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COMMITTEE MEETING

before

SENATE JUDICIARY COMMITTEE

Nomination of Christine T. Whitman
for Member of the Board of Public Utilities

January 21, 1988
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Edward T. O'Connor, Jr., Chairman
Senator Gabriel M. Ambrosio
Senator Richard J. Codey
Senator Donald T. DiFrancesco
Senator William L. Gormley
Senator Lee B. Laskin

ALSO PRESENT:

John J. Tumulty
Office of Legislative Services
Aide, Senate Judiciary Committee

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New Jersey State Legislature
SENATE JUDICIARY COMMITTEE
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MEMORANDUM

January 21, 1988

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE
FROM: EDWARD T. O'CONNOR, CHAIRMAN
SUBJECT: COMMITTEE MEETING, JANUARY 21, 1988

Please address any comments or questions to John J. Tumulty,
Committee Aide at (609) 292-5526.

The Senate Judiciary Committee will meet on Thursday, January 21, 1988 at 10:00 AM in Room 424, State House Annex, Trenton.

The following nominations will be interviewed:

TO BE A MEMBER OF THE BOARD OF PUBLIC UTILITIES:

Christine T. Whitman, of Far Hills, to replace Barbara Curran, for the term prescribed by law.

TO BE A JUDGE OF THE SUPERIOR COURT:

Stephen Skillman, of Princeton, to succeed himself, for the term prescribed by law.

TO BE A PROSECUTOR OF BURLINGTON COUNTY:

Stephen G. Raymond, of Moorestown, to succeed himself for the term prescribed by law.

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SENATOR EDWARD T. O'CONNOR (Chairman): The next nomination we'll consider is that of Christine T. Whitman of Far Hills, to replace Barbara Curran as a member of the Board of Public Utilities.

Senator Ewing, would you be good enough to introduce the nominee to the Committee?

SENATOR JOHN H. EWING: Thank you, Senator O'Connor. I take great pleasure in introducing to you, the Judiciary Committee, Mrs. John Whitman, commonly known as Christy Whitman, who is a long-time resident and born in Somerset County, and had been an outstanding freeholder there, and a great member of many civic groups. A very hard-working individual; a very intelligent individual, and one who I am sure will do an outstanding job for the people of the State, and a very sensitive job on the Board of Public Utilities. It gives me a great deal of pleasure to introduce Christine Whitman.

CHRISTINE T. WHITMAN: Thank you, Senator.

SENATOR O'CONNOR: Thank you Senator Ewing. Mrs. Whitman, I'll tell you that in spite of Senator Ewing's comments, we promise to be fair and objective this morning.

MRS. WHITMAN: I appreciate that. Thank you.

SENATOR O'CONNOR: In all honesty, he has been in constant contact since the Governor announced his intention to appoint you, so you could thank him for, perhaps the speed with which your nomination was brought before the Committee.

Just a few questions that we'll have for you. In setting rates for utility service, a utility regulator has to consider a number of interests of a number of different parties. Among them, the ratepayers themselves, who pay the rates, the utility company who provides safe, and adequate, and proper service with the rates the regulator allows it, and the utility company's investors, who desire a reasonable return on their investment.

Ideally, a regulator should seek to afford equal protection to the financial interests of each of these three distinct parties. Sometimes, however, it's not possible to do that. How would you, as a regulator, balance these interests when they're in conflict with each other?

MRS. WHITMAN: Well, I think Senator, that the important point that you brought up is the one where you mentioned that the thrust and the responsibility of the utility commissioner is to try to balance those interests. It is a very real responsibility to ensure that the utilities maintain their strength and viability to encourage growth in the State of New Jersey, but I think the thing that has to be kept in the mind of any Commissioner when facing those kinds of questions is that these are basic services, and everyone has to be able to afford them.

To be able to say you'd come down on one side or another, I think, would be something that has to be decided on a case-by-case basis. And, if you're asking how I would approach something like that, it would be that the utility would have to prove to me that the increase -- if that's what is being requested -- is necessary and that the service provided will be thorough, and given in the method that they present, and that the ratepayer can afford to pay those prices.

SENATOR O'CONNOR: Do you believe that a BPU Commissioner should protect the financial interests of ratepayers at the expense of investors or utility companies?

MRS. WHITMAN: I would hope that it wouldn't have to be at the expense of. I think the Board has the responsibility to try to continue to maintain that balance. And there are trade-offs, I know. I think I have watched in areas where you have had problems -- in the Board of Social Services, and homeless problems -- the seriousness of the people's attempts to meet payments for these utilities. They are basic services; I'm very cognizant of that. And I feel it is very important.

But I hope that it would not become an either/or type of situation.

SENATOR O'CONNOR: Utility regulation is based on a quid pro quo. A utility company submits the economic regulation by a public regulatory body in exchange for State-granted monopoly status in providing utility service. In this context, economic regulation is supposed to afford consumers the same protection that competition provides in a free market situation. With regard to electric and gas companies, however, it's now being argued that regulation does not produce the same efficiency, and thus lower rates, that competition would, and that some form of competition should be introduced into the utility regulatory arena. The argument is that if natural gas and electric utilities are forced to compete with non-utility sources of energy, they will become more efficient and thus lower their rates. Do you think that some form of competition should be allowed in the utility arena, and if so, what form?

MRS. WHITMAN: Quite frankly, Senator, that's beyond the scope of my frame of reference at the moment. I think it's something that the SLERP Commission, as I understand, is reviewing and will have a series of recommendations to make. I would like to take an opportunity to, a) review those; and b) discuss with the Board. I anticipate learning a lot more about that if I am to become a member of that Board. I will be better able to answer the question at that time.

SENATOR O'CONNOR: Okay. Are there questions from the other members of the Committee? Senator Laskin.

SENATOR LASKIN: Mrs. Whitman, I think that energy costs in New Jersey are obscenely high. And all the data that I have seen in the many years that I've been in the Senate supports that feeling -- that energy costs in New Jersey, for some reason, are generally higher by a rather substantial margin, than most of the states. Years ago, when we discussed

this issue at this Committee -- this was around the time of the oil crisis -- a lot of experts -- so-called experts -- told us that the reason that the energy costs in New Jersey are higher than most states, even comparable industrial states, is because we have an oil-based energy economy, and that our utilities rely on oil to burn and to make the energy and whatever the technicalities are. And so we all learned that lesson a few years ago. But unfortunately, when the oil prices started to go down, and we expected to see huge decreases in the cost of energy, it didn't happen.

And I find that our industry in this State is somewhat at a competitive disadvantage to other states, because our energy costs are so high here that they do better somewhere else.

The BPU has traditionally been a rate-setting commission. I'm not so sure that they can legally go into policy areas, and I'm not so sure that they can't. What I'd like to know, though, is your feeling about the subject of, do you think as a BPU Commissioner all you do is sit down, look at figures and decide like a judge whether a rate increase should be granted or not, or do you think that a BPU Commissioner should be more involved in at least thinking about long-range goals, policy determinations for the industry in general? How do you feel about that?

MRS. WHITMAN: Senator, I think, as far as individual rate case is concerned, that it would be more what you put forward -- of sitting down, taking the facts, looking for the justification, and making the decision. Certainly in the area of solid waste -- and I'm not going to pretend to be someone who has done any great deal of work with public utilities' regulation -- but in the area of solid waste, the BPU is much more than a regulatory body, or a rate-setting body. The decisions they make are policy decisions, and they will affect the future of the State in that area. And I can only presume

that therefore holds true to the other areas of utility regulation. They go much further than that, and I think the Commissioners and the BPU itself have got to think in terms of the big picture and the long-range picture on these issues, because yes, they do have a very definite effect.

SENATOR LASKIN: But see, what I'm concerned about really is your philosophy. Would you--

MRS. WHITMAN: Mine is very definitely that way.

SENATOR LASKIN: Would you be a Commissioner who would promote, if you can in certain particular instances, the competitiveness edge of our industry by virtue of the fact that you have that seat, and can make suggestions which may or may not be helpful, other than just sitting down, balancing numbers, and saying, "Well, we think it ought to be this number"?

MRS. WHITMAN: Senator, if I were to become a Commissioner, I would very definitely want to go beyond just the balancing of numbers where it is appropriate and possible to so do as a Commissioner. I definitely have an interest in that aspect of things. But at this point, I can't say where exactly one would be able to do that as a Commissioner, because I have not served on the Board.

SENATOR LASKIN: Yeah, I understand that. I'm not asking for a specific; I'm just asking about your thinking.

MRS. WHITMAN: No. But my philosophy would be to look at the bigger picture; look at the long-range impact, and I think very much keep in mind the importance of these various industries to the State's competitiveness overall in the region.

SENATOR LASKIN: We have a New Jersey Master Energy Plan. I'm not an expert on it, but we have one. And in that plan, which is binding on the BPU and binding on others, there's a sentence or two about, "BPU shall to the maximum extent practicable and feasible take all possible steps to promote competitiveness in the natural gas industry." Again,

this is like a philosophical thing. I'm not so sure that the BPU traditionally does more than juggle numbers. I may be wrong, but at least that's the perception I have. And if that concept is in the New Jersey Energy Master Plan, what would your reaction be to that statement, as far as your personal philosophy, to promote this competitiveness?

MRS. WHITMAN: Senator, I would certainly live by the letter of the law, and the letter of policy statements that come from the Governor or the governing body. I think it would be presumptuous of me to make any determination as to whether the BPU has in the past been primarily a rate-setting--

SENATOR LASKIN: I don't want you to do that. I'm just curious as to how you will be as the Commissioner. Will you be somebody who's not afraid to take different positions?

MRS. WHITMAN: I haven't been in the past, so I can only say that based on past experience. I have not, obviously, faced the particular issues to which you're addressing yourself, but in other issues where there have been either difficult decisions or positions to take that were not, perhaps, the ones that were taken by everyone else, I have not had a problem with that.

SENATOR LASKIN: Okay. Thank you.

SENATOR O'CONNOR: Senator Gormley?

SENATOR GORMLEY: We're all a part of that big mass called the State. And what happens is, whether you be with the Board of Public Utilities, or with another State agency, in the minds of the public -- and coming from a freeholder background, county officials especially have an appreciation of the word, "the State," have you given any thought to the predicament -- and obviously you have because you've probably lived it, being a freeholder -- the predicament that exists between BPU and DEP? The circuitous route that local officials are put through-- Whereas, if there were not turf wars, or if there were not such a dichotomy -- if there could be a process where

there would be more uniformity on the State level, I think it would make the burden much less for county officials, local officials, or whatever. And, I'm wondering if you have given that any thought so that when you go to the State you don't have to be bounced back and forth while they're playing the Abbott and Costello game of "Who's on First?" I wonder if you've given that any thought?

MRS. WHITMAN: I think that's a very important point, and to the extent that I have looked at the issue -- I have pretty good relations with the DEP; I know most of the people there -- and it would be my intention if I were confirmed as a Commissioner to immediately sit down and start talking with the DEP on some of these issues. Because, I agree with you 100% that everyone's got to be talking the same language from the same position, otherwise it's an intolerable burden on the counties and the municipalities, and basically then the taxpayers and the citizens of the State.

SENATOR GORMLEY: Because what happens is the one part of the State says to the local officials, "You go line up the other part of the State, we won't deal on that, when you come back then we can do what you want." Then it winds up a tennis match with the local official in the middle, without the level of expertise that both of those departments have available to them. And it's an unfortunate circumstance which occurs.

Thank you.

SENATOR O'CONNOR: Senator DiFrancesco, any questions?

SENATOR DiFRANCESCO: No, I have no questions.

SENATOR O'CONNOR: Senator Codey?

SENATOR CODEY: Yes, Mr. Chairman. I'm sure Ms. Whitman, you're aware of the controversy that came about a couple of months ago in regards to members of the Board in regards to a couple of instances, one where a member of the Board was treated to a big dinner in regard to his ascending to the national presidency of Commissioners throughout the

country. I thought it would be interesting to hear your comments on that particular instance, and the kind of ethical question that raises with regard to the Commission and its work in deliberating on behalf of the public with these regulators?

MRS. WHITMAN: Senator, there's-- Obviously, as you well know, there have been a new code of ethics written for the Board of Public Utilities. I have had an opportunity to look at it, not study it in great depth. My feeling is that that is of paramount importance; that perception is every bit as important as what actually happens. I would intend to live by the letter of that code of ethics, and have presumed that everyone else who would work with me would do the same.

I think perhaps the most important thing is to ensure that it is absolutely clear -- and my major concern would be -- that there is a real clarity in how that code is put into everyday practice, and there isn't a need for people to always ask for clarification; is this acceptable or is this not acceptable? And my presumption would be that I would live by that code. I think it is a very thorough code. It speaks to most of the issues that occurred before that caused some problem. I would not want to comment on the specific instance that you brought up. I wasn't there at the time; I haven't seen all the documentation and the background, and I think that the Senate has really spoken as has the State Board of Ethics. With the new code it spoke precisely to those questions.

SENATOR CODEY: In looking at your resume, there's no background, per se, in the area. What would you say to people who would question your coming on board in an area where you have no expertise -- at least on a resume -- in regard to a very complex issue such as regulating utilities?

MRS. WHITMAN: I think, Senator, what I would do and have done in the past is point to a couple of areas of my background that I think do speak to that. One is the involvement as a freeholder in the area of solid waste. That

is only one of the areas with which the BPU deals, but it is, I think, an increasingly important one, and certainly growing and demanding more and more time. I do have a familiarity with that. I'm not going to pretend that I've ever done anything with utility regulation, because I haven't. But as a freeholder I have also had experience in Somerset County; we administer our 201 and 208 Plans. So, as far as sewer extensions and that sort of thing, I have been involved in those and understand. Gas pipe lines we've had go through, and that type of thing, so I'm not totally unfamiliar with the various industries.

I do not know about their regulation, but again, in my various positions that I have held in the past I have had to absorb information on subject areas that I didn't know a whole lot about, garbage being one of the major ones at first -- I know far more about it now than I ever thought I would.

But, I have not had a problem with that. I think that is probably the most important thing I could bring. I do not bring a particular prejudice, not having been involved in any of the industries to be regulated, from that point of view. But I have had experience with having to absorb subject matter information in different areas, and then making decisions based on that.

SENATOR CODEY: Thank you, Mr. Chairman.

SENATOR O'CONNOR: Senator Lynch?

SENATOR LYNCH: Just a couple questions. I wasn't here, and I apologize, earlier when the questioning started, so I don't know whether the question was asked with regard to the basic jurisdiction of the BPU regarding the solid waste industry. Do you, from your experience so far in your involvement as a freeholder -- from the solid waste problems -- do you see a need for a continued role by the BPU in overseeing the solid waste industry?

MRS. WHITMAN: At this point I don't see any alternative for that. I know there has been some thought given to returning all the issues of solid waste to the Department of Environmental Protection for their administration. I have to look at that a little more closely. But, as this is a new and growing industry, and it is very much -- in my mind anyway -- a public utility and service, I think it appropriately does come under the BPU in certain areas. Whether that would continue forever or not, I have not studied that issue thoroughly. And I know there is a question on that.

SENATOR LYNCH: Why don't you think that DEP's capable of managing this situation?

MRS. WHITMAN: I don't think-- It's not a question of their not being capable of managing the situation, Senator, it's more from the point of view of the purview of the Board of Public Utilities being one to ensure to do the regulation for pricing. And that, I think is an appropriate one at this point with transfer stations, and--

SENATOR LYNCH: Do you think the BPU has been successful at regulating pricing of the solid waste industry?

MRS. WHITMAN: We in Somerset County have had some differences with them from time to time over the positions they've taken.

SENATOR LYNCH: Well, let me give you an example. And maybe you know -- you're familiar with it, because all of your waste is going into Middlesex County, where I'm a resident. Prior to the redirection of the waste flow by the State of New Jersey to the Edgeboro Landfill of garbage from Morris, Somerset, and Union County to the Edgeboro Landfill back in April of 1984, Edgeboro was getting a couple of hundred trucks a day -- maybe 250 trucks a day. They went up to 1500 trucks a day, which created a veritable nightmare. Just before the redirection order -- the year previous -- the Edgeboro Landfill received a rate increase based upon a flow of -- I don't know

what the number was -- but about 300 trucks a day, whatever that translates into -- a couple of thousands tons a day maybe, or 1500 tons a day. They got a rate increase based upon that flow. They then got a redirection of flow three to four times what they had been receiving, with no incremental expenses -- additional expenses; very few new employees, a little bit more ground to cover, period. BPU looked at that cursorily, and said that even though there were handshake contracts with family-owned companies -- seven or eight of them -- that showed where all these moneys were going, and even though it was pretty clear that there was no way you could make anything other than a substantial profit with those circumstances, that they found no excess and in fact, in the very near future after that, they approved another increase.

When the Department of Environmental Protection, through its leadership, clearly indicated to some of us at this very time -- in 1984 -- that we should be getting a rollback. And the number was something in excess of \$10 million then. And somehow or other we're trying to intimate that the BPU has a handle on this problem, and is regulating.

Have you experienced this, and have you seen this unfolding, and do you think the BPU is on top of legitimate rate-making for the solid waste industry?

MRS. WHITMAN: Senator, I think I've run into problems with both the BPU and the DEP in the whole area, I think because it is so new. I think there is a real case to be made for putting all solid waste into the Department of Environmental Protection because it handles so much of that in the regulatory sense now. As I said before, I am not at this point in a position, not having thoroughly studied it -- the actual question of whether or not it should happen-- That's something that I think there is certainly a good case to be made for it as the regulations currently stand, and as the law currently reads, there is a role for the BPU at this point. But that may well change.

SENATOR LYNCH: Do you know who's regulating the recyclers now?

MRS. WHITMAN: The recycling industry, it seems to me, is one that falls between the cracks. We have certainly had a problem as freeholders in answering our citizens who are--

SENATOR LYNCH: Is that a crack or is that a gap? A wide one.

MRS. WHITMAN: It seems to be a fairly wide one, quite frankly, Senator.

SENATOR LYNCH: Again, we're talking about the system; maybe it's the system that's wrong or the structure that's wrong, but we have tight regulations on the solid waste industry, and we put through all these laws that say that you have to check out everybody's pedigree from here to five generations ago. And the very people that we've screened out of the industry are now back in as recyclers with no regulation and no oversight. And all the same names are back in business, doing what they were doing five, six years ago. Have you seen that in Somerset County?

MRS. WHITMAN: I would hope that is something that-- I think we're in pretty good shape with our recyclers at the moment, but yes, of course. I think that's something that the Senate and the--

SENATOR LYNCH: Have you seen some familiar names coming back into the picture?

MRS. WHITMAN: Yes, they still come back.

SENATOR LYNCH: You indicated before-- You served on the board of freeholders for how long?

MRS. WHITMAN: Five years. It's the beginning of my sixth.

SENATOR LYNCH: Then you've had a lot of involvement with solid waste.

MRS. WHITMAN: Yes sir. I have not been the freeholder in charge of solid waste, but as freeholder director

for the past two years I was very much involved with the negotiations.

SENATOR LYNCH: And you indicated before -- and this isn't meant as an attack, but we all have problems, and this is an attack maybe at the structure of the system, and I'm not saying that you did anything wrong insofar as Somerset County was concerned; maybe you did everything right. I'm not sure -- but you said that Somerset County had-- That you were looking at the long-range picture in terms of your role on the BPU, and you think you have some vision down the road. Who had vision down the road in Somerset County in the early 1970s when they first got reports from their consultants saying they needed some landfills?

MRS. WHITMAN: Not being on the board at that time, Senator, I wouldn't try to answer that.

SENATOR LYNCH: But you're privy to that. You know that that was recommended back in those days.

MRS. WHITMAN: I know they've been looking-- It's a little bit like the courthouse, Senator, that had been something that had been seen as a need for 15 years before I went on the board, and it's now open. That was my responsibility.

SENATOR LYNCH: And the Somerset County Solid Waste Plan has been amended any number of times during the course of the 1980s?

MRS. WHITMAN: Yes. Yes, sir.

SENATOR LYNCH: And they've had any number of studies as to where to site the landfill.

MRS. WHITMAN: And as you know, we have sited a landfill.

SENATOR LYNCH: Oh yeah--

MRS. WHITMAN: We have amended our solid waste management plan to include a landfill -- potential landfill -- site.

SENATOR LYNCH: A potential landfill--

MRS. WHITMAN: Well, now it's up to the DEP.

SENATOR LYNCH: And a potential resource recovery site.

MRS. WHITMAN: No, we have not--

SENATOR LYNCH: But in fact, your solid waste plan is you have developed a transfer station which just went on-line, and you're shipping your garbage to Pennsylvania.

MRS. WHITMAN: We haven't amended the plan. Right. Yes, sir.

SENATOR LYNCH: With this long-range vision you have, what happens if the State of Pennsylvania gets approval from the courts as we have received in some areas of New Jersey almost totally, to keep out-of-state garbage from coming across their borders?

MRS. WHITMAN: Well, that's why Somerset County was the first county in the State to voluntarily mandate recycling countywide, and we also are in the process now -- we prequalified vendors, and now are about to have energy recovery, sir.

SENATOR LYNCH: That's not the question. The question has not to do with whether you do recycling; we're all doing recycling. And you, I'm sure, would admit, that if you reached Utopia, you're not going to recycle more than 20% of your solid waste.

MRS. WHITMAN: Oh no. Absolutely not. No, I'm just trying to explain, it's a three-part plan. And that is to answer that.

SENATOR LYNCH: Well, let's talk about the first part.

MRS. WHITMAN: The first part was recycling.

SENATOR LYNCH: The first part I asked was, what happens next year when Pennsylvania -- if Pennsylvania -- shuts you off, and Ohio shuts you off, and West Virginia shuts you off? Where do you go?

MRS. WHITMAN: Presumably, the State Department of Environmental--

SENATOR LYNCH: Back to Middlesex County I suspect, huh?

MRS. WHITMAN: If the State Department of Environmental Protection has given us the permits that we have requested, and we are completed with the studies that as you know are required by law in the State of New Jersey for the landfill site, if we have to, we have that site in Montgomery Township. We are also, as I started to say, we have prequalified three vendors, and it is hopeful that by the end of -- certainly by February -- we should have awarded a contract with a vendor to start construction on an energy recovery facility and we are starting the process. We have a site in mind, it is a number one site. We hope we can get the facility up relatively quickly there, and we will begin to--

SENATOR LYNCH: Which facility?

MRS. WHITMAN: Incineration. Cogeneration wall water burning; mass burn wall water technique.

SENATOR LYNCH: You hope to site this facility?

MRS. WHITMAN: Yes.

SENATOR LYNCH: When?

MRS. WHITMAN: We hope we award the contract; we have the site in mind; we have to go through -- it's the procedural thing now. It will be within--

SENATOR LYNCH: Well, have you identified the site?

MRS. WHITMAN: Yes.

SENATOR LYNCH: And you're going to hold public hearings on the subject?

MRS. WHITMAN: Yes.

SENATOR LYNCH: And when will they begin?

MRS. WHITMAN: They should begin within the next month and a half.

SENATOR LYNCH: And the same thing with the landfill?

MRS. WHITMAN: The landfill's already been done, Senator. I chaired those hearings. We've had the hearings. That's done.

SENATOR LYNCH: And when will the landfill be under construction or development?

MRS. WHITMAN: That's up to the Department of Environmental Protection now. They have 150 days to respond to the plan amendment that we sent to them and start the environmental and health impact statements.

SENATOR LYNCH: You mean this isn't going to be like the courthouse?

MRS. WHITMAN: This is not going to be like the courthouse, unfortunately. But I don't have as much control.

SENATOR LYNCH: I don't want to hold my breath though, do I?

MRS. WHITMAN: I think the DEP would move this pretty rapidly.

SENATOR LYNCH: My fear is-- And it goes not to maybe your management of Somerset County, it goes to the system that causes the counties, 21 of them and the Meadowlands, to have to make these decisions, and how we're spending billions of dollars to develop landfills and resource recovery plants when obviously we didn't have to spend that kind of money if it were handled properly 8, 9, 10 years ago and even later than that. Even in more recent years, even today, if it were handled differently we'd spend a whole lot less money.

And you see the same thing unfolding in different areas. We're now about to do the same thing with sludge. Most of the sewage-- Sewage in Somerset County goes in different directions I take it, huh?

MRS. WHITMAN: It goes primarily to the Somerset-Raritan Valley Sewage Authority, but that's the main sludge handler for the county. Not the only one. They burn theirs.

SENATOR LYNCH: How do they dispose of their sludge?

MRS. WHITMAN: They burn. They have incinerators on site there, and that's in Bridgewater.

SENATOR LYNCH: They have grandfather clauses? Because they certainly don't meet the pretreatment standards of the DEP that they implemented today.

MRS. WHITMAN: I would presume they do. I don't know that much about their operation, Senator.

SENATOR LYNCH: I obviously live in the wrong county. We can't get those same permits to do state-of-the-art, but it's all right to have them if you did it a long time ago, I guess. I have no further questions.

SENATOR O'CONNOR: Senator Ambrosio?

SENATOR AMBROSIO: Ms. Whitman, I'm interested in your statement that you believe that the solid waste industry is a public utility. What do you base that judgment on?

MRS. WHITMAN: I base it, really, on a presumption that it is an essential service to every homeowner in the State of New Jersey. We have to provide them with a way to dispose of their solid waste. And it is a responsibility to so do.

SENATOR AMBROSIO: Would you distinguish between the landfills and the collectors in terms of being a public utility?

MRS. WHITMAN: They're all an integral part of it, unless we change the technique where landfills no longer become necessary, and I can't see that happening for everything. It's a total picture.

SENATOR AMBROSIO: My understanding of a public utility is one where you grant a franchise to a company to provide a public service in a particular franchise area, and they are, in fact, a monopoly in that area. And in return for them having that monopoly, they submit themselves to rate regulation by the State. Would you agree with that?

MRS. WHITMAN: Basically, although as you know there have been some--

SENATOR AMBROSIO: Then how can you consider solid waste collectors as public utilities, when they're not granted any franchise, and the State expects the thousand solid waste collectors to have their rates regulated, but still demands that they compete with each other?

MRS. WHITMAN: I think the real question there, Senator, comes to the state of the law at present. Where you have a -- for instance, in Somerset County we have recently been granted a franchise -- we have been designated as a franchise district -- and we do control the waste flows. And as far as where the haulers have to take it, that is controlled now by the county. As you know, the DEP also has that ability--

SENATOR AMBROSIO: But that's only as far as the landfill. I'm really--

MRS. WHITMAN: That's as far as the transfer station is concerned.

SENATOR AMBROSIO: Yeah, I'm focusing on the collectors. As I understand the system now, every collector must file a tariff--

MRS. WHITMAN: Right.

SENATOR AMBROSIO: --and get that tariff approved by the BPU. And if there are a thousand different collectors, there are going to be 1000 different tariffs. They must charge what that tariff says if they're going to continue in business, otherwise they're violating the law.

How can we call them public utilities, when we then demand that they compete with each other, and are not protected by a franchised territory?

MRS. WHITMAN: I think they are-- I don't want to get into the argument too deeply, but I think they are protected somewhat in the sense of where they're directed to go, and the ability to control that, the cost that they--

SENATOR AMBROSIO: Well, that's only to dispose of, and not to collect.

MRS. WHITMAN: --have to assume. You mean in the districts they collect, no, that's true.

SENATOR AMBROSIO: But where they collect is not controlled or in any way mandated by the legislation. So, would you consider them true public utilities?

MRS. WHITMAN: Probably not, then, under that definition, no.

SENATOR AMBROSIO: Okay, thank you.

SENATOR O'CONNOR: Senator Van Wagner?

SENATOR VAN WAGNER: Thank you, Mr. Chairman. Good morning, Ms. Whitman, I'm sorry for being late. Obviously a lot of questions have been asked of you, and obviously you've probably expressed yourself on the issue of how important this particular nomination is that we're considering today.

MRS. WHITMAN: No one's asked that one directly.

SENATOR VAN WAGNER: That was not a-- You know, I didn't mean to lead you but-- You know, the face of the utility industry is changing as various kinds of deregulation comes into effect. And various sources of energy, particularly, have been deregulated. The crude oil industry, basically, has undergone a great deal of change; the gas industry is undergoing it yet. Pricing structures are changing. A very big component part of a rate that a utility charges has been the cost of the raw material that goes into that energy mix. And a great deal of changes are taking place in that whole industry. And ultimately, it's the feeling of many, at least perspective, that many of the nuclear facilities that are now presently operating will be phased down and phased out, and replaced with different types of energy delivery systems. One of the discussions particularly has been over the area of cogeneration. Okay. And I just wondered what your view was about what the role of the BPU would be in terms of setting rates for cogenerated electricity, and how you would in effect resolve what appears to be somewhat of a conflict

between the Department of Environmental Protection and the ability to move cogeneration along as a larger part of the total energy mix?

MRS. WHITMAN: I think that's something that gets back to a question that was asked earlier about the relationships between the Board of Public Utilities and the Department of Environmental Protection, because the issue you bring up is certainly a very important one, and again it speaks to that growing importance of the whole solid waste industry. Cogeneration, as you well know -- there are several aspects. And there is a cogeneration utilizing gas as well as utilizing garbage. And I think it's the--

SENATOR VAN WAGNER: And, in fact, diesel fuel.

MRS. WHITMAN: And diesel fuel, yes. And I think it's an issue that's going to have to be decided on a case-by-case basis, depending on what sort of cogeneration we're talking about. Because, many of the concerns where the BPU -- or the DEP regulation comes into it, particularly is on the environmental cleanliness of the procedures that are being put forth.

SENATOR VAN WAGNER: Well, obviously you know-- You've probably-- I've heard you answer questions many of which really dramatize and demonstrate the continuing conflict in many cases that exist between the BPU as a rate-setting organization and a regulator in one area and the DEP, who obviously have to be concerned with other areas of responsibility.

But, what I wanted to center on is what your view perspective, is of the place cogenerated energy will play in our particular State? Obviously, we've already built some plants. We haven't, but private companies have built plants. And as that becomes more of a reality, how will you view the rate-setting role that the BPU will play in that area?

MRS. WHITMAN: I think the BPU is going to play an increasingly important role in that, because it will be a

rate-setting type of a demand that's put on it. Because, I see this as an area that is certainly going to grow. I think the counties are going to look to it as a method from a garbage disposal point of view, and the utilities are going to come in, as they have in the past, looking for the most efficient and most cost-effective methods of providing the services and providing energy. And, as far as a conflict, I'm not sure it's really a conflict as, this point, figuring out how to work together. And I'm not sure that having more than one person or more than one agency looking at this whole area at this point is necessarily a bad idea. It is new, it is growing, and I think there are several different perspectives that have to be brought to play on it.

SENATOR VAN WAGNER: Yeah, but see, you'll have a responsibility, basically, to a ratepayer and to a utility's fiscal life. As energy replacements or energy transitions take place as the cost of energy fluctuates, and plants which were built by the issuance of debt are changed and restructured, there will be an issue of who's going to pay for that. You see, whether or not the ratepayer has to perhaps pay more in order to ultimately pay less, let's say, or, you know, who in your view, at least, -- or do you have any perception of where that balance should lie, in terms of restructuring the debt in relationship to restructuring the rates?

MRS. WHITMAN: Well, again as I-- Something I indicated earlier in response to a question was that, from my perception of it -- and I have not been a member of the Board and I really have a lot to learn as far as that is concerned in the regulatory process -- but--

SENATOR VAN WAGNER: Well, you see, I don't--

MRS. WHITMAN: --it would have to be-- I'm sorry, Senator.

SENATOR VAN WAGNER: I'm sorry, I just want to say to you that obviously you've not been a member of the Board, and

obviously that's good, in a way. But, when you become a member of the Board, I want to find out if you have in your mind, a particular direction, you know. One of the worst things I think that can happen is that when a person gets appointed to something that the first recollection in their mind is that, "When I become a member I will know more." You understand?

MRS. WHITMAN: Yes, absolutely. The way I would approach that kind of a situation is I would want to see a justification from the utility for -- if it's an increase or a decrease -- I'd want to see the justification for that. I'd want to ensure that the service was going to continue to be provided, and provided in a way that would be affordable to the ratepayer.

As far as what is a justifiable rate of return, those kinds of things would be, as I understand it at the moment-- There is a formula already in place in most instances that the staff puts towards the figures that are presented by the utility; that's something that would be decided on a case-by-case basis. But my basic philosophy would be I want to see a justification for the changes, and to see how that impacts on the overall provision of service and quality of service in the utility.

SENATOR VAN WAGNER: We see that there are people who say -- and what you say is very fine -- but there are people who have become more and more concerned about the makeup of the Board of Public Utilities, and many have said that it has become less of a consumer oriented, or even has less of a consumer concern than it has ever had historically. And I was wondering if you had that same perception?

MRS. WHITMAN: I've not looked at the Board from that point of view to know whether they had. I would have hoped that they would continue the balance that is necessary. It is absolutely essential that we continue to guard these-- These are essential services, and they are ones that have to be

provided in a way that people can afford. And that is our responsibility, to keep that balance. To keep the State growing, but--

SENATOR VAN WAGNER: Do you think you can balance much with three members on a Board of Public Utilities as the major regulatory system?

MRS. WHITMAN: Until I've been part of that process and trying to, I really can't answer that, Senator.

SENATOR VAN WAGNER: Thank you, Mr. Chairman.

SENATOR O'CONNOR: Thank you, Senator. Is there anyone here that wishes to address the Committee on the nomination? (no response) Okay, hearing no one, then may we have a motion to release the nomination? (motion for release) Okay, Senator DiFrancesco. (motion seconded) Seconded by Senator Codey.

MR. TUMULTY: Senator O'Connor?

SENATOR O'CONNOR: Yes.

MR. TUMULTY: Senator Ambrosio?

SENATOR AMBROSIO: Yes.

MR. TUMULTY: Senator Lynch?

SENATOR LYNCH: Yes.

MR. TUMULTY: Senator Codey?

SENATOR CODEY: Yes.

MR. TUMULTY: Senator Van Wagner?

SENATOR VAN WAGNER: Yes.

MR. TUMULTY: Senator DiFrancesco?

SENATOR DiFRANCESCO: Yes.

MR. TUMULTY: Senator Gormley?

SENATOR GORMLEY: Yes.

MR. TUMULTY: Senator Laskin?

SENATOR LASKIN: Yes.

MR. TUMULTY: The nomination is released.

SENATOR O'CONNOR: Congratulations.

(NOMINATION INTERVIEW CONCLUDED)



