

MAINE STATE LEGISLATURE

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STATE OF MAINE
112th LEGISLATURE

REPORT
OF THE
JOINT SELECT COMMITTEE
TO INVESTIGATE PUBLIC UTILITIES

MARCH 28, 1985

JOINT SELECT COMMITTEE TO INVESTIGATE PUBLIC UTILITIES

111th Legislature

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Charlotte Z. Sewall, District 20

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112th Legislature

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PUBLIC UTILITIES' INVESTIGATION

In 1982, the Maine Public Utilities Commission (PUC) began an investigation of Central Maine Power Company and the actions of several of its senior officers and subsidiaries. The PUC staff investigation led to a contempt citation by the Public Utilities Commission and a criminal proceeding by the Maine Attorney General. The Public Utilities Commission wrote to the Speaker of the House stating that:

The first question was to what extent did the Commission examine CMP's involvement in the political process.

Our response was that the Commission conducted no extensive examination of CMP's involvement in the political process.

Second question was what limits, if any, constrained the Commission's inquiry into CMP's involvement in the political process.

Our answer was the primary limitations were those imposed by the PUC priorities and the resources available to conduct the investigation.

The Public Utility Commission in the final report of its investigation said:

The general purposes of this investigation were to delineate the full set of events surrounding Mr. Scott's false testimony, and to discuss those events in relation to expected standards of performance by Maine public utilities in their relationships to the Public Utilities Commission. We have also had to establish that the conduct in question and its ramifications should not be paid for by Central Maine Power Company's electrical customers. Having accomplished those tasks, we have not investigated the implications of these events for the Maine political process. While such an investigation is desirable, it is not within our statutory mandate.

Among the items giving rise to concern regarding political involvement are the following:

First, the company has made the results of some of its surveys available to political candidates. The furnishing of such information is obviously of value and of benefit. Second, both the company's polling consultant, Command Research, and one of its leading media advisors, Ad Media, are actively involved as political consultants as well.

There are apparently no restrictions on the extent to which information generated in the course of the many political questions asked as part of Atlantic Research's polling operations, albeit paid for by the stockholders rather than the customers, could be shared with political candidates. To the extent this was done, it would reduce the need for polling expenditures by the candidates themselves.

Third, company employees have functioned as phone callers on a systematic basis in the taking of polls with political as well as utility significance.

Fourth, on at least one occasion, the November 1982 elections, Central Maine Power Company employees were told to do interviewing of voters as they left the polls at several locations in the state. The purposes, scope, funding, and beneficiaries of these exit interviews are largely beyond the scope of our investigation. However, it is obvious that the cost of such an operation, although trivial in terms of CMP's \$401 million 1982 operating revenues, are substantial by political standards.

LEGISLATIVE BASIS

The Legislature's response to the Public Utilities Commission's letter and Order was to consider the assumption of responsibility for completion of this task. Creation of the Joint Select Committee to Investigate Public Utilities was authorized by the 111th Legislature of the State of Maine through Legislative Joint Order 643 enacted on September 7, 1983.

During consideration of the Joint Order several issues were addressed in floor debate. The Legislature mandated through the Joint Order a thorough and comprehensive investigation of the nature and extent of the participation of regulated public utilities, directly or indirectly, in the political processes and activities of the State of Maine, and to investigate attempts by regulated public utilities to influence these processes, to determine if ratepayer funds had been used to support such activities, and to determine whether there existed reason to believe that violations of electoral statutes or utility regulations had occurred. This report was mandated by that Joint Order.

The Joint Order reads in part:

"...the Legislative Council shall appoint itself, a joint standing committee or a joint select committee, as a legislative investigating committee to investigate and report on the following matters:

1. The nature of the relationship of public utilities to their subsidiaries, affiliates, officers, employees and persons or organizations providing contractors services to them, with particular attention to the larger utilities;

2.The nature and extent of the participation of public utilities, either directly, indirectly or through their subsidiaries, affiliates, political action committees, officers, employees or contractors, in political processes and activities, including both referenda campaigns and election campaigns;

3.Whether that political participation has involved violations by public utilities or other persons of laws relating to elections, registration of voters, initiatives and referenda, campaign reports or finances, or other political or election activities or practices;

4.The relationship of that political participation and the regulation of utilities;

5.Whether ratepayers' money has been used directly or indirectly to affect the regulation of public utilities;

6.The ability of the commission to properly and thoroughly investigate, monitor and report on the matters set forth above; and

7.The adequacy of the present laws governing public utility regulation and elections to properly reveal and regulate the political participation of utilities; and be it further

Ordered, that to carry out this investigation, the Legislature grants to this committee all the powers and authority of a legislative investigating committee. The committee may hire legal counsel and staff as necessary;..."

The Joint Select Committee to Investigate Public Utilities was constituted by the Legislative Council on October 5, 1983. Appointed to the Committee were Senators John Baldacci, Peter Danton, and Charlotte Sewall, Representatives Carol Allen, Nathaniel Crowley, Linwood Higgins, Edward Kelleher, John Martin, David Soule, Donald Sproul, Pat Stevens, and Ralph Willey. Senator Baldacci and Representative Soule were appointed as Senate and House Chairmen.

It was clear to the Chairmen that the task before the Committee was broader in scope and complexity than the Public Utilities Commission staff investigation and the Attorney General's investigation. These focused respectively on the activities of Central Maine Power Company as they related to the Scott Affair and the actual conduct of Robert Scott. Questions of actual behavior, questions of violations of law, issues of utility regulation and cost accounting, and an examination of the interrelationships of political processes and utility behavior all had to be addressed. This meant that the Committee had to have available diverse skills in many areas.

Initial discussions among the Committee Co-Chairmen, the Legislative Council, the Public Utilities Commission and the Attorney General established several basic facts:

1. The Legislature did not have the internal resources available to provide staff support to the investigating committee without reducing the support available to the standing committees of the Legislature;
2. The Public Utilities Commission, which was itself an object of the probe, was not an appropriate source for staff support;
3. The current Attorney General was unwilling to follow the precedent of the Sugar Industry investigation and would not provide legal support to the investigating committee;
4. There were serious legal issues that would have to be addressed in the first major legislative investigation in over 70 years.

STATUTORY BASIS

Investigating committees of the Maine Legislature are provided with both statutory authorities and statutory obligations. The basic authorities are found in the Revised Statutes, Title 3, section 162, subsection 4; section 165, subsection 7; and sections 401, et seq. These sections provide that the Legislature may delegate to a committee investigative powers (section 411) including the administering of oaths, issuing subpoenas and taking depositions (sections 162, subsection 4; 165, subsection 7, 423, 426, and 427). Such committees must have a clearly stated subject matter and scope of investigation (section 412). Investigating committees must consist of at

least three members (section 413) and take investigating committee actions by majority vote (section 421). Orders of procedure, issuance of subpoenas, decisions to apply to the Superior Court to compel obedience to a subpoena, other procedural matters and votes to appeal rulings of the Chairman are investigating committee actions (sections 422, 423, 429, 430, 452, 454, 455, 457, and 458). Witnesses may be compelled to appear before investigating committees (section 424). Witnesses are entitled to have counsel advise them (section 451). Requests for testimony may be challenged as not pertinent to the subject matter and scope of the investigation (section 453). In such cases, after an explanation of the relationship believed to exist between the request and the subject matter and scope of the investigation, the chairman may direct compliance (sections 453 and 454). Witnesses may claim benefits of any privilege which could be claimed in a civil court action, although the chairman may direct compliance (section 457). Safeguards against improperly compelled testimony or improperly obtained evidence are contained in (section 472). Finally, contempt authority is vested in such Committees (section 473).

METHOD OF INQUIRY

The format and methodology of the Committee's investigation was developed by the Co-Chairmen. An initial structure was considered which would provide an investigator, attorneys for both Majority and Minority, and a Committee Assistant.

This was agreed to by the full Committee.

A reporting structure was put in place that required the staff to report to the Co-Chairmen, coordinating through the Staff Director. The exceptions were (1) the Chairmen related directly to the Majority Counsel for legal advice, and (2) the Minority controlled the activities of the Minority Counsel. This approach was an attempt to balance several factors:

- (1) Ensure Committee control of the investigation;
- (2) Provide clear direction to the staff charged with carrying out the information gathering part of the effort;
- (3) Create an orderly and systematic methodology for identifying areas, utilities, and individuals requiring investigation;
- (4) Guarantee the security and confidentiality of information which might be obtained that did not pertain to the purposes of the investigation;

- (5) Guarantee the security and confidentiality of the identities of individuals who were either identified or questioned in the course of the investigation but were determined not to be involved in activities being investigated by the Committee, or as being involved in a fashion that the public interest would not be served by the disclosure of their identities;
- (6) Provide for the preparation and conduct of such public hearings as might be necessary to present to the Committee the findings of the staff investigation in a fashion that would allow the Committee members to receive and evaluate directly the witnesses and information presented to the Committee.

The Co-Chairmen believed that the importance of the investigation required that the Committee members have direct access to the information necessary to evaluate and understand the issues and actions affecting regulated utility involvement in political activities. It was clear from the duration and the complexity of the Maine Public Utilities Commission staff investigation of the Robert Scott Affair, which resulted in a guilty plea to a false swearing charge and a Public Utilities Commission citation for contempt of Central Maine Power Company, that the scope and extent of the task was beyond the capacity of a thirteen member committee without the assistance and support of professional and secretarial/clerical support. This required the development of a methodology to guide the staff in conducting their part of the investigation.

The starting point was clear - the findings and conclusions of the Public Utilities Commission investigation and Attorney General's inquiry. This was initially limited to the activities and personnel of Central Maine Power Company. Certain clients and contractors of Central Maine Power Company and its subsidiaries were clearly identified in the Public Utilities Commission staff investigation. These served as a starting point for the present investigation.

The committee assigned responsibilities as follows:

The Staff Director was responsible for the planning and organization of the investigation, the security and maintenance of all committee materials, supervision of clerical and secretarial staff, coordination of staff submissions to the Committee, and other duties as the Co-Chairmen may assign.

The Committee Counsel was responsible to advise the Committee on particular issues of the investigation, to assist in the review of materials obtained by the committee, to help in the preparation of staff and committee reports, and other tasks assigned by the Co-Chairmen.

The minority counsel was responsible to the minority members for their purposes, including advice, analysis, and report writing.

The Committee Assistant provided clerical and secretarial support, assistance in the review of documents, and other duties as assigned by the Staff Director.

Marc Asch, of Millinocket, was retained as Staff Director for the Committee. H. Richard Mayberry, Esq., of Washington, D.C., was retained as Special Counsel. John J. Flaherty, Esq., of Portland, was retained as Majority Counsel with Estelle A. Lavoie, of Portland, Maine, as Assistant Majority Counsel. Mr. Flaherty and Ms. Lavoie were from the the firm of Preti, Flaherty, and Beliveau. Andrea Stahl, of Waterville, was employed as Committee Assistant.

The minority initially selected Harrison Richardson of the firm of Richardson, Tyler and Troubh of Portland, as Minority Counsel. Chairman Baldacci offered him the position on January 25, 1984. Mr. Richardson accepted the appointment on February 6, 1984, but on April 17, 1984, declined to serve because "it would not be appropriate for me to serve as Minority Counsel to the Committee. As I have previously indicated, one of my partners - John Whitman - represented Christian Potholm ... during the course of an earlier investigation by the Public Utilities Commission.... I feel that my involvement, under the circumstances, might give at least the appearance of impropriety...." On May 22, 1984, Representative Linwood Higgins asked Mr. Joseph Campbell of Locke, Campbell and Chapman of

Augusta, to serve as Minority Counsel. Mr. Campbell was replaced by the Minority as their Counsel following his election as Chairman of the Commission on Governmental Ethics and Election Practices on June 19, 1984. His successor, Mr. John Linnell of Linnell, Choate and Webber of Auburn was appointed on July 26, 1984..

The Committee requested assistance from the State Department of Audit on March 7, 1984, for auditors to review utility company records relating to expenditures and reports of time and effort of the companies and their subsidiaries. Mr. George Rainville, State Auditor, detailed Galen Libby, Assistant Director of Audits, and Dennis Foster, Legislative Auditor III, to assist the Committee.

The Order of Procedure for the investigation was adopted by the Committee on January 18, 1984, by a vote of 10-0. The order was as follows:

1. Staff will meet with the Attorney General's Office and obtain the pertinent files and related materials necessary to our investigation.
2. Staff will meet with the PUC and obtain the files and materials necessary to our investigation.
3. Staff will meet with the utilities, as appropriate, and obtain the pertinent files and materials necessary to our investigation.

4. Staff will meet with individuals identified by the staff at the Attorney General's Office, the PUC, and utilities, as appropriate, or elsewhere, and obtain testimony pertinent to our investigation.

Once these steps have been taken, the staff will then review and analyze these materials and information gathered, and prepare a preliminary report to the Chairman suggesting possible avenues of further inquiry. At that time, the Chairman will reconvene the Committee to receive an interim progress report.

The Staff Director and the House and Senate Co-Chairmen then met to develop the procedures to be followed in the course of the staff investigation. The first step in each line of inquiry would be to identify individuals, corporations, committees, associations, or groups that were believed to have material relevant to the purposes of the committee. Once the identification of these persons or entities had been made by the staff and approved by the Co-Chairmen, requests for access to files and other materials in their possession would be made. Following a review and assessment of these materials, additional requests would be made if the staff deemed them necessary. When the staff believed that sufficient information had been reviewed, interviews could commence with individuals identified through the document review as having particular

knowledge of the matters concerning the committee. After the interviews had been completed, the Staff Director would, if necessary, prepare proposals for additional lines of inquiry for consideration by the Co-Chairmen.

Periodically, the Staff Director would report through the Co-Chairmen to the full Committee.

The Committee was particularly concerned with the need to maintain security about the direction of its inquiries, as well as over the materials supplied to it.

LITIGATION AND COURT PROCEEDINGS

IDENTIFICATION OF POTHOLM AND COMMAND RESEARCH

The Committee had not anticipated the need for recourse to the Courts of the State of Maine when it began its inquiry. The original planning that went into the development of the strategy and procedures of the Committee assumed compliance with the needs of the committee for information. This expectation was based on two factors:

- (1) the principals had been through a more limited Public Utilities Commission and Attorney General's probe and therefore had had an opportunity to prepare their records and recollection;

(2) the objections raised by both Central Maine Power Company attorneys and individuals' attorneys to the scope and pertinence of aspects of the Public Utilities Commission inquiry clearly did not pertain to the broader statutory authority and legislative mandate of the present investigation.

The initial six months of the investigation was conducted with a minimum of involvement from legal counsel, except insofar as required to refine and place in explicitly legal form the requests of the Committee.

A strong working relationship was developed with the Public Utilities Commission and its staff, Central Maine Power Company, Maine Yankee Atomic Power Company and their attorneys Pierce, Atwood, Scribner, Allen, Smith and Lancaster, New England Telephone Company and its attorneys, and with the University of Maine's Social Science Research Institute. In addition, the Committee had requested documents from individuals identified in its probe. In all cases, the Commission, utilities, attorneys, and individuals fully complied with the requests of the Committee. Through an open process of explanation, as to the needs of the Committee, the protections available for sensitive information, and the procedures of the Committee, the few problems that arose in the course of these requests were quickly and uniformly resolved to

the satisfaction of all parties without the withholding of any information from the Committee with one exception. That exception was the content of the membership lists of the Committee to Save Maine Yankee for 1980-1982. The investigating committee agreed with the position of the law firm of Pierce, Atwood, which was coordinating the Committee to Save Maine Yankee's response to information requests from the investigation staff, that membership lists of a political committee of this type could reasonably be presumed to be protected by First Amendment rights. The membership lists were viewed to assure that additional materials were not present. Membership lists of conservation political action groups that were contained in the files of the Committee to Save Maine Yankee were likewise neither read nor copied.

The records of Central Maine Power Company document four major areas of political involvement.

- (1) in-kind contributions of personnel and services to the Committee to Save Maine Yankee, ranging from envelope stuffing to get-out-the-vote efforts;
- (2) political polling that complemented polling done by other utilities and the Committee to Save Maine Yankee;
- (3) targeting of major vendors for direct fundraising; and
- (4) development of political strategy and campaign direction for Save Maine Yankee with Central Maine Power Company.

Within these areas several consistent themes emerged. The distinction between referendum/political activities and normal utility functions was often blurred. There was a consistent underreporting of non-allowable political time which was reinforced by faulty time and effort reporting systems. There were areas, the Maine Voice of Energy, for example, where the Company officers were interested in concealing the relationship between Central Maine Power Company, the Committee to Save Maine Yankee, and outside groups.

The Committee had agreed to survey the Maine utility industry to assess the extent and intensity of their present participation in political processes. It chose the interrogatory as the information gathering tool (1) because it did not require the production of documents and (2) because it did not require on-site evaluations which would be disruptive and time-consuming for all concerned.

Because a desire to avoid placing an undue burden on smaller utilities, the Committee developed the following procedure to guide its selection of utilities.

- (1) Obtain a list of all utilities from the PUC;
- (2) delete all municipally-owned utilities;
- (3) delete all small utilities (different cut-off points were used for water, electric and telephone utilities);
- (4) delete all radio telephone companies; and
- (5) combine all subsidiaries, and commonly owned utilities with the parent or holding company.

This yielded forty-two (42) utilities who were asked specific questions on the presence or absence of their political activity.

The only two utilities which indicated political activity were Bangor Hydro-Electric Company and Maine Public Service Coporation. The Bangor Hydro-Electric Company reported that it had processed 12,000 pieces of mail for a State Senate candidate. Maine Public Service reported the use of employees and vehicles in get-out-the-vote campaigns. Bangor Hydro Electric had not reported its contributions and subsequently amended its original filing.

The Committee staff's inquiry into the information amassed by the Public Utilities Commission, into the files of Central Maine Power Company, the Maine Yankee Atomic Power Company, the Committee to Save Maine Yankee, Ad Media, Inc., and other sources revealed that one person alone possessed the information necessary to provide answers to many of the questions relating to the content, scope, type, and nature, of the political activities of Maine utility companies. That individual was Christian P. Potholm. Mr. Potholm had been retained by Central Maine Power Company as a political consultant in early 1980. He served in a similar capacity for the Committee to Save Maine Yankee in two referenda- 1980 and 1982 on the closing of Maine Yankee Atomic Power Company. In the course of interviews with Public Utilities Commission staff, present and former employees of Central Maine Power

Company, and preliminary inquiries with other Maine utilities, Christian Potholm was again identified as the only individual possessing knowledge as to the content, scope, type, and nature of political and polling activities of Maine utilities.

Christian Potholm was also identified as the only possible source for many documents, since both the files examined and individuals interviewed supported the fact that Potholm as a matter of routine procedure after the 1980 referendum made verbal reports and seldom - if ever - left written materials with either Central Maine Power Company or the Committee to Save Maine Yankee. This included not making written reports on polls conducted for Central Maine Power Company or the Committee to Save Maine Yankee, and not filing memoranda on his contacts with political figures on behalf of the Company or the Committee. The only evidence as to the content of eight (8) tracking polls performed by Command Research for Save Maine Yankee were handwritten meeting notes taken by some present at his briefings. It was the hope of the staff that Potholm would be able to fill the void in the files of both Central Maine Power Company and the Committee to Save Maine Yankee. It was because of these factors that requests for documents were prepared for Christian Potholm in his personal and corporate capacity as president and proprietor of Command Research.

Potholm and Investigation

Potholm had been deposed by the Public Utilities Commission staff in 1983. Early in the course of the Committee's investigation he was made aware of the staff inquiry through both Central Maine Company and the Directors of the Committee to Save Maine Yankee (Elwin Thurlow, John Menario, Michael Healey and Christian Potholm). Not only was he aware of the direction of the Committee's probe, but he reacted to it in a letter from his attorney to the other directors of the Committee to Save Maine Yankee. In this letter of February 27, 1984 he clearly indicated he was not only aware of the Committee probe but that he intended not to assist the Committee's inquiry voluntarily and that he anticipated incurring legal expenses in dealing with the Committee. This letter is reproduced below.

485 CONGRESS STREET
PORTLAND MAINE 04101

Michael T. Healy, Esquire
VERRILL & DANA
P.O. Box 586
Portland, Maine 04112

RE: Legislative Investigating Committee

Dear Mike:

As you know, I represent Chris Potholm in preparation for his likely role as a witness in the hearings which will be conducted by the legislative Committee investigating public utilities. Before the hearings actually take place, I understand that the Committee will be doing a certain amount of background investigation. In fact, Senator Baldacci has begun by sending a letter to John Menario requesting that he assemble and produce for inspection all documents pertaining to surveys and polling conducted by or on behalf of Save Maine Yankee.

My reason for writing is twofold. First, Chris would like to know what Save Maine Yankee would like him to do with the documents in his possession, which fall within the scope of Senator Baldacci's request. He does not intend voluntarily to produce any documents for inspection by the Committee, of course, unless and until he has the approval of the other three directors of Save Maine Yankee. If you approve, please let me know; and by copy of this letter to John Menario and Attorney Jack Montgomery, I am requesting a response from the other directors as well. He will also need to know what he should do with the documents in question. For example, should he send the documents (or photocopies of them) to you or to John Menario? Please advise.

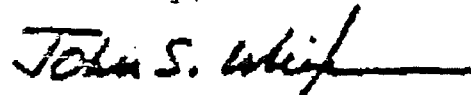
Second, Chris is understandably very concerned about the prospect of incurring substantial legal fees in connection with this investigation. He feels -- with reason, I think -- that on two separate occasions he played a major part in helping Central Maine Power Company to save its investment in a billion-dollar plant, and that largely as a result of that involvement he is now about to be subjected to an unpleasant and time-consuming process in which he will need

the advice of counsel to strike the right course. From your description of the conversation you had recently with John Rowe, it is my understanding that Save Maine Yankee has at least informally undertaken a commitment to assist its four directors in regard to their legal fees in this investigation. I would like to clarify that commitment as soon as possible, in order that my client may know where he stands. If you can shed any further light on this matter, please let me know; and by copy of this letter to Dan Boxer, I make the same request of him.

In addition, I gather from our previous conversations that Save Maine Yankee purchased officers' and directors' liability insurance coverage. You were going to obtain copies of those insurance policies, in order that we can determine whether the insurers have any duty to provide legal counsel with respect to the upcoming Committee hearings..

I am aware that these are topics which were probably discussed at the meeting of the other three Save Maine Yankee directors on February 23, which Chris did not attend. That was at my request, as you know, so I must take the blame for any inconvenience which his absence has caused. I do not rule out the possibility of his attending similar meetings in the future, but for the time being I would prefer to maintain a separate position. I hope you will understand this.

Sincerely,



John S. Whitman

JSW:ldb

cc: Mr. John E. Menario
Jack H. Montgomery, Esquire
Daniel E. Boxer, Esquire
Professor Christian P. Potholm

Insert Healey letter hereHis later behavior in dealing with the Committee staff and the full Committee became much more understandable after the discovery of this letter in the files of the Committee to Save Maine Yankee.

Requests for Documents

The Committee's initial approach to Potholm recognized that he played two separate roles in these areas. First, as Christian Potholm, he was directly retained by Central Maine Power Company as a political consultant and operative. Second, as President of Command Research, he contracted to provide a variety of services with Central Maine Power Company, New England Telephone Company, the Committee to Save Maine Yankee, and Charles Cragin, David Emery, John McKernan and William S. Cohen. These relationships are very confused at times. For example, while a political strategist for Central Maine Power Company he persuaded them to develop an inhouse polling capacity that involved generating business for his company, Command Research. He also had Atlantic Research (Central Maine Power Company's subsidiary) directly contract with a Vice-President of Command Research. However, in the late spring of 1984, the Committee staff and members were unaware of Potholm's intention to force the Committee into a compulsory process and not to cooperate voluntarily with the probe. The experience of dealing with Central Maine Power Company and the

Company's cooperation had demonstrated that the clear mandate of the Committee from the Legislature and the statutory basis of the Committee's authority had resolved the objections presented by their attorneys during the Public Utilities Commission probe. (It should be noted that the Central Maine Power Company attorneys for the Public Utilities probe were the firm of Verrill and Dana - the attorney directly in charge was Michael Healey - also Director and Counsel for the Committee to Save Maine Yankee. The attorneys for Central Maine Power Company in the Committee probe were Pierce, Atwood, Scribner, Allen, Smith & Lancaster).

The Committee met with great success in obtaining documents and other information through the use of Requests for Production of Documents and Interrogatories for Central Maine Power Company, New England Telephone Company, Bangor Hydro Electric Company, Ad Media, Inc., the University of Maine at Orono's Social Science Research Institute, and several individuals. The success in these earlier acquisitions of information and documents boded well for the two requests for documents sent to Potholm.

Negotiations of Request

The request for documents to Potholm as an individual was sent on June 7, 1984. It was followed on June 8, 1984, by a request for documents to Command Research. (These Requests for Documents appear in their entirety in Appendix D.) The requests had a deadline for response of fourteen days.

In all other cases, either the principals or their attorneys expeditiously contacted the Committee - either the Co-Chairmen or the staff-to coordinate their responses. These ranged from simple discussions of timing to negotiations over access to entire sets of files. In all instances, mutually satisfactory settlements were reached. In the case of Central Maine Power Company a combination of extensions of time, a process for rolling production of documents on site at Central Maine Power, and unrestricted copying were utilized. Serial numbering and indexing of documents were also waived for Central Maine Power after the initial sets of documents were produced. In the case of Ad Media, Inc., on site inspection of documents with the right to copy was agreed to by the Committee and the agency. Likewise, serial numbering and indexing were waived for them. The same procedure was followed with the University of Maine. The same procedures were used for the Committee to Save Maine Yankee. In all instances, requests for enlargements of time for response were granted.

In only one instance was no contact made to discuss the requests from the Committee either by a principal or an attorney - that of Christian Potholm and Command Research. His attorney first contacted the Committee by letter on June 14, 1984. The purpose was twofold, to seek an extension of time and to seek reimbursement from the Committee for his time. A review of the letter established that an extension was in order and that Mr. Potholm's attorney had failed to request an extension for both requests for documents. The Committee staff contacted him and informed him that a second letter was needed but that an extension for both was being granted. This was confirmed by letter from the Committee.

HARRISON L. RICHARDSON
WILLIAM K. TYLER
WILLIAM B. TROUBH
ROBERT L. HAZARD JR.
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JOHN S. WHITMAN
ROBERT J. PIAMPANO
RICHARD J. KELLY
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IN REPLY REFER TO:

7300/8280

June 14, 1984

The Honorable John E. Baldacci, Chairman
Joint Select Committee to Investigate
Public Utilities
State House
Augusta, Maine 04333

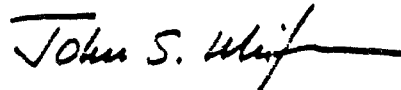
RE: Christian P. Potholm

Dear Senator Baldacci:

I represent Professor Potholm, who has referred to me your Committee's Request for Production of Documents dated May 31, 1984.

Please be assured that Professor Potholm wishes to cooperate fully with the Committee's investigation. He will produce for inspection all documents in his possession, not privileged, which fall within the scope of that investigation and are specified in your Request. I trust you will understand that compliance with the 19-page request will require Professor Potholm to sift through literally thousands of documents in his possession. He has begun this process, but it is extremely time-consuming and, unlike the utility companies which are the subject of your investigation, he does not have anyone who can assist him in this process. The documents will be produced as soon as it is humanly possible to do so, but I think it would be unrealistic to expect Professor Potholm to complete this task before the end of August, and I therefore respectfully request an enlargement of time until that date.

Sincerely,



John S. Whitman

JSW:ldb

At this time, and in the six weeks that followed, Mr. Potholm's attorney repeatedly turned down offers to create a methodology similar to those used in the case of Central Maine Power, Ad Media, Inc., and others to save Potholm time and effort, and to expedite the process for Potholm and the Committee. These offers were all rebuffed. In fact, when Mr. Potholm's attorney raised the issue of privilege and confidentiality in a June 28, 1984 letter to the Committee,

SENATE

JOHN E. BALDACCI, DISTRICT 25, CHAIR
PETER W. DANTON, DISTRICT 4
CHARLOTTE Z. SEWALL, DISTRICT 20

MARC ASCH, STAFF DIRECTOR,



HOUSE

DAVID B. SOULE, WESTPORT, CHAIR
JOHN L. MARTIN, EAGLE LAKE
EDWARD C. KELLEHER, BANGOR
CAROL ALLEN, WASHINGTON
NATHANIEL J. CROWLEY, SR.
STOCKTON SPRINGS
PATRICIA M. STEVENS BANGOR
LINWOOD M. HIGGINS, SCARBOROUGH
E. CHRISTOPHER LIVESAY, BRUNSWICK
RALPH M. WILLEY, HAMPDEN
DONALD F. SPROUL, AUGUSTA

STATE OF MAINE

ONE HUNDRED AND ELEVENTH LEGISLATURE

JOINT SELECT COMMITTEE TO INVESTIGATE PUBLIC UTILITIES

June 26, 1984

Mr. John S. Whitman
Richardson, Tyler & Troubh
465 Congress Street
Portland, Maine 04101

Dear Mr. Whitman:

On behalf of the Committee, let me express its appreciation of Professor Potholm's desire to cooperate fully with our investigation.

The policy of the Committee has been to grant requests for extensions of time for response when requested. Extensions have been for two weeks with consideration being given to subsequent requests. However, this had been within the context of on-going production of documents. The Committee is aware from communications with Central Maine Power Company and the Save Maine Yankee Committee that Professor Potholm had been contacted by them much earlier in this process. We assume that their questions were similar to ours and would have helped him prepare for our Requests, both to Command Research and to him personally.

I am directed by the Chairmen to grant a two week extension.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marc Asch", written over a horizontal line.

Marc Asch
Staff Director

MA:as

cc: Senator John Baldacci
Representative David Soule

HARRISON L. RICHARDSON
WILLIAM K. TYLER
WILLIAM B. TROUBH
ROBERT L. HAZARD JR.
EDWIN A. HEISLER
ROBERT E. NOONAN
JOHN S. WHITMAN
ROBERT J. PIAMPANO
RICHARD J. KELLY
WYNDELL G. LARGE
KEVIN M. GILLIS
JEFFREY A. THALER
MICHAEL P. BOYD
THOMAS E. GETCHELL
JOHN W. CHAPMAN
EVE H. CIMMET
WILLIAM S. WILSON JR.
ELLEN A. GORMAN
MICHAEL RICHARDS

RICHARDSON, TYLER & TROUBH
ATTORNEYS AT LAW
465 CONGRESS STREET
PORTLAND, MAINE 04101

AREA CODE 207
774-5821

IN REPLY REFER TO:
7300-8280

June 28, 1984

The Honorable John E. Baldacci, Chairman
Joint Select Committee to Investigate
Public Utilities
State House
Augusta, Maine 04333.

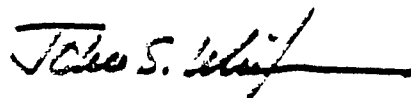
Re: Command Research

Dear Senator Baldacci:

I represent Professor Christian P. Potholm, who has referred to me your Committee's Request for Production of Documents dated May 31, 1984, directed to Professor Potholm in his capacity as President of Command Research.

Please be assured that Professor Potholm wishes to cooperate fully with the Committee's investigation. He will produce for inspection all documents in his possession, not privileged, which fall within the scope of that investigation and are specified in your Request. I trust you will understand that compliance with the 19-page request will require Professor Potholm to sift through literally thousands of documents in his possession. He has begun this process, but it is extremely time-consuming and, unlike the utility companies which are the subject of your investigation, he does not have anyone who can assist him in this process. The documents will be produced as soon as it is humanly possible to do so, but I think it would be unrealistic to expect Professor Potholm to complete this task before the end of August, and I therefore respectfully request an enlargement of time until that date.

Sincerely,



John S. Whitman

JSW:mh



The Senate of Maine
Augusta, Maine 04333

July 3, 1984

Mr. John J. Whitman
Richardson, Tyler and Trough
465 Congress Street
Portland, Maine 04101

Dear Mr. Whitman:

I am in receipt of your letter of June 28, 1984. As I answered your previous request with a two week extension, I am directed by the Chairmen to grant Command Research the same.

The Committee is aware from communications with Central Maine Power Company that Command Research, also, had been contacted by them much earlier in this process. The Committee feels that their questions would have helped Command Research prepare for our Requests.

Thank you for your cooperation and your desire to cooperate fully with our investigation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marc Asch", written over a horizontal line.

Marc Asch
Staff Director

MA:as

the staff contacted him to determine whether issues were being raised that required discussions between the Committee counsel and Mr. Potholm's attorney. Mr. Potholm's attorney assured the Staff Director that this language was only precautionary, that in fact, no such documents had been uncovered. The effect of this assurance was to allow the issue of privilege to remain unaddressed. With the concurrence of the Co-Chairmen, Mr. Potholm was not pushed for a more timely response to the Committee requests. He was allowed six weeks without pressure. Then on August 1, 1984, his attorney informed the Committee:

HARRISON L. RICHARDSON
WILLIAM K. TYLER
WILLIAM B. TROUBH
ROBERT L. HAZARD, JR.
EDWIN A. HEISLER
ROBERT E. NOONAN
JOHN S. WHITMAN
ROBERT J. PIAMPIANO
RICHARD J. KELLY
WENDELL G. LARGE
KEVIN M. GILLIS
JEFFREY A. THALER
MICHAEL P. BOYD
THOMAS E. GETCHELL
JOHN W. CHAPMAN
EVE H. CIMMET
WILLIAM S. WILSON, JR.
ELLEN A. GORMAN
MICHAEL RICHARDS

RICHARDSON, TYLER & TROUBH

ATTORNEYS AT LAW

465 CONGRESS STREET

PORTLAND, MAINE 04101

AREA CODE 207
774-5821

IN REPLY REFER TO:
7300/8280

August 1, 1984

Mark Asch, Staff Director
Joint Select Committee to
Investigate Public Utilities
State House
Augusta, Maine 04333

Dear Mr. Asch:

You called yesterday to inform me that all of the Committee members are very upset that my client, Christian Potholm, has not yet produced documents in response to the requests served on him and on Command Research, Inc. You further stated that the Committee would be meeting on August 8; that this subject would be on the agenda; and that Professor Potholm would almost certainly be summoned to appear before the Committee the following week, to explain why he has not yet produced the documents.

I was frankly surprised by this information, since I have been regularly reporting to you on Professor Potholm's progress in responding to the requests and I assumed that my reports were being shared with the Committee members. Lest there be any misunderstanding, however, let me repeat in writing what I have previously told you over the telephone.

Early in June my client received from the Committee two separate requests for production of documents, one addressed to him and the other to his polling company, Command Research. Each request seeks documents in more than fifty enumerated categories. Professor Potholm immediately began the task of combing through tens of thousands of papers in his files in order to comply promptly and fully with the Committee's requests. It was apparent at once that the job could not be completed within the short time period specified. Accordingly, on June 14 I wrote to Senator Baldacci, promising full cooperation and requesting an extension of time until the end of August to finish the task.

In order for Professor Potholm to comply conscientiously with the document requests, it is necessary for him to go through his files and those of Command Research, page by page. Each page must be considered in the light of 111 separate paragraphs in the requests, to determine whether it falls

Page Two

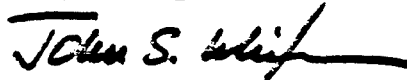
within the scope of any paragraph. To date he has identified more than 13,000 pages of documents which are within the scope of the requests. Each of those documents has been stamped with a number, in sequence, in order that we may comply with your Instruction A ("for each document produced, state the [paragraph] number of the document request to which it is responsive").

Professor Potholm has prepared, and I am in the process of reviewing, a partial response to the two requests. In addition to identifying which documents apply to which paragraphs, these responses will also provide the very detailed information concerning documents withheld under claim of privilege (as required by your Instruction B). The draft responses alone comprise about 100 pages, and will run longer when my client has completed his search of the files.

To say that this task has been burdensome is an understatement. In the past two months Professor Potholm has spent 215 hours of his time -- more than half his normal working hours -- going through his files in order to comply with the Committee's requests. He is working as fast as he can but, as I have indicated from the outset, the task is an enormous one and cannot be completed much before the end of this month.

In the meantime, let me take this opportunity to inquire whether the Committee intends to compensate my client for the hundreds of hours of his time which he has been obliged to devote to these document requests.

Very truly yours,



John S. Whitman

JSW:ldb

cc: Senator John E. Baldacci
Senator Peter W. Danton
Senator Charlotte Z. Sewall
Representative David B. Soule
Representative John L. Martin
Representative Edward C. Kelleher
Representative Carol Allen
Representative Nathaniel J. Crowley, Sr.
Representative Patricia M. Stevens
Representative Linwood M. Higgins
Representative E. Christopher Livesay
Representative Ralph M. Willey
Representative Donald F. Sproul

This clearly indicated that 13,000 documents had been identified and serially numbered from the files of Christian Potholm and Command Research. This information was presented to the Committee on August 8, 1984.

Committee members discussed the letter of August 1, 1984. The assumption was that there must be a significant set of materials yet to be reviewed, culled and numbered for the Committee. In this situation Representative Chris Livesay requested the Committee to set a date certain for delivery of the remainder. The Committee accepted his recommendation and informed Potholm's attorney that the 13,000 previously identified pages should be turned over no later than August 13, 1984, and the remainder no later than August 27, 1984. The dates accepted were those selected by Representative Livesay who used the dates in Mr. Potholm's attorney's letter. Mr. Potholm's attorney was then informed of the Committee action by telephone and letter.

SENATE

JOHN E. BALDACCI, DISTRICT 25, CHAIR
PETER W. DANTON, DISTRICT 4
CHARLOTTE Z. SEWALL, DISTRICT 20

MARC ASCH, STAFF DIRECTOR



HOUSE

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RALPH M. WILLEY, HAMPDEN
DONALD F. SPROUL, AUGUSTA

STATE OF MAINE

ONE HUNDRED AND ELEVENTH LEGISLATURE

JOINT SELECT COMMITTEE TO INVESTIGATE PUBLIC UTILITIES

August 9, 1984

Mr. John S. Whitman
Richardson, Tyler & Trough
405 Congress St.
Portland, Maine 04101

RE: 7300/8280

Dear Mr. Whitman:

I have been directed by the Chairman to inform you of the following actions taken by the Committee on August 6, 1984.

The following motion was made by Speaker Martin:

1. Dr. Potholm be given until August 15, 1984 to deliver the material he has already identified as falling within the scope of the request. These documents must be delivered to the office of this Committee by 5:00 p.m. on that date.
2. Dr. Potholm be given until August 27, 1984 to deliver the remaining material requested to the office of this Committee by 5:00 p.m. on that date.
3. A full Committee meeting will be held on August 28, 1984 to discuss the response to this request and any further action that may be necessary.

A vote was taken and this motion was unanimously adopted.

If you have any questions concerning this action taken by the Committee please don't hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marc Asch".

Marc Asch
Staff Director

MA/as

Through his attorney, Potholm led the Committee to believe that the 13,000 documents identified represented only a part of the materials to be turned over and that an additional three weeks were needed to review, identify, and number a substantial amount of additional documents.

Issuance of Subpoenas

In fact, unbeknownst to the Committee, virtually all of the documents had been identified and were ready for delivery to the Committee. Acting in good faith, accepting the statements of Potholm and his attorneys, the Committee, unaware of his letter of February 27, 1985 to the fellow Save Maine Yankee directors, permitted three more weeks of delay. On September 9, 1984, the staff informed the Committee that

- (1) over sixty per cent (60%) of the materials turned over were newspaper clippings;
- (2) only 5 additional documents were turned over and they were public brochures from Central Maine Power Co.; and
- (3) substantial claims of privilege and scope were now being asserted for the first time.

As a result of this action the Committee's schedule had been delayed for a full two months. A subpoena would have to be considered to compel obedience. If critical information were to be obtained, cooperation, either voluntary or under compulsion, was a requisite. Serious questions were

outstanding. All of the exit polling materials, data and analyses were missing from the Central Maine Power and Save Maine Yankee files. Likewise, all data and analyses for the 1982 weekly tracking polls were absent. As early as 1983, Potholm had been identified by the President of Central Maine Power as the conduit for data out of the Company and Save Maine Yankee. Virtually no information existed in Company files on this. No records of Potholm's activities on behalf of the Company existed in this area. The questions questioning when the polls that the Committee had obtained from Central Maine Power Company, New England Telephone Company, Save Maine Yankee, and Ad Media Inc., when compared to one another, showed coordinated pattern. The President and candidates for Governor and U.S. Senate were the subject of questions on a regular cycle regardless of the sponsor of the poll. Questions on the nuclear freeze issue were included in polls conducted in the spring, summer and fall of 1982. The common thread was the person conducting, planning and analyzing the polls - Christian Potholm. Since the few complete analyses of polls obtained by the Committee clearly contained references to data from other polls, it was a strong possibility that in addition to non-utility data being used in utility polls (see the discussion of the New England Telephone 1982 poll), utility data might have found its way into the analyses of non-utilities. Examination of the filings of election spending by state-wide and Federal candidates indicated that Potholm had

been involved as a pollster for several candidates at the same points in time that he was polling for Central Maine Power Company, New England Telephone Company, and the Committee to Save Maine Yankee.

The Committee discussed these and related issues on September 7, 1984. The Committee then voted to authorize the issuance of subpoenas duces tecum. This was done on a motion by Representative Edward Kelleher and a second by Senator Charlotte Sewall. The motion passed ____ to 1. Even at this stage, the Committee still sought to find a mechanism for accommodating any reasonable concerns Potholm might have to its demands. The Committee was also mindful of the costs that could be incurred if the issues had to be settled through court action. In an attempt to resolve these questions, the Committee directed Majority and Minority Counsel to meet jointly with Mr. Potholm's attorney to attempt to resolve the issues of privilege and confidentiality raised by them. The hope was that a mechanism could be found to avoid court action by the Committee.

The subpoenas were drawn up, signed, and served on Potholm on September 9, 1984. Delivery was by the State Police.

Attempts to Resolve Dispute

Shortly thereafter, the attorneys met in the Offices of Richardson, Tyler and Troubh following an initial meeting at which they had discussed their approach. The consensus they reached was that Potholm had a right to claim privilege, even if the claim was not supportable, and he had a right to assert that information requested by the Committee was beyond the scope of its charge, even if that was not supportable. Clearly, however, a procedure was necessary to resolve these assertions.

The Committee counsels met with Mr. Whitman. During that meeting Committee counsel explained the basis for the Committee's actions and demands. The scope and questions of privilege were also addressed.

Mr. Whitman agreed that he would review this with Mr. Potholm and advise the Committee Counsel of their decision. This he never did.

Although directed by the Committee to report jointly to the Committee, only the Majority Counsel did so. Minority Counsel separately informed both the Minority members and Potholm's attorney of his version of the meeting.

Refusal to Comply

On September 19, 1984, Potholm wrote to the Committee through his attorney, refusing to answer 6 of the 7 questions of his personal subpoena and 8 of the 12 questions on the corporate subpoena. He supplied certain additional documents both in response to the subpoenas and the earlier request for production of documents. Particularly disturbing was the fact that he admitted the existence of documents under the compulsion of the subpoenas that he had denied existed in responding to the requests for documents. The disclosure, therefore, raised doubts as to the veracity and completeness of all of his unsworn submissions. The explanation offered was "attorney inadvertence." Similar behavior was earlier exhibited during the Public Utilities Commission staff investigation where it was apparent that he was not fully candid with his employer at Central Maine Power Company. In the Scott affair he spoke to Robert Scott in the interval between Scott's statement on the "destruction" of the poll and the surfacing of a copy in Mr. Webb's files. When he spoke to Scott he did not inform him that he, the Pollster who had prepared the surveys for Scott's Atlantic Research operation, had a copy of the "destroyed" poll. If he had told Scott at that early point in the matter, conceivably Scott might have recanted before his and his company's predicament became critical. His own deposition before the PUC was replete with partial answers and objections. This lack of candor became evident in the course of Committee proceedings.

Efforts to Enforce

The Committee met on October 10, 1984 to hear witnesses and to consider Potholm's refusal to comply with the lawful requirements of the Committee's subpoenas. Majority Counsel informed the Committee that he did not consider Potholm's claim of privilege to be defensible in a Court of Law. The contractual obligations to maintain confidentiality of clients data were relieved by the authority of the subpoenas. Secondly, the proprietary privilege asserted by Potholm had no basis in law. The question of scope had been directly addressed within the subpoenas.

Majority counsel advised the Committee that the proper recourse was under 3 M.R.S.A. § 165 (7) which permitted application to the Superior Court to compel obedience to its subpoenas.

The minority counsel advised the Committee that in his opinion the material sought by the Committee was outside the scope of the Committee investigation, was protected by privilege, and that the subpoenas themselves were faultily drawn. He further offered his opinion that it would take until 1985 to obtain a summary opinion through the Courts. He advised the Committee that "I don't think it looks good for this Committee to go to Court with Dr. Potholm and lose, if I think it is clear you're going to"(lose).

The Staff Director informed the Committee that Potholm had failed to follow the procedures set forth in the request for production of documents for handling areas of dispute. Specifically, he was asked to describe each document withheld, to explain why that document was being withheld, to describe the nature of its contents, to whom it was sent, and its date. He had failed to do this in each instance. This denied to the Committee the basic information necessary to evaluate the legitimacy of his assertions of privilege and scope. The staff and counsel were therefore limited in formulating recommendations to the Committee. Either the Committee had to drop all of its requests or advance all of them through the Court.

Co-Chairman David Soule moved to authorize Co-Chairman John Baldacci to make application to the appropriate court to effect obedience to the subpoenas and to authorize the Majority Counsel to proceed on the Committee's behalf. Representative Nat Crowley seconded the motion which passed 6-5.

First Court Appearance and Decision

Justice Brody agreed to hear the matter in Kennebec County Superior Court on October 12, 1984. The Committee filings appear in full in Appendix C.

John Flaherty, Majority Counsel, presented the Committee's position before the Court. Potholm's attorney argued that the Court should not grant the Committee's request as the Committee did not have the statutory authority to compel Potholm to produce "privileged" documents. Justice Brody, at the conclusion of the hearing that day, issued the following order:

"Pursuant to Title 3 165 (7) of M.R.S.A., it is hereby ORDERED that Christian P. Potholm individually and in his capacity as a principal of Command Research shall appear before the Joint Select Committee to Investigate Public Utilities in Augusta, County of Kennebec, State of Maine, on October 25, 1984, at 10:00 a.m. and bring with him those documents subpoenaed (sic) by the Committee not previously provided."

In making this ruling, Justice Brody told Potholm's attorney that failure to turn the materials over would result in further judicial proceedings.

Appearance for Transfer of Documents

Potholm appeared before the Committee on October 25, 1984, as ordered, but with only a portion of the documents that the Superior Court Justice had directed him to bring. He turned over those documents and, claiming once again that the remaining materials were privileged and beyond the scope of the

Committee's investigation, failed to identify such materials in a manner sufficient to allow the Committee to evaluate which ones were and were not protected.

He was questioned individually on each section of the subpoenas with which he had failed to comply. Each time, he stated his objection and was informed by the Chairman of the Committee's response. The exchange (fully contained in the transcript for that day's proceedings) ran as follows:

BALDACCI: Please produce the writings.

POTHOLM: On advice of counsel, I will not produce them.

RICHARDSON: They will not be produced for the reason that (1) they are privileged by virtue of contracted confidentiality and (2) the request is objected to further for the reason that the materials sought are beyond the scope of the investigation.

BALDACCI: I consider that you do not enjoy the privilege claimed under section 457 of Title 3 and direct that you comply with the request to which your claim of privilege has been made.

POTHOLM: I refuse to comply.

BALDACCI: Having objected that the request is beyond the scope of this investigation, I advise you that in my opinion it is well within the scope of the Joint Order, specifically Paragraphs 2 and 3 of that Order, and further ... "because of your contractual relationship, Dr. Potholm, with Central Maine Power Company, New England Telephone Company and Save Maine Yankee for polling services and your contractual relationship with other clients in which political masking questions were included in poll conducted on their behalf, it is this Committee's belief that you had the opportunity and did avail yourself of the opportunity to share political information between and among utility and non-utility clients and thus may have contributed to the utilities unauthorized participation in political processes. The writings sought may well shed light on these activities.

The Committee is of the belief that your relationship with these several clients, many of whom may have been political candidates or committees permitted the transfer of polling

information by you to them and vice-versa much of which had been or may have been originally contracted for by a regulated utility."

Potholm was also permitted to make a statement to the Committee and to submit a written statement for the record. The Committee was operating under an agreement with the Minority members which precluded any questioning of Potholm by the Majority until a later date.

Contempt Citation

Representative Kelleher then moved that the Committee cite Potholm for contempt and return to Court to seek the materials it sought. Representative Crowley seconded the motion. The discussion that followed was characterized by the statements of Representative Higgins and Kelleher.

HIGGINS: He (Potholm) has provided us with a sworn statement under oath that documents that we are interested in obtaining belong to non-utility clients. They are non-political in nature and they are not pertinent to what we are charged with by joint order to discuss and to report back to the legislature with. I am not--I do not feel that we are in a position to, in essence, call Dr. Potholm a liar.

KELLEHER: It is obvious that there are materials that Mr. Potholm has in his possession and on his own advice of counsel and other clients, whomever they are, he feels it is improper to present that information to the Committee. If that is the case...We haven't heard the whole story ... The point is that obviously we have got to go back now to the court to determine by legal standing what is his justifiable right to be presented to this committee. I say let the Superior Court of the State of Maine determine whether we have a right to that information. No more, and no less."

The Committee voted 7-4 for the motion.

Second Court Hearing

Majority Counsel submitted several memoranda to the Court on the application for contempt. The application itself noted that:

1. Pursuant to the Order of this Honorable Court dated October 12, 1984, commanding Mr. Christian P. Potholm, individually and in his capacity as principal officer of Command Research, to appear before the Joint Select Committee to Investigate Public Utilities on October 25, 1984, and to bring with him those documents subpoenaed by the Committee not previously provided, the said Potholm did appear before said Joint Committee which had reconvened on said date.

2. The said Potholm appeared on said date with his attorney, Harrison L. Richardson, and agreed to produce certain documents and writings pursuant to the requests set forth in the subpoenas duces tecum, which requests were repeated during the course of the hearing by the Committee's Chairman, Senator John E. Baldacci.
3. During the same appearance on October 25, 1984, Potholm, while agreeing to produce certain documents, refused to produce the others which were within the purview of the subpoenas, stating that the materials exceeded the scope of the Committee's investigation and were protected by privilege.
4. Wherefore, the Committee respectfully requests that, after notice and hearing, this Honorable Court punish the said Potholm and Command Research for contempt of the Committee and said contempt having been committed in its presence, and that it accord the Committee such other and further relief on the premises as it deems appropriate.

The supporting memorandum of law addressed the issue of pertinency, stating:

... "it is self-evident that, in conducting any investigation, committees may require wide latitude in

inquiring upon several areas of interest that may with time yield valuable information upon the points at issue. The necessity for this latitude is recognized in sections 453 and 454 which require that, upon the witness's challenge of pertinency, the committee explain its belief of the relation between the request and the scope and subject matter of the investigation.

Upon such explanation, the chairman is empowered by section 454 to direct compliance notwithstanding the objection....

"Moreover, a challenge as to the scope of the investigation is not an assertion of infringement of private or constitutionally protected rights...In this case, there has been no pleading or assertion that the request for documents constitutes an invasion of privacy or other fundamental right guaranteed by the Constitution.

...the defendant asserts that he is bound to retain the documents based upon a contractual agreement of confidentiality with his clients. ...such a contractual agreement must yield in the face of compulsory process exercised by an independent branch of government.

Authority for this (is found in) Maine Sugar Industries, Inc. v. Maine Industrial Building Authority,...wherein the Supreme Judicial Court of Maine held that a statute dealing with the secrecy of information furnished to the Authority

by borrowers must be construed as prohibiting voluntary disclosure of such information, but not mandatory disclosure when required either by a court of competent jurisdiction or by a special legislative committee."

Mr. Richardson, on behalf of Potholm's contentions, submitted a memorandum of law which made the following arguments:

1. The court's role is to review the committee's action to determine whether the committee acted in accord with all the provisions of 3 M.R.S.A. sections 401 , et seq., and whether Dr. Potholm should be held in contempt.

2. The request for documents relating to non-utility clients are outside the scope of the committee's authorization.

3. The challenged requests are not pertinent to the committee's investigation as required by 3 M.R.S.A. 453 and 473.

4. Dr. Potholm's polls, results are the other documents relating to polls undertaken for private clients are confidential.

5. Dr. Potholm's actions do not amount to contempt. During the course of the hearing Dr. Potholm, Mrs. Potholm, their accountant, and John Linnell, Minority Counsel, testified on behalf of Potholm. The Court accepted several documents in evidence and received for possible in-camera review certain documents which had been withheld under claim of privilege and a summary (unverified) of others which were withheld from the Court and the Committee.

The Court issued its opinion on November 8, 1984. The full Opinion and Order is reproduced in its entirety in Appendix C. The key portions of it which reject in large measure Mr. Potholm's arguments are presented below:

At the outset, the Court announced it was making an independent inquiry into whether, by judicial standards, Mr. Potholm's conduct amounted to contempt. It found authority for such an inquiry in Title 3 M.R.S.A. Section 473 which applies to legislative investigating committees such as the Joint Select Committee to Investigate Public Utilities. The Court then proceeded to evaluate Potholm's other claims in light of Section 473.

First, the Court held that the Committee had met the procedural requirements of the statute by giving Potholm proper notice of the subject matter of the investigation, by properly directing compliance with the subpoena, and by seeking judicial enforcement of the subpoena in the statutorily prescribed manner.

Second, the Court noted that the Committee had been given broad authority to conduct its investigation and that its requests for information were relevant. Further, the explanation of such relevance given by the Committee to Mr. Potholm satisfied the statutory requirement.

Third, the two privileges claimed by Potholm - a proprietary or contractual privilege and a privilege to maintain trade secrets - were not among the compelling privileges recognized by the Court and the interests in nondisclosure which they protected were said to be outweighed by the public interest in the subject matter of the investigation.

Fourth, the Court, again utilizing a balancing test, rejected Potholm's claim that production of the requested documents would impinge upon his First Amendment right of political association.

Following an in camera inspection of the documents turned over by Potholm, the Court then ordered:

the defendants (Potholm and Command Research) produce those documents set out in Schedule A of this opinion within five days. Plaintiff's application for contempt is denied except as it relates to defendant's failure to produce those documents listed in Schedule A. In the event the scheduled documents are not produced within the five day period, this matter will be scheduled for hearing before this Court for enforcement of the Committee's contempt citation in accordance with this opinion and order.

The Committee Co-Chairmen, upon advice of Counsel with the concurrence of the Staff Director, concluded that under the Court order:

1. the documents necessary for the completion of the Committee's task would be made available;
2. the Court's in camera inspection would ensure that all pertinent material would be turned over;
3. the Court would enforce its order if Potholm failed to comply; and
4. the process followed by the Committee from the Request for Production of Documents to the issuance of subpoenas to judicial enforcement had been upheld by the Court.

While several members of the Committee had originally expressed support for Mr. Potholm's assertions that he had turned over all pertinent material within the scope of the investigation,

the Committee felt vindicated in requesting judicial enforcement of its subpoenas. Additional documents indeed were found to exist that were in fact pertinent and relevant.

HEARINGS

The Committee chose to utilize hearings as the major vehicle for revealing its findings to the Legislature and to the people of Maine.

Four questions combine to form the theme of the hearings:

1. Has ratepayer money been used for political purposes?
2. Have regulated public utilities properly reported their political expenditures?
3. Have regulated public utilities used subsidiaries, outside groups, agencies, or individuals to advance their political interests?
4. Has the Public Utilities Commission exercised the necessary vigilance to protect the public?

The Committee asked seventeen individuals to testify, only one declined. Eight hearings were held. The hearings focused on the activities of the Public Utilities Commission, Central Maine Power Company, Atlantic Research, the Committee to Save Maine Yankee and Command Research. The scope of the hearings

covered identification of political activities, identification of expenditures for political activities, exchange of political information by utilities and political figures, and the organization, staffing, and findings of two major statewide referendum efforts.

Complete transcripts of the hearings are in the appendices to this report. This section of the report summarizes the events of each hearing. All references are to the contents of those transcripts.

October 9, 1984

Peter Bradford

David Moskovitz

Frederick Gautschi, III

The first hearing was held October 9, 1984. The first witness was Peter Bradford, Chairman of the Public Utilities Commission. Mr. Bradford brought to the Committee a broad background in utility and nuclear power issues. He served twice as Chairman of the Maine Public Utilities commission, was a member of the United States Nuclear Regulatory Commission, and was Maine's first full-time Public Advocate.

Chairman Bradford outlined the basis for the Public Utilities Commission's concern with the broader political implications of information uncovered in its 1983 investigation of the testimony of Robert F. Scott. Chairman Bradford noted that the investigation of Mr. Scott's false testimony lasted nearly a year; that Mr. Scott had falsely testified that certain opinion surveys done by Central Maine Power Company had been destroyed; and that by the close of the Public Utilities Commission's investigation, Mr. Scott had pleaded guilty to a charge of false swearing, Central Maine Power Company's President, Elwin Thurlow, had resigned, and Central Maine Power Company had been cited for contempt by the Commission and fined \$5,000.00. Before the final order was issued by the Commission in July of 1983, Chairman Bradford, on behalf of the Commission, wrote to the Speaker of the House outlining the Commission's concerns with implications of what they had uncovered. Briefly, the Commission believed evidence indicated that Central Maine Power Company had engaged in political activities including the collecting and passing to political figures of voter opinion surveys and had used employees in get-out-the-vote efforts and exit polling following the 1982 Senatorial and Gubernatorial elections.

The Commission urged the Legislature to take action since "the vague and weakly enforced standards that have existed in this

area have permitted underreporting and occasional concealment of efforts that are substantial in political terms even when they have little or no impact on consumers. The financial and manpower resources available to utilities can have a major impact on candidate elections as well as on referendum questions. In gray areas such as the joint hiring by a candidate and by a utility of the same (10/9-p.10-12) pollster, or the commissioning of joint polls, the expenditure of dollar amounts that are trivial by utility regulatory standards can have a very significant election impact."

The final order of the CDmmission read in part, "We have not investigated the implications of these events for the Maine political process. While such an investigation is desireable, it is not within our statutory mandate." (10/9-p.9)

Mr. Bradford closed with two observations: "...utilities cannot constitutionally or reasonably be kept out of the political process altogether. When their vital interests are put at stake, it is to be expected that they will play an active role in response. My second observation is that the lines between proper and improper conduct must be drawn clearly and be firmly enforced."

The relationship of political expenditures to utility total expenditures was explored by the Committee and Mr. Bradford. Central Maine Power Company has annual expenditures of over \$400 million. Total expenditures in Maine statewide elections seldom even approach \$1,000,000. A utility would have to fund a statewide race totally in order to spend even 25% of its budget on political activities. However, in most races in Maine, contributions of \$100 to \$1,000 are considered large. For a legislative race \$1,000 might cover 25% of a contested race. In those terms, small expenditures, "no matter how great their impact on the campaign (p.18), were very small in terms of impacts on consumers." However, as Chairman Bradford later noted, "from the utilities' standpoint the benefits to be had from, for example, achieving the election of a Governor who appointed a friendly utilities commissioner, are so much larger than the dollars that could make a big difference in an election campaign, that to try to deal with a consumer protection matter is very ineffective."(p.59)

It was therefore established that (1) Central Maine Power Company had funded, developed and operated a polling operation which, at times, conducted polls on political issues, (2) it had, by press reports passed some of the data on to political figures, (3) its executives had lied to the Commissioners about the destruction of some of the polling materials, and then attempted to conceal the fabrication, (4) the Commission had further indications of political activity, and (5) the company

had participated in a get-out-the-vote effort and had operated an exit voter polling survey for reasons unknown to the Commission.

Commissioner David Moskowitz testified next. Mr. Moskowitz has an extensive background with utilities and utility regulation. He was an engineer for Commonwealth Edison of Chicago . He was first a staff attorney and later Director of Technical Analysis for the Maine Public Utilities Commission. Then in March of 1984, Governor Brennan appointed him Commissioner. While serving as the staff attorney Mr. Moskowitz was directly responsible for the investigation of the Scott affair. Mr. Moskowitz echoed Chairman Bradford's testimony regarding the size of the activities, the secretiveness of the company about its polling, and the clear value of the political information gathered through that effort. He added an extensive discussion of the obstacles to the Public Utilities Commission's investigation.

The Public Utilities Commission was restricted by staff, time and budget constraints. Its own resources were thin and the assistance from the Attorney General's Office slim to nonexistent at best.

The Commission assigned Mr. Moskowitz and retained Peter Murray of Murray, Plumb and Murray as outside counsel to assist in the investigation. Messrs. Moskowitz and Murray encountered strong resistance and obstacles to their probe.

First, Central Maine Power Company had its attorneys present at all depositions. In fact, many employees testified without benefit of personal counsel, relying instead on the corporate counsel of Central Maine Power.

Second, several witnesses had personal counsel - primarily non-Central Maine Power employees. The attorneys, both personal and corporate, vigorously acted to restrict the scope and (p.43) depth of the Commission's inquiry. The resistance was strongest in two areas - questioning about political activities by utilities and questions relating to groups or individuals used by Central Maine Power Company to advance its political interests. The result of the protracted and repeated objections was that (p.43) "arguments with respect to the scope of the Commission's jurisdiction, coupled with the resistance we met during the course of our depositions, caused me (Mr. Moskowitz) to limit the breadth and depth of our questioning in these areas."

Mr. Moskowitz expanded on Chairman Bradford's discussion of the value of polling material noting: (p.44)

"It seems to me that the truly valuable part of the polling overall was the way that the polling was able to break down the statistics by both a very fine geographic scope, and by the number of other demographic characteristics, ethnic background, age, level of education, which particularly in a larger scope election, statewide election, district wide election, would permit political candidates to focus their limited resources, as we all have limited resources, to both those areas of the state and to those audiences to which they could determine they could best spend their dollars.

"The get-out-the-vote effort could be linked to the exit polling by "assuming the exit polling was taking place at the outset of the election day, started to get results back... if you saw a low turnout, let's say, in one part of the state versus another, and you saw a high turnout was to your benefit, activities could be redirected, telephone calling, to get a higher turnout in that area."

(p.74) The exit polling covered, according to Commissioner Moskovitz, "... who would you vote for in the United States Senate race, Emery, Mitchell, you have choices, who would you vote for in the Maine gubernatorial race, Brennan or Cragin,

how did you vote on the Maine Yankee shutdown referendum, yes or no thank you for your consideration, have a nice day...the exit interviews were done in about 20 cities.

The limitations of the Public Utilities Commission's probe was illustrated by the exchange between Senator Baldacci and Mr. Moskovitz:

Q. "Commissioner Moskovitz, in the discovery of the polls of Atlantic Research, the non-utility polls that were done, did they have similar masking questions that the utility polls had?"

A. "If you include the non-utility polls - if you're excluding Central Maine Power Company polls and Save Maine Yankee polls, let me state briefly, those are the only polls they actually turned over to us. We never received copies of - I simply never pursued the issue - to receive copies of the polls done for totally outside clients. I don't know who the clients were, I don't know what the polling questions were." It was clear to the Public Utilities Commission staff investigators that Dr. Potholm

"...was the technical consultant. He was the person who established everything Atlantic Research is, he is the person that provided all the assistance to develop all polling techniques, the computer, worked with Central

Maine Power Company's computer department to establish the hardware and software required to make the thing work. He worked with the company developing the questions themselves, he worked with the telephones, the telephoners, and trained them as to how to ask the questions so as to import the response you would like to hear. He was for all practical purposes the brains behind Atlantic Research."

Understanding the activities of Atlantic Research/Central Maine Power Company was beyond the capability of the Public Utilities Commission's investigation partially because of limitations of statutory authority, partly because of limitations of staff and resources. As Commissioner Moskovitz said in a colloquy on ratepayer fundraising of Atlantic Research:

Q. "Were ratepayers' money used in running Atlantic Research?"

A. "To the best of our knowledge, no, and it is because of the accounting practices that we do employ..."

Q. "So your first impression is that you don't know, or that you would think there weren't...?"

A. "That's correct. We simply haven't had the ability thus far to send auditors out there. We don't have auditors to send out there."

Furthermore, the issue as the Public Utilities Commission defines it, is protective of the ratepayer dollar. Issues beyond the ratepayer dollar - those dealing with political activity, fall outside of the Public Utilities Commission's purview. As Commissioner Moskovitz stated, "From my perspective, the larger political types of issues don't involve whether it is \$500 or \$600. It is to what extent, my understanding of it, outside of PUC authority, it is to what extent these activities overall, \$500, have produced some tangible, or undesirable effect to the political process overall, that is something we don't deal with."

A brief exchange on time and effort reporting requirements took place establishing that the PUC did not review the bases of the Chapter 83 (political activity) reports of the utilities.

Q. "Have you ever reviewed the time and work efforts submitted for political activity prior to the Scott Affair?"

A. "In the umpteen or more cases that I have been involved in, I don't recall ever going beyond the annual report on any chapter 83 matter."

Q. "If the time and work efforts were found to be shoddy, or problems with them... then if it were not properly recorded, that it is fair to assume that the rate-payer paid for it instead of the shareholder?"

A. "If they improperly allocated their expenses and time then it would have been improperly passed on to rate-payers. If it had been improperly reported to us, and we didn't catch it, and it is obviously a very difficult thing to catch without sending auditors out to the site, then it would have been improperly passed on."

The last witness of the day was Frederick Gautschi, III. Dr. Gautschi is an Assistant Professor of Administrative Science at Colby College and a Visiting Assistant Professor of Business, Government and Society at the University of Washington. His research studies included decision-making behavior of regulatory agencies, corporate government, and the extent to which corporate board structure effects the incidence of corporate violations of federal law and the sources of contributions in anti-nuclear referenda.

Dr. Gautschi presented his research findings on nuclear referenda campaigns. The research was based on fourteen nuclear referenda, conducted in states as diverse as Maine, Montana, South Dakota, Massachusetts, Oregon, Washington and California. He stated "in most of these campaigns the major source of funds came from business interests." "...the percent of business contributions ranges from 72.2% all the way up to 99.6%." He found "utility companies have been heavily involved

throughout the country. Utility table, part one, details the number of utilities that contributed in these various referenda. Interesting to note, I think, maybe for present purposes, that the referendum that had the greatest number of utilities contributing was the 1980 Maine Referendum. 54 total companies had contributed. And you can see the size of the dollar amounts that were spent there."

Looking at the Maine referenda, Dr. Gautschi found that over 90% of the referenda funding came from business sources. He pointed out that "Maine also has the distinction of drawing the biggest contributions from some other sources, investment brokers for example." He found common patterns of contributions - Westinghouse contributed to 13 of the 14 referenda. General Electric spent only slightly less, \$500,000 in ten referenda. Dr. Gautschi also found a pattern in the principal vendors of nuclear referenda. Winner, Wagner, a California public relations firm, Mark Three Media, and Cambridge Reports appeared to him to represent "a common pool of resources."

Dr. Gautschi also looked at the behavior of Maine's utility companies on the national referenda scene. Only two Maine utilities contributed to out-of-state referenda - Maine Yankee Atomic Power Company and Central Maine Power Company.

He concluded that "it appears that there is some type of funding network that operates in the United States for these campaigns."

October 10, 1984

Richard Jalkut

John Rowe

On October 10, 1984, the Joint Select Committee to Investigate Public Utilities resumed its hearings. The first witness was Richard Jalkut, Vice-President of New England Telephone for Maine.

Mr. Jalkut was accompanied by Al Warren, Manager of Governmental Affairs, Chris Bennett, New England Telephone Counsel, and John Racant, Public Relations Manager.

Mr. Jalkut addressed numerous issues in his prepared remarks: New England Telephone Code of Business Conduct, a Personal Responsibility, reporting political activities under Chapter 83, political campaign services for candidates, and New England Telephone policies for political campaigns.

He opened his statement by stating, "I would like to compliment this Committee for its diligence, professionalism and cooperation in its dealings with New England Telephone and its personnel."

New England Telephone maintains an active posture toward state and federal legislation. A full time Governmental Affairs Manager reviews state and federal legislation, "assesses their impact on customers, employees, ratepayers, recommending specific positions our company should take on legislation, and their trying to work with the legislature in an educational lobbying capacity to sell our ideas."

(p.5)

New England Telephone, as any public utility, has multiple filing requirements. The Secretary of State requires a filing of the lobbying time and its associated costs on an annual basis. The Public Utilities Commission has a rule covering this same area known as Chapter 83.

In January of 1983, New England Telephone discovered that its Chapter 83 "reporting mechanism, although...in error, had not been challenged by the Commission or any of the intervenors..." (p.6)

Questioning by the Public Advocate's office about the differences between Chapter 83 and the Secretary of State rules led to a refiguring of expenses under Chapter 83. This expense led New England Telephone to publish guidelines on chapter 83 reporting.

Mr. Jalkut explained the need for company policies on the provision of services to candidates for office. This involves deposit policy, services policy, and collection.

New England Telephone repressed Political Action Committee involvement because "it would be a bad practice for a regulated utility operating in Maine to get directly involved in the state's political process, even if it meant just supporting a pro-business candidate regardless of political party." (p.9)

The "Code of Business Conduct, a Personal Responsibility" of the company is given to all employees who must sign it. It is

periodically renewed and revised. Section 10 deals with political contributions. It clearly states that:

1. Use of company funds for the support of parties and candidates is forbidden;
2. Direct or indirect pressure on an employee to make or not make a political contribution is forbidden; and
3. The company seeks resolution of political and regulatory issues on their merits.

Mr. Jalkut indicated that he personally monitored the public relations and public affairs areas - personally auditing expense reports and Chapter 83 filings. The complex regulatory and legislative world of the modern utility was addressed by Mr. Jalkut. Lobbying is both an advocacy and information gathering process. Hundreds of bills are examined for possible impact on New England Telephone operations, New England Telephone representation is sought by groups as diverse as the Maine Telecommunications Task Force, the Governor's Management Task Force, the Maine Highway Safety Committee, the Governor's Task Force on the Use of Computers in Government, the Maine State Lottery Commission, and the Maine State Transportation Committee.

He then laid five concerns before the Committee:

1. Consistent definitions of political activity are lacking;
2. Monitoring statutory and administrative responsibilities should be regarded as legitimate expenses;
3. A reasonable level of pro-bono effort by utility employees, on company time, should be permitted;
4. Personal rights of expression and participation should not be diminished by reason of utility employment;
5. Common definitions of lobbyist and political activities should be established.

During divestiture, New England Telephone undertook a major effort to explain the impact of it to customers, shareholders, business leaders and legislators. Whether these are political activities or obligatory informational functions of a utility is unclear. How these are to be viewed depends on the agency involved. The Public Utilities Commission defines political activity(p.11) "any act conducted directly or indirectly for the purpose of influencing public opinion with respect to an issue of public concern." The Secretary of State and the Commission on Governmental Ethics and Election Practices does not share that definition.

The Chapter 83 Incident

Mr. Jalkut related how the underreporting for Chapter 83 occurred. When he assumed the direction of New England Telephone - Maine, he became responsible for signing the report to the Secretary of State. According to his direct testimony(p.19)..."I made him (Bob Catell, Public Affairs Manager) go and get the reference...with the definition for what he was supposed to be reporting, and made him prove that the hours in fact that he was charging on that report were the hours consistent with the definition."

Until 1983, New England Telephone used the Secretary of State's report of hours and dollar value for the Public Utilities Commission's filings. Although this proved to be an error, it

was not picked up by New England Telephone, the Public Utilities Commission, the Public Advocate, nor by any intervenor until 1983. At that time, in response to queries from the Public Advocate and the work of this Committee, an indepth review of lobbyist disclosure and Chapter 83 requirement occurred. The Chapter 83 report was amended for 198_ from \$4,000 to \$66,000.

Even after the Chapter 83 incident, the Public Utilities Commission did not meet with the utilities to discuss proper interpretation and implememtation of Chapter 83 reporting.

Mr. John Rowe, President of Central Maine Power Company, was the next witness.

Mr. Rowe opened by stating(p.33) "I must confess that I have had some trepidation about both the investigation and what useful role, if any, I might play by appearing here. But I have been encouraged by the sense that the Committee staff has shown that what is about here is an attempt to devise workable procedures for the future..." This is the kind of area where a clear set of understandings and procedures are needed for the future.

Mr. Rowe was not associated with Central Maine Power Company during the period the investigation focused upon - 1980-1983. He offered his perspective on the general issues facing the Committee.

"It seems to me that the kinds of choices that may be open to a normal business, or to a trade union, or to many kinds of organizations, are not productively open to an electric utility in this day and age. It seems to me that an electric utility must be, in terms of partisan politics, as neutral as any collection of people can be."(p.38)

Utility isolation from the processes of government - that is from an understanding of it - was decried. "One cannot communicate well with the Public Utilities Commission, with the Public Advocate, with the Legislature, with any of the different kinds of agencies with which we must communicate if one doesn't have some understanding ... why agencies may be doing what they are..."(p.39)

Central Maine Power Company's Code of Ethics was also discussed. The policy is directed to:

1. Keep Central Maine Power Company out of campaigns for public office;
2. Clarify its role in the legislative process; and
3. Affirm its position to participate in referenda that affect its interests.(p.40)

Mr. Rowe pointed out that lobbying for the Secretary of State's reports, and lobbying for the Public Utilities Commission are different concepts. The Public Utilities Commission's definition is broader and more encompassing than the Secretary of State's. For his conceptual purposes, Mr. Rowe differentiated between contacts with Executive Branch members (routine business) and with Legislative Branch members (lobbying).

Internally, the question of accounting for time spent in bill review and comment within the company was seen as a gray area.

A review of accounting procedures led Central Maine Power Company to begin revision (p.43) of its accounting practices in the early summer. The review had not clarified all the issues and guidance was sought.

Mr. Rowe affirmed Central Maine Power Company's desire to meet reasonable any reporting requirement. He was concerned, however, over the ability of those requesting the data to use it effectively (p.44), further stating, "I would urge this Committee that while it will be and should be zealous in establishing clear reporting procedures, that it does want...its utility industry to be effective in contributing to these processes..."

In response to questions from the Committee, Mr. Rowe touched upon Central Maine Power Company's polling activities. He prefaced his remarks by stating "we just haven't seen the need to do any surveys since I have been here. It is not a basic activity of our business (p.55).

Atlantic Research, a Central Maine Power Company subsidiary for opinion polling, "was abolished... because Atlantic Research had been sufficiently tangled up in a problem which we regretted very greatly; that we simply thought it ought to be consigned to the dust bin of history..."(p.56) He further stated, "if Central Maine Power Company ever has reason to engage in this sort of information obtaining in the future...Central Maine Power Company would want to start fresh with a set of procedures to guarantee that none of the kinds of questions about double use of information, and so forth, that have come up in this proceeding, would come up in any future activity by us."

He closed by stating that he hoped that if a utility were to be involved in polling activity in the future that protective procedures could be established to guard against the sharing of that data with political candidates or parties. (p. 60)

October 11, 1984

Galen Libby

Hugh Larkin, Jr.

Dennis Foster

The third day of hearings focused on the State Department of Audit's review of utility companies' financial records, reporting systems, and audit trails, the auditors' findings, and the experience of other states in examining utility political expenditures.

Mr. Galen Libby, Assistant Director of Audits, and Mr. Dennis Foster, Legislative Auditor III, were the first witnesses. Mr. Libby has an extensive 34 year background in accounting and auditing, 15 years of which were with the State Department of Audit. He has major responsibility for supervision of Legislative Auditors with the Department, and individual responsibility for selected audits. Mr. Foster is an experienced auditor with 13 years service.

Mr. Libby reported to the Committee that he and Mr. Foster had "reviewed material relating to political activity reporting of employees of Central Maine Power Company during the calendar years 1980 through 1983, and of New England Telephone Company for the period September 1, 1982, through August 31, 1983."

(p.1)

Mr. Libby informed the Committee that detailed records for senior officers were reviewed. Specifically reviewed were travel records and time allocations. Daily calendars of both the senior executives and their secretaries were reviewed for consistency and conformance with travel expenses and time allocations. The auditors told the distribution of costs - that is, the assignment as either a ratepayer or a shareholder cost - rested on estimates produced by each senior employee. The estimate then formed a constant rate for distribution of expenses to shareholder and ratepayer.

Mr. Libby reported, "We did review Central Maine Power Company's daily desk calendars of which these are examples (Producing for the Committee copies of desk calendars). I have two desk drawers full of such material, and you go through it by the day for the three years and try to figure out how much time was spent. It is an impossibility." (p.6) He was asked if he tried to reconcile the daily logs with other records. "I tried, but due to the fact that I am not used to Central Maine Power Company's accounting system, it would be an impossible task to go through and look at computer records and say that this is the actual time it was correct." (p.6)

Mr. Libby then told the committee that the reporting system for officers and managers was based on estimates, not on actual time expenditures. The materials kept by the individuals - calendars, etc., - lacked the necessary information to verify or re-estimate the estimates used in cost allocation. For example, "they might say

on the 9th, they had an hour's meeting. I don't know whether that meeting went for an hour or how long when it says 9:00 o'clock here. I don't know whether it was an hour meeting or how long. This doesn't tell you how long the meeting was." (p.7-8)

He advised the Committee that "a standard type system that all public utilities could operate by would make it easier for them to report because I believe that there has been some confusion as to how they should report the time and how they should keep detailed records." (p.9) He further urged the Committee to establish ground rules for the utilities in time and effort reporting.

Mr. Libby confirmed the previous testimony of Mr. Jalkut of New England Telephone and Mr. Rowe of Central Maine Power Company that their companies were changing their systems of accounting and time and effort reporting. He attributed that to a recognition on their part that they were lacking in keeping necessary detailed records. Necessary elements of such a system, in his opinion, would have to be contemporaneous allocation of time as distinguished from retrospective.

Mr. Libby, during questioning by the Committee and staff, verified that he had contacted Maine Public Service Corporation and Bangor Hydro-Electric Company, and had found similar deficiencies with their systems for tracking and reporting time and effort.

Questioning then followed on the new reporting system adopted by New England Telephone. It was compared to the previous system and its improvements were noted.

The next witness was Hugh Larkin, Jr. Mr. Larkin is a certified public accountant and senior partner in Larkin and Associates, a firm specializing in utility regulation. Mr. Larkin has an extensive background in accounting and audits of major industries and utilities. He has testified in over 100 cases on behalf of State attorneys general and public utilities commissions. Mr. Larkin has also served as Technical Staff Director for the Michigan House Committee to study and evaluate the effectiveness of the Michigan Public Service Commission.

Mr. Larkin's testimony addressed the question of what were common violations of standard accounting procedures and other activities that led to under or over reporting of utility funds on political activities. He presented illustrations from Michigan referenda involving their major power utilities. The utilities saw their central interests at stake and responded to protect them.

Mr. Larkin offered several observations on general principles underlying rate regulation. Time and effort expenditures were critical to follow. Even above and below the line distinctions had to be reexamined. For example, one of the issues was the accounting treatment of in-kind contributions of utility employees to referenda

activities. "The second point is who paid for it." There has been some discussions about above and below the line. That is a kind of ...term of art, but it also ... is used to describe a group of accounts ... it is just a segregation of costs that this group of costs which we say is above the line is going to be included in rates. And this group of costs which we say is below the line, you can't get in rates. So it is obvious that the ratepayer is not paying for those. "But when you get to employees, people that normally work in the utility function, whose costs are normally charged as we would term above the line, those funds initially come from the ratepayers." (P.31-32) It was his opinion that political expenditures incurred and reported outside of a test year (the Maine system) would revert back to the ratepayers if they were not repeated in the next year.

He observed that the reason to be interested in the utility political expenditures was not that the absolute dollars were so great in comparison to the total utility budget, "it wouldn't affect somebody's utility bill, it would be pennies if it even affected it by that." (P.33) But that in political terms the amounts were enormous. A million dollar expense could be lost in a utility budget, yet critically influence a political campaign.

He recommended that utility managers keep detailed records of their time, particularly when they were outside of a utility function like a political activity (p.33). "I mean records that say I started

this day and I did this and I quit at this time, and keep track of all related costs. If they took an automobile somewhere, that ought to be charged, too, and the overheads related to payroll and to vehicle usages also out to be charges below the line."

"I heard that state auditor describe the information that they found. What they accounting was. It would be almost a carbon copy of what we looked at (in Michigan.)" (p.34)

He recommended that the committee require time accounting.

He then raised a new issue before the Committee. That issue was the role of contributions in referendum campaigns from utilities or companies that supplied services to utilities. He cited a study by the Michigan Public Service Commission staff that found 85% of contributions in their utility referenda came from a vendor of one of the state's four utilities. "I would look at these types of contributions with a jaundice eye, and I would require that they be taken out of the rates. That somewhere along the line these companies intend to recover those costs back." (p.35)

He commented that "the staff auditors (Mr. Libby and Foster) have given you examples of what records were kept by Maine utilities, and I think that those are pretty much standard in the industry." (p.36)

He recommended the Committee consider:

1. That daily logs be maintained by individuals documenting in detail specific jobs or activities performed including the time of day the job was performed and the total hours worked on political issues each day.
2. That logs include travel time.
3. That logs be on a daily basis.
4. That a monthly record summarize each employee's time on political issues and the wage allocations.
5. Monthly summaries of all employees expenses allocated below the line by individual be kept and broken down by:
 - Mileage
 - food
 - lodging
 - phone
 - miscellaneous
6. Summaries of meetings held that month including the date and time of each meeting, sign-in sheets of who attended, and for how long, and who they represented.
7. Periodic time reports for each individual which corresponded to the company's pay period, allocating normal and political functions.
8. An additional critical report is one documenting the need for additional personnel required to replace those assigned to political activities.
9. A final recommendation was to document overtime hours, premium hours worked by non-exempt employees.

An extensive period of questioning followed on rate regulation, commission approaches and time and effort reporting.

October 31, 1984

Norman J. Temple

John Menario

On October 31, 1984, the Committee resumed its hearings. The focus of this hearing was the involvement of Maine utilities in nuclear referenda in Maine in 1980 and 1982.

The first witness was Norman J. Temple, Vice President of Central Maine Power Company for Public Information. Mr. Temple had been employed by Central Maine Power Company for 28 years in public relations, area development, share owner relations, customer relations and legislative relations.

Mr. Temple described for the Committee Central Maine Power Company's initial assessment and reaction to the circulating of petitions before the 1980 referendum. The company saw this as a threat to its interests in Maine Yankee Atomic Power Company. It then placed advertisements in Maine newspapers opposing the petition drive. The Company took immediate criticism from many quarters for "intervening" to stop public consideration of the nuclear issue. The company then entered a period of watchful waiting.

Mr. Temple had been involved in the 1973 public power referendum and this first-hand experience placed him in the role of consultant to the Company's 1980 efforts. He advised Elwin "Skip" Thurlow, the

President of Central Maine Power Company, that the Company would have a difficult time directly fighting the referendum. First, it would require near total effort by certain key Central Maine Power Company employees. Second, direct Company participation might lessen public support for and activity on behalf of Maine Yankee.

The central actors for the effort were Michael Healy, a Portland attorney whose law firm had an ongoing relationship with the Company and had handled questions from the Secretary of State about the advertisement on the petition drive; John Menario, a well-known public figure in Portland and the State who had been City Manager and Director of the Chamber of Commerce for Portland as well as a member of several state-wide commissions; Skip Thurlow who as President ran the operation; and Christian Potholm, a political consultant and professor at Bowdoin College in Brunswick.

Forming an outside Committee to run the campaign was strongly recommended by Temple. John Menario, Temple and Thurlow met in Augusta to discuss forming such a committee. Thurlow and Menario then jointly developed the organization of the committee which became the Committee to Save Maine Yankee.

A separate steering committee (not part of the Committee to Save Maine Yankee) was also established to oversee the referendum activities of the Company, the Committee to Save Maine Yankee, and the national nuclear industry. The steering committee was composed

of John Menario, Skip Thurlow, Michael Healy, Christian Potholm as political consultant, and representatives of the national nuclear industry. Robert Leason, a Central Maine Power Company employee, was selected as coordinator for day to day liaison with the Committee to Save Maine Yankee and the Company. He also attended meetings of the steering committee.

In 1979, Christian Potholm came to the attention of the officers of Central Maine Power Company through the Maine Yankee Atomic Power Company information office. He had written a pro-nuclear letter to the editor that attracted their interest. Don Lobenstein, public information officer for Maine Yankee Atomic Power Company, and Don Vigue of his office, went to Bowdoin to thank Potholm. They brought back complimentary reports on Potholm which led Temple to meet him. After talking to Potholm at Bowdoin, Temple arranged for him to meet with Thurlow.

After a second meeting between Potholm and Thurlow, Temple agreed to serve on the Committee and Potholm was engaged as a consultant to Thurlow. "He came aboard as a political consultant." (p.24)

At approximately the same period in time as the circulation of petitions to close Maine Yankee, the responsibility for polling was shifted from Temple to Robert Scott. This also involved a change in polling firms. (The polling for Central Maine Power Company had been conducted by the Becker Institute of Massachusetts with

additional work by the University of Maine, Orono's Social Science Research Institute.) "I had been relieved of all polling responsibilities..." (p.25)

During questioning Temple described the development of a "letterhead" committee as part of the Committee to Save Maine Yankee's organization. This was a group of prominent individuals from various sectors of Maine life and parts of the State who were willing to lend their public support and name for the letterhead of the Committee to Save Maine Yankee.

The funding of a campaign was a source of great concern. The Company believed that the people of Maine would not support the Save Maine Yankee effort with enough contributions to conduct the referendum drive. This meant that the emphasis had to be on corporate funding. "Mr. Thurlow gave a considerable amount of time to making phone calls and approaching and writing letters to raise money from other nuclear companies, from vendors, from friends of the industry." (p.17)

The Committee to Save Maine Yankee was to serve as the public campaign coordinator conveying "a sense of broad public support." (p.22) "But our goal was to meet periodically as a steering committee to see what was being done and to see if we saw anything that ought to be done that wasn't being done." (p.23) The steering committee was never referenced or identified to the public, to the

letterhead members of the Committee to Save Maine Yankee, or the press, as even existing.

Polling for Save Maine Yankee was discussed, but Mr. Temple indicated that he had no direct knowledge other than seeing copies of polls at meetings with Cambridge Reports (a Massachusetts polling firm) or Command Research letterheads. This reflected the removal from Mr. Temple of responsibility for overseeing polling by the Company that had occurred earlier.

He continued his responsibility "to make sure...both parties and political figures at all levels, state legislators, local people, and our national representatives in Washington (knew) what we were doing and what our position was and what the seriousness of it was." (p.28) This role did not include the sharing of Central Maine Power Company or Save Maine Yankee poll results. "As a matter of course, I would not have shared it. That was in-house information." (p. 29)

Temple was aware that some results had been made available by Thurlow to Governor Brennan and his challenger, Charles Cragin. Temple was unaware of any other individual being authorized to share this information with political figures. He had objected to some of the polling that was proposed.

Q. Did you see so-called masking questions in these handouts that Mr. Potholm distributed?

A. Yes.

Q. Did you object to any of these?

A. Yes, on a couple of occasions we had been caught once where we had used some masking questions involving political candidates. Some had taken exception when it came out to having their name used in that regard and I pointed out in one of (the) meetings that we had been previously criticised by at least one candidate for using his name."

(p. 32)

Mr. Temple then was questioned on his understanding of tracking and masking questions.

Q. Is there any difference between...a masking and a tracking question?

A. yes... a masking question involving certain areas can track, but a tracking question when we did surveys over the years of how CMP was being perceived by its customers and that is a management tool....tracking question would mean that as he (Potholm) uses it, as I recall, if he asked how do you feel about President Reagan and then asked how do you feel about Maine Yankee, he would coordinate the two as tracking.

...He would also view the -- how do you feel about President Reagan as a masking question, too. It would usually come early on so that you wouldn't know whether its President Reagan running this survey

trying to find out how he's perceived or who." (p.32)

Temple's opinion was that such tracking and masking questions inserted into polls over a period of time would enable a pollster to develop a trend on a candidate or issue and that this trend information would be useful to a candidate. Although Temple had noted earlier, to his knowledge, in only one instance had such information been passed and that no one was authorized to pass such information.

The final area covered dealt with reporting and disclosure of political activity. When Central Maine Power Company placed the 1979 advertisement giving its position on the referendum petitions, they did not file disclosure forms, as required by State law, with the Secretary of State. James Henderson, Deputy Secretary of State, wrote to the Company in July of 1979, advising of the reporting requirement. In fact, Henderson had to write a second time to remind them that Maine Yankee Atomic Power Company was also covered by this law and had to file. According to Mr. Temple, the Company was unclear as to its actual filing obligations and had Seward B. Brewster handle the matter for them. The exchange of correspondence indicated this was before the petitions had been filed.

The last area covered was the Maine Voice of Energy. Temple was aware of it but believed there was no direct connection between the group and either the Company or the Committee, although the Company, through Maine Yankee Atomic Power Company, had given \$500 to the group.

The next witness was John Menario who had been the Chairman of the Committee to Save Maine Yankee. Mr. Menario is president of Governmental Services, Inc., a Portland-based government consulting firm, and a senior partner in Menario Russ, Inc., a commercial and industrial brokerage firm.

Mr. Menario described his activity in the 1980 and the 1982 referenda campaigns. In 1980, he played a substantial role. As President of the Save Maine Yankee Corporation, he was the chief spokesperson and chairman of the Committee to Save Maine Yankee. He acted as co-manager of the office staff.

He shared responsibility for fundraising with Skip Thurlow. Thurlow was in charge of raising funds from the utility industry and Menario was in charge of raising funds in the State of Maine.

Direct control over the referendum was divided between Menario and Winner, Wagner Associates of California. Winner, Wagner were engaged as media consultants after Menario had been employed by the Committee to Save Maine Yankee.

In 1982, he had a more restricted role, primarily as chief spokesperson.

Mr. Menario then reviewed the circumstances surrounding his original involvement with the Committee to Save Maine Yankee. He had been invited to Augusta to meet with Temple and Thurlow. This took place in March of 1980. "I struck my initial deal, though, with the president of Central Maine Power Company. He made clear to me that they would make the resources available initially to get the process underway." (p.50)

"It was understood that in 1980 I would be responsible for hiring the staff, that I would assist in helping identify people on a letterhead committee that I think carried some prestige within their own constituency. However, I made clear that I did not wish to work for a committee." (p.51)

Menario saw himself as working for the Directors of Save Maine Yankee - Thurlow, Healy, Potholm and himself. Thurlow was the first among equals in that arrangement. "If there were things that I was doing that were not pleasing to Skip Thurlow, then I wanted him to tell me that because I preferred to be guided by his thoughts." (p.52)

"I met once or twice with the letterhead committee. It is my opinion these meetings were more for public relations. I did not seek from them guidance or direction." (p.52)

"My role was to work for a very small group of directors. At least once a week I would meet with the directors ... once a month we went to Central Maine Power Company at which time a broader group of people of interest from around the country, as well as from Maine, would sit in as described by Mr. Temple of being the steering committee." (p.52-53)

He again addressed the role of the citizens' committee. "I do not, never did believe that the citizens' (sic letterhead) committee performed the role of a director. The analogy I would tend to set forth is that they tended to be more the corporators in a mutual savings bank. They were there for reasons of prestige and political support." (p.53)

Menario identified the out-of-date members of the steering committee as Fred Webber of the Edison Electric Institute (the national electric utility industry association) and Mr. Joseph Kigin of the Westinghouse Company.

Menario had no connection with the polling activities of the Company or Committee except to receive information through briefings by Potholm. He was unaware of any sharing of data with political figures except for some sharing with Governor Brennan in 1980. In 1982, a similar briefing of the Governor was proposed. "I do not recall any other person (than Thurlow) being authorized to make information available to any other

candidate." (p.70) He was aware of Potholm's activities to the extent that he was aware that Potholm had other clients. "I know he did polling for other political candidates. I never asked who they were. He never offered." (p.71)

Menario was then questioned by Representative Kelleher about a memorandum entitled "Preliminary Thoughts regarding Organizations and Market Strategy for the Referendum on Maine Yankee" which he had prepared for Thurlow. (The memorandum is found in the text of the October 31, 1984 hearing transcript.) This memorandum was prepared after Menario had been retained by Thurlow through the Committee to Save Maine Yankee.

Certain parts of the memorandum should be underlined, such as "...the ideal organization is one which will have central control and coordination, but which is perceived by the general public as a decentralized grassroots effort ...The opponent will be forced to attack Maine's concerned citizens, which is a much more formidable task than attacking the corporate giant called CMP." p.80) "I would strongly urge that you rethink your earlier decision to publically (sic) announce me as an individual hired by the CMP Company." (p.87) "It would also be known that from time to time a major source of funds to this committee will come from CMP, Central Maine Power. But I see no need of the public knowing the informal organizational structure in which I am the state coordinator for the Central Maine Power's overall activities." (p.94)

The Committee then questioned Menario on a memorandum to him from Annette Stevens dated July 30, 1980. (The memorandum and attached list are found in Appendix G.) The memorandum said:

"It has taken a year to accumulate this list of anti-nukes. Hope it may help you. And I will send additional names when they come to my attention."

Annette Stevens

"P.S. There's 122 of them!"

Attached was a list of 122 individuals, many with notations.
(p.101)

Q.Mr. Menario, for your benefit, there's a former president of Bath Iron Works on this list with some interesting comments next to his name and you have a state legislator on this list, Mr. James Handy. And 122 of them developed by a group of people or a person that is in correspondence with you and you're more or less set up by a utility or utilities to run a Save Maine Yankee effort; is that correct?

A. So far you're correct. (p.102)

Menario identified the memorandum and list as bearing his notation to file it under "research, anti-nuke individuals."
(p.103)

He also identified a second list of anti-nuclear individuals dated July 6, 1980, as bearing his notation to file. Menario denied having made use of the lists. (p.106-107)

Menario was then questioned on a letter to Norm Temple from Annette Stevens. The third paragraph stated, "I do keep John Menario informed of our activities, and Chris Potholm tries to arrange for our presence at certain events." (p.112)

November 1, 1984

Patrick S. Lydon

Thomas Webb

Elwin Thurlow

On November 1, 1984, the Committee resumed its hearings. This day's witnesses were all current or former employees of Central Maine Power Company who had been involved in the referenda.

The first witness was Patrick S. Lydon, a thirteen-year employee of Central Maine Power Company who had served as assistant to the treasurer, district manager, division manager, and assistant vice-president. He was involved in both the 1980 and the 1982 referenda.

In 1980, he was asked to head the get out the vote effort for the Committee to Save Maine Yankee. (p.6) He discussed the time and effort reporting used during that campaign. The get out the vote effort utilized "approximately 900 people, the majority of which would be Central Maine Power Company

employees and their families." (p.19) The Central Maine Power Company employees were "doing this work on their own time." (p.19) The same format was used in 1982.

He described meetings of the steering committee and the executive or directors' meetings of Save Maine Yankee. He told how polling results would be presented verbally by Potholm with written copies furnished only in the first, the 1980, referendum.

Lydon was familiar with the Maine Voice of Energy. "I enlisted the help of Annette Stevens and her committee to help make some of the telephone calls in the get out the vote effort down in the southern part of the state just prior to the September 23rd election date.



Central Maine Power Company

000012

GENERAL OFFICE, EDISON DRIVE, AUGUSTA, MAINE 04336
(TWX NUMBER, CMP-AGUA 710-226-0195)

(207) 623-3521

September 23, 1982

Willis Leith, Jr., Chairman
Tucker, Anthony & R. L. Day, Inc.
One Beacon Street
Boston, Massachusetts 02108

It has been brought to our attention that Tucker Anthony Management Corp. (Nancy Sullivan) 3 Center Plaza, Boston, MA, has contributed \$10,500.000 to the Maine Nuclear Referendum Committee. Through a referendum on the Maine ballot on November 2, 1982, this group is working to close the Maine Yankee Atomic Power Company plant in five years.

The cost for replacement power to Maine utility customers associated with their 50% interest in this plant is over \$1 billion for the five year period 1988-1992. This cost is for oil as a replacement fuel on which our country is dependent for much of its supply from foreign sources and does not include the replacement value of the nuclear plant itself. Individual citizens as well as Maine industries are extremely concerned about the economic impact that such a proposed closing of Maine's only nuclear power plant would produce. This is particularly true given the outstanding safety record of Maine Yankee and the nuclear power industry.

The Maine utilities of Central Maine Power Company, Bangor Hydro-Electric Company and Maine Public Service Company own 50% of the plant. The remaining 50% is owned by New England Power Company, The Connecticut Light and Power Company, Public Service Company of New Hampshire, Cambridge Electric Light Company, Western Massachusetts Electric Company, Montaup Electric Company, The Hartford Electric Light Company and Central Vermont Public Service Corporation. The closing in five years of Maine Yankee would have a similar effect on the rest of New England as it does in Maine. The utility industry association, Edison Electric Institute, is also very supportive and close to this campaign. They have a representative directly and actively involved.

Your firm has participated in the underwriting of Central Maine Power Company securities in the past as well as providing certain services for other utilities in New England and other parts of the country. In addition, your firm has an economic stake in the well-being of Maine industries such as the very important paper industry which will suffer severe economic impact if Maine Yankee is closed.

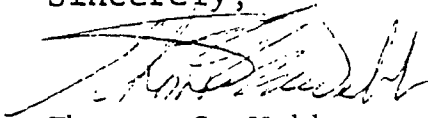
Willis Leith, Jr.
September 23, 1982
Page 2

000049

You can imagine the astonishment and surprise of those of us close to the issues and close to the campaign to learn of your rather significant contribution to the Maine Nuclear Referendum Committee. It seems inconsistent that you should wish to benefit from and help us build the economy of Maine and New England and at the same time work to tear it down.

We thought it appropriate to ask for an explanation for this strange dichotomy of values before discussing it with others who will also be interested. We hope you will let us know your feelings on this subject at your earliest convenience.

Sincerely,



Thomas C. Webb
Senior Vice President, Finance

cc: W. Ward Carey, President and Chief Executive Officer
120 Broadway, New York, NY

A discussion of a \$10,000 unreported in-kind contribution from Central Maine Power Company to the Committee to Save Maine Yankee revealed that (1) it represented a recalculation of overhead charges incurred on the referendum by Central Maine Power Company, (2) it was reported to the Committee to Save Maine Yankee some three months after the referendum vote; (3) that Central Maine Power Company had been billing Save Maine Yankee, and Save Maine Yankee had been reimbursing Central Maine Power for its expenses in connection with the referendum; (4) because it came late and because Save Maine Yankee thought it was a CMP bill which it disputed and for which it did not have the money to pay, it was never acted on; and (5) as soon as the letter was turned over to the Committee a late report was filed with the Commission on Election Practices and Governmental Ethics. (pp.41-43)

Lydon also discussed the exit polling conducted by the Company at the election polls in 1980. (pp.47-48)

A long discussion of the funding mechanisms of the Committee to Save Maine Yankee revealed that with the success of the fundraising effort in 1980 and 1982, Central Maine Power Company undertook to ensure that all billable time was paid for from the Save Maine Yankee treasury. Since many citizens contributed small amounts to the campaign the question arose whether these citizens had in fact contributed to Central Maine Power Company.

Q. Is it entirely likely, though, is it not, that at least some of the monies contributed by members of the public to Save Maine Yankee, an ostensible citizens' committee, found its way back in Central Maine Power by way of reimbursement?

A. In the normal course of paying bills of the committee, yes, sir. (p. 55)

The next witness was Thomas C. Webb, Senior Vice President of Finance and Administration for Central Maine Power Company and Financial Vice President on the Board of Maine Yankee Atomic Power Company.

Mr. Webb told the Committee that he had had a limited role in the referenda efforts except "I made contacts with the financial community that we thought might be interested in supporting the campaign....I made a few phone calls, wrote some letters requesting financial support...The banks, and investment bankers..." (p.58-59) "I did it as a Central Maine Power officer, and used Central Maine -- I think I used Central Maine Power Company stationery." (p.60) When asked his rate of success, he replied, "It was a relatively high degree of success.." (p.62)

He was then questioned about a letter to Tucker, Anthony and R.L. Day Company, an investment banking firm. (The letter is reproduced below.)

COMMITTEE TO
SAVE
MAINE YANKEE

Exhibit
B

P.O. BOX 1018 • AUGUSTA, ME. 04330 • (207) 623-2232

John E. Menario
Chairman
Michael T. Healy
Treasurer
Eugene M. Beaupre, M.D.
Pres., Mid-Maine Med. Center
Lillian L. Caron
Former Mayor, Lewiston
Bruce A. Chalmers
Chr. Me. Deleg., White House
Conf. on Small Business
Hon. Peter W. Danton
Richard A. Dummer
Farmer
Abbot Fletcher
Exec., Bath Iron Works
Dr. Alonzo H. Garcelon
Past Pres.
Sportsmen's Alliance of Me.
John W. Griffin
Plumbers & Steam Fitters Union
Conrad A. Grondin
Treas., Grondin Supply
A. J. Haug
Pres., Forster Mfg.
Richard C. Hill
Mech. Engineering
Professor, UMO
Dr. William Hughes
Physics Prof., Bowdoin College
Dwight Lanpher
Manager of Technical Services
Jackson Laboratories
Irving H. McConchie
Lobsterman
Dr. Roger N. Metz
Chr., Dept. of Physics,
Colby College
Charles J. Micoileau, Esq.
Attorney-At-Law
Dr. Richard Morgan
Govt. Prof., Bowdoin College
Joseph R. Nixon
Int. Brotherhood of Elect. Wrks.
Thomas S. Pinkham
Genl. Mgr., Pinkham Lumber Co.
Nicholas J. Pulla
President
Pulla Hardware & Lumber Co.
Carol Sharp, R.N.
Maurice P. Shea III
President
Depositors Trust of Eastern Me.
Margaret Chase Smith
Former United States Senator
Anita C. Stickney
Pres., Deering Ice Cream Corp.
E.W. "Skip" Thurlow
Pres., Maine Yankee Co.
Robert Turner
Exec., St. Regis Paper Co.
Partial List

June 8, 1984

Michael T. Healy, Esq.
Treasurer
Committee to Save Maine Yankee
C/o Verrill & Dana
2 Canal Plaza
Portland, Maine 04101

Dear Mike:

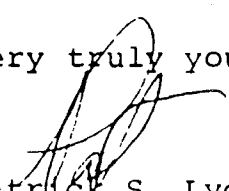
During the course of pulling together information to respond to data requests associated with the Legislative Investigation of Public Utilities, I found the attached letter in my files regarding the 1982 Save Maine Yankee referendum campaign.

Upon receipt of this letter in March of 1983, I indicated to Jim LeBlanc, as Save Maine Yankee Campaign Coordinator, I felt the charges were unfounded and, in fact, unjust, particularly coming so late after our efforts had been wound down. In addition, I indicated to Jim that we would be unable to pay as we did not at that time have funds available.

However, I have learned in the last week that Central Maine Power Company chose to report the total sum as an in-kind contribution for 1982 and reported it as such in all required state and federal reports. Therefore, it would seem appropriate that Save Maine Yankee should either amend its March 31, 1983 campaign finance report or add it to the June 30, 1984 report to the Secretary of State to reflect this additional in-kind contribution.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Patrick S. Lydon
Campaign Coordinator

Attachment





Central Maine Power Company

GENERAL OFFICE, EDISON DRIVE, AUGUSTA, MAINE 04336
(TWX NUMBER, CMP-AGUA 710-226-0195)

(207) 623-3521

Exhibit

A

February 28, 1983

Michael T. Healy, Treasurer
Committee to Save Maine Yankee
PO Box 1018
Augusta, ME 04330

Dear Mr. Healy:

The dollar value of in-kind services provided by Central Maine Power Company to the Committee to Save Maine Yankee for the period December 7, 1982 through December 31, 1982 amounts to \$10,252.60. Of this amount, \$10,216.00 represents a revised rental and general expense allocation which was applied to services provided by Central Maine Power Company to its various subsidiary and associated companies as well as "below the line" charges. The remaining \$36.60 represents leased vehicle charges.

We regret the late reporting of these charges. However, year end closing was not completed until the second week of February. Should you have any questions or need additional information, please contact us.

Very truly yours,

James M. LeBlanc
Assistant to the Comptroller

R.S. Howe

Robert S. Howe
Comptroller

L

Exhibit
D



Central Maine Power Company

GENERAL OFFICE, EDISON DRIVE, AUGUSTA, MAINE 04336
(TWX NUMBER, CMP-AGUA 710-226-0195)

(207) 623-3521

August 23, 1984

Galen Libby
State Department of Audit
State House Station #66
Augusta, ME 04333

Dear Mr. Libby:

The following letter is intended to outline our conversation of last week regarding Central Maine Power Company's in-kind contribution to the Committee to Save Maine Yankee.

When the effort to assist the Committee to Save Maine Yankee during the 1982 referendum first began, CMPCo. employees were divided into two distinct groups in order to facilitate accounting for time spent assisting the Committee. The first group of employees included the senior officers of CMPCo. as well as Mr. Patrick Lydon and Mr. Robert Leason. The second group consisted of all other employees.

CMPCo.'s original intention was to treat the services rendered to the Committee to Save Maine Yankee by the first group (senior officers, etc.) as in-kind contributions while the cost of services provided by the second group (all others) would be billed to the Committee. As matters evolved, the Committee to Save Maine Yankee, however, opted to reimburse CMPCo. for the original in-kind contributions arising from the services provided by the employees in the first group. The letters from CMPCo. disclosing the value of the in-kind contributions were used by the Committee as CMPCo. billing statements and the reimbursements were paid based on the value of the in-kind contributions disclosed in these letters. The Committee thus paid CMPCo. for the services provided by both groups of employees.

In late 1982, CMPCo. began considering the need to update and revise the overhead rates used in charging associated companies and "below the line accounts" (charges to stockholders rather than rate-payers, e.g. contributions to the Committee to Save Maine Yankee) for building useage and administrative overhead. CMPCo. made this revision in early 1983 prior to the closing of its 1982 accounting cycle.

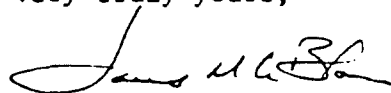
Exhibit D
Pg. 2

Page 2.

The overhead allocation considered (or gave credit for) amounts which had previously been charged for building useage. The difference between the revised rates and what had originally been charged the Committee amounted approximately to \$10,000. I wrote to the Committee advising of this retroactive readjustment charge. It is my understanding that the person responsible for handling accounts for the Committee at this period, I believe, assumed this retroactive charge was a billing, took exception to it and did not pay for what was assumed to be a billing. This charge was regarded by CMPCo. as an in-kind contribution. It was so reported in CMPCo.'s 1982 Annual Report to the Maine Public Utilities Commission and in its 1982 Federal Energy Regulatory Commission Form No. 1. As I was not associated with the Committee, I had no reason to know how it chose to handle this additional charge.

If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,



James M. LeBlanc
Assistant to the Comptroller

Webb was closely questioned on this letter. The Committee inquired about the writing of such a letter from Central Maine Power Company to a contributor to the anti-nuclear side of the referendum and questioned whether this represented an inappropriate use of corporate influence.

The last witness of the day was Elwin Thurlow, former President of Central Maine Power Company. He was at the head of the company during both referendum efforts.

Mr. Thurlow confirmed the testimony of Mr. Temple on the initial reaction of the Company to the 1980 referendum petition drive. Once the petitions had been accepted, the Company developed a strategy and began to assemble a team. "The two key individuals in state we ended up with, Mr. Menario and Mr. Potholm, were selected to run the campaign and provide the political strategy, or at least to be expert in that area."

(p.115) He confirmed receiving the memorandum on organization that Menario had been questioned about earlier. He said that the rationale for a separate Save Maine Yankee Committee was initially financial -- he did not want referendum funds commingled with Central Maine Power Company funds. He agreed, however, that the result was that there were not open, public, or private corporate records that would indicate a tie between John Menario and Central Maine Power Company. (p.121-122)

The funding of the drive was accomplished through solicitations by Central Maine Power Company and the Committee to Save Maine Yankee. The out-of-state money came primarily through the solicitation by Thurlow of Central Maine Power Company and Joe Kigin of Westinghouse Electric.

Thurlow said that he was the final decision-maker for Central Maine Power Company, the steering committee, and the Committee to Save Maine Yankee. "There had to be someone to make the final decision and that was me. But we did have the committee, and I listened very carefully, and many times I made the statement when you hire experts you better listen to them or you better fire them." (p.125)

Potholm was brought to Thurlow's attention by Temple. "...it appeared to me that he had some considerable background in the way of political strategy, and in the way of knowing more about political matters in the State of Maine, and the kinds of things that we would have to consider in order to run a successful campaign." (p.126) His initial role was purely as a political strategist. "I'm not sure that I knew at that time that he was involved in polling, because he had never done any for us and he didn't do any for Save Maine Yankee for some period of time after this." (p.127)

When Winner, Wagner recommended both a polling budget and a polling firm - Cambridge Reports - Potholm "made known his

knowledge in the polling area, and I think he helped frame some of the questions that Cambridge finally used." (p.128)

Further, Potholm "began to give us some interpretive thoughts on the Cambridge poll." (p.129)

Potholm's initial charge was "to provide general services along the lines of political strategy, participate in committee meetings, help us to develop a campaign, to give us ideas on what things we could do, and it was something in the order of 15 to \$20,000, I think, for the campaign. I don't recall that there was any discussion of him providing any kind of polling services at that time. Later on, however, the subject of tracking came up, and then I believe we had a separate understanding with him that he would provide certain tracking polls for some number, and I don't recall what the fee was." (p.129)

Thurlow then confirmed that Maine Yankee Atomic Power Company "had to agree to Winner, Wagner, to Cambridge, to everyone, that if we were unsuccessful in getting funds outside," the bills would be paid. (p.130)

The importance of obtaining support from political figures was seen as greater in the second campaign (1982) than in the first (1980.) "In the second one, there was (sic) several of us involved in trying to get the support of various candidates and

political figures. I was also involved, Mr. Potholm was involved, Mr. Menario was involved, and probably that was the -- primarily the three of us handled that function basically." (p.132)

"Early in the summer of 1980...Dr. Potholm then brought to our attention that he felt it would be important for us when we got down toward the end of the campaign to begin to do some tracking polls to be sure that we were putting our money in the right places in the campaign. And, he offered, or told us that he could provide that service. And we accepted." (p.133-134)

Thurlow then addressed the formation of Atlantic Research (Central Maine Power Company's polling subsidiary.) "Mr. Leason was active in it on the nuts and bolts side, doing a lot of spade work, Mr. Potholm was in it -- he played a key role in establishing, or helping to establish with our data processing people the computer program that would allow us to do polling, substantial polling." (p.136) "...when I got through the campaign and looked back at the dollars that we had spent on survey work it shook me up a bit to realize how much money it had cost....after the 1980 campaign I sat down with Dr. Potholm and said isn't there some way we can get around this cost and do something ourselves that would be less expensive, and I gave him the green light to see what he could do in-house." (p.138)

Sharing of data was considered by Thurlow. "We discussed one time the information that we had relative to the two political candidates, gubernatorial and the senatorial races, and he asked me if I would be willing to share some of that data with some of the other people doing polling, and he wasn't specific in that regard..." (p.151) Thurlow agreed that he had authorized Potholm to share this information as he saw fit. Thurlow was aware if Potholm had actually shared data, however, "I do know occasionally that he would mention the fact that so and so's poll shows this or that number,...these fellows apparently talk between themselves ... and he seemed to have quite a lot of information and I don't know where he got it." (p.153) Thurlow confirmed that he had shared some data by phone with Governor Brennan and gave a copy of the same data to Charles Cragin. (p.154)

Thurlow was aware of the general plan for exit polling that Mr. Lydon had outlined for the Committee in his testimony, but not of the questions.

November 15, 1984

Robert Leason

Marjorie Force

The Committee resumed its hearings on November 15, 1984. Two witnesses appeared before the Committee, Robert Leason and Marjorie Force, both employees of Central Maine Power Company.

Mr. Leason is presently the Director of Advertising for Central Maine Power Company. In 1980, he was assistant to the Senior Vice President, Robert Scott. He had been employed by the Company for 14 years at that time.

He became the Coordinator for the 1980 referendum effort. Thurlow had asked him to assume this role. Leason saw this as being the "interface between the committee (Committee to Save Maine Yankee) and the company.." (p.13) His primary contact at the Committee was Don Whitehead of Winner, Wagner Associates who would seek information from Central Maine Power Company through Leason. Leason maintained that the directionality of the information flow was from the Company to the Committee. (p.16) He was unable to name, however, the individuals or departments within the Company from whom he obtained information for the Committee. He recalled the steering committee, its membership, and the general nature of its meetings. (p.21)

During the first referendum, he had no contact with the polling except as one of the people who heard briefings by Potholm. In the second referendum in 1982, however, he was in charge of Atlantic Research. "...mine was an operative thing, where we conducted the polls, processed the information, and provided the information to the committee. But I did not try to characterize or explain the results or anything of that nature.

Q. Who did it?

A. I believe that was Dr. Potholm's responsibility." (p.36)
Through extended questioning, it was established that within Central Maine Power Company's polling operation (Atlantic Research), Potholm was the primary source of information. Leason maintained that his role was restricted to organizing the support services within the Company for the polling. This included finding people to make phone calls and arranging for data processing.

Leason informed the Committee that on at least one occasion Potholm had been allowed to bring data from an unknown client into Central Maine Power Company for processing on their computers. (p.62) (This use was billed to and paid for by Command Research.)

The standard distribution of polling results within Central Maine Power Company was, according to Leason, Thurlow and Potholm who received copies of every poll that was completed.

Mr. Scott and Mr. Temple occasionally, and sometimes Ad Media, were given copies. Since the printouts were quite large, Leason prepared condensed versions of them with the response rates to each question but no cross-tabulations. (p.70)

Normally, Scott would decline to receive a copy of the printout and rely on the condensed version prepared by Leason.

The second witness, Marjorie Force, was a computer programmer for Central Maine Power Company for 5 1/2 years. She was initially involved in the development of software for the processing of polling data in 1980. At that point in time, there were two individuals who ran the show for the Company - "Bob Leason, and Chris Potholm was with him from the beginning of the development of that program." (p.87)

Q. So, in the very first occasion on which you were consulted regarding the programming for these purposes, the people consulting you were Mr. Leason and Mr. Potholm?

A. That's right.

Q. Now, at that time who was really telling you --was one of them more prominent than the other in this discussion, or was Mr. Potholm as actively in this discussion as to what he wanted as Mr. Leason, or vice versa, or what?

A. Mr. Potholm was the one that knew how we wanted to analyze the surveys, so I would say he was the one that knew what we wanted. But, I never discussed anything with just Mr. Potholm. Mr. Leason was always there because officially I was working for Mr. Leason on the project.

(p.88)

Ms. Force explained in detail the physical operation of the polling analyses on the computer, who assembled the input for the computer, how the particular analyses to be performed were selected, and how the information was distributed from the computer center.

Ms. Force then reviewed the data storage system and how it functioned. Briefly, once a survey was completed the data was saved - "part of the normal operation of the program was to put the raw data, which was the people's responses, well, put the raw data off onto a computer tape, and that is where we would -- if you wanted to go back months later and rerun that survey, we would pull off the tape, put it back on the disk, and run the program. Yes, we could also go back and re-do a survey."
(p.98)

It was not uncommon, after an initial "standard" cross tabulation run had been completed, to do additional analyses on a particular poll.

Q. Were you ever asked to cross tabulate particular questions after your initial major run had been done?

A. Yes, after that standard run often Mr. Leason would come back and say cross tabulate opinion question number five against opinion question number eight, let's say, and I had to do a little bit of work to set that up. And then the procedure would be the same after that, cards went in, listings came out, and Mr. Leason got the listings. (p.107)

Ms. Force was questioned on the "releasing" of data storage tapes after the Scott affair had begun.

Q. Just one question on the data tapes: After the data was removed from the disks, spun on magnetic tapes, you then maintained these?

A. Yes.

Q. What happened to them?

A. Are you talking about releasing the tapes?

Q. Yes.

A. Okay, I'm not sure how much you're asking me about.

Are you telling me about releasing the tape?

Q. Just what you told me before.

A. Okay. My supervisor and I read the KJ (Kennebec Journal Newspaper) about the Bob Scott testimony indicating that we had destroyed all surveys - Central Maine Power destroyed all the surveys. We contacted Mr. Leason because we wondered, I guess basically we asked what the story was, because we knew we had those survey results, the raw data on tape, and Mr. Leason said he would look into it, and got back a little later, said he was still looking into it, something along that line. And then approximately a day later Mr. Leason and Mr. Potholm saw me. I don't know if they had looked for me or whether they just happened to see me.

But anyway, they saw me outside the building at CMP, and Mr. Leason said that he had discussed this with Mr. Potholm and there was no reason to keep those tapes around any more, that we would release those tapes.

Q. Could you explain what release means?

A. The tapes are like tape recorder tapes, and they all just stay in racks. And when we decide we don't want one any more, ...it doesn't exactly get erased, it just goes into a big stack of tapes that are a scratch pile,...so within a day or two those tapes ... would be written over.

Q. Effectively erasing?

A. Yes. (p.109)

Q. Do you remember approximately when that occurred?

A. I would say that they talked to me on Friday the day after Bob Scott's testimony -- the day after the KJ article about Bob Scott's testimony.

Q. You indicated that Mr. Leason and Mr. Potholm had talked with you about this?

A. Yes.

Q. You said, if I remember correctly, that Mr. Leason and Dr. Potholm saw you outside the building?

A. Yes.

Q. You were under the impression they were looking for you?

A. I don't know as it makes any difference. Once I said that I thought, why did I say that. To my knowledge they weren't looking for me. Mr. Leason has since told me he had gone to look for me in the computer center, and they said I just left. But at the time I don't remember knowing that.

Q. But it appeared in retrospect that for some reason Dr. Potholm and Mr. Leason wanted to talk to you about the releasing of computer tapes?

A. Yes.

Q. This just didn't come up in spontaneous conversation?

A. No.

November 26, 1984

Christian Potholm

The last hearing held by the Committee was to receive testimony from Christian Potholm. This followed the five month process of request for documents, subpoenas, and court enforcement by the Committee. The final court order required Potholm to turn over documents that the committee had been seeking.

Mr. Potholm had, on October 25, 1984, presented a written statement to the Committee which he had elaborated upon, but he had not been questioned on that statement. This was due to an agreement requested by the Minority members of the Committee. After the Court had issued its order, the staff had attempted to arrange an interview with Potholm pursuant to the Committee's standard procedure. The interview was refused.

When he finally testified on November 26, 1984, Potholm said that his initial contact with Central Maine Power Company had come as a result of an article he had written. "And it is from that basis that I was asked to come and discuss the possibility of serving in an effort to defeat the referendum to shut down Maine Yankee." (p.8) He told the Committee that he had met with Mr. Temple and Mr. Thurlow.

He confirmed that he had been engaged as a political strategist for the Company. (p.9) He subsequently met with Thurlow and the others, Fred Webber of Edison Electric Institute and Joe Kigin of Westinghouse Electric, who had been identified as serving on the steering committee. Potholm was made a director of the Committee to Save Maine Yankee and was involved in the "implementation of the strategy, the hiring of the polling firm and the hiring of the media firm." (pp.12-13)

Potholm admitted that he had been involved in the discussions to create Save Maine Yankee as the entity to oppose the shutdown instead of Central Maine Power Company.

Q. Well, in those days when you were involved in these discussions, did you have some input along those lines? For instance, were you asked for your opinion?

A. (Potholm's Attorney) About what?

Q. About Save Maine Yankee's appearing as a citizens committee separate and distinct from Central Maine Power.

A. I think it was a good idea, yeah.

Q. I asked if you had input and you voiced that right?

A. Yeah. (p.13)

A discussion of his financial arrangements with Central Maine Power Company revealed that although he had a written agreement with the Committee to Save Maine Yankee, his costs were guaranteed by Central Maine Power Company.

Potholm professed a lapse of memory as to his expense compensation from Central Maine Power Company and Save Maine Yankee. He also could not recall the amounts of time that he spent on the Save Maine Yankee effort. (pp.18-19) He was unable to recall the number of times he had prepared summaries or reports for the Save Maine Yankee Committee. (p.20) He recalled the tracking polling that Command Research had done for the Committee to Save Maine Yankee, although he could not recall specific questions.

Potholm agreed that the Committee to Save Maine Yankee members, including the letterhead committee, had no decision making authority of any kind with respect to the direction of Save Maine Yankee. (p. 25)

Potholm described his modus operandi for tracking polls. Briefly, little was committed to paper. A varying number of callers would place calls, obtain responses, pass these to Potholm who would summarize and report on the results.

It had been established that Potholm wrote the questions for the various polls. When questioned about them, he gave interesting responses. Q. Let's take a question like how is Ronald

Reagan doing. What is that? Is that a tracking question or an attitudinal question?

A. That could be both.

Q. It could be both. That appeared in all your surveys, didn't it, in 1980, for Command Research?

A. I don't recall if it appeared on all of them. It certainly is a question that I ask with frequency.

Q. Can you recall any survey in which the question was not asked in 1980?

A. I don't know.

Q. Is it fair to say at this point in time that the question appeared frequently, how is Ronald Reagan doing?

A. Well, no, I am not sure Ronald Reagan was on those.

Q. Well, let's try another one. Jimmy Carter. Question. How was Jimmy Carter doing. Was that in any of those polls?

A. I don't recall specifically whether it was. (pp.36-37)

Potholm was then shown copies of polls performed by Command Research to see if he recognized them. He made distinctions between attitudinal and tracking questions. He said that questions on political figures were included to judge movement on the referendum. "Those questions (Carter/Reagan, Brennan/Cragin) are there to compare the changes in one race with the changes in the other race." (p.46)

Yet when walked through a 1980 poll he responded:

Q. The first question has to do with republicans, democrats, and independents, right?

A. Right.

Q. The second one Anderson, Carter, Reagan, undecided, right?

A. Yes...

Now, on page 1, it shows John Anderson as having a rating of 9.6% ... and then on page 3 it shows John Anderson as having 7.5% out of Androscoggin, okay?

A. Yup.

Q. What significance did that have?

A. John Anderson had not really taken hold in Maine.

Q. That is what it meant?

A. That is the way I read that.

Q. That had nothing to do with Save Maine Yankee's referendum, did it, that John Anderson was not taking hold in Maine?

A. Well, we don't have any material here that shows us the Anderson voter versus the close down Maine Yankee voter.

(p.47-48)

Potholm then reviewed the polls the Court had ordered surrendered to the Committee. He acknowledged the presence of questions on political races on each one but maintained that the client had asked for their inclusion. On further questioning he conceded that he usually put the questions in the polls but discussed them with the client.

Potholm's version of the tape release was that "I was walking to my car, and Bob Leason said, oh, by the way, are you done with the July thing, and I said I don't need it any more." When asked if he disagreed with Force's statement that he and Leason had tracked her down, he said "Certainly wouldn't be my recollection." (p.83)

Potholm also reaffirmed that he had a copy of the poll Scott had told the Public Utilities Commission had been destroyed when he talked to Scott the day after the incident.

Polling

A central concern for the Committee has been the role that political polling played in the political activities of Central Maine Power Company and other Maine utilities. The extent of the polling became known during the Public Utilities Commission investigation.

At first, the political nature of the polling was not clear to the Public Utilities Commission staff. Partially this was due to a lack of information on how many polls existed and what they contained, and partly due to the provision of copies of polls with political questions excised.

As the Commission staff moved forward in its inquiry it ran into repeated objections in the course of deposing witnesses to questions about political activity. For example:

Deposition of Robert Scott (p.75)

Q. Was Mr. Potholm given a copy of the results of the surveys?

A. Yes.

Q. The results as well?

A. Yes, I believe so.

Q. And you were aware at the time that Mr. Potholm also conducted surveys for political groups, were you not?

Mr. Healey (attorney for CMP) May I inquire as to what relevance that has in this investigation?

Mr. Murray (PUC attorney) You may object, and if you want to instruct him not to answer you may do so, but to the investigation we believe it's relevant.

Mr. Healy -I instruct him not to answer.

Mr. Murray -You're instructing Mr. Scott not to answer as his lawyer or as a Company lawyer?

Mr. Healy - As the Company's lawyer.

Deposition of Christian Potholm (p.20)

Q. Do you recall whether Mr. Thurlow hired you for the advice you were providing the Save Maine Yankee during the first referendum?

Mr. Whitman (Mr. Potholms's atty.) - Again, I object. I do not see how this falls within the scope of the

investigation. If it would assist to go off the record and discuss this, I would be glad to do so.

Deposition of Christian Potholm (p.27)

Q. Did you know Mr. Scott at the time of the first campaign?

A. Not by name. I just knew him as somebody you would see if you were at CMP from time to time.

Q. He was though involved in the second campaign?

A. Yes. He was present in the room on a number of occasions.

Q. Going back then to the service that you provided as a consultant, have you provided services to Mr. Thurlow personally;

Mr. Whitman - I guess I will object here and ask for a clarification of that question to bring it within the scope.

Deposition of Marjorie Force (p.15)

A. You asked if I witnessed the conversation Friday afternoon with Mr. Leason and Mr. Potholm about releasing the tapes, and I did talk to my husband about it over the week-end.

Q. Why did you talk to yur husband about it?

Mr. Healy - Objection.

The Public Utilities Commission staff were ultimately in possession of eight polls performed by Atlantic Research. They were denied access to the poll conducted for Bath Iron Works,

at that time the "outside client." They were also unaware of two polls conducted for New England Telephone by Command Research, one of which was in the possession of Central Maine Power Company and the other which had been processed on Central Maine Power Company's computer for Command Research. The Commission staff was also unaware of the 18 tracking polls performed for Save Maine Yankee by Command Research.

As witnesses testified, including Mr. Temple and Mr. Potholm, the gathering of sequential data on political races over time created a tracking data base of great value to candidates in these races. Simply put, by combining the Central Maine Power Company polls, the New England Telephone polls, the Save Maine Yankee polls, the St. Regis poll, the Sportsmen's Alliance of Maine polls, the Maine Hospital Association poll, the individual hospital polls, and tracking polls, a person skilled in analysis of polling data could follow the popularity or approval rating of President Reagan, Senator Mitchell, and Governor Brennan for up to four years 1980, 1981, 1982, and 1983.

Mr. Potholm, before the Commission, the Court and the Committee, advanced the argument that the political questions were there solely for the purpose of validating by cross reference the major questions of the poll, whether they be moose hunting, hospital approval, bond issues, or closing Maine Yankee.

His position rested on two premises: (1) that the use of political tracking questions was accepted polling industry practice, and (2) that his polling instruments were primarily designed to yield valid data about non-political questions.

The Committee did not possess the expertise to evaluate these two claims. Therefore, it sought both an internal process of analysis and information from industry itself.

The internal analysis was as follows. First, no analyses of the political questions versus the "main" questions were ever found. That is, the analyses never asked "if 39% approve of President Reagan, what portion of that 39% want to close Maine Yankee?"

Secondly, it was clear that Thurlow, Menario, and Potholm all saw value in the political analyses favored sharing them with gubernatorial candidates. Third, Temple, Scott, Thurlow, Leason, and Lydon all referred to political questions at various points in depositions before the Public Utilities Commission staff, interviews with Committee staff, or in testimony before this committee, as masking questions. The primary source of information and education about polling was Potholm, yet Potholm referred to these questions as tracking.

Expert opinions were sought from industry sources to complete the analysis: Everett Ladd of the Roper Center for Opinion Research, Robert Craig of the University of New Hampshire, David Kovenock of Northeast Research (formerly head of the Social Science Research Institute of the University of Maine, Orono) and Barbara Farah, of the New York Times/CBS news polls. Each was asked to comment on Potholm's methodology. Their complete responses are found in Appendix H, excerpts are presented here. Everett Ladd was concerned about the effect of the Committee's inquiry on polling generally. He specifically said, "I see nothing out of order with the survey approach that Professor Potholm followed, with regard to question wording and question placement." He went on to discuss data retention and ownership "I have always encouraged survey organizations to contribute their poll findings to a library where they may be preserved....The organizations who give us their data are the major public polling organizations like Gallup, Yankelovich, CBS News and the New York Times, ABC News and the Washington Post etc." He went on to address the ownership of data issue Potholm raised before the Committee and Court, to wit, the data belonged to his clients and not him. "The private pollsters, who work for parties and/or various private sector clients, have consistently taken the position that their proprietary data are not going to be generally available." (emphasis added). Robert Craig said, "I would classify them as straightforward political surveys since the target population is not all

households or all residents or even all adults in Maine, but rather only those who are voters, those who might presumably participate in an upcoming referendum and/or election.....

"I see nothing in these studies to suggest that they are other than aimed at an understanding of political opinions. The demographic data collected, along with party registration figures, would be ample bases for assuring the validity of the survey. In my judgement, no opinion questions in these surveys need other political opinion (candidate) questions to "validate" them since all opinion questions can be volatile in different contexts, certainly whenever a "campaign" is being conducted (this is the reason for campaigns, after all). Party registration would be used to "validate," that is insure a representative sample for other political questions but not for non-political items. Demographic characteristics are fine bases for assuring "external validity..."

The Command Research's study done for New England Telephone is labeled "Current Voter Attitudes"...This study does contain other sections such as "Modern Communications" and "New Products" which can be viewed as non-political but the population of the survey is still registered voters only and, in my judgement, this is not the correct population for these questions, (all households or all adults would be more appropriate). "Overall then, in my opinion, these surveys are largely if not exclusively political opinion studies."

David Kovenock presents an extensive discussion of their validity which appears in full in Appendix H. He extensively analyzed the type, pattern and relationship of questions on six (6) polls. He concluded:

"(1) That the political questions could be used as indicators of one another and of an underlying partisan dimension;

(2) That the "political questions" would not be used as indicators of the focal "non-political" issues (the 1982 Yankee Nuclear Referendum, image of the local electric utility, the New England Telephone Company vis-a-vis the Maine Public Utilities Commission, and Bath Iron Works vis-a-vis Common Cause);

(3) Given the absence of any mention of the use of multiple indicators, and given the absence of their cross-tabulations by the "non-political" focal variables in the 7/82 poll for NET, that Command Research was exceedingly unlikely to have intended that the Reagan and Brennan approval questions and the Brennan-Cragin match-up questions be used as indicators of "non-political" focal variable in the NET poll."

He later stated: "Further, the Reagan and Brennan performance variables were included in the poll for NET but the CR report of that poll, while devoting a number of pages to

analysis of those 'political' variables, fails to use them in the analysis of any of the 'non-political' questions that constitute the bulk of the report -- not even in the analysis of voter evaluation of NET and the MePUC. This strikes me as suggesting that the two performance items were not included in that survey for the purposes of validating the 'non-political' questions."

"In summary, it is my judgment that:

(a). It was methodologically appropriate for CR and AR to use at least some of the 'political questions' for validation purposes... but only if one of the major purposes of the poll was to deal with "political questions."

(b). It was both methodologically unnecessary and methodologically inappropriate to use the 'political questions'... to validate ... any of the six polls insofar as those polls were designed for 'non-political' purposes."

Barbara Farah, of the New York Times, discussed at some length ways of measuring validity. She stated:"...questions that are used for tracking should be relatively immune to unexpected events. For this reason, it might be better if they were not political in nature, when the subject of the survey is essentially non-political.

"This may be a long, round-about way of saying that there is no intrinsic reason to be using political questions for surveys dealing with people's attitudes towards public utilities, jobs and the environment, unless there is also an interest in connecting these issues with the performance ratings of public officials or with certain policies. Being a political scientist, I would be interested in the connection between people's attitudes toward nuclear power, Common Cause, Bath Iron Works, etc. and their approval of the Governor's job performance. But I would not justify including these political questions in a survey on the grounds that they are used for validating the data. In fact, some questions, wrongly placed, can set a tone to the survey that is unintended....The political tracking questions used by Atlantic Research came at the beginning of the interview. Introducing a survey in this very way can set the respondent up to expect the following questions to have a political-partisan-dimension. If you are mainly interested in the environment and utilities, you may not want to begin a survey in this manner.... I see a hidden agenda in some of the surveys that were sent to me. It strikes me that asking whether the respondent is registered to vote or not means that there is more of an interest in a select group of respondents -- voters -- than with all people from Maine."

It should be stated that these reviewers did not have available the polls released by court order which extend the pattern across both time (well into 1984) and across vendor -SAM, MHA, and several hospitals.

There appear to be three plausible hypotheses to explain the pattern, type and analyses of political questions on these surveys.

1. The underlying reason for the polls was non-political -- data and faulty methodology were used by Command Research and Atlantic Research, either by direction of, or on the advice of, Christian Potholm.

2. The underlying purpose of the polls was to obtain political information and this was done with the knowledge and consent of the major purchasers - Central Maine Power Company and New England Telephone Company.

3. The underlying purpose of the polls was to obtain political information and this was done without the knowledge and consent of the purchasers.

The consensus of three of the four reviewers appears to rule out the first hypothesis. In order to evaluate the second and third hypotheses, additional information is required. Part of that information comes from the depositions, testimony, and court transcripts in the Appendices of this report. Clearly, Temple saw the value of the political information (p. 29-32, 10/31/84 Hearing Record) and had even objected (p.29 op. cit.) to their inclusion. Mr. Menario recognized their value

and participated in the decision to share the data. (p. 70, op. cit.) Mr. Lydon testified that the exit polling was developed by Potholm and himself (p. 47-48, 11/1/84 Hearing Record). Mr. Thurlow testified that great importance was placed on obtaining support from political figures and that he, Menario and Potholm handled that function. (p. 132 op. cit.). He further testified that Potholm played a key role in CMP's polling operation (p. 138 op. cit.). Thurlow stated that Potholm broached the idea of sharing data with candidates (p. 151 op. cit.) He further said that Potholm provided comparison data from other polls in discussions with him (p. 153 op. cit.) Leason remembered that only Potholm and Thurlow routinely received copies of all analyses.

Force placed Potholm at the center of CMP polling efforts from the start (p. 87 Hearing Record 11/15/84). She also recalled that special cross tabulations of questions were run (p. 107 op cit.) and that Potholm was a source of these requests.

Potholm himself admitted after extensive questioning the value of the political questions over time.:

Q: And over a period of time, by comparing those with what had already been taken, you could develop a trend or a curve of some understanding as to where the candidate stood even though that was not the primary purpose of

anyone of your surveys or polls?

A: If you're referring to the President as a candidate or the governor as a candidate, yes." (p.65-66, Court Record 11/2/84)

The other source of information the Committee has to evaluate the polling material derives from the responses to the political interrogatories sent by the Committee candidates for official holders of the state wide electoral offices and Federal electoral offices. These are contained in Appendix F. They allow us to develop a context for evaluating the polling material already reviewed.

David Emery responded that "My campaign did from time to time contract with either Command Research or Christian Potholm for consultation on an ad hoc basis with respect to tracking studies which were in fact conducted and managed by my campaign staff. Those tracking studies performed by my campaign staff may have from time to time contained questions which measured the respondents approval or disapproval of the performance of Ronald Reagan; the respondents voting preference with respect to the 1982 Maine U.S. Senatorial election in which I was participating, the respondents approval or disapproval of the performance of Maine Governor Joseph Brennan; the respondents voting preference with respect to the 1982 Maine Gubernatorial election and rarely other state issues

that were current at that time including the closure of Maine Yankee Atomic Power Company. It is my recollection that on a few occasions my campaign organization during the period of time in question called upon either Christian Potholm or Command Research to assist in my campaign in the conduct of its tracking polls. I do not recall whether we paid Christian Potholm or Command Research for the services provided or paid the individuals directly." John McKernan responded that he had purchased polling from Christian Potholm/Command Research but that no copies existed. He offered no description of the polling that had been conducted.

Charles Cragin reported that he had received material from Central Maine Power Company as Thurlow, Menario, Temple, and Potholm had testified. He also stated that Christian Potholm/Command Research had done polls for him. "The tracking study was on going from September 2, 1982 to November 2, 1982 with weekly reports provided to campaign officials. There is no record of the context of the question used. This tracking study was sponsored in a whole by the Cragin Campaign Committees connection with my candidacy for the Governorship of Maine."

Governor Brennan responded to the interrogatories confirming the testimony of Jalkut, Thurlow, Menario and Potholm. In addition, copies of the materials provided were

turned over to the Committee. This confirmed the initial contacts with the Committee staff in February and April of 1984. PUC Chairman Peter Bradford responded to the interrogatories confirming the testimony of Potholm. In addition, copies of the materials asked for had been provided to the staff 10 months earlier.

The only serious inconsistency in the responses to the interrogatories by political candidates and office holders was found in the response of U.S. Senator William S. Cohen. He answered all of the Committee's questions in the negative, yet he filed a statement with the Secretary of State on May 31, 1984 showing a disbursement to Command Research of \$2,000 for survey research on April 27, 1984. This clearly conflicts with his "no" response to question #1 of the Interrogatory dated October 24, 1984, some six months after the expenditure and five months after the filing with the Secretary of State.

After review of the foregoing, it appears that the primary purpose of the polling was to obtain political information. The number of groups, companies and individuals who purchased the information is not only large but disparate. It is inconceivable in the absence of any documentary evidence that these groups in any way coordinated their activities. Mr. Potholm, however, designed and conducted these polls. He wrote the questions. He set the order for the questions and supervised the conduct and analysis of the polls. The

similarities between questions asked on the polls of non-political (utility and non-utility) and political clients, and the timing of those polls, support the Committee's contention to the Court that Mr. Potholm directed the acquisition of longitudinal political data which was regularly updated and which information appears to have been largely paid for by utilities, referenda committees, and other Maine groups to a greater extent than by the political purchases of the data. This means that (1) utility and non-utility data were probably supplied, either knowingly or unknowingly, to political candidates, and (2) the political candidates received the direct financial benefit of these utility and non-utility expenditures.

VALUATION OF IN-KIND CONTRIBUTIONS

The Committee spent a considerable amount of time in examining witnesses on the problems relating to the valuation of polling data. There is no readily available source of guidance in current Maine statute or regulation. However the issue has been extensively addressed by the Federal Election Commission.

This regulation is triggered when an individual or entity that is unauthorized to make expenditures on behalf of a candidate purchases the results of an opinion poll and these results are subsequently "accepted" by a candidate. The candidate is considered to have "accepted" the poll results

from the individual or entity if the candidate or his agent engages in one or more of the following actions:

1. Requests the opinion poll results before having received the results,
2. Uses the opinion poll results, or
3. Does not notify the donor that the results have been refused.

11 C.F.R. § 106.4(b).

When an unauthorized person purchases poll results and forwards these results to a federal candidate, the acceptance by the candidate of the results usually constitutes an in-kind contribution by the unauthorized person to that candidate. However, if the poll results are released to the public prior to their receipt by the candidate and if this release were not coordinated through the candidate or his agents, an in-kind contribution of polling data to a candidate or political committee does occur and the candidate or political committee is considered to have made an operating expenditure equal to the amount of the in-kind contribution. 11 C.F.R. § 106.4(b).

In determining the size of an in-kind contribution made through the donation of polling results, the Commission's regulation provides a two-step allocation process. In the first step of the allocation process, the costs of the poll must be apportioned in an equitable manner among the candidates

who "initially" received the poll results. The first candidate or the first political committee that receives the poll results is considered to have "initially" received the results; also, all candidates and political committees that received the results within fifteen days of the date of their receipt by the first candidate or committee are considered to have "initially" received the results. Thus, if the corporate sponsor of a poll receives the results on January 1, 1984, and makes available these results to candidate A on April 1, 1984, and candidate B on April 16, 1984, both candidate A and candidate B are considered to be the initial recipients of the results. Candidate A is the first candidate or political committee to have received the results, and candidate B received the results within fifteen days of the date of their receipt by candidate A. Were the corporate sponsor to make the results available to candidate C on April 20, 1984, candidate C would not be considered an initial recipient because of the expiration of the fifteen-day period.

Allocation of Costs Among Initial Recipients

The Federal Election Commission has outlined four alternative methods by which the costs of a poll may be allocated among the initial recipients of the survey results:

1. The division of the overall cost of the poll by the number of candidates and committees initially receiving the

poll results (including state and local candidates and committees). For example, if a corporation sponsored a poll at a cost of \$10,000 and initially made available the results to four candidates, the corporation under this method would be considered to have made an in-kind contribution of \$2,500 to each candidate, and each candidate would be considered to have made an operating expenditure of \$2,500 on polling data.

2. For each initial recipient, the overall cost of the poll is multiplied by the following fraction:

$$\frac{\text{Number of question results received by the recipient}}{\text{Total number of questions contained in a poll}}$$

Therefore, if a corporation sponsored a poll at the cost of \$10,000 and a candidate received the results of three of the 100 questions in a poll, the corporation is considered to have made a \$300 in-kind contribution to the candidate, and the candidate is considered to have made an operating expenditure of \$300 on polling data.

3. Any method of allocation that reasonably reflects the benefits that a candidate derives from the poll. Or

4. A method of allocation that reflects the cost allocation formula of the polling firm from which the results were purchased. The amount of the in-kind contribution received by a candidate under this method is deemed to be the portion of the overall cost of the poll that would have been charged to the candidate by the polling firm.

The choice of which of the four allocation methods to use rests with the political committees or candidates receiving the polling results. Federal Election Commission, Explanation and Justification of 11 C.F.R. § 106.4, Fed. Elec. Camp. Fin. Guide (CCH) § 805 at 1538 .

Determination of Amount of In-kind Contributions

To Those Candidates and Political Committees

Not Considered Initial Recipients.

The Federal Election Commission has concluded that the value of polling data declines after certain periods of time have elapsed. Candidates and political committees who receive the results of a poll more than fifteen days after the first candidate or political committee received such results are considered to have received only a percentage of the value received by an initial recipient. A candidate who receives the results of a poll 16 to 60 days after their receipt by the first recipient is considered to have been given an in-kind contribution equal to 50 percent of the amount allocated to an initial recipient of the same results. 11 C.F.R. § 106.4(g)(1). For example, if a corporate sponsor gave the results of a poll to candidate A on April 1, 1984, and gave the same results to candidate B on April 20, 1984, the corporate in-kind contribution to candidate B would be one-half of the corporate in-kind contribution given to candidate A.

A candidate who receives the results of a poll 61 to 180 days after their receipt by the first recipient is considered to have been given an in-kind contribution equal to 5 percent of the account allocated to an initial recipient of the same results. 11 C.F.R. § 106.4(g)(2).

A candidate who receives the results of a poll more than 180 days after their receipt by the first recipient is not considered to have received anything of value and therefore is not considered to have received an in-kind contribution from the donor of the poll results. 11 C.F.R. § 106.4(g)(3).

The sliding scale of percentage depreciation outlined in the regulation does not cover a situation in which an initial recipient is given the results of some polling questions while a later recipient is given the results of other polling questions. In this situation, the later recipient would probably be allocated 100% of the value of the polling data received using one of the four allocation methods outlined above.

The complete regulations appear in Appendix I.

Maine Voice of Energy

As revealed in the hearings, the Maine Voice of Energy is a citizens committee based in Berwick concerned with energy issues. The group supplied lists of anti-nuclear individuals to the Committee to Save Maine Yankee and kept officials of Central Maine Power Company and the Committee to Save Maine Yankee informed of its actions and plans.

The investigation uncovered additional documentation of their activities. The documentation is contained in Appendix G.

In brief, the Maine Voice of Energy was organized in 1979. The organization was a citizens' group ostensibly unconnected to the utility industry -- although supportive of the industry.

On 8/8/79, Norman Temple of Central Maine Power Company developed a form letter to refer information requests on the nuclear referendum to the Maine Voice of Energy. The letter indicated there was no connection between Maine Voice and CMP. On 8/9/79, Temple sent an internal memorandum advising CMP management of the Maine Voice of Energy and suggesting contributions.

On 8/28/79, Temple wrote to Annette Stevens, President of the Maine Voice of Energy, saying "hope to have a check for you sometime next week." On 8/31/79 a note from Temple to Stevens was sent along with a \$500 Maine Yankee Atomic Power Company check. A year later, on 6/3/80, Annette Stevens wrote to John Menario with copies of articles of incorporation of MVOE and IRS Section 501 (c)(3) saying, "it gets a little bit sticky at the bottom of page 2, article 6, but get we'll manage to maneuver around it somehow." The problem was activities that influenced elections or propagandized.

On June 3, 1980 Annette Stevens wrote to Charles O'Leary, President of the Maine AFL-CIO, letting him know of the get out

the vote efforts, saying however, the Maine Voice of Energy cannot participate because of IRS restrictions.

(This should be compared to Lydon's statement that he met with her to provide names to the Maine Voice of Energy to call in the get out the vote effort of Save Maine Yankee.) On July 16, 1980, Stevens wrote to Menario with observations on his debate with Pat Garrett.

(On July 30, 1980 she sent the anti-nuke list to Menario presented in his transcript)

On August 4, she wrote to Temple with copies of their minutes saying "I do keep Menario informed of our activities, and Chris Potholm tries to arrange for our presence at certain events." The ongoing relationship is at variance with the testimony of both Temple, Menario and Potholm. The situation is further affected by two separate issues (1) the continued status as a 501(c)(3) corporation for IRS purpose when clearly Maine Voice of Energy knew get out the vote efforts were out of bounds; and (2) their failure to register with the Commission on Governmental Ethics in spite of the nature of their activities and a letter dated 9/15/80 informing them of the reporting requirements. In addition, it must be noted that the IRS warned them of possible 501(c)(3) problems on April 10, 1980.

Vendor Contributions.

During the Committee hearings, Thurlow, Temple and Menario informed the Committee that the funding of the referenda was a

critical concern to those directing the effort for the Company. The possible sources of contributions were: (1) the people of Maine (2) Maine business (3) out of state business and (4) the nuclear industry - both utilities and nuclear plant building and equipment firms. Responsibility was divided among several individuals: Menario concentrated on in-state fund raising, Thurlow on companies doing business with Central Maine Power Company and the nuclear industry. Thurlow was assisted by two out of state representatives - Joe Kigin from Westinghouse for the nuclear suppliers and Fred Webber from Edison Electric Institute for the utilities. Thomas Webb testified he contacted banks he dealt with for the Company. The Committee found at Central Maine Power Company a computer listing of payments from Maine Yankee Atomic Power Company to suppliers (vendors). The computer list was highlighted to indicate vendors who had received large (over \$100,000 payments from Maine Yankee). These were then summarized on a handwritten list. The list corresponded to letters written by Thurlow and Webb to vendors on stationery of Central Maine Power Company and Maine Yankee Atomic Power Company. A separate list was found at Ad Media, Inc. monitoring the vendor contributions. Earlier the Committee had heard from Dr. Gautschi that over 98% of the referenda funding for the Committee to Save Maine Yankee had come from businesses and corporations including the nuclear industry. In fact, Maine had the highest number of out of state contributors to a utility referendum of those he had examined.

The Committee asked Central Maine Power Company to provide lists of all vendors for Central Maine Power Company and Maine Yankee Atomic Power Company for the referendum years. The Company provided this material and the staff compared the vendor lists with the contributor listed by the Committee to Save Maine Yankee. The results of that research are as follows: 1980: \$842,585 was contributed by all parties to the Committee to Save Maine Yankee. Of this amount the following was contributed by suppliers and banks for Central Maine Power Company and Maine Yankee Atomic Power Company:

In-state: \$140,686

Out-of-state: \$260,250

total: \$400,936

1982: \$883,106.81 was contributed by all sources to the Committee to Save Maine Yankee. Of this amount the following was contributed by suppliers and banks for Central Maine Power Company and Maine Yankee Atomic Power Company:

In-state: \$ 81,100

Out-of-state: \$265,548

total: \$346,648

Interrogatories to Political Candidates and Office Holders

Documents found at Central Maine Power Company, is the files of Save Maine Yankee, and at New England Telephone Company, contained few indications that the political data

collected by or for the companies or the referendum committee had been passed to candidates for political office.

However, responses to requests for production of documents, supplemental information from company attorneys and company officers, as well as information gained in interviews, revealed that political polling information had been given to candidates for state office. It was unclear whether additional candidates or office holders had received similar information. Therefore, each candidate in 1982 for Congress from Maine (House and Senate), for Governor, and incumbents were sent a request for production of documents and interrogatories to verify the information received from utility sources possibly to uncover additional instances of the exchange information.

The responses to the interrogatories confirmed the utility information on the supplying of polling data to Charles Cragin and Governor Brennan. These were well documented and had been previously reported in the press.

It also revealed that, during the eight weeks preceding the 1982 election, when intensive weekly tracking polling was being conducted by Command Research for Save Maine Yankee-polling on the Gubernatorial race, the Senate race and the referendum-the same pollster was simultaneously conducting precisely the same poll Congressman Emery, and similar or identical polls for Cragin and McKernan. Based on Potholm's

testimony and documents from 1980, tracking polls were done in two to three days included 600-900 calls and were conducted by 10-12 part-time callers. Potholm himself prepared the analyses.

Simple calculations would yield for the tracking polls 2400 to 3600 calls in a 3 day period followed by a compilation of the data and analysis.

Given the number of calls and the analysis required, it appears unlikely that the necessary work was performed independently for each candidate and the Committee to Save Maine Yankee. Further, direct sharing of information and unreported subsiditation of political candidates appears to have occurred.

Unfortunately, the Judge's order denied the Committee access to the financial records of Command Research necessary to document the financial dealings.

OWNERSHIP OF POLLING DATA

An essential element of Mr. Potholm's refusal to turn over many of the documents and polls requested and then subpoenaed by the Committee was the fact that such documents were the private property of his clients, and not of Command Research. Thus, he was bound by terms of a contract or Memorandum of

Understanding entered into with each client not to disclose the documents, which were then property, without authorization. Mr. Potholm affirmed this view in an unsolicited, sworn affidavit and in a sworn statement submitted to the Committee, and in testimony before the Committee and the Superior Court.

During the course of cross-examination in court proceedings, Mr. Potholm was presented with a 1980 memorandum of Understanding entered into VCR & the Committee to Save Maine Yankee - which specifically provided that the polls were the property of Command Research. When asked to explain the discrepancy as to its previous testimony and the ownership of this poll, Potholm replied that the memo was subsequently altered so as to delete this provision, and that other Memoranda of Understanding submitted to the court contained no similar language. Thus Potholm led all parties to believe that the 1980 memo was the only exception to the rule that, subsequent to that time, all polling documents were the property of Command Research's clients.

Since that time, the Committee has received additional information from New England Telephone and Ad-Media revealing the existence of two other Memoranda of understanding which specifically provide that the following polls are the property of Command Research: a November, 1981 contract with Central Maine Power Company and a July, 1982 contract with New England Telephone Company.

The Committee is thus faced with two inconsistent and irreconcilable positions by Mr. Potholm as to the ownership of polls and related documents. The contradiction between Potholm's sworn statements and executed contracts undermines any confidence the Committee may have in the completeness and accuracy of his testimony.

FINDINGS &
RECOMMENDATIONS

The Findings and Recommendations of this Committee must be understood and interpreted within the context of the goals and objectives of this Committee. This introductory statement is an effort to present in summary form these elements which are found through the statements of the members of the Committee during the course of the hearings and committee meetings.

The Committee believes that two major principles are basic to the functioning of open government and utility regulation. The first is the right of public utilities to defend openly and forcefully their interests in the political arena. The second is the right of the people -- the ratepayers -- not to bear the financial burden of defending the interests of the shareholder and management of regulated public utilities. In addition, the Committee reaffirms the fundamental right of public utility employees, as citizens of this State, to participate in civic endeavors and in political activities at all levels of government.

This Committee fully, and unreservedly, endorses the right of regulated public utilities to advance and defend their interests in the political arena. This means that companies, within the limits prescribed by State or Federal election law for permissible corporate behavior, may engage in political activities. They may contribute to referendum campaigns. They may make direct expenditures on referendum issues. They may make in-kind contributions on referendum issues.

Their employees may form political action committees. It may represent their positions and interests on legislative, executive, and regulatory issues which affect them either directly through employees or through the use of representatives to legislative, executive, and regulatory bodies. These are not only rights, but certainly insofar as presentation of positions and interests on legislative, executive, and regulatory issues affecting their companies are concerned, these are virtually obligations. They must not be unduly restrained from representing their interests because of their status as public utilities.

The individual ratepayer must also be protected. He or she has no practical, readily available alternative to doing business with the local utility which has been granted a monopoly on the delivery of service in his or her area. In normal circumstances, a consumer may choose to do business or not to do business with a particular company or institution.

Consumers may shop for banking services, for cars, for exercise programs, and other goods and services. If a company is pursuing political objectives you oppose you can refuse to buy from them. However, the ratepayer does not have this option available.

The protection to the ratepayer is to ensure that no funds are spent on political activities unless they shareholder funds, not ratepayer funds. It is vitally important to be able, however, to trace individual dollars from ratepayer to operating versus political expenditures. Therefore a two-fold protection must be offered (1) reporting and accounting practices geared to separating these expenditures; and (2) adequate reporting of these expenditures in a fashion to ensure that the particular political activities of regulated public utilities are conducted in an open manner.

It is not the intention of this Committee to limit or restrict in any way the legitimate political activities of any utility. The purpose of this investigation has been dual, first, to document past problems and second, to provide fair and equitable guidelines for the political activity of public utilities and the protection of the ratepayer. It is also the intention of the Committee that such protection not result in undue burdens on the utilities which are not offset by benefits to the public.

FINDING 1

It is necessary to develop adequate reporting and accounting practices to track the actual expenditures of time, material and funds by public utilities on political activity.

Background: The State Auditors, the heads of the largest public utilities, and an independent expert on regulatory accounting practices, were unanimous in noting significant problems utilities have experienced in capturing and reporting time and effort on political activity. These had not been noticed by the Public Utilities Commission until this investigation. The auditors' review of New England Telephone Company, Central Maine Power Company, Bangor Hydro-Electric Company, and Maine Public Service Corporation confirmed this. The findings of the auditors and the expert witness support the conclusion that systematic underreporting of political activity had occurred. Central Maine Power Company and New England Telephone Company, voluntarily, have modified their internal recordkeeping systems which should provide substantially more accurate reporting of political activity time and expense.

Recommendation 1

The Public Utilities Commission should establish a common system for time and effort reporting of political utilities. This should include at a minimum:

1. On days when political activity (as defined by this Committee in Recommendation 2) occurs, daily logs maintained by individual employees documenting the specific jobs or

activities performed, including:

- *time of day each is performed
- *total hours worked on
non-political/political activities each
day
- *travel time
- *expenses

2. Monthly summaries of each employees time on political activities each month and the wage allocation for each employee for political and utility functions.

3. Monthly summaries of all employees expenses allocated below the line by individual maintained by:

- *mileage
- *food
- *lodging
- *phone
- *other

4. Reports corresponding in time period to the pay periods used by the Company for each class of employee allocating normal and political functions.

5. Reports corresponding in time period to the pay periods used by the company for each class of employee documenting overtime and premium time worked and/or additional employees hired to replace those personnel assigned or time spent on political activities.

Support: In many instances inadequate records often created were days, weeks, or even months after the day the work was performed. These often did not match other records -- calendars, expense records, etc.--that the companies had. This recommendation would provide an adequate basis for calculating the amounts that should not be charged to ratepayers. It would provide an audit trail which is presently lacking. It would ensure that all utilities recorded this information in comparable ways.

FINDING 2

The present requirements of Chapter 83 of the Public Utilities Commission are over broad and requires redefinition.

Background: Chapter 83 requires the reporting of Political activities, institutional advertising, promotional advertising, and promotional allowances within a single report. The definition of political activity used is:

Political Activities. The term "Political Activities" means any act, practice, expenditure, or advertising conducted directly or indirectly for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters or with respect to any issue of public concern or controversy. The term "Political Activities" also means any act, practice, expenditure, or advertising conducted directly or indirectly for the purpose of influencing federal, state, or local legislative or administrative authorities with respect to any legislation, rule, or ordinance concerning an issue of public concern or controversy; provided, however, that political activities do not include activities occurring in the normal course of business before such

authorities to secure licenses, permits, easements, variances, or similar authority with respect to zoning, street opening, line extension, construction, and similar undertakings which might require appearance before such authorities; and, provided further, that political activities do not include appearances before the Commission with respect to rulemaking proceedings. The term "Political Activities" also means any act, practice, expenditure, or advertising conducted directly or indirectly in association with any activity described in 35 M.R.S.A. § 51-A (1978), which covers expenses, whether paid directly or indirectly, through reimbursement or otherwise, incurred by a public utility with respect to contributions or gifts to political candidates political parties, political or legislative committees, or to any committees or organizations working to influence referendum petitions or elections.

This definition is cumbersome. It requires the reporting as political activity, appearances before administrative entities and speeches before civic organizations as well as activities seeking to influence the outcome of a referendum or other electoral event. It does not differentiate between instances of voluntary presentation of views concerning legislation or a campaign and instances when, for example, a legislative committee, regulatory or advisory body, or agency, requests specific testimony or information from a utility.

RECOMMENDATION 2

A statutory definition of political activity be established for purposes of reporting political activity by a public utility and that such activity be separately reported. The definition of political activity shall be:

"any act, practice, or expenditure conducted directly or indirectly for the purpose of influencing (federal, state or local ordinances, legislation, campaigns for political office, referenda, initiatives, constitutional amendments and bond issues. Political activity shall not be construed to include oral and written communications to or before the executive branch, administrative agencies or the general public except when the communication advocates a specific position with respect to a campaign as defined in 21 M.R.S.A. § 1421, or when the communication concerns legislation which has been assigned an LD number and has been printed by the Legislature, nor shall political activity include services rendered by utility employees on behalf of government agencies, boards, commissions or ad hoc committees created by public bodies to examine particular problems or issues, to responding to requests from legislators or legislative committees, or to those activities which a utility can demonstrate to the satisfaction of the Commission benefited ratepayers.

Total expenditures, including in-kind expenditures for telephone, rent, services and supplies, for such political activity by public utilities shall be reported to the Public Utilities Commission as a separate item.

Support: A more restricted definition of political activity permits a more accurate assessment of the actual level of political action than an overbroad one. This definition does not include such intrinsic aspects of a utility's business as involvement in administrative rulemaking where the Administrative Procedure Act governs and limits involvement in the administrative process, to responding to requests from legislators or legislative committees or having utility employees serve on local, pro bono state or regional committees or task forces where the employee's technical skills benefit the task force or committee. Excluding advertising, institutional promotion, etc, does not prevent the Public Utilities Commission from separately requiring reporting of these expenditures, nor will it prevent the disallowance of these expenses, it will however, provide a clearer measure of utility behavior. For example, a utility might on a regular basis spend a million dollars a year on institutional promotion and advertising and only \$20,000 on political activity. In a year with a referendum affecting their company, the utility might shift \$900,000 of its advertising and institutional promotion to political activity. Under the present system, the amounts under Chapter 83 would appear to be constant. Under the Committee proposal they would jump from \$20,000 to \$900,000.

FINDING 3

It is often difficult to be aware of the extent and nature of the political involvement of public utilities.

Background: Witnesses before the Committee, including Elwin Thurlow, former President of Central Maine Power Company, John Menario, former head of the Committee to Save Maine Yankee, and Christian Potholm, former political strategist for the Committee to Save Maine Yankee and Central Maine Power Company, testified that Central Maine Power Company had endeavored to minimize its public role in organizing, funding, and directing the activities of the Committee to Save Maine Yankee.

RECOMMENDATION 3:

A utility which intends to become involved in a campaign, as defined in 21 M.R.S.A. §1421, and expects to have expenditures of over \$50,000, shall prospectively file a statement of intent with the Public Utilities Commission. Such statement shall include:

- *A short characterization of the political purpose of the activity

- *The approximate level of expenditure controlled by the utility from utility and non-utility sources;
- *Certification of notification of the Board of Directors of the utility of the proposed activity. The Public Utilities Commission staff shall meet with appropriate personnel of the utility within two weeks of the filing of the statement of intent to review the requirements for political reporting and the systems in place in the utility to record such effort and activity.

Support: The Committee believes that prospective notice of political activity will prevent utilities from shielding their political activity on major issues of public concern from both the shareholders and the ratepayers. Certain members of the Committee expressed surprise at the fact that the Public Utilities Commission had not met with utilities to examine the accounting systems being used to report political activity.

FINDING 4

The Public Utilities Commission has failed to adequately inform the utilities of its reporting and record keeping requirements for political activity.

Background: Both Central Maine Power Company and New England Telephone Company reported to the Committee that they had never met with the Public Utilities Commission to establish reporting systems nor had the Commission given sufficient guidance to ensure complete and comparable reporting.

Recommendation 4

The Public Utilities Commission and the utilities, with the participation of the Public Advocate, shall establish common reporting practices for all utilities to ensure that similar activities are similarly reported.

Support: The current situation, where each utility independently designs its own time and effort reporting system, cannot, by its very nature, provide comparable data. An informed Public Utilities Commission, and an informed public,

require information that will allow them to compare the levels of activity of various utilities. A common reporting system comparing apples to apples will facilitate this process.

Finding 5

The utilities are currently required to report similar information to several governmental agencies in different forms.

Recommendation 5

The current Chapter 83 and the Secretary of State's lobbyist disclosure report be combined into a single report. The Utility Political Activity Report (UPAR) shall contain sufficient information to satisfy the requirements of 3 M.R.S.A. § 317 and Chapter 83 as modified by Recommendation 2. It shall be filed as required by the Secretary of State. Duplicates shall be filed with the Public Utilities Commission. The filing of this report shall meet the annual filing requirements of the Secretary of State and the Public Utilities Commission. The form shall be in two parts: Part I - the information required by 3 M.R.S.A. § 317; Part II - the dollar amount required by Chapter 83. The form shall be developed by the Secretary of State.

Support: The inherent reasonableness of providing single reports to multiple governmental agencies and authorities is compelling. A combined report to both the Secretary of State and the Public Utilities Commission, provided the information

needs of both are fully met and will simplify the regulatory burden of the utilities. The Public Utilities Commission and the Secretary of State's office have similar reporting requirements for political activities and lobbying. The Secretary of State's requirements are statutorily based and deal only with lobbying. The Public Utilities Commission requirements encompass the Secretary of State's needs.

Finding 6

The proposed reporting requirements might inhibit utilities from the exercise of their rights if safeguards are not provided. Excessive disclosure of detailed reports on individual lobbying contacts to the Public Utilities Commission goes beyond the requirements of the Secretary of State.

Background: The objective of the reporting system is to ensure that the expenditures of utilities for political activities are not charged to ratepayers. This obviously requires significant reporting. This is provided for in Recommendations 1, 3 and 4. However, the disclosure of the specific activities - e.g. employee w met with senator x, representative y, or director z - goes far beyond the level of disclosure required by the Secretary of State for lobbyist disclosure. In that instance the amount of time/money spent on promoting or opposing specific bills is required, not detailed accounts of individual contacts for the Secretary of State. The Committee is concerned that four goals be met:

- (1) all expenditures are reported fully,
- (2) the political purposes of expenditures are known;
- (3) excessive, duplicative, and unnecessary reporting requirements shall not exist; and
- (4) undue disclosure requirements not be placed on utilities.

Recommendation 6

The Public Utilities Commission shall not require utility companies to go beyond the requirements of the Secretary of State in disclosing the identities and content of individual lobbying contacts, but that this not relieve utility companies of the obligation to disclose completely and fully the total amounts expended on such activities.

Support: The leading concern of the Public Utilities Commission regarding political expenditures is that these be below the line (not charged to ratepayers). The Legislature has charged the Secretary of State and the Commission on Governmental Ethics and Election Practices with certain responsibilities for monitoring the conduct of political activities. It is inappropriate for the Public Utilities Commission to be burdened with additional responsibilities in this area which are not necessary to protecting the ratepayers' interest.

Finding 7

The Public Utilities Commission must have a mechanism for insuring the accuracy of the amounts reported to it as political activities.

Background: Protection of the ratepayer requires that all political activity expenditures be completely reported. Underreporting results in excessive charges to ratepayers.

Recommendation:7

The Public Utilities Commission be empowered to have the State Department of Audit review the filings, time and effort reporting systems, and the reported information of utility company political activities to ensure full and complete compliance with the requirements on the reporting of such activities.

Support: The Public Utilities Commission must have a mechanism for assuring that the figures being presented are accurate. This concern must not, and in this recommendation, will not result in disclosure of individual lobbying contacts.

FINDING 8

Public utilities solicited contributions for Save Maine Yankee on corporate letterhead. Senior officers directly solicited funds from vendors.

background: See Thurlow, Menario & Webb transcripts

Recommendation 8: Regulating vendor solicitations:

(a) That no officer, manager or employee of a public utility be allowed to solicit funds from utility company vendors for a referendum campaign committee on utility company letterhead;

(b) That utility company purchasing agents as well as any other employee of a utility company purchasing department be prohibited from soliciting any utility company vendors;

(c) That a list of all utility company vendors solicited and contributing, and the amount of each vendor's contribution to the referendum campaign or utility political activity, be reported to the Public Utilities Commission.

(d) That the Public Utilities Commission be empowered to investigate any suspected impropriety in connection with a vendor contribution;

(e) If the Public Utilities Commission determines that a utility exchanged anything of value with a particular vendor to secure that vendor's contribution, the Public Utilities Commission may remove the value of the improper contribution from the rate base.

Support: The business sector contributes significant proportions of all funds received by campaign committees opposing anti-utility referenda. The Committee to Save Maine Yankee, in both 1980 and 1982, received a large proportion of its funds from vendors. Vendors were directly solicited.

Finding 9

The Maine Voice of Energy, a 501 (c)(3) non-profit corporation, coordinated political activities with the Committee to Save Maine Yankee. It was asked to file by the Commission on Governmental Ethics and Election Practices but did not.

Support: See Menario testimony on anti-nuclear activists' list, and Appendix G.

Recommendation 9:

Refer the material in Appendix G and appropriate hearing transcripts to the Internal Revenue Service and the Commission on Governmental Ethics and Election Practices.

Support: The material in Appendix G and in the transcripts of Menario and Lydon document the tax status of the Maine Voice of Energy, the request to file from the Commission, its get-out-the vote activity and its collection of the anti-nuclear activists' list.

Finding 10:

Christian Potholm was an employee of Senator William Cohen at the same time he was consultant and pollster for Central Maine Power Company and New England Telephone Company, both Federally regulated entities.

Recommendation 10: Appropriate sections of transcripts and other documents be forwarded to the U.S. Senator William S. Cohen.

Finding 11

Christian Potholm conducted tracking polls for the Committee to Save Maine Yankee, David Emery, John McKernan, and Charles Cragin. Save Maine Yankee paid \$18,000, McKernan \$2,000, Cragin \$3,800, and Emery \$5,000 for these services.

Background: See transcripts of Court Hearing at Appendix C.

Recommendation 11

The Federal Election Commission be informed of its information for its review.

Support: The Federal Election Commission is charged with review of these issues. Under Maine statute no violation would have occurred.

MINORITY REPORT
AND DISSENTING VIEWS

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.

-Henry Clay

Government is not a substitute for people, but simply the instrument through which they act. In the last analysis, our only freedom is the freedom to discipline ourselves.

-Bernard Baruch

No man's life, liberty or property are safe while the legislature is in session.

-Mark Twain(a plaque in the office of Severin M. Beliveau)

INTRODUCTION

Since the formation of this Committee, we Republican members have repeatedly expressed our concerns about: (1) its lack of objectivity; (2) its partisan nature; (3) its indifference to maintaining proper financial controls on its budget; and (4) its search for scapegoats. We have consistently raised questions about the manner in which Chairman Baldacci has permitted this Committee to operate and his control, or lack thereof, over the activities of the Staff Investigator Marc Asch. We have been repeatedly assured by those in control of the Committee investigation that its final product would be objective, bipartisan and positive in nature. Upon review of the document we find it to be none of the above.

Unfortunately, the Majority report confirms our worst fears. What began as a witch hunt - and a hunt for Republican witches at that - has turned into a whitewash as well. We believe that the Chairman of this Committee, Senator Baldacci, the Staff Investigator, Marc Asch, and perhaps others, have engaged in the deliberate, calculated, systematic and ongoing cover-up of information, materials and witnesses designed to prevent the full Committee, the Legislature, and the people of Maine from learning the truth about the role that the utilities have played in the politics of Maine during the period that we were asked to investigate.

The Republican members of this panel state categorically that the behavior of the Staff Investigator, Marc Asch, with the

complicity of the Chairman, Senator Baldacci, by selectively choosing what we were to see, what information was brought to our attention, which witnesses were called, and which were not, have made a mockery of the investigation and undercut the supposedly objective and nonpartisan nature of its conclusions.

This conclusion is not ours alone. In a thoughtful and well researched story on this Committee and its activities, reporter Scott Allen of the Maine Times has noted:

Asch became the personification of the probe, carrying out most of the investigation on his own and feeding Baldacci prepared statements and question lists for Committee hearings. The other 12 Committee members were frequently "window dressing" who were simply "fed information", says Rep. Carol Allen (D-Washington). Committee Democrats repeatedly protested that they were not "out to get anyone" - several, like Rep. Allen had never even heard of Chris Potholm. But their motives didn't matter - they rarely understood why witnesses were appearing or what the investigator was doing. Rep. Patricia Stevens (D-Bangor), who lives down the street from John Baldacci, hadn't read crucial documents that were given to her, saying that she "trusts John." She, like the other Democrats, simply followed Baldacci's hand. Baldacci, in turn, reacted to rather than led, Marc Asch.

(Maine Times, Vol.17, No. 14, January 11, 1985, P. 2-3).

It is now clear that the Staff Investigator, through his control over the Chairman and with the Chairman's complicity, systematically and regularly suppressed evidence and avoided asking tough questions of a wide variety of deponents. It is not enough to assert that the Republicans could "look at the evidence" with the apparently thousands of documents under Mr. Asch's control and the numerous interviews of which we were not a part. We have had to rely on the Chairman and Investigator Asch

to bring to our attention all relevant materials. We did rely on them. We now learn, however, that there has been a regular and systematic suppression of evidence and a failure to interview key people in what can only be described as a deliberate attempt to prevent all of the evidence from coming before the full Committee.

Again, we note the report in the Maine Times that:

Potholm was subpoenaed for failing to answer some of the questions. He was later cited for contempt of the Committee and was taken to court for the same reason. Ad-Media, meanwhile, which possessed several times as many documents as Potholm, didn't comply at all, (emphasis supplied) and the Committee merely dispatched the secretary for a single day to review all the documents and called it an investigation.

The uneven treatment of Potholm was paralleled in other aspects of the Committee's work. Asch, who screened the witnesses for the public hearings, called John Menario, chair of the two Save Maine Yankee campaigns, and grilled him for his possession of the "enemies list." Menario tried to explain that the list was of no importance in the campaign, that it was simply an unsolicited compilation of names of people widely known to support the other side, but the Committee has continued searching for evidence to prove them wrong. Asch did not call Menario's counterpart, Roger Mallar, former Commissioner of Transportation, who headed up the group which opposed an elected PUC, as did Governor Brennan, in 1981.

Since August, the Baldacci Committee has had the equivalent of an "allies list" from this campaign produced by NAT and listing top Democrats like Brennan, Attorney General James Tierney and Secretary of State Rodney Quinn as friends of the utility. The Committee members were never told of this "allies list."

NET President, Richard Jalkut, a fund-raiser for Brennan in 1982, was called to testify with different results. He had been the inspiration behind the forming of the anti-Elected PUC coalition, a coalition which Brennan wanted, but which CMP was reluctant to join.

When Jalkut testified the Committee didn't ask him any questions about the 1981 campaign. Instead, the normally combatant Asch said, "I would like to add that the staff was extremely impressed with the fact that New England Telephone, seeing what they perceived to be a potential deficiency, took upon itself to correct this. . . . referring to NET's tightened political activity reporting.

(Maine Times, supra, P. 4).

We believe that the suppression of evidence and the failure to interview key people forms a pattern which is both overwhelming and regrettable.

SUPPRESSION OF EVIDENCE

(1) The Staff Investigator, Mr. Asch, has suppressed a memorandum from New England Telephone outlining the major political figures to be contacted and organized by the utility and its allies in order to assist that utility in its political activities. Individuals specifically mentioned include: Governor Joseph Brennan, David Flanagan, Rodney Quinn, Diantha Carrignan, David Redmond, Gordon Weil, Roger Maller and Dick Davies.

FAILURE TO INTERVIEW KEY PERSONNEL

(2) To our knowledge, none of the people listed in the New England Telephone memo were called upon to testify as to their

inclusion in the political activities of New England Telephone, nor quizzed as to what role, if any, they played in the political activities of that utility.

Either these people were not interviewed, or if they were, the results have not been made available to the full Committee membership. In either case, the failure to provide us with their statements about their involvement, or lack thereof, represents a serious flaw in the investigative process as conducted by Mr. Asch.

SUPPRESSION OF EVIDENCE

(3) Republican members of the Panel were not shown a game plan developed for New England Telephone in its effort to defeat the Elected PUC proposal during the fall of 1981. We are advised that among other things, the plan outlines the critical role to be played by Governor Brennan indicating therein that "the most important person in this effort should be the Governor", and other prominent members of the Brennan Administration.

FAILURE TO INTERVIEW KEY PERSONNEL

(4) It seems highly unusual to us, if the investigation was to be a complete and thorough one, that there appears to have been no effort to interview Roger Mallar, who directed the defeat of the Elected PUC concept during the fall of 1981, and who is alleged to have been picked by New England Telephone and the Governor to head the Coalition for Responsible Government. If

Mr. Mallar was interviewed, the Republican members of this Panel have never been advised of that fact or shown a copy of same.

(5) Likewise there appears to have been no effort to interview Gordon Weil, the Governor's personal representative to the Coalition. As the Governor's personal representative one would certainly think that Mr. Weil would have been in a position to indicate the level of the Governor's involvement in the day-to-day running of that campaign, as well as any role that he may have played in the setting up of that Committee.

(6) Again, if Mr. Weil was interviewed, the Republican members of this Committee have never had a chance to review his response to questions, nor was it ever suggested to the Committee by Mr. Asch that this would be an appropriate person to call. Since Mr. Weil was a key political operative during the entire period under review and a close advisor of Governor Brennan, we have difficulty in believing that such an omission was unintentional.

(7) It also appears that a decision was made not to interview Anthony Buxton, who served as counsel for the Coalition for Responsible Government and was one of its principal strategists. We can understand why the Democrats who were in control of this process might have found it embarrassing to bring forth the Chairman of the Democratic State Committee in Maine to ask him about political activities of the Coalition. However, if this was to be a truly bipartisan, sincere effort to meet the responsibility placed upon this Committee by the Legislature, it seems to us that an interview of Mr. Buxton was obvious.

FAILURE TO GATHER CRITICAL TESTIMONY

(8) In contrast to the amount of time and investigative energy devoted to the Save Maine Yankee efforts, the failure to examine the 1981 referendum (Elected PUC) raises further doubts as to the objectivity of the entire process, particularly in light of the fact that Richard Jalkut, Vice President of New England Telephone, was a strong backer and principal fundraiser for Governor Joseph Brennan.

This is not a view that is shared only by the Minority members of this Committee. It appears to be a view that is shared, however belatedly, by the Chairman of our Committee, Senator Baldacci.

The second "whole story" Baldacci wants to tell has to do with the failed Maine Energy Commission in 1981. Initiated by utility activist Bruce Reeves, the referendum would have made the three member PUC directly elected by Maine voters, rather than appointed by the Governor. The referendum might have faced no opposition but for Richard Jalkut, the new President of New England Telephone (NET). In August, 1981, Brennan wanted to stop Bruce Reeves, but the referendum was favored at the time by 70 percent of the voters. Brennan and Jalkut formed a natural alliance.

According to Reeves, who was being funnelled information at the time through Senate President Gerard Conley (D-Portland), and confirmed by Republican sources, Jalkut approached Skip Thurlow at CMP to organize an opposition effort. But CMP had just survived a referendum to shut down Maine Yankee in 1980 and was uninterested in being involved in another one. . . . but Jalkut was insistent and CMP agreed to contribute to the cause by allowing a poll to be run through their computers. NET hired Chris Potholm and Command Research to conduct the poll. Potholm found Reeves' lead to be staggering but soft. He came back to Jalkut and Thurlow

reporting that the election could be won and giving them a blueprint in how to do it. All they had to do was make known some provisions in the Reeves' bill, such as the one empowering the Elected PUC to make treaties with foreign governments, and voters would reject it as silly public policy. The Coalition for Responsible Government, as the opposition to Reeves was called, used Potholm's advice to defeat the referendum.

House Speaker Martin calls this referendum "a non-example" of utility politics and he wants to focus on the two Maine Yankee efforts. However, Baldacci is now convinced the utility spent thousands of dollars at least in part to do what Brennan wanted them to.

(Maine Times, supra, P. 7, 28)

If this is a story which Senator Baldacci wants told, he apparently is alone in that regard among the Majority members of the Committee.

Meanwhile, Speaker Martin had grown tired of the bad press and he pressured Baldacci to keep a low profile and write the Committee's report. . . . Baldacci sat down to write his report, but he couldn't do it; he was troubled by the belief that people were lying to his Committee.

There is a bit of a "true believer" in John Baldacci. With each press lambasting of him as Committee Chairman, he became more convinced that he was about to uncover "the whole story." With indications from both Martin and the Governor's office that they wouldn't cooperate, Baldacci's hands had been tied throughout much of the investigation. Now, with Martin's man, Asch, out of state and Baldacci feeling his "political tombstone" was already written, he declared, "If the Committee doesn't want to go after [Roger] Mallar and Brennan, I've got better things to do with my time." He would quit if the Committee didn't follow his lead. He started doing the things he probably should have done at the outset. (emphasis supplied) For instance, he talked to a pollster other than Potholm (the University of Maine's Kenneth Hayes) and found out for the first time how pollsters use tracking questions.

Baldacci also took control of the probe's direction. He even began paying copying costs out of his own pocket for documents at Ad-Media he needed to make his case.

(Maine Times, supra, P. 6)

(9) We have learned that there appears to have been a substantial difference in the treatment of the dissemination of polling data by New England Telephone. For example, the NET survey of July 19, 1982 was given to Governor Brennan (apparently by Richard Jalkut himself) in its entirety during the summer of 1982 while the information was still fresh, usable, and very valuable according to a formula proposed by Mr. Asch in the Majority report.. The strength of this material apparently permitted the Governor to cease polling because no further polls were conducted during his campaign. The same material was not transmitted to Charles Cragin, the Republican candidate for Governor until October of 1982 when the material had lost all value, even by the Democrats standards.

It has been reported that our Chairman "plans to ask (the Governor) to amend his 1982 Federal Election Commission report to include the poll." (Maine Times, supra, P. 28) That would seem to be the very least that should be done with this information. Of more interest to this Committee, if the Democrats are interested in determining the extent of utility involvement in the Maine political process, would be to have Mr. Jalkut appear before the Committee in order to be questioned on this subject and others.

Standing like a redwood in a blueberry patch is the failure of the Staff Investigator, Mr. Asch, to adequately examine the

documents provided by Ad-Media. Estimates have indicated that there may have been as many as forty thousand documents made available by Ad-Media to be reviewed by the Committee. Mr. Asch saw fit to ask the Committee's secretary to do this review which apparently occupied her for a portion of one day during which time she looked at an insignificant amount of the documents.

This activity, or lack thereof, raises the most serious charges of political favoritism. Ad-Media, as previously indicated, was the media firm of Governor Brennan and its files undoubtedly contain relevant information which has been kept from this Committee because of Mr. Asch's dereliction of duty. Even after it was made public that the Committee's secretary was only briefly at Ad-Media and had examined only a tiny fraction of the documents, no effort was made by Mr. Asch to further review these documents. It was only after the Committee had overspent its budget by a substantial amount and gone out of business in 1984 that Chairman Baldacci took it upon himself to go to Ad-Media to look at the files.

What the Chairman found, or more importantly what he did not find, should be of great interest to the Committee. As reported in the Maine Times:

When Baldacci went to Ad-Media on his own just two weeks ago, he found that all the files on the Maine Energy Commission in 1981 had been destroyed in April of 1983 by a company called Confidential Destruction. Ad-Media's Jack Havey said it was routine to get rid of old documents, but Baldacci noted the company still has its files from the 1980 Save Maine Yankee Campaign as well as piles of old magazines. Baldacci contacted Roger Mallar who headed up the opposition to the 1981 referendum, but Mallar had destroyed his

records of the campaign also. Baldacci thinks the memos and polling data for 1981 were destroyed, not because they were old, but because they were politically damaging.

(Maine Times, supra, P. 28)

So do we. But whether our beliefs are accurate or not, isn't this the type of information that should have been brought to the Committee's attention? The situation cries for an explanation. Mr. Mallar and Mr. Havey should have been given an opportunity to explain the destruction of these documents to the full Committee.

The visit of our Chairman to Ad-Media in late December, 1984 produced other questions which, if the Democrats on this Committee were serious about its purpose, would require investigation and explanation.

Other documents missing at Ad-Media were any files pertaining to Atlantic Research (CMP's in house polling organization). There were ten folders stapled shut labeled Atlantic Research. An Ad-Media employee explained that they had "anticipated" an Atlantic File, but never had one. Baldacci could not find records from Brennan's 1982 primary effort or any computer printouts or polls. Finally, an executive summary of a poll asking about the popularity of Governor Brennan, PUC Chair Bradford and U.S. Senator Mitchell omitted the answers to these questions. Baldacci believes Ad-Media "filtered" the documents in anticipation of his visit. As a result of the same Ad-Media visit, Baldacci is convinced CMP "filtered" its response to the interrogatory as well. He says there were documents at Ad-Media that CMP, as an Ad-Media client, should have had but didn't.

Maine Times, supra, P. 28.

Although it would appear that our Chairman in a 2 or 3 week period in December of last year turned up and publicly discussed

more evidence of questionable activity on the part of Democrats than Marc Asch has brought to light during the entire life of this Committee, he has apparently been dissuaded from pursuing his previously announced quest for truth which he so freely discussed with Scott Allen.

"Somebody is going to get into a lot of trouble," says Senator John Baldacci. . .

"Whoever's hand is in the cookie jar, we are going to slam it shut." - Senator John Baldacci.

Instead of addressing itself to the issues raised by Senator Baldacci late in 1984, the report drafted by Marc Asch is a textbook example of revisionist history. Using carefully selected aspects of a process which took weeks to accomplish, Asch, by the cut and paste method, consumed 22 pages in the draft of the report that we have been provided with attempting, apparently, to justify the excessive waste of time and legal expense incurred by the Committee in its odyssey with Dr. Potholm.

The Maine Times managed to summarize that fiasco in less than 100 words and one paragraph:

Baldacci claimed after the second court appearance, needed when Potholm still would not hand over the wanted documents, that the Court had "basically upheld" the Committee's position. The Committee had (1) asked for all the withheld documents, (2) cited Potholm for contempt of the Committee, and, (3) claimed the Court had no power to review the Committee's actions. In his decision, Justice Brody gave the Committee a fraction of the desired documents, refused to enforce the contempt citation, and conducted a judicial review of the subpoena's validity. (emphasis supplied)

Maine Times, supra, P. 6.

In summary, the report drafted by Mr. Asch for the Committee is not really a report at all. It is an embarrassment to the Legislature and the people of Maine and we will not sign it.

We are pleased to note that our view is shared by the Portland Press Herald in a March 26, 1985 editorial which noted:

In a draft of the Committee report due next Monday, Investigator Marc Asch (who moved to Ohio midway through the investigation and then billed the Committee for thousands of dollars to pay for trips back to continue his work) found no instances in which laws were broken. The draft cites a few discrepancies in testimony that one Committee member said "barely rise to the level of innuendo."

The major recommendations in the draft amount to little more than suggestions for improving state monitoring of political activities by utilities. The draft contains no evidence that those activities are either so wide-spread or so costly as to justify major changes in either the law or Public Utilities Commission regulations.

In short, the Committee to Investigate Public Utilities has come up empty handed. And it has left taxpayers with nearly empty pockets in the process.

The Committee had a budget of \$75,000.00 but spent money like a drunken sailor long after it had used up that allocation. The latest accounting puts Committee expenditures at about \$145,000.00.

The Committee probe started out as a political witch hunt, with Democrats out to uncover utility collusion of the Republicans at ratepayer expense. It turned out to be a costly and embarrassing fiasco with a report that likely won't be worth the paper it is printed on.

The intellectual bankruptcy of the report is best exemplified by a review of the recommendations that it contains. After going through 122 pages of a mind-numbing recreation of

history as Mr. Asch sees it, the first four recommendations of the Committee in essence call for the Public Utilities Commission to clean up its act with respect to time and effort reporting of public utilities, a redefinition of present requirements of the PUC with respect to same, a requirement that public utilities file a statement of intent to become involved in major political activities with the PUC and the establishment of common reporting practices within all utilities by the PUC.

We respectfully suggest that the foregoing recommendations could have easily emerged from a few hours of civilized discussion among the public utilities involved, the Public Utilities Commission and the Elections Division of the Secretary of State's Office. This could have been accomplished for significantly less than \$175,000.00, or more, that this document represents, and without the wild accusations, false charges, embarrassing leaks, unnecessary confrontations and bickering, and besmirching of reputations which were part and parcel of this effort.

However, it seems that even these relatively innocuous recommendations have given Mr. Asch pause for thought, as he then proposes a finding that "the proposed reporting requirements might inhibit utilities from the exercise of their rights if safeguards are not provided" (Finding 6, P. 130 - Draft Report), and that "the utility companies not be required to go beyond the requirements of the Secretary of State in disclosing the identities and content of individual lobbying contacts..." (Recommendation 7, P. 131)

We can only note that we wish Mr. Asch had been similarly concerned with persons' rights during his conduct of the investigation.

There are a few more recommendations which in essence suggest that the Maine statutes with respect to elections be amended to conform to Federal election laws.

Having previously expressed a concern for the rights of utilities, Mr. Asch's report then proceeds to trample on them again by requiring that "regulated public utilities contracts with polling organizations and polling consultants and media firms with access to their polling data contain clauses certifying that the firms/consultants are not currently employed by candidates for public office or by office holders.

While we have confidence in the wisdom of the Legislature that it would summarily reject such an unconstitutional prohibition on utilities and those whom they deal with, we would hope that the Majority members of this Committee would delete this recommendation from its final report.

We also believe that Recommendation 10 as proposed by Mr. Asch, i.e., "Regulated public utilities be forbidden to directly solicit funds for referendum committees. Their officers and executives also be forbidden to solicit funds from venders on non-company letterhead.", should be summarily rejected by this Committee.

We hope that his lack of concern for the First Amendment is not shared by any member of this Committee, whether of the Majority or of the Minority. So long as all political activity

of the type contemplated by Recommendation 10 is reported by the utility "below the line" we fail to see why such a heavy-handed recommendation need even be made.

The remaining findings (13 through 17) of the Committee report serve to underscore the trivial nature of the Committee's activities.

In summary, they propose (1) that hearing transcripts be forwarded to the Internal Revenue Service and the Commission on Governmental Ethics and Election Practices in order to determine whether or not the Maine Voice of Energy performed political acts on behalf of the Committee to Save Maine Yankee; (2) that appropriate sections of transcripts and other documents be forwarded to United States Senate Committee of Ethics for their review in order to determine whether or not Dr. Christian Potholm has a possible conflict of interest in violation of the U.S. Senate Rules on Conflict of Interest; and, (3) that the Federal Election Commission be informed that there is a possibility that utility data may have been passed to political candidates by Dr. Potholm during his conduction of tracking polls for various candidates, as well as Save Maine Yankee.

It would appear from the previously listed findings that Mr. Asch, at least, believes that it is the function of this Committee to also serve as an investigative arm of the Internal Revenue Service, the Commission on Governmental Ethics and Election Practices, the U.S. Senate Committee of Ethics and the Federal Election Commission. If the Democratic members of this Committee believe that these findings are proper and appropriate

for this draft report, then they should by all means vote to include them in the final draft. We do not and we will not.

Finally, determined to see that the report ends with a "whimper and not a bang" the draft proposes a finding that "Inconsistencies exist between statements of John Menario on sharing 1980 Save Maine Yankee data and the Governor's response to the Committee's interrogatories.", and that, "Inconsistencies exist between statements submitted by Senator Cohen to the Committee and to the Commission on Governmental Ethics and Election Practices." In both instances, Mr. Asch's report recommends no action and finds no violation of Maine law. We are sure that John Menario, Governor Brennan and Senator Cohen will be relieved to learn of that.

SUMMARY

As Republicans we take little comfort in the fact that our warnings delivered 14 months ago concerning the creation of this Committee and the manner in which its business would be conducted have come to pass. In fact, the manner in which this investigation was conducted and the manner in which the Committee has functioned over this period of time has exceeded our worst expectations.

But while we can say, "We told you so.", and point to vote after vote where we disagreed with the course that this Committee set for itself, we have to recognize that this sorry chapter in Maine Legislative history serves only to weaken the faith of Maine citizens in its Legislature and the Legislative process.

The one lesson to be learned from this whole unnecessary exercise is as stated in the Bangor Daily News editorial of December 6, 1984, which concluded that:

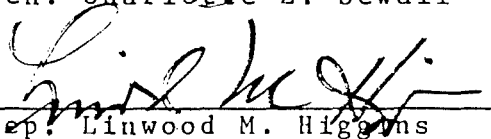
Regardless of how this issue (the overspending of the Committee budget) is resolved by the new Legislative leadership, the experience of this special committee has been an example of how the process of Legislative investigation easily can get out of hand, politically and financially.

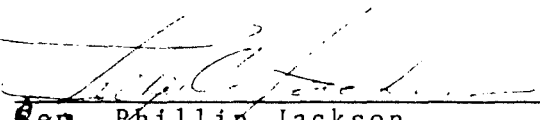
At a time when we as a Legislature are attempting to provide funding for so many worth-while governmental activities which directly affect and benefit our citizens, we hope that this exercise in political excess will never again be repeated by any future Legislature.


The people of Maine deserve more than this from their elected representatives. Much more.


Dated at Augusta, Maine, this 28th day of March, 1985.


Sen. Charlotte Z. Sewall


Rep. Linwood M. Higgins


Rep. Phillip Jackson


Rep. Ralph M. Willey


Rep. Donald F. Sproul

ADDENDUM

Since the drafting and signing of this Report to the People of Maine and the Legislature, the Republican members of the Committee have been importuned by the Democrats to sign a unanimous Committee report.

To that end they have offered to delete many of the recommendations made by Mr. Asch and rewrite others. They have suggested that Mr. Asch's work be issued unsigned by anyone.

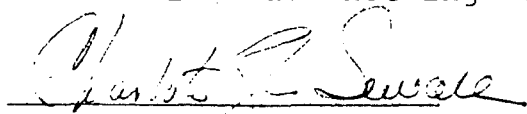
As much as we would like to have political harmony, we are unable to agree to any changes in the draft report which would make it acceptable for our signature.

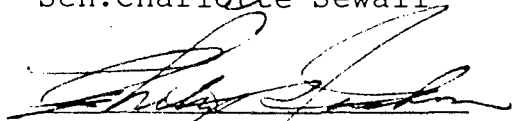
While the report is objectionable in many regards, many of which have been identified previously, it is the mechanism which brought the report about which makes it unacceptable to us.

We have been excluded from the process of this committee and we are satisfied that we have been shown only a small portion of what was available for review and worthy of our attention. The Democrats concern over our input comes far too late to be of any value.

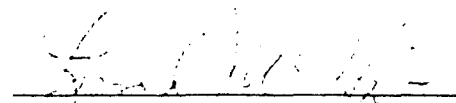
As we have previously stated, the report in its original form is an embarrassment. It is not capable of being edited into respectability. It is capable of being shredded. While we would be tempted to participate in that, we would prefer to let those who conceived this exercise in excess select its demise.


We will have nothing further to do with it.


Sen. Charlotte Sewall


Rep. Phillip Jackson

Dated: March 29, 1985


Rep. Linwood Higgins


Rep. Donald Sproul


Rep. Ralph Willey

SENATE

JOHN E. BALDACCI, DISTRICT 25, CHAIR
PETER W. DANTON, DISTRICT 4
CHARLOTTE Z. SEWALL, DISTRICT 20

MARC ASCH, STAFF DIRECTOR



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STATE OF MAINE

ONE HUNDRED AND ELEVENTH LEGISLATURE

JOINT SELECT COMMITTEE TO INVESTIGATE PUBLIC UTILITIES

March 29, 1985

Members of the 112th Legislature
State House
Augusta, Maine 04333

Dear Colleague:

As the Chairmen of the Joint Select Committee to Investigate Public Utilities, we must register a strong dissent to the misstatements of facts and inaccuracies contained within the Minority Report.

We will not speak to the unsubstantiated charges of lack of objectivity, nor to the fact that the Minority and Majority members supported without dissent every Committee action - including the issuance of the subpoenas (seconded by Senator Sewall) - up to the enforcement of the subpoenas, but we will address the factual errors contained in the report.

1. The full Committee was informed of the existence of the New England Telephone Company memorandum cited as (1) and (3) in their report. This was prepared by Christian P. Potholm and formed a part of the 1981 New England Telephone poll reported to the Committee and described on several occasions to the Committee.

-No member asked to see this document.

2. The Committee chose through a unanimous vote to use formal written interrogatories, not interviews, to question political candidates and officeholders. The Minority supported this decision, without dissent. After the Minority had added several names to the list of those selected to receive the interrogatories, they did not offer nor suggest any of the names cited in (4).

-No Minority member ever offered names for questioning to the Committee. Linwood Higgins, in the third to last Committee meeting, February 20, 1985, asked the process for calling additional witnesses. The Chairmen asked him to provide suggested names and topics. They followed up with a letter to him a week later. Higgins never responded.

3. Point (7) is false, Anthony Buxton was interviewed about the Coalition for Responsible Government on two separate occasions by the Staff Director.

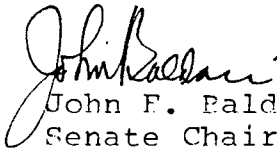
4. Point (9) reflects a difference of time of days, not months, as the Minority report implies. In fact, Mr. Cragin, himself picked the material up at Central Maine Company offices in Augusta according to the statements of E. W. Thurlow. However, all of this is included in Appendices B and F.

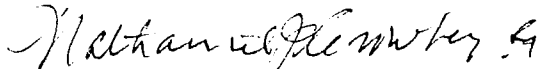
5. The comments on the staff draft of the report ignore the fact, well known to the experienced minority legislators, that staff drafts, including this report, are prepared to include the views that members give to staff. The particular section cited by the Minority on page 15 of their report at the request of a member. The Staff Director himself spoke against that section before the Committee.

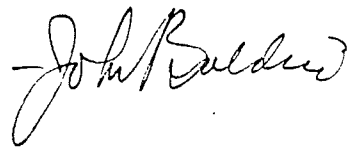
We must note that the full draft report was provided to all Committee members a full week in advance of final Committee consideration. At that time, and subsequent thereto, Committee members were requested to provide any disagreements and comments they may have with that draft. Again, during the course of the final meeting, Committee members were asked to identify criticisms or comments. At no time during this entire period did the Minority come forward with any statements relating to the draft report. It is only at the final moment, a day after the final Committee vote that the Minority chose to share its concerns on the draft report. It is obvious that the carefully constructed Minority report was prepared long in advance and deliberately withheld from the Committee. This is clearly a blatant, partisan attempt to discredit the hard work and open proceedings of the Committee.

The draft report exhibits the careful, thorough, and detailed consideration of all material presented in the course of the investigation. The Committee revisions merely altered the tone, and never altered the substantive findings of the report. Finally, the Minority members have chosen to present blatant falsehoods, to use press accounts in place of facts, and have continually negotiated in bad faith with the Committee. The Committee report rests on its facts which are contained and referenced in the Appendices. The people of the State Maine now can read the facts and judge for themselves.

Sincerely,


John F. Baldacci
Senate Chair


Nathaniel J. Crowley, Sr.
House Chair

P.S. Marc has done a very good job. 
Methodology of investigation right on
thru so no stone was left unturned.