "I don't know. I do know of the incompatibility with his superiors." This was after a month there.

How did you know about that?

Mr. FEE. Specific conversations with the Chairman, specific conversations with Commissioner Smith, knowledge of the dissatisfaction of Commissioner Watt, conversations with Mr. Journey.

Mr. Moss. Watt had been there how long? How many conversations were there with the Chairman and how many conversations have you had with Mr. Journey?

Mr. FEE. I don't remember specifically, Mr. Chairman. It was more than one on the subject.

Mr. Moss. Mr. Lewnes almost became a compelling matter; is that correct?

Mr. FEE. I would say so at that time, yes.

Mr. Moss. A compelling matter of business suddenly after he appeared before this subcommittee and testified. You state clearly, "I understood that the Chairman had a problem with Mr. Lewnes."

Mr. FEE. That is correct.

Mr. Moss. Did he tell you what the problem was?

Mr. FEE. My best rendition of that is that, as I said before, when the Commissioners assigned him things to do on matters which appeared before the Commission and preparing documents in a certain way or restructuring them or changing things, he would not respond enthusiastically or at all. That was upsetting to the Commission.

Mr. Moss. Is that the same Commission which voted to agree to have him assume the role of an administrative law judge without any dissenting votes?

Mr. FEE. It is the same Commission.

Mr. Moss. And is the Mr. Journey the same Mr. Journey who signed his 1976 performance rating, which rates a person as either satisfactory, unsatisfactory, or outstanding? This one surely enough is Drexel Journey, and it covers the period from April 1, 1975 through March 30, 1976. Is that the same Drexel Journey that signed that satisfactory rating?

Mr. FEE. It is the same.

Mr. Moss. A compelling crisis of incompetence, incompatibility that occupied your 1st month on the Commission, occupied the Chairman in his 3rd month on the Commission, and Mr. Watt in his 3rd month on the Commission, and Mr. Holloman about his 3rd month on the Commission—all of these people suddenly targeting in on this one man.

Was there anyone else among the employees who had a similar problem?

Mr. FEE. Other than Mr. Journey, none that I know of.

Mr. Moss. None that you know of. You mean you are not sure. You meant other than Mr. Lewnes rather than Mr. Journey, did you not?

Mr. FEE. I am sorry. I don't quite understand the question.

Mr. Moss. You just stated that other than Mr. Journey you don't know. I believe you intended to say that other than Mr. Lewnes you did not know.

Mr. FEE. Yes.

Mr. Moss. Am I correct?

Mr. FEE. Yes, sir.

Mr. Moss. I don't want you to guess. I want you to be absolutely certain.

Mr. FEE. As I understood the question, Mr. Chairman, you wanted to know whether there were other people, other than the Commissioners and Mr. Journey, that had a problem with Mr. Lewnes.

Mr. Moss. No. I asked whether there was any other person employed by the Commission who had a problem similar to that of Mr. Lewnes.

Mr. FEE. None that I know of.

Mr. Moss. None that you know of.

Mr. FEE. None. At that time I am certain there were none.

Mr. Moss. You had no connection at all with Mr. Mamone and you had no discussion about his transfer, either?

Mr. FEE. No, sir. Clearly I have no knowledge of that nor do I know Mr. Mamone.

Mr. Moss. You know nothing about that?

Mr. FEE. No, sir, except what I read from the hearings last week.

Mr. Moss. Mr. Luken?

Mr. LUKEN. Mr. Fee, you are executive director? Is that your title?

Mr. FEE. Yes, sir.

Mr. LUKEN. What did you understand to be your personal responsibility, with reference to Mr. Lewnes as to employment tenure?

Mr. FEE. My responsibility as to his——

Mr. LUKEN. Hiring and firing?

Mr. FEE. My responsibility clearly inferred by me was that it was an untenable situation between Mr. Lewnes and his boss and a festering situation between Mr. Lewnes and the Commission and that it should be solved.

Mr. LUKEN. And your responsibility as the Executive Director of the Commission was to resolve the situation by separating Mr. Lewnes; is that right?

Mr. FEE. No, sir. My intent was to look into ways it could be resolved. When we found out what the Civil Service Commission

rules and regulations were as applied to him, and the reason I used his name specifically is that rights in a situation of an adverse action vary very much from one individual to another, depending on whether they are a career employee, a veteran, a schedule A employee, and so on, I made a specific inquiry as to the rights he would have and the rights the agency would have in the event we decided to solve the situation.

As I testified, I thought that the remedies were far too harsh and that was not what the Chairman nor I——

Mr. LUKEN. That was your final conclusion after you investigated the matter?

Mr. FEE. That is right.

Mr. LUKEN. After you talked with Mr. Dunham, as reflected in the interview with the staff, you came away from that conversation with the resolution to get rid of George Lewnes. Is that right?

Mr. FEE. Mr. Luken, I am at a disadvantage. I have not studied my conversation of the August interview. I clearly had conversations.

Mr. LUKEN. Mr. Gore asked you something about it.

Mr. FEE. Clearly I had conversations with the Chairman about the Lewnes situation. Clearly I knew the Chairman was not happy and wanted to resolve it.

Mr. LUKEN. What do you mean? What did you understand that to mean, "resolve it"?

Mr. FEE. Just get Mr. Lewnes out of the job that he was in.

Mr. LUKEN. Were there specific directions as to what job to get him into?

Mr. FEE. No, sir.

Mr. LUKEN. I know we have been over this in a number of ways, but you indicated there was such language used as "problems" and "incompatibility" and that he did not "enthusiastically follow directions." Can you be any more specific than that?

Mr. FEE. I cannot. The reason is that my information was secondhand. I was not in a position to make these determinations myself. I was only in occasional Commission meetings where some of the instructions were given, and perhaps not in the next one, to see the Commission direction carried out.

My information is secondhand so I qualify it.

Mr. LUKEN. I would like to get to your responsibility.

Mr. Moss. I wonder whether we might take a 15-minute break so we can respond to the rollcall now underway on the floor.

We shall recess for 15 minutes.

[Brief recess.]

Mr. Moss. The committee will be in order.

Mr. Luken, you were interrupted at the time of the break.

You may proceed.

Mr. LUKEN. Mr. Fee, discussing your responsibilities and how you discharged them, the normal process for removal of a person such as Mr. Lewnes from his office would be for you to be aware of grounds for discharge, and then the procedure for such removal. Is that correct?

Mr. FEE. That is correct.

Mr. LUKEN. In this case we went about it in a reverse process. You were advised in your relatively new job that, "We want to

reassign Mr. Lewnes," and then you went seeking grounds. Is that right?

Mr. FEE. That is not correct.

Mr. LUKEN. You described the process. You went to your counsel and asked him about it. Is that right?

Mr. FEE. That is correct.

Mr. LUKEN. This was after you had talked with Mr. Dunham, Mr. Smith, Mr. Watt, and the General Counsel about the fact that they had indicated to you that Mr. Lewnes should be removed from the job. Is that right?

Mr. FEE. That is correct.

Mr. LUKEN. And they had not given you any grounds. Is that right?

Mr. FEE. That is not correct.

Mr. LUKEN. That is what I want to get to. What were those grounds?

Mr. FEE. The grounds were, as I qualified in my written statement, and I continue to qualify in my statements this morning, secondhand. To the best of my understanding, it is not responding to Commission directives and that was upsetting the Commission and being disruptive in its work.

Mr. LUKEN. You said, "not responding to Commission directives enthusiastically." Which is it?

Mr. FEE. You may insert the word "enthusiastically."

Mr. LUKEN. I believe that was your word.

Mr. FEE. Yes, sir, it was.

Mr. LUKEN. Which is it? Was it on the ground he did not respond to Commission directives enthusiastically or that he didn't respond to the Commission directives?

Mr. FEE. I don't know. There are shades of things in the Federal Power Commission which I don't pretend to understand.

Mr. LUKEN. Does that mean that you were called upon to make a political discharge?

Mr. FEE. It does not.

Mr. LUKEN. What were the shades? Do we understand them, do you think?

Mr. FEE. If you come to understand them, it won't be through me. What I am saying is that when an order——

Mr. LUKEN. Can you tell us where it will come from?

Mr. FEE. Perhaps the Chairman or the General Counsel, more experienced in these matters than I, can enlighten the committee.

When an order comes before the Commission, it can be drafted in any one of a variety of ways. The way it has to end up being drafted is the way the Commission wants it drafted. Staff is instructed to draft orders the way the Commission wants them. I believe it is in this regard that Mr. Lewnes had developed some problems with the Commission.

Mr. LUKEN. In the regulations is it stated what grounds are for removal from office, as in the case of Mr. Lewnes?

Mr. FEE. Yes, sir.

Mr. LUKEN. Are those enumerated? Can you tell us now what they are?

Mr. FEE. Grounds for adverse action, it becomes suspension, removal, downgrade, incompetence, insubordination, malfeasance.

Mr. LUKEN. Maybe you have already gone through this in your questioning?

Mr. FEE. No, sir, I don't believe so.

Mr. LUKEN. I believe you said that you found no cause in Mr. Lewnes' case for any of those grounds enumerated?

Mr. FEE. Mr. Luken, what everybody appears to be confusing is my conversation with Mr. Minor, which was certainly a predecisional conversation, and the actual circumstances that happened to Mr. Lewnes.

Mr. LUKEN. All right. Let's take them separately. Were any of the enumerated grounds stated to you in that conversation?

Mr. FEE. Which conversation, sir?

Mr. LUKEN. You just mentioned a conversation with Mr. Minor.

Mr. FEE. Yes. As I testified earlier, he briefed me for maybe a period of 5 or 10 minutes, very technical Civil Service Commission types of conditions which have to be present to initiate an adverse action against an employee.

Mr. LUKEN. In your conversations with Mr. Dunham, with Mr. Smith, with Mr. Watt, with the General Counsel, as you were apprised of the Lewnes situation before you investigated it, were any grounds stated to you, or was anything stated to you which would constitute a proper ground for adverse action?

Mr. FEE. No, sir.

Mr. LUKEN. And after your investigation you found no such ground; is that right?

Mr. FEE. The only investigation——

Mr. LUKEN. Mr. Lewnes' investigation.

Mr. FEE. My investigation of Mr. Lewnes was not a real investigation.

Mr. LUKEN. Such as you described the inquiries in your testimony I believe you said you found no ground for discharge, removal, or adverse action.

Mr. FEE. Or removal from his job under the harsh circumstances prescribed in the Civil Service Commission regulations, as I was briefed by Mr. Minor.

Mr. LUKEN. You said you had nothing directly to do with the Mamone situation. Is that right?

Mr. FEE. That is correct.

Mr. LUKEN. You became aware of it later.

Mr. FEE. That is correct.

Mr. LUKEN. When did you become aware of that?

Mr. FEE. I believe upon reading the transcript of the hearings.

Mr. LUKEN. Which hearings?

Mr. FEE. Of this subcommittee's hearings last week.

Mr. LUKEN. Are you aware of Mr. Wofsy's testimony with reference to Mr. Mamone?

Mr. FEE. I read the transcript. I can't recall it precisely.

Mr. LUKEN. He said he went over to Mr. Journey's office and during the course of their conversation Mr. Journey said, "We have to remove Russ from the *HIOS* case. The people upstairs have lost confidence in him."

Then he testified that "upstairs" meant the Commission and the Executive Director. Can you help us out on that?

Mr. FEE. No, I cannot. I could not be categorized as one of the people upstairs in that situation. I clearly had no knowledge of it.

Mr. LUKEN. You had no knowledge and no participation in that. Is that right?

Mr. FEE. That is right.

Mr. LUKEN. Would it be fair to characterize that conversation that Mr. Wofsy had with Mr. Journey as a conversation similar to the one that you had with Mr. Dunham, Mr. Watt, and the General Counsel with reference to Mr. Lewnes?

Mr. FEE. You may characterize it as such, yes.

Mr. LUKEN. Yet Mr. Wofsy attempted to avoid the instruction, as he testified, did he not?

Mr. FEE. I have no firsthand knowledge of that. I read the record as you did.

Mr. LUKEN. He said he tried to keep him on the case in that subterfuge fashion because, as he said, he had to shave in the morning. Did you respond to the direction that you had in the same way as Mr. Wofsy, or did you in fact attempt to carry it out?

Mr. FEE. I attempted to resolve the problem. If it was not by order, it clearly would have become my order soon.

Mr. LUKEN. You attempted to find——

Mr. MOSS. Would you yield at that point, Mr. Luken?

Mr. LUKEN. Yes.

Mr. MOSS. Just reviewing the contemporaneous memorandum filed with this committee reflecting an interview with you on August 9, 1976, by Mr. Braun of this committee, he reports as follows:

"Fee was told by Dunham, 'Curt, look into it. See if we can get George Lewnes out of that job.'"

Is that correct?

Mr. FEE. Yes, sir.

Mr. MOSS. Then we have established that you were told by Dunham to get rid of, or to get Lewnes out of the job.

Mr. FEE. Yes, sir.

Mr. MOSS. I thank the gentleman for yielding.

Mr. LUKEN. You were directed, as the chairman has pointed out, and you attempted to carry that out even though no grounds were stated to you.

Mr. FEE. No, sir, Mr. Luken, I did not. I went and requested counsel, House counsel, on what alternatives were available in the situation.

Mr. LUKEN. We have had a lot of euphemisms in this testimony, such as "alternatives." I don't know who is kidding who.

You have just stated that the Chairman told you, "We want to get rid of George Lewnes." You went to carry out that directive, did you not? You were not looking for alternatives. He did not state any ground, did he?

Mr. FEE. Clearly my instructions were——

Mr. LUKEN. Would you answer that? He didn't state any grounds, did he?

Mr. FEE. At that time he did not.

Mr. LUKEN. Then you had no right to proceed in any fashion against Mr. Lewnes inasmuch as you had no grounds.

Mr. FEE. Mr. Luken, I have——

Mr. LUKEN. Is that right?

Mr. FEE. That is not correct. I had a fairly good knowledge of the Chairman's thoughts on the situation, Commissioner Watt's thoughts, Commissioner Smith's thoughts.

Mr. LUKEN. We have been over those extensively.

Mr. FEE. Yes, sir.

Mr. LUKEN. None of them constituted any grounds. You just said that.

Mr. FEE. I would disagree. I believe when three or four——

Mr. LUKEN. Then you are contradicting your testimony. You have said there were no grounds at the inception. You just answered my question and stated there were no grounds enumerated in your conversations with those gentlemen. Do you want to read the record back?

[No response.]

Mr. LUKEN. Which is it now?

Mr. FEE. I am a little frustrated because I have tried to accurately portray something on which my recollection is fuzzy. I have stated again and again everything that I know, and if I contradicted myself on a small point, I wouldn't be surprised.

Mr. LUKEN. Sir, I don't consider it a small point. I consider it the heart of the matter of what we are talking about. We are talking about the import of those suggestions or directions to you by the Chairman and these other people associated with the Commission, which you have testified to vaguely in some instances. We are trying to get at the interpretation that you put on them.

If, in fact, you were told, "Let's look into the separation of Lewnes from his job," and you were given no basis for such separation, then the question is why did you look into it?

Mr. FEE. Two reasons: I was aware that there was a basis for the problem; and, second, I was carrying out an order of a superior.

Mr. LUKEN. What basis?

Mr. FEE. The basis that I stated before, that I was aware that the Commission was not pleased with Mr. Lewnes——

Mr. LUKEN. Is that a ground for separation, that the Commission is not pleased?

Mr. FEE. Certainly not in a formal adverse action and proceeding, that would not be a ground.

Mr. LUKEN. It is not a legitimate ground, formal or informal, is it?

Mr. FEE. I would agree.

Mr. LUKEN. We are not discharging people or removing them at the whim of his superiors, are we?

Mr. FEE. That is correct.

Mr. LUKEN. Being pleased or displeased is a whim of the superiors; is it not?

Mr. FEE. No, sir. The staff of the Commission exist to serve the Commission. I believe within the confines of the Civil Service Commission Personnel Manual procedures they may take action against an employee that they want to take action against.

Mr. LUKEN. When you went to look into the question of his being reassigned you were not advised that he served at the pleasure of the Commission and that they could do whatever they wanted with respect to him; were you?

Mr. FEE. No; I was briefed on the very technical language and possibilities that existed in the Federal Personnel Manual to remedy a situation like that.

Mr. LUKEN. You are talking about the laws and regulations of the Federal Power Commission?

Mr. FEE. Yes.

Mr. LUKEN. They are not technical, but those are the laws and regulations.

Mr. FEE. Yes, sir.

Mr. LUKEN. Are you familiar with the relationship between the Gallagher, Connor & Boland firm?

Mr. FEE. Mr. Luken, my awareness of that relationship started with the article in the Buffalo paper which I read a day or two after it came out.

Mr. Moss. Would you let the Chair in on the subject matter? I do not read the Buffalo newspaper.

Mr. LUKEN. Let me ask another question, Mr. Chairman.

That is in connection with Mr. Keeley; is that right?

Mr. FEE. Yes, sir.

Mr. LUKEN. Will you tell us what that is?

Mr. Moss. The question asked of the witness was: Are you familiar with a law firm having the name of Gallagher, Connor & Boland?

Mr. LUKEN. The relationship between the law firm and the FPC staff member. I think perhaps the witness can tell us that.

Mr. FEE. The beginning and end of my knowledge is what was reported in the article in the Buffalo newspaper.

Mr. LUKEN. What was that?

Mr. FEE. That there is a personal relationship which exists between the staff attorney and a member of that law firm.

Mr. LUKEN. Who is the staff attorney?

Mr. FEE. The staff attorney is Patrick Keeley.

Mr. LUKEN. Was he employed with the FPC while you were there?

Mr. FEE. Yes, he is currently employed.

Mr. LUKEN. And he is the junior attorney who was put on the *HIOS* case?

Mr. FEE. Yes, sir.

Mr. LUKEN. In place of whom?

Mr. FEE. Mr. Mamone I am tempted to say; I think so.

Mr. LUKEN. That is while you were Executive Director?

Mr. FEE. Yes, sir.

Mr. LUKEN. What?

Mr. FEE. Yes.

Mr. LUKEN. You were not aware at that time that he was a brother-in-law to one of the partners in the firm of opposing counsel?

Mr. FEE. That is correct.

Mr. LUKEN. And he never acquainted you with that fact?

Mr. FEE. He did not, nor was I responsible for the reassignment.

Mr. LUKEN. You were not responsible for the reassignment of Lewnes, either, were you?

Mr. FEE. I admit to a small hand in that.

Mr. LUKEN. Lines of responsibility are a little loose?

Mr. FEE. Yes, sir.

Mr. LUKEN. Do you recognize this relationship as involving any conflict now that you are aware of it?

Mr. FEE. The——

Mr. LUKEN. His brother-in-law; is that right?

Mr. FEE. Mr. Luken, I am not competent to comment on the face of it. There is an appearance of a conflict, but I know enough about conflict of interest statutes to know that they are highly technical. I believe this subcommittee had knowledge of that relationship sometime in the past.

Mr. MOSS. Let me understand this. Let me have this clear on the record.

Mr. LUKEN. I was about to do that.

Mr. MOSS. What relationship are we talking about, what individual with what?

Mr. LUKEN. Mr. Chairman, we have a memorandum dated March 10 from the staff, confirmed today, that Mr. Harrington is the brother-in-law of Patrick Keeley, an attorney within the FPC, and he was at the time that events which are before the committee occurred.

This was brought out in previous testimony the other day, Mr. Chairman. The question was asked and it now has been confirmed.

You say, Mr. Fee, that you are just not aware as to whether that would set up a potential conflict under the regulations?

Mr. FEE. I am not competent to make that legal judgment.

Mr. LUKEN. In your experience have you come across such relationships on the part of opposing counsel?

Mr. FEE. No, sir.

Mr. LUKEN. Are you an attorney?

Mr. FEE. No.

Mr. LUKEN. That is one handicap you do not have.

Mr. FEE. One handicap I don't have.

Mr. LUKEN. You were aware, of course, though you were not responsible, you say, for the replacement of Mr. Mamone by Mr. Keeley; is that correct?

Mr. FEE. That is correct.

Mr. LUKEN. And you know Mr. Keeley was junior attorney in the sense that he had only about 1 year's experience out of law school?

Mr. FEE. I learned that from the record.

Mr. LUKEN. In that sense only?

Mr. FEE. I learned that from the record.

Mr. LUKEN. The *HIOS* case was a major case; was it not?

Mr. FEE. Yes.

Mr. LUKEN. Have you ever known of a case where a senior trial attorney was removed in favor of a junior attorney with only 1 year's service?

Mr. FEE. In the scheme of things I would have no way of knowing about that nor be responsible for a decision. That is clearly within the prerogative of the General Counsel and/or the direction of the Commission or the Chairman.

Mr. LUKEN. I have nothing further.

Mr. Moss. Mr. Sharp?

Mr. SHARP. Thank you, Mr. Chairman.

Mr. Chairman, I want to take a little different approach and ask a couple of questions along another line.

First of all, Mr. Fee, were you in any way charged with trying to implement the Touche Ross recommendations or to draw up any changes at the FPC as a result of that study?

Mr. FEE. Mr. Sharp, I held the distinction of being the technical director of this study which under contracting procedures is a position somebody has to hold. I am that person.

Mr. SHARP. Once you had the study, I presume since Chairman Dunham and the Commission asked for it, they were making some kind of use of it. Did you have any followup responsibilities?

Mr. FEE. Absolutely. We did a request for proposal and did a management study over a 60-day period. We kept the contractor on in order to implement many of the recommendations that they had made and the staff had agreed to. I have a summary of it. It is really quite something, the summary of what we did. It is contained in this folder and it is still going on in isolated places.

Mr. SHARP. Let me ask you about another personnel change to which it seems that personnel study is relevant. Did you have any conversations about or any input into the conversations about or any input into the decision relative to Mr. Lotis' position at the Commission?

Mr. FEE. Yes, many conversations and a modicum of input.

Mr. SHARP. Then perhaps you can tell me why he would have essentially lost managerial responsibility after the reorganization of October.

Mr. FEE. I am not the best person to answer that question. I will tell you what I think. Mr. Journey will have to speak to that.

We decided in the reorganization to rewrite the job descriptions within the Office of the General Counsel so that greater freedom of assignment could be given to the General Counsel as far as distributing caseload.

Mr. SHARP. Was that a recommendation of the Touche Ross study?

Mr. FEE. I don't think it was a specific recommendation; no. It was certainly an accommodation to one of their recommendations, that the workflow and the work controls in the Office of General Counsel were not good.

Mr. SHARP. I am under the impression, though, that the study makes it clear that Mr. Lotis was doing a pretty good job of supervising a number of attorneys in this process. I wonder why, when your study comes forth with that kind of information, you would in fact remove him, as I understand it, effectively from managerial responsibility over an attorney.

Mr. FEE. I know——

Mr. SHARP. Have I characterized the report wrong? Is it not pretty clear on that point?

Mr. FEE. I am not sure. I can't remember specifically reading that in the report.

However, I do know of a conversation that I had with a Touche Ross consultant, which one I don't remember, the gist of which was that Mr. Lotis was doing a good job of keeping track of his work and supervising his attorneys, and whatever.

Mr. SHARP. It seems strange to me, if this is one of your prime responsibilities, and I certainly think it is as Executive Director, that you have a management study for the purpose of trying to improve the whole operation, and you got back very favorable comment on this particular person, that you would allow the General Counsel simply to reorganize a person out of managerial responsibilities when it was one area in which the report said things were working well. You certainly had plenty of other areas where things were not working well.

That seems to me to be the height of poor management, unless there is some other motive.

Mr. FEE. I know of no motives. The best person to talk to on that subject is the General Counsel. He has the full confidence of the Chairman and, as such, has full authority and responsibility for his personnel actions within the Office of General Counsel.

Mr. SHARP. I see. But you would never question him about such a change when you had responsibilities to see the whole thing managed more effectively?

Mr. FEE. Essentially, that is correct.

Mr. SHARP. Were you aware of any problems, longstanding problems, between Mr. Journey and Mr. Lotis? As you mentioned, there were longstanding problems between Mr. Journey and Mr. Lewnes.

Mr. FEE. Yes, I am under the impression, Mr. Sharp, that similar problems existed between Mr. Journey and Mr. Lotis.

Mr. SHARP. I see. So rather than having that kind of personality clash, which I assume is the best we have been able to get out of the preliminary questioning, and perhaps you can enlighten me if there is some different reason in Mr. Lotis' case, in order to get rid of a personality clash we simply lose what our management study tells us is the best operation we have in an effort to carry forward more efficient government. Is that it?

Mr. FEE. I am not sure I agree with the conclusion, but I understand the logic you imply.

Mr. SHARP. Did you ever discuss with Mr. Lotis any dissastifaction that you or the Commissioners had with his performance?

Mr. FEE. No, sir. I had many conversations with Mr. Lotis, if memory serves me correctly, and he will corroborate this—we had no discussions about specific substantive shortcomings that he had on the job.

Mr. SHARP. Were there any negative conversations with him where you had to correct him in some action he had taken or give him instructions because he seemed to be failing in his operation? I understand you to have said there were none.

Mr. FEE. That is correct.

Mr. SHARP. Did you have any discussions with Mr. Journey about any failings or dissatisfactions with Mr. Lotis which would lead to his no longer managing sime 18 attorneys and instead managing zero?

Mr. FEE. Yes, I had many conversations with Mr. Journey on the same subject.

I think to understand the situation clearly we have to retreat back in time through some point in the spring, or maybe even before that, when Mr. Lotis had made the decision, I believe, to leave the agency and some of the things that happened from that point through to now were an accommodation to him. He was looking for another job, waiting for his name to come up on the administrative law judge register so it can't all be explained in clear organizational terms.

Mr. SHARP. In other words, you are saying it was your impression and that of Mr. Journey that Mr. Lotis was looking for other employment within the Commission? Is that what you say?

Mr. FEE. No, outside the Commission.

Mr. SHARP. So you, in essence, presumed he would be out, and therefore you went ahead and made reorganizational effort?

Mr. FEE. Yes, sir, that is basically it. The genesis of this is a conversation Mr. Lotis had with the Chairman about his intentions, I believe.

Mr. SHARP. Did Mr. Lotis indicate to you, through Mr. Journey or the Chairman, that he was desiring to leave because he was eager to have other employment which paid better, or some reason like that, or did it have to do with specific concerns about the operation of the Federal Power Commission?

Mr. FEE. I don't recall his specific comments. My understanding was that he was definitely having problems with his boss, and his boss with him, and this was an attempt by him to resolve the situation.

Mr. SHARP. So even though our Touche Ross study held that this is an effective operation in the FPC, that in fact this individual is doing a good job in supervising and keeping the work moving, which we know is a serious problem in other areas and it has been within the Federal Power Commission, we resolve the thing by simply organizing him out of managerial responsibility and not in any way, it appears to me, accommodating to our better quality people.

Perhaps I misunderstand the purpose of the study or its conclusions or how you people read those conclusions.

Mr. FEE. Mr. Sharp, I believe Mr. Lotis' decision to leave the Commission antecedes any conclusions that the Touche Ross study made or subsequent changes as a result of the study.

Mr. SHARP. Mr. Chairman, I am sure we will have other witnesses to cover these questions.

Thank you for the time.

Mr. Moss. Are there further questions?

If not, Mr. Fee, we will excuse you with the thanks of the committee.

The committee will now call Mr. Jon G. Lotis.

Mr. Lotis, will you be sworn?

Do you solemnly swear that the testimony you are about to give before this committee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LOTIS. Yes, sir.

Mr. Moss. Will you identify yourself for the reporter and the record?

STATEMENT OF JON G. LOTIS, ASSISTANT LITIGATION COUNSEL, FEDERAL POWER COMMISSION

Mr. LOTIS. I am Jon G. Lotis.

Mr. MOSS. And you are appearing here in response to a subpoena issued by this subcommittee?

Mr. LOTIS. Yes, Mr. Moss.

I have a prepared statement I would like to read at this point.

Mr. MOSS. You may proceed.

Mr. LOTIS. I appear here today under subpoena issued March 8, 1977, by the Chairman of the Interstate and Foreign Commerce Committee of the House of Representatives of the United States.

From January 1973 until October 1976, I held the position of Assistant General Counsel with the Federal Power Commission. On October 12, 1976, the Office of General Counsel was reorganized and I was assigned a position titled Assistant Litigation Counsel. I have been asked by the staff of the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce to provide a general description of my educational and professional background and to describe my duties and responsibilities before and after October 12, 1976, reorganization of the Federal Power Commission's Office of General Counsel.

I have also been requested to describe how I carried out my responsibilities as Assistant General Counsel and to describe certain other matters which may have relevance to this inquiry.

I graduated from the University of Pittsburgh in 1963 receiving a BBA degree. My major field of study was economics. I served as an economist with the FPC in its Bureau of Natural Gas from June 1963–September 1968. During that period I analyzed and evaluated about 150 certificate, rate, refund, and tariff filings and prepared written reports to the Commission containing my recommended disposition of these matters. I served as technical expert for staff counsel in formal hearings and settlements and assisted in preparation of cross examination and in writing of staff briefs in gas certificate and rate matters. On occasion I prepared special studies and reports with recommendations for individual Commissioners and department heads. I testified as an expert witness on matters of purchased gas cost, sales, rate design, tariff, and service matters in two proceedings before the Commission.

In 1966 I received an award from then-Chairman Lee White for sustained superior performance as an economist with the agency. During this same period I attended George Washington University evening division and received in 1967 a J.D. degree in law. In September 1968 I transferred to the Office of General Counsel and from September 1968 until December 1972, I served as sole or lead counsel on major pipeline rate cases involving El Paso Natural Gas Co., Southern Natural Gas Co., United Gas Pipeline Co., Algonquin Gas Transmission Co., and South Georgia Natural Gas Co. In addition, during the latter part of this period, I was supervisory counsel on 17 other electric and gas rate proceedings and 9 rulemaking proceedings.

In January 1973 I was appointed Assistant General Counsel responsible for gas pipeline and electric rate matters. In 1972 and

1973, I was selected by the agency as its nominee for the Younger Federal Lawyer Awards program sponsored by the Federal Bar Association. I have appeared before the Practicing Law Institute, the American Public Power Association, and the Georgia Public Service Commission staff speaking on all facets of the Commission's ratesetting responsibilities, including matters of pipeline cost allocation and rate design, the contractual rights of electric utilities to change rates and antitrust considerations in FPC proceedings.

As Assistant General Counsel, I was responsible for the legal work involved in the Commission's administration of those portions of the Natural Gas and Federal Power Acts related to the regulation of rates, charges, and terms and conditions of service for all interstate gas pipelines and electric utilities. In this capacity I advised the Commission on the facts and law related to the disposition of all gas pipeline and electric rate cases pending before it.

Under my supervision, draft Commission orders were prepared and circulated to the Commissioners and office heads containing my recommended disposition of rate and rate-related matters. I supervised 12 to 18 attorneys engaged in the full range of trial activities, including preparation of discovery, and evidence, hearings, settlement negotiations, and preparation of motion, briefs, and memoranda of law on rate and rate-related proceedings. I reviewed draft Commission Opinions prepared by its Office of Special Assistants for content and legal accuracy.

At the time of the reorganization I was responsible for about 100 major formal pipeline proceedings which were in various states of adjudication and settlement involving approximately $3.2 billion of proposed rate increases and 100 major electric rate proceedings involving approximately $600 million in proposed rate increases. Gas pipeline and electric rate proceedings for which I was responsible constituted over 50 percent of all investigations and hearings conducted by the agency. In addition, I held responsibility for the legal work associated with 11 rulemaking proceedings of the Commission.

The cases arising under my jurisdiction were concerned with the profit levels to be allowed each utility and the methods for ascertaining that profit level. Other issues prevalent in most cases included the determination of the costs properly includible in a utility's rate base, the determination of the depreciation and tax levels to be allowed for ratemaking purposes, the allocation of allowable costs among wholesale jurisdictional services and nonjurisdictional industrial services, the proper design of utility rates among various classes of service, the handling of discrimination allegations concerning price and services, and, in general, the ascertainment of the proper levels of all costs to be collected through customer rates.

I assisted attorneys under my supervision through a training program I developed which covered both technical as well as legal aspects of the work. The program included the development of gas pipeline and producer regulation; the technical methodology by which gas pipeline and electric utility cost of service, cost allocation, and rate design is established; the status of the law related to each of these areas; ground rules for trial practice and settlement negotiations; the law related to fixed rate contracts; and other areas depending on the topical nature of a particular subject at the time.

The course was constantly being revised and updated as changes in the law and technical areas of our practice occurred. I advised the Commission of the existence and content of my training program in a memorandum to them dated October 28, 1975, which I have appended to my testimony and identified as Attachment I [see p. 257].

That document with its appendices describes in fuller detail the nature and content of the training course. Training was provided not only for attorneys, but for nonlegal staff, as appendix B to the October 28, 1975 memorandum illustrates.

While the training sessions were in progress the new attorney was assigned cases for which he or she was given sole responsibility. Cases initially assigned were of a lesser degree of difficulty, but, by giving the attorney sole responsibiilty for its completion, the attorney's confidence in his ability to perform the work could quickly be established.

Through close supervision and guidance, I found that during this early period the new attorneys' mistakes could be kept to a minimum and corrected immediately. Any disadvantage to this approach would be far outweighed by the savings to the taxpayers by making their representative at the Commission productive in as short a period of time as possible.

As the attorneys became more proficient and skilled, more difficult cases were assigned.

I was always available to the attorney to discuss legal and technical issues arising in cases and to help in the difficult portions of briefs and pleadings when my assistance was required. I asked those attorneys who I believed were not able to keep pace or who were not pulling their full weight to leave the FPC during their first year probationary period in Government.

Again, my purpose was to make the operation effective and efficient at the lowest cost to the taxpayer. I believe I succeeded.

In terms of approach to cases, I emphasized the aggressive pursuit of the facts and their disclosure at the earliest possible time to all the parties through service of a settlement proposal. Since becoming Assistant General Counsel in January 1973, I have directed my attorneys to conduct rate settlement negotiations with the purpose of achieving just and reasonable rates through the settlement process rather than formal litigation.

My negotiating instructions are as follows:

One, staff's top sheets, which are settlement sheets, or direct evidence should not be prepared as if it is a position for bargaining purposes—unduly low relative to applicant's case—but a position truly reflective of staff's best judgment as to the just and reasonable rate level that the Commission would approve if deciding the case today. This is absolutely essential to establish staff's credibility among all parties that we are at all times neutral, independent, and seeking the just and reasonable result.

Two: At the first settlement conference explain staff's position and its underlying rationale for each item in issue.

Three: Listen to applicants and intervenors state their differences with staff position.

Four: After consulting with technical staff, change staff position, one, if new facts or arguments are presented by the parties which

could alter staff's case; two, if parties show staff computational errors; three, if staff itself, independent of the parties, have discovered the existence of new facts which warrant a change; and, four, if after hearing parties' argument staff agrees with parties that it has misapplied the law or applicable Commission precedent or policy in arriving at its position.

Thus, staff's position going into settlement was quite flexible. Changes were always made in staff's position where the circumstances I outlined above existed. Where the parties have reached agreement on all issues, save one or two, staff proposed stipulations with reserved issues or, if amenable to the parties, submissions of questions directly to the Commission. Under these procedures we settled the majority of rate cases.

Despite the large number of cases under my supervision, all cases were assigned, were aggressively pursued, and the attorneys were current in their work. I took considerable pride in that fact because it meant that over 200 major formal hearing cases at any given time were being handled by only about 15 attorneys on average.

Morale was exceptionally high and a good portion of the work was done by the attorneys voluntarily at night and on weekends. No inducement of additional compensation was offered, as it was unnecessary to do so, and none was requested by my staff. The savings to the taxpayer were enormous.

The situation changed in July 1976. Because of attorney attrition in the months of June and July, I had to reassign more than 50 formal hearing cases among the remaining attorneys. By July 30, 1976, my staff had reached the saturation point with casework and I was unable to assign the new rate cases being filed. I met with Mr. Journey on July 30, 1976 and requested replacements or at least the use of attorneys from other sections who had the time and would be more than willing to handle a rate case. Mr. Journey denied the request and instructed me to send him all new electric rate filings because he intended to assign them to the Hydroelectric Section of the Office of General Counsel.

By August attrition had reduced my staff by one-third—6 out of 18. I reported my staffing problem in a memorandum dated September 17, 1976, which I gave to a Touche Ross representative. That is in attachment II [see p. 259].

The Touche Ross representative said he would look into the matter. He returned a few days later and informed me that, after having looked into the situation, Touche Ross would recommend that additional attorneys and secretaries be assigned my section to make up for the attrition. I never received that assistance, however.

About 2 weeks before the reorganization, I had heard rumors of an impending OGC reorganization which would affect me. To alleviate my concern, I met separately with Commissioners Watt, Smith, and Holloman, each of whom expressed considerable satisfaction with my work and told me not to be concerned because they had heard of no such plans.

Commissioner Watt explained that the General Counsel had met with the Commissioners on several occasions to discuss OGC reorganization plans which the General Counsel had devised. Commissioner Watt stated that the plans were very unclear as to what precisely

the General Counsel had in mind for the office and only under questioning did it become clear that I was not on the organization chart at all.

Commissioner Watt told me that because Commissioners Holloman and Smith expressed objections to the plans, they were not approved.

The day after I met with Commissioner Holloman, he called me back to his office to tell me that he had spoken to Chairman Dunham after our conversation of the day before and that the Chairman expressed satisfaction with my work.

After the October 12, 1976 reorganization, I was assigned by the General Counsel to work on two appellate cases under the general supervision of the solicitor. One case involves a curtailment plan established by the Commission for one interstate pipeline and the other a curtailment compensation scheme proposed by another pipeline.

Upon learning of these assignments, I advised the solicitor that I might leave the Commission by the end of the year and that he might want to have some attorney on stand-by to handle the cases if I became unavailable. The solicitor told me that there was no problem because from the outset the two cases were slated to be handled by two other attorneys working under his supervision.

On March 4, 1977, after announcement of these proceedings was made known, I was given two additional assignments by the General Counsel involving appellate work. Had I not been assigned these matters, it is my understanding from the solicitor that they also would have been handled by other attorneys working under his supervision.

Thank you.

[The attachments referred to follow:]

ATTACHMENT I

October 28, 1975

MEMORANDUM TO: The Chairman
Commissioners Smith, Springer
and Holloman

FROM : Jon G. Lotis
Assistant General Counsel

SUBJECT : Training Program For Legal and Non-Legal Personnel In The Pipeline and Electric Rate Section

URGENCY : For Information

At recent hearings Congressmen have inquired as to the existence and nature of training programs within the Office of General Counsel for new attorneys. Since this subject may arise again I would like to appraise the Commission as to the existence and nature of the training and orientation program that I conduct for legal and non-legal personnel under my supervision.

The material attached as Appendix A is provided all new attorneys under my supervision as part of a series of orientation and training sessions that I conduct. The program is constantly being revised and updated as changes in the substantive and procedural areas of law occur. In addition to discussion related to the attached materials, I cover the development of gas pipeline and producer regulation, the technical methodology by which pipeline and electric cost of service, cost allocation and rate design is established. With each new group of attorneys entering my section, the programs' emphasis may differ slightly depending on the topical nature of a particular subject. The training sessions which I conduct are flexible and allow for "give and take" between the new attorneys and myself.

Upon assignment to the pipeline and electric rate section I will assign a new attorney to work under the immediate supervision and guidance of Messrs. Bullock and Magnuson who conduct additional

training and orientation sessions. Messrs. Bullock and Magnuson principal responsibility in this regard is to see to it that the new attorneys' questions are answered and that they are given guidance in their assignments and shown "how to do it".

The attached material as Appendix B is an outline of a course I have put together with the assistance of the attorneys in may office for the non-legal staff of my office. Due to workload pressure and attorney turnover we have not yet completed the program as scheduled. However, upon its completion I intend to formulate another series of training sessions for non-attorneys under my supervision which expands the present format.

Jon G. Lotis

/ ATTACHMENT II

September 17, 1976

FROM : Jon G. Lotis
Assistant General Counsel

In the past 3 months, I have lost 1/3 of my attorneys (6 out of 18). In order to handle the situation, I requested replacements or at least the use of attorneys from other sections who had the time and would be more than willing to handle a rate case. Mr. Journey told me that new attorneys would not be assigned me and that attorneys from other sections would not be available because of the work-load in other areas. Since my discussion with Mr. Journey, July 30, 1976, he has assigned all new electric rate filings, which will require formal hearing, to the hydro-electric section of the Office of General Counsel and has made 2 reassignments of pending cases in my section. (See attached memoranda).

In the past year, I have lost 3 out of 7 secretary/clerical (secretaries) personnel. My requests to Mr. Journey for replacements have been denied. If this situation is permitted to persist, I will lose my remaining 4 secretaries.

The work in my area of responsibility is increasing, not declining. My formal case assignments as of September 1, 1976, are shown on the attachment. 1/

1/ This listing does not include what I refer to as "ankle-biters" i.e., those matters which require the time and attention of attorneys which are not formal hearing matters. Items falling into this category are PGA and fuel adjustment compliance filings, all other rate filings which are accepted within the thirty day period, refund compliance matters, answering Congressional mail and other correspondence, preparation of notices, etc.

One of the three secretaries (Ms. Ross) lost in the last year was assigned to the electric rate settlement task force on June 11, 1976. Ms. Ross estimates that she has only about 2 hours of work per day to do since joining the task force; before she worked a solid 8 hour day. Ms. Ross and the undersigned would greatly appreciate if she could be reassigned back to my section. If the task force needs typing to be done it could be sent to my section. In this manner the agency would receive the full benefit of the services of Ms. Ross on an 8 hour vs. 2 hour basis.

Jon G. Lotis

Mr. Moss. Thank you, Mr. Lotis.

Mr. Sims?

Mr. SIMS. Just a couple of housekeeping matters, if I may.

I see that the attachments are not, in fact, attached to the copies of the opening statement which the members have before them. This is a clerical oversight and we are trying to get these attachments now.

I would also like to put into the record at this point exhibit F, which I believe the members do have.

Mr. Moss. Without objection, it is so ordered.

[Exhibit F referred to follows:]

Exhibit F

U.S. GOVERNMENT MEMORANDUM

JUNE 17, 1975.

To: Jon G. Lotis.
From: General Counsel.
Subject: Conversation with Richard M. Dicke, Ohio Electric Company and Ohio Power Company, Docket No. E-8888.

I suggested that Ohio Electric treat Mr. Dicke's June 13, 1975, letter as a settlement proposal, if that is what it was intended as. I suggested that he request a public conference and that if additional data is required by staff that he be advised. He requested that the public conference be held before the end of June 1975. I told him I saw no reason why that could not be arranged.

Please follow through on that timing. I believe that you should attend the conference along with Mr. Ellis. Also, I would like Mr. Lamke in attendance. See my remarks before on Western conference of June 11, 1975. I would anticipate that Bureau of Power and OAF would be represented also.

I told Mr. Dicke that if staff had problems with the Company's proposal, they should say what they would prefer and why. As I stated, I see this case as having regional power plant siting overtones.

DREXEL D. JOURNEY.

JUNE 19, 1975.

Memorandum to: Drexel D. Journey, General Counsel.
From: Jon G. Lotis, Assistant General Counsel.
Subject: Your conversations with Richard M. Dicke, Ohio Electric Company. Docket No. E-8888 (See Appendix A).

This is in response to your memorandum of June 17, 1975, to me concerning the procedure you recommend be followed with respect to the Section 206 rate investigation instituted by the Commission against Ohio Electric Company.

For the reasons hereinafter discussed I urge that the attached motion (Appendix B) be issued immediately, that such motion be served on all customers of Ohio Power Company and the Ohio Commission along with the settlement letter submitted to you by Mr. Dicke, counsel for Ohio Electric and Ohio Power. The need for investigation and for service of notice of these proceedings on wholesale customers of Ohio Power Company in this case is especially important because the proposed transaction is between affiliated companies and therefore the protections normally afforded by arms-length bargaining may not be present.

At the June 17 meeting in your office of staff personnel associated with the Ohio Electric rate investigation, I indicated the background of this proceeding and advised you of the consistent blatant refusal of Ohio Electric to respond to staff's repeated requests for technical data and information necessary to pursue this Commission's authorized investigation. I recommended that this matter be turned back to trial staff for action along the lines recommended in staff's motion. Upon conclusion of that meeting, I, as well as the other staff members involved, were under the impression that you had no objection to the filing of a staff motion to compel disclosure and that thereafter this matter would be permitted to be pursued through the formal investigative process. However, your June 17 memorandum to me indicates that after conferring with staff you engaged in further discussions with Mr. Dicke and advised him of the procedures which you now direct me to observe. For the reasons hereinafter discussed, I am unable to do so.

I will outline once again the relevant procedural history of this case. A series of conferences covering various dates between December, 1974, and March, 1975, have already been held involving staff and Ohio Electric in attempts by the staff to secure the information necessary to properly evaluate Ohio Electric's rate proposal. These attempts were to no avail. Ohio Electric continued to refuse to disclose information necessary for staff to pursue its investigation. Most recently, staff counsel had been advised by counsel for Ohio Electric, Mr. Conrad K. Harper, that the situation was out of his hands and that the data would not be forthcoming. Ohio Electric's apparent attempt to frustrate this Commission's authorized investigation by its steadfast defiance of trial staff's effort to secure disclosure is compounded by the fact that until such investigation is completed Ohio Electric will continue to collect rates which may be excessive and therefore unlawful. Since this is an investigation of an initial rate, no refund obligation exists and relief to the consuming public can only be afforded after completion of the investigation and Commission decision.

A conference, as you recommend would serve no useful purpose until technical staff received the information necessary to evaluate the original presentation of Ohio Electric and the settlement letter sent to you. I have contacted the supervisory technical personnel responsible for this investigation (i.e., William Lindsay and Georgia LeDakis), and they are in agreement that it would be unwise to pursue further conferences with Ohio Electric until staff is in receipt of the data which it seeks through the attached motion.

Upon receipt of the information necessary to evaluate the original proposal and subsequent settlement letter trial staff would pursue this matter as they would in any other case. Trial staff has never refused to discuss the possibilities of stipulation and settlement in any rate proceeding. However, the time is not ripe for such discussion in this case.

I am personally distressed at what appears to me to be an attempt by Ohio Electric to circumvent the normal and established rate investigation process. Equally disturbing to me is any suggestion that I participate in such maneuvering. I will not do so. I have made it my policy and have directed all attorneys under my supervision to pursue discovery with the objective of disclosure of all relevant facts in every case. If the information sought by staff's motion is not disclosed, Ohio Electric remains in the driver's seat—collecting monies which may be ultimately found to be unlawful.

In conclusion, I urge that (1) authorization for release of the attached motion be granted (2) that no further conferences with Ohio Electric be convened until the information sought in the motion is furnished and (3) that no further conversations with Mr. Dicke related to these "procedural" matters take place. If these recommendations are not acceptable, it will be necessary to resolve this matter through the Executive Director inasmuch as the technical bureaus supervisory personnel involved in this investigation concur in my disagreement with your June 17 directives to me.

Copies of this memorandum have been sent to those persons and offices listed in your June 17, memorandum to me.

JON G. LOTIS.

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FEDERAL POWER COMMISSION

CERTIFICATION FOR WITHIN GRADE PAY INCREASE

Date Eligible: June 20, 1976

Name: Jon G. Lotis

Bureau or Office: OGC

Title: Supv. Trial Attorney
(Assistant General Counsel)

Grade: GS-905-16/4
From: pa ~~$37,000~~ to pa $37,000

I certify that the above named employee's performance has been evaluated against the appropriate elements of the rating guide on the reverse side of this form. This employee's performance:

☐ is not of an acceptable level of competence for the reasons shown below. I recommend reconsideration on _____.

☑ is of an acceptable level of competence and warrants a within grade increase.

☐ Remarks:

RETURN THIS FORM TO THE OFFICE OF PERSONNEL PROGRAMS AT LEAST TEN DAYS PRIOR TO THE DATE ON WHICH THE EMPLOYEE IS ELIGIBLE FOR THE INCREASE. (Shown Above).

Signature and Title of Certifying Official	Date
	6-23-76
Signature and Title of Reviewing Official	Date
Signature and Title of Bureau of Office Head*	Date

*Approval of Bureau or Office Head is required only if the recommendation is to withhold the within grade increase.

957
-68)

FEDERAL POWER COMMISSION

CERTIFICATION FOR WITHIN GRADE PAY INCREASE

Date Eligible: June 22, 1975

Name: Jon G. Lotis

Bureau or Office: OGC

Title: Supervisory Trial Attorney (FU) (Assistant General Counsel)

Grade: GS-905-16/3
From: ~~pa $35,751 to pa $36,000~~

I certify that the above named employee's performance has been evaluated against the appropriate elements of the rating guide on the reverse side of this form. This employee's performance:

☐ is not of an acceptable level of competence for the reasons shown below. I recommend reconsideration on _____.

☒ is of an acceptable level of competence and warrants a within grade increase.

☐ Remarks:

RETURN THIS FORM TO THE OFFICE OF PERSONNEL PROGRAMS AT LEAST TEN DAYS PRIOR TO THE DATE ON WHICH THE EMPLOYEE IS ELIGIBLE FOR THE INCREASE. (Shown Above).

Signature and Title of Certifying Official	Date
Signature and Title of Reviewing Official	Date
Signature and Title of Bureau of Office Head* GENERAL COUNSEL	Date 6/12/75

*Approval of Bureau or Office Head is required only if the recommendation is to withhold the within grade increase.

-3

SS# 165-34-5619

Form 957
Rev(10-68)

FEDERAL POWER COMMISSION

CERTIFICATION FOR WITHIN GRADE PAY INCREASE

Date Eligible: 06-23-74

Name: Jon G. Lotis

Bureau or Office: OGC

Title: Supervisory Trial Attorney(PU) General Counsel

Grade: GS-905-16/2

From: $32,806 To: $33,899

I certify that the above named employee's performance has been evaluated against the appropriate elements of the rating guide on the reverse side of this form. This employee's performance:

[ ] is not of an acceptable level of competence for the reasons shown below. I recommend reconsideration on _____.

[X] is of an acceptable level of competence and warrants a within grade increase.

[ ] Remarks:

MW 6-25

RETURN THIS FORM TO THE OFFICE OF PERSONNEL PROGRAMS AT LEAST TEN DAYS PRIOR TO THE DATE ON WHICH THE EMPLOYEE IS ELIGIBLE FOR THE INCREASE.(Shown Above).

Signature and Title of Certifying Official	Date
Signature and Title of Reviewing Official	Date
Signature and Title of Bureau of Office Head* Leo E. Fergus Gen. Counsel	Date 6/13/74

*Approval of Bureau Office Head is required only if the recommendation

Rev. July 1968
Commission

REQUEST FOR PERSONNEL ACTION

REQUESTING OFFICE: Unless otherwise instructed, fill in all items in this part *except those inside the heavy lines.* If applicable, obtain resignation and separation data on reverse side.

1. (CAPS) LAST—FIRST—MIDDLE	MR.—MISS—MRS.	2. (For agency use)	3. BIRTH DATE (Mo., Day, Year)	4. SOCIAL SECURITY NO.
LOTIS, JON G.	Mr.		09-16-41	165-34-5619

NO OF ACTION REQUESTED: PERSONNEL (Specify appointment, reassignment, resignation, etc.)	3. REQUEST NUMBER	C. DATE OF REQUEST
PROMOTION		1-3-73

POSITION (Specify establish, review, abolish, etc.)	D. PROPOSED EFFECTIVE DATE	E. POSITION SENSITIVITY

VETERAN PREFERENCE (1—NO, 2—5 PT, 3—10 PT. DISAB., 4—10 PT. COMP., 5—10 PT. OTHER)	6. TENURE GROUP	7. SERVICE COMP. DATE	8. HANDICAP CODE
	2		

FEGLI (1—COVERED (REGULAR ONLY—DECLINED OPTIONAL), 2—INELIGIBLE, 3—WAIVED, 4—COVERED (REG. & OPT.))	10. RETIREMENT (1—CS, 2—FICA, 3—FS, 4—NONE, 5—OTHER)	11. (For CSC use)

12. NATURE OF ACTION CODE	13. EFFECTIVE DATE (Mo., Day, Year)	14. CIVIL SERVICE OR OTHER LEGAL AUTHORITY
02 Promotion	06-24-73	Select A 213.3102 (2)

15. FROM: POSITION TITLE AND NUMBER	16. PAY PLAN AND OCCUPATION CODE	17. (a) GRADE OR LEVEL	(b) STEP OR RATE	18. SALARY
Supervisory Trial Attorney (Public Utilities) Assistant General Counsel #3558	GS-905	15	2	pa $27,795

19. NAME AND LOCATION OF EMPLOYING OFFICE
Federal Power Commission
Office of the General Counsel
825 North Capitol Street, Washington, D. C. 20426

20. TO: POSITION TITLE AND NUMBER	21. PAY PLAN AND OCCUPATION CODE	22. (a) GRADE OR LEVEL	(b) STEP OR RATE	23. SALARY
~~[illegible]~~ GT-1231 Supervisory Trial Attorney (Public Utilities) Assistant General Counsel ~~#9623~~ 9623	GS-905	16	1	pa $31,203

24. NAME AND LOCATION OF EMPLOYING OFFICE
Federal Power Commission
Office of the General Counsel
825 North Capitol Street, Washington, D. C. 20426

25. DUTY STATION (City—county—State)	26. LOCATION CODE
Washington, D. C.	

27. APPROPRIATION	28. POSITION OCCUPIED (1—COMPETITIVE SERVICE, 2—EXCEPTED SERVICE)	29. APPORTIONED POSITION FROM: (1—PROVED, 2—WAIVED) TO: STATE
215		

F. REMARKS BY REQUESTING OFFICE (Continue in item F on reverse side, if necessary)

G. REQUESTED BY (Signature and title) (Leave blank on resignations)
Leo G. Fraunel General Counsel

H. FOR ADDITIONAL INFORMATION—CALL (Name and telephone number)
Patricia Holland 120-Xk407

I. REQUEST APPROVED BY: SIGNATURE [signature] TITLE: Executive Director

PART II. TO BE COMPLETED BY PERSONNEL OFFICE (Items inside heavy lines in Part I above also to be completed)

J. POSITION CLASSIFICATION ACTION: IDENTICAL ADDITIONAL — NEW — VICE — REGRADED

K. CLEARANCES	Initials or Signature	Date
(1)		
(2) CEIL. OR POS. CONTROL	[initials]	5/21/73
(3) CLASSIFICATION	[initials]	6/25/73
(4) PLACEMENT OR EMPL.	[initials]	6-22-73
(5) Comp.	[initials]	[illegible]
(6) APPROVED BY:		

(7) REMARKS: (Note: Use item 30 on reverse for Standard Form 50 remarks)
QUALIFICATION STANDARD: CSC Form 917 dtd 6-13-73 + CSC Form 981 dtd 6-13-73.

	Chairman	Chairman	Commr	Commr	Commr
Initial	[initials]	[initials]	[initials]		

Mr. SIMS. This contains the memoranda between Mr. Lotis and Mr. Journey, General Counsel, which were the subject of a subcommittee field hearing in Indiana last year.[1]

Appended thereto are some of the more recent fitness reports and pay increases which have been accorded Mr. Lotis.

Mr. Lotis, soon after Drexel Journey became the General Counsel, did he discuss anything with you concerning Mr. George Lewnes, who was then an Assistant General Counsel?

Mr. LOTIS. Yes, he did. Shortly after being named General Counsel on a permanent basis, Mr. Journey came into my office and told me that he thought I was doing very good work.

What he wanted to do, he said, was to transfer curtailment cases which had been under Mr. Lewnes into my section and to put the electric rate work which I had been handling back into the Hydroelectric Section where it once was several years back.

Personally, I thought this in terms of my development would be a good thing because at that time there weren't that many electric rate cases pending and curtailment cases were just beginning to come on the scene.

I didn't say anything, however, because the matter was not carried any further than that, Mr. Journey's suggestion that he was thinking of that possibility.

He then stated, however, that what he needed to know was whether I had anything on Mr. Lewnes.

I told him that George and I have had professional differences in the past on substantive issues. but that is as far as it went.

He said, "Think about it. Think a minute. Do you have anything on him?"

Well, I thought a minute but I wasn't thinking what I might have had on George Lewnes. I was thinking of the statement that was being asked me. I was just furious. This occurred shortly, within weeks, after his appointment as General Counsel.

I said nothing to him after thinking a minute.

Then he said, "Well, if you get anything on him, my door is always open." That ended the conversation.

Mr. SIMS. So, Mr. Lotis, literally one of the first moves Mr. Journey made after he became General Counsel was to come to you and offer you a significant portion of Mr. Lewnes' jurisdiction in return for any dirt that you might have had on him. Is that a fair summary?

Mr. LOTIS. I think that is exactly how I construed Mr. Journey's remarks to me, how I construed them then and how I construe them today.

Mr. SIMS. And you have already stated to us what your reaction was.

Did Mr. Journey's deputy, Mr. Robert Perdue, say anything to you concerning Mr. Lewnes around this same time period?

Mr. LOTIS. Sometime after the conversation with Mr. Journey, Mr. Perdue told me that he had hired a GS–14 for the purpose of blocking promotions in Mr. Lewnes' shop. At that time there were a number of attorneys at the GS–14 level in Mr. Lewnes' shop, and

[1] See Regulatory Reform—Volume VI, Serial No. 94–85, pp. 455–665 (Wholesale Power: The Federal Regulatory Process), hearings before the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, 94th Congress.

bringing someone on at that level would, he felt, block some of those attorneys from getting that GS–15 position.

I asked him whether he had advised Mr. Journey of this. He said he did. Mr. Journey just laughed.

[The following memorandum was received for the record:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
WASHINGTON, D.C., *April 1, 1977.*

Subject: Affidavit of one Robert Williamson Perdue, dated March 17, 1977, and attached to Mr. Drexel Journey's prepared statement of March 18, 1977, as Appendix A[1]

Mr. Perdue's affidavit states that Mr. Lotis' testimony regarding Mr. Perdue represents a falsehood. Mr. Lotis testified that Mr. Perdue had told him that he had hired a GS–14 attorney for the purpose of blocking the promotion to GS–15 of attorneys at the GS–14 level in Mr. Lewnes' section.

I was a trial attorney in the office of General Counsel at the Federal Power Commission from 1971 to 1975. In a private conversation with me in the Spring of 1975, Mr. Perdue said that a GS–14 attorney working under his supervision had been hired for the purpose of blocking the promotion to GS–15 of attorneys at the GS–14 level in Mr. Lewnes' section.

WILLIAM D. BRAUN,
Counsel.

Mr. SIMS. Mr. Chairman, I will note for the record that a brief survey of the promotion, hiring, and firing charts that Mr. Fee put in the record did not seem to reflect any category for promotions which were blocked.

I would like to ask you now about your current assignment. Do you consider that your current assignment is an increase or even a continuance of your previous level of responsibility?

Mr. LOTIS. There is no question in my mind, or that of my professional colleagues in the utility business, both inside and outside the Government, that I have received a demotion. I have had many expressions of sympathy and condolences from professional people both inside and outside Government. I have received no congratulations on my new assignment.

Mr. SIMS. Do you know of anyone who considers your assignment an increase in responsibility?

Mr. LOTIS. Perhaps the General Counsel.

Mr. SIMS. But no one else?

Mr. LOTIS. I don't know.

Mr. SIMS. Has your new assignment, which until quite recently I understand consisted of handling two appellate cases, kept you completely occupied?

Mr. LOTIS. No, it has not. I considered that I could have handled those two appellate cases at the same time I was performing my responsibilities as Assistant General Counsel, and that would be required. I certainly don't believe it is commensurate with my ability and it certainly hasn't taken up my full time.

A lot of my time has been spent advising my old staff, which comes quite frequently to my office asking for advice on both technical and legal matters.

Mr. SIMS. Do you believe the Touche Ross management study was the basis for your reassignment?

[1] See p. 347, this hearing.

Mr. LOTIS. I believe it was absolutely not.

Mr. SIMS. Why not?

Mr. LOTIS. For a number of reasons.

One, about a month after the Touche Ross, after the October 12 reorganization took place, an article appeared in a FPC news digest which indicated that the changes which had occurred in OGC on October 12 were the result of the Touche Ross study.

I played the game up to this point because at that point I viewed the action as strictly political in nature.

I became very concerned when the agency began issuing press releases saying that my change was the result of a management study.

I immediately got on the phone to the Office of Public Information, Bill Webb, the Director, and asked him whether he confirmed those facts that he was reporting.

Bill said that he would get back to me.

He did get back to me later, and he said that the report came from the Executive Director's office but that it had been edited and revised by the General Counsel.

I asked him if he took any steps to verify the facts contained in the release. He said he had not.

I then called Paul Burke, who was on the Touche Ross staff. He was the principal liaison man for Touche Ross with the Office of General Counsel.

I asked, "Paul, did you read the article?"

He said he had not, but I read it to him. He was very upset. He said he was very tired of the agency taking actions and then using the names of Touche Ross for the justification.

I asked what about that particular precise article referred to. He said he was upset by that.

I asked, "Would you be willing to go on the record on that so I could have a retraction printed?"

He said yes, he would be happy to say something which would, in effect, remove Touche Ross from responsibility for the change which had occurred.

I called Bill Webb back and I said, "Bill, Touche Ross would be willing to make the change. Would you print it?"

He said he would, but he said, "Jack, you have to realize there will be a problem in that it has to receive the clearance of the Executive Director."

I then became concerned. I called another individual with Touche Ross. with whom I had dealt quite frequently during the course of their study. His name is Thomas Doyle.

I asked Mr. Doyle, explained to Mr. Doyle the situation, and I asked him what his views were. He said, "Jack, as a personal friend, don't pursue this matter any further. You're going to get hurt."

I said to Mr. Doyle, "What further can they do to me but to damage me by printing such an article for publication?"

But, based on Mr. Doyle's advice, I thought that maybe in my best interest at that time I wouldn't pursue it.

I knew the election was right around the corner and I was hoping that the top management of the agency would be immediately removed. I did nothing at that time.

I had other reasons to believe that my removal was not based on the Touche Ross study.

During the course of their study, as I said, I met quite frequently with Mr. Doyle. I told Mr. Doyle I was quite concerned because the Chairman was going around the country quite frequently and speaking of a backlog of rate cases at the agency, and it seemed to me, at least, that the finger was being pointed at the attorneys in the agency.

I asked him whether he believed the same. He said he didn't find any deficiency on that score in my department, and he thought highly of our operation.

He also referred me to the GAO report which did not indicate that I or my office was responsible for any of the backlog which existed at the agency.

As a matter of fact, Mr. Doyle subsequently told me that upon looking at the backlog a little closer, Touche Ross determined that the Commission itself was largely responsible for that backlog on electric rate cases.

Mr. SIMS. In other words, the time between an administrative law judge's decision or some other decision and a Commission decision was the largest single factor?

Mr. LOTIS. Yes. I am not sure he said the largest single factor, but he said that was one of the principal factors.

Mr. SIMS. That was the time period he was referring to.

Mr. LOTIS. Yes.

Mr. SIMS. I would just like to note for the record the GAO report to which you referred. I believe the members have a copy of it, or certain pages. It is dated September 7, 1976. It is entitled "Management Improvements Needed in the Federal Power Commission's Processing of Electric Rate Increase Cases."

On page 14 of that report the GAO lists the four primary causes for backlogs. Mention of backlog in the General Counsel's office is not one of those four.

I wanted to note that in order to confirm what you just repeated in your testimony and mentioned in your opening statement.

So you were able, despite your shrinking professional staff, to keep up with the electric rate backlog. Do you know how many persons have now been thrown into this struggle to decrease the backlog?

Mr. LOTIS. I know in terms of the electric rates I had a total of 12 attorneys. Six were assigned to electric cases and six to pipelines.

The electric rate cases now consist of 17 attorneys with authorization for 3 more, I understand.

Mr. SIMS. Of the 12 attorneys that you were finally reduced to, about half of those did electric rate work.

Mr. LOTIS. Yes.

Mr. SIMS. So they now have as many as 17 or more doing what 6 attorneys did at one point?

Mr. LOTIS. Yes.

Mr. SIMS. Mr. Chairman, I would like to introduce into the record something which already has been referred to. This is entitled exhibit G.

This consists of excerpts from notes compiled by Touche Ross concerning the Office of the General Counsel of the Federal Power Commission.

Mr. MOSS. If there is no objection, it is so ordered.

[Exhibit G referred to follows:]

EXHIBIT G

EXCERPTS FROM NOTES OF TOUCHE ROSS STUDY (JULY 1976) OF FEDERAL POWER COMMISSION, OFFICE OF GENERAL COUNSEL

I. GAS AND ELECTRIC RATES (LOTIS)

Case management and control function smoothly. Training programs by Assistant General Counsel Lotis and monitoring of case status for timely completion of major activities and quality assurance reviews contribute to the operating effectiveness of this section.

Lotis conducts intensive training sessions for all new attorneys and secretaries. Each attorney is implicitly "on probation" until he has demonstrated to Lotis the ability to conduct each case type. Attorneys in Lotis' section rarely remain at the commission long enough to make significant advances in grade level. Most leave to go with outside law firms. Highly sought after by law firms. Intensive learning experience at FPC under Lotis.

II. LEGISLATION

There is no system of assignment of activities. No review of current inventory of assignments. No review of completion status of assigned activities. There is no system for status reporting nor performance monitoring of assigned work activities. There are no section management controls over quality of work product and consistency of approach consistent with commission policies.

III. HYDROELECTRIC

Status reporting (of cases) process is informal. Review process and controls over quality and timeliness of work product do not appear to exist.

Experience for the most part is the only training process. The Hydro unit has a compendium of forms and copies of precedent setting cases, but has not been updated in years, nor organized by subject matter.

There is an unusually large percentage of grades 13 to 15 attorneys in this section.

Significant effort is devoted to processing activities unrelated to hydroelectric case backlog.

Lack of an effective system for orientation and training affects an increasingly longer learning curve and inhibits the transferability of section attorneys among case assignments.

IV. GAS PRODUCERS

There is no training program for attorneys. There is limited cross fertilization of attorneys into other technical areas. No attorney has ever handled a curtailment case and a pipeline case. No consistent review process. Revise case assignment/management procedures.

V. CERTIFICATES

Section is unable to document actual case load. Case management procedures in the past have been nonexistent. Lack of training contributes to technical knowledge deficiencies.

Mr. SIMS. The text of the notes are available for inspection in the subcommittee offices. These are fairly extensive excerpts from those notes.

I would like to read what Touche Ross, the independent management group hired by the Commission, had to say about the Gas and Electric Rate Section headed by Mr. Lotis.

Case management and control functions smoothly. Training programs by Assistant General Counsel Lotis and monitoring of case status for timely completion of major activities and quality assurance reviews contribute to the operating effectiveness of this section. Each attorney is implicitly on probation until he has demonstrated to Lotis the ability to conduct each case type. Attorneys in Lotis's section rarely remain at the Commission long enough to make significant advances in grade level. Most leave to go with outside law

firms, highly sought after by law firms. Intensive learning experience at FPC under Lotis.

Those are rather favorable remarks and they contrast very greatly with the unfavorable remarks that Touche Ross had about all of the other sections in the Office of the General Counsel.

For example, in the Gas Producers and Certificate Section, and I believe those are the two sections to which your responsibilities have been assigned——

Mr. LOTIS. Legislation and Certificates.

Mr. SIMS. The former head of Legislation is now head of a section which handles electric rates?

Mr. LOTIS. Former head of Legislation now handles my electric rate work.

Mr. SIMS. In Legislation Touche Ross notes:

There is no system of assigning activities, no review of current inventory of assignments, no review of completion status. There are no section management controls over quality of work product so far as gas certificates. Section is unable to document actual caseload. Case management procedures in the past have been non-existent. Lack of training contributes to technical knowledge deficiencies.

These are merely the highlights.

From these statements it sounds as though you should have been given additional managerial responsibilities rather than having them removed from you.

Was not your office even moved from the eighth floor down to the fourth floor?

Mr. LOTIS. Yes. At the time my office was moved, I called the Executive Director and I asked, "Would you please not do that if I was going to work on appellate work? At least keep me close to the law library."

He said he thought he had done enough for me already and he was going to do no more. I had asked him to intervene with the General Counsel to leave me close to the library at least.

Mr. SIMS. The Executive Director has testified that whenever he didn't want to answer a question or couldn't remember, or for whatever reason, he often referred the questioner to Mr. Journey, who he said supervised attorneys such as yourself.

What did the Executive Director mean by the statement he couldn't help you out any more?

Mr. LOTIS. I think he was referring to the fact—I am certain he was referring to the fact—that on the day of the reorganization, before it was officially announced, which was about 4 o'clock that afternoon, it was fairly well known that the reorganization was going to take place that day.

I went to the Chairman's office early that morning and I asked the Chairman if he could tell me what was going to occur. He said he couldn't.

I told him that I have reason to believe that I was going to be removed from my position.

I told him that I realized that management had certain prerogatives, and I told him then that I would agree to sign a statement, which would be a statement of my withdrawal, or leaving, of the agency after the elections if Mr. Ford was reelected, but if the

Democrats were voted into office, I wanted him to give me some assurance that I would stay on.

He gave me no response but said to please see Mr. Journey and he will give you any information that can be given as to your position.

I went to Journey's office. Mr. Journey said he was working on it at the time and couldn't talk to me about it.

I went to the Executive Director and I said to Mr. Fee could he please give me some help on this. I know fairly well now that the intention is to remove me. I said:

> If you want me out, probably the best way is not to remove my title and position. Keep my title and position. It would be much easier for me to get a job and to avoid a lot of hassle as to what happened on October 12.

I was trying to avoid that. I see now that I haven't.

Mr. Fee was kind enough to say he would look into this and see what he could do, that he would talk to Mr. Journey and call me back.

He later called me back and said although Mr. Journey was very reluctant since a lot of papers relating to the reorganization already had been drafted, he was able to convince Mr. Journey that I should be placed back on the organization chart with a title.

I thanked him and that was the end of the conversation.

Mr. SIMS. At this point I would like to introduce into the record exhibit I, a memorandum of conversation between myself and Mr. Allen Tuttle, the Solicitor of the Federal Power Commission.

Mr. MOSS. Is there objection?

Hearing none, it is so ordered.

[Exhibit I referred to follows:]

Exhibit I

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

DATE: January 31, 1977

SUBJECT: Memorandum of Conversation between Allan Abbot Tuttle, Solicitor, FPC, and Stephen Sims, Special Assistant, Oversight Subcommittee

The conversation, initiated at the request of Mr. Sims, concerned (1) handling of cases by the Solicitor's Office generally and (2) the cases currently assigned to Assistant Litigation Counsel Lotis.

The two cases assigned Mr. Lotis were selected by the General Counsel from a list prepared by Mr. Tuttle. The General Counsel asked Mr. Tuttle to prepare this list on the day in October 1976 when the reorganization of the Office of the General Counsel was announced. The actual assignment of cases to Mr. Lotis was made later that day.

Assigning of appeals cases to attorneys outside the Solicitor's Office is not routine, but is not unprecedented. Sometimes an attorney outside the Solicitor's Office will ask for and get an appeals case. In other instances, attorneys or sections will possess unusual expertise or be so conversant as regards a given case that they will be assigned to handle or assist with the appeal. The procedure in the case of Mr. Lotis differed, in that he did not request the Solicitor for the assignment, nor did he have prior exposure to the FPC proceeding.

The two cases assigned Mr. Lotis (a Transco case and a Panhandle case) are major cases. Mr. Tuttle had a lawyer from the Solicitor's Office in mind for the Panhandle case before it was assigned to Mr. Lotis. In the instance of Transco, the Solicitor had received a request from a lawyer outside the Solicitor's Office who had special knowledge in the case and was interested in working on it.

If the cases had not been assigned to Mr. Lotis, the Solicitor's Office was prepared to handle them.

Stephen P. Sims

This memorandum substantially reflects a conversation I had with Mr. Sims, at his request, on January 31, 1977.

Allan Abbot Tuttle

Mr. SIMS. Paragraph 2 of this memorandum, which is signed and attested to by Mr. Tuttle, states as follows:

> The two cases assigned Mr. Lotis were selected by the General Counsel from a list prepared by Mr. Tuttle. The General Counsel asked Mr. Tuttle to prepare this list on the day in October 1976 when the reorganization of the Office of the General Counsel was announced. The actual assignment of cases to Mr. Lotis was made later in the day.

Is there anywhere stated in the Touche Ross study that this is a style of management to be emulated?

Mr. LOTIS. As I testified, I don't believe Touche Ross touched on my position other than in a complimentary manner.

Mr. SIMS. This was, in fact, a rather hasty attempt by Mr. Journey to find something for you to do, was it not?

Mr. LOTIS. That is my judgment.

Mr. SIMS. Mr. Lotis, the Touche Ross notes say that your attorneys were very well trained compared to the rest of the Office of the General Counsel. Do you believe they were treated equally and fairly in promotion?

Mr. LOTIS. In terms of promotions, we were at the bottom, the very bottom rung, of the ladder. While promotions on occasion were given to attorneys under my supervision, in the main they were the very last to receive promotions.

Mr. SIMS. Mr. Chairman, I would like to introduce into the record at this point exhibit H which depicts figures provided to subcommittee staff by the Federal Power Commission. It shows the rate of promotion by section within the Office of the General Counsel.

Mr. MOSS. Is there objection? Hearing none, it is so ordered.

[Exhibit H, referred to, follows:]

EXHIBIT H

March 7, 1977

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Rate of Promotion by Section, Office of General Counsel

(From FPC Data)

The Rates section, which Lotis headed, had the lowest rate of promotions of any of the sections headed by an Assistant General Counsel in the General Counsel's Office between October 1975-October 1976:

Section	Promotion Rate	No. Promoted	No. Eligible
Solicitor	40%	2	5
Certificates	46.2%	6	13
Legislation	25%	1	4
Hydroelectric	38.5%	5	13
Producers	100%	7	7
Rates	20%	2	10

Comparison of Promotions in Grades 9-13 October 1975-76

Section	Promotion Rate	No. Promoted	No. Eligible
Solicitor	33%	1	3
Certificates	75%	6	8
Legislation	33%	1	3
Hydrolectric	50%	4	8
Producers	100%	4	4
Rates	22%	2	9

Note: Personnel Data Tabulated from Information Supplied by the Federal Power Commission.

Mr. SIMS. Mr. Lotis, I note that for the period of October 1975 to October 1976, which is when the reorganization occurred, the promotion rate in the section you headed was approximately 20 percent, only 2 out of 10 eligible being promoted.

I also note that that is the lowest of all the operating sections. In fact, one of the sections, the Producer Section, had 100 percent promotion rate, 7 out of 7.

Does this seem to confirm your fears and suspicions which you just expressed?

Mr. LOTIS. Yes. I had never seen the documentation of it before, but it certainly confirms what I believe to be the case.

Mr. SIMS. Just to be sure we did not run into some statistical quirk, such as high GS ratings, or the absence of a slot into which they could be promoted—in other words, no head room—we looked at attorneys simply in grades 9 through 13.

I just note that once again the Rate Section comes out dead last among the operating sections.

Mr. LOTIS. Yes. Let me say on that point that I was quite familiar with what was going on at the agency. When I hired attorneys, I advised them of that fact.

I said their best opportunity is to acquire as much knowledge about the work as possible and leave the agency because promotions—because our section was not favored and their best opportunity and best chance was to learn as much as they could and get out of Government.

Mr. SIMS. Do you think Mr. Journey may have had a few laughs about this, also?

Mr. LOTIS. I have no idea.

Mr. SIMS. In your statement you said you indicated to the solicitor and Chairman Dunham, among others, that you were considering leaving the Commission. What exactly did you say to Chairman Dunham and the others regarding your intentions on this score?

Mr. LOTIS. Yes. I think the situation has to be straightened out.

I had applied for the position of administrative law judge in mid-April of 1976. I applied because I was very concerned about my own position in light of what had been happening with Mr. Lewnes.

Sometime after I had taken the examination, between mid-April and June 4, and the way my calendar shows it it was June 4 at 9 a.m., I was called to the Chairman's office.

The Chairman had said to me that he had heard rumors that I was thinking of leaving the agency and taking the position of administrative law judge, and he asked me what the status of that application was.

I told him that while I had originally intended, when I had filed the application, to leave by July 1, that at that time, which was June 4, I believe, there was no possibility that that could occur, and the way the program was set up at the Civil Service Commission it would be the fall before I could obtain any status on the roster.

I told him that would be so close to the election that I may very well not leave this agency.

He said that he had no problem with that decision. I had asked him at that time whether he thought any changes would occur as a result

of the Touche Ross study prior to the election. He said other than some housekeeping matters, he thought not because we would be coming too close to the election.

He also said to me at that time that if any differences occurred between myself and the General Counsel between now and then, that I should advise him of that and he would create a higher position for me within the agency.

Mr. SIMS. Does that strike you as something that Touche Ross might endorse?

Mr. LOTIS. I have no idea of that. I was quite surprised at the time because, while I had had differences with Mr. Journey in the past, I could not anticipate any differences between then and the election which could cause him to make the statement, so I was quite surprised.

I said nothing and the meeting ended.

Later that same day, at 4 p.m. on June 4, I was called in to a meeting with the General Counsel and the Executive Director of the agency. The subject of the meeting was the electric settlement task force which was just getting off the ground.

The Executive Director handed the meeting over to Mr. Journey, who was in the midst of explaining what was intended with the electric settlement task force.

I was asked for my cooperation. I told them they would get it but I thought they would fail, that the task force would fail.

Mr. Journey then received a call and left his office.

At that time the Executive Director said to me:

> Jack, let Mr. Journey do whatever he wants to with this task force. Let him alone. If any problem arises between you and Mr. Journey, we will have a position for you. I have taken care of this. I have spoken to the Chairman about it and he has cleared it.

Mr. SIMS. Before we get into the electric rate settlement task force, I want to make it clear that there was nothing in your application for an administrative law judge or in your conversations with Mr. Dunham or any of the other senior decisionmakers at the Commission which made it clear that you were going to leave before the election. It that the case?

Mr. LOTIS. No. Prior to June 4, and I think that was the date the Chairman called me to his office, prior to June 4, I think the impression might have been conveyed by myself and by others that I was definitely leaving and was going to leave by July 1, but I clarified that with the Chairman at the June 4th meeting.

Mr. SIMS. So there was no reason to exclude you from the reorganized Office of General Counsel, was there?

Mr. LOTIS. No.

Mr. SIMS. Thank you.

Could you describe briefly what the electric settlement task force is?

Mr. LOTIS. The electric rate settlement task force was created, as best I can determine, by memorandum from the Executive Director dated June 28, 1976.

It consisted of about four to six personnel. Its principal objective, in terms of significant aspects of what it should be doing, was that it had the authority to overrule the investigatory staff in any case pending before the Commission in terms of the final position that the staff would take for settlement.

Mr. SIMS. So the task force had the authority to overrule the staff which would be acting under the procedures you described in your opening statement; is that correct?

Mr. LOTIS. They had the authority to overrule a staff position for settlement which was developed on the basis of my settlement ground rules, which I previously testified to.

Mr. SIMS. Are you aware of any instances where the task force overruled the staff and had a case settled at a level different from the staff position?

Mr. LOTIS. No.

Mr. SIMS. Did this authority concern you?

Mr. LOTIS. It concerned me very much.

Mr. SIMS. What was the danger therein?

Mr. LOTIS. I was very much concerned because the technical staff which conducts these investigations must certify that settlements are in the public interest and are just and reasonable. The law is that a settlement is a disposition on the merits.

My ground rules for settlement reflected that fact. I was very much concerned with a technical witness being coerced by a supervisor to change his position to achieve settlement against his better judgment.

Mr. SIMS. Did you speak to the chief of the task force about this?

Mr. LOTIS. Yes; and let me finish the remainder of my concern relating to the prior question.

Justified or not, my concern was also the statements made about my receiving a higher position if I had any disagreement between June 4 and the election. That was another aspect of my concern.

Mr. SIMS. Prior to speaking to the task force director, did you give any special instructions to your staff which reflected this concern?

Mr. LOTIS. Yes. Right after the June 4th meeting, I called a meeting of my staff and I told them to be particularly careful in all settlements to follow my instructions, settlement and negotiating instructions, carefully, and particularly with respect to rate of return.

I also at about the same time talked to Mr. Lindsey, heading up the settlement task force of the Commission. I told Mr. Lindsey how I construed the June 28th memo of the Executive Director giving him authority to overrule the staff position. Mr. Lindsey agreed with me.

I told him under those circumstances, while I respected that position, I also had an obligation that I felt I must fulfill, and I told him that if ever that occurred, I would call the task force member to the witness stand at the time the settlement to the Commission was certified to testify under oath, or to verify by means of affidavit, that the settlement agreed to by him was just, reasonable, and in the public interest.

I also told him that if the technical staff man who had spent weeks, maybe months, investigating this matter thought differently in his professional judgment, then I was also planning or thinking of calling him to the stand to present his views.

Mr. SIMS. Did you discuss the operations of the task force with representatives of Touche Ross?

Mr. LOTIS. Yes; in September I did.

I told Touche Ross I was very much concerned for the same reasons I have just expressed. I also told Touche Ross that they had not been

effective, they had never overruled one staff position, perhaps because of my instructions which I thought was fairly well-known by that time. I thought it was a waste of money and staff.

Mr. Lindsey was a very good man and I thought he should be performing the responsibilities under his job title, which was the Deputy Chief of the Bureau of Economics.

Mr. SIMS. What was Touche Ross's response?

Mr. LOTIS. Touche Ross's representative told me that they would investigate this matter independently.

Later they came back—I should say the Touche Ross representative who at that time was a Mr. Doyle came back—to my office. I asked him whether he had investigated it. He said he had. He said he agreed with me, and that Touche Ross would recommend to the Commission that the task force be dissolved.

Mr. SIMS. Do you know what happened to that recommendation?

Mr. LOTIS. Mr. Doyle came back to me a few days later and told me that he had met with either the Executive Director, the Chairman, or both—I am not sure of the precise number of people he met with, but I thought it was either or both of them—and discussed the matter with them.

They thought that in light of the Chairman's public statements as to the efficiency and the worthwhileness of the task force, that it should be continued for the time being and phased out rather than immediately dissolved.

Mr. SIMS. So this was clearly a Touche Ross recommendation that was not taken.

Mr. LOTIS. It was decided it would be phased out. The task force is still in existence today.

Mr. SIMS. Mr. Chairman, I would simply like to note for the record what Touche Ross did say about this task force.

On page ii–9 of the October 1976 study entitled "Phase II–B——

Mr. GORE [presiding]. Is there objection?

Mr. SIMS. They say:

> The settlement task force constitutes an additional organizational element which must be coordinated and scheduled by staff. Additional staff effort must be expended in familiarizing the task force with each case and the staff position in each case.

They add:

> On the other hand, the settlement task force is composed of experienced FPC personnel who may be increasing the effectiveness of the informal settlement discussions. We recommend that the effectiveness of the settlement task force be evaluated to determine if a continued specialized settlement function is warranted.

I submit that Touche Ross printed in their final report exactly what you suggested they were going to do, exactly what they told you.

I imagine that the events that you have just recounted have bothered you a great deal. Could you summarize your feelings about all this for the committee?

Mr. LOTIS. Yes. They are very intense, so I thought I would read them to you.

I understand from Mr. Journey's statement to the committee that he is relying on the Touche Ross report to support the changes made in the October 12, 1976 reorganization.

Touche Ross' notes are before you. I urge you to read them carefully.

"Intensive learning experience at FPC under Lotis," says Touche Ross. The General Counsel's response is to remove all attorneys out from under my supervision.

Touche Ross says I did my job and they say I did it exceptionally well, better than any other division in the Office of the General Counsel.

But that is precisely the point: I succeeded with the help of many dedicated and capable attorneys and secretaries in making the regulatory process function smoothly, efficiently, and speedily in my area of responsibility at minimal cost to the taxpayer. Obviously, this cannot be tolerated.

I also made recommendations for cost and manpower savings which Touche Ross agreed could be achieved only to find out that it would be better that such savings be delayed to avoid embarrassment to officials whose public statements would prove to be wrong.

I carried out my responsibilities to the public interest in the AEP case in docket No. E–8888 against significant obstacles only to find out that I was not expected to do that good a job.

The Natural Gas and Federal Power Acts say that consumers are entitled to adequate and reliable utility service at the lowest reasonable rate. Achievement of that objective, whether through an independent regulatory agency or through an executive branch officer, can be attained only if the price-setting process is handled with care by public officials selected on the basis of their sensitivity to the rights of consumers who must ultimately foot the bill but who are not present and participating in the process. They must rely on public officials to protect their interest.

These same public officials should also realize the need for a strong healthy utility industry if the country's energy needs are to be served. The rights of consumers and the financial requirements of the utility are not incompatible—a balance can be struck.

Last, but not least, public officials must be selected on the basis of their competence and high ethical standards which will be necessary to restore public confidence in the utility price-setting process.

Mr. SIMS. Have you become clear in your own mind as to the motive for your reassignment on the part of Mr. Journey or any of the Commissioners?

Mr. LOTIS. No. I know I have done my job. No one has said otherwise.

Mr. SIMS. You know of no justification is what you are saying. Is that right?

Mr. LOTIS. None.

Mr. SIMS. Thank you very much.

I have no further questions.

Mr. GORE. Mr. Lent?

Mr. LENT. Thank you very much, Mr. Chairman.

Mr. Lotis, you indicated in your recent answer that you know of no motive or justification for your change of position. Were you one of those officials of the Federal Power Commission who testified at one time or another before a committee or subcommittee of the House of

Representatives and do you feel your change in assignment was a result of active retaliation?

Mr. LOTIS. I have never testified before a House or Senate committee.

Mr. LENT. So you do not fit into the same category as Mr. Mamone or Mr. Lewnes or any of the others?

Mr. LOTIS. If that category means whether I testified before, the answer is: No, I have not testified before.

Mr. LENT. I am a little curious. Perhaps you can straighten me out, Mr. Lotis.

What is it that you think you did that would have brought about your transfer?

Mr. LOTIS. I think I did my job.

Mr. LENT. Was there anything that was ever said to you about the way in which you did your job that would give us some clue as to why this transfer occurred?

Mr. LOTIS. I outlined in my prepared statement how I did my job. What precise facets of how I performed my responsibilities which might have caused anxiety or disagreement by top management, I don't know.

Mr. LENT. You did say during questioning by counsel that prior to the 4th of June you may have conveyed the impression that you were going to leave the Federal Power Commission.

Mr. LOTIS. I am certain of that. I am certain that I must have had discussions, perhaps with the Executive Director and perhaps the Chairman indicating that I was going to take an ALJ position by July 1 and I thought at that time things would work through.

Mr. LENT. Did you ever say anything else that might have conveyed that impression to your superiors that you were a short-timer?

Mr. LOTIS. Yes. Right after I applied in April, I went to see Mr. Journey and I told him that, because I expected Civil Service to contact him.

The point of the fact is, though, that on June 4 at my meeting with the Chairman I told him that I may very well stay until the election. He recognized that.

Mr. LENT. Through the election.

Mr. LOTIS. Through the national election in November.

Mr. LENT. In 1976?

Mr. LOTIS. Yes.

Mr. LENT. So that this reorganization took place in October of 1976 and you had previously indicated to the Chairman that you were thinking of leaving after the election of 1976.

Mr. LOTIS. No. I told him in our conversation that I was going to stay, it could very well be that I would stay on, because by the time I would be put on the Civil Service roster it would be about October. By that time, I wanted to see what the outcome of the election was and whether the administration changed and I would have any future with the agency.

Mr. LENT. Is it not a fact that you had on several occasions sought out other employment?

Mr. LOTIS. During what period?

Mr. LENT. Prior to the reorganization? I mean other than the application for administrative law judge.

Mr. LOTIS. During what time frame?

Mr. LENT. During any period that you had worked for the Federal Power Commission and prior to the October 1976 reorganization.

Mr. LOTIS. I am trying to think of the last discussion.

Mr. LENT. Let me ask some specific questions.

Did you ever go to another Federal agency looking for a job?

Mr. LOTIS. Ever?

Mr. LENT. Ever before the October 1976 reorganization.

Mr. LOTIS. I don't believe so.

Mr. LENT. You asked for a job. This is sort of a monumental thing in most people's lives. They would remember whether they ever sought out a job.

Mr. LOTIS. I did not to the best of my knowledge.

Mr. LENT. No one else would have done it under your name for you, would they?

Mr. LOTIS. I am saying I did not.

Mr. LENT. Did you ever interview for a position with any other agency or with a private law firm or with any other potential employer?

Mr. LOTIS. Prior to the October 12th reorganization—no governmental agency. In terms of private, I think my last discussion was with a firm which was not engaged in the utility practice of law, but that was in 1975, late 1975.

Mr. LENT. Wasn't it a matter of common knowledge around the General Counsel's office that you were unhappy and you were interested in finding some other employment, either as a ALJ or in some other capacity.

Mr. LOTIS. There is no question about it, that prior to the meeting with the Chairman, which I believe was June 4, I had conveyed the impression that I would leave, that I thought I would leave if I could get something I liked.

Mr. LENT. So when the reorganization day of reckoning came, you were assigned to handle some cases under the direct supervision of Mr. Journey—is that right?

Mr. LOTIS. Yes.

Mr. LENT. Is it fair to say you became, in effect, Mr. Journey's assistant?

Mr. LOTIS. No. Technically that may appear on the organization chart, but since the reorganization Mr. Journey has never spoken to me. I would hardly call that an assistant-type relationship.

Mr. LENT. One of these cases you were asked to handle was the so-called Panhandle case.

Mr. LOTIS. Yes, sir.

Mr. LENT. The other one was the so-called Transco case.

Mr. LOTIS. Compensation case, yes, sir.

Mr. LENT. You were put on preparing briefs for these two cases.

Mr. LOTIS. Yes, sir.

Mr. LENT. And these two cases ultimately would be argued before the U.S. Supreme Court?

Mr. LOTIS. I have no way of knowing. They were in D.C. Circuit. Whether they would get to the Supreme Court, I don't know.

Mr. LENT. They are at the Court of Appeals level now?

Mr. LOTIS. Yes, sir.

Mr. LENT. It is generally assumed they will ultimately reach the U.S. Supreme Court.

Mr. LOTIS. No.

Mr. LENT. It is assumed they are not going to reach the Supreme Court?

Mr. LOTIS. I don't know whether the Supreme Court would grant ceriorari on those cases or not.

Mr. LENT. Is it not a fact that both the Panhandle and the Transco cases are deemed to be very important cases in the Federal Power Commission, major cases?

Mr. LOTIS. Yes.

Mr. LENT. So you consider it a demotion that you were transferred from the job you previously had to work on briefs for these two very important cases and to defend the position of the Federal Power Commission possibly before the U.S. Supreme Court?

Mr. LOTIS. Absolutely yes. Before I had jurisdiction over 200 pending cases before the Commission to determine not only how the cases were tried, but because of the Commission's rules of practice I also advised the Commission on the disposition of those cases. I was in a policymaking position.

I am not now. I am working as a trial attorney at the appellate level on two cases, albeit important ones.

Mr. LENT. You were told or advised by Mr. Dunham during one of your conversations with him, as I recall your earlier testimony, that if any problems were to arise between you and Mr. Journey you should come and see him, meaning Chairman Dunham?

Mr. LOTIS. Yes, sir.

Mr. LENT. I ask you now—following the October reorganization did you seek out Chairman Dunham as he had suggested earlier?

Mr. LOTIS. He said if I have any problems between that time of the conversation, which was June 4, and the election, to see him. I didn't consider the reorganization when it occurred—maybe I do on subsequent reflection—a problem to meet. I don't know why I was reorganized down in my position.

Mr. LENT. You say reorganized down. You suffered no diminution in salary level?

Mr. LOTIS. That is about the only thing, but that is not the important thing to me.

Mr. LENT. Your testimony is that you don't really know why you were transferred down.

Mr. LOTIS. That is correct.

Mr. LENT. It had nothing to do with your cooperation with a committee of the House of Representatives?

Mr. LOTIS. Your are right. I have never testified before a House committee.

Mr. LENT. Is it not true that if an individual feels he has been wronged by an administrative action such as transfer, that that individual has the right to file a grievance with the Civil Service Commission? Is that true?

Mr. LOTIS. That is true.

Mr. LENT. Did you take advantage of that right which you have as a Federal employee?

Mr. LOTIS. I did not because I believed that process to be very demeaning and also because we were 1 month away from the national election and I expected, my expectations were that the Democrats would come into office, and the people I would be filing grievances against would be long gone and have little interest in this case and at that time I was hoping I would have little interest.

Mr. LENT. You would also have a right to file a grievance with the union. Is that correct?

Mr. LOTIS. I believe you are right.

Mr. LENT. You didn't exercise that right?

Mr. LOTIS. For the same reason.

Mr. LENT. For the same reason?

Mr. LOTIS. Yes.

Mr. LENT. You also have a right, I believe, to take your grievance to the full Commission and present it. Is that correct?

Mr. LOTIS. I wasn't aware of that, but I may have that right.

Mr. LENT. You did not exercise that right?

Mr. MOSS. Let's first establish whether there is such a right.

Mr. LENT. You did not take your grievance before the full Commission? Is that correct or not?

Mr. LOTIS. That was no big secret. The Commissioners personally knew what my grievance was. They agreed with me. Other than the Chairman, whose thoughts I did not know, everyone was expressing sympathy for what had happened. There was no question that the way the reorganization took place was under the auspices of the Chairman under authority delegated to him. I just couldn't see that recourse to the full Commission, if that was available, would get me anywhere because the individual responsible for the action was the Chairman, as I understood it.

Mr. LENT. You cannot help me out of my confusion, then. I am trying to figure out why you are a witness before this committee because you were not one of those who cooperated with the committee and you can't really tell us why it is you were transferred other than simply to say you were doing your job. Maybe the chairman will enlighten me.

Mr. MOSS. The witnesses do not elect to come before this committee. The Chair determines the witness he feels necessary to develop a case on the record.

The witness is before the committee because we subpenaed him. I wanted him before us because the handling of his case by the Commission demonstrates, in my opinion, a degree of incompetency on the part of the Commission in carrying out its responsibilities to protect the public interest in the disposition of these cases. That is why he is here.

He could not possibly tell you why he was here because I didn't tell him.

Mr. LENT. It is a mystery to several of us, then.

Mr. GORE. Mr. Chairman?

Mr. LENT. I understood in his opening remarks the chairman indicated that the purpose of the hearing was to study whether or not retaliatory actions had been taken against FPC employees who cooperated with the committees or subcommittees of the House.

This one obviously does not fit into that pigeon hole. I am trying to figure out what pigeon hole he does fit into.

Mr. Moss. Let the Chair again explain.

The other day I went to the extreme of reading into the record for the second time my opening statement where I laid out three reasons we were inquiring. The last reason was the one which seems to intrigue the gentleman from New York: A third, and no less relevant, concern is whether or not any of the witnesses suffered because of testimony at or involvement in hearings of a committee of the Congress.

I continue on to cite the relevant portions of title 18.

But I also started out by saying these hearings also have direct relevance to the proposed executive branch reorganization.

"Then a second general point to which I would like to direct the subcommittee's attention concerns"—and then: "The regulations and the change in the operations of the respective units, to render them in my opinion less competent to carry out their assignments."

Therefore, there are three reasons.

Mr. LENT. Does the witness have exhibit G before him?

Mr. LOTIS. Yes, sir.

Mr. LENT. Would you refer to the second paragraph?

Mr. GORE. Would the gentleman from New York yield?

Mr. LENT. I will yield as soon as I finish with this one question.

The statement is made, and these are the notes of the Touche Ross study:

> Attorneys in Lotis' section rarely remain at the Commission long enough to make significant advances in grade level. Most leave to go with outside law firms.

Do you agree with that statement which is in the Touche Ross study?

Mr. LOTIS. Yes.

Mr. LENT. If you will refer to exhibit H, which was previously put into evidence, this is the exhibit which indicates that the promotion rate in your section was only 20 percent.

Mr. LOTIS. Yes.

Mr. LENT. Is it not perfectly understandable that the promotion rate would be only 20 percent in your division in light of the findings of the Touche Ross study that attorneys rarely remain at the Commission long enough to make significant advances in grade level?

Mr. LOTIS. No. I am not sure there is a correlation between the two, only because I don't know the basis on which exhibit H was prepared. I don't know how the percentages were calculated and what precisely was done to arrive at those percentages, so I cannot agree with that at this point.

Mr. LENT. Exhibit H was prepared by the staff of this subcommittee. The point of exhibit H is to demonstrate that the Rate Section, which you head, had the lowest rate of promotions of any of the sections headed by an Assistant General Counsel in the General Counsel's office between the dates October 1975 and October 1976.

You will see that of the number of eligible men and women in your division, only 2 were promoted for a promotion rate of 20 percent, 2 out of 10.

Now I ask you whether that is not explainable by the finding of the Touche Ross study which is that there is a high turnover in your particular division.

Mr. LOTIS. No, for this reason: Attorneys coming into my section will come in at about a GS–11 level. They can remain at that level for about 2 years while another attorney coming in at the same level in another section would be promoted in 1 year.

My attorneys would leave rather rapidly, as Touche Ross explains, leave in 2 or 3 years, and that is usually the case.

That perhaps explains these figures. I am sure they will, because there are many attorneys at the low grade levels who had not been promoted in my section. I assume that is why I say these figures do not need to correlate with the Touche Ross statement. They are apples and oranges.

Mr. LENT. I have no further questions, Mr. Chairman.

Mr. MOSS. Mr. Gore?

Mr. GORE. Thank you, Mr. Chairman.

I wanted to pursue the why of the reorganization concerning you, Mr. Lotis, just briefly.

It is true that you have never appeared as a witness before this subcommittee or any other subcommittee; but is it not also true that communications from you to Mr. Journey have been included in the proceedings of this subcommittee?

Mr. LOTIS. Yes, I believe they have.

Mr. GORE. If I am not mistaken, some communications which might have been very embarrassing to Mr. Journey were included as part of the record of this subcommittee last July in hearings in Indiana. They related to conversations between you and Mr. Journey concerning an electric rate case that involved Ohio Electric. Is that correct.

Mr. LOTIS. Yes.

Mr. GORE. Ohio Electric is a subsidiary or an affiliate of the American Electric Power Holding Co. Is that correct?

Mr. LOTIS. Yes.

Mr. GORE. You were involved in this rate case and involved in negotiations with the attorneys for Ohio Electric during the time that these memoranda refer to. Is that correct?

Mr. LOTIS. Not personally, but I supervised the negotiations.

Mr. GORE. According to the record of this subcommittee last July, and I do not believe that has to be entered into the record——

Mr. SIMS. It already has been.

Mr. GORE. Let the record show this is included in the proceedings of this subcommittee of last July.

You were the recipient of a memorandum from Mr. Journey suggesting that you speed up settlement in this case, or that those working under your direction speed up the settlement in this case. Is that correct?

Mr. LOTIS. Yes.

Mr. GORE. You wrote a memorandum back to Mr. Journey advising him again of the "consistent blatent refusal of Ohio Electric to respond to staffs repeated requests for technical data and information necessary to pursue this Commission's authorized investigations."

Skipping down somewhat in the memorandum, you continue:

Ohio Electric's apparent attempt to frustrate this Commission's authorized investigation by steadfast defiance of trial staff's efforts to secure disclosure is compounded by the fact that until such investigation is completed Ohio Electric will continue to collect rates which may be excessive and, therefore, unlawful.

Skipping further, you continue:

I am personally distressed at what appears to me to be an attempt by Ohio Electric to circumvent the normal and established rate process. Equally disturbing is any suggestion that I participate in such maneuvering. I will not do so.

Do you have any comment?

Mr. LOTIS. I might say about that one point. Those views were not only my views, but that memo had been looked at very closely and had been concurred in by the Chief of the Rate Division of the Bureau of Power and Chief of the Rate of Return Division within the Office of Accounting and Finance.

Mr. GORE. As a result of continued pressure from Mr. Journey, this case was settled in a way that staff disagreed with?

Mr. LOTIS. I wouldn't say that. I would like to fill in the gaps leading up to the settlement, if I may.

Mr. GORE. Fine.

Mr. LOTIS. After I sent the memo to Mr. Journey which you just described, Mr. Journey said to me that unless I conducted the settlement conference which he was ordering me to conduct, I would be removed from the case.

I suggested what amounted to a compromise—that I would meet and have the technical staff meet with the Ohio Electric people on the day he had indicated provided we were given the opportunity to compel Ohio Electric to disclose the data we needed at that conference.

Mr. GORE. After the settlement were there any further unusual actions on the part of Mr. Journey regarding this case?

Mr. LOTIS. After the case was settled, Mr. Journey called me into his office and said he wanted an order prepared approving that settlement.

I told him I didn't see the hurry because we first had the notice of settlement, and the usual notice time was 2 weeks.

He said he didn't want the settlement notice.

Mr. GORE. He didn't want the public informed of it?

Mr. LOTIS. That is the only conclusion I can draw. He did not want the settlement noticed.

I said to him that I could not do that and I would not do that.

He reneged and said, "Settle. Put up a notice but make it for about a 2- or 3-day common period."

I could see I was running into another problem with him, and I advised the staff counsel in the case to prepare a notice, put 2 or 3 days in there, but to take it to the Secretary of the Commission, tell the Secretary specifically, "Do you agree with 2 or 3 days being proper notice?" The Secretary did not agree, and he put the standard 2-week notice in.

Mr. GORE. Did you ever get feedback from Mr. Journey about your action in circumventing that request regarding this brief notice?

Mr. LOTIS. I reveived no notification from him as to that.

Mr. GORE. Did he ever tell you why he was in such a hurry about the *Ohio Electric* case?

Mr. LOTIS. I asked him about that, what the rush was in approving this settlement since the company itself drafted the settlement document, and in the document—this was about July of 1975—in the document itself drafted by Ohio Electric, they provided that as long as the settlement was approved by the Commission by October 1, its provisions would remain in effect and it would be an effective disposition of all issues in the case.

He told me that he knew more about this case than appeared in the public files.

At that point I didn't want to hear anything more.

Mr. GORE. In other words, he indicated that he was basing his actions on information that did not appear in the hearings or before the Commission in a formal manner but that he had knowledge that you were not privy to, and you did not pursue that matter with him.

Mr. LOTIS. Yes.

Mr. GORE. In summary on that matter, it is fair to say you did not object to the final settlement in the case, but rather the manner in which it was conducted by Mr. Journey?

Mr. LOTIS. Yes.

Mr. GORE Does he intervene so intensively in every case coming before the FPC?

Mr. LOTIS. No.

Mr. GORE. Mr. Chairman, at this point I would like to introduce into the record a statement prepared and signed by Ms. Lynn Hargis, which I believe the staff has available.

Mr. MOSS. Without objection, the item will be made part of the record.

[The statement referred to follows:]

STATEMENT OF LYNN HARGIS

I am a trial attorney in the electric rate section of the Federal Power Commission. In that capacity, I was interviewed by the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce of the House of Representatives and subpoenaed to give testimony at the hearings to be held beginning March 9, 1977. Subsequently, I was told that there would not be time for me to appear as a witness, and the Subcommittee staff requested that I submit an affidavit describing a conversation they had learned of in a prior interview.

On February 15, 1977, I participated as Staff Counsel in a settlement conference convened in a case involving one of the American Electric Power Company affiliates, Michigan Power Company. After a day-long session of sometimes difficult negotiations, a settlement was reached. During the course of the negotiations I had firmly defended the Staff rate of return witness' recommendation for return on common equity which seemed low relative to other recent returns approved by the Commission. I explained to the Company that I had checked with members of the Office of General Counsel who had assured me that—under the special circumstances present in this case—the rate of return recommendation was reasonable.

At the conclusion of the negotiations, I was in conversation with American Electric Company's new in-house counsel, Mr. Edward Caine, when we were joined by Mr. John G. Howard, Senior Vice President in charge of rates of the American Electric Power Service Corporation. Mr. Howard first restated his views on the importance of an adequate rate of return to a utility, and then asked if the member of the Office of the General Counsel with whom I had conferred was Drexel Journey. I replied that I had not spoken to Mr. Journey and explained that staff counsel did not usually go so high up for advice on routine rate cases.

Mr. Caine then remarked as a pleasantry that when he became counsel for AEP, Mr. Journey told him to feel free to come to him whenever he needed anything. Mr. Caine added jokingly that he had missed his opportunity by not going to Mr. Journey over the present case (since the Company finally settled on Staff's rate of return).

Mr. Howard then said, seriously, "You have changed the way these settlement negotiations are handled," or words to that effect. I asked what he meant. He answered that in the past a lot more had been accomplished by "quiet talks." "When we had a rate case, we would go to Drex Journey's office and discuss things," he said (or similar words), "then later we would have a settlement conference." Mr. Howard added in words that I believe are almost verbatim, since they impressed me strongly at the time: "It may not have been democratic, but at least you knew where you stood."

At that point the implications of what he was saying to me began to sink in, and—not knowing how to deal with it—I changed the subject. However, realizing it might become important that I remember the conversation as accurately as possible, I made a careful mental review of it later that day and repeated it to my roommate.

Signed: LYNN HARGIS,
March 11, 1977.

[The following additional material was received for the record:]

AMERICAN ELECTRIC POWER *Service Corporation*

2 Broadway, New York, N. Y. 10004
(212) 422-4800

JOHN G. HOWARD
Senior Vice President-Rates

April 20, 1977

Hon. John E. Moss, Chairman
Subcommittee On Oversight And Investigation
Interstate and Foreign Commerce Committee
House of Representatives
Congress Of The United States
House Office Building
Washington, D. C. 20426

Dear Sir:

On April 6, 1977, I received a telphone call from Mr. Bernard Wunder a staff attorney with the Subcommittee On Oversight And Investigations of The Committe On Interstate And Foreign Commerce of The House of Representatives. Mr. Wunder advised me that Lynn Hargis, Esquire of the legal staff of the Federal Power Commission had filed with your Subcommittee a statement relating to certain comments allegedly made by me and by Edward A. Caine, Esquire, Senior Rate Counsel of American Electric Power Service Corporation at a settlement conference held at the Federal Power Commission on February 15, 1977. I asked Mr. Wunder to send me a copy of Ms. Hargis' statement. On April 12, during my absence from my office, a copy of the statement was received. I read the statement upon my return to the office on April 13, 1977 and I hereby submit my response to the allegations and implications contained therein, and I do so to the best of my knowledge, information and belief:

1. I am a Senior Vice President of American Electric Power Service Corporation having as my areas of responsibility matters including rates, interconnection arrangements and special contracts. In that capacity I, together with a number of other people, represented Michigan Power Company, an American Electric Power System Company, at a settlement conference involving FPC Docket No. ER76-781. At the settlement conference, held at the offices of the FPC, there were in addition to the representatives of the Company, representatives of the Company's wholesale for resale customers and the Staff of the Commission.

2. Ms. Hargis has alleged that at the conclusion of the negotiations, in the presence of Mr. Caine, I "restated" my views with respect to the importance of an adequate rate of

return to a utility and then asked if the member of the Office of the General Counsel with whom she had conferred (regarding the propriety of the rate of return on common equity reflected in the Staff's "top sheets", which constitute a summary cost of service study) was Drexel Journey.

There were no conversations between Ms. Hargis and me relating to any matter of substance which did not take place in the presence of all of the participants at the conference. Insofar as the discussion regarding rate of return is concerned, my position was that the rate of return on common equity, which was reflected in the Staff's "top sheets" was considerably below that which had been reflected in other recently issued "top sheets". I sought to determine whether this was the result of some change in Commission policy or whether it was solely the point of view of Ms. Hargis and the members of the Technical Staff who were assisting her. It was in pursuit of this inquiry that I asked whether or not the Staff's position had been approved by any of Ms. Hargis' superiors. I do not know on what basis she drew any inference of impropriety from my question and I deny that any such implication was contained in my question.

3. Ms. Hargis has also alleged that I had a discussion with her in Mr. Caine's presence in which I stated that:

(a) "You have changed the way these settlement negotiations are handled."

(b) "A lot more had been accomplished by 'quiet talks'."

(c) "When we had a rate case, we would go to Drex Journey's office and discuss things - - then later we would have a settlement conference."

(d) "It may not have been democratic but at least you knew where you stood."

I did not make any of these or similar statements to Ms. Hargis or to anyone else. To the best of my knowledge and belief I have not seen or talked with Mr. Journey for three or four years. On earlier occasions, perhaps as long ago as ten years, I did meet with Mr. Journey and other FPC Staff members and representatives of an AEP System Company's affected wholesale customers in settlement conferences which related to those cases. Such meetings were held in public rooms of the Commission, never in anyone's private office. In particular, to the best of my recollection I have never been on any occasion in Mr. Journey's office nor have I said to anyone that I had been. There were no improprieties on any occasion of past settlement conferences and I have never said to anyone that there were any.

4. Finally, Ms. Hargis alleges that Edward A. Caine, Senior Rate Counsel of AEPSC, in conversation with her in my presence stated that Drexel Journey told him "to feel free to come to him whenever he needed anything" and that Mr. Caine jokingly stated that he had missed his opportunity by not going to see Mr. Journey relative to the Michigan Power wholesale case. I have no recollection of Mr. Caine having said these things or similar ones to Ms. Hargis or to anyone else.

In the telephone conversation with Mr. Wunder on April 6 when he told me about Ms. Hargis' statement he asked whether her statement was true. My statement above is in response to that question. I request that this letter be made a part of your Subcommittee's Report.

I have taken the liberty of sending copies of this letter to all members of your Subcommittee, to Mr. Wunder and to Ms. Hargis.

Yours very truly,

John G. Howard

JGH:cc

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared John G. Howard, who being by me first duly sworn, doth depose and say: the said John G. Howard that he is Senior Vice President - Rates of American Electric Power Service Corporation, and that he has read the foregoing letter signed by him and knows the contents thereof, and that the statements therein made are true and correct to the best of his knowledge, information and belief.

John G. Howard

Sworn to and subscribed before me
this 20th day of April, 1977

William J. Prochaska
Notary Public

WILLIAM J. PROCHASKA
Notary Public, State of New York
No. 43-4636690
Qualified in Richmond County
Certificate filed in New York County
Commission Expires March 30, 1978

Edward A. Caine
Senior Rate Counsel
American Electric Power
Service Corporation
2 Broadway, S. 1159
New York, New York 10004
April 21, 1977

Honorable John E. Moss, Chairman
Subcommittee on Oversight and Investigation
Interstate and Foreign Commerce Committee
House of Representatives
Congress of the United States
House Office Building
Washington, D. C. 20426

Dear Sir:

I have, on April 11, 1977, been apprised of the fact that a statement, dated March 11, 1977, has been filed by Lynn Hargis, Esquire of the legal staff of the Federal Power Commission, which relates to certain comments alleged to have been made to her by me and by Mr. John G. Howard in my presence. Having read a copy of the statement, I hereby submit my response to the allegations and implications therein contained, and I do so to the best of my knowledge, information and belief:

1. On January 3, 1977, I became Senior Rate Counsel of American Electric Power Service Corporation. In that capacity, I represented Michigan Power Company, an affiliated utility, in its FPC Docket No. ER76-781 settlement conference with its wholesale for resale customers and the staff of the Commission, which conference occurred at a hearing room of the Commission in Washington, D. C. on February 15, 1977, pursuant to the Commission's Rules and Regulations.

2. Lynn Hargis, Esquire has alleged that, after the conclusion of the conference, I "as a pleasantry" mentioned to her that upon my becoming employed by the American Electric Power Service Corporation, Drexel Journey, Esquire (General Counsel of the Commission) told me "to feel free to come to him whenever [I] needed anything."

---

a. I have no recollection whatever of making this or any similar comment to Lynn Hargis, Esquire at any time.

b. Upon my new employment, I in fact made a courtesy telephone call to Mr. Journey in his capacity as General Counsel of the Commission; I informed him that I had been so employed and that I would represent the AEP Companies before the Commission; Mr. Journey thanked me for my courtesy and congratulated me upon my new employment.

c. At no time has Mr. Journey ever discussed any substantive matter with me involving American Electric Power Company, Inc., or any of its subsidiaries, or any other company; nor has Mr. Journey ever offered to do anything for me; nor to the best of my knowledge, information and belief has he ever offered to do anything for American Electric Power Company, Inc., or any of its subsidiaries, or any other company.

3. Lynn Hargis, Esquire has also alleged that, after the conclusion of the conference, I "jokingly" commented that I "had missed [my] opportunity by not going to Mr. Journey over the present case". I have no recollection whatever of making this or any similar comment to Lynn Hargis, Esquire and to the best of my knowledge, information and belief, I have never made this or any similar comment to anyone at any time.

4. Lynn Hargis, Esquire has also alleged that, after the conclusion of the conference, Mr. Howard asked whether Mr. Journey had reviewed the staff position regarding rate of return on equity; I specifically recall the question and the answer.

a. To the best of my knowledge, information and belief, the question and answer occurred during the course of the conference and the question asked was whether her position relating to return on equity was the position of the particular staff members present at the conference, or whether her position had been taken or reviewed at the highest legal staff level, that is by Mr. Journey; Mr. Howard clearly stated that the reason for the question related to the fact that the

Honorable John E. Moss, Chairman
Subcommittee on Oversight and Investigation
Washington April 21, 1977

staff position as to rate of return on equity had been substantially higher in many recent proceedings.

b. To the best of my knowledge, information and belief, nothing improper was implied by the question and nothing improper should be inferred from Mr. Howard's asking it.

5. Lynn Hargis, Esquire has also alleged that, after the conclusion of the conference, Mr. Howard made certain other comments to her in my presence. To the best of my knowledge, information and belief, neither Mr. Howard nor anyone else has ever made these or any similar comments to me or in my presence.

I have concurrently sent a copy of this letter to each member of the Subcommittee and to Lynn Hargis, Esquire.

Respectfully submitted,

Edward A. Caine

EAC/bh

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Edward A. Caine, who being by me first duly sworn, doth depose and say: the said Edward A. Caine that he is Senior Rate Counsel of American Electric Power Service Corporation, and that he has read the foregoing letter signed by him and knows the contents thereof, and that the statements therein made are true and correct to the best of his knowledge, information and belief.

Sworn to and subscribed before me
this 21st day of April, 1977

Notary Public

WILLIAM J. PROCHASKA
Notary Public, State of New York
No. 43-4636690
Qualified in Richmond County
Certificate filed in New York County
Commission Expires March 30, 1978

April 26, 1977

Lynn Hargis
Office of the General
Counsel
Federal Power Commission
825 North Capitol Street
Washington, D. C. 20426

Honorable John E. Moss, Chairman
Subcommittee on Oversight and Investigation
Interstate and Foreign Commerce Committee
House of Representatives
Congress of the United States
House Office Building
Washington, D. C. 20426

Dear Chairman Moss:

I have received copies of affidavits from Mr. John G. Howard and Mr. Edward A. Caine relating to the statement I submitted to your Subcommittee.

Mr. Howard is not telling the truth regarding his remarks about past settlement conference practices. It is possible that Mr. Caine did not hear those remarks, but I believe he did. By inference, Mr. Howard has indicated that I was not telling the truth in my statement. I consider this to be a very serious charge against my personal integrity.

I ask that Mr. Howard, Mr. Caine and I be called to give testimony under oath before your Subcommittee. I also ask that the Subcommittee call as secondary witnesses those persons to whom I repeated the conversation at the time that it occurred.

I did not intend in my statement that any implications of impropriety be drawn from the parts of the conversation relating to rate of return or Mr. Caine's remarks about Mr. Journey, which I clearly indicated were made as a "pleasantry" and said "jokingly." By repeating these remarks I was merely trying to establish the context in which the later remarks about past settlement conferences--which I consider to have very serious implications of impropriety--were made.

Similarly, I repeated as a background remark the question Mr. Howard asked about whether Mr. Journey had been the member of the Office of General Counsel to whom I referred during the conference. The question particularly struck me because I was surprised to hear the General Counsel mentioned by name in such a context (since, as my reply indicated, he normally had no input in an ordinary rate case), but I drew no implication of impropriety from the question by itself.

The remarks which I consider to have very serious implications of impropriety are those referring to the conduct of past settlement conferences. Mr. Howard has flatly denied making these remarks. Mr. Caine has said that to the best of his knowledge they were not made in his presence. (Since I cannot be certain of what he did or did not hear, I cannot speak to the truthfulness of his statement).

I hereby swear on affidavit that the entire conversation occurred as I reported it in my statement, that I made a conscious effort at the time to recall it carefully and that I repeated it to a number of people, most of them attorneys at the Federal Power Commission, on or near the date it occurred.

The fact that Mr. Howard, at least, has chosen not to tell the truth on affidavit casts this matter in a very grave light. I urge your Subcommittee to look into the subject carefully and to take sworn testimony as requested above.

Respectfully,

Lynn Hargis

Lynn Hargis

cc: Subcommittee Members
Bernard Wunder
John G. Howard
Edward A. Caine
Drexel D. Journey

Sworn to and subscribed before me this 26th day of April, 1977.

Ethel R. Dugan

Notary Public
in and for the District of Columbiz

My Commission Expires February 14, 1979

Mr. Moss. I would ask unanimous consent that all items referred to today during the course of the hearings be included in the record at the appropriate place.

Is there objection?

Hearing none, it is so ordered.

Mr. GORE. Mr. Lotis, this involves Michigan Power. To your knowledge is this another affiliate of the American Electric Power Holding Co.?

Mr. LOTIS. Yes.

Mr. GORE. Let me read briefly from this memo. Let's identify her first.

Could you identify her for the record?

Mr. LOTIS. Miss Hargis was an attorney in the Gas Pipeline-Electric Rate Section and was a trial attorney working under my direction and supervision. Upon reorganization, she was transferred to the newly-formed Electric Rate Section.

Mr. GORE. She indicates in this memo, and this is a conversation which took place following the reaching of a settlement, that she was in conversation with the lawyer for the American Electric Power Co. when they were joined by the senior vice president in charge of rates for the same company. The senior vice president asked whether a member of the Office of the General Counsel with whom I—meaning Hargis—had conferred was Drexel Journey.

I am quoting from her now:

> I replied that I had not spoken to Mr. Journey and explained that staff counsel did not usually go so high up for advice on routine rate cases.
>
> Mr. Caine then remarked as a pleasantry that when he became counsel for AEP, Mr. Journey told him to feel free to come to him whenever he needed anything. Mr. Caine added jokingly that he had missed his opportunity by not going to Mr. Journey over the present case since the company finally settled on staff's rate of return.
>
> Mr. Howard then said, seriously, "You have changed the way these settlement negotiations are handled," or words to that effect. I asked what he meant. He answered that in the past a lot more had been accomplished by "quiet talks." "When we had a rate case, we would go to Drex Journey's office and discuss things," he said, or similar words, "then later we would have a settlement conference."
>
> Mr. Howard added in words that I believe are almost verbatim, since they impressed me strongly at the time: "It may not have been democratic, but at least you knew where you stood."

From your testimony of this afternoon it occurs to me that this procedure outlined by an official of the American Electric Power Co. is consistent with the impression of the procedure you believed might have been followed in the *Ohio Electric* case, or at least you got that impression from the remark by Mr. Journey which you did not choose to follow up on. Is that true.

Mr. LOTIS. Yes.

Mr. GORE. Mr. Chairman, I think that if employees of the Federal Power Commission seeking to advocate the public interest as strongly as possible come to the attention of this subcommittee, either by being called as a witness or by word of their advocacy coming to the knowledge of the subcommittee and then evidence including their advocacy is inserted in the record, and that results in embarrassment to those who are higher up in the Commission, that any action taken

adversely regarding such employee immediately after their advocacy of the public interest has come to the attention of the Congress, it is indeed a serious matter and it is of the same cloth as the other cases and people that these hearings concern.

I would just like to take this opportunity, Mr. Lotis, to add my congratulations to you on the way you conducted yourself in the Federal Power Commission. I wish we had more public servants like you and some of the other people who have testified before this subcommittee.

I hope that you and those like you in the Federal agencies will not be deterred by what is the appearance of adverse personnel action after vigorously advocating the public interest.

Mr. LOTIS. Thank you.

Mr. MOSS. Mr. Sharp?

Mr. SHARP. Thank you, Mr. Chairman.

I wanted to ask whether there were other significant areas where you differed with Mr. Journey and what were the proper procedures to be handled by the Commission in deciding these cases. Had you had other basic differences with him?

Mr. LOTIS. Yes; I had basic differences which were, of course in several categories. One happens to be legitimate professional differences as to how certain issues should be handled, and the other I would refer to as ethical practices, including AEP-type cases.

The request made of me by Mr. Journey to see what I could get on Mr. Lewnes, other than the AEP example we highlighted and one Miss Hargis highlighted, there was at least one other *AEP* case which I am not sure is part of this record to date. Basically it was the handling of people.

I had very much respect for attorneys in my office, and whether you call it personality differences or otherwise, I don't believe General Counsel shared my respect and enthusiasm for the way they did their jobs.

Mr. SHARP. Substantive or professional differences as you call them. In your view did Mr. Journey come down on the side of the utility, a position which would be more economically advantageous to the utility?

Mr. LOTIS. I would say he was very uneven in that. Certainly with particular companies there would seem to be a trend, but in the aggregate I cannot say that he came down on the utility side versus the customers' side except for the electric cases where he did in my belief come down on the utility side.

Mr. SHARP. And in the first case you talked about, the *AEP* case, where he directed an early settlement.

Mr. LOTIS. Yes. The subsequent case which is of significance——

Mr. SHARP. That is what I was to ask next.

Mr. LOTIS. A subsequent case was around the latter part of November. At a Commission meeting there was discussion concerning newspaper reports on threats by American Electric Power to cut off wholesale service to customers.

The Commission asked the Bureau of Power to look into this and prepare a report to the Commission;

Such a report was prepared by the Bureau of Power and it was by way of a memorandum dated December 1, 1975.

I had some input into that memorandum with Mr. Jack Weiss, of the Bureau of Power, who was Acting Chief at that time.

My input was essentially on what we should do about it. I suggested to Jack, and we both reached agreement, that the Commission should immediately issue an order and investigate the threat of wholesale curtailments on the system and not wait for a complaint to be received.

The memo went to the Commission. At a Commission meeting it is my understanding that it was decided to issue an order instituting an investigation.

At the time it was decided, Mr. Journey at the meeting indicated he wanted to coordinate this matter with some of the other Bureaus involved. He indicated the Hydroelectric Section.

I knew at that point I might have very little input into the future course of that investigation. I could have had an order prepared and to the Commission within a week instituting an investigation. The coordination period took some time, however, and it never did reach a formal Commission agenda. It was placed on the administrative agenda, which is a housekeeping-type of agenda of the Commission, by the General Counsel.

My understanding is that the order was prepared the day before that particular meeting.

I had no knowledge of it until I got a call from one of the assistants to the Commissioners. The assistant said, "Jack, have you seen the order concerning that case?"

He had thought I had been working on it, or I had been responsible for it.

At that time I thought I was, too. I indicated that I thought it should be brought up at the Commission meeting because it was a substantive action which should not be on the administrative agenda.

By that time the meeting already had taken place.

I immediately sent a memo, I think dated February 10, 1976, to the Commission saying to them that the proposed order which had been on the agenda which was prepared and dictated by Mr. Journey the night before in his office, with the help of Mr. Lampke of the Hydroelectric Section, was inadequate. While it institutes an investigation, the investigation would be so broad, since it would be conducted on a national basis, that he could never pinpoint AEP, never get to the AEP problem, and the threat of curtailments on the AEP system would remain with us because that investigation could take years and years and we need quick action.

The day afterwards I received a memorandum from the General Counsel, February 11, telling me that I had essentially disobeyed instructions, I never was on the case to start with, and I was off the case.

The way he worded the memo, I wish I had it, it was in terms that he had previously told me I was taken off the case and I had no business sending that memo to the Commission, which was untrue.

Mr. Moss. We will hold the record open for a copy of that memorandum.

Mr. Lotis. I can supply it.

[The memorandum referred to follows:]

MEMORANDUM

FEBRUARY 11, 1976.

To: Mr. Lotis.
From: General Counsel.
Subject: American Electric Power Company, Inc.

I have read your memorandum of February 10, 1976, concerning complaints filed against American Electric Power Company, Inc.

As I have previously instructed you, the immediate supervision of these cases is to be undertaken by Richard Mattingly. It was my further instruction that Richard Mattingly in turn is to coordinate with Dan Lamke and Charlie Reusch in all matters which may relate to bulk power supply development and utilization, generally.

To facilitate overall policy coordination and legal guidance, the cases referred to in your memorandum are to be assigned as of today to Richard Mattingly, who will in turn report directly to me. I will coordinate all affected matters for OGC.

Please have the staff counsel involved report to me today along with Richard Mattingly.

DREXEL D. JOURNEY.

Mr. SHARP. Mr. Lotis, if I may pursue that AEP question further, one of the issues in the hearing we had at Richmond, Ind., was raised by city officials at Anderson, Ind. who buy wholesale from an affiliate of AEP. I believe it was shortly thereafter that some kind of decision was made at the Federal Power Commission to begin an investigation. I would like to go back and ask you to give me the time sequence of what was the initial order to investigate this.

The initial action which led to your memorandum was when?

Mr. LOTIS. The staff was given instructions in November of 1975. The staff was given instructions by the Commission at a formal Commission meeting to investigate newspaper reports that were appearing in the paper that American Electric Power intended to curtail wholesale electric service. There were other allegations similar in nature.

The Bureau of Power was given responsibility for preparation of that memo. Mr. Weiss, the Acting Chief of the Bureau of Power, investigated the matter. He then discussed it with me, what should be done. We both agreed that the Commission should issue immediately an order instituting an investigation to ascertain the facts relative to those allegations.

The memorandum was sent to the Commission by way of a report dated December 1, 1975.

At the Commission meeting following the December 1st memo, the Commission decided to adopt its recommendations and investigate the AEP matter.

At that meeting, Mr. Journey immediately said, because I immediately said once they decided to go ahead, I would get an order immediately out on that, Mr. Journey said he wanted to coordinate it with the Hydroelectric Section since it involved, I think he said, powerplant sitings, and other things, which I did not understand in terms of their relevance to this particular question.

In early February of 1976, an order was prepared. I am not sure whether there was a signature on that order, but it is my understanding an order was prepared by Mr. Journey. I know this fact only from a conversation I had with a Mr. Lamke, who indicated that the night before the special administrative meeting where this item ap-

peared that Mr. Journey was in his office with Mr. Lamke dictating that order to his secretary.

Mr. SHARP. Who is Mr. Lamke?

Mr. LOTIS. At that time he was one of the attorneys in the Hydroelectric Section. He indicated he was assisting in the preparation of that order. The order was prepared by Mr. Journey.

It made the administrative agenda. I got notification of it only through a call from the assistant to one of the Commissioners who asked me whether I read it and agreed with it.

By that time the meeting took place. I think it was the day after, or the day of, the special agenda meeting.

I immediately sent the memo to the Commission saying that order was inadequate. It was too broad in scope. It would never get to the heart of the AEP matter. It would take years to investigate the types of issues raised by the order. I suggested a more limited investigation directed exclusively to AEP.

The day after that memo—my memo was February 10—I received a memorandum dated February 11, I believe, from Mr. Journey indicating that I wasn't following his instructions and that I was not on the case. The way the memo was worded, apparently he thought I had been removed from the case at some previous time.

Mr. SHARP. Have you any idea of the status of that study now? Is it still going on?

Mr. LOTIS. Whether the Commission issued Mr. Journey's order or not, its purpose was achieved. I am not familiar with any action taken to investigate precisely the AEP matter by the Commission.

Subsequently, customers filed complaints with the Commission, and then the Commission responded in instituting an investigation based on customer complaints. Therefore, there was a type of action taken, but it was delayed substantially.

Mr. SHARP. On the first AEP case where you were directed to speed up consideration of the rate, the action taken by Mr. Journey, does that violate specific rules of the Commission in your judgment?

Mr. LOTIS. I think as a matter of due process, customers are guaranteed to have notice of proposed settlements. I thought, and still believe today, that had we not taken the steps we did in enforcing the noticing provisions against Mr. Journey's wishes, I think the customer would be perfectly within his rights to say that that decision might be tainted.

Mr. SHARP. Is indication that he was making the judgment on information beyond the hearing record in any way a violation of the Commission rules or generally-accepted ethical practices of regulatory commissions?

Mr. LOTIS. It is absolutely against my best judgment as to what should be done in that type of situation. It is against my ethical practices.

In terms of whether it violated a specific Commission rule, I am not sure.

Mr. SHARP. It suggests there were ex parte communications.

Mr. LOTIS. "Ex parte" is a word of art. It has to be used carefully. It was certainly borderline. That is the only reason I did not say it violated the Commission's ex parte rules. It is very borderline.

I say borderline for this reason: That no customer at that point had formally intervened in the case. It appeared that the settlement going up to the Commission had the concurrence of everyone, at least everyone who participated. Therefore, at least it might have met the technical requirements of the ex parte rules in terms of being outside the rules.

Mr. SHARP. That made it all the more important with regard to the notice requirement, that due process would be fulfilled inasmuch as you did not have intervenors, or people who were perhaps aware of what was going to happen.

Mr. LOTIS. These are the most important cases, the cases where you do not have intervenor representation. These are the cases easiest for executives, for management, or anyone associated with the case to wheel and deal or make private agreements which would not be subject to public scrutiny. This is why noticing is so important.

Mr. SHARP. Thank you, Mr. Chairman.

Mr. MOSS. You have before you, Mr. Lotis, the memorandum you referred to dated February 11 from Mr. Journey to you, in effect removing you from this case, the *American Electric Power* case.

He states in paragraph No. 2: "As I have previously instructed you." Had he previously instructed you?

Mr. LOTIS. To the best of my knowledge, he had not.

Mr. MOSS. Would such an instruction have been oral or by appropriate memorandum?

Mr. LOTIS. Mr. Journey usually operates by memorandum. On occasion he operates orally. I couldn't say whether one or the other is most common.

Mr. MOSS. Does any such memorandum exist?

Mr. LOTIS. Not to my knowledge.

Mr. MOSS. I will have the staff get in touch with the Commission to see whether they can produce any such memorandum limiting you in matters and cases of this type.

Are there further questions?

Mr. GORE. I have one, Mr. Chairman.

Mr. MOSS. Mr. Gore?

Mr. GORE. When your request for additional staff was denied by Mr. Journey, did he give an explanation for denying that request?

Mr. LOTIS. He indicated that everyone had problems. There was a workload in all sections, and if he transferred and gave me assistance, it would just hurt another section.

But the irony of that was that while he took the cases from me, he gave them to another group of attorneys in the Hydroelectric Section who obviously had the time and were available to do the work. That is all I was requesting.

Mr. GORE. Thank you, Mr. Chairman.

Mr. MOSS. There being no further questions, we want to thank you for your appearance, your testimony, and your cooperation.

The committee now will stand adjourned. We shall reconvene Monday morning at 10 o'clock.

The committee now stands adjourned.

[Whereupon, at 2:45 p.m., the hearing adjourned, to reconvene Monday, March 18, 1977.]

ADVERSE PERSONNEL ACTIONS AGAINST PROFESSIONAL STAFF MEMBERS AT THE FEDERAL POWER COMMISSION

FRIDAY, MARCH 18, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

We convene this morning seeking answers—answers to the very serious questions raised during 3 previous days of hearings. We have heard how Mr. Lewnes' section, which was responsible for nearly all matters relating to natural gas supply, lost its three most experienced attorneys in a period of 6 months—shortly after two attorneys, Assistant General Counsel George Lewnes and supervisory trial attorney Russell Mamone, testified before this subcommittee and our sister subcommittee, Energy and Power.

We have heard that the top trial attorney in offshore gas pipeline matters, Mr. Mamone, was transferred to hydroelectric relicensing, an area in which he had no experience whatsoever.

His colleague, Mr. Wofsy, quit as Acting Assistant General Counsel after unprecedented orders to remove an attorney from a major case by the General Counsel because, as he put it, he had to face himself when he shaved in the morning.

There can be no question that these transfers undermined effective regulation of the natural gas industry.

We have also heard that another Assistant General Counsel, Mr. Jon Lotis, who had an outstanding record of achievement with the Federal Power Commission, was reorganized out of his responsibility for gas and electric rate work in October 1976. This was obviously not mandated by Touche Ross and Co., who will be paid $457,686 for their management improvement survey. It appears to have had much more to do with Mr. Lotis' determination to protect the public interest in ratemaking and his disinclination to go along with efforts to improperly rush a rate settlement with the Ohio Electric Power Co.

Even more disturbing than that was the testimony that the Executive Director of the FPC in February or March 1976 ordered an FPC personnel attorney to find a way to fire Mr. Lewnes. We know that there were probably differences in regulatory approach between

Mr. Journey and Mr Lewnes before this, but the effort to get rid of Mr. Lewnes did not develop until just after the January 1976 congressional testimony of Mr. Lewnes, and after a brief was filed with the Commissioners by Tenneco sharply critical of this testimony. We may well ask if not congressional testimony, what was the catalyst that triggered the effort to fire Mr. Lewnes?

Persons who can shed light on these and other questions—Chairman Dunham; Mr. Fee, the Executive Director; and General Counsel Journey—are about to come before us.

Before they are sworn, however, I wish to state that our previous witnesses—Mr. Lewnes, Mr. Lotis, Mr. Mamone, and Mr. Wofsy—each having had long service with the Federal Power Commission, each having had a personnel file that reflected no adverse action or unsatisfactory ratings, will be accorded an opportunity if they desire to rebut any testimony touching directly on them which, if true, should have been reflected in normal personnel files.

The Chair does not intend to permit the records of achievements of career civil servants to be unjustly maligned. At the same time, I can assure all of our witnesses and those present that if, after a review of the record of these hearings, the subcommittee determines that witnesses before any committee of this House have been impeded, intimidated, or injured, very prompt and appropriate action will be taken.

I understand from counsel that this matter has been discussed with the witnesses and that appearing en banc would be preferable.

Chairman Dunham, General Counsel Journey, and Executive Director Fee, would you gentlemen come forward to be sworn?

Do you and each of you solemnly swear that the testimony you are about to give this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DUNHAM. I do.

Mr. JOURNEY. I do.

Mr. FEE. I do.

Mr. Moss. Will you identify yourselves to the reporter?

TESTIMONY OF HON. RICHARD L. DUNHAM, CHAIRMAN, FEDERAL POWER COMMISSION; DREXEL D. JOURNEY, GENERAL COUNSEL; AND J. CURTIS FEE, EXECUTIVE DIRECTOR

Mr. DUNHAM. Richard Dunham.

Mr. JOURNEY. Drexel Journey, General Counsel.

Mr. FEE. Curtis Fee, Executive Director.

Mr. Moss. Which of you gentlemen would prefer to lead off?

Mr. Chairman, you have a statement of 10 pages together with a rather large number———

Mr. DUNHAM. No, Mr. Chairman. I have a statement of one page.

Mr. Moss. You submitted as of this morning this other document?

Mr. DUNHAM. No, I have not.

Mr. JOURNEY. I have submitted that, Mr. Chairman.

Mr. Moss. Very well. Is that, then, to be your statement?

Mr. JOURNEY. That plus two others I submitted to Mr. Lemov.

Mr. Moss. We will discuss them later, then.

You may proceed, Mr. Dunham.

STATEMENT OF RICHARD L. DUNHAM

Mr. DUNHAM. Mr. Chairman, in regard to your letter to me with respect to alleged adverse personnel actions, I have a very brief statement to read at this time.

I have never at any time taken any action or directed any action to be taken adverse to a Commission employee because of testimony before Congress or because of the content of positions taken in hearings or Commission meetings.

During my term as Chairman, no professional employees have been removed, suspended, furloughed, or reduced in pay or rank.

No grievance procedures have been undertaken under either Civil Service or union contract procedures by any of the professional staff for matters occurring during my term. No employee has appealed to me about any alleged discriminatory practices by me or by a section head. In fact, therefore, no "adverse personnel actions" have occurred.

I have taken many actions designed to improve the management, productivity, and workflow of the Commission. These actions were within my authority and in my opinion were absolutely necessary.

I have never at any time taken any action to impede the free discussion of opposing viewpoints before the Commission. I have, in fact, encouraged structures that would enable such positions to be clearly and directly presented.

I have discouraged mere delay due to unspecified problems with matters and have attempted to require that matters be brought to a head and resolved.

Mr. Moss. Mr. Journey?

I wonder whether we can first get the statements in order?

Mr. JOURNEY. All right.

Mr. Moss. I have before me a statement of March 10, 1977.

Mr. JOURNEY. That has a cover letter of March 8, Mr. Chairman?

Mr. Moss. That is correct.

Mr. JOURNEY. That is one I would like to have in the record.

Mr. Moss. Without objection, then, that statement will be entered in the record at the appropriate place [see p. 319].

Mr. JOURNEY. Next, Mr. Chairman, I sent to Mr. Lemov a letter of March 14 with six enclosures. I ask that that letter and those enclosures be made part of the record.

Enclosure 1, Mr. Chairman, deals with the HIOS matter.

Enclosures 2, 3, and 4 deal with the Ohio Electric matter.

Enclosure 5 is a document which deals with the Electric Rate Settlement Task Force.

Enclosure No. 6, Mr. Chairman, is a document which deals with the adequacy and reliability of electric bulk supply and complaints before the FPC. These are background materials.

I sent much of this data to Mr. Lemov earlier. The committee has them.

These are basically the statistical materials and things out of the FPC files, sir.

Mr. Moss. This material at this time will be received for review, with a reservation for subsequent inclusion in the record after examination of it.

[See hearings before the Subcommittee on Oversight and Investigations of the Comittee on Interstate and Foreign Commerce, 94th Congresss, 2d session, Serial No. 94–85—Regulatory Reform—Volume VI.]

Mr. JOURNEY. Part of it, Mr. Chairman, and I think this should be clear—when I was in Indiana before the subcommittee chaired by Mr. Sharp, I submitted a number of documents which I had requested in my August 11, 1976, letter to you be included in the record. They dealt with the Ohio Electric matter and they dealt with American Electric, the bulk power supply problems of American Electric Power.

You will find them in that committee print, pages 616 to 618, and some at page 592.

These materials offered today seek to give you, in capsulized and updated form, the materials I previously submitted which did not get into the record.

Mr. Moss. That is why I feel it is appropriate we accept them for review and with a reservation to include them after we have viewed those portions which are not felt to be redundant, as you can well recognize. I think you can see much of it could be redundant.

Mr. JOURNEY. The next one, Mr. Chairman, is the one which I submitted this morning. It has a cover letter to Mr. Lemov. It is a 12-page statement.

With your permission, I would like to read that statement.

Mr. Moss. That statement you may read, and with regard to appendixes we shall make the same reservation as previously until we have had an opportunity to review the statement, which was received at 9:25 this morning. We have not had an opportunity to review it.

[See p. 319 for attachments printed in record. All other attachments, or parts thereof, referred to in Mr. Journey's statement may be found in the subcommittee's files.]

Mr. Moss. You may proceed. You may read your statement.

STATEMENT OF DREXEL D. JOURNEY

Mr. JOURNEY. Mr. Chairman and members of the subcommittee, your chief counsel has the prior submissions which I forwarded for inclusion in the record. My appearance has been rescheduled by the subcommittee several times. I ask that those submissions—letter of March 8, 1977, with attached statement and letter of March 14, 1977, with enclosures be incorporated in this hearing record along with this statement.

I shall be direct. What I have to say now restates the cumulative thrust of testimony which this subcommittee heard on March 9, 10, and 14, 1977, as it relates to the Office of the General Counsel of the FPC.

Fundamentally, what you have heard are pent-up frustrations of persons who disagree with substantive, structural, and personnel decisions which have been made at the FPC. Ventilation is good. It is necessary. It has been accomplished before this subcommittee, as it had been accomplished innumerable times heretofore before other

committees of the Congress. I am going on my 25th year as an FPC employee and have seen many congressional inquiries of the agency.

At the outset, several matters merit comment. Mr. Lotis has set forth testimony relative to "dirt" on George Lewnes (TR 119–120, 169). I do not, and never have, dealt in smut. Mr. Lotis' recollection is faulty. I have never made any such comment.

The Deputy General Counsel has reviewed Mr. Lotis' testimony as it relates to him (TR 121). He has advised me that he made no such comments. An affidavit of the Deputy General Counsel is attached hereto as appendix A.

Mr. Lotis' comments with respect to Mr. Lamke (TR 170–177) have been reviewed by the latter. Attached to this statement is the affidavit of Daniel C. Lamke showing the facts as they arose, not as Mr. Lotis recites. The affidavit and appendices thereto are attached as appendix B.

The appendices include the FPC's Secretary's notes covering the Commissioners' review of the bulk service complaint matters about which Mr. Lotis testified. The documents are those which appear in FPC files.

This matter is also covered in my letter to the subcommittee's chief counsel dated March 14, 1977, pages 3, 4, and 10, and enclosure 6 thereto.

I invite the subcommittee's attention to appendix B hereto, and the various Commissioner's comments which show how the Commission, itself, wished to get into the bulk service questions—broadly or narrowly. My prior testimony on this matter appears in the printed hearings of the subcommittee, Serial No. 94–85, Regulatory Reform, volume VI, Richmond, Ind., committee print pages 616–618, and 634. In my March 14, 1977 letter to the subcommittee's chief counsel, page 10, I extracted the substance of that testimony as follows:

> * * * what the Commission was looking at was service questions in Nevada, in Virginia, West Virginia, Ohio and Indiana and, as I understand it, they wanted a coordinated review of it overall * * * I was then instructed to sit down and look at this thing in terms of not just the Indiana utilities but everybody to see what could be done. * * *

Mr. Lotis' comments fail to recognize that the Commissioners, not the General Counsel, decided how electric service complaints were to be handled.

Legal work in this area has been split historically between Mr. Lotis and Mr. Lamke. As between the two, Mr. Lamke had the broader responsibilities, since he conducted all electric interconnection cases and he is responsible for the presentation of FPC testimony on electric bulk power supply needs in all cases before the Nuclear Regulatory Commission and before the State Public Service Commissions.

Mr. Lotis had sought to try bulk power supply cutoff as a "one issue" aspect of an FPC rate case involving the American Electric System. His recommendations were presented to the Commission but have not been accepted by it.

The Chairman, Richard L. Dunham, by his memorandum of April 15, 1976, attached hereto as appendix C, set the final format of an FPC Bureau of Power study of service needs and economic requirements which the Commission wished to be completed. That was done.

The study is enclosure No. 6 to my March 14, 1977, letter to the subcommittee's chief counsel.

At the present time, the Bureau of Power study is being used in the trial of the only service case which is still in the trial phase before the FPC's Administrative Law Judge. It involves *Mishawaka, et al.*, v. *AEP, et al.*, FPC docket Nos. E-9548 and 9549. All other service cases involving the American Electric System companies or other utilities have been tried or have been resolved. According to FPC records, legal arguments in specific cases have gone forward.

Turning to Mr. Lotis' comments on docket No. E–8888, Ohio Electric (TR 160–164), the Commission's Secretary has advised me that he has no recollection of the conversation which Mr. Lotis attributes to the Secretary and a staff counsel (TR 163). An affidavit to this effect is attached hereto as appendix D.

As will be noted from the Secretary's affidavit, the public notice of settlement about which Mr. Lotis testified (TR 163) does not include the 2-week period to which Mr. Lotis testified but an 8-day period. As the Secretary notes, 1 week is not an unusual FPC practice for noticing documents filed with the agency.

The files of the Office of the General Counsel indicate that in 1975 there was a forthcoming security issuance matter of Ohio Electric before the Securities and Exchange Commission and the company wished to conclude its rate proceeding before the FPC by early August 1975, if possible. A letter of Richard M. Dicke to FPC staff counsel James Ellis, dated June 18, 1975, is attached hereto as appendix E.

Mr. Lotis' comments relative to the public notice (TR 163, 177-178) and the notice to wholesale customers of Ohio Electric are difficult to understand, in addition to being in error. As this subcommittee's hearings show, serial No. 94-85, committee print, page 586, the purchaser of the entire output of Ohio Electric's Gavin Plant, Ohio Power Co., is a corporate affiliate. The FPC initiated docket No. E–8888 in September 1974 essentially to review a rate of return question in a cost-of-service-type rate schedule.

See my March 14, 1977, letter to the subcommittee's chief counsel, pages 3–6 and enclosure Nos. 2, 3, and 4 for the background of this case. See, also, the subcommittee's prior hearings, serial No. 94-85, committee print pages 585-592. There were no intervenors in docket No. E–8888.

At no time did I enter into the substantive aspects of this case. What I did do was to direct Mr. Lotis to convene a public settlement conference on the matter. Under the FPC's Rules of Practice and Procedure, 18 CFR 1.18, any person, at any time, has a right to request a settlement conference. See my March 14 letter to the subcommittee's chief counsel, pages 6–7, outlining these rules. Mr. Lotis apparently regards that as an intrusion. The memorandum directive which I sent to Mr. Lotis is designated enclosure No. 4 to that letter and it appears at committee print pages 590–1. For present continuity purposes, it bears repeating:

> I suggested that Ohio Electric treat Mr. Dicke's June 13, 1975 letter as a settlement proposal, if that is what it was intended as. I suggested that he request a public conference and that, if additional data is required by staff,

that he be advised. He requested that the public conference be held before the end of June 1975. I told him I saw no reason why that could not be arranged.

Please follow through on that timing. I believe that you should attend the conference along with Mr. Ellis. Also, I would like Mr. Lamke in attendance. See my remarks before on Western Conference of June 11, 1975.

That was a conference before the Western Conference of Public Service Commissioners, which I attended at the direction of former Chairman Nassikas. I shall speak to that later because it is relevant.

I would anticipate that Bureau of Power and OAF would be represented also.

I told Mr. Dicke that if staff had problems with the company's proposal, they should say what they would prefer and why. As I stated, I see this case as having regional power plant siting overtones.

Following the oil embargo of 1973–74, I had been instructed by former FPC Chairman John N. Nassikas to attempt to keep all proceedings moving where large bulk power supply plants were involved, whether at the Federal or State level. Ohio Electric's Gavin Plant, the subject matter of E–8888, is such a plant—a 2,600,000 kW installation baseloaded plant in the east central area reliability council area. See committee print, page 586. That is why I became involved in E–8888 and that is the only reason. Mr. Lotis would have preferred to have conducted the case according to his timing pattern for handling rate proceedings. Committee print, pages 591–2.

Company counsel directed my attention to the plant and the FPC docket, all as set out in his letter of June 12, 1975. Committee print, pages 585–590. Under established FPC rules, 18 CFR 1.18, counsel had the legal right to do so.

Mr. Lotis' testimony sets forth his ethical judgments relative to the FPC's ex parte rules (TR 177–9), and he recognizes, albeit reluctantly because of his best judgment (TR 177–78), that the General Counsel must be available to regulated utilities and must carry out procedural functions, such as I discharged in Docket No. E–8888.

As the subcommittee may or may not know, my involvement in general FPC work includes work of the Electric Reliability Councils, which is conducted under 202(a) of the Federal Power Act, 16 U.S.C. 824a(a), in coordination with State Public Service Commissions, the National Electric Reliability Council, and nine regional councils.

See Order No. 383 issued June 25, 1969, 41 FPC 846, 34 FR 11200; Order No. 383–1 issued January 13, 1970, 43 FPC 37, 35 FR 3240; Order No. 383–2 issued April 10, 1970, 43 FPC 515; 35 FR 6121; Order No. 383–3 issued March 15, 1973, 49 FPC 700, 38 FR 7455; Order No. 383–4 issued December 13, 1976, no FPC citation yet but it appears at 41 FR 55174.

My knowledge of Ohio Electric and the Gavin plant, and countless other plants across the country to which Mr. Lotis refers (TR 164), relates to bulk power supply planning and power plant operation. That work is not conducted in individual FPC rate case dockets with which Mr. Lotis is familiar. Mr. Lamke is familiar with bulk power supply operations throughout the country, and that is why I asked him to work on the docket as needed, all pursuant to my June 17, 1975 memorandum to Mr. Lotis.

Mr. Lotis' testimony alleging unusual actions infers that I did not wish to follow 18 CFR 2.1 of the Commission's statements of general

policy and interpretation and inform the general public of the nature of the settlement proposal which the company and FPC staff counsel, operating under the direct supervision and guidance of Mr. Lotis, had worked out.

Under my supervision as General Counsel, I have always required my attorneys to make the public interest their foremost concern. Since there were no other parties in docket No. E–8888, I welcomed the public exposure element.

Moreover, since I was the principal staff lawyer that drafted 18 CFR 2.1, I find it difficult to understand why I would seek to avoid public notice. I did not.

The subcommittee may wish to question the persons mentioned in Ms. Hargis' memorandum (TR 166–167). I have no knowledge of what is reported there. Ms. Hargis has never discussed the memorandum with me, and I have never discussed any regulatory matter of American Electric Power with Edward Caine.

He telephoned me at the time he became employed by the AEP System and, as I do with all lawyers—congressional committees, consumer groups, State commissions, utilities, and the general public—I wished him well and told him the FPC legal staff was here to conduct business of the agency. If he had reasons to contact me, he could do so. That is courtesy I extend to all practitioners.

To the best of my recollection, the last time I spoke with John Howard—also mentioned in the Hargis memorandum—was in connection with the FPC's coal-by-wire proceeding in 1974 in which I negotiated the transfer of coal-fired energy from the Midwest to the Northeast to prevent blackouts by reason of the oil embargo. Those discussions were held jointly with FPC's Chief, Bureau of Power, and are on the public record. The transcripts are on file with the Commission. I was there acting as Deputy General Counsel and pursuant to a specific order of the Commission. See appendix F.

Before then, my involvement with the American Electric Power System was mainly in trying the interstate jurisdiction and accounting cases of the FPC against these and other utilities in the 1950's and 1960's. We won those cases, some of which were pursued to the U.S. Supreme Court. The FPC's annual reports to the Congress list all major FPC litigation.

I might point out, Mr. Chairman, just for the purpose of record continuity, that you will find in 328 Fed 2nd 237 a case called *Appalachian Power Company* v. *Federal Power Commission*, cert. denied, 379 US 829. This is the landmark case that I tried against American Electric Co. You will find that was a case which started in 1959 and concluded in 1964. An opinion was by Circuit Judges Bell, Sobelov, and Bryan.

I looked back in my files and I also found another case, Indiana-Michigan Electric Co., whereunder former Chairman Swidler, along with other staff counsel, prosecuted the jurisdiction cases against the *American Electric System*. We won them.

This is *Indiana Michigan Electric Co.* opinion 458 and opinion 458(A).

The basic opinion is April 14, 1965 and the opinion on rehearing is June 11, 1965.

We went to the Court of Appeals and the Supreme Court: 365 F. 2d 180; cert. denied 385 U.S. 972.

I don't know how many other cases I have been involved in concerning AEP companies, but my litigation experience with Chester Davis, who was counsel for Howard Hughes, and Richard Dicke, counsel for American Electric, dates back to 1959 when I was slugging it out in the pits with them as a young trial lawyer.

The position of FPC General Counsel is an amorphous one. Being a noncareer executive appointment, the incumbent serves at the pleasure of the Chairman. The position is charged with responsibility for actions of subordinates, but does not carry with it the power to appoint principal assistants. That authority is exercised by the FPC Chairman, usually in consultation with other Commission members.

I do not have the right to hire or fire or do anything to an Assistant General Counsel. I do not have authority to do that.

An incumbent General Counsel usually inherits his principal staff from his predecessor. That was largely true in my case when I succeeded my immediate predecessor. Because of human nature and potential internal professional rivalries, the General Counsel selection tends to be made by an incoming Chairman from outside the FPC staff. That was not done in my case. My immediate predecessor was selected by an incumbent Chairman, as was I, when appointed to the position in 1974.

Assistants may, and usually do, report directly to individual Commission members, as well as to the Commission itself on all matters of Commission business.

Matters of administration are directed through the General Counsel and the Executive Director to the Chairman. Under reorganization plan No. 9 of 1950, the Chairman is the chief administrative officer of the agency.

As such, the FPC General Counsel post is a mixed parcel of accountability, bifurcated authority, limited tenure, and narrowly defined areas for control over what the agency may do. The position is a 1930 statutory creation which now satisfies few persons and frustrates many.

Under S. 826, the chief legal officer of the Department of Energy will be a Presidential selection with Senatorial confirmation. There will be defined accountability to both branches of Government. In my judgment, that change is needed.

This subcommittee's current hearing record, as I read it, is largely directed to the methods by which the current system operates; and, more importantly, to substantive decisions which the Commission has rendered. I refer particularly to natural gas producer regulation and the interstate electric utility rate settlement task force.

It involves personnel, secondarily, in that staff witnesses, and perhaps subcommittee members, believe that those decisions should reflect other policies and judgments.

Unfortunately, some of the testimony is personal. That is regretful. However well intentioned, no one rises by tearing down another person. Months or years of discord can ensue from insidious personal comments, inferences, and innuendo.

Mr. Chairman, I have attached as appendix G a memorandum prepared by the OGC Administrative Officer, John Griffin. Mr. Griffin is available to discuss the appendix. It is comprised of material with which he is intimately familiar.

The transcript pages of the hearings to date do not include copies of the documents which may have already been entered into the record. I would anticipate that the subcommittee members would wish to question Mr. Griffin. He is available. It sets forth statistical data on staffing, promotions, hiring, et cetera. It should be helpful to the subcommittee in light of questions that have been raised to date.

Thank you.

[The parts of Drexel Journey's attachments to March 18, 1977, statement to be included in the record. All other attachments, or parts thereof, referred to may be found in the subcommittee's files.]

GENERAL COUNSEL
FEDERAL POWER COMMISSION

MAR 8 1977

Michael R. Lemov, Esquire
Chief Counsel
Subcommittee on Oversight and
Investigations
Committee on Interstate and
Foreign Commerce
House of Representatives
Washington, D. C. 20515

Dear Mr. Lemov:

The Oversight Committee has scheduled hearings March 9 and 10, 1977, on the recent Federal Power Commission agency action restructuring various of its staff bureaus and offices.

A substantial number of FPC staff personnel are involved in these workload redistributions and work pattern reassignments. Affected FPC staff offices include:

- Office of the Commission Secretary
- Office of Administrative Operations
- Office of Economics
- Office of Energy Systems
- Office of Accounting and Finance
- Bureau of Natural Gas
- Bureau of Power
- Office of the General Counsel

The basic recommendations upon which this restructuring has been accomplished, were formulated in a report rendered to the Commission by Touche Ross and Co., entitled Federal Power Commission Administrative Management Survey for Improving: Organization Functions Management Process, Phase I Report (July 1976).

This activity, an FPC administrative and managerial function, has been completed under the overall direction of Chairman Richard L. Dunham, and the immediate supervision of the Commission's Executive Director, J. Curtis Fee. The Chairman's duties and responsibilities under Reorganization Plan No. 9 of 1950 are to:

> ***from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of this reorganization plan.

The Commission's Executive Director functions as the delegatee of authority from the Chairman, 18 CFR 3.4(d). To the extent that the FPC's Office of the General Counsel has been affected by this internal restructuring, I have exercised administrative authority, which I possess as General Counsel of the agency, to implement the Touche Ross recommendations within OGC.

The Touche Ross Report and what has been done administratively at the FPC by authority of the Chairman under Reorganization Plan No. 9 of 1950, will serve the future.

Along with the five Commissioners Offices, the FPC's General Counsel's Office, and other circa 1930 statutory staff offices are soon to be abolished. Under S. 826, the FPC staff will be transferred to the new Department of Energy where all legal work will be conducted under a Presidentially appointed General Counsel confirmed by the Senate. The Attorney General will represent the new Department in court litigation.

I support the Administration's proposed Energy Department reorganization.

On March 10, 1977, Chairman Dunham, Executive Director Fee, I, and others will be present at the Committee hearings to discuss the FPC's restructuring of staff offices and workload.

In advance of that participation and to facilitate your work as Counsel to the Committee, I thought it might be helpful for you to have a statement detailing the general

nature of the restructure of FPC staff offices, with particular reference to OGC's work assignments. I have touched upon related topics which I understand to be of interest to the Committee.

The Chairman and the Executive Director plan to use the attached statement as the basic factual statement of the agency's position. They wish me to advise you that they may have brief supplementary oral statements to present at the March 10th hearings, 10:00 a.m., but essentially this attached statement is the data they wish to present to the Committee.

This letter transmits 30 copies of prepared comments which I will ask to be included within the hearing record on March 10, 1977. I would appreciate it if your office would arrange for distribution of the copies to Committee members and staff.

A copy of this letter is being forwarded to Minority Counsel, Mr. Bernard Wunder.

Sincerely,

Drexel D. Journey
General Counsel

Enclosures

STATEMENT OF
DREXEL D. JOURNEY
GENERAL COUNSEL
FEDERAL POWER COMMISSION

BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS
COMMITTEE ON INTERSTATE
AND FOREIGN COMMERCE
UNITED STATES HOUSE
OF REPRESENTATIVES

MARCH 10, 1977

Mr. Chairman, Members of the Committee, Congressional oversight is a necessary and continuing aspect of administrative agency work. Over the past 5 years, a substantial number of FPC-OGC personnel have been called upon to testify before various Congressional Committees, including this Committee. I have been one of these. This statement will serve to present the basic position of the FPC. See my letter to the Subcommittee's Chief Counsel dated March 8, 1977.

As General Counsel of the Commission, I shall be happy to respond to questions which you may have relative to recent internal restructuring of work of the Federal Power Commission. Where I do not know the answers, I assume you will direct the questions to others in the room who may know.

In addition to the FPC Chairman, Richard L. Dunham, and its Executive Director, J. Curtis Fee, other staff office

heads are available to answer questions which you may have. The Commission's Director of Personnel Programs is also present.

The purpose of these hearings, as I understand Chairman Moss's March 3, 1977 letter and comments of the Committee's Chief Counsel and staff[1/] is to permit various persons to record their support for, or opposition to, what has become known as the Touche Ross restructuring of various FPC staff offices (Touche Ross & Co., Phase I Report, July 1976).

Specifically, it is my understanding that this Committee wishes to assure itself that no administrative action has been taken by the FPC which could be said to be retaliatory or discriminatory against any FPC employee who may have testified before this or any other Congressional Committee, or who may have been called upon to supply information to such Committees or their staffs. I know of no such retaliatory or discriminatory action and, if there were such acts by the FPC, they would be improper. No one may tamper with First Amendment rights.

1/ Your letter states as follows: "***public hearings*** regarding adverse personnel actions against professional staff members at the Federal Power Commission." My conversation with the Chief Counsel was telephonic and occurred March 4th. On March 7th, Committee staff met with Chairman Richard L. Dunham.

Insofar as I understand FPC policy now, and over the 24 years that I have been employed by the agency, FPC employees supply data and information to Congressional bodies as those Congressional bodies see fit, and as the employees desire to do so.

These hearings will be constructive in documenting the views of all concerned: persons who may oppose the work-load - personnel shifts made necessary to implement the Touche Ross recommendations, as well as those who favor what was done. I am among the latter, for budgetary reasons and because of the dramatic reductions in workload backlogs which have been accomplished in OGC since the shifts were completed in October 1976.

Marked increases in productivity have occurred in virtually all areas of legal work at the Commission. In just one area, uncontested pipeline certificate dockets have been reduced from 605 to zero in less than 6 months. Further improvements are detailed later in this statement. Thus, in addition to satisfying the Subcommittee's concern relative to the absence of any retaliatory action, the record will serve to document the positive and constructive steps which Chairman Dunham has implemented at the FPC.

The Touche Ross proposals for restructuring the FPC staff work have been the subject of newspaper comment by syndicated columnist, Jack Anderson.

To facilitate the investigation of this Subcommittee, Chairman Dunham directed that FPC staff afford access to all FPC records. That was done. Also, it is my understanding that Subcommittee staff personnel have reviewed Touche Ross's records.

Other than to implement Touche Ross recommendations, there has been no general reassignment of the FPC Office of the General Counsel personnel since I became General Counsel in 1974. Individual lawyers and clerical personnel have received specific assignments to handle particular matters. Most recent examples of this include assignments of OGC personnel to assist the Administrator of the Emergency Natural Gas Act of 1977, Pub. L. 95-2. Chairman Dunham is the Administrator and exercises Presidentially delegated authority pursuant to E.O. 11969. General day-to-day work assignments are handled by individual Assistants Counsel or the Solicitor, each within her or his particular area of immediate supervisory responsibility. The overall workload in OGC at the present time is about 50-50, natural gas and electric power. Natural gas work is grouped into two major areas: pipeline rates, certificates and curtailment; and producer rates and certificates, including offshore transportation facilities. Electric work is also grouped into two major areas: hydroelectric licensing and river basin work; and interstate electric rates, power pooling,

and corporate controls. Legislative work is grouped in a separate area. Also, there is a separate area of grouped work including contract and procurement, equal employment opportunity, labor-management relations, and Civil Service and related agency housekeeping functions.

Approximately 10 - 15% of the Commission's decided cases find their way into the courts. The agency's court litigation calendar is under the day-to-day supervision of the Solicitor, Allan Abbott Tuttle. The Deputy General Counsel exercises overall authority coordinating the work of various Assistants Litigation Counsel. Robert W. Perdue is the incumbent Deputy General Counsel and the Acting Litigation Counsel. On occasion, the Deputy General Counsel and I receive instructions from various Commissioners concerning case assignments and particular OGC personnel. Being employees of the agency, we do, of course, observe such instructions.

The Federal Power Commission's work schedule, budget and personnel records show the work and assignments handled by each OGC employee. The Committee staff has had access to all of these materials. The Committee staff also has had access to all FPC Office of Personnel Programs and OGC records detailing pertinent FPC staff employment records.

The implementation of the Touche Ross recommendations did not involve any FPC "adverse actions" against any employee[2/] and did not result in the filing of any "grievance" by any employee[3/] against the Commission. And, insofar as I know, it did not result in any employee complaints to the Commission under the Commission's open door policy of hearing the views of any employee. Established rules of the agency[4/] provide the means by which staff views are presented for Commission consideration.

Currently, the FPC's Office of the General Counsel is comprised of 167 persons. There is 1 vacancy for employment. There are over 1500 persons with applications on file seeking to join the FPC's OGC legal staff.

During the course of the Committee staff's investigation of the Touche Ross Matter, I was asked whether I thought

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2/ As defined in FPC's Administrative Manual (Instruction No. 4X62.1, May 14, 1975), an "adverse action" constitutes removals, suspensions, furloughs without pay, and reduction in rank or pay (5 CFR 752.201).

3/ As defined in FPC's Administrative Manual (Instruction No. 4X61.1, May 14, 1975), a "grievance" constitutes a request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management (5 CFR 771.102).

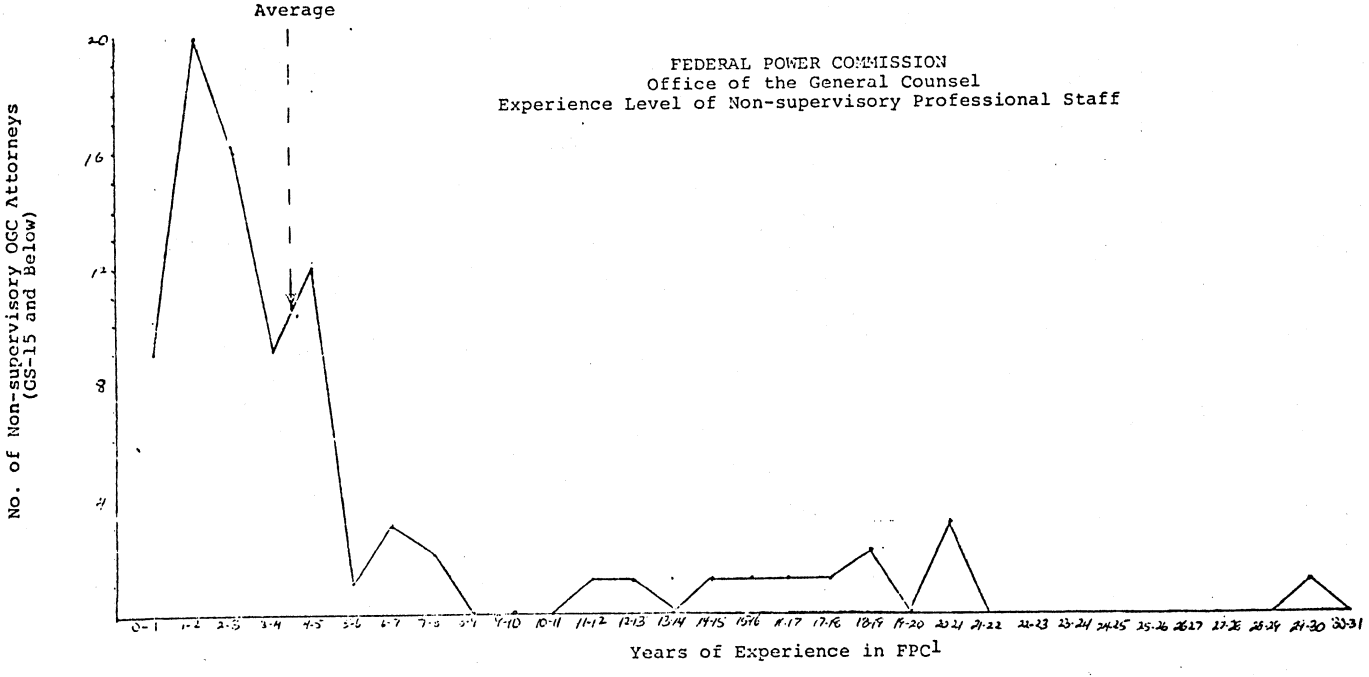
4/ FPC Administrative Order No. 158, published April 9, 1976, 41 FR 15090.

that among the approximately 100 lawyers in the FPC's Office of the General Counsel, professional or personality difficulties could and did arise, and if so, could that result in some employee attrition from the agency. My answer was yes, but no more than I would expect to find in any large legal staff, public or private. There are on the legal staff of the agency employees who have been hired during all national administrations, starting with that of President Franklin D. Roosevelt and continuing up to the current Administration. There are all age groups. There are all types of backgrounds -- geographic, ethnic, social, economic and educational. There are all shades of philosophical persuasions. The lawyers within OGC are a distinguished group, truly a cross section of the national legal community.

I bring this to the Committee's attention, only because I was advised that as a part of the Committee's inquiry into the Touche Ross study and the staff restructuring, FPC employee attrition would be reviewed.

The Office of the General Counsel now has an attrition rate (retirements and voluntary resignations) of approximately 28.6% annually. At the time I became General Counsel, it was 38%. The overall FPC agency attrition rate for employees is just under 20% annually at the present time. The higher rate for OGC reflects a phenomenon which has been going on

for some time among young lawyers with alternate employment capabilities -- 3-year government service by the younger lawyers and then voluntary departures to work in the private sector. It also reflects the fact that clerical workers, when trained in legal procedures, soon find higher paid positions in the private sector. The following curve shows the 3-year phenomenon to which I refer:



[1]Prepared by John Griffin, OGC Administrative Officer, 1 November 1976

Employee reasons for leaving the FPC's payroll are recorded in exit interviews conducted in the FPC's Office of Personnel Programs. I understand Committee staff personnel have had access to those materials. It is my general impression, from my years of work at the FPC, that FPC OGC staff personnel leave for financial gain reasons, for professional or personal reasons, because of philosophical policy differences with substantive FPC decisions, or for health or age retirement reasons. I see no reason why administrative changes to accommodate workload and personnel shifts of the Touche Ross type should result in any appreciable increase in staff attrition.

There are and have been in existence adequate procedures and opportunities for the presentation and open discussion of differing professional points of view on matters of policy and practice within the Commission.

Still, as is the case with any Government agency or private corporation, the policies eventually decided upon, after input from all concerned, <u>are</u> those of the agency or firm, and it is up to the employees to follow them.

At the FPC, we have traditionally followed principles and practices of professional development for legal employees, including rotation among areas of Commission jurisdiction to enhance the experience and capability of Commission attorneys.

87-292 O - 77 - 22

The rotation of staff at the Commission, just as at major corporations which transfer employees among their offices, is specifically designed to further the objectives of the Commission.

The fact remains that work requirements are management prerogatives. If any Commission staff member, whether in OGC or elsewhere, feels that those requirements are not satisfactory, there are well established avenues of review.5/

5/ The Subcommittee's October 1976 Report on Federal Regulation and Regulatory Reforms states in part (p. 381):

> The Federal Power Commission's legislative mandate consists of two principal statutes covering three major fields. Part I of the Federal Power Act *** creates the Commission and delegates to it the responsibility for the licensing of hydroelectric projects on navigable waters or government lands. Part II of this Act directs the Commission to regulate the transmission and sale for resale of electric energy in interstate commerce.
>
> The second statute, currently a major subject of debate, is the Natural Gas Act.***

The Federal Personnel Manual requires a policy of rotational opportunity for employees. Section 412, Appendix A, Instruction 203 states, in part, as follows:

> A-3, a. It is not practical or economical to invest the same development efforts in everyone who reaches the midmanagement level.
>
> * * *
>
> e. Developmental experiences include on-the-job development, formal training programs, and self development activities.
>
> * * *
>
> A-4 a. Since much development is accomplished best on the job, departments and agencies are urged to consider setting up organizational and occupational mobility programs * * * both time-limited moves such as details, and long-term actions involving job rotation * * *. There are no legal restraints on mobility within bureaus or among bureaus within a department.***

The members of the Commission set the Commission policies The staff functions to discharge these policies. Individual assistants to particular Commissioners are responsible to that particular person (18 CFR 3.4(b)).

The detailed record of why, how and by whom the recent redistribution of work was accomplished among FPC staff personnel, including the General Counsel's office, starts with various FPC appropriations hearings and Chairman Dunham's announced intention to clean up backlogs when he became Chairman of the FPC in November 1975. The Commission's FY 77 appropriations covered an amount for this work which Chairman Dunham described as follows:6/

> ***As I mentioned in my opening statement, there is a need for a full-scale review of our total mission and how we are carrying it out. This has never been done. Such a review could help us unwind some of the red tape that binds most bureaucracies from time to time. No study will be a panacea but it can help us relieve regulatory lag.

Insofar as OGC is concerned, the action documents redistributing FPC work started with Chairman Dunham's memorandum of August 2, 1976, FPC Administrative Order No. 146-A

6/ Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, Public Works For Water and Power Development and Energy Research, Appropriation Bill, 1977 (p. 237).

dated October 7, 1976, the Executive Director's memorandum dated October 7, 1976, and my memorandum of October 8, 1976, all of which are attached hereto as Appendix A. The substantive details covered in these documents reflect the basic recommendations of the Touche Ross report of July 1976 as they pertain to OGC.

What has the redistribution of work accomplished within OGC? Based upon a comparison of FY 78 budget materials prepared for submission to the Office of Management and Budget, which did not reflect the results of the Touche Ross study, and the FY 78 budget materials prepared for submission to the House Appropriations Committee, which did reflect the Touche Ross results, we find that OGC backlogs have decreased materially, that OGC per capita output has increased, and that, as a result of these factors, OGC's budget request was reduced from 276 persons to 168 persons. The impact of Touche Ross Recommendations on OGC workload has actually exceeded our expectations. Since the implementation of Touche Ross, we have reduced projected OGC backlogs in the area of non-contested statutory certification orders under the Natural Gas Act, as of the end of FY 77, from 1,050 to fewer than 100 producer matters; and from 605 to zero pipeline matters.

In addition, the restructured OGC, as part of the Commission's overall effort, has assisted in the accelerated disposition of electric rate filings under Part II of the Federal Power Act, and the processing of approximately twice the number of hydroelectric applications within OGC. The hydroelectric matters include the Commission's processing of various licensing and related actions which are taken under Part I of the Federal Power Act. Hydroelectric applications disposed of in fiscal years prior to the Touche Ross type changes were averaging about 131 per year. In FY 76, the number was 209. The reduction in the backlog of electric cases under Part II of the Federal Power Act is from 156 pending cases in September 1976 to 129 in January 1977, or a reduction of 17%. Pending electric rate cases now subject to refund total approximately $580 million on an annualized basis, or a reduction of almost 10% from the September 1976 total.

In turning this workload processing around, OGC has reassigned approximately 21.4% of its staff as a result of implementing the proposals made by Touche Ross. This includes 28 professionals and 8 non-professional or clerical. OGC's current authorization is 102 professionals and 66 clerical persons.

The FPC's Office of the General Counsel is comprised of a fine group of people. The agency can be justly proud of them. I am.

Thank you. I shall be pleased to respond to questions.

APPENDIX A

FEDERAL POWER COMMISSION
WASHINGTON, D. C. 20426

OFFICE OF THE CHAIRMAN

AUG 2 1976

MEMORANDUM TO: All Employees

FROM: Richard L. Dunham

SUBJECT: Organization Procedural Changes

As you know, Touche Ross & Co. has performed an administrative management survey for improving the organization, functions and management process of the FPC. The reasons for the survey were clear. Complex pressures have placed new and more extensive regulatory requirements on the FPC. They have and will continue to require an expeditious, orderly and equitable handling of the FPC's regulatory and decision-making functions.

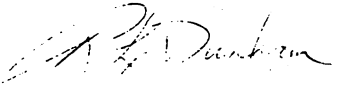
The first section of the study has been completed. It has resulted in recommendations for organization and procedural changes designed to provide a more effective organization.

I have personally monitored the study activities and reviewed its recommendations, and it is now ready for discussion and consideration by the Commission and staff.

A series of long-term recommendations are currently being reviewed. However, several interim activities should be commenced immediately. I have instructed Touche Ross to contact all affected units of the FPC to review study findings and recommendations. I have also requested that the Executive Director initiate several task forces to implement appropriate changes in a timely manner.

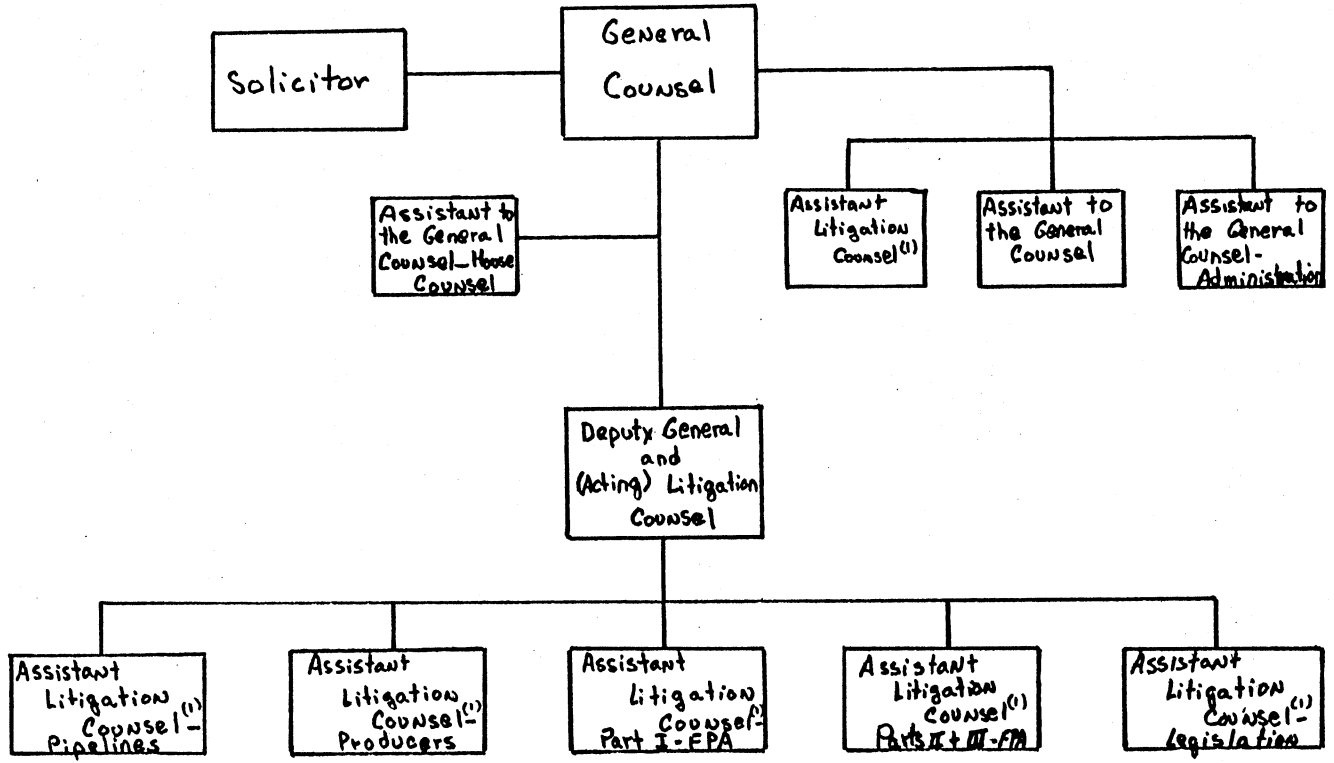
Selected personnel will be contacted in the near future.

The Commission has taken the initiative in surfacing problems in our current organization and identifying desired solutions. This first step in an overall improvement program was of critical importance to the FPC. I wish to thank the entire Commission staff for your cooperation and solicit your continuing contribution in improving our operations.



DC-104

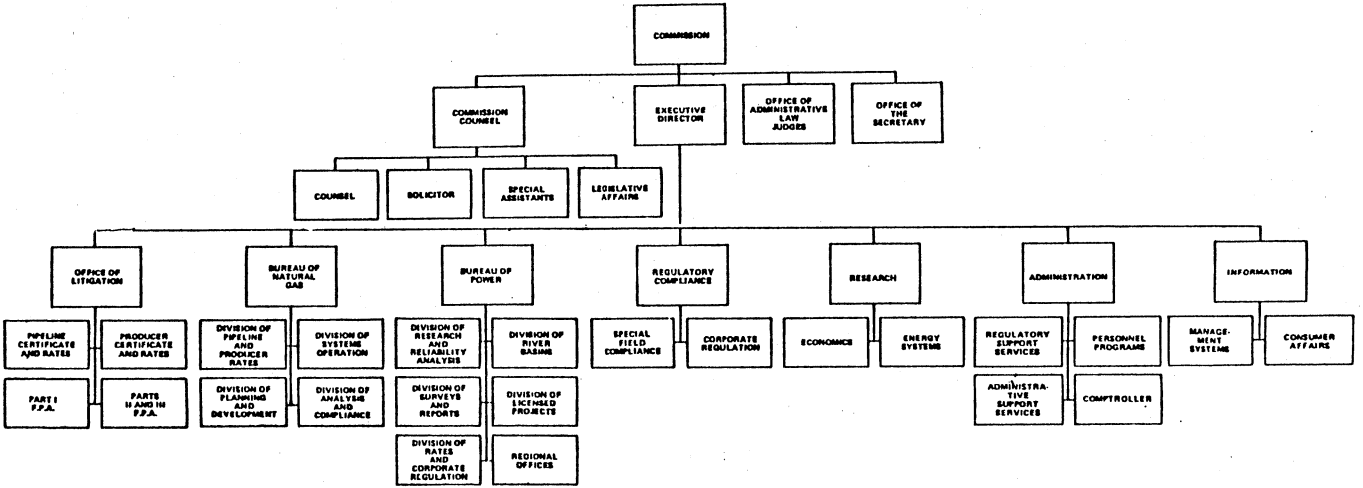
Office of the General Counsel Organization (effective 10-12-76)



(1) — [illegible] "Assistant General Counsel"

Proposed by Touche Ross & Co.

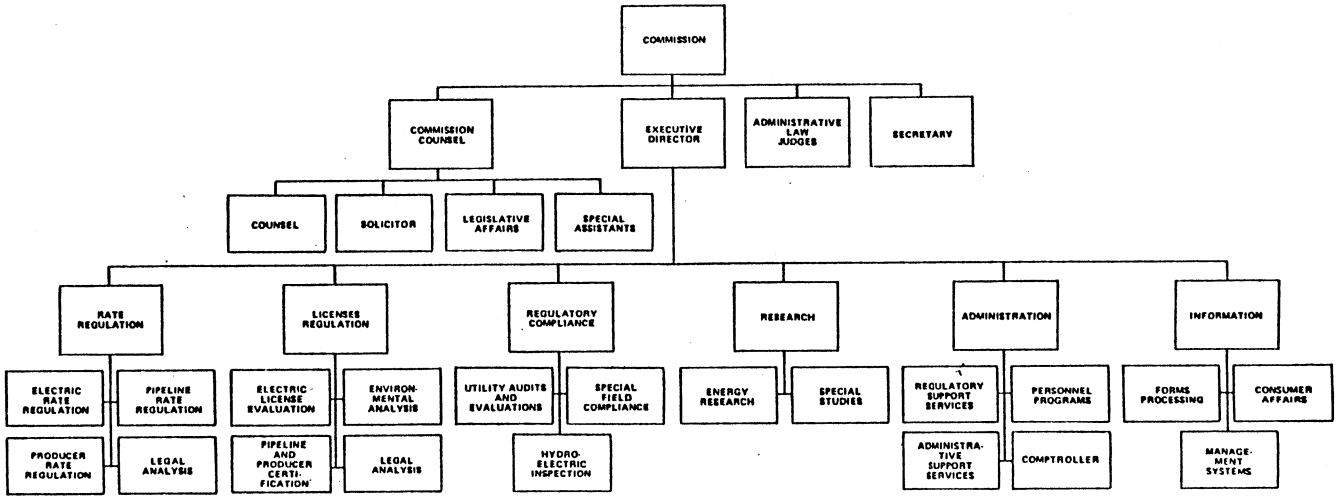
EXHIBIT I C-3
INTERIM ORGANIZATION STRUCTURE



Proposed by Touche Ross & Co.

EXHIBIT I C-1

LONG TERM ORGANIZATION STRUCTURE



FEDERAL POWER COMMISSION
WASHINGTON

OFFICE OF THE
EXECUTIVE DIRECTOR

OCT 7 1976

MEMORANDUM TO : Bureau and Office Heads

FROM : J. Curtis Fee
Executive Director

SUBJECT : Reorganization of the Office of the General Counsel

As a result of the Touche Ross Management Study, the Commission approved Administrative Order No. 146A, a copy of which is attached. In order to implement the changes necessary to implement Administrative Order No. 146A, I have initiated the Legal Support Task Force. It will concentrate on the following major efforts:

1. Redistribution of workload in OGC

2. Implementation of work-flow processing and case management systems

3. Detailed investigation into the positive and negative factors involved in the proposed long term OGC reorganization

The Legal Support Task Force is established as of today under the authority of Mr. Drexel Journey, General Counsel and under the direction of Mr. Perdue, Deputy General Counsel. I consider the duties of this task force to be of high priority to the Commission. You are requested to give full cooperation to its efforts.

Attachment

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Richard L. Dunham, Chairman; Don S. Smith, John H. Holloman III, and James G. Watt.

Administrative Order No. 146A

ORGANIZATION AND FUNCTIONS
OF THE OFFICE OF THE GENERAL COUNSEL

(October 7, 1976)

This administrative order reestablishes the Office of the General Counsel and restates the division of responsibilities between the Office of the General Counsel (OGC) and the Office of Special Assistants as to the preparation of opinions and orders generally and in response to applications for rehearing or reconsideration in meeting separation of function responsibilities.

1. ORGANIZATION. The Office of the General Counsel consists of a single organizational unit without divisions or sections.

2. RESPONSIBILITIES.

a. The Office of the General Counsel is responsible for the legal phases of all staff work required in the performance of the Commission's functions.

b. In addition to the foregoing organizational responsibility, the General Counsel has personal responsibility for providing advice and counsel to the Chairman and the Commission with respect to legal, legislative, and other Commission matters as requested.

3. FUNCTIONS. Studies and analyzes applications and formal and informal communications, filings, and submittals; prepares statutory notices of Commission proceedings for publication and service; prepares correspondence, memoranda, and reports, on legal aspects of such proceedings; advises members of the staff and the Commission on legal questions; and prepares proposed Commission orders. Serves as staff counsel in hearings

and in oral argument before the Commission, presenting evidence, examining witnesses, preparing and submitting motions, stipulations, briefs, exceptions and other pleadings, and presenting oral argument on behalf of the staff before administrative law judges and before the Commission.

Advises the Secretary and the Commission's Records Officer on the certification of Commission records to reviewing courts; represents the Commission, and individual Commissioners in the discharge of their official duties, in the courts, preparing and filing motions, stipulations, briefs, and other pleadings, and presenting oral argument in the lower courts and, in association with the Department of Justice, in the Supreme Court of the United States. Consults with bureaus and offices concerned and drafts legislative proposals initiated by the Commission, Commission comments on legislative proposals prepared outside the agency, and proposed changes in the Commission's rules and regulations; advises the Commission concerning the legal effect and significance of such proposals. As directed, represents the Commission before committees of the Congress, before other governmental agencies, and elsewhere. Compiles and prepares headnotes for, edits, and supervises publication of the Commission's opinions and orders; and is responsible both for the maintenance of a work-flow processing system and for providing case status information to the Commissioners and other Commission personnel.

Senior members of OGC, to the extent stated in the position description held by each individual and as assigned, are responsible for the training of less experienced attorneys in the routine legal work which is the responsibility of OGC so as to assist them in becoming more effective members of the Commission staff.

Subject to the provisions of the Administrative Procedure Act, advises the Commission in the preparation of its opinions and orders. As a division of administrative work load, OGC personnel will handle applications for rehearing or reconsideration in any proceeding where such applications have been filed before the commencement of the hearing and OGC has drafted the order. OGC personnel

will handle any applications, petitions, motions, or other filings, other than settlements, except where OGC has filed a pleading in opposition to the movant or any other party. OGC personnel will handle settlement proposals before or after a hearing has been set, where the Staff has not opposed the settlement. Additionally, OSA will furnish to OGC such information and assistance as is required both to maintain the work flow processing system and to provide case status reporting data in a systematic manner.

All of the above stated functions in OGC will be performed under priorities established by the General Counsel, as required.

4. SUPERSESSION. This order supersedes Administrative Order No. 146 dated February 24, 1975.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary.

OCT 8 1976

MEMORANDUM TO: Mrs. Van Cleve, Messrs. Perdue, Tuttle, Goldstein, Grant, Gilmore, Lotis, Minor, Keeley, Griffin

FROM: Drexel D. Journey

SUBJECT: Redistribution of OGC Workload

This memorandum implements portions of the organization of OGC reflected in Chairman Dunham's memorandum of August 2, 1976 (copy attached). Attached hereto is the organization chart for OGC reflecting the workload redistribution which is being made at this time based upon the Touche Ross analyses and recommendations.

Consistent with this redistribution of workload, work schedule assignments will be changed effective Tuesday, October 12, 1976. (1) The pipeline certificate and rate work will be under the supervision of Gordon Grant in the role of Assistant Litigation Counsel[1/] (acting); (2) the producer rate and certificate work, including all off-shore pipeline work, will be the responsibility of Francis Gilmore filling the role of Assistant Litigation Counsel; (3) all Part I electric work, including license project accounting, will be handled under the supervision of Ruth Van Cleve filling the role of Assistant Litigation Counsel; and, (4) all Part II and III electric work, including Federal power rates, will be handled under the supervision of Daniel Goldstein (now Assistant Litigation Counsel-Legislation) as Assistant Litigation Counsel (acting) for these matters.

In discharging the dual position of Deputy General Counsel and Acting Litigation Counsel, Robert W. Perdue will coordinate materials for the agenda from the various Assistants Litigation Counsel under the general supervision of the General Counsel. The work of the Solicitor will continue under the immediate supervision of the Solicitor and under the general supervision of the General Counsel. Additionally, the work of the Office of the General Counsel in the legislative area will continue as presently conducted under the general supervision of James Wood filling the role of Assistant Litigation Counsel-Legislation (acting).

1/ Assistants Litigation Counsel formerly titled "Assistants General Counsel"

The position of Assistant Litigation Counsel and the two positions of Assistant to the General Counsel will be occupied by Messrs. Lotis, Minor, and Keeley, respectively. Assignments in the nature of those presently handled by Mr. Minor will continue under the supervision of the General Counsel. Assignments to Messrs. Lotis and Keeley will be at the direction of the General Counsel. Administrative work in OGC will continue under the supervision of Mr. Griffin.

As you will note from the overall interim organization chart and the potential long-range reorganization proposal prepared by Touche Ross (copies attached), the work of the General Counsel's office may be further subdivided at some future time. Recognizing that future organizational changes may occur, the positions of Acting Litigation Counsel and Deputy General Counsel are currently combined but have distinct roles in the organizational framework.

I do not know, at the present time, when further reorganizational steps will be directed by the Chairman. It is my understanding that various other staff offices will be undergoing changes and that as such changes occur, OGC may be affected at the direction of the Chairman through the Executive Director, including further changes in the workload and assignments as specified herein. Phase II of the OGC Reorganization Task Force will study this matter.

Your cooperation in implementing the new procedure will ensure a smooth transition. The Administrative Officer, John Griffin, will be in consulation with each of you concerning changes in office space, telephones, furniture, and other physical factors. It is contemplated that, with the workload restructuring, physical relocations will be completed as soon as possible. As he has in the past, John will do his best to serve everybody's interests in that regard.

I am attaching for your information a copy of the Executive Director's memorandum of October 7, 1976, and Administrative Order No. 146A. Because I consider this matter of general interest throughout OGC, copies of this memorandum will be available to all OGC personnel.

General Counsel

Approved: _____
Executive Director

Attachments

APPENDIX A

City of Washington,)
)
District of Columbia)

March 17, 1977

AFFIDAVIT

Now comes Robert Williamson Perdue to, and does make the following statement and statements regarding certain oral testimony, statements, allegations and averments given and/or made by one Jon G. Lotis during the course of proceedings before the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce in the City of Washington on March 14th in the year Nineteen Hundred and Seventy Seven, and particularly that portion of said testimony of the aforenamed Jon G. Lotis as transcribed, printed and published on page one hundred and twenty-one (121) of the transcript of the aforesaid proceedings, and in particular the questions, testimony and comment made at lines one through sixteen (1-16) of said page. Reference is also made herein to lines sixteen (16) and seventeen (17) of page one hundred and twenty of the aforesaid transcript merely to establish the time frame of the aforementioned testimony of the said Jon G. Lotis.

At page one hundred twenty (120) of said transcript appears the following:

"16 Mr. Simms: So, Mr. Lotis, litarally one of the first
17 moves Mr. Journey made after he became General Counsel"

At page one hundred twenty-one (121) of said transcript appears the following:

"1 Did Mr. Journey's Deputy, Mr. Robert Purdew, say any-
2 thing to you concerning Mr. Lewnes around this same time
3 period?
4 Mr. Lotis. Sometime after the conversation with Mr.
5 Journey, Mr. Purdew told me that he had hired a GS-14 for
6 the purpose of blocking promotion to Mr. Lewnes's shop.

At that time there were a number of attorneys at the GS-14 level in Mr. Lewnes's shop, and bringing someone on at that level would, he felt, block some of those attorneys from getting that position.

I asked him whether he had advised Mr. Journey of this. He said he did. Mr. Journey just laughed.

Mr. Simms. Mr. Chairman, I will note for the record that a brief survey of the promotion, hiring, and firing charts that Mr. Fee put in the record did not seem to reflect any category for promotions which were blocked."

(emphasis added)

The aforementioned testimony of Jon G. Lotis is a reiteration of a statement or statements he made in my presence of the undersigned, and others, over one year ago and is, as I personally told him then and at that time (1) is a mistake on his part, (2) illustrates a fantasy, or (3) as I told him then and avow now--is a falsehood deliberated to lend some credence to a perpetration of his of which I had no knowledge.

The falsehood of Jon G. Lotis appears on its face. He testifies "***Mr. Purdew told me that he had hired a GS-14 for the purpose of blocking promotion to Mr. Lewnes's shop. At that time there were a number of attorneys at the GS-14 level in Mr. Lewnes's shop, and bringing someone on at that level would, he felt, block some of those attorneys from getting that position." Of course, you cannot "block" a GS-14 from becoming a GS-14 by hiring a GS-14.

But more damning, and irrefutable proof of the falsehood of the aforementioned testimony of Jon G. Lotis are the following facts:

(1) Mr. Drexel D. Journey became acting General Counsel on September 24, 1974;

(2) Mr. Journey hired Mr. Robert Winters (the GS-14 which Mr. Lotis testified was hired by "Mr. Purdew") on December 22, 1974;

(3) Mr. Journey was promoted to General Counsel on December 31, 1974;

(4) Mr. Robert W. Perdue was promoted to Deputy General Counsel from Assistant General Counsel on May 11, 1975.

(5) Mr. Robert W. Perdue moved from his office as Assistant General Counsel to the office occupied by, and he now occupies as Deputy General Counsel on May 19, 1975.

These facts show that the conversation Mr. Lotis said he had with "***Mr. Journey's Deputy, Mr. Robert Purdew, ...concerning Mr. Lewnes around this same time period?" Could never have taken place as "litarally one of the first moves Mr. Journey made after he became General Counsel...." At the least there was over a five and one-half month time interval between the respective appointments.

Further, Mr. Robert Winters was appointed as a GS-14 almost six months before Robert Williamson Perdue was promoted to Deputy General Counsel. Additionally, Mr. Winters would, and could not at that time, be promoted to a GS-15 until sometime in December, 1975. Consequently, his being hired by Mr. Journey in December, 1974 and assigned to the Producer Section of the Office of the General Counsel under Assistant General Counsel Robert Williamson Perdue could not "block" any pending promotions for anyone.

In edification of the testimony being a similar tale told by Mr. Jon G. Lotis, at a bi-weekly staff meeting held by the General Counsel in May 1975, he recounted a similar fabrication Upon the request of Mr. Perdue, the General Counsel had excused Mr. Perdue from said meeting because he was preparing for the oral argument in Docket No. R-389-B, which he was to argue in the United State Court of Appeals for the Fifth Circuit (National Rate Cases for New Gas, Case No. 74-3330, et al.). Upon hearing Mr. Lotis' tale, Mr. Journey sent for the undersigned and asked Mr. Lotis to recount his story. Mr. Lotis did so, and was

immediately challenged by the undersigned. First, I challenged that such an incident ever occurred, and secondly, that anything like it ever occurred. There was a discussion, and then a heated exchange ensued which was ended by the undersigned personally telling Mr. Lotis he was telling an untruth. Mr. Lotis did not challenge that statement and the matter ended.

Robert W. Perdue

Robert W. Perdue

Robert Williamson Perdue, being first duly sworn, says: That he has read the foregoing affidavit and knows the contents thereof; and that the same is true of his knowledge except as to the matters which are therein stated upon information furnished him, and as to those matters that he believe to be true.

Sworn to and subscribed before me,
this the 17th day of March, 1977.

Jennie P. Sheltons

Notary Public

My Commission Expires August 31, 1979

APPENDIX B

AFFIDAVIT OF DANIEL C. LAMKE

COMES NOW the above-named affiant who deposes and states as follows:

I, Daniel C. Lamke, an employee of the Federal Power Commission ("F.P.C.") believe myself to be the Mr. Lampke (sic) referred to in testimony previously offered before this Subcommittee on March 14, 1977. More specifically, that testimony offered by Mr. John G. Lotis, Assistant Litigation Counsel, on pages 172 and 175 of that day's transcript.

I have been employed with the Federal Power Commission since May, 1970. Since the time of my employment in May of 1970, until today's date, my primary responsibilities have been related to legal activities including trial and advice to the members of the F.P.C. and other legal and technical staff members thereof primarily regarding responsibilities set forth in the Federal Power Act.

In addition, from time-to-time, I have been requested by appropriate members of the staff and Commission of the Federal Power Commission to offer advice with regard to certain isolated items pursuant to the Natural Gas Act. Further, during the years since my employment I have upon request performed other internal functions within the F.P.C. such as acting as a primary draftsman in the now effective Standards of Conduct for Federal Power Commission employees as well as F.P.C. special government employees and F.P.C. Commissioners.

It is my recollection that from 1974 until November 1976, I acted as the Supervisory Attorney in charge of a group of attorneys that became unofficially referred to as the Corporate Regulation - Electric Section of the Hydroelectric Division of the General Counsel's Office. I was acting in that capacity during the period of time that Mr. Lotis referred to in his testimony (pages 172-175).

Mr. Lotis' testimony as it relates to a particular matter involving the American Power System, as stated by him on pages 172 - 175 of this Subcommittee's Transcript, March 14, 1977, creates in my mind an innuendo that Mr. Journey (General Counsel of the Federal Power Commission) and I acted unjustly and in concert in presenting an order to the Commission recommending a broad based investigation of the electric utility industry regarding the alleged need of the industry to favor retail electric service over wholesale electric service.

In my opinion, Mr. Lotis' statement is misleading due to his lack of presenting the factual background of what I consider to be a primary issue that was being addressed during this period of time.

My review of the papers related to this matter correspond to my personal recollection of the following facts:

(1) During the latter part of January 1976, through a conversation with the General Counsel, I became aware of a Bureau of Power Memo to the Commission dated December 1, 1975 (attached hereto as

Appendix 1) that indicated that American Electric Power Company as well as other companies identified by the memo, had indicated the possibility of the termination of certain electric services. More specifically, certain companies including American Electric Power Company ("A.E.P.") or it's subsidiaries had indicated that they might terminate wholesale power service to certain customers for purposes of supplying retail electric service.

(2) It is my recollection that during the primary conversation between Mr. Journey and myself, we both expressed concern with regard to the broad industry-wide repercussions of electric utility companies curtailing wholesale service to customers on the single ground that they may unilatterally prefer to provide service on a retail basis.

(3) Pursuant to our initial conversation, Mr. Journey and myself felt that the most effective way of implementing the recommendations of the Bureau of Power Memo of December 1, 1975, as well as the much broader concern of a shortfall of electric energy on

industry wide basis, was to present the relevant factors as we knew them at that time along with a proposed broad based investigation of the electric industry to determine whether there was any factual basis that would indicate the necessity of any proposed curtailment of electric energy whether it be wholesale or retail .

(4) The conversation between Mr. Journey and myself, to my recollection, specifically included a discussion that any allegations raised in any particular case against any particular company, must be tried within the confines of the case in which those issues were raised. This included the allegations regarding A.E.P. referred to by Mr. Lotis in his testimony or in any other case which might arise requiring Commission decision (see Appendix 2). To my knowledge, that conversation became fact as represented by the Commission setting it for hearing in the individual dockets involving this particular issue. The most recent of which involved the cities of Anderson and Mishawaka, Indiana, Docket No. E - 9548, et al, which has been presented before an Administrative Law Judge of the Federal Power Commission and initial briefs filed as of March 11, 1977.

The matter of curtailment of electric service in any form by A.E.P. or any other electric utility was a matter of concern to a great number of the members of the staff of the Federal Power Commission and, in my opinion, a matter of great concern to the Commission. The drafting and presenting of any order to the Commission was not confined to a closely held group of two (Mr. Journey and myself), as seemingly insinuated by Mr. Lotis' testimony. For instance, I can identify the order that Mr. Lotis is referring to in his testimony on page 172 and page 175, where he indicates that the proposed order was prepared and dictated by Mr. Journey the night before Commission presentation, with my help. That statement is true. I might also add, however, that this matter is not isolated to one day's consideration by the Commission or the staff of the Commission. I think that this is clearly indicated by the Secretary of the Commission's prepared agenda sheets attached hereto as Appendix 3. Those sheets indicated that the Bureau of Power Memo, dated December 1, 1975, appeared on the agenda for Commission discussion for December 17, 1975. Those discussions continued according to the agenda sheets, in an official manner through April 6, 1976, at which time the Chairman of the Commission issued a memo to the Chief of the Bureau of Power to conduct a study with regard to the adequacy

of power supply for utility systems (see Appendix 4). The Secretary's agenda sheets do not however indicate fully staff efforts with regard to presenting this matter to the Commission. For example, my personal file contains eight (8) different drafts of proposed orders representing approaches to the same problem. To the extent that the orders attached as Appendix 5 A - J, do not bear the name of the draftee, I have no independent recollection as to who within the Commission specifically prepared them. I can only state that they were prepared by Commission personnel at my request for purposes of informing me of suggested approaches of addressing the problem of potential nation-wide electric inadequacies.

I am also including as Appendix 6, a series of memoranda in my personal file between myself, the General Counsel, Mr. Lotis or other Commission personnel, regarding this matter. They are submitted for no other particular purpose than to indicate that a substantial number of employees of the Federal Power Commission, in many different divisions, were fully aware of this matter and expressed opinions regarding it.

While inappropriate to express feelings rather than facts in affidavit form, I am constrained to take particular exception to the seeming allegation that an order was done at night for purposes of presentation to the Commission the next day, insinuating in my mind that it was an overt attempt to withhold information for review by any responsible commission staff member. In my experience, with the F.P.C. over the last seven (7) years, I, as well as many other members of the staff of the F.P.C., to my personal knowledge, have worked night hours, holiday hours, weekend hours or any other necessary hours for purposes of developing the required information and preparing proposed orders for Commission consideration. In that statement, I include Mr. Lotis who, to my personal knowledge, has worked as long and as hard in his efforts as any other member of the Commission staff.

Daniel C. Lamke

Daniel C. Lamke, being first duly sworn, says: That he has read the foregoing affidavit and knows the contents thereof; and that the same is true of his knowledge except as to the matters which are therein stated upon information furnished him, and as to those matters that he believes to be true.

Sworn to and subscribed before me, this the 17th day of March, 1977.

Jennie L. Shelton
Notary Public

My Commission Expires August 31, 1979

NOTE: THE FOLLOWING LETTER WAS SUBSEQUENTLY RECEIVED FROM FPC. SEE APPENDIX B, P. ——, THIS HEARING, FOR TEXT OF MR. LAMKE'S AFFIDAVIT.

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426
March 23, 1977

Michael R. Lenov, Esquire
Chief Counsel
Subcommittee on Oversight
and Investigations
Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Lemov:

Attached to Mr. Drexel D. Journey's statement of March 18, 1977, submitted before the Subcommittee on Oversight and Investigations Committee on Interstate and Foreign Commerce there was attached an Appendix B which consists of an Affidavit with Appendicies submitted by myself. The Affidavit referred to certain testimony made by Mr. John G. Lotis regarding a Federal Power Commission proceeding. As indicated by my Affidavit I took exception to what I considered an innuendo by Mr. Lotis as to my personal integrity in that matter.

On the morning of March 23, 1977, Mr. Lotis contacted me in my office at the Federal Power Commission and subsequently in his office we conversed regarding the matter. Mr. Lotis, during those conversations indicated to me that it was not his intention to create any insinuation that the matter referred to by him in his testimony, which was handled by me, was done in any inappropriate manner. While I think the Affidavit and Appendicies prepared by me clearly indicate the handling of the matter, I do appreciate Mr. Lotis personally informing me that no insinuation was intended.

Mr. Lotis during our conversation of March 23, 1977, indicated to me that he intended to make a statement before the Subcommittee on March 24, 1977, clarifying this matter.

On the basis of our conversation and upon Mr. Lotis's explanation that no such innuendo was intended, we concluded that my submitted Affidavit may be unnecessary to clarify any matter in which the Subcommittee is concerned.

In concluding, however, that the Affidavit may be unnecessary for my purposes I do not mean to indicate that I am withdrawing the Affidavit in the absence of a specific finding on the part of the Subcommittee that it is unnecessary for its purposes.

Sincerely,

Daniel C. Lamke

Daniel C. Lamke
Trial Attorney

DCL dla

APPENDIX D

AFFIDAVIT OF KENNETH F. PLUMB

I, Kenneth F. Plumb, being first duly sworn, depose and say:

I am Secretary of the Federal Power Commission and I have been so employed since June 1971.

I have read the testimony of Mr. Jon G. Lotis concerning the issuance on July 21, 1975, of a notice in Ohio Electric Company, Docket No. E-8888. Mr. Lotis stated that he had staff counsel discuss with me the length of the notice period, and that I apparently disagreed with the General Counsel on how long the notice period should have been.

I have no recollection of any such conversation. The only record I have pertaining to the notice is the issued document itself, a copy of which is attached hereto. I note that the notice period was eight days, which is not an unusual period.

Kenneth F. Plumb

Kenneth F. Plumb

Sworn to and subscribed before me,
this the 16th day of March, 1977.

Notary Public

My Commission Expires August 31, 1979

APPENDIX G

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : General Counsel DATE: March 17, 1977

FROM : OGC Administrative Officer

SUBJECT: Data for the "Hearings on Adverse Personnel Actions Against Professional Staff Members at the Federal Power Commission" held before the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, U. S. House of Representatives

Pursuant to your request, this memorandum outlines my involvement with these hearings thus far and examines point-by-point the statistics and other data cited in statements in the unedited stenographic transcripts. These statistics will be compared with the data I am preparing for the Subcommittee.

I have answered numberous requests for data from the Subcommittee. On July 9, 1976, I provided a response to Mr. Braun's verbal request concerning OGC assignments on the HIOS Project, a copy of which is attached as Attachment A. On January 31, 1977, I provided a response to Mr. Nourse's verbal request concerning OGC actual on-board personnel count and promotions by pay period and appropriation code for a time period selected by him, a copy of which is attached as Attachment B. On February 4, 1977, I drafted a response for the Chairman's signature to Congressman Moss' written request for a breakdown of OGC's on-board personnel by occupational series, grade level, and months in grade, a copy of which is attached as Attachment C. On March 10, 1977, I provided a response to Mr. Wunder's verbal request for an on-board OGC personnel count for selected time periods, a copy of which is attached as Attachment D. On that same day I provided a response to Mr. Sims' verbal request for a listing of reassignments occasioned by your October 8, 1976 memorandum. A copy of my response to Mr. Sims is attached as Attachment E. On March 11, 1977, I provided to Mr. Sims copies of all promotion/personnel memoranda written by various Assistants General Counsel that I found in the files I inherited. A copy of this

5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

response is attached as Attachment F. Between February 28, 1977 and this morning, I have worked 111.5 hours on this Subcommittee's inquiries. Fifty of those hours were either overtime or on weekends.

I informed you and all my contacts on the Subcommittee that, from March 9, 1977 forward, I would send copies of all my correspondence with the Subcommittee to both Mr. Lemov and Mr. Wunder. I also discussed this problem with Mr. Sims and we agreed that what was needed was a complete factual record of OGC's personnel actions for FY-1975, FY-1976, Transition Quarter, and FY-1977. Later, Mr. Lemov asked during the hearing (March 14, 1977, Transcript page 18) that this data be compiled for FY-1970 to the present time. Responding to this request will take a minimum of one full month of my time.

Acting pursuant to the concurrent requests I received from you and from Mr. Sims, I have developed certain data pertaining to the professional staff in Mr. Lewnes' and Mr. Lotis' sections for FY-1975 and FY-1976. From these data, I have developed several charts which serve to illustrate what I believe to be the major points of concern to me at issue in these hearings. These charts are not complete because they do not address the full time period requested by the Subcommittee and because they do not address all sections of OGC. As these data are developed further, I will add them to the charts listed below:

Attachment G*: Comparative average tenure of the professional staff in OGC.

Attachment H*: Comparative average grade of the professional staff in OGC.

Attachment I*: Comparative promotions of professional staff in OGC.

Attachment J*: Comparative attrition of professional staff in OGC.

Attachment K*: Comparative promotion eligibility of professional staff in OGC.

87-292 O - 77 - 24

Attachment L*: Comparative on-board professional staff in OGC

Preliminary analysis is possible, subject to the caveat that this analysis may require revision upon examination of the data from FY-1970 through FY-1974. With that qualification in mind, I'll turn to a specific point-by-point analysis of the first three days' hearing transcript.

1. Mr. Mamone (March 9, 1977)

> Since September 1974, the career certificate legal staff has been drastically diminished. Between that date and January 1977, only eight of the 26 original attorneys remain in this section. Of this, 18 departed, 12 resigned from the Commission, and 6 transferred elsewhere in the Commission. This represents an extraordinary rate of attrition [emphasis added].[1]

I cannot confirm this statement either as to all of its facts or as to its assertion of the drastic or extraordinary nature of the attrition. In fact, Mr. Lewnes latter refers to the attrition as "normal" (March 10, 1977 Transcript page 67). As shown in Attachment L, I can confirm that there were 26 on-board professional staff[2] as of September 1974. I cannot confirm that, in the time period mentioned, 12 of these 26 left the Commission. My figures indicate that 11 left the Commission, that one was reassigned outside of OGC, and that

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*Eventually, all of these data will be expanded to include the time period requested by the Subcommittee.

[1]March 9, 1977 unedited stenographic transcript, p. 13.

[2]Defined as either Law Clerks (Trainee) or Attorneys, but not student clerks.

three were transferred within OGC. Neither can I confirm the "drastic" or "extraordinary" nature of this attrition, which, based on my figures, is 3 of 26 in FY-75, and 9 of 26 in FY-76, 2 of 26 in FY-TQ, and 1 of 26 in FY-77 (through January 1977). These attrition rates are 11.54, 34.62, 7.69, and 3.84 percent for the fiscal years mentioned. The composite rate is 15 of 26 or 57.69 percent over 2.25 years, for a yearly rate of 25.64 percent. A comparison of the yearly rate with OGC's overall yearly attrition rate for professionals in FY-75 (22.45%) and FY-76 (23.53%) yields a difference of two or three percentage points, which does not support the use of the descriptors "drastic," "extraordinary," or "tremendous."[3]

> Additionally, the curtailment and extraordinary relief cases were added to the duties of the certificate section in 1970. Together with the increased workload in the Section 7 area, these substantial added duties imposed further demands on staff. [4]

The impression here conveyed is that these demands were imposed during the same time period as the attrition rate cited above. I can confirm that this workload was added, but substantially before the time period mentioned during Mr. Mamone's discussion of attrition.

> The number of filled positions in August 1974 was 137; it increased to 151 in December 1975; and it rose to 159 in December 1976. [5]

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[3]Parenthetically, it should be noted that OGC attrition was only 12 of 26, since the other 3 remain with OGC. The adjective "tremendous" was used by Mr. Lemov.

[4]March 9, 1977 unedited stenographic transcript p. 14.

[5]March 9, 1977 unedited stenographic transcript p. 14.

I cannot confirm these figures exactly, but the difference is very minor. However, they may mislead the Subcommittee, since they include all OGC personnel, instead of only professional staff. In FY-75 and FY-76/77, OGC's professional staff was not authorized to exceed 98 and 102, respectively. My on-board count of professionals (as opposed to authorized ceiling) is not yet complete.

During the course of the hearing, Mr. Mamone states that neither the employees nor the Union had been shown the Touche Ross report.[6] I believe he is correct with respect to large numbers of FPC employees; but I believe he is incorrect on the Union involvement. The Executive Director should be able to answer the question.

> However, I know of no other attorney who was ordered to be moved from Section A to Section B.
>
> * * * *
>
> ***I don't believe any attorney was transferred during the course of the October reorganization who did not request a transfer or who did not go to a similar function in a different box or block on a table of organization.[7]

These statements are not accurate. Attachment E provides the actual reassignments and Attachment M provides a graphic description of the effect of your October 8, 1976 memorandum.

Finally, during Mr. Mamone's testimony, there was a discussion of the experience level in the certificate group. A large reduction in the average experience level was alleged. Attachment G provides the actual figures.

2. Mr. Lewnes, Mr. Wofsy, Mr. Mamone (March 10, 1977)

I confirm the number of professional staff on board in Mr. Lewnes' section. Refer to Attachment L. However, several times during the testimony, reference was made to

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[6]March 9, 1977 unedited stenographic transcript, pages 36 and 58.

[7]March 9, 1977 unedited stenographic transcript, pages 38 and 73.

the "decimation" of his staff and the lack of promotions (Mr. Lewnes later refers to his attrition as "normal"). Attachments L, I, and K address these issues.

During Mr. Lent's questions,[8] the issue of the justification for Mr. Lewnes' outstanding rating of Mr. Mamone was raised. The inadequate justification is not as germane to that discussion as is the fact that Mr. Lewnes used that same verbiage to recommend several attorneys for outstanding performance ratings. In my opinion, outstanding ratings should never be granted on "boiler plate" justification. Mrs. Schutte can describe the requirements for justification of outstanding ratings.

> I was loosing people in normal attrition. I was not getting replacements.[9]

Attachment L does demonstrate a lack of replacements, but I do not believe it to be excessive, especially in view of the hiring restrictions during that time period.

3. Mr. Fee (March 14, 1977)

Mr. Gore's use of the October 1975 to October 1976 time period is an important point.[10] It is repeated several times during the March 14, 1977 hearings. I have not attempted to confirm these figures since they refer to an unrepresentative time period. All government budgeting (and, therefore, personnel trending) is keyed to fiscal years. The time period of October 1975 through October 1976 covers the last three quarters of one fiscal year (1976) and the transition period between one fiscal year structure and another. It should be noted that consideration of the July through September time period when evaluating promotions is important in the case of OGC because of two factors: (a) most new hires were made during that period, which implies that, one year later, they would be first eligible for promotions; and (b) eligibility is a key factor in assessing both promotion distribution and

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[8]March 10, 1977 unedited stenographic transcript, pages 42, 43, and 44.

[9]March 10, 1977 unedited stenographic transcript, page 67 (Mr. Lewnes).

[10]March 14, 1977 unedited stenographic transcript, pages 22 and 23.

1. Attachment A -- July 9, 1976 letter to Mr. Braun concerning OGC assignments on the HIOS Project.

2. Attachment B -- January 31, 1977 letter to Mr. Nourse concerning OGC actual on-board personnel count and promotions by pay periods.

3. Attachment C -- February 4, 1977 response to Moss request for a breakdown of OGC's on-board personnel by occupational series, grade level, and months in grade.

4. Attachment D -- March 10, 1977 letter to Mr. Wunder concerning his verbal request for an on-board OGC personnel count for selected time periods.

5. Attachment E -- March 10, 1977 letter to Mr. Sims concerning his request for a listing of reassignments occasioned by your October 8, 1976 memorandum.

6. Attachment F -- March 11, 1977 letter to Mr. Sims providing him all promotion/personnel memoranda written by various Assistants General Counsel that I found in files.

7. Attachment G -- Comparative average tenure of the professional staff in OGC.

8. Attachment H -- Comparative average grade of the professional staff in OGC.

9. Attachment I -- Comparative promotions of professional staff in OGC.

10. Attachment J -- Comparative attrition of professional staff in OGC.

11. Attachment K -- Comparative promotion eligibility of professional staff in OGC.

12. Attachment L -- Comparative OGC on board professional staff.

attrition in OGC. Attachments I and J supply certain statistics relating promotions and attrition in OGC, and Attachment N relates promotion eligibility to attrition.

4. Mr. Lotis (March 14, 1977)

I cannot confirm the status of promotions in the Rates Section.[11] My figures do not agree with those cited in the transcript, but, since I do not have a copy of the chart, or a copy of its supporting data, I do not know the source of the disagreement. See Attachments I and K. I can suggest that his high attrition rate (and hence his low promotion rate--the eligibility problem again) are due in part to his advice to his newly arrived attorneys.[12]

This concludes the point-by-point analysis. I believe the main points addressed by the Subcommittee are:

1. Promotion rates
2. Attrition rates
3. On-board professional staff
4. Average experience levels

I hope that the attached material will serve to explicate further the data I am preparing for the Subcommittee.

Respectfully submitted,

John R. Griffin III

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[11]March 14, 1977 unedited stenographic transcript, pages 135 and 158.

[12]See page 135 of the transcript.

13. Attachment M -- Description of the effect of October 8, 1976 memorandum.

14. Attachment N -- Comparative OGC promotion eligibility to attrition.

NOTE: Attachments B, C, D, and F follow--all other attachments may be found in the subcommittee's files.

ATTACHMENT B

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

January 31, 1977

Mr. Richard Nourse
House Annex No. 2
Room 3304
Washington, D.C. 20515

Dear Mr. Nourse:

Pursuant to our conversation on January 26, 1976, enclosed are the following:

1. Actual on-board personnel count by pay period and by appropriation codes for the Office of the General Counsel (OGC) for the period July 1, 1975 through January 29, 1977. Included for comparison purposes is OGC's authorized personnel staffing pattern for FY-76, FY-TQ, and FY-77.

2. A listing of OGC's promotions by appropriation code for the same time period.

As you requested, these data are displayed by each appropriation code as well as by totals. I wish to reiterate that the Office of the General Counsel is a single integrated unit, with no formally established suborganizational units. The appropriation codes represent a substructure only for accounting purposes. This point is particularly germane to any discussion of OGC promotions at the appropriation code level, since promotion decisions are made with no reference whatsoever to these artificial appropriation codes.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

If I can be of further assistance in this matter, please let me know.

Sincerely,

JOHN R. GRIFFIN, III

John R. Griffin III
Administrative Officer
Office of the General Counsel

OFFICE OF THE GENERAL COUNSEL
Promotion History
July 1, 1975 through December 31, 1976

Summary

APP'N CODE	OFFICE	TOTAL PROMOTIONS[1] 01 JUL 75 30 SEP 75	01 OCT 75 30 SEP 76	01 OCT 76 31 DEC 76	TOTALS
L5000	RATES	6 (5)	5 (1)		11 (6)
L1000	IMMEDIATE OFFICE OF THE GENERAL COUNSEL	2 (1)	5 (0)	4 (0)	11 (1)
L2000	SOLICITOR	4 (0)	3 (0)	4 (0)	11
L3100	PIPELINES	4 (1)	12 (4)	5 (0)	21 (5)
L3200	PRODUCERS	3 (0)	9 (1)	1 (0)	13 (1)
L3300	HYDRO (PART I)	10 (1)	10 (1)	8 (0)	28 (2)
L3400	RATES & CORPORATIONS			4 (0)	4 (0)
L3500	LEGISLATION	3 (3)	2 (1)	1 (0)	6 (4)
	TOTALS	32 (11)	46 (8)	27 (0)	105 (19)

[1]The numbers in parentheses indicate the number of those promotees who have since left the Commission's employ.

OFFICE OF THE GENERAL COUNSEL
Promotion History
July 1, 1975 through December 31, 1976

Professional Staff

APP'N CODE	OFFICE	TOTAL PROMOTIONS[1] 01 JUL 75 30 SEP 75	01 OCT 75 30 SEP 76	01 OCT 76 31 DEC 76	TOTALS
L5000	RATES	6 (5)	3 (1)		9 (6)
L1000	IMMEDIATE OFFICE OF THE GENERAL COUNSEL	0 (0)	1 (0)	9 (0)	1 (0)
L2000	SOLICITOR	3 (0)	3 (0)	1 (0)	7 (0)
L3100	PIPELINES	4 (1)	10 (3)	2 (0)	16 (4)
L3200	PRODUCERS	3 (0)	9 (1)	1 (0)	13 (1)
L3300	HYDRO (PART I)	8 (1)	8 (0)	4 (0)	20 (1)
L3400	RATES & CORPORATIONS			4 (0)	4 (0)
L3500	LEGISLATION	0 (0)	2 (1)	1 (0)	3 (1)
	TOTALS	24 (7)	36 (6)	13 (0)	73 (13)

[1]The numbers in parentheses indicate the number of those promotees who have since left the Commission's employ.

OFFICE OF THE GENERAL COUNSEL
Promotion History
July 1, 1975 through December 31, 1976

Non Professional Staff

APP'N CODE	OFFICE	TOTAL PROMOTIONS[1] 01 JUL 75 30 SEP 75	01 OCT 75 30 SEP 76	01 OCT 76 31 DEC 76	TOTALS
L5000	RATES	0 (0)	2 (0)	0 (0)	2 (0)
L1000	IMMEDIATE OFFICE OF THE GENERAL COUNSEL	2 (1)	4 (0)	4 (0)	10 (1)
L2000	SOLICITOR	1 (0)	0 (0)	3 (0)	4 (0)
L3100	PIPELINES	0 (0)	2 (1)	3 (0)	5 (1)
L3200	PRODUCERS	0 (0)	0 (0)	0 (0)	0 (0)
L3300	HYDRO (PART I)	2 (0)	2 (1)	4 (0)	8 (1)
L3400	RATES & CORPORATIONS			0 (0)	0 (0)
L3500	LEGISLATION	3 (3)	0 (0)	0 (0)	3 (3)
	TOTALS	8 (4)	10 (2)	14 (0)	32 (6)

[1]The numbers in parentheses indicate the number of those promotees who have since left the Commission's employ.

OGC ON-BOA PERSONNEL COUNT AS OF C.O [illegible].

PAY PERIOD ENDING	OGC APPROPRIATION CODES*								
	L5000	L1000	L2000	L3100	L3200	L3300	L3400	L3500	TOTAL
07-05-75	24	19	10	38	14	33		12	150
07-19-75	24	20	11	37	14	32		12	150
08-02-75	24	20	10	36	14	32		12	148
08-16-75	23	21	10	37	15	33	E	11	150
08-30-75	23	21	11	38	16	33	S	11	153
09-13-75	26	21	9	38	16	35	T	11	156
09-27-75	26	19	10	38	17	36	A	11	157
10-11-75	26	19	10	38	17	35	B	11	155
10-25-75	26	19	11	37	17	34	L	11	155
11-08-75	25	19	11	37	17	34	I	11	154
11-22-75	25	20	11	37	17	35	S	11	156
12-06-75	26	20	10	37	17	35	H	11	156
12-20-75	25	19	10	37	17	35	E	11	154
01-03-76	25	18	10	37	17	34	D	11	153
01-17-76	25	19	10	36	17	34		10	151
01-31-76	25	19	10	35	16	34	O	10	149
02-14-76	26	19	10	35	16	33	C	10	149
02-28-76	25	19	11	35	16	31	T	10	147
03-13-76	25	19	11	34	17	31	O	10	147
03-27-76	25	19	11	34	17	30	B	10	146
04-10-76	25	22	11	31	14	31	E	10	144
04-24-76	25	24	11	29	13	29	R	10	141
05-08-76	25	24	11	29	13	28		11	141
05-22-76	25	23	11	29	13	30	8	12	143
06-05-76	25	22	11	29	13	31		12	143
06-19-76	25	23	13	32	15	36	1	12	156
07-03-76	23	27	13	32	15	37	9	11	157
07-17-76	22	26	13	33	15	35	7	11	155
07-31-76	22	26	13	31	15	36	6	11	154
08-14-76	21	27	13	30	16	34		12	153
08-28-76	20	27	13	30	16	35		12	153
09-11-76	20	28	13	31	16	35		11	154
09-25-76	19	27	13	31	16	36		12	154
10-09-76	D	27	14	37	17	28	22	11	156
10-23-76	I	28	14	34	18	27	22	11	154
11-06-76	S	28	14	38	16	27	22	11	156
11-20-76	S	29	14	38	18	25	22	11	157
12-04-76	O	29	12	38	18	26	22	11	156
12-18-76	L	29	12	38	19	27	21	11	157
01-01-77	V	29	13	38	19	26	22	11	158
01-15-77	E	30	13	37	19	27	25	11	162
01-29-77	D	30	13	38	19	27	25	11	163

*APPROPRIATION CODES ESTABLISHED BY COMPTROLLER FOR BUDGET AND ACCOUNTING PURPOSES AS FOLLOWS:

APP'N CODE	OGC SUPERVISOR IN CHARGE OF:	MAXIMUM AUTHORIZED STAFF* FY-76	TQ	FY-77
L5000	Rates	23	23	**
L1000	Immediate Office of the General Counsel	26	26	29
L2000	Solicitor	13	13	14
L3100	Pipeline Matters***	32	32	40
L3200	Producer and all Offshore Matters	16	16	18
L3300	Hydroelectric (Part I)****	38	38	28
L3400	Rates & Corporations (Parts II & III)	*****	*****	26
L3500	Legislation	11	11	13
TOTALS		159	159	168

*Authorized at end of FY
**Office Disestablished 10-08-76
***Named "Certificates" Until 10-08-76
****Included Part II in FY-76 & FY-TQ
*****Not established until FY-77

ATTACHMENT C

Honorable John E. Moss
Chairman
Subcommittee on Oversight and
Investigations
Committee on Interstate and
Foreign Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your letter dated February 2, 1977, enclosed is a breakdown by appropriation code of the employees (GS-9 and above) on-board in the Office of the General Counsel as of July 31, 1976, August 28, 1976, and September 25, 1976. Included in these data are the occupational series, the grade level, and the number of months in grade for each employee listed. If the number of months in grade exceeds twelve, the employee should be considered eligible for promotion. Unless otherwise noted in the "Remarks" column, all of the individuals listed are still employed in the Office of the General Counsel.

If I can be of further assistance in this matter, please let me know.

Sincerely yours,

Richard L. Dunham
Chairman

Enclosure

OGC
Griffin, J.R:dja
2-4-77

Control No. 1083

cc: Chairman(2)/Ea. Comm./Secretary/Executive Director/ Mr. Journey/Mr. Wood/OPI/Central Files/Interoffice Files/OGC/Mr. Griffin

OFFICE OF THE GENERAL COUNSEL
Transition Quarter On-Board Staff
Appropriation Code L1000

Immediate Office of the General Counsel

FOR GS-9 AND ABOVE

Last Name	ON BD 1 JUL 76	As of 07-31-76 GS SERIES	GRD	MTHS IN GRD	As of 08-28-76 GS SERIES	GRD	MTHS IN GRD	As of 09-25-76 GS SERIES	GRD	MTHS IN GRD	Remarks
Journey	X	0905	18	19	0905	18	20	0905	18	21	
Perdue	X	0905	17	14	0905	17	15	0905	17	16	
Minor	X	0905	15	15	0905	15	16	0905	15	17	
Diaz	X	0905	14	13	0905	14	14	0905	14	15	To L3500 10-8-76
Griffin	X	0341	14	04	0341	14	05	0341	14	06	
Whitfield	X	0905	13	24	0905	13	25	0905	13	26	
Konski	X	0905	11	08	0905	11	09	0905	11	10	To L3400 10-8-76
Keeley	X	0905	11	03	0905	11	04	0905	11	05	
Lane, P.	X	0341	09	03	0341	09	04	0341	09	05	
Rexinger	X	0905	11	08	0905	11	09	To Private Industry 9-10-76			
Steen	X							0904	09	05	From L3500 8-29-76

87-292 O - 77 - 25

OFFICE OF THE GENERAL COUNSEL
Transition Quarter On-Board Staff
Appropriation Code L3200

Producers

FOR GS-9 AND ABOVE

Last Name	ON BD 1 JUL 76	As of 07-31-76 GS SERIES	GRD	MTHS IN GRD	As of 08-28-76 GS SERIES	GRD	MTHS IN GRD	As of 09-25-76 GS SERIES	GRD	MTHS IN GRD	Remarks
Gilmore	X	0905	16	9	0905	16	10	0905	16	11	
Winters	X	0905	14	19	0905	15	01	0905	15	01	
Clark	X	0905	13	11	0905	13	12	0905	14	01	
Frandsen	X	0905	13	12	0905	14	01	0905	14	02	
Koves	X	0905	12	12	0905	12	13	0905	13	01	
Sledge	X	0905	12	9	0905	12	10	0905	12	11	
McMurtrie	X	0905	11	13	0905	11	14	0905	12	01	
Parks	X	0905	11	13	0905	11	14	0905	12	01	
MacIntyre	X	0905	11	01	0905	11	02	0905	11	03	
Musser	X	0954	9	31	0954	9	32	0954	9	33	
Wright	X	0905	9	05	0905	9	06	0905	09	07	
Kelly, R.					0904	11	01	0904	11	02	From School 8-6-77
Province	X	0905	12	16	0905	12	17	0905	13	01	To Pvt. Ind. 10-29-76

OFFICE OF THE GENERAL COUNSEL
Transition Quarter On-Board Staff
Appropriation Code L3100

Certificates (Renamed "Pipelines" 10-8-76)

FOR GS-9 AND ABOVE											
	ON BD 1 JUL	As of 07-31-76			As of 08-28-76			As of 09-25-76			
		GS		MTHS IN	GS		MTHS IN	GS		MTHS IN	
Last Name	76	SERIES	GRD	GRD	SERIES	GRD	GRD	SERIES	GRD	GRD	Remarks
Grant	X	0905	15	110	0905	15	111	0905	15	112	
Drennan	X	0905	15	16	0905	15	17	0905	15	18	From OSA 7-4-76
Keating	X	0905	15	28	0905	15	29	0905	15	30	
Mamone	X	0905	15	34	0905	15	35	0905	15	36	To L3300 10-8-76
Wofsy	X	0905	15	73							To L5000 8-1-76
Martin	X	0905	15	86	0905	15	87	0905	15	88	
Heisler	X	0905	14	28	0905	14	29	0905	14	30	
Mark	X	0905	14	51	0905	14	52	0905	14	53	
Anderson	X	0905	12	13	0905	12	14	0905	13	01	
Cockrell	X	0905	13	9	0905	13	10	0905	13	11	
Harris	X	0905	13	73	0905	13	74	0905	13	75	
King	X	0905	12	12	0905	12	13	0905	13	01	
Kissel	X	0905	13	17	0905	13	18	0905	13	19	To Pvt. Ind. 2-4-77
Bortz	X	0905	12	12	0905	12	13	0905	12	14	
Fullerton	X	0905	11	19	0905	11	20	0905	11	21	
Froehlich	X	0905	9	11	0905	9	12	0905	11	01	
Stauber	X	0905	9	11	0905	11	01	0905	11	02	
Williams	X	0904	11	05	0904	11	06	0905	11	07	
Zipp	X	0905	9	11	0905	9	12	0905	11	01	
Aber	X	0905	12	16	0905	12	17	0905	13	01	To Pvt. Ind. 10-15-76
Cashell (GS-13)				Reassigned to Secretary's Office							7-18-76
Pulas	X	0905	12	9	0905	12	10	0905	12	11	To Pvt. Ind. 10-8-76

OFFICE OF THE GENERAL COUNSEL
Transition Quarter On-Board Staff
Appropriation Code L2000

Solicitor

		FOR GS-9 AND ABOVE									
	ON BD 1 JUL 76	As of 07-31-76			As of 08-28-76			As of 09-25-76			
		GS		MTHS IN GRD	GS		MTHS IN GRD	GS		MTHS IN GRD	
Last Name		SERIES	GRD		SERIES	GRD		SERIES	GRD		Remarks
Tuttle	X	0905	16	13	0905	16	14	0905	16	15	
DuBoff	X	0905	13	12	0905	13	13	0905	14	01	
Telleen	X	0905	12	12	0905	12	13	0905	12	14	
Taube	X	0905	13	09	0905	13	10	0905	13	11	
Walsh	X	0905	13	12	0905	13	13	0905	13	14	
Garten	X	0905	11	10	0905	11	11	0905	11	12	
Lahey	X	0905	11	12	0905	12	01	0905	12	02	
Tucker	X	0954	09	28	0954	09	29	0954	09	30	
Burnes	X	0905	13	09	0905	13	10	0905	13	11	To Justice 11-27-76

OFFICE OF THE GENERAL COUNSEL
Transition Quarter On-Board Staff
Appropriation Code L3400

Rates and Corporations

	FOR GS-9 AND ABOVE										
	ON BD 1 JUL 76	As of 07-31-76			As of 08-28-76			As of 09-25-76			
		GS		MTHS IN	GS		MTHS IN	GS		MTHS IN	
Last Name		SERIES	GRD	GRD	SERIES	GRD	GRD	SERIES	GRD	GRD	Remarks
NOT ESTABLISHED UNTIL 10-8-76											

OFFICE OF THE GENERAL COUNSEL
Transition Quarter On-Board Staff
Appropriation Code L3300

Hydro

FOR GS-9 AND ABOVE

Last Name	ON BD 1 JUL 76	As of 07-31-76 GS SERIES	GRD	MTHS IN GRD	As of 08-28-76 GS SERIES	GRD	MTHS IN GRD	As of 09-25-76 GS SERIES	GRD	MTHS IN GRD	Remarks
Van Cleve	X	0905	16	14	0905	16	15	0905	16	16	
Hagenlock	X	0905	15	34	0905	15	35	0905	15	36	
Lamke	X	0905	15	34	0905	15	35	0905	15	36	To L3400 10-8-76
Shepherd	X	0905	15	28	0905	15	28	0905	15	28	
Stafford	X	0905	15	02	0905	15	03	0905	15	04	To L3400 10-8-76
Boergers	X	0905	14	11	0905	14	12	0905	14	13	
Everett	X	0905	14	118	0905	14	119	0905	14	120	To L3500 10-8-76
Reusch	X	0905	14	08	0905	14	09	0905	14	10	
Azzaro	X	0905	13	02	0905	13	03	0905	13	04	
Cromes	X	0905	12	12	0905	12	13	0905	13	01	To L3400 10-8-76
Gossel	X	0905	13	11	0905	13	12	0905	13	13	
Lee	X	0905	12	12	0905	12	13	0905	12	14	
Lesch	X	0905	12	12	0905	13	01	0905	13	02	
Miles	X	0905	12	12	0905	12	13	0905	12	14	
Nelson	X	0905	13	11	0905	13	12	0905	13	13	
Woods	X	0905	13	98	0905	13	99	0905	13	100	To L3400 10-8-76
Chryssikos	X	0905	12	1	0905	12	2	0905	12	3	To L3400 10-8-76
Clarke	X	0905	12	9	0905	12	10	0905	12	11	
Garber	X	0905	11	9	0905	11	10	0905	12	11	
McGettrick	X	0905	11	13	0905	12	01	0905	12	02	
Phillips	X	0905	11	9	0905	11	10	0905	11	11	To Pvt. Ind. 2-25-77
Watkins	X	0905	11	10	0905	11	11	0905	11	12	
Fields	X	0905	9	11	0905	09	12	0905	11	01	To L3400 10-8-76
Reiter	X	0905	9	11	0905	09	12	0905	11	01	To L3400 10-8-76
Ortman (GS-13)											To Pvt. Ind. 7-2-76
Wenner					0904	11	01	0904	11	02	Fm Law School 8-15-76

OFFICE OF THE GENERAL COUNSEL
Transition Quarter On-Board Staff
Appropriation Code L3500

Legislation

FOR GS-9 AND ABOVE

Last Name	ON BD 1 JUL 76	As of 07-31-76 GS SERIES	GRD	MTHS IN GRD	As of 08-28-76 GS SERIES	GRD	MTHS IN GRD	As of 09-25-76 GS SERIES	GRD	MTHS IN GRD	Remarks
Goldstein	X	0905	16	74	0905	16	75	0905	16	76	To L3400 10-8-76
Wood	X	0905	15	21	0905	15	22	0905	15	23	
Gould	X	0905	13	70	0905	13	71	0905	13	72	
Marshall	X	0905	11	11*	0905	11	11*	0905	11	12*	To L3400 10-8-76
Schifter	X	0905	11	10	0905	11	11	0905	12	01	To L3400 10-8-76
Pendley					0904	11	01	0904	11	02	To L3200 10-8-76
Riordan	X	0904	11	03	0904	11	04	0904	11	05	
Steen	X	0904	09	03	0904	09	09				To L1000 8-29-76
Liebesman	X	0905	11	13	0905	11	14	0905	11	15	To Justice 1-1-77
Yellman	X	(GS-9 to GS-11 7-18-76)									To Pvt. Ind. 7-21-76

*Part time: Eligibility determined on basis of number of paid hours worked.

OFFICE OF THE GENERAL COUNSEL
Transition Quarter On-Board Staff
Appropriation Code L5000

Rates

		FOR GS-9 AND ABOVE									
	ON BD 1 JUL	As of 07-31-76			As of 08-28-76			As of 09-25-76			
		GS		MTHS IN	GS		MTHS IN	GS		MTHS IN	
Last Name	76	SERIES	GRD	GRD	SERIES	GRD	GRD	SERIES	GRD	GRD	Remarks
Lotis	X	0905	16	37	0905	16	38	0905	16	39	To L1000*
Mattingly	X	0905	15	62	0905	15	63	0905	15	64	To 3100*
Wofsy					0905	15	74	0905	15	75	Fm L3100 8-1-76 to L3400*
Bullock	X	0905	14	16	0905	14	17	0905	14	18	To L3400* to OSA 1-30-77
Hargis	X	0905	11	11	0905	11	12	0905	12	01	To L3400*
McManus	X	0905	11	11	0905	11	12	0905	11	13	To L3400*
Nygaard	X	0905	11	11	0905	11	12	0905	12	01	To L3400* to OSA 2-14-77
Pederson	X	0905	11	11	0905	11	12	0905	11	13	To L3100*
Stiles	X	0905	11	17	0905	11	18	0905	11	19	To L2000*
Stough	X	0905	12	16	0905	12	17	0905	12	18	To L3100*
Lane, D.	X	0905	11	11	0905	11	12	0905	11	13	To L3100*
Elrod	X	0905	12	11	0905	12	12	0905	12	13	To L3100* To FEA 1-15-77
Melvin	X	0905	11	03	0905	11	04	0905	11	05	To L3400* to PRC 11-13-76
Weller	X	0905	11	14	0905	11	15	0905	11	16	To L3100* to PRC 12-11-76
Corbet	X	(GS-12)									To Pvt. Ind. 7-9-76
Kelly,	X	0905	12	05	0905	06					To Comm. Holloman 9-12-76
Oliver	X	0905	13	12							To Pvt. Ind. 8-13-76
Sodaro	X	0905	11	11							To OSA 8-1-76

*Workload redistributed 10-8-76

ATTACHMENT D

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

March 10, 1977

Mr. Bernard Wunder
Minority Counsel
Subcommittee on Oversight
and Investigations
Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Wunder:

Confirming our telephone conversation of March 9, 1977, enclosed is the personnel count that we discussed. If I may be of further assistance, please let me know.

Sincerely,

John R. Griffin III
Administrative Officer
Office of the General Counsel

Enclosure

cc: Mr. Lemov

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

FEDERAL POWER COMMISSION - Office of the General Counsel

Personnel Count

	ON BD 10-1-76			ON BD 10-29-76			ON BD* 3-7-77		
	Pro.	Other	Total	Pro.	Other	Total	Pro.	Other	Total
General Counsel	5	20	25	7	20	27	8	22	30
Solicitor	8	5	13	8	5	13	8	5	13
Pipelines	21	11	32	23	12	35	27	14	41
Producers	12	4	16	12	4	16	11	7	18
Hydroelectric	26	11	37	19	8	27	17	9	26
Rates & Corp.	Established 10-8-76			16	5	21	20	7	27
Legislation	8	5	13	6	5	11	8	5	13
Rates	14	5	19	DISSOLVED OCTOBER 8, 1976					
TOTALS	94	61	155	91	59	150	99	69	168

*Includes all seven new hires for which firm offers are outstanding: 2 professional and 1 other in Pipelines; 2 professionals in Rates & Corporations; 1 professional in Hydroelectric; and 1 professional in Legislation.

ATTACHMENT F

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

March 11, 1977

Mr. Steven F. Sims
Special Assistant
Subcommittee on Oversight
and Investigations
Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Sims:

During the March 10, 1977 hearings before the Subcommittee, I believe Chairman Moss requested copies of the memoranda written by Judge Lewnes concerning various personnel matters under his purview during his tenure as Assistant General Counsel. In our phone conversation this morning, you informed me that this request had been fulfilled by Judge Lewnes and that I need not find the copies held in the Office of the General Counsel.

Inasmuch as I had completed the file search before your call, I perused the material found therein. I believe it important to the Subcommittee's full understanding of this matter to have before it the similar memoranda written by other Assistants General Counsel. Therefore, I am enclosing copies of all such memoranda I found during my file search.

If I may be of further assistance, please let me know.

Sincerely,

John R. Griffin III
Administrative Officer

AMERICAN REVOLUTION BICENTENNIAL 1776-1976 ©

Mr. Moss. Thank you, Mr. Journey.

The committee will not today question Mr. Griffin. The committee will, before it concludes its inquiry into this matter, probably desire to examine Mr. Perdue on the affidavit submitted because the charges are in an affidavit and because it was put before the committee without the committee having a right to examine the matter of that affidavit.

The same would be true of Mr. Lamke. The same would be true for Secretary Plumb. The same will be true for Ms. Hargis. The same will be true for Mr. Griffin.

We shall have them before us for direct testimony on these matters.

Mr. JOURNEY. If I might say one other thing for housekeeping purposes, Mr. Chairman, I discussed with you my work with the Electric Reliability Councils. I have never testified before you on this program. I testified before Mr. Sharp on it and Mr. Santini. I am not sure about Mr. Lent.

This is a program——

Mr. Moss. I have read the testimony. As chairman, I have the responsibility to review the entire record before it is printed.

Mr. JOURNEY. What I meant, sir, is that this type of report, this Reliability-Council-type report, is the thing referred to in my testimony. This does not appear in individual rate files but it is a public document. That was what I had reference to.

Mr. Moss. Mr. Journey, you may recall that for many years I served for a while as chairman and as the ranking member on the Subcommittee of the Committee on Government Operations which made an extensive study of the various intertie operations and various Federal systems of power around this country.

Mr. JOURNEY. Yes, I remember that.

Mr. Moss. And I have a fair degree of familiarity with the work of the Commission there.

I also served on the Oversight Committee in 1958 when we had the Federal Power Commission before us for rather extensive hearings at that time. We have a long acquaintance, therefore, and a long acquaintance with the work you carried on and which the Commission carried on.

Mr. JOURNEY. The work I did before the Western Conference, when I went out in 1975, was in further answer of that.

Mr. Moss. That, however, at this moment is not the issue before the subcommittee.

Mr. JOURNEY. I understand that.

Mr. Moss. At a later date as we move into more substantive matters within the jurisdiction of the Commission, as we undoubtedly will be doing, particularly in connection with the consideration of the proposed reorganization creating a Department of Energy, the committee will be making inquiries into many facets of the Commission's operations.

Mr. JOURNEY. I would think you would, sir.

Mr. LENT. I have another housekeeping question.

Since the exhibits which have been submitted by Mr. Journey are referred to in his testimony, and since they may be the subject of cross-examination by counsel or some of the members of the sub-

committee, I wonder whether we can get a ruling from the Chair now as to whether or not these——

Mr. Moss. We have a ruling that these will be reviewed. This was delivered to the subcommittee at 9:25 this morning. We have not had an opportunity to review it.

It would amaze me if counsel can ask any questions on the exhibits in view of the fact that he has not had an opportunity even to look at the exhibits, much less examine on them. I certainly have not had an opportunity to look at them, nor am I prepared to examine on them.

Therefore, the ruling is that the appropriate reservation is made to receive those portions deemed pertinent after a review of the material.

Mr. LENT. I would just respectfully point out that without these materials being included, augmenting Mr. Journey's testimony, it would be impossible to figure out what his main testimony was about without having the activity to refer to these documents.

Mr. Moss. The gentleman has never reviewed a report or a hearing record printed by any committee I have chaired which has not had a great deal of coherence and order in its production. He will not in this instance.

Mr. Fee?

Mr. FEE. Mr. Chairman, on Monday you instructed me to bring my statement with me on Friday and enter it into the record.

If it pleases the committee, I would choose not to read it. The material has been covered rather extensively.

Mr. Moss. And it has been entered in the record on Friday.

Mr. FEE. Yes, sir. Thank you.

[Mr. Fee's prepared statement and attachments follow:]

STATEMENT OF
J. CURTIS FEE
EXECUTIVE DIRECTOR
FEDERAL POWER COMMISSION

BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS
COMMITTEE ON INTERSTATE
AND FOREIGN COMMERCE
UNITED STATES HOUSE
OF REPRESENTATIVES

MARCH 14, 1977

Mr. Chairman: Thank you for the opportunity to testify before your Subcommittee. I was informed that my knowledge of certain events concerning personnel actions at the Federal Power Commission would be the subject of the important matters before your Committee today. I have prepared a statement to read into the record about my knowledge of these actions, discussed in last week's hearings.

Early last year I became aware of a deteriorating situation concerning Mr. George Lewnes and assessments of his performance as Assistant General Counsel. Although my information was mostly secondhand, I knew that several members of the Commission were becoming increasingly displeased with him. The specifics of the problems, as best I understand them, were rooted in his failure to carry out Commission instructions in certain matters in a timely and thorough matter. I was also aware of the incompatibility and strife between Mr. Lewnes and Mr. Journey. The Chairman's assessment of the

problem was that although Mr. Lewnes seemed to be a very competent and knowledgable attorney, he did not appear to be contributing fully to the ultimate resolution of the Commission's work.

At some point in early March 1976, I asked Mr. Edward R. Minor, a lawyer with whom I consult often on administrative matters, what rights and options management had in such a case and what rights the individual had. As Mr. Minor has testified, one facet of this inquiry was to examine the option of removing Mr. Lewnes from the job.

The result of Mr. Minor's investigations was to identify certain extreme measures that were available if removal were the objective. None appeared appropriate to a situation which I had come to see as a mismatch of talent and job and one in which Mr. Lewnes did not deserve such harsh treatment. At that point, I had decided to have a talk with Mr. Lewnes and see if there was some way to resolve the problem by mutual agreement.

I believe, (and Mr. Lewnes' testimony confirms) that he came to see me before I had the chance to speak to him. During our discussions he told me that he had heard there were some problems, and I said that was true. For the next hour or so, we talked and decided that a change would be best for all concerned. I pledged to counsel with him

during his job search and assist him in anyway I properly could. I knew of his long-standing interest in becoming an Administrative Law Judge and expressed my thought, that it was an excellent idea. That, of course, became his choice and Chairman Dunham and I fully supported him for it. We were able to salvage a wealth of experience and wisdom for the agency and solve a festering personnel problem. Mr. Lewnes, to the best of my knowledge, is now a happy, productive, and excellent Administrative Law Judge.

There is a lingering allegation that this series of events was triggered by, and was a reprisal for, certain testimony given before Congress. I state here unequivocally that such allegations are false. I received no instructions linked to his testimony, nor was I ever under the impression that these events were a result of any testimony Mr. Lewnes may have given.

The following is a statement of my knowledge of events that led up to the reassignment of Mr. Cockrell from the so called El Paso Abandonment Application (or sometimes referred to as SOHIO Reverse Flow) CP75-362. My recollection of this matter is based on memory, recent conversations, and research through my own files to reconstruct the relevant events, but I would not regard it as definitive.

Sometime in April of 1976, I received instructions from the Commission in a regular meeting to get involved in the external matters that would have bearing on expediting the FPC part of this case. During my review of the situation, it became apparent that staff did not agree on the policy question of whether or not the abandonment in this case constituted a "major Federal action" under the National Environmental Policy Act of 1970, and if a full-fledged Environmental Impact Statement were required During this review process, I came upon the April 2, 1976 draft statement of agreement which I learned was prepared by Mr. Cockrell and a junior staff member at the Department of Interior. I remember being displeased with the fact that the FPC action was declared to be a "major Federal action," a key policy issue not yet decided by the Commission and clearly central to the FPC's ability to expedite its part of the proceeding. It was obvious to me that the position of the "Statement of Agreement" was not coordinated with appropriate substantive Commission staff as it should have been. I communicated my displeasure to Mr. Journey, the Agency's General Counsel. Later, I learned that one or more members of the Commission expressed similar displeasure with the work of Mr. Cockrell on this case and asked Mr. Journey to assign a more experienced attorney to the case.