

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
JOINT SELECT COMMITTEE
TO INVESTIGATE PUBLIC UTILITIES

PROCEEDINGS

CHAIRMAN BALDACCI: Members of the Joint Select Committee to Investigate Public Utilities, members of the press, ladies and gentlemen:

Bear with me for a moment, I have some things that I want to cover before we begin today's hearings.

We are nearing the end of a long and arduous process, longer than any of us would have predicted at the outset, over 200,000 documents reviewed, than we might have imagined from the beginning. Difficult for each of us as Legislators participating in the first Legislative investigation of this decade, difficult for the utilities who are the focus of this probe, difficult for the attorneys of this committee, and the attorneys of the utilities as we move into uncharted legal areas, difficult for our staff who have examined millions of documents, putting together great energy and effort into understanding the events of the last four years we have been charged to investigate by the Legislature.

I have appreciated the counsel and support of the members of this Committee throughout our work. Lacking recent legislative history, we have had to create a framework for this undertaking. The members of this Committee have moved forward diligently and with a commonality of purpose unambiguously clear to any who have carefully watched our proceedings. I do not mean to gloss over our differences,

1 and they have been sharp at times, but to recognize the
2 cohesion of the Committee at critical times.

3 First, we unanimously adopted the charge to the
4 staff; second we broadened that charge to include all Maine
5 utilities from just Central Maine Power Company at the
6 request of Representative Livesay, a Republican; third, that
7 same Republican moved to set the date certain for production
8 of documents; fourth, it was a unanimous vote to issue our
9 subpoena, the second in the history of this Legislature,
10 moved by Representative Kelleher, a Democrat, and seconded by
11 Senator Sewall, a Republican; fifth, it was a unanimous vote
12 to send out interrogatories to political figures.

13 This solid record of bipartisan support overshadows,
14 in my mind, the reports of bickering and partisanship too
15 often seen in the press. On the hard, politically sensitive
16 issues we have moved in a firm, bipartisan fashion. This is
17 a valuable legacy of this Committee for future legislative
18 investigative efforts.

19 I must recognize the cooperation shown by the
20 utilities, large and small, with our staff and the state
21 auditors. They have demonstrated a commitment to openness,
22 with the Legislature, that if continued will benefit the
23 people of Maine.

24 Today we begin the first set of hearings to explore
25 the political activities of Maine's utilities. Our interest

1 is simple. We need to answer only four simple questions:
2 First, has rate payer money been used for political purposes;
3 second, have our utility companies properly reported their
4 political expenditures; third, have our utility companies
5 used outside groups, agencies, or individuals to advance
6 their political interests; fourth, has the Public Utilities
7 Commission exercised the necessary vigilance to protect the
8 public.

9 Our goal is to fully answer the charge given this
10 Committee by the Legislature. We hope to complete our
11 fact-finding in the course of these and subsequent hearings.
12 The Committee will then sift through the material at our
13 disposal and prepare a report for the Legislature.

14 This report will be in four parts: First, the
15 findings of this Committee; second, the recommendations and
16 referrals to state agencies or other entities for their
17 consideration; and, third, recommendations to the Legislature
18 for statutory change.

19 Before we move into today's session, I want to
20 address the question why are no additional hearings scheduled
21 at this time other than the two in front of us. For the
22 benefit of the press and public let me review the events of
23 the last four months. In early June, following extensive
24 work with Maine's utilities, CMP in particular, and review of
25 material from the Committee to Save Maine Yankee, the staff

1 of this Committee discussed with House Chairman, David Soule,
2 and myself, the next steps required to fulfil our charge.
3 They presented evidence to us that Dr. Christian Potholm, and
4 Dr. Potholm, alone, could answer many of the outstanding
5 questions raised by the material reviewed to that point.

6 In early June, June 7th, to be precise, Dr. Potholm
7 was sent a straightforward request for documents. Today,
8 four months later, he has failed to produce what we asked for
9 from him. He was granted extensions. He was allowed to
10 delay through July into August.

11 Finally the Committee's patience was exhausted, and
12 on August 8, 1984, at Mr. Livesay's request we sent a date
13 certain, one suggested by Dr. Potholm in writing, I must add,
14 for final production. On that date he failed to produce,
15 forcing our committee to issue a subpoena. Our attorneys met
16 with Dr. Potholm's, but a satisfactory resolution was not
17 found. The Committee seen -- the Committee will soon deal
18 with enforcement of that subpoena. Fairness to the utility
19 companies of this state dictates a speedy resolution. Dr.
20 Potholm stands in the way of that restitution. Until he
21 cooperates either freely or under compulsion our task will
22 remain unfinished. That, and that alone, is why we are
23 holding hearings in October and not in August. That and that
24 alone stands between this Committee and the completion of its
25 task.

1 Today, the committee will hear from three witnesses:
2 Peter Bradford, Chairman of the Maine Public Utilities
3 Commission; David Moskovitz, Commissioner, Maine Public
4 Utilities Commission; Frederick Gautschi, III, Professor of
5 Colby College.

6 Mr. Bradford has had a distinguished career of
7 public service to both Maine and the nation, serving as an
8 advisor to Maine Governors, twice Chairman of the Maine PUC,
9 and a member of the United States Nuclear Regulatory
10 Commission, and Maine's first full time Public Advocate. He
11 is also author of "Fragile Structures: A Story of Oil
12 Refineries, National Security, and the Coast of Maine"
13 published in 1975 by Harper and Row.

14 David Moskovitz has an impressive background. He
15 came to the Maine Public Utilities Commission with several
16 years experience as an engineer to the Commonwealth Edison of
17 Chicago. His career in Maine began as a staff attorney for
18 the PUC. He was promoted to director of technical analyses,
19 and in March of this year he became Commissioner of the Maine
20 Public Utilities Commission. Mr. Moskovitz was also one of
21 the first people to foresee and act upon the significant
22 potential for cogeneration in Maine.

23 Dr. Frederick Gautschi, who is an assistant
24 professor of administrative science at Colby College and is
25 currently a visiting assistant professor of business,

1 government, and society, at the University of Washington. He
2 has done research studies related to the decision-making
3 behavior of regulatory agencies, corporate government, the
4 extent to which corporate board structure effects the
5 incidence of corporate violations of federal law, the sources
6 of contributions in antinuclear referenda. It is this last
7 point that relates to the investigation being conducted by
8 the Committee.

9 Before we begin hearing from the witnesses that are
10 here today, I would like to have them all rise to be sworn in.

11 Raise your right hand. Do you swear or affirm that
12 you will tell the truth, and nothing but the truth in this
13 matter now before the Committee, so help you God?

14 (All witnesses answered in the affirmative.)

15 CHAIRMAN BALDACCI: First, I ask Chairman Bradford,
16 if you please.

17 Would you like to first submit a prepared statement
18 to the Committee, or have you already submitted it?

19 MR. BRADFORD: I think I have provided a statement,
20 not as early as I would have wished, but at least a few
21 minutes before the hearing.

22 CHAIRMAN BALDACCI: Would you like to read that?

23 MR. BRADFORD: Yes, I'll summarize some parts of it,
24 but would ask that the statement in its entirety be what
25 appears on record.

1 Senator Baldacci, Representative Soule, members of
2 the Committee, you have asked that I appear today to review
3 the basis for the Public Utilities Commission's concern with
4 the broader political implications of information uncovered
5 in our investigation of the testimony of Robert F. Scott, a
6 report issued by the Commission on September 21, 1983.

7 You will remember that that investigation began a
8 year earlier when Mr. Scott testified falsely that certain
9 political surveys done by a Central Maine Power Company
10 subsidiary had been destroyed.

11 When further evidence made clear that Mr. Scott's
12 testimony had been untrue, the PUC referred the matter to
13 Attorney General Tierney. In December 1982, as a result of
14 the Attorney General's investigation, Mr. Scott pleaded
15 guilty to a charge of false swearing. The Commission's
16 investigation into other aspects of the matter went forward.

17 In August of 1983, CMP's president, Mr. Thurlow,
18 cited the investigation as the principle factor in his
19 decision to resign. Our final report was issued several
20 weeks later.

21 Since the pertinent paragraph of that report for
22 purposes of your investigation represented a consensus
23 conclusion of all three Commissioners, and was accepted by
24 the parties to the investigation, I think that it is prudent
25 for me to read rather than to paraphrase it. It is as

1 follows:

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

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

16 First, the company has made the results of some of
17 its surveys available to political candidates. The
18 furnishing of such information is obviously of value and of
19 benefit.

20 Second, both the company's polling consultant,
21 Command Research, and one of its leading media advisors, Ad
22 Media, are actively involved as political consultants as well.
23 There are apparently no restrictions on the extent to which
24 information generated in the course of the many political
25 questions asked as part of Atlantic Research's polling

1 operations, albeit paid for by the stockholders rather than
2 the customers, could be shared with political candidates. To
3 the extent this was done, it would reduce the need for
4 polling expenditures by the candidates themselves.

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

8 Fourth, on at least one occasion, the November 1982
9 elections, Central Maine Power Company employees were told to
10 do interviewing of voters as they left the polls at several
11 locations in the state. The purposes, scope, funding, and
12 beneficiaries of these exit interviews are largely beyond the
13 scope of our investigation. However, it is obvious that the
14 cost of such an operation, although trivial in terms of CMP's
15 \$401 million 1982 operating revenues, are substantial by
16 political standards.

17 That concludes the direct portion from the order.

18 But in July of 1983, several weeks before the Scott
19 investigation had been completed, Speaker Martin wrote to me
20 to ask several questions about our investigation. These
21 questions were based on our preliminary decision in the
22 matter, which had been released for public comment at that
23 time. Again, since these responses represent a consensus of
24 all three Commissioners, though not in this case of the
25 parties, it is prudent for me to read rather than paraphrase

1 the pertinent parts.

2 I will delete some of the material for reading
3 purposes that is in the text in front of you simply to save
4 time.

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

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

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

13 Our answer was the primary limitations were those
14 imposed by the PUC priorities and by the resources available
15 to conduct the investigation. The PUC's primary duties in
16 the areas of electric utility regulation involve setting just
17 and reasonable rates, reviewing power supply planning,
18 establishing each electric utility's short and long term
19 avoided costs, establishing and overseeing conservation loan
20 programs, and the establishing of reasonable and
21 non-discriminatory rate designs. In addition, we are charged
22 with performing similar functions for the telephone, gas, and
23 water industries. To the extent that the discharge of these
24 duties brings us into contact with possible violations of
25 other laws, we are required by Title 35, Section 8, to report

1 such concerns to the Attorney General. Indeed, this was a
2 practice that was followed with regard to possible campaign
3 law violations arising from the 1973 investigations into CMP
4 expenditures to defeat the proposed Power Authority of Maine.

5 Since political or referendum-related expenditures
6 are not considered to be legitimate expenses for ratemaking
7 purposes, the Commission did undertake to establish that no
8 political survey-related expenses were being charged to
9 customers. Since no rate case has occurred since the events
10 in question, current consumers are certainly not paying rates
11 based on these activities.

12 Because of manpower limitations the Commission
13 decided to hire outside counsel to assure us that the matters
14 of primary concern to us were adequately pursued. The need
15 to bring the case to a timely conclusion and to pay adequate
16 attention to other urgent matters on our docket simply did
17 not allow time for an extensive inquiry into possible
18 campaign law violations or other political matters.

19 The third question was if any constraints existed,
20 would the Commission have proceeded further but for those
21 constraints.

22 The answer was that the Commission would have
23 inquired further into some aspects of the political question
24 had it not been for the aforementioned constraints of time
25 and manpower. There are indications of considerable

1 political activity by CMP. This activity is undoubtedly
2 attributable in some measure to the company's perception that
3 its vital interests have been put at stake in several
4 referenda questions in recent years. However, nothing that
5 we know about those activities provides a fully satisfactory
6 explanation as to why CMP was prepared to go to such lengths
7 to protect surveys from confidential review by the Public
8 Utilities Commission. In order to understand these officials'
9 motivations, and to assure that no improper direct or
10 indirect political contributions were taking place, and to
11 recommend possible legislation, some additional investigation
12 would have been desirable.

13 The fifth question -- I have skipped over the
14 fourth though it was responded to by David Moskovitz who was
15 then a staff attorney, and who will be available to you later
16 this afternoon.

17 The fifth question, though, was what other
18 information does the Commission have in its possession, or
19 know, or believe to exist, which may have a bearing on the
20 political involvement issue raised in the report.

21 Our response was that throughout this proceeding,
22 the Commission has occasionally received information relating
23 to CMP political activities. For example, the enclosed
24 article from the December 5 Boston Globe contains explicit
25 information that the surveys were shared with, quote, major

1 political candidates, unquote. The conducting of exit
2 interviews involving both Maine Yankee and political
3 candidates is discussed in materials forwarded to your office
4 in response to a telephone request from Mr. Allen. Our
5 record does not indicate why these interviews involved the
6 gubernatorial election as well as the future of Maine Yankee.

7 In addition, it has come to our attention that
8 survey material has been distributed to at least one
9 legislator, and that Central Maine Power Company employees
10 were used, allegedly on a compulsory basis, to conduct a get
11 out the vote effort by telephone on election day in November
12 1982. Such questions as how the lists of people to call were
13 compiled, and how this effort was reported for campaign
14 contribution purposes have not been reviewed by us.

15 In conclusion, let me make two personal
16 observations based on my involvement in utility regulation
17 over many years. The first is that utilities cannot
18 constitutionally or reasonably be kept out of the political
19 process altogether. When their vital interests are put at
20 stake on issues such as the closing of Maine Yankee, or the
21 establishment of a power authority, or the method of choosing
22 utility commissioners, it is to be expected that they will
23 play an active role in response. While limitations may be
24 placed on these activities and while full, accurate, and
25 prompt disclosure is essential, it is settled law that

1 corporations may take advocacy positions on behalf of their
2 stockholders.

3 My second observation is that the lines between
4 proper and improper conduct must be drawn clearly and firmly
5 enforced. The vague and weakly enforced standards that have
6 existed in this area have permitted underreporting and
7 occasional concealment of efforts that are substantial in
8 political terms even when they have little or no impact on
9 consumers. The financial and manpower resources available to
10 utilities can have a major impact on candidate elections as
11 well as on referendum questions. In gray areas such as the
12 joint hiring by a candidate and by a utility of the same
13 pollster, or the commissioning of joint polls, the
14 expenditure of dollar amounts that are trivial by utility
15 regulatory standards can have a very significant election
16 impact. A few hundred dollars can be significant in a state
17 legislative race. Several thousand dollars is a major
18 contribution even to a statewide race. PUC rate cases
19 routinely run to tens of millions of dollars, and the annual
20 revenues of the utilities are in the hundreds of millions.
21 The Seabrook-like issues that we investigate can give you
22 assurance that the PUC will uncover activities of grave
23 significance to the political process. Since we deal for the
24 most part in large dollar amounts, these activities can be
25 buried in accounts that we will never see. Furthermore, our

1 primary duty is consumer protection. If the expenditures are
2 not proposed to be passed on in rate cases, we are even less
3 likely to find them. If any of the types of activities that
4 have come out in the Scott investigation, the get out the
5 vote effort, the exit interviews, the sharing of surveys and
6 of surveyors, seem to the Legislature to be undesirable, or
7 in need of restriction, then you must legislate against them
8 directly rather than expect the PUC to come across them as
9 part of its routine consumer protection function.

10 Thank you very much for giving me the opportunity
11 to testify. I know that your task to date has largely been a
12 thankless one, but I believe that it may well be shown that
13 many of those who are charging you at the moment with a witch
14 hunt will be shown eventually to have been riding to their
15 press conference on broom sticks. Done thoroughly and
16 effectively the task of defining and controlling undue
17 utility involvement in the process of electing government
18 officials is a very important public service, and you are to
19 be commended for undertaking it.

20 CHAIRMAN BALDACCI: Thank you, Mr. Bradford.

21 Are there any questions for Mr. Bradford?

22 Representative Soule.

23 CHAIRMAN SOULE: Chairman Bradford, throughout your
24 comments you made references to the various statutory
25 authority of the commission to investigate, in particular to

1 Section 51A of Title 35, regarding limitation on political
2 contributions, and so forth. Since this Committee seems to
3 have grown out of an inability of the PUC to go any further
4 than they thought they could at a certain point in time, can
5 you make any suggestions to us as to statutory changes that
6 you might feel appropriate that would allow the PUC to handle
7 matters such as this in the future?

8 MR. BRADFORD: If you want the PUC to handle the
9 question of election law activities by utilities, that would
10 require obviously a major shift in statutory focus, that is
11 campaign contributions, for example, would have to be
12 reported to us rather than to the Secretary of State. And,
13 questions such as defining just what a campaign contribution
14 in the gray area of the relationship between polls done for
15 one party and polls done for a candidate would have to be
16 spelled out.

17 It doesn't seem to me that the PUC is the best
18 place to put the bulk of that responsibility. That is, to
19 the extent you can draw a clear line between concerns you
20 have about the integrity of the political process, and
21 concerns you have about protection of utilities customers, it
22 is best to draw, and leave the protection of the customers to
23 us, and leave to the Secretary of State and election law
24 enforcement mechanisms the control of political contributions
25 by utilities, and I suppose by others as well. That is, the

1 question of polling and relationship of gift of a question in
2 a poll, or a get out the vote effort, to an individual
3 candidate's election efforts probably doesn't stop with
4 utilities. There is no reason why that wouldn't arise in
5 other contexts as well.

6 Our powers to investigate are very broad, and in
7 fact in my response to Speaker Martin I indicated that the
8 primary constraint of our going further in this area is one
9 of priorities, that is, what the legislature basically
10 expects us to do, protect consumers, oversee conservation
11 assistance programs, set avoided cost rates, regulate water
12 and telephone as well as electric matters, worry about
13 Seabrook. The dollars involved in these campaign assistance
14 efforts, no matter how great their impact on the campaign,
15 were very small in terms of impacts on consumers. And we
16 simply made a priority decision that we had put as much
17 effort into the implications of the Scott false testimony
18 case as the consumer protection implications justified.

19 CHAIRMAN SOULE: Thank you.

20 CHAIRMAN BALDACCI: Representative Livesay.

21 REPRESENTATIVE LIVESAY: I have a number of
22 questions that relate to those issues that seem to concern
23 you in terms of political involvement, and elaborated on to a
24 certain extent on page two. When you set forth four, you
25 said that those were among the concerns. Were there any

1 other concerns that aren't listed among those four, or are
2 those the ones that --

3 MR. BRADFORD: Those were certainly all the ones
4 that the three Commissioners agreed on. I don't know that
5 that list fully overlaps with the response to question five
6 on page five of my testimony. That is, I can't remember
7 whether there are any items picked up in the response to the
8 Speaker that aren't specifically laid out there. But those
9 two answers taken together is -- as nearly as I can recall it
10 now, touch all the implications that we had of utilities
11 political activity.

12 REPRESENTATIVE LIVESAY: And, do your concerns
13 focus primarily in -- maybe I should say even exclusively on
14 Central Maine Power Company as opposed to other utilities? I
15 know that is sort of the context?

16 MR. BRADFORD: That is right. Since both the
17 letter to the Speaker and the report in the false testimony
18 case arose directly from the case that involved only CMP --
19 testimony that involved only CMP, the best answer to your
20 question would be yes. Speaking personally, my own
21 experiencing goes back a number of years all the way to the
22 proposed public power authority referendum in 1973 where
23 there were some concerns about utility conduct that went
24 beyond just CMP. But I think for purposes of your
25 investigation and the responses that we have given to the

1 legislature recently the Commission's concerns were focused
2 on CMP.

3 REPRESENTATIVE LIVESAY: You indicate that, you
4 know, one of your areas of concern was the making of poll
5 results available to political candidates, and then went on
6 to say that it had obvious value and benefit. And I guess
7 this is the question that I ask now is in part in
8 anticipation of some sort of guideline that maybe this
9 Committee would determine necessary to work up in the future
10 in terms of in kind contributions. How would you suggest one
11 value for reporting purposes, the making available of a
12 particular poll. You know, I see lots of different problems.
13 If you and I are running for the same office, and the poll is
14 made available to both of us, you know, does that have some
15 sort of a different value than it would have had if that poll
16 had been made available to only one? Does the indiscriminate
17 dissemination of polling information completely diminish the
18 value of that poll in terms of an in kind contribution?
19 There are a number of sort of intriguing questions, I guess,
20 you know, that one is confronted with when you're forced to
21 place a value on it, or to suggest to a company that they
22 need to place a value on it.

23 MR. BRADFORD: You'll have to let me speak as much
24 as a citizen as a --

25 REPRESENTATIVE LIVESAY: I see this is something

1 that has been going through your mind.

2 MR. BRADFORD: It is certainly a fair question.

3 It seems to me as a part of the political reporting
4 now, and not utility accounting, that you have to value a
5 gift to a campaign at its market value, that is, how much
6 would it have cost the candidate to obtain the same services
7 in whatever market exists for those services. For rate
8 making purposes we value these things at cost. But, I don't
9 think that really tells you very much about the impact of
10 this gift on a political process. I have never run for
11 office, so I'm much less expert than any of you in assessing
12 this. But it doesn't seem to me that if, for example, a
13 utility includes one question on an issue of vital concern to
14 a candidate in the poll, and that raises the cost of doing
15 that poll by \$100, but that same candidate would have had to
16 pay \$1,000 or more to do an independent poll on the same
17 issue, that you -- that the electorate has been fully
18 informed by evaluating the inclusion of that one question at
19 \$100. It seems to me it is really the value that the gift
20 has to the candidate. That is important, electoral
21 information. Important rate making information is just the
22 opposite. For those purposes all we care about is the cost
23 to the utility.

24 You also asked if the information were given to
25 both sides. My intuitive answer to that is, if you and I are

1 running against each other, and somebody gives us each \$100,
2 we are obligated to report the \$100 gift, both of us. The
3 person can't get up and say since I gave both \$100, it
4 cancels out and nobody had to report anything. And I think
5 the same has to be true of any other candidate.

6 REPRESENTATIVE LIVESAY: You know, I think it may
7 be a little bit more complicated than that. But I guess I
8 don't know whether this is the time to ask questions in terms
9 of, you know, specifics as far as, you know, who was the
10 information made available to that you're aware of in terms
11 of furthering the Committee's work, or maybe our investigator
12 has already, you know, touched upon those areas.

13 MR. BRADFORD: I have furnished the Committee my
14 response to the questions and the interrogatories that were
15 sent out, and I have given you all that I know on that
16 question in that response.

17 REPRESENTATIVE LIVESAY: Just, again, this is sort
18 of a -- from your own personal insights and observations in
19 this area: How do you think this information was made
20 available, and what do you think the motives were behind
21 making it available? And I guess if I were a utility, let me
22 tell you how I would approach it, and what my thought process
23 might have been in conducting a poll to find out whether
24 Maine Yankee's continued existence was popular or unpopular
25 with the citizens of the state. That would be, you know, of

1 primary interest to me, and I bet that what I would have done
2 with the utility, I would have gone to those major
3 candidates and said, jeez, you know, you may want to take a
4 look at this information in terms of Maine Yankee, and, you
5 know, you may want to take a stand one way or another. And
6 presumably the poll is going to -- said in fact that Maine
7 Yankee was something that was supported by the vast majority,
8 or a significant portion of the citizens of the state. You
9 give them that information, it shows the poll indicates that,
10 and what you hope is that they then take the public stand
11 that in fact they're also in support of continued existence
12 at Maine Yankee. And that sort of repeated message to the
13 voters that not only is John McKernan, but John Carey, but
14 Governor Brennan, but -- that sort of works to the company's
15 advantage. And then I guess what might have happened, and
16 they would have said incidently, in addition to Maine Yankee
17 information, I can tell you what they say about your race.

18 Do you think that is how the information was
19 disseminated, and do you think that was kind of the
20 motivation behind it, or do you think it was done in some
21 other sort of a fashion?

22 MR. BRADFORD: I don't know how the information was
23 disseminated. We may have a certain amount of institutional
24 knowledge on that, that is we have a stack of depositions
25 that high off the table in which CMP executives and Command

1 Research personnel both discussed the process of taking the
2 polls and of disseminating them. So it may well be possible
3 to give you more information on that.

4 REPRESENTATIVE LIVESAY: It is the motive that
5 interests me inasmuch as anything, because if we know what
6 the motivation is, we're in a better position to work up
7 meaningful guidelines.

8 MR. BRADFORD: As I suggested in my testimony I'm
9 sure that one of the motives was, as you suggest, the
10 safeguarding of corporate interests that were put at issue in
11 these various referenda.

12 The more complicated situation to me is the one in
13 which other questions, questions obviously extraneous to the
14 future of Maine Yankee, or whatever other issue the polls
15 were primarily devoted to, were included. Now, if there were
16 such questions, they were termed masking questions, and in
17 fact the word masking is -- now elicits a certain amount of
18 amusement at PUC used in that context, because it was never
19 clear what was being masked, from whom, and for what purpose.

20 But these masking questions were of a sort that
21 would elicit a substantial amount of political data that had
22 nothing to do with the referendum question at issue. Let me
23 try to make it neutral by just making up a hypothetical
24 masking question.

25 Supposing that 10 or 11 years, 15 years ago, there

1 had been a poll going on related to Maine Yankee, and a
2 utility had chosen to throw in a question saying are you
3 opposed to or in favor of an oil refinery at Machiasport.
4 Then had gone to candidates to whom the Machiasport oil
5 refinery was an important question and said we have this data,
6 and by the way here is what they think of your stand on the
7 Machiasport oil refinery. It seems to me the second half of
8 that proposition doesn't have a lot to do with the
9 safeguarding of Maine Yankee, and it does give rise to
10 certain other types of questions, such as how did that
11 question come to be included in the first place? Was it
12 really just an independent test question to see what the
13 voters' sympathies were, or was the person who put the poll
14 together in close enough contact with one or more of the
15 candidates to know that the Machiasport oil refinery was in
16 fact an important question to that candidate, and the data to
17 be gained from the poll would be invaluable to the candidate.
18 Those are the kinds of questions that the PUC did not get into,
19 but that we felt was raised about our experience with the
20 masking questions and with the admission -- clear cut
21 admissions that the surveys had been distributed to political
22 candidates. And I take it those are within the scope of your
23 investigation to a greater extent than they were to ours.

24 CHAIRMAN BALDACCI: Senator Sewall.

25 SENATOR SEWALL: Chairman Bradford, I'm still

1 trying to figure out in my mind the mechanics of handling
2 this, whether the PUC should be actually doing this where it
3 is in your scope but not in your budget timewise, or perhaps
4 financially, or whether we should do it. And I'm having a
5 little trouble especially with the value of some things, or
6 maybe the person who is deciding on the value. For instance,
7 it makes me a little bit worried now, daily in the mail I'll
8 get from one group or another saying most people in your
9 district think thus and thus. The minute I open it I am
10 getting something of value when I haven't ask for the poll,.
11 I open my letter and it says sportsmen in your area wants
12 thus and thus, and they voted in a poll to thus, and thus,
13 and thus. Should I suddenly say I have this, I don't know
14 what value it would be to me if I did this poll, and be
15 writing it down? That kind of just day-to-day thing bothers
16 me.

17 And the other thing that bothers me is that I see
18 where if a public utility is concerned as a business, the
19 same way another corporation would, although, it is two
20 things, can it come under the same kind of laws? Are you
21 really looking for a split where the legislature does the
22 election laws and you review it, is that where you're headed?

23 MR. BRADFORD: That was -- with regard to the
24 political contribution aspects of our concerns, my preference
25 would be that the political behavior of utilities be

1 regulated by those who regulate political behavior anyway.
2 It is not what we're best at. We could help substantially in
3 terms of tracing the dollars, and giving background on how
4 these things are done. But you have laws in any case that
5 relate to the corporate political conduct, and this seems to
6 me to be a more logical subchapter of those than it does for
7 consumer protection laws.

8 With regard to the surveys you get in the mail, you
9 assumed a fact that perhaps you all know. I don't know it to
10 be true here. That is that the surveys were done without any
11 consultation with you. I'm sure that is true of the surveys
12 that you get in the mail. We have never known for sure
13 whether these surveys were done without any consultation with
14 either a candidate or a representative of the candidate. If
15 it can be established, I think, that the questions -- all the
16 questions in the survey -- were done without regard to the
17 interests of any political candidate, then it seems to me
18 you're a long way toward saying this isn't reportable conduct.
19 I just don't know that to be the case here.

20 SENATOR SEWALL: I guess I'm just worried, saying
21 as a candidate, I'm not taking any surveys, I'm not doing any
22 surveys myself, and saying my congressional candidate says I
23 have taken a survey and I found out thus and thus in your
24 area, it is going to help you. Do I then -- all these things
25 are so difficult to report that -- and it is then when you

1 throw in being a public utility, a regulated utility, and you
2 throw in that you, not only your corporate side, but you have
3 that regulated side, in other words the stockholders may
4 participate, and the shareholders -- do you think you can
5 stay out of it and allow -- do you think that your regulatory
6 area can stay out of this and let us write in the election
7 laws committee a rule that would satisfy what you think the
8 intent of the law should be?

9 MR. BRADFORD: You're always going to have the same
10 kind of problems with the election laws as we do in other
11 senses for utility laws, that is every time you have got to
12 draw a line, there is going to be conduct that will edge up
13 to it from both sides. And to take a clear case, if somebody
14 sent you a \$100 bill in the mail and said I hope this helps
15 in your campaign, you have no difficulty knowing that that
16 had to be reported. If somebody sent you a bona fide survey
17 on 100 different issues on the attitude of your voters that
18 you found very helpful, again, this isn't my area, but it
19 seems to me that if that had a definable value, that probably
20 ought to be reportable as well.

21 Again, I'm not speaking as a PUC chairman now. The
22 area in which I can speak as a PUC chairman is, if you write
23 a law that says a contribution of that second sort should be
24 reportable coming from any business, including utilities, and
25 that matter arises, and someone wants to understand how that

1 utility put a value on this item, how much of your time went
2 into it, how it is accounted for rate making purposes, we can
3 certainly help out. And if there is reason to be concerned
4 that perhaps the customers paid for it, we can get at more
5 information in our rate cases than probably the election law
6 people can with regard to most other businesses, at least on
7 a routine basis. So we can be helpful in that way.

8 We can enforce that law if you want to have us do
9 it. I'm just suggesting that is not a very good use of our
10 time because it has such small consumer protection
11 implications.

12 SENATOR SEWALL: Wouldn't you feel, though, that no
13 matter how anyone reported it it could always be questioned?

14 MR. BRADFORD: Yes.

15 SENATOR SEWALL: No matter how anyone reported it,
16 it would always come up to questions and scrutiny?

17 MR. BRADFORD: The same as any other line the
18 legislature draws. When people's conduct edges close to that
19 line that is what judges and lawyers -- one gets rich at and
20 the other keeps busy with.

21 SENATOR SEWALL: But we are dealing with separate
22 things. Someone sends you \$100, so and so sent me \$100, and
23 I have it. If someone gives me a poll and I happened to know
24 something and be somewhere and answer a question, how much
25 did that question help me in my campaign, and how much could

1 I put that down -- could I put it down some way that I
2 thought was fair. If I said it didn't help me at all,
3 someone said she knew that and therefore I can't see tangibly
4 how you do this. And I'm wondering if you can give us any
5 guidelines on any in kind contributions.

6 MR. BRADFORD: Maybe you should better direct this
7 to Dr. Gautschi than to me, but let me ask the same question.
8 Supposing a corporation, utility or otherwise did a poll,
9 statewide poll on a number of issues that were important in
10 legislative races, and then mailed that poll to all the
11 candidates of one party, said good luck, you have been
12 helpful to us in the past and we would like to help you.
13 Isn't it pretty clear that that really would be assistance of
14 a sort that ought to be reported?

15 SENATOR SEWALL: I'll stop now, Mr. Chairman, but I
16 just want to say, yes, I think it would be. But to report it,
17 how could I say how much it was worth in my campaign, how
18 would I put the dollar figure in?

19 MR. BRADFORD: How much would it have cost you to
20 do a similar poll is what I'm suggesting.

21 SENATOR SEWALL: If it changes the three votes that
22 made my election --

23 MR. BRADFORD: You're never required to value gifts
24 in -- then even a \$100 bill would be hard to value if you had
25 to do it in terms of how many votes it turned around. I

1 think again, intuitively, this isn't my specialty, but it
2 seems to me the market value is the right yardstick.

3 And also there is still this matter we have been
4 assuming we knew the answer on, and that is we have been
5 assuming there is no relationship between the questions that
6 went into that poll and the questions that the candidate
7 would like to have asked. One of the concerns that I had
8 coming out of this investigation, and that I assume the
9 Committee will be in a position to answer, is whether perhaps
10 there was a relationship between some of the candidates who
11 received the material and the questions that were chosen to
12 be asked. It seems to me you have a very different picture
13 where the input questions to the poll actually come from the
14 candidate in the first place.

15 CHAIRMAN BALDACCI: Chairman Bradford, first of all,
16 starting with the Scott investigation that did occur, would
17 you tell me -- and what happened -- what were the documents
18 that you were searching for, what were the documents that you
19 were searching for from Mr. Scott or from Central Maine Power
20 Company, what was produced to you, and what was actually
21 there? It says here falsified surveys. What happened?

22 MR. BRADFORD: They did not falsify surveys. The
23 concern first arose in the context of a hearing that the
24 Commission was holding into the desirability and possible
25 scope of a conservation assistance program financed in part

1 by the utilities. I'm doing this from memory now. Our
2 report of the Scott investigation would be a better source
3 for want of specific details.

4 Mr. Scott was asked a question which dealt with
5 some surveys that CMP had conducted with regard to customers'
6 attitudes toward conservation. He answered it. The attorney
7 then asked him whether that survey was available and could be
8 furnished to the Commission. He responded that it was not,
9 that it had been destroyed. That response caused sufficient
10 skepticism that there were follow up questions of the sort
11 how was it destroyed, why, on whose orders. And he answered
12 all of those again on the assumption that it had been
13 destroyed.

14 Without going into the full details of the weeks
15 that followed, about two weeks later at a hearing in which
16 Mr. Moskovitz was in fact the staff attorney, lo and behold,
17 the survey that had been testified had been destroyed was
18 produced by a different Central Maine Power Company witness.
19 And in the questioning that followed it became clear that not
20 only had the survey been available, but that it was clear
21 that Mr. Scott had to have known it.

22 We then reported, as the law requires, an
23 indication of false testimony to the Attorney General, and
24 his investigation went on from there. One aspect of that
25 investigation was a request for the production of, at that

1 point, all surveys done by Central Maine Power as we, and I
2 think the Attorney General both, tried to get at some
3 understanding what it was about these surveys which would
4 sway the, then, number two or three, depending on how you're
5 counting, executive in Central Maine Power Company to feel
6 there was something so sensitive here that false testimony
7 was in order to keep them out of the hands of the Public
8 Utilities Commission.

9 CHAIRMAN BALDACCI: What was diferent from the
10 survey that was produced to the survey that you had
11 afterwards?

12 MR. BRADFORD: Well, eventually the correct survey
13 was produced. There was a certain -- there was a certain
14 amount of intermediate, what should I say, horsing around
15 with a doctored version of it, but ultimately the company
16 produced the original survey.

17 David may have a clearer recollection on some of
18 these matters.

19 CHAIRMAN BALDACCI: We'll get into that. What is
20 the position of Atlantic Research; is it a subsidiary to
21 Central Maine Power Company?

22 MR. BRADFORD: It no longer exists, first, but at
23 the time Atlantic Research was a wholly-owned subsidiary of
24 Central Maine Power Company, and its only purpose, I believe,
25 was the conducting of public opinion surveys. It had a board

1 of directors who were all CMP employees, and I think had two
2 employees of its own, and a small budget. Actually I don't
3 know how small their budget was. It did some surveys itself,
4 and contracted out for others; it did surveys for CMP and
5 also for other clients.

6 CHAIRMAN BALDACCI: What is the relationship
7 between that subsidiary and the Public Utilities Commission
8 regulation?

9 MR. BRADFORD: Well, our duties with regard to a
10 subsidiary like that would be to be sure that its income was
11 being reported properly on the one side, and also on the
12 other side that customers weren't being charged for
13 activities that weren't related to the utility service being
14 provided.

15 CHAIRMAN BALDACCI: Does anybody have any other
16 questions?

17 Representative Livesay, and Representative Willey.

18 REPRESENTATIVE LIVESAY: I'm back to motives
19 because I'm always concerned with motives. The fourth
20 concern that you set forth dealt with Central Maine Power
21 Company employees conducting basically, I guess, exit polls.
22 Why in God's creation would they conduct exit polls? Number
23 one, you know, on most issue I can wait until the morning
24 after, and I would have thought maybe they could, too. And
25 secondly, how in the world will exit polls ever have any sort

1 of political value in terms of Maine politics? Why would
2 they ever do that, and what value could they have been to
3 anybody?

4 MR. BRADFORD: The first question is one which you
5 have used almost exactly the language I used when I first
6 learned of the existence of these polls, why on earth would
7 they do it. And I don't recall that to this day we have a
8 clear answer to that. I'm certain we didn't set it forth in
9 our conclusion. Do you --

10 The value that it might have to the utilities seems
11 to me to be essentially just the converse of what you
12 suggested, that is they would know the night before rather
13 than the morning after, and I don't know how to put a dollar
14 value on that. It would have a somewhat greater value to the
15 outfit that was doing the polling to be able, for example, if
16 they had clients who were candidates or clients who were news
17 services.

18 REPRESENTATIVE LIVESAY: News services I can see,
19 but candidates, they might know when to start celebrating or
20 when to start wiping the tears.

21 MR. BRADFORD: Keep the news services possibility
22 in mind is all I can say to you.

23 But why utility employees should be used as the
24 people who conduct the polls -- primary benefits were to news
25 services -- is a question which I really don't know the

1 answer. One can speculate about commingling of functions
2 that arose in preceding months, and a certain amount of
3 carelessness that arose in terms of who did what. We don't
4 have that answer in our records and I really just don't know.

5 CHAIRMAN BALDACCI: Representative Willey.

6 REPRESENTATIVE WILLEY: One question: At the
7 bottom of page three you make reference to the concerns being
8 forwarded to the office of the Attorney General. Did this
9 stimulate any activities to their behalf?

10 MR. BRADFORD: Yes, the Attorney General opened an
11 investigation into the false testimony that we had received,
12 I believe in the first week or 10 days of October. That
13 investigation culminated with Mr. Scott's pleading guilty to
14 the crime of false swearing in Superior Court in December.

15 REPRESENTATIVE WILLEY: Any other activities
16 besides the relationship to Mr. Scott?

17 MR. BRADFORD: The Attorney General's investigation
18 remained open virtually as long as ours did, but their
19 primary focus was on Mr. Scott's false testimony and the
20 other activities that went on parallel with it. For example,
21 he ordered a subordinate to take the surveys out and destroy
22 them in order to be sure -- I won't speculate on it. He
23 ordered a subordinate to destroy the survey. The subordinate
24 in fact did not, he drove around with the survey in the trunk
25 of his car for a couple of weeks. That material came out in

1 the course of the Attorney General's investigation.

2 REPRESENTATIVE WILLEY: That was the extent of his
3 investigation basically, was Mr. Scott?

4 MR. BRADFORD: Yes, that is correct, Mr. Scott and
5 the related activity within CMP. It was -- his investigation
6 I think encompassed the events and the actions by individuals
7 arising from Mr. Scott's testimony. He would be your best
8 witness on that, of course, the Attorney General would.

9 CHAIRMAN BALDACCI: Representative Stevens.

10 REPRESENTATIVE STEVENS: Chairman Bradford, I just
11 want to clarify this. Your goal for the statute changes to
12 enable the PUC to pursue an investigation. From your
13 testimony I gather that you're frustrated, together with the
14 other information I have about the Scott affair, but it seems
15 to me at this point to decline to suggest more authority in
16 the PUC to pursue something like that. Would it be your
17 course of recommendation that election laws just begin where
18 your authority leaves off, as currently written?

19 MR. BRADFORD: I haven't made my concern very clear
20 if I left you with the impression that the PUC wanted to
21 pursue election law violations, or for that matter to get the
22 authority to look into the picture with utility dollars. Our
23 authority is very broad in both of those areas. Our concern,
24 if I can speak for one Commissioner who is no longer on the
25 Commission, one other who isn't here to correct me, was more

1 along the following lines: We had a course of conduct that
2 indicated a fairly subtle but quite substantial involvement
3 in political campaigns, both referenda and candidate
4 elections, by the state's electric utility. We aren't
5 specialists in that area, and our concern was that what was
6 going on here had been going on, at least from my experience,
7 for a number of years, and could conceivably have quite an
8 impact on the electoral process, all of which was essentially --
9 the impact on the electoral process was essentially outside
10 PUC jurisdiction. We felt we would be remiss in not calling
11 it to the Legislature's attention, because obviously the
12 electoral process is within your jurisdiction. And we were
13 in the position more of people who have seen something that
14 seemed to be a problem, seemed possibly to indicate a
15 substantially undesirable line of conduct within the
16 responsibility of another group. We felt we had a duty to
17 call it to the Legislature's attention. We don't have a
18 particular fixed advocate. I have been fairly free with
19 suggesting off the top of the head interpretations and
20 hypothesis. A good deal of follow up, remember, came at my
21 response to Speaker Martin's specific questions about our
22 investigation. I'm not before you today as an advocate for a
23 particular change in either the PUC's laws or in the election
24 laws. As a citizen I can tell you I would like to see
25 utilities as limited as constitutionally possible in the area

1 of political activity that they can undertake with the
2 possible -- let me just leave it at that. But that was not
3 the PUC's position.

4 REPRESENTATIVE STEVENS: Over these years that you
5 have observed potential in kind contributions by utilities,
6 has any suggestion been submitted to limit the contributions,
7 political in kind contributions?

8 MR. BRADFORD: There is a statute on the books that
9 arose out of the power authority referendum in 1973 which if
10 I remember correctly -- Joe, you may do better than I --
11 simply says utilities can not spend their customers' money to
12 influence referendum elections. Does that sound right?

13 MR. DONAGHUE: Contributions to campaign referenda
14 is what it says.

15 MR. BRADFORD: Are not chargeable to customers.

16 So there is that one piece of legislation that
17 deals with the customer impact. On the other hand the
18 customer impacts are on the order of a tenth of a cent --

19 REPRESENTATIVE STEVENS: That could be an effective
20 tool as to the cost to the customers?

21 MR. BRADFORD: From the utilities standpoint the
22 benefits to be had from, for example, achieving the election
23 of a governor who appointed a friendly utilities commissioner,
24 are so much larger than the dollars that could make a big
25 difference in an election campaign, that to try to deal with

1 a consumer protection matter is very ineffective. Utilities,
2 assuming they are prepared to behave this way, would be quite
3 happy to say all right, the stockholders will pay for that,
4 it is a trivial amount in their terms. But you may still be
5 dealing with a contribution of some tens of thousands of
6 dollars of services of one sort or another.

7 CHAIRMAN BALDACCI: Mr. Bradford, how long did the
8 Public Utilities Commission investigate the -- Mr. Scott's
9 testifying falsely?

10 MR. BRADFORD: Almost exactly a year.

11 CHAIRMAN BALDACCI: A year?

12 MR. BRADFORD: That is not to say we weren't doing
13 a lot of other things at the same time. No one person spent
14 that entire year on that matter. But a year went by from the
15 day of the false testimony to the day of the Commission order
16 closing the case out.

17 CHAIRMAN BALDACCI: To find out what the motives
18 were, why someone would lie in front of the Public Utilities
19 Commission?

20 MR. BRADFORD: Yes, that is correct.

21 CHAIRMAN BALDACCI: I have a -- and at the present
22 time is there any mechanism or process whereby the PUC may
23 legally, or in fact does have the ability to ascertain from a
24 given regulated utility, the amount of time spent on polling
25 for whatever purpose, the amount of time spent on polling for

1 political information, the method, if any, by which the time
2 is allocated by the employer, the time at which the
3 allegation is made?

4 MR. BRADFORD: Yes, our statutes are very broadly
5 worded in the sense that they give us the power to inquire
6 into any act or practice of any utility as long as we can
7 establish that it has some relationship to our duties, that
8 is the reasonableness of the rates being charged, or the
9 reasonableness of the management practices of the companies.
10 If I understood your question correctly, I don't have any
11 hesitancy saying we can get that information.

12 CHAIRMAN BALDACCI: Are there any other questions
13 for Chairman Bradford?

14 Thank you very much.

15 I would ask Commissioner David Moskovitz. I remind
16 you that you have already been sworn, sworn in, or sworn at,
17 and that you have a prepared statement that you would like to
18 read?

19 MR. MOSKOVITZ: I do. Thank you very much Senator
20 Baldacci, and members of the Committee. I have kept my
21 remarks short so I might be able to have some more time to
22 answer your questions.

23 My name is David Moskovitz. I am currently one of
24 three Commissioners at the Public Utilities Commission. I am
25 here today, however, because I was also the lead staff

1 attorney responsible for investigating the testimony given by
2 a representative of Central Maine Power Company while under
3 oath concerning information contained in public opinion polls.
4 My charge in that investigation was to determine whether
5 false testimony was given to the Commission, the extent of
6 the false statements, to what extent persons other than the
7 witness before the Commission were involved either before or
8 after the false statements were given, and finally to develop
9 a sense of why the false statements were made, and why
10 materials related to those false statements were withheld
11 from the Commission.

12 During the course of the investigation we learned
13 that several people at Central Maine Power Company were
14 involved in significant activities, all with the result of
15 concealing polling information from the Commission. We also
16 learned that through its wholly-owned subsidiary, Atlantic
17 Research, a number of public opinion polls had been conducted
18 on behalf of Central Maine Power Company, Save Maine Yankee,
19 and others. These polls contained valuable public opinion
20 polling information, including information that would be
21 extremely useful in any political campaign.

22 We also learned that the highest officials of the
23 company believed that this information was very sensitive,
24 and made it clear to others at the Company that the public
25 opinion polling data was to be treated with the utmost

1 secrecy.

2 I believe that in large part it was the articulated
3 policy of the Company concerning the secrecy of these polls
4 that led to the decision on the part of one witness before
5 the Public Utilities Commission to give false testimony under
6 oath.

7 I should also note from my perspective it was
8 necessary to examine the extent of the polling activities in
9 order to obtain a clearer understanding of the company's
10 motivations.

11 Our scope, however, was much more limited than the
12 charge of this committee. In July of 1983 Speaker Martin
13 wrote to Chairman Bradford asking the following question:
14 Did counsel for Central Maine Power Company, or any of the
15 witnesses deposed by the Commission, object to or refuse to
16 answer any questions concerning CMP's involvement in the
17 political process?

18 I responded to that request by explaining that we
19 did encounter some resistance to our questions in this area.
20 I also stated that arguments with respect to the scope of the
21 Commission's jurisdiction, coupled with the resistance we met
22 during the course of our depositions, caused me to limit the
23 breadth and depth of our questioning in these areas.

24 I also should note that shortly after this
25 committee was created, your committee, I turned all of the

1 staff investigative files over to your staff, and including
2 the voluminous deposition transcripts that had been developed.

3 I could also take just a moment and address a
4 couple of the questions that were also put to Chairman
5 Bradford if you would like me to now.

6 CHAIRMAN BALDACCI: Please.

7 MR. MOSKOVITZ: I'll limit my responses to a couple
8 of the special areas.

9 With respect to the value of the polling
10 information, Senator, that you were asking, I agree with
11 Chairman Bradford as to how we would go about putting a
12 dollar figure on it, basically how much would it cost to
13 produce it. I have no idea if that is how the Secretary of
14 State's office would do it.

15 It was my impression that during the course of the
16 investigation that it wasn't so much the straightforward
17 question of how was so and so doing compared to their
18 opponent that was of value. It seems to me that the truly
19 valuable part of the polling overall was the way that the
20 polling was able to break down the statistics by both very
21 fine geographic scope, and by any number of other demographic
22 characteristics, ethnic background, age, level of education,
23 which particularly in a larger scope election, statewide
24 election, district wide election, would permit political
25 candidates to focus their limited resources, as we all have

1 limited resources, to both those areas of the state and to
2 those audiences to which they could determine they could best
3 spend their dollar.

4 We were, at least during the course of our
5 investigation, I was amazed literally at the number and
6 complexity of the various computer runs that were made of the
7 various polls. Even if you had a poll of only 25 questions,
8 all of which also contained a list of standard demographic
9 types of questions, you would get the results of that poll
10 back in umpteen different forms depending on just how it was
11 that you wanted to look at it. And it seems that is the
12 information rather than what is today's standard, what the
13 polls tell you today, the type of thing you see in newspapers,
14 that are of most importance.

15 With respect to the exit polling, I also don't have
16 any specific knowledge of what use one might put to exit
17 polling. It just occurred to us during the course of the
18 investigation, not that we did anything with it, that the
19 only possible use we could see besides forecasting the
20 results, was, assuming the exit polling was taking place at
21 the outset of the election day, started to get results back
22 and 8:00 o'clock, 9:00 o'clock in the morning, if you saw a
23 low turnout, let's say, in one part of the state versus
24 another, and you saw a high turnout was to your benefit,
25 activities could be redirected, telephone calling, to get a

1 higher turnout in that area.

2 With respect to the Attorney General's
3 investigation, besides the conviction of Mr. Scott, there was
4 also a subsequent conviction of Central Maine Power Company
5 in itself, which came several months after the conviction of
6 Mr. Scott. Central Maine Power Company I believe pleaded
7 nolo contendere, and fined, I believe, \$500.

8 With respect to the length of the Commission's
9 investigation, depending on how one defines the length of the
10 investigation, the case was opened and closed, there was a
11 duration of about a year. The actual investigation, which
12 was the gathering of information, preparing and taking the
13 depositions, which I think, if my memory serves me right,
14 amounted to over 2,000 pages, and some 12 or so witnesses,
15 was completed in the matter of a couple of months. From
16 there there were long periods where there was very little
17 activity. There were opportunities for, in a sense, briefing
18 types of matters, and then of course the process to finally
19 bring the proceeding to a close. There was also a long
20 hiatus at the front end of the investigation, where we were
21 essentially doing nothing pending the Attorney General's
22 investigation.

23 That is all I have for you. Now, I would be happy,
24 of course, to answer any of your other questions.

25 CHAIRMAN BALDACCI: Senator Sewall.

1 SENATOR SEWALL: Thank you, Mr. Chairman.

2 What I'm trying to do is look for a solution to
3 this committee that we have been dragging on, we met first
4 the 21st of November in 1983. And I'm trying to think of a
5 solution to this kind of political in kind contribution which
6 has raised so many problems. And, if you had your druthers,
7 how would you handle it, how would you write it so that a
8 candidate running for county commissioner in Franklin County
9 could comply with the amount it would cost for a poll, if
10 that candidate should become aware or been given the results
11 of a statewide poll done by a major utility?

12 MR. MOSKOVITZ: I really wish I could give you a
13 useful answer. I'm not at all familiar with the way the
14 election laws are written today. I wouldn't know what that
15 candidate would be required to report given today's law, let
16 alone how I would change that law to fit that situation. I
17 would think there would be people around the state, certainly
18 around the country, that were expert in election laws and
19 have faced that question where -- I just haven't given it any
20 thought at all.

21 SENATOR SEWALL: Would you consider the proposition
22 that a candidate running for office was given the information
23 of a poll, that it would be enough if they simply reported
24 that they had been given the information from that poll, and
25 let the public decide what that amount might be?

1 MR. BALDCCI: I really don't know.

2 CHAIRMAN BALDACCI: Representative Sproul.

3 REPRESENTATIVE SPROUL: Commissioner Moskovitz,
4 both you and Commissioner Bradford mentioned Atlantic
5 Research in your testimony. Commissioner Bradford mentioned
6 that all the officers of Atlantic Research I believe were
7 employees of CMP, and there were a few other people. The
8 polls which they conducted on behalf of CMP and Save Maine
9 Yankee, the polls that they did simply for things which they
10 had an interest in, or did they take on clients for totally
11 other types of issues, too, or do you know?

12 MR. MOSKOVITZ: Well, the -- there was -- they
13 provided us with a list of all of the polls that they
14 performed. Within that list were polls for CMP, polls for
15 Save Maine Yankee, and polls for others, I think one or two.
16 I haven't reviewed this material lately. There were polls
17 that were conducted for nonaffiliated companies or interests,
18 which could be anyone in the state, or someone outside the
19 state.

20 REPRESENTATIVE SPROUL: They were compensated for
21 such polling?

22 MR. MOSKOVITZ: Absolutely. I believe -- I know we
23 have the dollar amounts associated with those privately done
24 polls. It would have been someplace in the -- I believe the
25 15,000 range seems to stick in my mind. In addition in a

1 separate case that happened to be going on at the same time,
2 you may recall Central Maine Power Company had proposed they
3 set up a holding company, a new parent company that would own
4 Central Maine Power Company as one sub and also other
5 companies. One of the other companies was Atlantic Research.
6 They proposed to shift its location in the corporate
7 structure from a sub of CMP to a sub of the parent, with the
8 express purpose of making this polling activity -- marketing
9 their polling activities -- so that they could offer polls
10 that are much more wide spread, on the basis, you will see in
11 the course of the depositions that we did take, that they
12 believed that they had developed the polling capabilities,
13 the technique of polling, and the computer facilities to
14 massage data to produce a meaningful result to the point
15 where they could actively compete with other national polling
16 firms and produce a quality product. And they wanted to take
17 that capability and essentially market it to anyone who
18 wanted to buy it.

19 CHAIRMAN BALDACCI: Commissioner Moskovitz, in the
20 discovery of the polls of Atlantic Research, the nonutility
21 polls that were done, did they have similar masking questions
22 that the utility polls had?

23 MR. MOSKOVITZ: If you include in the nonutility
24 polls -- if you're excluding CMP polls and Save Maine Yankee
25 polls, let me state briefly, those are the only polls they



1 actually turned over to us. We never received copies of -- I
2 simply never pursued the issue -- to receive copies of the
3 polls done for totally outside clients. I don't know who the
4 clients were, I don't know what the polling questions were.

5 CHAIRMAN BALDACCI: In your investigation I
6 remember reading the depositions, or information as public
7 utilities committee, and there seemed to be claims of
8 privilege and beyond the scope of the review in your
9 investigation.

10 MR. MOSKOVITZ: Absolutely.

11 CHAIRMAN BALDACCI: Could you elaborate somewhat on
12 that, that occurred during your investigation?

13 MR. MOSKOVITZ: Yes, you hopefully would have a
14 copy of my letter to Speaker Martin of sometime in September,
15 I believe, where I discussed a few of the specific instances,
16 and also attached copies of the relevant transcript pages,
17 but principally in the area of concerning the polling
18 activities, who got polls, what they did with them, who the
19 private client was, what those polling -- what that polling
20 data looked like. Various attorneys around the table all
21 essentially objected to our asking those questions,
22 instructed the witnesses not to respond, and as a result we
23 never got the information.

24 Keep in mind that the -- essentially all of the
25 investigation that we undertook, we undertook as our

1 conscious decision to undertake the material in the form of
2 depositions, unlike anything else we have ever done, we have
3 done principally for the purpose of keeping it out of the
4 press and other public scrutinies until we had amassed all of
5 the information that we needed. It took about two months or
6 so. Then all of the depositions were released publicly.
7 Because we chose that route, deposition route, we didn't have
8 a judge, hearing examiner, available before whom we could
9 present arguments and get a ruling instantly -- a short time
10 anyway, on our right to obtain the additional information.

11 So we had to make choices from time to time as to
12 whether to pursue that specific information, and in this case,
13 because of the things that we were really concerned with as
14 opposed to what you really might be concerned with, I elected
15 not to pursue my recourse to obtain copies of the polls done
16 for private individuals, or pursue other lines of questions
17 beyond what we did. It would have obviously stretched the
18 investigation out substantially.

19 CHAIRMAN BALDACCI: First of all, I would
20 appreciate it if you would tell the Committee who argued
21 beyond the scope in the review, and secondly if you tell me
22 why you selected that individual to review?

23 MR. MOSKOVITZ: I believe it was for more than one
24 individual. I'm sure it was for Mr. Potholm. I believe it
25 came up during the course of Mr. Scott's deposition.

1 CHAIRMAN BALDACCI: Why did you investigation Mr.
2 Potholm?

3 MR. MOSKOVITZ: Why did we?

4 CHAIRMAN BALDACCI: Yes.

5 MR. MOSKOVITZ: Simply because -- to get an
6 understanding, again, of the possible motives as to why a
7 witness before the commission would want to conceal
8 information from us. It was necessary to find out what the
9 information was, and try to develop an understanding on our
10 part why, how far did it go, did it extend beyond this
11 particular poll.

12 CHAIRMAN BALDACCI: Why Mr. Potholm? Is he an
13 employee of Central Maine Power Company?

14 MR. MOSKOVITZ: I'm sorry, I perhaps didn't
15 understand the thrust of the question.

16 Mr. Potholm became involved after questioning other
17 Central Maine Power Company employees. We learned
18 essentially that Mr. Potholm was the -- I don't know what the
19 proper term might be, the technical consultant. He was the
20 person who established everything that Atlantic Research is,
21 he is the person that provided all the assistance to develop
22 all polling techniques, the computer, worked with Central
23 Maine Power Company's computer department to establish the
24 hardware and software required to make the thing work. He
25 worked with the company developing the questions themselves,

1 he worked with the telephones, the telephoners, and trained
2 them as to how to ask the question so as to import the
3 response you would like to hear. He was for all practical
4 purposes the brains behind Atlantic Research.

5 CHAIRMAN BALDACCI: So he was the subsidiary, in
6 effect? Atlantic Research you said was a subsidiary of
7 Central Maine Power Company?

8 MR. MOSKOVITZ: Yes.

9 CHAIRMAN BALDACCI: And so you're telling me that
10 he was Atlantic Research for all intents and purposes?

11 MR. MOSKOVITZ: He was the expertise there, which
12 eventually became transferred to employees of Central Maine
13 Power Company.

14 CHAIRMAN BALDACCI: Were rate payers' money used in
15 running Atlantic Research?

16 MR. MOSKOVITZ: To the best of our knowledge, no,
17 and it is because of the accounting practices that we do
18 employ.

19 This perhaps goes to some of the questions again
20 that were being put to Chairman Bradford as to the extent to
21 which we can focus our activities on a \$5,000 or \$10,000
22 expense. The total, I just don't remember the numbers now,
23 but the total income of Atlantic Research -- total expenses
24 of Atlantic Research for doing all of their activities for a
25 whole year would not amount to a level that would justify on

1 just a pure dollar amount our spending a great deal of time
2 on it, simply because there are other issues that --

3 CHAIRMAN BALDACCI: So your first impression is
4 that you don't know, or that you would think there weren't,
5 and the second would be that you don't know, because it is
6 when you're dealing with billions of dollars, 20,000, or
7 30,000, or whatever, isn't that great a figure?

8 MR. MOSKOVITZ: That's correct. We simply haven't
9 had the ability thus far to essentially send auditors out
10 there. We don't have auditors to sent out there.

11 CHAIRMAN BALDACCI: And they disbanded the company?

12 MR. MOSKOVITZ: Atlantic Research I understand has
13 been disbanded, dissolved, whatever the proper terms might be.
14 At least we were told that is what they intended to do. We
15 also haven't checked that. I assume it has been.

16 CHAIRMAN BALDACCI: Would you think it is fair to
17 assume from what has been given here so far that the PUC
18 hasn't really shined a great bright light on this particular
19 area, because either they didn't have the staff or resources
20 to dedicate towards it or their priorities were involved with
21 Seabrook, and modernization, technical issues, and this area
22 really didn't get going until very recently, and it hadn't
23 had much attention paid to it until very recently; would that
24 be fair to assume that?

25 MR. MOSKOVITZ: It is fair to say there hasn't been

1 a great deal of attention paid to it from a pure rate making
2 perspective. At the same time those instances where we have
3 had an opportunity to conduct, in a sense, double checks to
4 insure ourselves that rate payers have or haven't been paying
5 for this or that expense, we have taken those opportunities.
6 And during the course of this case, for example, we went
7 through separate independent means, and we were looking at
8 the total income and expense of Atlantic Research. I did
9 have the opportunity to check that against prior rate making
10 practices, and there is nothing that I was able to tell,
11 strictly from looking at those documents, and it would only
12 amount to a couple or two or three pieces of paper, that
13 would be suggestive that there has been -- that you would be
14 able to tell the difference in your bill. But it has not had
15 the type of attention that we put on larger questions, like
16 Seabrook where we're in the middle of umpteen weeks of
17 constant hearings on the subject.

18 CHAIRMAN BALDACCI: So Chairman Bradford's analogy
19 about what you at the PUC seem to feel is an insignificant
20 amount, here in Augusta, in the State House, if somebody
21 contributes 500 or \$1,000 that is a great deal of money in
22 the legislative, or senate campaign, or several thousand
23 dollars, but when you look at several thousand dollars over
24 at PUC, it gets lost between consultants and whatever else
25 that is going on?

1 MR. MOSKOVITZ: Don't confuse our budget with the
2 utility revenues, please. If you're comparing \$500 to CMP's
3 500 million dollars, that is where it might get lost.

4 CHAIRMAN BALDACCI: 400 million, whatever. But
5 that is basically where you guys are in that environment?

6 MR. MOSKOVITZ: We are constantly having to
7 allocate our limited resources to the issues in front of us,
8 and that means attempts to focus most of our efforts --
9 concentrate your dollars where you get the biggest bang, that
10 means a --

11 CHAIRMAN BALDACCI: So you think this investigation
12 makes sense to do it, to find out, draw lines, implement
13 statutes and regulations?

14 MR. MOSKOVITZ: From my perspective, the larger
15 political types of issues don't involve whether it is \$500 or
16 \$600. It is to what extent, my understanding of it, outside
17 of PUC authority, it is to what extent these activities
18 overall, \$500, have produced some tangible, or undesirable
19 effect to the political process overall, that is something we
20 don't deal with.

21 CHAIRMAN BALDACCI: Representative Crowley, then
22 Representative Soule.

23 REPRESENTATIVE CROWLEY: Thank you.

24 Mr. Moskovitz, I was wondering about the equipment,
25 access to customer lists, phone numbers, and so forth, that

1 the public utilities have a special right to have. Were they
2 using these sort of things to do their surveys, were they
3 able to use the sophisticated computer capability for the
4 utilities to run these?

5 MR. MOSKOVITZ: Well, they certainly used the CMP
6 computer facilities. Atlantic Research's offices, to the
7 extent there were such offices, the computer facilities were
8 on Edison Drive, were CMP facilities, their computer experts
9 were Atlantic Research computer experts, and it was all paid
10 for through allocation of time and expenses.

11 With respect to the use of customer information
12 from strictly the public utilities side of the computer to
13 polling activities, I just don't remember now. I do recall
14 asking about it, and because I don't remember it, my guess is
15 it wasn't used, because if it had been used I think I would
16 have remembered. I would have to just refer you or your
17 staff to the depositions on that. My recollection was,
18 though, that their polling practices in terms of actually
19 dialing up people to ask their questions was done on an --
20 using random digit dialers, it was just a little computer
21 black box to randomly select phone numbers.

22 REPRESENTATIVE CROWLEY: Would they be randomly
23 selected from their customer lists?

24 MR. MOSKOVITZ: My guess is it would have been
25 randomly selected, depending on the scope of the survey, from

1 the relevant populations. If they were doing a CMP survey, a
2 survey for CMP on their customer energy consumption
3 characteristics, I would suspect they would limit the
4 available numbers to call to CMP service territory. If they
5 were polling on how are you going to vote on the Maine Yankee
6 referendum statewide election, my question is they were
7 calling both inside the service territory and outside.

8 CHAIRMAN BALDACCI: Representative Soule.

9 CHAIRMAN SOULE: Commissioner, just to follow up on
10 the use of computers a little bit further, is there anything
11 in your investigation that indicated use by the computer
12 services of the programs developed by Atlantic Research by
13 groups other than Central Maine or by Atlantic Research
14 themselves?

15 MR. MOSKOVITZ: They were being used and actually
16 manipulated by Atlantic Research. Then the question would be
17 who is the client, are they conducting a poll for company X,
18 Y, Z, or some person out there in the public. Then those
19 computer programs, and the like, would be used for that
20 person's benefit, and you pay for it, or that person would
21 pay for it through the bill that they pay. I don't recall
22 anything that would suggest that they in a sense leased out
23 their software to another entity for the purpose of having
24 them do the polling. I don't recall even asking them.
25 Sometimes you don't find out unless you ask the specific

1 question. It just doesn't come to mind. You, of course,
2 recognize it has been some time since I have had the
3 privilege of reviewing the material.

4 CHAIRMAN SOULE: If I can tax your memory a little
5 further, do you recall the -- who were the officers of
6 Atlantic Research?

7 MR. MOSKOVITZ: Well, I'm pretty sure Mr. Scott was
8 one, Mr. Leason was one, I suspect Mr. Thurlow was one.

9 CHAIRMAN SOULE: Do you recall --

10 MR. MOSKOVITZ: It may have been listed right in
11 our initial report. If it wasn't, it would be very close to
12 the front of probably Mr. Thurlow or Mr. Scott's deposition.

13 CHAIRMAN SOULE: Do you recall whether they were
14 compensated?

15 MR. MOSKOVITZ: Let me go back to the other
16 question, since Chairman Bradford pointed me to the page of
17 the report, the officers are Mr. Thurlow, Mr. Scott. Mr.
18 Thurlow was the president, Mr. Scott was vice president. Mr.
19 Webb was one of the directors, and then there are other
20 officers and employees of Atlantic Research that are also
21 employees of Central Maine Power Company, the principal one
22 being Mr. Leason. Mr. Leason is not an officer of Central
23 Maine Power Company, an employee, though, he is.

24 CHAIRMAN SOULE: Do you recall whether they were
25 compensated?

1 MR. MOSKOVITZ: You're right in that you're taxing
2 my memory. I believe they were -- they did not receive a
3 separate paycheck, that their time -- that their time was
4 allocated to Atlantic Research. So take Mr. Leason, for
5 example. If he earned \$40,000 a year and spent half of his
6 time on Atlantic Research, he would only be paid \$40,000, or
7 probably the whole \$40,000 worth of salary would come on
8 checks that were signed by Central Maine Power Company, but
9 when you look to the allocation of his actual expense of his
10 wages they would have been allocated to Atlantic Research, so
11 that less than his full salary would appear on the books of
12 CMP as an expense.

13 CHAIRMAN SOULE: Were you able to, in your
14 investigation, do any kind of analysis as to whether or not
15 those allocations were proper, or was this another area that
16 just the numbers are so insignificant as far as the rate
17 making process goes you didn't look into it?

18 MR. MOSKOVITZ: We did some, we did obtain the time
19 sheets, phone logs, and the like of the principal actors
20 involved. The only person that -- single person, but there
21 weren't very many people that spent a substantial portion of
22 their time on these matters, Mr. Leason being the primary
23 person. Looking through the phone logs, expense vouchers and
24 the like, of Mr. Thurlow and Mr. Scott, it was a very small
25 fraction of time that was essentially devoted, might have

1 been reviewing the draft questions of a survey they were
2 doing, four, five, six surveys a year, that doesn't amount to
3 a whole lot of time. From the essentially cursory,
4 characterize it that way, cursory review that we did, it
5 looked as if the allocations had been done in roughly the
6 right way. But it was clearly one of the situations where
7 the -- first, that wasn't the principal thrust of the
8 investigation, and second the dollars involved were small
9 enough so that we decided to focus our attention on other
10 matters.

11 CHAIRMAN BALDACCI: Representative Sproul.

12 REPRESENTATIVE SPROUL: Commissioner, we are
13 talking about the insignificant amount of money in respect to
14 other amounts you looked at. Can you give me a ball park
15 figure exactly what the total income and expenses of Atlantic
16 Research were in a given year or their highest year, roughly?

17 MR. MOSKOVITZ: I know we have the numbers. It is
18 someplace in the order of about \$100,000, in that ball park.
19 It might have been as much as 200,000, I would be surprised
20 if it were more than that. It has been growing significantly
21 since it was first created. Projecting that forward I don't
22 know what it would have amounted to.

23 REPRESENTATIVE SPROUL: Thank you.

24 MR. MOSKOVITZ: I believe we have supplied that to
25 your staff.

1 SENATOR SEWALL: Commissioner, on your
2 investigation you stopped short of point of privilege. This
3 committee is right at that point now. I'm still looking for
4 some reason to be here and how I fit into this puzzle. Is
5 that it, is that the idea that you're speaking just for
6 yourself, that you want us to figure out whether this is or
7 is not in your budget, deciding whether or not privilege?
8 You stopped short of this, I want to know why.

9 MR. MOSKOVITZ: Well, I stopped short of it because
10 given the objections to it, there was just a personal wane of
11 what I had to do, and how much effort it would take to obtain
12 this additional piece of information, and was it worth it,
13 because my charge wasn't to determine to what extent the
14 public utilities had been influencing political activities, I
15 decided not to go any further. Had that been my charge I
16 would have pursued it.

17 SENATOR SEWALL: Thank you.

18 CHAIRMAN BALDACCI: Representative Willey.

19 REPRESENTATIVE WILLEY: Just one question: In the
20 whole scope of your investigation, during the whole time of
21 the investigation, the only thing actually illegal I have
22 heard is the activities on behalf of Mr. Scott; is that true?

23 MR. MOSKOVITZ: Well, no, there were other
24 activities on the part of the company, the company after all
25 was convicted.

1 REPRESENTATIVE WILLEY: The company paid a \$500
2 fine, something like that?

3 MR. MOSKOVITZ: Yes, that is right.

4 REPRESENTATIVE WILLEY: That was the end of the
5 illegality?

6 MR. MOSKOVITZ: Depending on how one defined
7 illegality.

8 REPRESENTATIVE WILLEY: Contrary to law, I guess.

9 MR. MOSKOVITZ: The Public Utilities Commission
10 doesn't necessarily enforce criminal laws in the State of
11 Maine. I believe, though, both the staff report and the
12 commission decision lay out essentially who did what when,
13 and leave it to other people to decide what was wrong and
14 what was illegal.

15 REPRESENTATIVE WILLEY: The Attorney General's
16 office didn't do anything with the information, apparently,
17 other than Mr. Scott. I am just trying to determine the
18 extent of illegality.

19 MR. MOSKOVITZ: Having never been an Attorney
20 General, or worked for an Attorney General, mostly getting my
21 experience in that area from television, I would suspect it
22 is like most other areas, in that you don't necessarily give
23 every person that speeds a ticket, you don't necessarily
24 convict every person who is guilty of a crime.

25 REPRESENTATIVE WILLEY: Any other illegal

1 activities that were discovered were pursued?

2 MR. MOSKOVITZ: That is my understanding.

3 CHAIRMAN BALDACCI: David -- Commissioner Moskovitz,
4 I understand that when a company engages in political
5 activity and files a report to the Commission, what kind of
6 review process goes on, if any, of that report, other than it
7 has been sent in? You just flip through the pages, see any
8 large amounts, or anything that is different than before,
9 what kind of review goes on over at the PUC?

10 MR. MOSKOVITZ: Well, largely it would take place,
11 I suspect, during the course of a rate case, so that if -- I
12 forget the numbers of utilities that we regulate -- we don't
13 have a rate case every year for every utility. There won't
14 necessarily be any type of formal review of everything in a
15 utility annual report every year. Annual reports are used by
16 us most frequently when a rate case comes -- has been filed,
17 so that when a rate case has been filed we would like
18 certainly the most recent, and maybe go back one, or two, or
19 three years worth of annual reports, in their entirety, which
20 include the Chapter 83 political activities reporting
21 requirement, and depending on what one found you either just
22 look at the one, or two, or three pages that was filed, or as
23 is the case in many other areas, if there is something that
24 strikes you odd while reviewing the annual report, or any
25 other information available to you, you dig into it deeper.

1 But for the most part, for the many utilities that don't have
2 rate cases filed very frequently, those annual reports may
3 not be reviewed by any individual at the commission.

4 CHAIRMAN BALDACCI: I don't know if this is a fair
5 question for you, or Chairman Bradford, or one of the members
6 of the Commission, have you ever reviewed the time and work
7 efforts submitted for political activity prior to the Scott
8 investigation?

9 MR. MOSKOVITZ: It probably is fairest to me since
10 Chairman Bradford was never actually on the staff. I'll
11 speak to you as a person who was on the staff --

12 MR. BRADFORD: You assume commissioners don't do
13 work?

14 MR. MOSKOVITZ: No, no.

15 In the umpteen or more cases that I was involved in, I
16 don't recall ever going beyond the annual report on any
17 Chapter 83 matter.

18 CHAIRMAN BALDACCI: If it is found that maybe the
19 time and work efforts have been faulty, have been reviewed --

20 MR. MOSKOVITZ: Other than the Scott matter?

21 CHAIRMAN BALDACCI: Other than the Scott matter,
22 other than the Scott matter, which is what we are discussing,
23 general statutory provisions, that it wouldn't be fair to
24 assume that maybe the shareholders paid for that instead of
25 the rate payers?

1 MR. MOSKOVITZ: Let me qualify that one further
2 extent, and that is the other instance that comes to mind,
3 and it has been since the Scott case --

4 CHAIRMAN BALDACCI: We were -- we were talking
5 prior to the Scott case.

6 MR. MOSKOVITZ: Prior to the Scott case I don't
7 recall any specific matter. It occurred in a recent New
8 England Telephone Company case, also a number of parties
9 spent considerable effort in looking at that issue.

10 CHAIRMAN BALDACCI: If the time and work efforts
11 were found to be shoddy, or problems with them, even though
12 they may not be a great deal of money to the Public Utilities
13 Commission, or to the companies with million of dollars, but
14 it was a large amount in the political activity, then if it
15 were not properly recorded, that it is fair to assume, or is
16 it not fair to assume that the rate payer paid for it instead
17 of the shareholder?

18 MR. MOSKOVITZ: If they improperly allocated their
19 expenses and time then it would have been improperly passed
20 on to rate payers.

21 CHAIRMAN BALDACCI: So, would you just -- I want to
22 get that wording down -- if it was improper --

23 MR. MOSKOVITZ: If it had been improperly reported
24 to us, and we didn't catch it, and it is obviously a very
25 difficult thing to catch without sending auditors out to the

1 site, then it would have been improperly passed on.

2 CHAIRMAN BALDACCI: You never looked at it other
3 than the annual reports before the Scott case. I'm saying it
4 wasn't a big ticket item, and you had other priorities, and
5 it is our job, I get the message.

6 Does anybody else have any questions before I go to
7 the staff that had questions?

8 MR. ASCH: I think the staff has several questions
9 if the members are done.

10 CHAIRMAN BALDACCI: Yes.

11 MR. ASCH: Mr. Linnell.

12 MR. LINNELL: Commissioner Moskovitz, you indicated
13 in your prepared statement that you learned that Atlantic
14 Research had conducted a number of public opinion polls on
15 behalf of CMP, and Save Maine Yankee, and others, and that
16 the polls contained valuable public information -- public
17 opinion polling information and would be extremely useful in
18 any political campaign. My question is, did you also uncover
19 any information that was in fact disseminated to political
20 candidates by CMP or Atlantic Research?

21 MR. MOSKOVITZ: Certainly not the specific
22 individuals. I do recall both from Mr. Thurlow, for a number
23 of the witnesses that we deposed, it did include Mr. Thurlow,
24 Mr. Scott, Mr. Potholm, Marjorie Force, who was one of the
25 computer analysts, we asked questions surrounding that

1 question, who got them, when did they get them.

2 The polls, the only individuals or entities that
3 received the polls of which we have specific knowledge were
4 either CMP employees, Mr. Potholm received copies of all
5 polls, Ad Media, their advertising agencies received copies.
6 I can't say if it was of all polls simply because I don't
7 remember, but certainly the majority of the polls, and this
8 would include not just one summary results, but I'm speaking
9 principally of the cross tabulated computer results. And the
10 material was shared, at least in part, with the directors of
11 Central Maine Power Company, I believe, at least on one
12 occasion, and with, whatever the proper name is of the Save
13 Maine Yankee organization, which included people other than
14 Central Maine Power Company or utility type people. That is
15 all that comes to mind. I would have to turn to the
16 depositions to answer.

17 MR. LINNELL: I haven't had an opportunity to read
18 those, but at least in so far as your recollection goes, you
19 were not able to track those computer results from Atlantic
20 or CMP into any political operation, any candidate's
21 operation directly?

22 MR. MOSKOVITZ: Not directly to any candidate, no.

23 MR. LINNELL: Okay. You indicated that you had
24 problems with Command Research on claims of inquiries beyond
25 the scope of your investigation, claims of privilege --

1 MR. MOSKOVITZ: Well, Mr. Potholm.

2 MR. LINNELL: He is Command Research, right?

3 MR. MOSKOVITZ: I think that is one of his
4 companies.

5 MR. LINNELL: Right. Was Command Research one of
6 the companies you specifically looked into?

7 MR. MOSKOVITZ: We asked to depose Mr. Potholm for
8 his -- as a consequence of his activities with Central Maine
9 Power Company and with Atlantic Research. We didn't asked
10 for Command Research.

11 MR. LINNELL: You did not ask for Command Research?

12 MR. MOSKOVITZ: I don't believe so, no. Now
13 Command Research as a separate entity did do some of the
14 earlier polling for Central Maine Power Company. We did
15 receive some of that.

16 MR. LINNELL: All right. This was polling with
17 respect to public referendum issues?

18 MR. MOSKOVITZ: I would have to look at the
19 specific polls to see what the subject matter of the poll was.

20 MR. LINNELL: Okay.

21 MR. MOSKOVITZ: I think it was early Save Maine
22 Yankee polls.

23 MR. LINNELL: In any event, whether it was called
24 Command Research or Christian Potholm, or whatever,
25 essentially talking about the same person. You were asking,

1 as I understand it, for polls done for nonutility clients,
2 polling information?

3 MR. MOSKOVITZ: I suspect we asked for that. I
4 don't recall specifically asking that. We also asked
5 questions concerning who else got the polls, what else did
6 you do for these people, and also I recall today, anyway,
7 meeting opposition there.

8 MR. LINNELL: Did he indicate to you at that time
9 that in order for him to release polling information done for
10 a particular client to somebody else he would have to get
11 that client's permission?

12 MR. MOSKOVITZ: Not that I recall.

13 MR. LINNELL: Do you recall whether or not that
14 ever came up?

15 MR. MOSKOVITZ: I certainly don't recall asking
16 that specific question, and I don't recall whether he ever
17 gave that answer in response to anything we did ask.

18 MR. LINNELL: Okay. We have a similar problem with
19 Dr. Potholm on this committee with respect to polls done for
20 nonutility clients, and have been met with similar types of
21 objections you were apparently met with, and he provided us
22 with an affidavit which indicated that polls developed for
23 nonutilities clients were never shared with utility clients.
24 Did your investigation come up with any information to
25 contradict that affidavit statement?

1 MR. MOSKOVITZ: There might be some.

2 MR. LINNELL: What would it be?

3 MR. MOSKOVITZ: The one point that comes to mind --
4 now, again, I would have to refer you for a more complete
5 answer to the depositions -- the point that comes to mind
6 came up in the context of marketing his skills, when he goes
7 out to sell his polling skills, that he might have shared
8 with others some of the results of earlier polls as sort of a
9 marketing type of a tool, here is the type of thing I do, do
10 you want to buy some, how --

11 MR. LINNELL: I don't want to get this confused,
12 and it might be easy to do it. His affidavit doesn't say he
13 never shared polling information done with a client with
14 anybody else. It says specifically that he never shared
15 nonutility clients' polling information with utility clients.
16 In other words, he never took a poll he did for a political
17 candidate and shared it with CMP, New England Tel,
18 Bangor-Hydro, anyone like that, that is what he says, in
19 essence; did you find anything to contradict that assertion
20 in your investigation?

21 MR. MOSKOVITZ: The only thing I can lead you to is
22 that part of the deposition where we were discussing the
23 presentations he would give during the course like the Save
24 Maine Yankee biweekly meetings, or weekly meetings, whatever
25 they were. There might have been some discussion there,

1 although I don't recall it specifically now, where the
2 summary -- where that summary presentation would have
3 included information other than the specific poll. But I
4 don't -- to be very specific, I don't recall now any specific
5 response on his part that contradicts that affidavit.

6 MR. LINNELL: Okay. And he indicates also in the
7 affidavit that polls generated during the course of working
8 with nonutility clients were never delivered to the utilities
9 which were the subject of the investigation -- of this
10 investigation. And I would say that means for incorporation
11 in their data base, or whatever they may have been using; did
12 you find any information to contradict that statement?

13 MR. MOSKOVITZ: Not that I recall, with this one
14 caveat, I don't know what his relationship was to the one
15 Atlantic Research poll that was done for a nonutility client.
16 If it were a poll that was really being done by Mr. Potholm
17 using Atlantic Research as in effect a subcontractor, then
18 that information was -- resided in Central Maine Power
19 Company's computer, but again, I refer you to his deposition
20 and possibly Marjorie Force's deposition.

21 MR. LINNELL: His deposition was taken
22 approximately when? I have not seen it. I assume the staff
23 has it. Can you give me the date of it?

24 CHAIRMAN BALDACCI: Mr. Flaherty, after Mr. Linnell
25 is done do you have some questions?

1 MR. FLAHERTY: Two or three.

2 MR. MOSKOVITZ: I don't have it with me. If you
3 find the staff report done February 14th, it lists the
4 depositions of all the individuals and the dates for those
5 depositions.

6 MR. LINNELL: Was he only deposed once?

7 MR. MOSKOVITZ: I think he was deposed once.

8 MR. LINNELL: So if we have a deposition of his
9 that is the one you are referring to?

10 MR. MOSKOVITZ: You got it. I think Marjorie Force
11 was also deposed once.

12 MR. LINNELL: Just to follow up briefly on this
13 exit polling thing, was that done by Atlantic Research, do
14 you recall?

15 MR. MOSKOVITZ: I don't recall if it was done by
16 Atlantic Research, by Save Maine Yankee, or by Central Maine
17 Power Company. I think we took that up with Mr. Thurlow, and --

18 MR. LINNELL: You're not sure?

19 MR. MOSKOVITZ: I'm sure we took it up with Mr.
20 Thurlow. I'm trying to remember whether it was in his first,
21 second, or third day.

22 MR. LINNELL: The answers varied, did they?

23 MR. MOSKOVITZ: No, the answer would have been the
24 same. We would have asked it only once. With some witnesses
25 we went chronologically forward, with others we didn't.

1 MR. LINNELL: Okay. But you don't recall -- but it
2 was one of those three entities, either CMP, Save Maine
3 Yankee, or Atlantic Research?

4 MR. MOSKOVITZ: That's right. And it might have
5 been some combination of those, might have been CMP employees
6 with their time allocated to Save Maine Yankee.

7 MR. LINNELL: I think Chairman Bradford indicated
8 CMP employees were utilized. Do you recall on what basis --

9 MR. MOSKOVITZ: Save Maine Yankee, of course,
10 wouldn't have any employees, per se. I think, if I remember
11 right, that also came up in a discovery or data or request in
12 the last CMP rate case.

13 MR. LINNELL: Well, just getting by that little
14 hang up for a moment, I guess the question I really wanted to
15 find out was what types of questions were they asking in the
16 exit poll; was it strictly related to the public utility
17 referendum, or did it go well beyond that?

18 MR. MOSKOVITZ: I have a copy of the exit interview
19 script for -- it doesn't have a date on it, done by Save
20 Maine Yankee. They asked, who did you vote for in the U.S.
21 senate race, Emery, Mitchell, you have choices, who did you
22 vote for in the Maine gubernatorial race, Brennan or Cragin,
23 how did you vote on the Maine Yankee shutdown referendum, yes,
24 no. Thank you for your consideration, have a nice day.

25 MR. LINNELL: Okay.

1 MR. MOSKOVITZ: The exit interviews were done in
2 about 20 cities, it looks like it was by CMP employees for
3 Save Maine Yankee, so it would have been time and expenses
4 allocated to Save Maine Yankee.

5 MR. LINNELL: All right.

6 CHAIRMAN BALDACCI: Mr. Flaherty, do you have some
7 questions?

8 MR. FLAHERTY: Just a few, if I may, Mr. Chairman.

9 Mr. Moskovitz, I don't want to revisit the same
10 territory covered by my colleague here, but I do have some
11 questions probably for clarification.

12 The word masking has been used almost to a point of
13 being comical, according to the chairman, and with reference
14 to masking questions, did you gain an understanding from the
15 investigation that you undertook of what that term means, or
16 that phrase masking question in the polling context?

17 MR. MOSKOVITZ: Several.

18 MR. FLAHERTY: Well, specifically, did you
19 ascertain from Mr. Potholm what he would have us understand --

20 MR. MOSKOVITZ: Yes.

21 MR. FLAHERTY: -- was a masking question?

22 MR. MOSKOVITZ: Yes, I'm sure he goes on for 30 or
23 40 pages in the transcript.

24 MR. FLAHERTY: Could you distill it for us?

25 MR. MOSKOVITZ: Well, I'm not sure I really can do

1 it justice. At one point it was merely -- questions that
2 were asked merely to ascertain whether the sample, population
3 that was sampled, was representative of the population as a
4 whole. We also -- that was from one of the responses from
5 Mr. Potholm's initial response. I don't think it changed
6 substantially, but from other questions in responses about
7 what was actually done with the masking questions, it seemed
8 that too much analysis was being done of the masking
9 questions for them to be serving purely that purpose. Mr.
10 Scott also gave his definition of masking questions, which
11 was in a sense to fool the person being polled so that they
12 wouldn't know what the poll was all about, so that you obtain
13 a more neutral response. Mr. Potholm, you will find in his
14 deposition, totally disavows any notion that is in fact what
15 a masking question is. And I would have to refer you to the
16 rest of Mr. Potholm's deposition. I remember that part of
17 the deposition going on much longer than it probably needed
18 to.

19 MR. FLAHERTY: So, if I understand you, according
20 to Mr. Potholm, the question was designed simply to enlighten
21 the interviewer as to whether he was in the right polling
22 area?

23 MR. MOSKOVITZ: That he had a representative sample.

24 MR. FLAHERTY: But that was something, if I
25 understand you, that would be unconsciously communicated

1 through the answer to the interviewer?

2 MR. MOSKOVITZ: No, no, you're mixing up Mr.
3 Scott's answer with Mr. Potholm's answer. Mr. Potholm
4 responded that -- in effect like this: There are lots of
5 people who are always asking do you approve of Ronald
6 Reagan's performance. Let's say that this week, that the
7 general population, say 25 percent, generally approve of his
8 performance. He would then conduct his poll, Mr. Potholm, he
9 would throw that same question in. If he got a number that
10 was substantially different than 25 percent, he would have
11 cause to believe that the poll overall was not a
12 representative sampling of the population. If his poll said
13 10 percent looks favorably upon Mr. Reagan's performance, he
14 would conclude that somehow the 500 people he called weren't
15 representative because the numbers should be, to that
16 question, the number should be 25 percent. Whereas Mr.
17 Scott's response to what is a masking question was
18 essentially to fool the person being called, so that when
19 they are really calling to find out about Save Maine Yankee,
20 or a gubernatorial, or something else, they first disarm you
21 by saying how do you view President Reagan's performance, or
22 Mr. Scott asserted that the more political questions
23 themselves of how would you vote in the Emery-Mitchell
24 campaign, that was also a masking question. He would say we
25 don't really care what the answer to that is, that is only

1 there for the purpose of fooling the person we're calling.
2 What we really want to know is how much insulation do you
3 have on your hot water heater.

4 MR. FLAHERTY: Would it be fair to say that
5 whosoever definition you use, the client on whose behalf the
6 poll was being taken would have no interest in that
7 particular information?

8 MR. MOSKOVITZ: It depends. From Mr. Scott's
9 response the answer would be yes, from Mr. Potholm's response
10 the answer would be no. That is, Mr. Potholm's response, you
11 would still care what the answer is, you might have a
12 different motive for caring. Mr. Scott's response, you
13 wouldn't care at all, and that in fact was why he cut them
14 out of his copies of the survey before they were turned over
15 to the Commission.

16 MR. FLAHERTY: But ultimately they found their way
17 back in?

18 MR. MOSKOVITZ: Right.

19 MR. FLAHERTY: Now, you said that too much use was
20 being made of these answers to these so-called masking
21 questions for them to be simply masking questions?

22 MR. MOSKOVITZ: Too much analysis.

23 MR. FLAHERTY: What shall we understand by that
24 statement?

25 MR. MOSKOVITZ: Breakdown of those masking

1 questions. I also hate to call them masking questions.

2 MR. FLAHERTY: Why do you hate to call them masking
3 questions?

4 MR. MOSKOVITZ: Because there is too much of a
5 notion they aren't really questions that you wouldn't care
6 about.

7 MR. FLAHERTY: But you don't agree with that?

8 MR. MOSKOVITZ: It didn't seem that way from what
9 we obtained.

10 MR. FLAHERTY: That is what I'm trying to get at.
11 Why not?

12 MR. MOSKOVITZ: The breakdown of responses to that
13 question by ethnic origin, income level, specific
14 geographical location, educational level. It seemed that if
15 all you wanted to determine was whether you obtained a
16 representative sample, you wouldn't have to go to that
17 breadth and depth, and also -- I would also add this, the
18 distribution of bad information if all you cared about was do
19 you have a representative sample. The only person who would
20 get the data, even in the broken down form, would be Mr.
21 Potholm, in all likelihood, the only person who would know
22 how to read them. But in reality they were distributed in
23 the same fashion as all the other materials were distributed..

24 MR. FLAHERTY: And I think you said earlier that
25 Mr. Thurlow and Mr. Potholm had testified that they had

1 distributed, although you can't recall to whom specifically,
2 the results of those kinds of polls and those kinds of
3 questions?

4 MR. MOSKOVITZ: No, no, I don't think I said that.

5 MR. FLAHERTY: I'm sorry, I thought you said that
6 both Mr. Thurlow and Mr. Potholm had advised you that they
7 had communicated the results of those polls taken on behalf
8 of utility clients to nonutilities clients, or people. If
9 that is not so then you didn't say it.

10 MR. MOSKOVITZ: I don't think I said it, but if the
11 question were just asked afresh, I believe -- I would have to
12 refer to their deposition specifically, but it at least would
13 have been distribution of the polls, or the substance of the
14 results, to board of directors, people who were present at
15 Save Maine Yankee meetings, and there might have been
16 reference in the depositions to distributions to others,
17 although they would not have been any named individuals,
18 again with exception of things like Mr. Potholm, Ad Media, or
19 nonaffiliated people.

20 MR. FLAHERTY: And you're now talking about results
21 of polls conducted on behalf of regulated utilities?

22 MR. MOSKOVITZ: Or Save Maine Yankee.

23 MR. FLAHERTY: Or Save Maine Yankee.

24 MR. MOSKOVITZ: That's right.

25 MR. FLAHERTY: Earlier you talked about, in this

1 same context, you indicated Mr. Potholm had copies of all
2 poll results?

3 MR. MOSKOVITZ: All of the poll results that we saw.

4 MR. FLAHERTY: That you saw?

5 MR MOSKOVITZ: Yes.

6 MR. FLAHERYT: And also you indicated that some
7 organizations such as Ad Media --

8 MR. MOSKOVITZ: Yes.

9 MR. FLAHERTY: -- got, and your word was cross
10 tabulated computer results?

11 MR. MOSKOVITZ: Yes.

12 MR. FLAHERTY: What should I understand by that
13 word, cross tabulated?

14 MR. MOSKOVITZ: That is where the responses to the
15 questions are broken down by all of these other factors,
16 specific geographic location, age, sex, income, education,
17 and the list goes on and on.

18 MR. FLAHERTY: And were the poll results taken on
19 behalf, or on different occasions all combined as each new
20 set of results, to your knowledge, was achieved or obtained?

21 MR. MOSKOVITZ: Not that I ever saw.

22 MR. FLAHERTY: You never saw that?

23 MR. MOSKOVITZ: I never saw a poll, or computer run
24 that allocated data for more than one poll.

25 MR. FLAHERTY: Now, did you indicate that Mr.

1 Potholm was given the use of the Central Maine Power computer?

2 MR. MOSKOVITZ: I don't know whether he was given
3 the use of Central Maine Power Company's computer. We did
4 ask about that in the depositions. There might be a better,
5 more specific response. The response really should be I
6 don't remember, not I don't know.

7 MR. FLAHERTY: You just don't remember?

8 MR. MOSKOVITZ: That's right, except to the extent
9 that he was involved in the polls that were conducted by
10 Atlantic Research, so to that extent he certainly had access.
11 He was doing them -- working with them on behalf of Atlantic
12 Research and had access to the computer then.

13 MR. FLAHERTY: And I think you said that some of
14 the polls which were being done by Atlantic Research at that
15 time were nonutility company polls?

16 MR. MOSKOVITZ: That's right, at least one. And, I
17 would have to refer you to the deposition to again see the
18 exact involvement of Mr. Potholm in that specific poll.

19 MR. FLAHERTY: Thank you.

20 CHAIRMAN BALDACCI: Are there any other questions
21 to Mr. Moskovitz?

22 Mr. Asch, do you have any questions?

23 MR. ASCH: It is the intention of the staff to
24 schedule a set of hearings that is going to cover the full
25 ground that this discussion sits within. We're talking about

1 a very involved process. And I think it is really
2 inappropriate to pursue it in great depth at this point. I
3 do intend to come back to it later in the hearings, and at
4 that point we have specific questions for Mr. Moskovitz --

5 MR. MOSKOVITZ: Happy to help.

6 MR. ASCH: -- we will bring them up.

7 I think there probably is only one question, and
8 that is in your discussions with Mr. Thurlow, with Mr. Leason,
9 Mr. Scott, individuals from CMP, and with Dr. Potholm, did it
10 appear to you that they had a different understanding of why
11 particular parts of the polls were in the polls?

12 MR. MOSKOVITZ: Yes.

13 MR. ASCH: Did it appear to you that that
14 understanding -- if they had a different understanding, do
15 you have any -- can you speculate on why they might have a
16 different understanding?

17 MR. MOSKOVITZ: What is useful to one person may
18 not be very useful to another.

19 MR. ASCH: Did it appear to you that anyone other
20 than Dr. Potholm educated these people on the art of polling
21 and the uses of polling?

22 MR. MOSKOVITZ: Not that I recall. There was
23 another firm that CMP used for polling before they turned to
24 Atlantic -- to Command Research, and Mr. Potholm -- Cambridge
25 Reports, Cambridge Reports is another polling firm they used,

1 and to what extent they also provided similar types of
2 overall technical polling assistance, as opposed to please do
3 a poll for me, I don't remember.

4 MR. ASCH: I find it strange the officers should
5 all believe that masking existed to hide the identity of the
6 person who was polling, and yet their pollster would have
7 such a clear understanding that it wasn't.

8 MR. MOSKOVITZ: There were gradations, I forgot
9 right now what Mr. Thurlow's knowledge was, impression of
10 masking questions. Mr. Leason's was much closer to Mr.
11 Potholm's than Mr. Scott's. And where in that gradation Mr.
12 Thurlow fell, I don't remember now.

13 MR. ASCH: Thank you.

14 CHAIRMAN BALDACCI: Thank you.

15 Is there anything else that you would like --
16 Representative Crowley has a question for you.

17 REPRESENTATIVE CROWLEY: Mr. Moskovitz, and I know
18 what you said, but I'm not sure, when Atlantic Research
19 contracted out some of their work, is this parts of that
20 small budget that the Atlantic Research operated under or is
21 this a separate budget?

22 MR. MOSKOVITZ: I guess I don't know what you mean
23 when you say contracted out?

24 REPRESENTATIVE CROWLEY: I can't remember the --
25 subcontracted I guess you said; is that the same money?

1 MR. MOSKOVITZ: The budgets I spoke of, dollar
2 amounts, 100 or \$200,000 amount, was the total level of their,
3 I believe, annual revenues, so that would have been the money
4 that they received for, I believe it was six or seven polls
5 that were conducted within a one-year period. That would
6 also -- that same income statement would have covered all of
7 their expenses.

8 REPRESENTATIVE CROWLEY: Atlantic Research operated
9 right within the company with their computers and so forth;
10 where did Command Research operate?

11 MR. MOSKOVITZ: I think Command Research was a
12 company that essentially was Mr. Potholm, and I believe his
13 wife. He named another individual that he was in a
14 partnership with in Command Research, I seem to recall. And
15 their physical location, it was either the University,
16 Bowdoin, where he teaches, or his home, I believe.

17 REPRESENTATIVE CROWLEY: What facilities did he use
18 to do his research?

19 MR. MOSKOVITZ: I seem to recall he used the
20 university's computer.

21 REPRESENTATIVE CROWLEY: Bowdoin College?

22 MR. MOSKOVITZ: I don't know if I have that
23 understanding now from newspapers or from the deposition. It
24 is hard to keep it straight. I always looked at the
25 depositions.

1 CHAIRMAN BALDACCI: Mr. Flaherty had just one more
2 question.

3 MR. FLAHERTY: No, I don't.

4 CHAIRMAN BALDACCI: You didn't have one more?

5 MR. FLAHERTY: No, thank you.

6 CHAIRMAN BALDACCI: There you go, all set.

7 Any other questions for Mr. Moskovitz? No?

8 Thank you very much, David, for coming over.

9 Appreciate the time and you will be available.

10 All right. Now, I would like to bring on Dr.

11 Gautschi.

12 DR. GAUTSCHI: Thank you, Senator Baldacci. I have
13 a prepared statement which no one else has at this point. It
14 is in draft form, and my understanding is that it will be
15 typed up and I would like to have it submitted as part of the
16 record. Let me try to keep my remarks as brief as possible.

17 First I will give you a little introduction as to
18 how I fit into this whole thing to some extent. About two
19 years ago I got interested in studying referendum campaigns,
20 a lump initiative referendum campaigns. And I thought that --
21 I had read about the same kinds of things that other people
22 had read about, lots of money has been spent in a variety of
23 places on referendum campaigns. Some of the best examples
24 seemed to come out of California where in recent years
25 apparently -- not apparently, but a considerable amount of

1 money was poured into an antismoking -- campaign against an
2 antismoking proposition in California by four large tobacco
3 companies. I think they amounted to something like 2-1/2
4 million dollars.

5 The early public opinion polls showed that the
6 proposition was winning. In fact, the polls showed the
7 proposition winning up until a month or two, let's say, prior
8 to the election, and the proposition ended up losing.

9 So certainly lots of people have speculated on the
10 effect of money and -- money spent and outcomes in referendum
11 politics. Much more attention has been given to electoral
12 politics, but with the increasing frequency of the use of the
13 referendum type ballot measure, a few people are starting to
14 give some attention to that.

15 Anyway, that was my interest, and I wanted to do
16 the kind of thing that no one has ever demonstrated, and maybe
17 no one ever will, and that is to determine definitively the
18 nature of the relationship between spending in this kind of
19 political campaign and outcomes.

20 Well, I subsequently dropped back and took a subset
21 of all the referenda, and looked at 14, what we might call
22 antinuclear referenda that have been held in a variety of
23 states throughout the country, in Maine, three in Montana,
24 one in South Dakota, one in Massachusetts, one in California,
25 two in Oregon and two in Washington. And if it doesn't add

1 up to 14 I may have left something out.

2 But my first task I thought would be to try to look
3 at the sources of funds, where the contributions come from.
4 And it turns out there is a rather interesting pattern which
5 seems to emerge on paper nationwide. So I will talk about
6 that first, and then talk a little bit about the Maine
7 experience.

8 Well, I have supplied everyone with some tables
9 that are in -- some of them are in cut and paste form, and
10 some are just handwritten form. Let me talk briefly about
11 this.

12 The first thing that comes out rather clearly in
13 these campaigns and incidently the various ballot measures
14 range from something rather modest, such as a 1980 measure in
15 Washington that had it passed, and in fact it did, would have
16 been the importation of nuclear waste. Subsequent to the
17 election the measure was ruled unconstitutional. But ranging
18 from that to, on the other end of the spectrum, the 1980
19 Maine ballot measure. And you have various degrees of, let's
20 say, severity of impact that might have been felt by the
21 nuclear industry had these different things passed, some did,
22 some didn't.

23 But anyway, in most of these campaigns the major
24 source of funds came from business interests. And if you
25 look at the table that I have labeled percentage table you

1 will see -- you will notice first off that South Dakota is
2 missing, not because I don't have the data, but because it
3 just isn't in there. But you can see on the right-hand side
4 the percentages vary from Montana in 1976, 70.2 percent of
5 the contributions came from business affiliated concerns, and
6 that number is probably low because the filing documents
7 which I received from the secretary of state's office in
8 Montana omitted a \$42,000 -- detail on a \$42,000 contribution,
9 so I'm just assuming that it came from nonbusiness sources,
10 which could well be erroneous. Anyway, it ranges from that
11 72.2 percent all the way up to 99.8 percent in Montana in
12 1978.

13 Well, let me give you a little bit more detail here
14 on what some of the major contributors looked like. Too, I
15 think certainly not to my surprise, and probably not to the
16 surprise of anyone else, utility companies have been heavily
17 involved throughout the country. And I have table labeled
18 utility table, part one, which details the number of
19 utilities that contributed in these various referenda.

20 Interesting to note, I think, maybe for present
21 purposes, that the referendum that had the greatest number of
22 utilities contributing was the 1980 Maine. 54 total
23 companies had contributed. And you can see the size of the
24 dollar amounts that were spent there.

25 Now, I guess the table which you do not have is --

1 shows that typically the pattern is that there are some of
2 the utilities -- let me go on to the utility table, part two,
3 which shows where these companies have spread their money.
4 You start with the biggest, which is Commonwealth Edison,
5 contributed to nine different campaigns, total amount is maybe
6 not overwhelming, an average of about \$5,000 per campaign.
7 Some of these others that have very large amounts, go down to
8 the sixth contribution, Portland General Electric has 511,000
9 plus, owed primarily to the fact that Portland General
10 Electric contributed about \$300,000 in the 1980 Oregon ballot
11 measure campaign. In other words, Portland General Electric
12 didn't give lots and lots of money out of state.

13 Now another interesting feature in this particular
14 table I think is this: Let me just list a few of these:
15 Commonwealth Edison, Carolina Power and Light, Middle South
16 Services, Baltimore Gas and Electric, Duke Power, Virginia
17 Electric Power, Houston Lighting and Power, Iowa Illinois Gas
18 and Electric, Long Island Lighting, Pacific Electric, Texas
19 Utilities, and Wisconsin Power and Light, all of whom have
20 given rather generously, are located in states where there
21 have never been ballot measures having to do with nuclear
22 power. In fact a number of these are located in states in
23 which there are no provisions for initiatives or referenda.
24 Nonetheless, these companies contributed to campaigns to
25 defeat antinuclear referenda around the country.



1 Now, beyond utility companies, I thought it would
2 be interesting to look at a further breakdown, and thought,
3 well, why not look at the biggest of the big, how about
4 Fortune 500 companies. Well, Fortune 500 companies are
5 involved, too. I have two tables here, one industry type
6 table, the second one is not labeled, shows number of Fortune
7 500 contributors. The biggest block of contributions came
8 from California in 1976, where a little over a million
9 dollars was contributed by 53 members of the 1982 Fortune 500
10 listing. Now, when you put these dollar amounts together
11 with dollar amounts that come from utility companies, you're
12 talking about fairly sizable amounts, and you're talking
13 about companies that have at their disposal substantial
14 amounts of money to contribute.

15 Just let me mention a few of the companies which
16 you don't see listed here, a few of the companies that have
17 been involved, and you will recognize that they are not
18 exactly what we call small: EXXON, Shell, Mobile, Atlantic
19 Richfield, the big oil companies, Westinghouse, General
20 Electric. Some rather strange names pop up in there, I think
21 some consider them rather strange, Proctor and Gamble,
22 Standard Brands Foods Company, Anheuser Busch, Adolph Cross.
23 One can only speculate as to why these companies have been
24 involved in such a campaign. And, you notice on the industry
25 typed table it spreads across a variety of industries.

1 Now, one other table which you do not have, which I
2 did a further breakdown to look at other Fortune listings.
3 Not only do we have Fortune 500, but Fortune annually puts
4 out a listing of the biggest diversified service companies in
5 America, largest commercial banking companies, largest life
6 insurance companies, largest diversified financial companies,
7 largest retailing companies, and largest transportation
8 companies, all of which do not make the Fortune 500 list.
9 There are some of those around, too.

10 When you look at all of this together, it turns out
11 that you get substantial backing in all of these campaigns by
12 companies that have large amounts of money to be able to put
13 into the campaigns.

14 Now, the actual dollar amounts are reminiscent of
15 something that went on earlier in these discussion today,
16 that to the average person the actual dollar amounts are not
17 always all that big, \$2,000 here, \$5,000 there. But -- I
18 mean to the average person the amounts are fairly good sized,
19 to these companies they are pretty small. So they appear to
20 be able to contribute in a variety of places and do it
21 apparently with a great deal of frequency.

22 Now, the -- there are other -- so, what you see, it
23 seems to me, is some sort of common pool of resources that
24 appears to be spread around in all of these campaigns. There
25 are other kinds of common sources that are used in some of

1 the filing reports, and unfortunately I don't have the exact
2 states in which these names show up. But here are some names
3 some of which I -- one of which we have heard before.

4 There is an outfit in Los Angeles, Winner Wagner,
5 which has been involved in managing a number of the campaigns
6 designed to defeat antinuclear referenda; another company in
7 Los Angeles, Mark Two Media, has been involved in a number of
8 these; and then a third, Cambridge Reports, which I heard
9 mentioned here a few minutes ago, which was used not only in
10 Maine but in a number of other places.

11 Well, let me shift then to what I refer to as the
12 Maine experience. When one looks at filing statements on
13 contributions for Maine, what stands out -- well, I have
14 already mentioned that in 1980, from what I looked at, Maine
15 set the record for the number of utilities contributing, not
16 necessarily the aggregate amount. The winner in that
17 category is Missouri, primarily because the Union Electric
18 Company of St. Louis contributed about 1.2 million dollars to
19 the effort to defeat a referendum issue in that state.

20 But, in Maine we have -- there are a couple of
21 things that you might find interesting here. I did a
22 breakdown on just Fortune 500 companies to see how many of
23 these had contributed in Maine, in either 1980 or 1982. And
24 there is a handwritten table here which lists all of these
25 companies, and shows you how many times they contributed not

1 only in taking into account the two Maine referenda, but
2 other referenda around the country. And again, the most
3 popular name on here is Westinghouse, contributed in all but
4 one of these campaigns. The only one that it didn't
5 contribute in was the 1980 Washington effort, ballot measure
6 aimed at, once again, preventing the importation of
7 radioactive waste, but Westinghouse was there in every other
8 campaign. And as you know, Westinghouse gave rather
9 generously, over \$570,000, fairly sizable amount per campaign.
10 The second place in this category is General Electric, which
11 again, over half a million dollars in 10 campaigns. And then
12 you have all kinds of other companies that are on here, once
13 again, the food companies show up, Standard Brands, Pepsico,
14 shows up in Maine, Mobile, and Proctor and Gamble, again, and
15 a variety of others. So, when you look -- if you refer back
16 again to the amount of money that came from business sources
17 in Maine in those two campaigns is still well above 90
18 percent. If you go through the -- and it is not just --
19 again, these figures are designed to indicate that it is not
20 just -- it is not primarily lots and lots of small companies
21 that made up the big share, it is fairly -- well, it is a
22 finite number of rather large companies that made up the
23 biggest share.

24 Now let me get to one other thing about -- or I'll
25 just mention again that -- again here we see Winner Wagner

1 involved from filing reports, Mark Three Media, Cambridge
2 Reports Involved, so that once again, a drawing from a common
3 pool of resources.

4 One other thing you might find interesting, which I
5 did not photocopy, Maine also has the distinction of drawing
6 the biggest contributions from some other sources, investment
7 brokers for example. If you go back to the 1980 campaign, I
8 believe that has that -- let me see if I can find that
9 quickly here.

10 Yes, these companies, Goldman Sax, E. F. Hutton,
11 Merrill Lynch, Leaman Brothers, Kidder Peabody, Life, Eastman
12 and Dillon, gave contributions ranging from \$6,000 to \$15,000.
13 These company were also involved in other states, Life,
14 Eastman and Dillon in 1976 in Oregon, Kidder Peabody in 1976,
15 in Oregon, and then they go from state to state. Some places,
16 for some reason, those investments houses didn't have any
17 interest in campaigns, but they certainly did in Maine.

18 Now, as I said, there are a number of utility
19 companies that have contributed all around the country, and I
20 thought it would be interesting to look to see which utility
21 companies from Maine have contributed in other parts of the
22 country. And there are only two, Maine Yankee Atomic Power
23 Company, South Dakota in 1980, \$2,000, and Oregon in 1980,
24 \$5,000. And the other is Central Maine Power Company,
25 Washington 1980, \$2,000.

1 That last one struck me as being really quite
2 curious because the utility industry by and large stayed out
3 of that one. Again, remember that is the one that I said
4 would have banned the importation of radioactive waste.
5 Total of about \$70,000 spent in the campaign. That is the
6 smallest spending amount of the 14 I looked at. But Central
7 Maine Power Company was there. That is even the one that
8 Westinghouse stayed out of.

9 Well, so what do I conclude from all of this. As I
10 said -- maybe I didn't say this at the outset -- it seems to
11 me what I discovered was something that would have been
12 surprising if I hadn't discovered it, and that is that it
13 appears on paper, anyway, that there is some type of funding
14 network that operates in the United States for these
15 campaigns. And I have had no access to letters, I have had
16 no personal communications with people at any of these
17 companies. I have simply looked at filing statements from a
18 variety of states and tried to wade through all of this
19 material to see what I could find, and this is the first
20 thing that has fallen out of it. So, I'll leave it at that
21 at this point.

22 If there are any questions that I might have --

23 CHAIRMAN BALDACCI: How would you characterize
24 Central Maine Power's involvement in terms of -- getting back
25 to the Maine picture how could you characterize --

1 DR. GAUTSCHI: As I mentioned a moment ago, when
2 you look at the filing reports from these other states,
3 Central Maine Power Company, if you want to include Maine
4 Yankee Atomic Power Company with it, is the only Maine
5 utility that has ever made a contribution to any one of these.

6 CHAIRMAN BALDACCI: Outside of the State of Maine?

7 DR. GAUTSCHI: Outside the State of Maine, at least
8 on these that I have looked at. There are a couple of others
9 that I have not gotten access to. I think there has been one
10 in Ohio, and I don't remember what the other one is, but I
11 haven't been able to get access to that data.

12 CHAIRMAN BALDACCI: After reviewing your research
13 efforts, what conclusions can you draw for those of us who
14 make public policy decisions?

15 DR. GAUTSCHI: Well, let me go back to what I said
16 at the outset. I'm really concerned with a more general kind
17 of issue than I think the -- than this Committee may be
18 concerned with. As I said, there is no way to demonstrate
19 definitively, or there hasn't been yet any way to demonstrate
20 definitively what the fact that spending has on outcomes of
21 referendum campaigns. But, it seems to make some sense that
22 if you look at these campaigns in a slightly different way
23 from what we might ordinarily look at them in terms of a
24 contest of who can raise resources, that most of them
25 demonstrate rather clearly that there is no contest. And,

1 that maybe we don't know whether or not spending 4 million
2 dollars in California to defeat an antismoking proposition
3 will insure the defeat of that proposition, but we know it
4 will do certain things. It will buy access to people who
5 have expertise, people -- let me mention something about the
6 polling thing I thought of while people were talking earlier.
7 One of the things that has been discovered is that in a
8 number of these campaigns polling becomes very important,
9 because a poll may show a particular ballot measure passing,
10 but with proper -- maybe I shouldn't say manipulation, but
11 I'll use that word -- proper manipulation of questions, one
12 can transform the measure into something that may look very
13 different from what the measure originally was intended to be.
14 And that kind of thing is done often through the use of
15 polling data, ask the right questions and find out if we were
16 able to rephrase this in a slightly different fashion, then
17 we could possibly, we -- we can hit the nerve, and we can
18 possibly get people to vote the other way. This has been
19 pretty well documented in Colorado, for example, by a
20 Professor Shopley who did a study of the 1976 ballot measures
21 in Colorado, and found that a number of measures which
22 appeared to be headed for overwhelming victory were turned
23 around largely through the use of this kind of resource. So --

24 CHAIRMAN BALDACCI: Go ahead.

25 DR. GAUTSCHI: I don't know what to tell you,

1 exactly what my recommendation would be, but I think that, as
2 I said, with the increasing frequency of this kind of
3 activity, ballot measures, and the fact that the -- to date
4 there is no state prohibition on contributions in campaigns
5 that has been upheld as being constitutional, that people who
6 are concerned about the effects of money in politics ought to
7 be concerned about this particular aspect of politics, and
8 ought to try to strive for some creative ways in doing
9 something about dampening the influence of money.

10 CHAIRMAN BALDACCI: Anybody else have any questions?

11 Representative Sproul.

12 REPRESENTATIVE SPROUL: It seems as though a lot of
13 your testimony here is meant probably to raise questions
14 rather than answer. It is interesting to note, though, that
15 in Maine both from the '80 to the '82 elections, both the
16 number of the Fortune 500 contributors decreased from 36 to
17 27, and decreased substantially in the amount of money spent.
18 Also, similar decrease can be seen in the number of utilities
19 contributing in the Maine referendums from 1980, which was 54
20 utilities, to 34 in '82; any thoughts as to why the decrease?

21 DR. GAUTSCHI: As to why that happened? I have
22 actually asked myself that question. I'm not really sure
23 what the answer is, although somebody picked up the slack,
24 obviously. It seems to me if you go back to the table on
25 percentages, notice that business related sources still

1 accounted for essentially the same amount, 97 -- close to 98
2 percent. Now, there may have been some shifting around to
3 other companies. I'm sure I have that data somewhere, but I
4 don't have it with me, so I couldn't tell you exactly what
5 those are. There are a number of companies in there that
6 have been big contributors which don't show up on anybody
7 else's list, privately held, for example. Bectal, for
8 example, is one of them that has been involved in a lot of
9 places, sizable amounts of money. All I would say is
10 somebody appeared to have picked up the slack, I don't know
11 who it was.

12 REPRESENTATIVE SPROUL: Do you believe there is
13 perhaps any type of effort being made by utilities in other
14 parts of the country to decrease their involvement, because
15 that same type of pattern, as I look at the utilities, I
16 don't know, it seems somewhat the ones more recent tend to be
17 in smaller numbers.

18 DR. GAUTSCHI: I don't know. I have some
19 information on what has happened with regard to public
20 opinion toward nuclear power over the years, and -- from a
21 fellow who has done some work on this at Washington State.
22 And he said that everybody had suspected that after Three
23 Mile Island, that once things cooled down, that public
24 opinion would go back up in terms of its -- toward nuclear
25 power, but it turns out in fact it -- apparently public

1 opinion is more negative toward nuclear power today than was
2 the case at the time of Three Mile Island, which would seem
3 to suggest maybe utilities would be more concerned -- should
4 possibly be more concerned today than they might have been
5 sometime ago, but that is about all I can tell you.

6 CHAIRMAN BALDACCI: Frederick, I know in your other
7 function you were hired by the Public Utilities Commission to
8 review the code of ethics for Central Maine Power Company.

9 DR. GAUTSCHI: Right.

10 CHAIRMAN BALDACCI: I don't want you to give us a
11 detailed report of that, but you were also interested in
12 researching the involvement of large out of state money in to
13 the state, or by in state utilities sending money outside of
14 the state, and you mentioned that Central Maine Power Company
15 was the only one, and really runs Maine Yankee Atomic Power
16 plant, anyway, so what was your synopsis of the code of
17 ethics and what occurred?

18 DR. GAUTSCHI: Well, let's see, it has been a while
19 since I wrote that, so I'm not sure I can remember as well as
20 I might want to.

21 I guess maybe I'll make a couple of statements
22 about codes of ethics in general. I think that -- this would
23 be accurate to characterize my assessment of a code of ethics
24 as being a rather critical one, and that it seemed to me that
25 it might be more productive to try to get a feel for, let's

1 say, attitudes of individuals who worked at Central Maine
2 Power Company, rather than expect that a code of ethics by
3 itself would be particularly productive in changing behavior,
4 or as I remember, in effect coding behavior that had always
5 existed. It seems to me that is what the letter that came
6 from Mr. Thurlow to the Public Utilities Commission indicated,
7 we were just putting on paper what we have always done.

8 Interesting enough, one of those things that was
9 put on paper had to do -- may not have been the code of
10 ethics itself, may have had to do with regulatory relations
11 policy. Another document I saw -- was a statement to the
12 effect, if I remember this correctly, that Central Maine
13 Power Company was going to stay out of politics, in effect.
14 Now, at the time this was written, of course, to some extent
15 Central Maine Power Company had been involved in politics
16 through these -- what I have looked at, just contributions
17 right here, not only in Maine but out of state.

18 I think I probably looked at particular provisions
19 of the code and may have made some remarks about those
20 provisions. And I had referred to a company which at the
21 time seemed to be be doing fairly well financially,
22 subsequently I guess has fallen on hard times, that
23 approached business ethics or organizational ethics in a
24 rather different way, really looked upon it as some kind of
25 process whereby lots of questions were raised, where people

1 are frequently given the opportunity to question the way in
2 which business is done at the company. So, not that I
3 remember -- I don't remember from that particular company any
4 really formalized code of ethics, but it seems as though the
5 attitude of people at that company was very different in what
6 you might expect from people at a company which simply drew
7 up a code of ethics and adopted it, which is another point I
8 now remember.

9 You see, I didn't know when I got the material who
10 had put the code together, whether there had been a joint
11 effort between management employees, or whether somebody had
12 hired somebody to put it together, or what the story was,
13 whether it was something being imposed upon employees, or
14 something, as I said, was the result of some joint effort,
15 and consequently I had some doubts if in fact something drawn
16 up by an outside consultant, for example, whether it would
17 ever be particularly well received by people who were simply
18 given it, and said this is the way things are going to be.
19 So, those are my random remembrances of what went on.

20 CHAIRMAN BALDACCI: Are there any other questions?

21 Any questions by the staff?

22 Thank you very much.

23 Seeing we do have the votes for the enforcement of
24 the subpoena -- thank you, Jack, for smiling.

25 I would like to adjourn --

1 MR. ASCH: Recess.

2 CHAIRMAN BALDACCI: -- recess the meeting until
3 1:00 o'clock tomorrow -- 12:00 o'clock -- recess the meeting
4 until 12:00 o'clock here in Appropriations.

5 MR. FLAHERTY: I prefer 12:00 if it is convenient
6 for the committee. In the event that a vote is affirmative I
7 want to have some time to call the court.

8 SENATOR SEWALL: We agreed not to vote until after
9 2:00.

10 MR. FLAHERTY: It would be very helpful if that
11 issued were resolved one way or another before you go into
12 the afternoon proceedings.

13 MR. ASCH: I think we need to separate two issues,
14 one of them is procedural. We have two witnesses coming
15 tomorrow who because of the nature of their positions, the
16 president of New England Telephone, and the president of
17 Central Maine Power, have made considerable adjustments in
18 their schedules to be able to be here. They would like to
19 begin at 1:00 o'clock so that they may have a reasonable
20 expectation of making additional commitments later in the day.
21 I was hoping to honor that, to make that possible, and was
22 simply -- was unaware of any agreement of the committee as to
23 when a vote would or would not be taken. I was hopeful that
24 discussion of the subpoena issue would take place either
25 before Mr. Jalkut or Mr. Rowe testified, or after they

1 testified. We would obviously prefer to resolve the issue as
2 early as possible, and we would like, if possible, to have
3 the committee discussion, discussion of the issues before Mr.
4 Jalkut and Mr. Rowe testify. The staff obviously is
5 unaware -- I am unaware of any agreement by the Committee as
6 to when the vote will be taken, but if we can start
7 discussion early, so we had a chance to discuss it a while
8 before --

9 CHAIRMAN BALDACCI: It is my understanding that the
10 vote would be taking place tomorrow if everybody was here.
11 Presumably when they left here they had an understanding we
12 were supposed to start around 2:00, and I explained 1:00
13 o'clock we would have to start the hearings because Mr.
14 Jalkut and Mr. Rowe had to leave on a trip so we could take
15 care of it after Mr. Jalkut and Mr. Rowe made their
16 presentation, or in between, just as long as there was an
17 opportunity for all the members to be here. That was the
18 understanding I had with Representative Higgins and
19 Representative Willey

20 REPRESENTATIVE SPROUL: I can't be here, I
21 understand until --

22 SENATOR SEWALL: I can't be here until 2:00.

23 CHAIRMAN BALDACCI: So it will be done in between.

24 MR. ASCH: Can we start Mr. Jalkut and Mr. Rowe at
25 1:00?

1 CHAIRMAN BALDACCI: 1:00 o'clock with Mr. Jalkut
2 and Mr. Rowe.

3 MR. ASCH: Are we recessed, Mr. Chairman?

4 CHAIRMAN BALDACCI: We are recessed until 1:00
5 o'clock tomorrow.

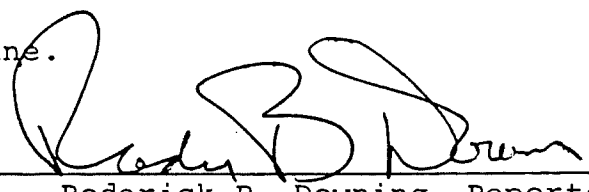
6 (The hearing was recessed at 5:30 P.M.)
7
8
9

10 HEARING

11 I, Roderick B. Downing, hereby certify that
12 the foregoing is a true and complete record of my steno-
13 graphic notes in the hearing of the Joint Select
14 Committee to Investigate Public Utilities, held
15 October 9, 1984.

16 IN WITNESS WHEREOF I subscribe my hand and
17 affix my seal this 26th day of October, 1984.

18 Dated at North Windham, Maine.
19
20


Roderick B. Downing, Reporter

21 My Commission Expires
22 June 16, 1985
23
24
25