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SENATE TASK FORCE TO REVIEW REORGANIZATION PLAN No. 001 (1991)

"Review the Provisions of Reorganization Plan No. 001 (1991)"

May 23, 1991
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF THE TASK FORCE PRESENT:

Senator Daniel J. Dalton, Chairman
Senator Richard Van Wagner
Senator Paul Contillo
Senator Walter Rand
Senator Leanna Brown
Senator C. William Haines
Senator Henry P. McNamara
Senator John O. Bennett
Senator William E. Schluter

ALSO PRESENT:

Mark T. Connelly
Mark O. Smith
Office of Legislative Services
Aides, Senate Task Force to Review
Reorganization Plan No. 001

* * * * *

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SENATE HEARINGS

before

SENATE TASK FORCE TO REVIEW REORGANIZATION PLAN NO. 1001 (1991)

Review the provisions of Reorganization Plan No. 1001

May 3, 1991
Room 434
U.S. House of Representatives
Washington, New Jersey

MEMBERS OF THE TASK FORCE PRESENT:

Senator Richard J. Durkin
Senator Richard J. Durkin
Senator Richard J. Durkin
Senator Richard J. Durkin
Senator Richard J. Durkin
Senator Richard J. Durkin
Senator Richard J. Durkin
Senator Richard J. Durkin
Senator Richard J. Durkin
Senator Richard J. Durkin

ALSO PRESENT:

Mark T. Connelly
Mark T. Connelly
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Mark T. Connelly
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Mark T. Connelly
Mark T. Connelly
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Mark T. Connelly

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1000 New Jersey
Washington, New Jersey



New Jersey Senate

TRENTON

NOTICE OF A PUBLIC HEARING

The Senate Task Force to Review Reorganization Plan No. 001 (1991) will hold a public hearing on Thursday, May 23, 1991, beginning at 10:00 a.m. in Room 424, State House Annex, Trenton, New Jersey.

Persons wishing to testify may contact either Mark Connelly at (609) 292-7676 or Mark Smith at (609) 984-7381.

Senate President John Lynch has appointed a Senate Task Force, consisting of the combined memberships of the Senate Environmental Quality Committee, the Senate Transportation and Public Utilities Committee, and the Senate Land Use Management and Regional Affairs Committee, to review the provisions of Reorganization Plan No. 001 (1991).

Reorganization Plan No. 001 (1991), which was filed by the Governor with the Legislature on April 25, 1991, would transfer the Board of Public Utilities from the Department of the Treasury to the Department of Environmental Protection, transfer certain other functions of the Board of Public Utilities to the Department of Environmental Protection, abolish the Division of Energy Planning and Conservation in the Board of Public Utilities and transfer its functions to the Department of Environmental Protection, and transfer the rate regulation of the solid waste industry from the Board of Public Utilities to the Department of Environmental Protection.

Pursuant to the provisions of the "Executive Reorganization Act of 1969," P.L. 1969, c. 203 (C. 52:14C-1 et seq.), Reorganization Plan No. 001 (1991) will take effect 60 days from the date of filing with the Legislature, unless both Houses of the Legislature adopt a resolution disapproving the plan.

Issued 5/14/91



STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
CN-001
TRENTON
08625

JIM FLORIO
GOVERNOR

April 25, 1991

Honorable John A. Lynch
Senate President
New Jersey State Senate
State House Annex
Trenton, New Jersey 08625

Honorable Joseph V. Doria, Jr.
Speaker of the General Assembly
New Jersey General Assembly
State House Annex
Trenton, New Jersey 08625

Dear President Lynch and Speaker Doria:

RE: REORGANIZATION PLAN NO. 001 (1991) -- Transfer
of Functions to the Department of Environmental
Protection from the Board of Public Utilities

Enclosed for filing with the Senate and General Assembly this day is a Reorganization Plan for the transfer of certain functions of the Board of Public Utilities, now located in but not of the Department of Treasury, to in but not of the Department of Environmental Protection. This Plan is transmitted and filed with you in accordance with the provisions of the "Executive Reorganization Act of 1969," L. 1969, c. 203 (C. 52:14C-1 et seq.).

Pursuant to the provisions of the Executive Reorganization Act, I am charged with the responsibility to periodically review the structure of State government to determine whether changes in its organizational framework could result in more streamlined and efficient operations.

As you know, the role of the Board of Public Utilities has changed dramatically since its creation in 1911 under then Governor Woodrow Wilson. The nature and role of public utilities have also changed drastically. Some entities such as street railways no longer exist, while others such as solid waste collectors, disposal facilities and cable television have been added to the Board's jurisdiction in recognition of their increased role in today's society.

Reed
4-25-91
Jim Florio
Governor of the State of New Jersey

The role of our environmental laws has also increased dramatically. Clean air, clean water, the preservation of open space and many other environmental goals are important parts of maintaining New Jersey as an attractive place to live and work. As our understanding of environmental problems has increased, the role of energy production and conservation has become apparent. Environment and energy have become closely linked in New Jersey and throughout the world.

It is appropriate for the structure of State government to recognize the interrelationship of programs to protect the environment, conserve energy and regulate public utilities. The merger of functions accomplished by this Plan will facilitate the full integration of environmental and energy policy, and public utility regulation.

Under this Reorganization Plan, the Board of Public Utilities will be transferred from in but not of the Department of Treasury to in but not of the Department of Environmental Protection. Solid waste responsibilities will be consolidated in the DEP; the DEP Commissioner will prepare a single budget proposal for the DEP and for the Board, after weighing the Board's budget recommendations; and, the DEP will exercise certain administrative responsibilities now vested in the Board.

I believe it is important for New Jersey State government to continue its traditional commitment to the City of Newark, and State employee levels in Newark will not decrease as a result of the Reorganization Plan.

Also, in implementing this Plan, I have instructed the DEP Commissioner to pay particular attention to the needs of Board employees who reside in the Newark vicinity who cannot reasonably be asked to commute to Trenton. He will be conferring with appropriate employee representatives to implement this process.

To reflect the organizational changes proposed in this Plan, I am proposing that the name of the Department of Environmental Protection be changed to the Department of Environmental Protection and Energy and that the Board of Public Utilities be denominated the Board of Regulatory Commissioners.

This proposal will foster the implementation of fully integrated, efficient and coordinated environmental and energy policies which are based on the interrelationship of energy, environmental and public utility matters. The changes set forth in the Plan, while not abolishing any existing functions, will ensure more efficient and effective government and should lead to a reduction in expenditures.

Very truly yours,



JIM FLORIO
Governor



STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
CN-001
TRENTON
08625

JIM FLORIO
GOVERNOR

A PLAN FOR THE REORGANIZATION AND INTEGRATION OF
RESPONSIBILITY FOR ENERGY AND CERTAIN PUBLIC UTILITY
MATTERS WITHIN THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE REDESIGNATION OF THAT DEPARTMENT AS THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY.

TAKE NOTICE that on April 25, 1991, Governor James J. Florio hereby issues the following Reorganization Plan (No. 001-1991) to provide for the increased coordination and integration of the State's utility, environmental and energy policies by the transfer of functions from the Board of Public Utilities now allocated in but not of the Department of Treasury to in but not of the Department of Environmental Protection.

GENERAL STATEMENT OF PURPOSE

Pursuant to its present statutory authority, it is the duty of the Board of Public Utilities to regulate the public utilities of the State for the provision of safe, adequate and proper service including electric, gas, solid waste, water and sewers, telecommunications and cable television. In this role, the Board regularly considers environmental matters in consultation with the

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[Signature]
Secretary of the State

Reorganization Plan (No. 001-1991)

Department of Environmental Protection. Additionally, the Board is charged with evaluation of the State's energy needs to ensure the continued supply of energy at reasonable prices and to avoid the potential adverse effects of an insufficient energy supply on the economy and to the State's quality of life and its environment.

The purpose of this Reorganization Plan is to create a governmental structure that will promote the statutory aims of the Board and ensure that public utilities provide safe, adequate and proper service in conjunction with the complementary directives of doing so consistent with the statutory goals of environmental protection and energy management and conservation. In transferring existing functions of the Board of Public Utilities to in but not of the Department of Environmental Protection, this Plan recognizes the interrelationship of energy management planning and environmental protection on the one hand and the provision of safe, adequate and proper utility service by the electric, gas, water, sewerage, and solid waste utilities on the other. This Plan will foster the efficient implementation of a coherent public policy which advances a coordinated and integrated energy conservation and planning policy.

This Plan proposes that the Commissioner and the DEP assume certain administrative responsibilities of the Board. Another significant aspect of this Plan is the merger of the solid waste regulation responsibilities of the DEP and the Board. These

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actions will promote the policy, regulatory and administrative integration of these two bodies, and thereby advance a coordinated approach to environmental and utility regulation and energy planning, and be more economical. This Plan also proposes that the DEP be renamed the Department of Environmental Protection and Energy to better reflect its new role, and that the Board be renamed the Board of Regulatory Commissioners.

THEREFORE, in accordance with the provisions of the "Executive Reorganization Act of 1969," L. 1969, c. 203 (C. 52:14C-1 et seq.), I find with respect to each reorganization included in this Plan that each is necessary to accomplish the purposes set forth in Section 2 of that Act and will do the following:

1. It will promote more effective management of the Executive Branch and its departments because it will group similar functions within already existing agencies;
2. It will promote the better and more efficient execution of the law by integrating the State's utility, environmental and energy public policies;
3. It will group, coordinate and consolidate functions in a more consistent and practical way according to major purposes;
4. It will reduce expenditures by more closely aligning similar functions; and

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5. It will eliminate duplication and overlapping of effort by consolidating certain functions and result in a savings of State funds.

THE PROVISIONS OF THE REORGANIZATION PLAN ARE AS FOLLOWS:

1.a. The Board of Public Utilities, including the functions, powers and duties assigned to it pursuant to Reorganization Plan No. 002 (1989) (C. 21 N.J.R. 1937, July 17, 1989), created pursuant to L. 1911, c. 195 as amended (C. 48:2-1), and allocated in but not of the Department of Treasury pursuant to L. 1987, c. 365, §9 (C. 52:18A-2.1), together with all of its functions, powers and duties, is continued and is transferred to and constituted as the Board of Public Utilities in but not of the Department of Environmental Protection, except as hereinafter provided.

b. The Board of Public Utilities shall remain constituted as a three-member board as now provided by law (C. 48:2-1), whose final agency decisions, consistent with other applicable principles, continue to be appealed to the Appellate Division of the Superior Court, except that pursuant to the authority conferred by N.J.S.A. 52:14C-5 (i) the President of the Board shall be redennominated as Chairperson; and (ii) in the case of a vacancy on the Board, the Governor may appoint an acting member from among the employees of the DEP or the Board by filing a letter evidencing the

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appointment with the Secretary of State, which appointment shall be effective for no more than 120 days and which shall then expire, or until such time as a member is nominated, confirmed, appointed and qualified to serve, whichever is sooner.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will promote a closer cooperation with the Department of Environmental Protection and further the important goals of coordinating and integrating the State's utility, environmental and energy policies to ensure the provision of safe, adequate and proper service from utilities consistent with the achievement of and energy conservation goals. Also, vesting the Governor with a limited authority to name an acting member to the Board of Public Utilities, a power which already exists with respect to the Commissioner of Environmental Protection, will ensure the Board's ability to carry out its important regulatory functions without delay.

2.a. The Division of Energy Planning and Conservation in the Board of Public Utilities, Reorganization Plan No. 002 (1989), ¶I(1)(a), created pursuant to L. 1977, c. 146 as amended (C. 52:27F-7), together with all of its functions, powers and duties, is abolished and all of its functions, powers and duties are transferred to and vested in the Department of Environmental Protection and the Commissioner thereof.

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b. There shall be created in the DEP an Office of Energy Planning which shall be assigned those responsibilities the DEP Commissioner deems appropriate, and which may include any functions, powers or duties formerly assigned to the Division of Energy Planning and Conservation.

c. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Division of Energy Planning and Conservation in the Board of Public Utilities, the same shall mean and refer to the Department of Environmental Protection and the Commissioner thereof.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will confer on the Department of Environmental Protection and its Commissioner the necessary authority to implement the important goals of coordinating and integrating the State's environmental, utility and energy policies. This reorganization will also promote and assist the development and utilization of cogeneration of energy and programs of energy conservation for both residential and commercial users. This Plan will provide for the collection and dissemination of energy data for the benefit of promoting the economy.

3.a. The Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the

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Board of Public Utilities, Reorganization Plan No. 002 (1989), ¶I(1)(a), created by L. 1977, c. 146, §10 (C. 52:27F-12), together with all its functions, powers and duties as set forth in L. 1977, c. 146, §11 (C. 52:27F-13), is continued and transferred to and constituted the Advisory Council on Energy Planning and Conservation in the Department of Environmental Protection.

b. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the Board of Public Utilities, the same shall mean and refer to the Advisory Council on Energy Planning and Conservation in the Department of Environmental Protection.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will provide the Commissioner of the Department of Environmental Protection with a body that can advise him regarding the relationship between the State's economic, environmental and energy policies.

4. The responsibility and authority vested in the President of the Board of Public Utilities to act as chairperson of the Energy Master Plan Committee, established by L. 1987, c. 365, §14 (C. 52:27F-14), pursuant to Reorganization Plan No. 002 (1989), ¶ III.1., is hereby vested in the Commissioner of the Department of

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Environmental Protection; the responsibility and authority of the President of the Board of Public Utilities to serve as a member of the Energy Master Plan Committee is continued.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will help ensure close coordination and integration of the State's environmental and energy policies.

5. The responsibility and authority for requiring the periodic reporting by energy industries of energy information, and the analysis and reporting of same, set forth in L. 1977, c. 146, §16 (C. 52:27F-18), is transferred to the Department of Environmental Protection and the Commissioner thereof.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this transfer is consistent with the centralization of energy data collection and dissemination responsibilities within the Department of Environmental Protection as an aid to integrating energy, environmental and economic policy.

6. All responsibility and authority now vested in the Board of Public Utilities for the regulation of solid waste under L. 1985, c. 38 (C. 13:1E-136 et seq.), as amended, or under any other law or regulation, including, but not limited to rate-

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setting, is hereby continued and transferred to the Commissioner of the DEP.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will help ensure the close coordination and integration of the State's environmental and public utility policies.

7. All responsibility for budget, fiscal and personnel matters (including adoption of a Code of Ethics as required by the State Conflicts of Interests Law (C. 52:13D-23) and acting as appointing authority with all of the rights thereunder) and day-to-day administration, including contracting and rulemaking authority in these areas, including such authority specifically conferred on the Board by N.J.S.A. 48:2-2, 3 and 7, is hereby transferred from the Board of Public Utilities to the Commissioner of the Department of Environmental Protection; except (i) that the Board shall make annual budget recommendations to the DEP Commissioner for inclusion in the DEP's annual budget request to the Governor and Treasurer, subject to the review of the Commissioner, after due consideration by the DEP Commissioner of the resources needed by the Board to ensure its ability to carry out its assigned functions under law; and (ii) that the Board will adopt and recommend a Code of Ethics required by the Conflicts La to the Commissioner for his consideration and approval and transmittal to the Executive

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Commission on Ethical Standards with such modifications, if any, as the Commissioner deems appropriate; (iii) that the Board will be responsible for the allocation of its budget and the assignment of Board personnel; and (iv) that BPU employees for payroll, administrative and other personnel related practices shall remain and continue to be categorized as BPU employees. Upon the request of the Board, the DEP Commissioner shall make available Department resources to the Board to carry out its responsibilities.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this consolidation of budget and administrative authority in the DEP Commissioner, to be exercised in consultation with the Board as set forth above, will result in increased and more effective management of the Board's operations in light of the transfer of the Board to the DEP. The shifting of administrative functions from the Board will also permit the Board to focus on its policy and regulatory responsibilities.

8. a. The Board of Public Utilities is denominated the Board of Regulatory Commissioners. I find that this name change, authorized by N.J.S.A. 52:14C-5, will better reflect the responsibilities of the Board and its allocation within a renamed Department of Environmental Protection and Energy, infra, ¶9.

b. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding

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or otherwise, reference is made to the entities recited in paragraphs 1 to 7 above to the Board of Public Utilities and the President thereof, the same shall mean and refer to the Board of Regulatory Commissioners and the Chairperson thereof.

9. a. The name of the Department of Environmental Protection is denominated the Department of Environmental Protection and Energy. I find this name change, authorized by N.J.S.A. 52:14C-5, will better reflect the Department's responsibilities for energy and public utility matters and better inform the public of the Department's role.

b. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise, reference is made to the entities recited in paragraphs 1 to 7 above to the Department of Environmental Protection or the Commissioner thereof, the same shall mean and refer to the Department of Environmental Protection and Energy or the Commissioner thereof.

10. All transfers directed by this Plan shall be made in accordance with the "State Agency Transfer Act," L. 1971, c. 375 (C. 52:14D-1 et seq.).

11. All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies. A copy of this Reorganization Plan

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was filed on April 25, 1991 with the Secretary of State and the Office of Administrative Law (for publication in the New Jersey Register). This Plan shall become effective in 60 days on June 24, 1991 unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than June 24, 1991, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

TAKE NOTICE that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the public laws and in the New Jersey Register under a heading of "Reorganization Plans."

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SENATOR DANIEL J. DALTON (Chairman): Ladies and gentlemen, if we can take our seats, we'd like to get the hearing started.

As you well know, this is a Task Force that was created by the Senate President, Senator Lynch, composed of the members of the Environmental Quality Committee, the Transportation Committee, and the Land Use Committee in order to review the Governor's BPU/DEP merger, Reorganization Plan. As you well know, this Plan was filed by the Governor with the Legislature on April 25, 1991. The Plan would transfer the Board of Public Utilities from the Department of the Treasury to the Department of Environmental Protection. It would transfer control of the BPU's budget and staff to the Commissioner of the Department of Environmental Protection. It would transfer certain other functions of the Board of Public Utilities to the Commissioner of the Department of Environmental Protection. It would abolish the Division of Energy Planning and Conservation in the Board of Public Utilities and transfer its functions to the Department of Environmental Protection. It would also transfer the rate regulation of solid waste collection and disposal services from the Board of Public Utilities to the Department of Environmental Protection.

Under the terms of the 1969 Executive Reorganization Act, a reorganization plan submitted to the Legislature assumes the force and effect of law in 60 days, unless both Houses of the Legislature pass a concurrent resolution disapproving it. Unlike the legislative process, the procedure established in the Executive Reorganization Act is a "take it or leave it" procedure. There is very little room allowed for debate, consideration, and modification of a reorganization plan.

Nonetheless, because the Plan alters procedures and structures that have been in place for decades, and because this Plan entails a major refocusing of energy utility

regulation, solid waste management, and other environmental policies, and because the Plan addresses substantive issues which are more appropriately considered in the light of day of the legislative process, rather than the dark of night of a reorganization plan, the Senate intends to look closely and publicly at this Plan and the policies that it advances.

Before we move on to any comments which any other members of the Task Force may want to make, and the testimony itself, I'd like to make, if I could, and with the permission of the Task Force, some general observations concerning the Reorganization Plan.

First, and this is part of the public record, I am not a fan of reorganization plans. Some might remember that in 1986 I went to court to oppose a reorganization plan submitted by the previous Governor, Governor Kean, concerning some of the very same issues contained in the Reorganization Plan before us today. I lost in court, but I still believe in the principle which I advanced in that case; that broad and substantive policy should be advanced through the legislative process, and changes in broad and substantive policy should be advanced through the legislative process.

You know, all of us know that that process oftentimes is slow and it's cumbersome. But it alone allows for the open, thorough, and lengthy public discussion and consideration which the issues in this Plan deserve.

As I read and studied this Plan I couldn't find any reason why the changes contemplated in the Plan needed to be accomplished immediately. Nothing in the Plan needs to be done by June 25. Therefore, I must ask the rhetorical question: Why not submit the proposal in the form of legislation and allow the legislative process to take its course? What's the hurry for?

In addition to my questions about whether the Reorganization Plan is an appropriate vehicle to accomplish the

Plan's changes, I believe the Plan raises a number of issues which I find worthy of note. Let me outline them here very briefly for you, because I know many of you will address these same issues.

First, independence: If the Board of Public Utilities is transferred to the Department of Environmental Protection and becomes part of the DEP without its independence clearly and absolutely defined, including its staff and budget, New Jersey will be the only state which does not have an independent utility regulatory commission, removed and insulated from the political process. The Plan indicates that the Commissioner of the DEP will control the BPU staff and budget. If the BPU does not control its staff or budget, it seems clear that the Board's independence will not be maintained.

The present system of utility regulation, for all of its faults, has been incrementally built up over 70 years, and the Reorganization Plan does not make clear what the present system will be replaced with.

Secondly, temporary terms: The Plan authorizes the Governor to appoint an interim member to the Board of Public Utilities from among the employees of the DEP for a period of 120 days and until a permanent member is appointed and qualified. Current law requires that members of the BPU must exclusively devote their time to their duties as BPU Commissioners. This raises the question regarding whether the DEP employee would have to resign his or her permanent position for a temporary appointment. It also raises additional questions regarding the independence of the Board of Public Utilities, especially given the fact that there is no doubt that the DEP employee works for the DEP, not the Board of Public Utilities.

Current law also requires that no more than two BPU Commissioners be of the same political party. If there are two

Commissioners of the same party, as there are currently, and the Commissioner of DEP is of the same political party, it's unclear whether the requirement would still be in effect, or whether the Commissioner could appoint an interim Commissioner of the same political party, thereby removing, for at least four months -- for a four-month period, and probably longer -- any political balance in the membership of the Board of Public Utilities as contemplated in the law.

The Plan doesn't answer these questions and, in addition, providing for part-time terms is probably beyond the scope of the Executive Reorganization Act, and therefore isn't legal.

Another issue that this Plan raises is the budget. The Plan doesn't elaborate how the budgets of the DEP and the BPU will be maintained. Currently, the Board is authorized by law to assess the utilities such charges as are necessary to fund the Board's regulatory responsibilities for the fiscal year. Given the Commissioner's control of the BPU budget, it's unclear whether utilities will be funding DEP functions in addition to BPU functions.

Another issue is the burden on the DEP Commissioner. As you well know, those burdens are substantial. The Department has been the subject of intense criticism for several years. This Department requires the thoughtful and full consideration of the Commissioner, as well as a major infusion of new management to address existing program problems. Adding energy planning and BPU coordination to the DEP Commissioner's responsibilities at this time would make the job impossible. It could, in fact, impede the solving of the Department's many problems. Even if it's concluded that the current Commissioner is up to the task, future Commissioners may not be.

Another issue raised in the Reorganization Plan is the connection between energy and environmental policy. The stated

rationale for moving the Division of Energy Planning in the BPU into the DEP is that there is a close relationship between environmental and energy policies and issues, and that merging the Division into the Department will improve and coordinate the making of decisions in both areas.

Certainly energy policy and energy planning decisions have environmental aspects and certainly have environmental consequences. But the same is also the case with decisions made by the Department of Transportation, whose policies can destroy wetlands, encourage the use of polluting cars, and discourage the use of mass transportation, for example. The Department of Community Affairs, whose building codes can discourage energy efficiency and their policies can encourage suburban sprawl, the State Planning Commission, the Department of Commerce and Economic Development, and many other State departments; indeed, as strong an argument can be made on environmental grounds for bringing certain aspects of transportation policy, or any of the policies of any of those other departments, and incorporating them into the DEP.

Another issue is checks and balances. From a substantive public policy standpoint, it makes sense to keep purely environmental decisions separate from energy and utility regulation decisions. The checks and balances of two independent agencies looking at the same issue are healthy, and they create a healthy tension. For example, some electric utilities are now being required to prepare and finance the cleanup of former coal gasification plants. Since this is a controversial decision, even from an environmental standpoint, it will be important for a completely independent BPU review of this decision to determine its financial impact and make sure it makes economic sense as well. The same would be the case for the issue of EMF, or for the DEP proposed requirement to build cooling towers for the Salem nuclear plants.

Combining energy and environmental policy in one Department will also lead to questions as to which policy is driving the other. In the current political climate, energy and utility interests can reasonably worry that energy policy decisions will be driven by environmental concerns. It is conceivable, however, that in the future, under different circumstances and a different administration, energy policy could be driving environmental decisions, at which point environmental groups could be justifiably concerned.

Consumer protection: It can also be argued that from a purely consumer protection basis, and based upon DEP's record-setting fees for environmental regulatory programs, that the DEP may be the most inappropriate Department in which to place the BPU. In the past, DEP has shown no hesitation in imposing higher fees on industry to finance environmental regulatory programs. As a Department with only a thin mandate to consider the effect of high program costs and permit fees on the economy or the affordability of goods and services, these fees have withstood the often violent criticism they provoked. Given its widely supported mission to protect the environment at virtually any cost, DEP's approach to economics can be justified. However, the same approach, if applied to electricity, natural gas, solid waste, and water costs could be disastrous. The DEP simply has no history of balance and compromise in the setting of fees; qualities that are necessary in setting utility rates, and keeping those rates, "reasonably low."

Solid Waste: The Plan would fundamentally reshuffle the State's approach to the regulation of solid waste. The solid waste industry has been treated as a public utility for the past 20 years. While there is growing support to remove rate regulation from the solid waste collection industry, this Plan would transfer the rate-making function to DEP agency personnel who are engaged in environmental regulation of the

solid waste industry. This, in effect, removes any balance between environmental regulatory decisions driven by the mission of DEP to protect the environment, and utility rate-making authority driven by the BPU mission to establish a fair and economic relationship between the consumer and the producer.

Overcentralization of economic power: DEP exerts a significant influence over New Jersey's economy. The Department's influence over land use policy constitutes a significant determinant of future development. In addition, future development will be heavily influenced by the manner in which DEP distributes funds for such basic infrastructure improvements as sewage treatment plants, solid waste disposal facilities, and wastewater collection systems. Further, DEP's permitting processes and enforcement powers may heavily influence business location or expansion decisions.

The BPU, as everyone well knows, also exercises significant economic power in determining how much energy is produced, the rates at which it will be sold, and in determining which parts of the State will be allocated the most power.

Together, therefore, these two agencies may well exercise more power over the State's economy than all other executive departments. This potential gives rise to one serious question: Is it good public policy to allow one Department, controlled in essence by one individual, to exercise the combined power of DEP and BPU, or should such power remain in the hands of separate directors?

Cost savings: One stated rationale for the merger is that it will save the State taxpayers money. One document prepared by the Commissioner of the Department of Environmental Protection indicates that the savings may amount to \$3.9 million. Yet it is not clear if these savings are actual savings; that is, a reduction in existing costs to run separate departments, or avoided future costs.

If there are real savings associated with the merger, then I will expect to see either the DEP's budget go down, or the BPU's budget go down. And if the BPU's budget goes down, I would expect to see the amount assessed by the BPU against the State's utilities, which the consumers pay in rates, also go down.

In time of fiscal crisis, it sells well to argue that this Plan will save money, but it hasn't been demonstrated to me how this Plan is going to save one dollar.

This Plan raises these and many other questions, and I look forward to a productive hearing.

I would like now to turn to any other members of the Task Force, if they would like to make any statements. If not, I would like the opportunity to introduce them to everyone.

On my far right -- not politically, necessarily, but sometimes that works out -- is Senator Bill Schluter. Next to Bill and to his left is Senator Leanna Brown. Next to Leanna is Senator Bill Haines. Next to Bill is Senator John Bennett.

To my far left -- and this usually works out -- is Senator Paul Contillo, the Chairman of the Land Use Committee. To his right is Senator Walter Rand, Chairperson of the Transportation Committee. And to his right, to my left, is Senator Rich Van Wagner, Chairperson of the Environmental Quality Committee.

I want to thank everyone for joining us here today for what I think will hopefully be a productive, and certainly, a lively discussion about this Reorganization Plan.

Senator Bennett?

SENATOR BENNETT: Mr. Chairman, certainly, to expound upon your initial comments at this point, I think, would be somewhat -- almost a backwards approach. You have hit upon many of the highlights that I think those of us who have had the opportunity to review the Reorganization Plan have focused our attention on.

I'd like to just get clear in my mind in the very beginning exactly what are the parameters as to what we would be able to accomplish. Is it, in fact, the function of the Legislature that we, under this Reorganizational Plan, can either take it or leave it? Or, do we have the authority to make recommendations that the Plan get rewritten with certain specific recommendations, and a failure to do that results in us ultimately only being able to take a position of rejecting it? Or, can we make suggestions, send them to the Governor's Office, and ask for them to be incorporated?

SENATOR DALTON: I'll answer that in two ways: Legally, it is take it or leave it. Practically, I hope that the Governor's Office would be receptive to accepting changes suggested by the Task Force. As you well know, if, in fact, we determine that we should leave it, we have until June 25, in both Houses, to basically say, "No." If we determine that we want to take it as is, we have until that same-- Well, actually it doesn't need any action by the Legislature. It would just go into effect. I'm hopeful that this administration will have an open mind with regard to any suggestions that come from this Task Force as a result of this hearing today.

SENATOR BENNETT: Thank you.

SENATOR DALTON: The first person on our agenda is the DEP Commissioner, Scott Weiner. Commissioner Weiner?

COMMISSIONER SCOTT A. WEINER: Good morning, Senator Dalton and members of the Committee -- or, Task Force. I want to thank you for the opportunity to come before you today to participate in this review. I appreciate the opportunity, on behalf of the Governor, to discuss Reorganization Plan No. 001. I think it is an important process that we are embarking upon, and I want to take just a minute to talk about the use of the Executive Reorganization Plan.

This is a tool, if you will, that has been available to Governors of many administrations for over 20 years in New Jersey. It was first enacted in 1969. As you pointed out, Senator Dalton, you're no stranger to the use of the Executive Reorganization Plan. In enacting the statute that allows for the filing of a Plan, we believe that the Legislature appropriately recognized the administrative responsibilities of a Governor to propose changes in the structure of State government to promote efficiencies as indicated by the Act. But the mere use of the Act in the defined Reorganization Plan is in no way intended to cut out, or limit, the concept of consultation or deliberation. Today's proceeding is certainly indicative of that.

Senator Dalton, you rhetorically asked the question, "What's the rush?" The Governor believes that this is a Plan that makes sense. It's a Plan that makes sense in the realities of 1991 and right now, but in no means should anybody on the Committee think that this is strictly a take it or leave it proposition. Clearly, if the members of this Task Force and your colleagues in the Legislature want to make suggestions, those suggestions, I'm sure, will be considered by the Governor and will get his utmost attention.

I know this is not a new subject to most of the members of the Task Force, but I'll ask you to bear with me for just a couple of minutes while I talk about the origins of the Plan that is before you today. I think it is important as we discuss it, to understand the context in which it arose, and the goals which it seeks to achieve.

This Reorganization Plan emanates from a directive the Governor issued some six or seven months ago in the late fall of 1990 to the Audit Commission, as well as to the members of the Cabinet, that we all should review the current structure of State government that we operate in, and that we should identify opportunities for streamlining and efficiency.

The Governor cited a number of objectives that he wanted to try to achieve. These included: better coordination between State government agencies and their functions; the elimination of unnecessary duplication of functions; and responsibilities leading to the savings of taxpayer money.

This Plan reflects those objectives and, we believe, achieves four specific goals. They are: It, in fact, streamlines government. It promotes and enhances energy policy and puts the responsibility and accountability for energy policy at the Cabinet level, where we think it belongs. It fosters the efficient implementation of a coherent public policy in the areas that are the subject of the Reorganization Plan. And it does, in fact, save money, and will produce real savings in money that will emanate or be illustrated in two aspects. You are correct, Senator Dalton, that if savings are to be achieved, they should flow back to ratepayers by reduction in the assessment that is imposed upon utilities.

In addition, effectively for the past five years there has been a hiring freeze, either self-imposed by the Commissioners of the BPU or by Governors, which has inhibited the hiring -- in fact, all but eliminated the hiring -- of technical staff who conduct rate cases. For example, in some cases where we should have upwards of seven, eight, nine, possibly ten accountants, or rate analysts reviewing rate cases, we now have three.

The availability of these savings will achieve another goal of the Governor, which is to take the resources of State government and reallocate them from areas of duplication to areas where the resources can match existing needs.

This Plan that is presented to you is premised on a thought that there is no one correct way to organize State government. There could be any one of a number of different models. Heaven knows that State government in this State, and other states, emerges and it grows, and it changes to reflect the times and temperaments.

There are many of us who would look at the issue of energy policy and planning and would argue for the appropriateness as a matter of governmental structure -- pure governmental structure -- of a Department of Energy; Cabinet rank, fully staffed, to be able to analyze and promote and discuss broad-based energy policy. It's our belief that that simply isn't possible in the realities of the 1990s. So, from that premise, and given the importance of energy policy and planning to this Governor and to this State -- not to speak of this country, particularly from the experiences that we all had during the past year -- the issue is how can we take this mix of issues, and organize State government in a way that is streamlined, efficient, and that provides for the best possible synergies and organizations?

I have used the word, "synergy" a lot since January when this Plan was first announced. I'll try to limit my use of it today. But I want to cite briefly a U.S. GAO conference report that was published just recently. In summarizing a conference the GAO held entitled, "Meeting Energy Challenges in the '90s," the task force and the participants noted something which, Senator, you pointed out in your remarks. Virtually every process which requires energy produces waste. That waste can threaten human health and the environment. Energy policymakers must come to understand environmental effects.

I would suggest that throughout this country, both at the Federal level and the State level, and throughout this State, in terms of the preparation and the promulgation of energy policy, for all too long, energy policymakers have not paid appropriate cognizance to the environmental effects of energy production.

This Plan that is before you today really has three aspects to it, and I would like to touch upon each of those briefly. Those three aspects are: the economic regulation of

the solid waste energy, the responsibility and accountability for energy policy and planning, and the economic regulation of public utilities.

First with respect to solid waste: This is a topic which is well-known to every member of the Legislature, so I needn't and I won't go through the history of the 20-year experiment of economic regulation of the solid waste industry, both as collectors and in the disposal industry, nor the initiatives that this administration, along with many of your colleagues in the Legislature, have advanced to bring about the reform and the abolition of economic regulation of the solid waste collection industry. This is not a new idea to bring the Departments together -- the two Divisions together. It was discussed in the 1970s, while Joel Jacobson was my predecessor at the BPU. It was discussed recently while Commissioner Hughey had the job I now hold. Each of those times, for various reasons, it was not consummated. I would respectfully suggest that that had to do with factors other than checks and balances, although I understand that that is a fair and a real concern.

With respect to the process that will take place, let me point out that at least since the spring of 1990, the Division of Solid Waste at the BPU, and the Division of Solid Waste Management at DEP, have, in fact, worked as one unit. That started during the task force studies and has since carried on today. They are housed in different departments; they carry on different responsibilities. But in many instances the Legislature has, in fact, imposed similar responsibilities on those agencies. Waste flow waters, for example, is something which has to be carried out jointly by both agencies.

We understand and respect the concern of both independence in this issue, as well as process. Let me say, so that there is no misunderstanding, that the process of rate

setting under the Reorganization Plan will be exactly the same as it is at the BPU. Rate Counsel will continue to play the role that it has played. The parties will continue to have the obligations and the burdens imposed by statute in order to establish rates. The standards for the setting of those rates remain the same.

What changes is, at the staff level there will be opportunities for streamlining and consolidation, and admittedly, the rate-making responsibility will fall upon one Commissioner rather than three, for solid waste. Having had the responsibility both at the BPU and now at the DEP, to carry on those responsibilities, I would suggest that a single Commissioner decision making is appropriate, particularly when we realize that rate making will more likely than not be limited to the disposal industry, which itself is going through evolutions, and also recognize that single Commissioner rate making is not unique even in this State. I'll just point to the Department of Insurance.

So one may argue whether multimember boards would be appropriate for the solid waste industry, but there is also a history of the structure. But, most importantly, I want to emphasize that the role of Rate Counsel, the standards to be applied with respect to the setting of rates in the solid waste industry, remain the same. We will achieve, I believe, significant streamlining.

Energy policy, the second component: A basic driver of this Plan has been the Governor's commitment to enhance and promote the role of energy in State government policy. This is a commitment that has been carried out throughout the start of this administration. I have spoken to many members of this Committee and this Task Force about those issues. By taking the energy responsibilities and making them the responsibility of the Commissioner of the newly structured DEPE, the Governor believes that not only will we be enhancing the role of energy

policy and putting accountability where it belongs, but also providing the opportunities for parties to understand the implications of the decisions they make.

Now, I mentioned before the GAO conference and its conclusion that policymakers can't ignore the inextricable links of energy policy and the environment. I appreciate, Senator, the concerns that you raise about keeping the lines neat, and making sure that policymakers, and particularly decision makers, understand the standards that are imposed upon us, always through legislation. I would like to point out a couple of examples, though, where I think the structure will, in fact, enhance the responsibilities which we all face during the 1990s and beyond.

The story that I would like to repeat -- and many of you have heard before -- deals with a cogeneration plant that was planned and is planned for development in the territory in South Jersey of Atlantic Electric. This is a plant that had gone through a procurement process supported by the BPU. It is a nonutility generating plant. It is a coal-fired cogeneration plant, and provides many, many advantages in terms of energy policy, energy development, capacity planning, fuel diversity, and the like. The BPU, in furtherance of those goals, approved the various agreements that provide for the operation of that plant. As a nonutility generator it was not subject to the economic regulation of the Board. Rather, its economics were set in a contract primarily between itself and the utility that would be buying the power.

That facility fell within the appropriate review of the DEP for all the environmental concerns that should be an appropriate part of the portfolio of the DEP; air emissions and the like. And during the course of that review, -- and this is during my tenure as BPU President -- the DEP decided that it wanted to impose new emissions technologies on the boilers of that plant. They decided that they wanted to impose emission

standards that were far stricter than anything that had come before. The project developers at that facility came to the BPU and they went to the DEP and they said, "If these are imposed -- if these standards are imposed -- then it is going to destroy the economics of this facility and we are going to have to abandon our plan."

This morality play, as I have described it, was the subject of a talk I gave last year at the annual meeting of the New Jersey Alternate Power Producers Association. At that point, I pointed out that if alternate power producers are, in fact, going to play a role in the State's energy mix, they have to be willing to absorb societal costs whatever they may be, including environmental costs, and society has to be able to impose increasing environmental standards.

In a conversation with my predecessor, Commissioner Yaskin, I pointed out that the Board would be standing foursquare behind whatever environmental decision that was made, because those were separate issues that her Department had to consider. In the course of that discussion, it became apparent to both she and I that the staff of the DEP didn't understand the distinction between a nonutility generator and a utility company. They didn't understand the rate-making structure. They didn't understand the economics of the project, because in the course of the discussion it came out -- a phrase came out, essentially, and I'll paraphrase -- "Well, as we impose these environmental requirements, can't the company just pass it through to ratepayers, so if we decide that we want stricter environmental standards, the ratepayers will pay for it?" I pointed out that, "No, that wasn't the case with a nonutility generator," and that the implications were that if the company was not just bluffing, and if the project fell away, New Jersey might lose an important energy project. But if that was the environmental cost, then everybody would be prepared to withstand that.

Maybe the Board would order, or maybe the utility company would build the same plant and operate it as a utility. In fact, that utility company has a Certificate of Need pending before the Board that called for the creation, or the erection of a new base-load facility in environmentally sensitive areas. That is another issue we have to wrestle with.

As the staff at the DEP understood the implications of their decisions, their environmental vigilance never lessened, but they now understood the implications and the fact that you can't make policy in a vacuum. What resulted was a compromise worked out between the project developers and the DEP, which resulted in technology being posed in certain levels, and it resulted in emission standards being enhanced, but not at the same levels.

One can point to the Clean Air Act and the responsibilities that we all will have on issues of stationary sources, emissions trading, and the like. The linkage between global warming and fossil fuel use and production goes without saying.

Senator, you mentioned before the issue of EMF. I, as a member of the Board, had to wrestle with an EMF decision involving Berkeley Heights. There the question we had to face was not just the provision of safe, adequate, and proper service, which is our statutory mandate. But as we look at safe, adequate, and proper service, we realize that there is an environmental component to safe, adequate, and proper service. So, in fact, the BPU had to wrestle with the issue of whether or not we allowed the energization of a line in Berkeley Heights, and whether or not that need, which had already been established by the Board in terms of capacity need and assurance, was going to be offset by a public health risk that would be established.

Thirdly, the BPU rate-setting issues: Again, we recognize both the history that comes before in terms of

utility regulation in this State and in this country. But, Senator, in your opening remarks you alluded to a concern about independence. You said that the proposed reorganization might have the effect of removing the Board in its rate-making function from the political insulation that it now has. That would make it different from any other board in the country.

In fact, I think the latest number is 28 BPUs throughout the country have commissioners who run for public office in partisan elections. New Jersey, in establishing its State government through its Constitution, had determined that every major statewide officeholder, other than Governor in the executive branch, be appointed. Other states have determined just the contrary. It was always interesting for me, as a BPU Commissioner, to meet with my colleagues from around the country and hear stories about their campaigns, statewide, for the same job that I held.

This Plan recognizes and continues the existing structure of the BPU; a bipartisan, multimember Board, appointed by the Governor, confirmed by the Senate. The decisions of the Board, particularly because this is the principal work they do -- the rate-making decisions -- are final agency actions which a DEP Commissioner would have absolutely no role in. When decided, those are final agency actions appealable to the Appellate Division. The Board would retain its rule-making responsibility, again, as final agency actions to promulgate rules and regulations in support of its rate-making functions.

Again, we recognize the concerns of independence, and the concerns of potentially blurring lines of responsibility. The BPU, renamed the BRC in the Executive Reorganization Plan, would continue to have a staff whose job would be to support its rate-making functions, and to provide information to the Commissioners in support of those responsibilities.

Why one Department, and why one staff? First I want to stress again that under the reorganization, the Board would continue its, "in, but not of" status. Currently, the BPU is in, but not of the Department of the Treasury. Now it would be in, but not of the Department of Environmental Protection and Energy.

The distinction is the two points that you made, Senator -- budget and staffing. This again is not a new model for State government. For example, in discussions with the Public Advocate about the impact of his plan, Commissioner Caraballo pointed out that, in fact, the Office of the Public Defender is in, but not of the Public Advocate. Budget support and personnel support are provided by the Office of the Public Advocate to the Office of the Public Defender. The same model; the same synergies.

There has been concern that the budget would somehow be controlled or manipulated by the Commissioner of the Department. Let me again suggest the experience that I think everyone has had throughout State government. When the executive branch puts a budget together, it's the Governor and the Governor's aides and assistants -- be they Commissioner, be they a Treasurer, be it the Office of Management and Budget -- who have the final say on a budget. The thought behind this structure was that if, in fact, the goal was to achieve synergies, and if, in fact, the goal was to achieve streamlining, that the role of the Commissioner of the Department to be another set of eyes before that budget goes to the Governor to see, that, in fact, the streamlining and synergies are being achieved. But once adopted, that's the budget of the Department.

I have said for the past few months, and will continue to say, that ultimately, when you strip away all the other issues, what will ultimately determine the success of any department, of any agency, of any policy initiative, is the

commitment of a Governor, the support of the Legislature, and the quality of people appointed to the job. You can take a look at the BPU or at any other department of State government over the years, and I will suggest to you that it always goes back to the support of a Governor and the commitment and support of the people who are appointed to the jobs, and that the structure is something which can assist or deter from the accomplishment of the goals, but doesn't dictate it.

I also wanted to touch briefly on the issue of whether or not this Reorganization Plan would take an already overburdened DEP and add responsibilities that are incalculable and unachievable. Let me suggest that, in fact, what we have found was that right now we are duplicating budget and personnel functions at the BPU that could be easily absorbed into the existing structure at the DEP, resulting in much of the savings that you alluded to, and as mentioned in the task force report.

Secondly, in terms of energy policy and planning, right now that consists -- and many of us would agree that it's far too little people -- but that now consists of approximately 25 people who perform those functions. I respectfully suggest, having had, admittedly, just a few months experience in the saddle, that the addition of 25 people to help coordinate energy policy -- not rate setting, but energy policy -- will not only not be a burden, but will assist the Department in carrying out its mission and help propose State policies ultimately considered by this Legislature that will reflect coherent, well-thought-out State policy, much more so than it does today.

I'd also like to suggest that pointing to the problems in the past at the DEP in terms of its structure, focuses on much too narrow of an issue. Lord knows that we still have issues that we have to deal with at the DEP, and I have been devoting myself, for my brief three months, to addressing

those. But I would suggest that the addition of the responsibilities of energy policy is needed for us to carry out the type of coordinated mission that is dictated by the responsibilities of the Clean Air Act, of the Clean Water Act, of EMF, of all the environmental and energy policy related issues that we are going to be confronting as a society.

So, let me sum up, and I appreciate your indulgence.

We believe this Reorganization Plan does three things: It streamlines government, it enhances energy policy, and finally, as I have mentioned, it identifies almost \$4 million of potential savings. And, Senator, I make no apology for the fact that some of those dollars will, in fact, go to replace positions that have remained vacant far too long, and will assist in the issues of consumer protection and, in fact, some of those dollars will be able to flow back to ratepayers.

I anticipate that members of the Committee have many questions, and I am, of course, happy to address those specifically. Again, I thank you for this time

SENATOR DALTON: Thank you, Commissioner.

Before we get into the questions, I want to acknowledge the presence of Senator Henry McNamara, who has just joined us. Good to have you here, Henry.

Let me turn first to Senator Bennett. I know he has some questions. So we'll start with John and Paul, okay? How's that?

SENATOR BENNETT: Thank you, Mr. Chairman.

Commissioner, Mr. Chairman, and members of the Committee: I have a couple of prepared remarks that I want to say, and then I'll go into some questions. I might remark from the outset, that I felt that many of the rhetorical questions that you, as Chairman, raised prior to the Commissioner's talk, were very valid and did not need to be embellished at the time. I'm disappointed that we haven't heard those answers yet, so I may go back to some of those very questions that you raised prior to the discussion.

Commissioner, you were quoted in The Star-Ledger today to the effect that it is not the structure that is important, but the commitment of the Governor and the quality of his appointments, which I believe you reiterated here today. I agree that the quality of appointments is important. The structure also, however, I believe, is quite critical. This nation was founded on the principle that power corrupts, and absolute power corrupts absolutely. That's why the Constitutions of the United States and this State established an elaborate system of checks and balances; so that good men and women will not be tempted to abuse the power that they have been entrusted with, and to protect us from the bad who would abuse that power. You're asking us, in my opinion, to abandon our constitutional duty to define the structure of government and to merely assent in this vague Reorganizational Plan based upon a promise that you or your successors won't abuse those powers. History has taught us that that is not good enough.

On the quality of appointments, I am troubled, and I believe it is important to point out presently-- The Chairman pointed out that it is necessary under the existing structure to have a political balance, and that a political balance would be removed, or conceivably could be removed, with the possibility of having a temporary appointment done from the staff, of 120 days.

Quite frankly, I'm troubled that there has not been a political balance on the Board of Public Utilities during this administration, and the fact that the Republican vacancy on the Board of Public Utilities has remained vacant. You come before us at a time when we are to be entrusted about appointments, when, in fact, the Deputy Commissioner of the DEP has not been filled, and some of the other high-ranking Department Commissioners are serving presently in Acting Commissioner slots. The fact that the BPU has not been balanced out to meet the statutory requirements troubles me greatly.

On the independence of the proposal that is in front of us today, we have -- excuse me, if I can just get my right paper here -- had the opportunity to look at public utility regulation agencies currently in existence around the country. Can you tell us what other states currently have a Board of Public Utilities, or its equivalent, that is not separate and independent from another board in the state, or another department within the state?

COMMISSIONER WEINER: I don't mean to be coy at all with what I am about to say, but it depends on how you answer that. For example, there are some states-- I'll get that answer to you. I don't pretend to have the breakdown of that in my head. There are some states, as I mentioned, that have elected commissioners. There is one state that has a single utility commissioner, who exercises all rate-making authority. There are some states that have separate departments. Most states have their BPU commissioners, as I would recall, within other departments of state government. Very few serve as members of the cabinet. It varies all over.

I think one of the-- If I may suggest another question? Another question is, how many environmental commissioners also have the merger of energy policies as part of that portfolio? I believe that this may be the first. I will predict it's the first, rather than saying it's the only.

SENATOR DALTON: It's the second, Commissioner. That's only for siting purposes, and that's in New York.

COMMISSIONER WEINER: Okay.

SENATOR BENNETT: It's the second.

SENATOR DALTON: We'll be glad to share our information about the structure with you. We've already taken a look at that.

COMMISSIONER WEINER: Now, Senator, I don't-- Do you want me to respond to the questions you are raising, or should I--

SENATOR BENNETT: I only asked one question, specifically, so far. I'll go into the specifics, if you like, now. My first one was, what other states would have the-- You answered that you would get to us on that.

I would offer to you that, as the Chairman said, the only state that currently has any connection between the public utilities and the environment is the State of New York, and that is only for siting purposes, and no other state in the nation has the connection that you are proposing under this Reorganizational Plan.

COMMISSIONER WEINER: Can I correct two other things that you mentioned in your remarks, because I think they need correcting?

SENATOR BENNETT: Sure.

COMMISSIONER WEINER: One was that you alluded to the fact that the position of Deputy Commissioner of the DEP remained vacant, and I take it from your comment, that is somehow indicative of inaction or something to the like. Let me point out what I have said repeatedly to the public: I have no intention of immediately appointing a Deputy Commissioner. The reason for that is that I felt, as Commissioner of the Department, that it was important for me to work directly with the Assistant Commissioners, many of whom I have appointed.

The second point I want to correct is, there is only one Assistant Commissioner who is now in an acting capacity. That is Assistant Commissioner Jim Hall in Natural and Historic Resources. As I announced about a month ago, we are conducting a search for that position, and Assistant Commissioner Hall is a leading candidate for that. But over the course of the past three months, I have restructured and I have filled every position in the senior management of DEP. In fact, the Deputy Commissioner's position I don't intend to fill for many months until I get more comfortable with how the Department should be structured, what an appropriate role of a Deputy Commissioner

is, and I continue to establish my direct relationship with the Assistant Commissioners and not be insulated by a Deputy Commissioner.

SENATOR BENNETT: I'm totally open for you to give clarification on the vacancy on the Board of Public Utilities which has been vacant for nearly 18 months.

COMMISSIONER WEINER: Senator, again--

SENATOR BENNETT: I'm totally open to have you clarify that point.

COMMISSIONER WEINER: Senator, again, you and I have discussed that. I will repeat something which I have said in public. At the time that former Commissioner Whitman left the Board, I had predicted that appointment would be filled imminently, and I meant and envisioned that to be the spring or summer of 1990. The position hasn't been filled. It's a position that the Governor has been working on to fill, and we also discussed at the time of my confirmation of this post, that in light of the pending Reorganization Plan, it seemed appropriate that any appointments not be made until we saw what the fate of this Plan was going to be, so we would understand the role.

SENATOR BENNETT: My trouble, Commissioner, is that I'm being asked to go with this Reorganizational Plan--

COMMISSIONER WEINER: I understand.

SENATOR BENNETT: --based on the quality of appointments, and I, quite frankly, haven't seen a lot of those appointments being made as clearly or as readily as I would like, specifically with respect to a temporary appointment.

Maybe we should address some of those points that were raised by the Chairman?

COMMISSIONER WEINER: Yes, yes. Thank you.

SENATOR BENNETT: Specifically, the Reorganization Plan, as I understand it, allows the Governor to appoint a member of the DEP staff to an interim position, not to exceed

120 days. Does that individual, when and if he or she would be appointed, have to go through advice and consent of the Senate?

COMMISSIONER WEINER: For the 120-day period?

SENATOR BENNETT: That's correct.

COMMISSIONER WEINER: No.

SENATOR BENNETT: Does that person have to vacate their position within the DEP?

COMMISSIONER WEINER: Yes. They will continue to hold the title-- This-- If I may, I don't mean to interrupt, but, let me first explain why the temporary appointment, and-- First why the person would come from the staff of the DEP -- or the DEPE -- and why the temporary appointment.

The issue of temporary appointments was intended to address a situation that arose in 1989, and has arisen other times in the Board's history. In 1989, as you may recall, former Commissioner Guido had passed away, Commissioner Whitman was still a member of the Board, and Commissioner Barbour, unfortunately, at that point, had been suffering hospitalization. The Board continued to do its work principally by speaker phone that was connected into Commissioner Barbour's hospital room. The Board, and many of you, may have had to face the issue, along with the then administration, of what to do in the event that Commissioner Barbour wasn't able to conduct business at a particular point in time. There was research in the "rule of necessity," and, "the one Commissioner decision," and the like.

It was considered also that this was the only commissionership where a temporary appointment or an acting appointment couldn't be made. For example, most recently, just going to my own Department, DEP, Commissioner Daggett served as an Acting Commissioner. So in order to be consistent with the current statutory scheme, the Attorney General's Office took a look at the provisions in Title 13 pertaining to the DEP, to see how an Acting Commissioner could be appointed.

Under Title 13, an Acting Commissioner of the DEP must come from the ranks of the Department -- must be an employee of the Department -- which creates the anomaly, and, in fact, Commissioner Daggett, in order to be an Acting Commissioner of the DEP, had to be appointed to some staff position, be it a confidential aide, be it as a project specialist, as a conditioned precedent to his appointment as Acting Commissioner.

Now, in recognition of the concerns that you are addressing and to underscore the fact that this is not intended to bypass the appropriate role of advice and consent of the Senate, and also to recognize that it is intended to address specific emergent situations, the Governor inserted a 120-day limitation for the use of this extraordinary provision. I would suggest that, for example, any member of the Cabinet -- any principal head of a Department, let me phrase it that way -- can be appointed on an acting basis, indefinitely. In fact, a Governor could completely bypass the advice and consent role of the Senate by appointing a department head on an acting basis.

What this attempts to do is define for a limited 120-day period a specific tool to avoid the breakdown of business at the Board.

Now, another question was raised by Senator Dalton, which is: Could this permit three members of the same political party to be appointed? I would suggest that that was not the intent at all, nor would it be permitted under the Reorganization Plan.

SENATOR DALTON: The Reorganization Plan is silent on it, Scott.

COMMISSIONER WEINER: That's right, but it doesn't obviate--

SENATOR DALTON: Well, why is it silent on it?

COMMISSIONER WEINER: Because--

SENATOR DALTON: Why are you coming here and saying you would assume. Why isn't it in the Plan?

COMMISSIONER WEINER: Well, let me suggest two things, Senator. The reason why I'm saying, "I would assume," is because I don't want to practice law.

The second reason is-- The reason why it is silent in the Plan is the Plan, by its terms, incorporates all of the provisions of Title 48, so that we would have to reiterate every other given in Title 48. We have been advised by the Attorney General that unless we're changing something, there is no need to call out the provision.

So for example, the membership remains three. All the provisions of 48:1-3 that deal with the appointment of Commissioners remains good law. That's the reason.

SENATOR BENNETT: Would that employee have to resign his position with the Department, or continue to be a Department employee assigned full time to sit as a temporary Commissioner?

COMMISSIONER WEINER: My view, as I sit here, would be that that person would be assigned to serve full time as a Commissioner, so that full-time activities would be as a Commissioner, for that 120-day period, or any part thereof, and their underlying status as an employee of the Department would be protected.

Now, whether the vehicle is a leave of absence or temporary assignment, again, I would leave to the lawyers in the Personnel Department, but the goal would be to move the person in. It may very well be that the person, in fact, like Commissioner Daggett, would not come initially from the ranks of the Department, but would join the Department as a condition precedent to his taking on the commissionership.

SENATOR BENNETT: With all due respect, Commissioner, we are not talking about an Acting Commissioner of the Department. We are talking about, and trying to maintain a credibility in our position as to how this Board remains -- the Board of Public Utilities, the rate-making and policy-making

aspect of the Board of Public Utilities -- independent and autonomous from you as a Commissioner, or any successor Commissioner.

COMMISSIONER WEINER: Or anyone else.

SENATOR BENNETT: Or any other entity or person. When that person is going to be employed by you prior to his interim or her interim appointment to Commissioner, and knows that they are coming back to work for you after their interim position is done, and they are sitting to perhaps hear an individual rate case for a particular moment in time, there is, in my mind at the very least, a question as to whether or not that credibility of independence has been breached.

That may be an isolated case on my part, but I feel very strongly that the ability to take one of your staff people-- What would preclude that staff person from being you? Or is there anything that does preclude the Commissioner from assuming the position of BPU Commissioner on an interim basis?

COMMISSIONER WEINER: I have never thought about that.

SENATOR BENNETT: I would suggest that perhaps maybe you take a moment and think about it.

COMMISSIONER WEINER: Well, I'm taking a moment and thinking about it. I'm trying to think of a situation where that could be justified, because of two reasons: One is the concern of independence that you have, and I respect that, and I think the Governor respects that concern. We may respectfully disagree that the scenario that you point out is not one of concern. The appointment of a Commissioner -- any DEPE Commissioner to fill that vacancy -- I think, would undercut the concept of independence which we are talking about today.

Whether or not there is a preclusion of it, as a matter of law, the only one that comes to mind quickly -- and

again, I want to give the condition I'm not practicing here -- is that a BPU Commissioner must devote his or her full time and attention. Now, my recollection of statutory history is that that really was written into law at the time that the BPU Commissioners went from being part time to full time. But one could certainly argue -- and I feel like I'm taking a law school exam now -- that the DEPE Commissioner could not meet the obligation of full-time devotion to the responsibilities of the BPU if, in fact, he or she were wearing both hats.

SENATOR BENNETT: You say there is going to be \$4 million in savings in the reorganization. Since that amount obviously is -- especially in today's day and age with our fiscal situation -- not the most significant of figures on the larger budget scale that we are looking on--

COMMISSIONER WEINER: But it's still real money.

SENATOR BENNETT: That's my question. Is it real money that will be saved from operations, or is it, in fact, moneys that are going to be not expended in the future because there will be a streamlining?

COMMISSIONER WEINER: It falls into two categories, and again, if the staff hasn't gotten it, I'll be happy to provide the staff with the analysis of how we got to that number. But it arises in two settings. There are positions that will just no longer be needed -- accountants, personnel people, and frankly, staff in the Board President's office that just will no longer be needed. Those are savings of implementation of streamlining. There are some positions that have been vacant for years, which--

SENATOR BENNETT: Like a Commissioner?

COMMISSIONER WEINER: Well, not yet years. But like rate analysts, like accountants, like auditors, and I would suggest that those positions have remained vacant too long, and need to be filled.

Now, I want to be very clear about this, because it may very well be that some of those \$3.9 million that might have paid for an accountant maintaining the budget of the Board will go to pay for an accountant reviewing rate cases. But I would suggest that that accountant reviewing rate cases is a position that needs to be filled today, and was needed to be filled last year and three years before that. And the inability to fill those positions because of a desire out of respect of the impact of the assessment on utility rates, to hold that down to the barest minimum, has brought the Board to a point where its staffing has become functionally deficient.

SENATOR BENNETT: I'm going to apologize, and I'll stop and let everyone else do some. Then maybe I can come back later. But I'm going to apologize for taking so long with so many people sitting up here. I think that there are certainly many questions.

On the budget aspect, my understanding is that money that is collected through the assessment-- How will you be accounting for those moneys? How are you going to earmark the moneys that are going to come in for that assessment? Are they only going to be utilized for rate making, or can they also be utilized for policy making also?

COMMISSIONER WEINER: Well, let's start with the current situation. Utility assessment dollars have historically been used for the activities of the Board which include rate-making activities, policy-making activities, energy conservation activities, and the like. Our research took me back to the period when Joel Jacobson had become Energy Commissioner, and the BPU was then put in, but not of the Department of Energy. So, again the in, but not of status and the linkage between Energy and the BPU is not new. What is new, or what is different from that structure, is that the staff would be staff of the Department and the budget would be

a combined budget of the Department and the Board. Those are the distinctions. But the in, but not of status in the Energy Department is not new.

So utility assessment dollars where there is an appropriate linkage to utility activities can be included. For example, right now there are staff at the Board -- and this has been for at least the last two years -- who are paid for by, in part, assessments on the electric and natural gas companies, who perform research and program functions on energy conservation. I would argue that's an entirely appropriate activity.

There are members of the Electric Division staff who are engaged in working groups dealing with the Clean Air Act, and implementation of mobile source control as an implementation of emissions trading, along with their DEP colleagues. That work, I would suggest, is entirely appropriate for support on the utility assessment. The way it will be controlled to make sure, for example, that the assessment on electric companies doesn't go to support Park Rangers -- just to try and pick something that is distinct -- is through internal cost accounting, which is done in my Department and every department of State government for multiple funding sources. The ultimate comfort factor comes in from the audit function that will be performed by your branch of the government, to make sure that, in fact, whether it's utility assessments or NJDEPS fees or Air Act fees, that those dollars are going for the statutorily intended purpose.

SENATOR BENNETT: Does any of that \$3.9 million result from the transfer out of cable TV?

COMMISSIONER WEINER: No.

SENATOR BENNETT: That's totally from what will be within the DEP?

COMMISSIONER WEINER: Let me-- I just want to check a definition on that. (Commissioner Weiner consults with aide)

Now, for the purposes of planning, right now the Office of Cable Television within the BPU has 23 positions, and it is anticipated that those 23 positions would continue.

SENATOR BENNETT: Okay.

COMMISSIONER WEINER: Telecommunications, similarly, currently has 22 people assigned to that Division of the BPU overseeing the economic regulation of the telecommunications industry. It is assumed that those 22 will continue. It is not included in the projected savings.

SENATOR BENNETT: Thank you. Commissioner, I would have some more questions, but in fairness to all the other people who are up here, I would like to waive asking anything further with my right to come back if they are not touched on by some other people.

I appreciate your candor. I, quite frankly, continue to maintain a position similar to what was expressed by the Chairman, that if what you are proposing is truly the right thing to do for streamlining, I would respectfully suggest that we shouldn't have to question or even wonder what the Reorganization Plan re implementation means, or ask you these questions for clarification.

A piece of legislation having the Legislature do what is necessary, if it is the right thing to do-- I think the Legislature could do it through legislation, and, quite frankly, I strenuously object to the attempts to reorganize State government through the backdoor.

I, too, have not been silent on this. When a previous Governor of a different party than yours, and one that was mine-- I disagreed on that reorganization at that time.

I feel that it is contrary to constitutional rights, especially when you deal with rate making, which is clearly a legislative function and can only be performed by an agency which the Legislature gives that authority to. So, I disagree that there is a legal basis to allow it, much less than what we are doing here.

But I will not ask any further questions, and let's go back and let the other Senators and then if they haven't hit on them, I'd like to come back.

Thank you, Mr. Chairman.

SENATOR DALTON: You're welcome, John.

Senator Contillo?

SENATOR CONTILLO: Yes. Commissioner, I'll give you a little bit of a rest, for awhile. I'm quite torn here, between looking at individuals that I know, and personally have great respect for. It's easy enough to look at this program and say, "I know Scott Weiner. I know his talent. I'm confident in his ability and his integrity." I feel much the same about the new Commissioner, Jeremiah O'Connor; absolutely talented people. But I really think we must look at this as a structure, hopefully that if it is in place will go for a long period of time. Or, maybe not. Maybe there should be a time limit on this, because it does seem to be somewhat experimental.

So, I raise the question: Does it make sense to do this on a reviewable basis?

COMMISSIONER WEINER: I would suggest, Senator, that like any other thing that goes on in government, that it is always reviewable, and that government, by definition, has to be adaptive and we have to be prepared for change.

Now, I understand the concerns raised by Senators Dalton and Bennett in terms of the process that has been utilized. We respectfully disagree. The Legislature has given the executive branch the tool of the Executive Reorganization Act. It's not unlimited. It's defined in statute. The Legislature has reserved unto its right the right to reject a plan filed by a Governor. The Legislature always has the ability to repeal that Act. It always has the ability to enact a new statute that would, in some way, circumscribe, or limit, or enhance any aspect of a final reorganization plan that might

not have been rejected. So, while I respect the positions taken, I have to quibble with the language of "dark of night," as if this was being done surreptitiously.

Structures must be adaptive, and I'll point back again to the BPU in recent history, just the last decade of the '80s; the structure which many of you and your colleagues might have said even then wasn't best, and you may have wanted to recommend other structures, but that was the structure that we are now trying to move away from.

The Board suffered from what I believe were legitimate criticisms at that point in time; legitimate criticisms due, in fact, because of continuing vacancies back during the '80s, because of the approach the Board took or, in fact, didn't take to certain issues, particularly environmental issues. Particularly understanding the importance of integrated resource planning, of least cost planning of the economic and environmental costs of a utility plant, and you just can't turn on a switch of an electric facility, turn that light on, kick up a base-load plant and assume it has no environmental impact at all, and not factor that cost into society's costs. That suffered throughout the 1980s.

Our belief is that the proposal presented in the Reorganization Plan provides an appropriate mix of an opportunity for synergy and an opportunity to maintain the important issue of independence of decision making.

One of your colleagues asked a question: "How can we trust that this will happen?" My answer is, we all have to start from the presumption that we are going to obey the law. There is a restriction against BPU Commissioners sitting in their quasi-judicial function from having ex parte communications about pending matters with anyone, be they a DEP Commissioner, be they members of the Legislature, be they a Governor. And having sat on that Board for 14 months, I can

assure you and your colleagues that that is understood and it is respected, and there has been a history of that and that's going to continue, particularly--

SENATOR CONTILLO: Commissioner, no one has been a greater critic than myself, particularly of the BPU, to the point where I came here to the Judiciary Committee to try to stop the reappointment of the President of the BPU. I tried on the floor of the Senate. I felt that that particular BPU Board gave away, to the -- made the ratepayers pay -- to the Hope Creek II Plant, instead of the stockholders. I find myself in a very strange position now of trying to maintain the independence of a Board that I felt was disgraceful at that time.

I've been a constant critic of the DEP, and I've said it publicly. I thought they were the greatest impediment to recycling in the State. The worst decision I ever saw came down in the last moments of the Kean administration, when the DEP Commissioner, the President of the BPU, and the Commissioner of the Department of Community Affairs got together and gave away, both environmentally and financially, the entire part of our county and the watershed area up there.

So I find it strange that I would be so concerned now that we are taking away the independence of two Departments that I have no faith in to begin with. There has been an awful lot of criticism of each Department not being able to do its own job, and now we are going to merge them into one.

So, specifically, having said all that, can you tell me how, through the budgetary process, the BPU can maintain their independence? How will they frame their own budget and their own staff?

COMMISSIONER WEINER: What will happen is-- Let me talk about what happens today, and what would happen under the Plan.

What happens today is the BPU President, as the chief administrative officer of the Board, compiles a budget -- prepares a budget -- in consultation with the staff and the other BPU Commissioners, as he or she chooses. That budget is transmitted to the Governor through the Treasury Department and is included as part of the Treasury Department proposal, because the Department is in, but not of the Department of the Treasury.

For the most part, my limited experience as a Board member was that the Treasurer took very little direct interest in the BPU budget as a part of his Department. That was twofold: One was, I think, his view of the issues, and the second was that he had already, as a matter of generic State policy, said to my Board, and other agencies, "Here are the limits in terms of growth," or, in fact, "Here are the rules in terms of cutbacks in your expenditure levels."

What would happen under the Reorganization Plan is that the BPU Commissioners -- the three Commissioners -- would prepare a budget outlining what they believe their needs to be to carry out their responsibilities -- so many rate analysts, so many auditors, so many inspectors, so many of each and every position that is needed. That budget would be passed on to the Commissioner of the DEPE to be included within that Department's budget and to be passed on to the Governor.

The Reorganization Plan gives the DEPE Commissioner-- Really, frankly, Senator, what it is doing is being honest and forthright. It gives the DEPE Commissioner the ability to comment on that budget submission when it goes to the Governor. I described in this morning's newspaper, as alluded to by Senator Bennett, that I viewed the role of the Commissioner as an extra set of eyes. The fact of the matter is, at the time I submitted my budget at the BPU, and by the time it got incorporated into the Governor's proposal, there

were untold sets of eyes who reviewed that budget, to make sure that it was consistent with the Governor's policies and initiatives.

All that does is add another set of eyes. And what is ultimately going to make that budget or not make that budget, is a Governor's support. Again, look at the last decade, and you can look at the decade before that. I don't mean to pick on any particular-- Look at any point in time. The support of a BPU budget was wholly and entirely dependent upon the support of the Governor and the executive branch, before it found its way here.

Nothing prohibits a Governor in the future from saying about the DEPE Commissioner's comments, "Commissioner, I respectfully disagree. I want to get them to spend more money, or I want to cause them to spend less money." It becomes an aid to the Governor in seeing that a Governor's policies of coordination, streamlining, and synergy are being achieved and that, in fact, we're not ending up with duplicative administrative functions, when the goal has been to avoid that.

SENATOR CONTILLO: But you, sir, will review that budget before it gets to the Governor's Office?

COMMISSIONER WEINER: That's right.

SENATOR CONTILLO: And is not budget control really domination of that Department?

COMMISSIONER WEINER: No. I will say, having sat here-- Because the domination of the budget occurs at the Governor's Office, and now I will say-- I would have said that two years ago, Now, having spent 18 months -- in terms of executive branch design -- that policy is set in the Governor's office.

I have now been involved in two budgets -- a BPU budget and a DEP budget -- and I can assure you when that budget found its way to this body -- to this branch of

government -- that that had the impact of an executive branch review. That was not just merely my budget. Each Commissioner doesn't submit their budget to the Legislature; a Governor submits a budget to the Legislature. And a Governor can decide how much input he or she wants in the preparation of that budget. For example, you could have any structure you want. Nothing prevents a Governor from saying, "Mr. Attorney General, I would like you to review the DEP's budget."

SENATOR DALTON: Excuse me, Commissioner. Senator Contillo, with all due respect, is not trying to define the Governor's role here. He is trying to define the DEP Commissioner's role.

COMMISSIONER WEINER: And I'm trying to define that, Senator, in the context--

SENATOR DALTON: You keep talking about the Governor. We all realize that the ultimate responsibility for the budget is the Governor's, okay?

We want to know, under this Reorganization Plan--

COMMISSIONER WEINER: Right.

SENATOR DALTON: --what is your role as DEP Commissioner?

COMMISSIONER WEINER: It will be defined by the Governor. That's the point that I am trying to make, Senator.

SENATOR DALTON: It's defined right here, under the Reorganization Act, okay?

COMMISSIONER WEINER: And it says--

SENATOR DALTON: The Reorganization Act states, and I quote, "That the Board shall make annual budget recommendations to the DEP Commissioner for inclusion in the DEP's annual budget request to the Governor and Treasurer, subject to the review of the Commissioner after due consideration by the DEP Commissioner."

COMMISSIONER WEINER: Senator--

SENATOR DALTON: That sounds like more than a review.

COMMISSIONER WEINER: Well, I will respectfully disagree. It's a review. It's a review because a Governor -- this Governor and a future Governor -- may say, "DEPE Commissioner, after your review, why did you comment-- Give me your comments: Why did you do what you want to do, or disagree?"

I'm sorry I'm not giving you the answer that you want. I can only give you the answer that is real and that-- The role of a Commissioner in this review is spelled out, and in fact, I would suggest it is being clear and frank that a DEPE Commissioner is going to review the budget. It constrains that review, and that a Governor will then say, because it has to be -- giving due consideration to certain factors, to make sure that the comments that go to the Governor consider those factors--

SENATOR DALTON: How does the phrase "due consideration" restrain the Commissioner's review?

SENATOR CONTILLO: Can he add to it or subtract from it?

COMMISSIONER WEINER: Yes, after giving consideration.

SENATOR CONTILLO: Well, then you have absolute control over their budget.

SENATOR DALTON: Yes, it's not independent then.

COMMISSIONER WEINER: I have control over a budget that's recommended to the Governor.

SENATOR CONTILLO: Yes, that's true. That's true, but it's quite difficult for one to-- It's an extra filter; it's an extra step. It's an additional loss of independence to a Board I had no respect for to begin with.

COMMISSIONER WEINER: Senator, I apologize. I apologize if you feel that I am not directly answering your question. All I can do--

SENATOR CONTILLO: Well, it's essential. In other words--

COMMISSIONER WEINER: I understand.

SENATOR CONTILLO: --there has been a lot of discussion. We have been sitting here for an hour-and-a-half and I've listened to different variations of it. But in the final analysis, there are really only two questions, I think, that have to be asked.

Number one is: How do you maintain the independence of two separate responsibilities? How do you maintain the independence of your environmental responsibility and of the responsibility you had before, a few short months ago, of the financial viability of our utilities?

They are separate responsibilities. They're adversarial, and they have to be that way, and I'm somewhat apprehensive that we're going to break that down. And the only assurance that we can have, as we look to the year 2000, is going to be strong budgetary independence.

We've just gone through this with an Ethics Board, an Ethics Board without independent counsel, and the only way they get independent counsel is to have the power of the budget to hire their own. We can give them this and that, but if they don't have the power of the budget to be independent, it's a smoke screen. It is nonexistent. There is no independence.

COMMISSIONER WEINER: Senator, if you will indulge me for three minutes?

SENATOR CONTILLO: Again, certainly.

COMMISSIONER WEINER: This Governor has fought very hard for the independence of the Ethics Board on the State level.

SENATOR CONTILLO: This Governor can only be here another six years, at best.

COMMISSIONER WEINER: I understand that, but that's the point.

SENATOR McNAMARA: I wouldn't bet on it. (laughter)

COMMISSIONER WEINER: That's my point, that we could create-- Right now, there isn't even the statutory authority to hire an independent ethics counsel. That could be created; it could be fulfilled in this administration, and nothing prevents another Governor of any party from not funding that position.

On the question of adversarialness, I respectfully suggest that, in fact, the interests aren't adversarial. They are not identical, but they are not adversarial.

One of the problems, I would respectfully suggest, that we have had in policy-making throughout this country, is we have set up regulatory barriers, and we set up adversarialness, where, in fact, there has to be understanding of implications. And there have been allusions to the fact that this Reorganization Plan is going to create a blurring of the lines and require environmental regulators to think about economics, when they never have in the past, and economic regulators to think about environmental issues, when they never have in the past. In fact, as I said with the BPU, safe, adequate, and proper service is the definition-- Historically, around the country -- and New Jersey has been a laggard in this -- have recognized environmental concerns, particularly in least cost energy planning and environmental externalities as part of the economic regulatory mix for a BPU.

On the DEP side, rule making specifically requires economics: The Freshwater Wetlands Protection Act says that the criteria to determine eligibility for a field permit require, in part, a determination of whether the project is a practical alternative and whether the project is in the public interest. These determinations, in turn, require -- and I'm citing sections 9b, 10a, and 11f -- "a consideration of the alternatives costs, and the economic value of that activity": The Water Pollution Control Act, 58:10A-8, in establishing more stringent effluent limitations for point sources, beyond that

achievable by "the best available technology economically available, the Commissioner shall consider thus and such."

SENATOR DALTON: Commissioner, let's stay on the budget, okay? Your budget-making role. I think that was Senator Contillo's question.

COMMISSIONER WEINER: On the budget, again, Senator, I apologize. I apologize.

I have sat through now not just two budgets, but when I was at ELEC, I was responsible for three budgets in the executive branch. I have been the ELEC Executive Director. I have been the BPU President. I have been the DEP Commissioner. I have been involved in five executive branch budgets. I have proposed five budgets.

I assure you that in each of those, the budget that is prepared is not dictated by the Department, it is controlled by the Governor. I have served under three Governors of two different parties, and that has never altered.

SENATOR DALTON: So you would have no objections to the elimination of your recommendations in review of the Board of Public Utilities' budget within the Reorganization Plan, because ultimately it's going to be determined by the Governor's Office.

COMMISSIONER WEINER: If the Governor had wanted to propose it that way, I would not have objected, and because if a Governor had wanted me to review it he would have said, "Commissioner, go take a look at the BPU's budget and tell me what you think of it."

SENATOR DALTON: So you have no objection to the deletion of that part of the Plan?

COMMISSIONER WEINER: If he wanted to propose it, that would be fine.

SENATOR DALTON: How about if this Task Force wanted to propose the elimination of that part of the Plan?

COMMISSIONER WEINER: I don't see any problem with that.

SENATOR DALTON: Okay.

SENATOR CONTILLO: How clear is the autonomy question spelled out in the Plan? You know, again, we go back to the question of, it's very difficult to separate how I feel about the individual involved today. And that's really my problem. How do we make sure in the future that autonomy exists? Can't we incorporate that in the Plan?

COMMISSIONER WEINER: I'm not sure. Again, I would suggest that if you could pick any period of time that you want for the BPU, going all the way back to Woodrow Wilson when it was created-- Go from 1911 or thereabouts up to today, and you will find periods when the BPU functioned as a strong independent arbiter of the important issues that it weighs.

Senator Bennett made a comment before about the economic impact. I think it was you, Senator Bennett, of the role--

It always astounded me, and I know that you and Senator Dalton and others-- This point wasn't lost on you for years.. The BPU is responsible for the setting of rates that cost New Jersey residents and businesses to reach into their pockets to the tune of \$12 billion a year -- round numbers, current time. That is a striking similarity to the size of the State budget, and I think over its history I wouldn't be surprised if it exceeded the State budget.

That's an awesome responsibility. You can take a look from 1911, and you can take a look until today, and you can find periods when the BPU functioned well and periods when the BPU didn't function well. You can find times when you can say it was independent, and you can find times when it wasn't independent. Again, I'll suggest that it's not the structure. Structure is not determinative. Structure is an aid to bringing about good policy and streamlining in the design of State government. That is where structure becomes important.

Some things don't make sense at all. We believe this makes eminent sense in the 1990s.

SENATOR CONTILLO: I just again-- I'm going to wind up here. The question is that maybe it should be clarified a little more in the Reorganization Plan, that the intention is to maintain an autonomy, and maybe it could be spelled out.

COMMISSIONER WEINER: Thank you. Again, I apologize if I didn't seem responsive to your questions.

SENATOR DALTON: Senator Haines?

SENATOR HAINES: Commissioner, what I hear about you from many people is good. I can tell you very honestly that in speaking around the county for the last year, I praised former Commissioner Yaskin as being one of the best Commissioners that DEP has ever had. But I can tell you that DEP is a monster. It is not being run right. You both have tried to reorganize it, but it is not doing its job.

Everywhere I go businessmen tell me that DEP is, in effect, driving them out of the State, or preventing them from enlarging their operations within New Jersey.

If you go to county government, it takes DEP sometimes nine months to make a decision on whether to put in drainage for a county road that obviously needs drainage.

If you go to township government, you have the same problems with DEP -- lack of ability to make decisions. It's not the law, it's the way it's administered. It's administered slowly. It's administered slowly on purpose. It's an attitude toward a lack of growth, even, I think, an attitude, people tell me, that DEP would like to start to depopulate the State. This is the attitude we get from DEP.

And then you want to take on additional responsibilities, and you can't do what you are currently doing properly? You're doing a lousy job of what you are doing, and you want to take on additional responsibilities.

Let me tell you, Commissioner, one of your facets here is natural resources. I have, in my district, a big chunk of the natural resources, because we have a lot of Green Acres.

We have a fire department down in the Pinelands that can't even get their equipment started. If we have a major fire in the Pinelands, I can tell you, it's going to be more of a disaster than we've ever seen in California, because natural resources are neglected in your Department.

These are some of the problems that I see.

The other factor is that the Department is run like a Georgia hit squad. In other words, what's being done here is, you go out and collect fines and fees to the tune -- according to Assemblyman Doria -- of 77% of your total budget -- fines and fees. You're like the cops down in Georgia that have a 10-mile-an-hour speed limit, and if you drive 11-miles-an-hour, you're subject to a fine. If you don't pay the fine, you have to come back a week later, and you can't do that because you're on your way to Florida.

I think the total amount of fines and fees that go into DEP ought to go straight to the budget -- straight to the Governor -- and you get your appropriation out of the budget the way everybody else does.

COMMISSIONER WEINER: I agree. In fact, I agree, and I think, in fact, if you take a look at it, to use the euphemistic phrase, "above the line, below the line," that those moneys are above the line.

SENATOR HAINES: Well, the other thing is that we have an ECRA law. The law is good; there's no problem with it. But the way it's administered is horrible. You people can't make decisions.

I have a friend that has been three years with a leaking oil tank, that maybe leaks 25 gallons of oil; \$100,000 later-- And you know, I took him in to meet with DEP, and they blackballed him because he came in with a legislator.

COMMISSIONER WEINER: You didn't bring him in to meet with me.

SENATOR HAINES: And that's a fact.

COMMISSIONER WEINER: You didn't bring him in to meet with me, Senator.

SENATOR HAINES: No, I didn't, because you weren't there at the time. This was a couple of years ago.

COMMISSIONER WEINER: I understand, but again, I apologize.

SENATOR HAINES: Look, I took him in to meet with the Governor's Chief Counsel. I thought that was high enough.

We've got a situation here where you can't do what you are doing properly, and it should be divided, if anything. And you want to take on additional responsibilities?

Commissioner, I think you're out of whack.

I think the leader of this group here, Senator Dalton, made an extremely good statement, and I support everything he said.

Thank you very much, Senator.

COMMISSIONER WEINER: Thank you, Senator.

SENATOR DALTON: Senator Rand?

SENATOR RAND: Thank you, Mr. Chairman.

Good morning. Is it still morning? Yes. Good morning, Commissioner.

COMMISSIONER WEINER: Good morning, Senator. How are you?

SENATOR RAND: Good. How are you? Although after this, I don't know how you are going to be.

COMMISSIONER WEINER: I'm doing fine. I find these discussions to be important, and I hope I get the opportunity to respond to some of Senator Haines' comments.

SENATOR RAND: I'm glad you said that for one reason. I listened to Senator Dalton, whom I respect greatly, because I don't think there is anybody in this entire Legislature that knows the workings of the DEP, and is more environmentally concerned and consumer oriented than Senator Dalton, in his 10

or 12 years that he has been here. The questions that he brings up are really important. They are controversial. They are troublesome, and they deserve an answer.

COMMISSIONER WEINER: Absolutely.

SENATOR RAND: And if we can't get an answer here, what I would ask the Chairman to do is to certainly get an answer in writing, to every single one of those questions, because I don't think they are going to be answered here today, so that we can partake as a group here.

COMMISSIONER WEINER: Sure.

SENATOR RAND: But that brings us to the next step. I think that certainly the Senator will supply you with those questions, and you're going to come back with those answers, however controversial those answers might be.

I guess there are only two people who are here who sat on the Appropriations Committee, and we've had the pleasure of hearing you before our Committee, in which you stressed how important this Reorganization Plan is. I'm going to follow in the same vein as Senator Haines; that the history of the DEP in the 16 years that I am here, Commissioner, has not been one that has inspired confidence, either in the public or in the Legislature.

Now, I will tell you this: Your appointment raised some eyebrows to the positive side. There is no question that it was very well received. But you've only been there three months, and I would hope, and I would have thought, that you would have proved your case. I think you are on your way, because I've got news for you: In the 15-and-a-half years that I have been here, I've had more problems with the DEP than all the other agencies of government put together -- the calls that come into our office. And I must say to you, in the last three months, we've only had one problem, handled correctly.

So I have an open mind, but it seems to me that you asked us for legislative input. Before I get to the other

questions -- and maybe I should have asked the questions first -- I want to make this statement: Why doesn't the Governor give us 60 extra days, so that he doesn't hold our feet to the fire, so that we can discuss this rationally? Maybe there is a common platform or a third method of doing these things, or maybe a compromise or maybe something that we can amend?

I've never liked the BPU. I thought they were insulated. I thought that they were aloof. I thought that they were set aside. But that doesn't say-- Maybe they should have been changed from three Commissioners to five, to take care of some of the problems, and maybe we should have not put them in Treasury, but put them in some other-- Maybe in the DEP, I don't know, but if you want me to rationally analyze this, you've got to give me some time. I can't do it with holding my feet-- To say by June 23 I'll act-- I can't act that quickly.

It is only \$18 million, and in the context of the budget that Senator McNamara and I sit on, it's peanuts. It is actually peanuts. If you're talking of \$100 million, \$200 million, \$300 million, now you're beginning to talk of real money. But the \$18 million, believe me, if that was our problem, Commissioner, I would say to you, "Take the \$18 million and run. Our problems are over." We have a \$762 million problem we have to solve in the next six weeks, and you want this Legislature to solve this problem in the next three weeks. I don't think it is humanly possible.

So I would ask you, very honestly-- My questions are not difficult, and I am going to follow that up. But I would certainly respect if you go back to the Governor and give us a little more time, that maybe we could respond legislatively. Maybe we can put some input into it. Maybe the questions that Senator Dalton asked can be answered and the respective people sitting here can be asked.

These are logical people. These are not people who just rubber stamp anything. These are people who want questions answered, logically and intelligently. You have champions of yours on this side. I don't think you have any detractors. I think that person for person here, we want to see you succeed as the Commissioner of the DEP, are relieved that you are there, and hopefully wish you well. Why don't you extend the same courtesy to them, so that they can have the time to digest this and discuss it with you rationally and intelligently, to come to some conclusion.

Maybe your position is right. I'm not going to argue that point. I do know that \$18 million doesn't make me nervous. I've got to tell you that. I've become insulated for \$18 million.

SENATOR McNAMARA: It's only 3.9.

COMMISSIONER WEINER: It's only 4, Senator.

SENATOR RAND: It's only 4? That's even more to that, that it's not that pressing of a problem.

It may have a lot of merit -- it does have a lot of merit. I questioned you during the appropriations process. But I would hope that you would extend that courtesy to the Legislature. We need time to digest it and time to discuss it with you, to come to some kind of rational understanding of what we should do.

COMMISSIONER WEINER: Senator, I can assure you that your suggestion will be taken back to the Governor. I also want to assure you that at the time this Plan was being designed, and the question of implementation was being considered, very serious thought was given to its importance, to its timing, to the tools that--

SENATOR RAND: But, Commissioner, nobody from the Legislature was involved. It is my understanding that nobody-- I would ask Senator Dalton here, openly, but I don't want to get into a debate. Senator Dalton, were you involved?

SENATOR DALTON: I was not involved, not at all.

SENATOR RAND: That bothers me, that Senator Dalton was not involved.

COMMISSIONER WEINER: Senator?

SENATOR RAND: I would rather have him involved than me, because he probably knows more about this from more experience, than I have had in all the legislation, since I have been here.

COMMISSIONER WEINER: Senator, and again this is by way of explanation, not apology for the process right or wrong in terms of who is talking to whom. I was one of the people, but not the only person who was involved in this Plan, and there were other staff from the Governor's Office who were not-- I'm frankly not entirely sure who they spoke to. I assure you that your suggestion will be taken back, but I also want to assure you that in choosing to use the Executive Reorganization Act, the Governor chose that route recognizing the tool that had been provided historically by the Legislature. He concluded that it was appropriate under the circumstances, in anticipation of proceedings such as we are going through today, to provide the type of dialogue that we are having today. I think it's terribly important that we have this meeting; that questions be answered and followed up, and I look forward to doing that.

SENATOR RAND: Commissioner, I would say to you that this Legislature is not going to repeal the executive powers that the Governor has, neither by legislation nor by intent nor by design. But I would hope, if the Governor uses this method, and I would rather have the other method -- I tell you that honestly--

COMMISSIONER WEINER: I understand.

SENATOR RAND: --because it only gives us time, not because I disagree with the Governor's right to have the executive powers, but I do think we need time--

COMMISSIONER WEINER: I understand.

SENATOR RAND: --desperately need time.

Let me say this to you, not only for the Legislature's benefit, but also for your benefit, sir: I make that very clear. I think that it would behoove both arms of government to sit down and rationally discuss a proposal that is so -- that I guess brings such passions to the front, and I would hope you would transmit that.

Let me get back to the questions that I would ask you, very quickly.

COMMISSIONER WEINER: Sure.

SENATOR RAND: You mentioned here that there is a hiring freeze on BPU personnel. Why the hiring freeze, if the \$18 million is raised by assessments? Four years ago -- four years ago or five years ago, I lose count of time-- Five years ago, I remember sitting downstairs -- because we didn't meet here as an Appropriations Committee, but we met where the Senate Chambers are now -- and we increased the fees on the Board of Public Utilities to pay for these things.

COMMISSIONER WEINER: What happened was -- I think it was around Fiscal Year 1990 -- the Legislature authorized an increase in the ceiling of the assessments in terms of percentage of gross revenues of the utilities.

SENATOR RAND: What was that, that we did?

COMMISSIONER WEINER: You increased the ceiling on the assessment from, I think it was one-eighth of a point, to a quarter of a point.

SENATOR RAND: That's correct. When was that done?

COMMISSIONER WEINER: January of '90. I think that became effective July '90.

SENATOR RAND: Okay.

COMMISSIONER WEINER: But to answer your question, going back to the point--

SENATOR RAND: And we raised some fees about four years ago, also.

COMMISSIONER WEINER: That, I'm not sure. That may be. You raised the ability to impose the fees--

SENATOR RAND: That's correct.

COMMISSIONER WEINER: What happened was, I think consistent with the comments -- I don't recall -- I think that Senator Haines was making-- Those assessments-- Although the money to run the BPU doesn't come out of the General Fund, all appropriated dollars, and I can only speak for this administration-- When we took office in January of 1990 and faced the budget problems that we face, we made a decision that the cost of State government couldn't increase. So, in fact, there was a lid put on all growth and expenditures, even for those agencies such as the BPU which were funded from sources other than the General Fund -- in recognition that this is still coming out of residents' pockets -- and because the budget had to have not only a zero growth, but, in fact, a contraction of expenditures.

Consistent with that, and the point that Senator Haines made, the fines and penalties, which is one component of the Department's budget-- To me, and I've spoken about this a lot, but I want to emphasize the point that our goal in enforcement is to talk compliance, not to generate dollars. I've been very clear about that during my tenure, not only here but in other enforcement agencies. But our movement away from General Fund revenues and on to fee-supported systems is consistent with the same philosophy that supports the BPU, which is that the regulated community should be paying the cost of regulation. The cost causers should pay for the cost of regulation. During the past two years, we have moved from 50% of the budget -- in round numbers -- of the DEP being supported by general tax revenues, to now where it is approximately 23% -- 23.5% -- of the budget, consistent with that same philosophy.

So, Governors, other BPU Commissioners, recognizing a need to curtail State expenditures, had limited and imposed hiring freezes.

SENATOR RAND: Yeah, but ratepayers should have the personnel to protect them, or at least to have adequate personnel being paid for, voluntarily or by statute, whatever it might be, to certainly have the personnel-- And to tell me that--

That's difficult for me to comprehend, sir.

COMMISSIONER WEINER: Senator, we agree, and one of the questions that I face -- and I face it here and I faced it there -- was, how far can you bring down the number and still provide the type of service that ratepayers in the regulated community are expecting? The example I gave earlier was, because of these continuing freezes, where we might have had seven or eight or nine rate analysts, we now have three or four. Now, when we hit the three or four level, I become concerned.

One of the reasons why the freeze hasn't been lifted right now is to take a look at the current situation. What's going to happen with the reorganization? We are able to take some of the moneys. An example that I continually use, is that the accountant who is now doing budget work, can become an accountant who is doing rate analyst work, at no net increase to the assessment, enhancing service in regulatory oversight, and avoiding unnecessary duplication.

SENATOR RAND: That's why I have an open mind. That's why I want to be, at least, fluid on this.

COMMISSIONER WEINER: I understand.

SENATOR RAND: But, I want the concerns addressed. The independence and so forth, I want that addressed. I think that if we have a time period in which we can talk and get together -- I don't mean myself personally, but I'm talking those responsible for formulating policy as far as the Legislature is concerned -- then certainly we have the ability to at least compromise and review these problems and then maybe energize a situation that we can accept.

COMMISSIONER WEINER: I see.

SENATOR RAND: That's the only thing that I'm trying to get to.

Let me ask you just one more question--

COMMISSIONER WEINER: Sure.

SENATOR RAND: --and then, Mr. Chairman, I'll give up my time, until we get around again.

You talked about interim appointments, yet I looked at the Reorganization Plan -- I have it here -- and it says nothing about amending the statute, N.J.S.A. 52:27F-6.

COMMISSIONER WEINER: I'm sorry, which section? Where are you, Senator?

SENATOR RAND: Title 48. Wouldn't you have to amend that, if you are going to have an interim appointment?

COMMISSIONER WEINER: No. In fact, the Executive Reorganization Plan, if it becomes effective, serves as a supplement to Title 48. For example, Reorganization II, 1989, that had been signed by Governor Kean, dealing with the Division of Energy Conservation and Planning, serves as supplement both to Title 48 and to Title 52. It becomes a supplement to the statutory framework and is included within the statutory pocket parts.

SENATOR RAND: Thank you very much, Commissioner.

COMMISSIONER WEINER: Thank you, Senator.

SENATOR RAND: Let me just close with one thing: Time is necessary, and if you will transmit that message to the executive--

COMMISSIONER WEINER: I will.

SENATOR RAND: --let me tell you, you will gain a mile, rather than gain one foot.

COMMISSIONER WEINER: I will.

SENATOR RAND: Thank you very much.

COMMISSIONER WEINER: Thank you, Senator.

SENATOR RAND: Thank you, Mr. Chairman.

SENATOR DALTON: Senator Brown?

SENATOR BROWN: Thank you, Mr. Chairman.

It's good to have this dialogue with you, Commissioner. We certainly wish you well with all of your responsibilities. I would just like to underscore Senator Rand's plea for time. Certainly, many of us feel that if more time was available to the people in the State of New Jersey, that we would not quite be facing some of the educational challenges in the State that we presently are. So, hopefully we will learn from that particular experience.

There is no question in my mind that there is the big "C" of centralization going on, and I suppose at different periods in history you can argue whether centralization is good or bad.

I must say, Commissioner, though, over the last decade, there is no department in State government that has grown as much as yours has. I would just like to repeat the remarks of my colleagues, who have been concerned that if you were coming to us a year from now, saying, "I've really gotten 'X,' 'Y,' and 'Z' in shipshape in the Department of Environmental Protection," I think you would get a lot more sympathy from some of us, as far as taking on new responsibilities.

I'd like to direct my questions, though, to a little different tack. In the State of New Jersey, over the years, there has been a great deal of caution on the part of elected officials in two areas: One has been the casino area; the other has been solid waste. I would just like to hear from you how you feel these changes will affect the solid waste industry in the State of New Jersey and ensure residents of the State that the integrity of the industry will be stronger because of the changes, rather than weaker?

COMMISSIONER WEINER: On the issues of integrity, and really dealing with, "Do we have procedures in place to keep

certain people or businesses out of an industry" -- an important issue for the State -- "that we believe should not be engaged in that business?" -- let me define it that way -- I would suggest to you, Senator, that one of the problems of solid waste regulation in this State, going back 20 years, was when the State was faced with that same problem, and real life problem -- criminal complaints, criminal convictions on price fixing, collusion in the solid waste industry -- the answer they came up with was there was a need for regulation, and therefore, the responsibility went to the BPU. Wholly unprepared for, and unlike any other utility that it had ever regulated-- It was different than an electric company or a gas company or a telephone company. There were well over a thousand-- I think there are representatives of the solid waste industry here today to speak -- who can speak about it much more eloquently than I can, but well over 1000 companies, and the BPU is given the responsibility to provide for economic regulation in the name of integrity regulation.

What was really needed was integrity regulation, not economic regulation. Over the years what happened was we tried to put a square peg in a round hole. We drove small businesses out. We inhibited any ability for competition in the collection industry, and the whole regulatory system broke down because we set up an economic regulatory system to deal with integrity regulation.

There are now two very important programs that are working their way through: One is 901, and we need to talk about that. I think everybody is intimately familiar with that.

The second is a bill which I believe is now before your body, which will provide for the gradual four-year, economic deregulation of the collection industry. It is our belief, along with the industry -- our belief being the administration, my days at the BPU and now at DEP -- that there is a real opportunity for competition in that industry. There

are hundreds of companies that can compete. Because it has been so strictly regulated, we believe that competition should be gradual over a four-year period, to make sure you don't have predatory pricing and other issues. But we see that to be competition. We see strong economic factors. Integrity regulation will come through 901. Integrity regulation will come through the Attorney General's Office. Integrity regulation will never come through economic regulation. We've learned that lesson.

SENATOR BROWN: And just one last question: Following through on that, obviously your Department has a relationship to members of the industry where there are violations. Obviously, you come down on these particular companies, and you see no problem that this independent competition is going on at the same time that your particular responsibilities do have an enforcement aspect to them?

COMMISSIONER WEINER: No, I don't. It requires vigilance and it requires a recognition of the legal constraints, but that's true. Frankly, when I was at ELEC-- And it's not me, it's any enforcement agency, that mixes both regulation and enforcement of those regulations. The difficulty, I would suggest, and where enforcement agencies have run afoul, is where they lose sight of the role of enforcement. They make enforcement a goal unto itself and to see the economic body count. What can we produce in the way of fines? What can we produce in the way of fine assessments? My touchstone has always been compliance.

But the role-- The mixing of program responsibility and enforcement responsibility is not new, and I would suggest that it occurs in every administrative agency where there is an enforcement element.

SENATOR BROWN: Thank you, Mr. Chairman. I'd just like to conclude with an observation that as a Freeholder, I gave a great deal of thought to this whole business, that

obviously solid waste regulation took place under two parts of the executive branch, and so on. I'm not adverse to having the whole regulation aspect looked at again. However, a couple of years ago, I sat next to a former Attorney General, and he was-- I was saying to him how maybe we could have great cost savings in government if we combined operations and merged towns and all this. He looked at me and he said, "Senator Brown, you know, to a certain extent, if you are looking at things from the standpoint of corruption and the integrity of government, maybe it's not so bad that we have so many units out there."

Thank you very much.

SENATOR DALTON: Thank you, Senator Brown.

Senator Van Wagner?

SENATOR VAN WAGNER: Thank you, Mr. Chairman.

Good afternoon, Commissioner.

COMMISSIONER WEINER: Good afternoon, Senator.

SENATOR VAN WAGNER: I'd like to maybe change the focus to process. In developing the Reorganizational Plan that has been put before us, if you can, what steps, initially, did you and the staff of the Department -- I should say Departments -- take in deciding on the feasibility of the recommendations that are encompassed in this Plan? (no response)

Well, okay, I'll ask you a specific question: Did you start with a review of existing statutes as they relate to the various functions of the DEP and as they relate to the Board of Public Utilities and move from that point? Did you start with the premise that by consolidation you would achieve efficiency and therefore consolidation of various types of functions that seemed to have some linkages to both the DEP and the Board of Public Utilities would gain some economies of scale? Did you start with the idea that there needed to be a more coordinated decision-making process within the DEP versus the BPU? Was there outside input on the feasibility of the recommendations that you made?

COMMISSIONER WEINER: Without intending to be facetious at all, Senator, I'm going to say it's all of the above. This process started with the Governor charging the Cabinet with the task of looking for these opportunities, not just within our own areas of responsibility, but he said, frankly, "in other areas that may not be yours, where you have seen in your practice, or over years, opportunities." So, for example, nothing would have prohibited me from commenting on the Attorney General's Office, or vice versa.

Lots of ideas were spun out. Some came from statute; some came from practical experience. Some came from, frankly, old reorganization plans. As I said, there is nothing new here under the sun. Lots of these issues -- and I'm not just talking about Reorganization Plan No. 001 -- but many of the initiatives that were announced by Brenda Bacon at the end of January had roots, or at least were compared against former reorganization plans, of former Governors and former administrations.

So, we looked at statutes. We looked at functional relationships. We looked at changing statutes. We looked at current responsibilities. We looked at emerging issues. We looked for opportunities to streamline, and lots and lots and lots of proposals were left on the cutting room floor, if you will. Lots of ideas were spun out, and through conversation, through statutory analysis, through economic analysis, the 27 or 28 proposals that were announced at the end of January were presented. Some of them have since been found to be not ready for further consideration. Some of them have been withdrawn; others have been presented like this one. But I can't say that there was a single action that started this, other than the Governor's charge to the Cabinet.

SENATOR VAN WAGNER: Okay. Let me take you through a few hypotheticals, all right, if I might?

COMMISSIONER WEINER: Sure, sure.

SENATOR VAN WAGNER: Let's take -- not in any specific order -- waste flow waters. The responsibility for the determination of waste flow waters and the mapping of the solid waste district lies with the Department of Environmental Protection?

COMMISSIONER WEINER: And the BPU.

SENATOR VAN WAGNER: Okay. A court case five years ago, in effect, ruled out a unilateral decision by the DEP in the case of the closing of the High Point landfill, and said that the redirection of that waste flow was really within the province of the BPU.

COMMISSIONER WEINER: Jointly.

SENATOR VAN WAGNER: Jointly. Well, it was-- Okay. But, in effect, if I remember the court case correctly, it said that because of the economic effect that it would have on some of the municipalities--

COMMISSIONER WEINER: That's correct.

SENATOR VAN WAGNER: --and counties that were involved in the closing of that landfill, for example, that it was important to the BPU to make a determination as to whether the rates that were going to be charged were appropriate.

COMMISSIONER WEINER: That's correct.

SENATOR VAN WAGNER: Okay. Now, under the proposed Reorganization Plan, if that should occur again -- let us assume that a landfill is going to be closed-- In your view, how will the reorganized Department make that decision?

COMMISSIONER WEINER: What would have to happen now is, if a landfill was going to be closed for environmental reasons--

SENATOR VAN WAGNER: Under the Reorganization Plan.

COMMISSIONER WEINER: --I understand. Under the Reorganization Plan, that initiative would emanate from the staff of the DEPE, which is dealing with the environmental issues, and the same process would have to be followed. The

decision would be made respecting the environmental requirements opposed to the landfill, and now, because solid waste has been transferred, simultaneously, the decision would also have to be made in terms of the ratepayer impact. So that, as Commissioner -- I'll just speak for myself, it's for any Commissioner under the Reorganization Plan -- we would be required to simultaneously consider and do exactly what the court required; which is to consider the economic implications to the municipalities in terms of implementation of the closure order.

SENATOR VAN WAGNER: Suppose the BRC, as it's proposed to be, says that in order to efficiently, and at the least cost to the ratepayers, accomplish that end, that the waste should be redirected in the following fashion--

COMMISSIONER WEINER: Senator, can I interrupt you for just a second? Because the BRC would not have any role under the Reorganization Plan. All solid waste functions would be the responsibility of the Commissioner of the Department. So the Commissioner would simultaneously, and I think appropriately, have to consider both the economic as well as the environmental implications of the closure order. In fact, it would be doing exactly what the court in High Point anticipated, which is to say that the environmental side of the equation can't happen in isolation to the economic impact.

SENATOR VAN WAGNER: Okay. Well, all right, we'll follow your line of reasoning. You're sitting there now. You're the Commissioner of this new Department, and you have reviewed all the data in front of you. It is clear that you have a very, very, difficult and conflicting decision to make. On one hand, the direction of the waste can be done more efficiently and at least cost to the ratepayer in this particular fashion, but on the other hand there are serious questions about the environmental impact of implementing that type of waste flow. What do you do?

COMMISSIONER WEINER: Again, assuming we're dealing with a hypothetical, I suggest that's easy, because the least cost considerations do not require -- and I alluded before -- that it, in fact, requires that environmental impacts be considered. It's not sufficient to say the least--

SENATOR VAN WAGNER: No, no, what I'm setting, Commissioner, if I might-- I'm setting a hypothetical where there is a clear-cut dichotomy between the two issues.

COMMISSIONER WEINER: I understand that, but-- I don't mean to be argumentative at all, because that clear-cut dichotomy often exists, but the fact that it is cheaper to do it the way that's environmentally insensitive is not even acceptable under BPU rate-making determinations.

SENATOR VAN WAGNER: Well, let's assume, as it is in most cases, that it's not clear that that's the case. In fact, I sense that a lot of the frustration that comes about as a result of decisions that are made -- sometimes by both the BPU, and the DEP as it exists now -- is as a result of gray areas, rather than those that are very clear-cut.

COMMISSIONER WEINER: Always respectful differences in opinions and decisions--

SENATOR VAN WAGNER: Right. Who then becomes the final arbiter?

COMMISSIONER WEINER: The Commissioner of the Department.

SENATOR VAN WAGNER: The Commissioner of the Department will make the decisions--

COMMISSIONER WEINER: --will make the administrative decisions as a final agency action.

So this model, Senator -- again taking up the theme of High Point -- is that the Environmental Commissioner, the DEP Commissioner of the future, in dealing with the closure of a landfill, must consider both the environmental necessity for the closure of the landfill, as well as the economic impacts on

the sending municipalities, as well as the landfill closure costs. You can't make one decision without the other, which I would suggest is one of the holdings of High Point.

SENATOR VAN WAGNER: What would be the effect, for example, if you or your predecessor -- or your successor, let's say, in some future time -- made a decision that was considered to be less sensitive to the cost factors involved, and more insensitive to the environmental considerations? The counties or municipalities that were involved would then object?

COMMISSIONER WEINER: Sure.

SENATOR VAN WAGNER: Right now, they have two agencies to which they can appeal.

COMMISSIONER WEINER: And they still might object. For example, nothing-- Right now they don't appeal to another agency. There are two points of decision and they may feel-- For example, the BPU may make that same decision and agree with the environmental decision under today's model -- the existing model -- and then the complaining municipality or county would have the right to an appeal to the Appellate Division, arguing that the decision by either body was inappropriate and not supported by the facts, contrary to the statutory criteria to be applied. The same would be the case, I would suggest, under the model anticipated by the Reorganization Plan, and it reads the municipality or county would file an action challenging the final agency action alleging that the Department, in its decision, failed to properly apply the criteria of decision making. That's, in reality, the gist of appellate decisions, or appellate cases, all the time.

SENATOR VAN WAGNER: Do you have a great many of those cases pending in the Department now?

COMMISSIONER WEINER: A great many of which cases?

SENATOR VAN WAGNER: Cases that have undergone some amount of controversy that have not yet been settled, and

perhaps are still pending, awaiting some type of decision from one side or the other -- either the BPU side or the DEP side, or both?

COMMISSIONER WEINER: There are a number of cases still pending at the BPU. Now we're talking about solid waste cases?

SENATOR VAN WAGNER: Solid waste or practically any type of dispute.

COMMISSIONER WEINER: In solid waste there are a significant number of rate cases, primarily collector rate cases, still pending at the BPU. When I took office, there were, I think, close to 2000 cases pending. It's a number that overstates itself. For example, if the Weiner Collection Company started a rate case in 1987, another one in '88, another one in '89, these would be separate cases. Those cases were backlogged. We cleared out hundreds of those; they're being cleared out by the hundreds in anticipation of the rate fee regulation. I want to go through each type because it varies.

In the Appellate Division, I mean, I can't tell you, but I can find out how many cases are pending. There are cases that are presented every day at the BPU and the DEP, and all the various industries, that require a knowledge and a sensitivity of the environmental impacts, as well as the economic impacts, for a decision to be made.

SENATOR VAN WAGNER: All right, let's move away from solid waste and use another, if I might, hypothetical. Let's take the issue of energy, which I think is on everybody's mind. Let us assume that-- Let's use Atlantic Electric, all right? Atlantic Electric or, let's say, ABC Utility has decided, as a policy matter, that they are going to move away from the construction of their own generating facilities, all right? They're going to utilize either IPPs or other types of cogenerating opportunities to provide them with the megawatts that they need to supply the market that they're serving.

You, as the Commissioner of this new Department, have set an energy policy in motion, let's say, that, in your view, is in conformance with environmental and economic considerations, as well as sound energy planning. But by the same token, you have previous decisions by existing utility commissioners -- or utility commissioners that were there before -- in which approval has been given to the construction of generating facilities that are now just standing out there. They've already been paid by the ratepayers, they've already been billed through the process, and now you have to decide how you're going to square your energy policy with previous decisions by the Board of Public Utilities that have, in fact, impacted ratepayers. Okay, what do you do?

COMMISSIONER WEINER: Well, what I would suggest happens with that hypothetical, if I could just go on with it-- It's the policy of the State, articulated by the Department, promoting cogeneration, promoting a mix of nonutility generation. It's now entirely up to the Board, 100% entirely, without the input of the Commissioner, to figure out how to implement that through the rate structure of the utility that's under review.

SENATOR VAN WAGNER: You're saying under present conditions, it's entirely up to--

COMMISSIONER WEINER: Even under future conditions, because what will happen is, the implementation of that policy is inextricably linked, as you know, Senator, to decisions on approval of contracts, on rate structure, on incentives, on 101 different rate-making questions that come in. So that the policy towards independent power production, the policy towards all source bidding, the policy towards conservation, integrated resource planning, may be articulated by the Department, endorsed by the Governor, but ultimately it's going to be up to the BRC/BPU, in its independent rate-making and rule-making authority, to take those policies and implement them in the

context. I would suggest that I have absolutely no role-- First of all, any future Commissioner would have no role in the rate-making decisions or the rule-making decisions that would implement those policies as applied to a specific company.

SENATOR VAN WAGNER: But if the BRC, as it's proposed to be organized, reports to the DEP Commissioner--

COMMISSIONER WEINER: They do not. They do not on decisions involving rate-making or regulations. Maybe that's not clear, but let me say it clearly.

SENATOR VAN WAGNER: It's very unclear.

COMMISSIONER WEINER: Okay, and I apologize for that. They do not report to the Department Commissioner on matters of rate making or rule making of the decisions that they have to make. It is entirely independent. If they did report-- For example, decisions of other divisions within the Department are reviewable by the Department Commissioner. The decisions of the BRC will not be reviewable by the Department Commissioner. They are final agency actions. I suggest that is outlined in the Plan, appealable directly to the Appellate Division. So, if, for example -- take your hypothetical, Senator -- the BRC approved or disapproved, or modified a contract between the IPP and a given utility-- If implementation then seems appropriate for that utility in that setting, the overall energy policy, the Department's Commissioner has absolutely nothing to say other than, like any other bystander in State government, saying, "You did a good job. You did an interesting job. You did a bad job." And, if anybody has a complaint, it's up to the Appellate Division.

SENATOR VAN WAGNER: Suppose the BRC made a decision to approve a so-called clean coal-burning cogenerating facility and it was in contravention to policies that were set forth by the Commissioner?

COMMISSIONER WEINER: I would just cite the example--

SENATOR VAN WAGNER: Would the Commissioner go to the Appellate Division? Would the Commissioner, himself, go to the Appellate Division to appeal a decision by the BRC?

COMMISSIONER WEINER: No. I can't imagine that, because the Commissioner's not involved. It would be like--

SENATOR VAN WAGNER: Well, he is involved; he set a policy.

COMMISSIONER WEINER: Yeah, but take today's models. The DEP-- Let me go back six months. The answer, Senator, is no. You said to answer your question. It is no. Because, today, under the current model, the DEP may set an air policy in terms of implementation of the Clean Air Act--

SENATOR VAN WAGNER: Right.

COMMISSIONER WEINER: --and we will work in concert, as you have a good BPU. For example, I'm trying to obtain grant funds for technology to meet Phase I of the emission standards. But if the BPU, today, exercising its judgment, or the BRC, if this plan becomes effective, adopts a rate structure, approves a contract, approves incentives, whatever it does, it's a final agency action, and at that point the DEPE Commissioner could stand in the same shoes as the Department of Energy Commissioner. The model I would turn to--

SENATOR VAN WAGNER: There is no Department of Energy.

COMMISSIONER WEINER: There will be if the Plan takes effect, because the Department of Energy-- The purpose of the Plan is to make the Department of Environmental Protection a new Department of Environmental Protection and Energy. The name was not just picked out of the air. It is to elevate the role of energy policy and to make it part of a principal Department of State government again.

SENATOR VAN WAGNER: Suppose the hat that says, "energy" says, "Wait a minute here. We've looked at the number of megawatts that we've got on-line now. We've got three IPPs and two cogenerators producing a combination of 1800 megawatts

which is clearly far in excess of what we're going to need in the next five years, and we've decided that there's no clear reason why the BRC should approve the cogenerating proposal put forth by the XYZ Utility and XYZ Corporation." What do you do?

COMMISSIONER WEINER: In the first instance it goes to whatever authority is contained within the Division of Energy Conservation and Planning to do capacity planning in a finite sense and to set capacity standards. If the capacity setting standards are set by the BRC, it's their decision.

SENATOR VAN WAGNER: But the BRC isn't setting the capacity.

COMMISSIONER WEINER: Under your hypothetical they wouldn't be. In this case the BRC would be without power to do it.

SENATOR VAN WAGNER: No, under your Plan the BRC is independent, and therefore makes a decision based on its own considerations.

COMMISSIONER WEINER: Let's take-- Can I give a different example that's clear, at least to me, but maybe answers the same point?

SENATOR VAN WAGNER: I don't know if it will be clear to me, but go ahead.

COMMISSIONER WEINER: Well, I'll just get more confident in my example. The responsibilities for Certificates of Need which previously were Department of Energy's responsibilities became BPU responsibilities and--

SENATOR VAN WAGNER: Under their previous reorganization.

COMMISSIONER WEINER: That's right, and now would again become a DEPE responsibility -- review of a Certificate of Need. Let's assume that the Department, in reviewing that Certificate of Need, determines that, in fact, there is no need for that facility -- a facility. It determines something within its statutory powers to determine something. The BRC

would be without the authority to do anything contrary to that. If no Certificate of Need is the issue, the BRC can't act as if a Certificate of Need was issued.

SENATOR DALTON: Who's going to do that Certificate of Need within the DEP?

SENATOR VAN WAGNER: That was my next question.

COMMISSIONER WEINER: The Certificate of Need will be issued by the Commissioner.

SENATOR VAN WAGNER: But who, in the Department, is going to do the Certificate?

COMMISSIONER WEINER: Within the Department, the Office of Energy, which will be established, which will be comprised of people that are now at the BPU doing the same job. But they would now become Department employees, as opposed to BRC staff, and they would be performing the functions that you all remember that were much clearer when it was a division function or a Department of Energy function.

SENATOR DALTON: There's going to be an Office of Energy now in the DEP?

COMMISSIONER WEINER: That's called for in the Plan, that's correct. There will be an Office of Energy.

SENATOR VAN WAGNER: Let me see if I understand this now: The Commissioner, under his function, will set a capacity plan in motion, or, let's say that the energy planners will develop an energy capacity plan, I assume, at some point. So we can decide whether or not we need all these things, right?

COMMISSIONER WEINER: Yes, but there's a question that I'm leaving open, as to who will have the authority to make the determination as to whether or not capacity is needed. Should that be the Energy Department or should that be the BPU?

SENATOR VAN WAGNER: Well I don't want you to leave that question open. I want you to tell me who's going to make that decision within your new Department?

COMMISSIONER WEINER: Right now it would be whatever is provided for in Title 52.

SENATOR DALTON: Tell us, Commissioner, who provides for it in Title 52?

COMMISSIONER WEINER: Right now it would be the Department.

SENATOR VAN WAGNER: Which Department?

COMMISSIONER WEINER: The new Department will do that planning. It will absorb the powers of the Division of Energy Conservation and Planning. Previously, all the powers that used to be in the Department of Energy that then were transferred merely to the Division, are now being re-transferred to the DEPE. So the model, Senator, the simple answer, and I'm sorry if I'm getting confused -- I may be getting confused-- This has been--

SENATOR VAN WAGNER: You're not any more confused than I am.

COMMISSIONER WEINER: Well, this has been two-and-a-half hours for me, so I apologize if I'm not being coherent.

The model I would suggest is the exact same model that existed before the Department of Energy was abolished. It's the exact same model. The role that used to be performed by the Department of Energy will be performed by the Department of Environmental Protection and Energy. The responsibility of the BPU will be the responsibility of the BRC. It would be that model.

SENATOR VAN WAGNER: Okay. Can I introduce another element?

COMMISSIONER WEINER: Sure, I'll do my best.

SENATOR VAN WAGNER: I'm not trying to--

COMMISSIONER WEINER: I know you're not. I apologize. I'm usually better than this.

SENATOR VAN WAGNER: I'm trying to understand how all of this works.

COMMISSIONER WEINER: I understand.

SENATOR DALTON: Just for your information Commissioner, Senator Van Wagner is going to finish his questioning. Senator McNamara has to leave by 1:00. He said he has several brief questions. We'd like to give you the opportunity to go and get something to drink, or whatever, and come back, if you have no problems with that.

COMMISSIONER WEINER: Sure. I'm at the Committee's disposal.

SENATOR VAN WAGNER: If you'd like, I'd be willing to yield, Senator, and let Senator McNamara go ahead. Then I can always phrase my questions later on. Okay? I'll end with that and just say: If you would think about the interfacing of the answer you just gave me, with the decision that's made now by the Commissioner of Commerce and Economic Development, or whatever--

COMMISSIONER WEINER: The Commissioner of Commerce and Economic Development, today, makes no decisions.

SENATOR VAN WAGNER: Has no regulatory function?

COMMISSIONER WEINER: In energy. That was all transferred to the BPU. The decisions that the Commissioner of Energy used to make--

SENATOR VAN WAGNER: No, no. I'm not talking about an energy decision; I'm talking about an economic development decision.

COMMISSIONER WEINER: Oh, I'm sorry. I'm sorry.

SENATOR VAN WAGNER: I'll come back to that, okay?

SENATOR DALTON: Senator McNamara?

SENATOR McNAMARA: Thank you, Senator. Good afternoon, Commissioner.

COMMISSIONER WEINER: Good afternoon, Senator.

SENATOR McNAMARA: You know, believe it or not, I came down here relatively objective, but with a lot of questions in my mind. After listening to the testimony, I'm becoming slowly convinced that without the structure of well-thought-out legislation, I don't think I could support what's going.

The last quick fix that was recommended by the Governor was called the QEA, and I think a lot of people remember it. It has had several amendments to date, and I'm sure it will have several more amendments as time goes on.

A number of things trouble me. The fact that you have less people examining rates at the BPU, as far as I'm concerned, is a very bad decision and a very false economy for the ratepayers in the State of New Jersey. So, you know, the fact that if -- with this merger -- accountants would be freed up and can go and take those positions to examine the utilities' fee requests, I have very little comfort in, because the budget-- And I'm afraid that, it seems to me, the ultimate staff -- or the majority of the staff -- is going to be controlled by the DEP Commissioner, and no reference to you. Please.

It's like you talked about the structure of the BPU over the years. There were periods when they were very good; there were periods when they were not so good; and there were periods where it might be said that they weren't good at all. But there was a structure in place that allowed them to be very good when the right people were there, and I'm afraid with the limit that I can pull out of this Reorganization Plan, that that's no longer going to exist, and there's no guarantee that either of us are going to be back next year, or the following year, or whatever.

My staff also tells me the present DEP budget, which you referred to as most of it being on-line with true general revenues -- that about 50% of it is off the line. So, you know, there's a basic question--

COMMISSIONER WEINER: I'll stand to be corrected. If I'm wrong, I'll certainly apologize, but I'll say that I treat it as if we are on budget, and for those of you on the Appropriations Committee, you know that there's not an item there that we didn't explore in detail.

SENATOR McNAMARA: Well, I think that when we were talking about it, one of the concerns that we voiced was that more of it seemed going off line than on, so you know, let's leave that as an aside.

I guess my overall point -- at this particular point in time in the history of the State of New Jersey -- is, if there's any time, that time should be taken so that the public perception is that whatever we're doing is the right thing. It is, as Senator Rand suggested, time to slow down, maybe put it in neutral or reverse. I would hope that the Governor would take that into consideration, and possibly withdraw this proposal at this time and introduce it as legislation. I honestly feel, especially now, when we're talking about the impact of Energy -- a new Department in that Department -- that \$3.9 million savings, I have a feeling, is going to be gone like the wind in the night.

So my own conclusion, after today's testimony and the original statement made by Senator Dalton, is, quite frankly, that the way to go is legislatively. I hate to sound biased, but I want to know--

COMMISSIONER WEINER: I understand and respect your views.

SENATOR McNAMARA: I was leaning that way coming down, but after reading all the comments from OLS, I think there's just too many questions.

I want to thank Senator Dalton for allowing me the time to mention it to you.

COMMISSIONER WEINER: Thank you, Sir.

SENATOR DALTON: Commissioner, would you like to take a break?

COMMISSIONER WEINER: Oh, thank you. When would you like me to return?

SENATOR VAN WAGNER: Thursday. (laughter)

SENATOR DALTON: How long do you think you need? Do you need 20 minutes, a half an hour, 40 minutes?

COMMISSIONER WEINER: If you give me five minutes to stretch and get a drink of water, I'll be fine.

SENATOR DALTON: Well, why don't we give you a little more than that? We'll give you a half an hour. Is that okay?

COMMISSIONER WEINER: Fine. See you then.

SENATOR DALTON: Senator Van Wagner wants to just say one thing.

SENATOR VAN WAGNER: I just want to say something and it's a little bit different than what has been said, Commissioner. I don't think you're moving too fast, okay? I just want you to know that. I think this is a long time coming, and I'm glad it's here now and I'm glad we're going to have an opportunity to interact with you to change it. I don't know if you got that impression from me.

COMMISSIONER WEINER: No.

SENATOR DALTON: We just think 60 days is too short of a time, Commissioner.

COMMISSIONER WEINER: Thank you very much.

SENATOR DALTON: The next speaker on the agenda is-- By the way, the Commissioner is getting a break. The hearing continues on. You will be seeing staff and the members of the Task Force move in and out, and please feel free to do so, but the hearing will continue.

The next speaker will be Ms. Barbara Hauke from Rockland Electric. Ms. Hauke?

B A R B A R A C. H A U K E: My name is Barbara Hauke, and I'm a Legislative Executive of Rockland Electric Company. We appreciate the opportunity to testify today before the Senate Task Force, and thank you for seeking the input from those who will certainly be affected by the proposals before you.

The transfer of functions from the Board of Public Utilities to the Department of Environmental Protection is a matter that deserves the careful scrutiny it is receiving. Any governmental reorganization, regardless of its scope, carries

with it the possibility for both good and harm. Certainly no one doubts that the intent here is to provide a more cost-effective, more responsive bureaucracy, and both the Legislature and the administration are to be congratulated for recognizing this need and acting upon it.

We like creative ideas, and we think this is one of them. We also think that Commissioner Weiner is fully capable of turning this concept into reality, and ought to have the opportunity to do so.

Let me focus my remarks on that portion of the reorganization that gives us a certain level of concern: the transfer of conservation and energy policy from the Board of Public Utilities to the new Department of Environmental Protection and Energy.

Melding Conservation and Planning with the Environmental Protection does create opportunities to better respond to today's agenda. But we believe that having the BPU responsible for rates, and the Department of Environmental Protection and Energy responsible for conservation, could result in serious shortcomings. Any lack of coordination between the Departments must be avoided to prevent the Plan from strangling the regulatory process. (aide goes over to adjust witness' microphone)

SENATOR VAN WAGNER: I couldn't hear you.

SENATOR DALTON: That's the recording mike. That's not the one that carries your voice. Just put that back in, Barbara, or you won't be on the record. The one there, you press that button, and a red light comes on and that's the one we can hear you on. The other one goes to the recorder.

MS. HAUKE: Can you hear me?

SENATOR VAN WAGNER: Is the light on?

SENATOR DALTON: Try it now.

SENATOR VAN WAGNER: Is the light on?

MS. HAUKE: No. It's probably tired after two-and-a-half hours of the Commissioner's-- All right, I'll try and talk a little louder.

SENATOR VAN WAGNER: If you would, Barbara.

MS. HAUKE: And I have copies of my testimony for all of the Senators.

To give you a sense of the great frustration that we've had in the past with this kind of problem, let me read you a portion of a letter dated November 4, 1988, from James F. Smith, Chairman of Rockland Electric to the President of BPU.

In 1988, when that letter was written, conservation plans were first submitted to the Division of Energy and Conservation Planning of the Department of Commerce and Economic Development. Upon approval, the plans were then submitted to the BPU for its approval within 90 days.

That system just didn't work. By having to serve two masters -- even masters with good intentions -- delay and confusion were inevitable.

Mr. Smith wrote that: "The current review and approval process does give us considerable concern. There's an unceasing effort by the regulatory agencies' staffs to reach an agreement among all parties before submitting the company's plan to the Board. This has resulted in a lack of action. Our plan has been under review for over 13 months and we appear to be no closer to agreement than when it was first filed. My concern arises both from the delay in the approval process and the apparent change in the rules of the game."

Altogether, it took 18 months -- a full year-and-a-half -- to get our conservation program approved. This resulted in lost time and benefits to both customers and our company. When adopting this consolidation proposal, therefore, we urge you to recall these earlier difficulties and act accordingly. It would be a shame for a good idea, run by able people, to fall prey to the same shortcomings as previous organizations.

SENATOR VAN WAGNER: Excuse me. The Plan seems to be addressing what you just mentioned -- by consolidating these functions under one roof.

MS. HAUKE: Yes, that's true, Senator, but it's also not totally clear to us exactly who will make the final decision. Even with some of the questions that you brought out, we still have to go in front of the regulatory board.

SENATOR RAND: Mr. Chairman, if I may ask the witness a question? Is that 13-month delay due to low staffing or due to the fact of the inactivity of the Commissioners that are presently aboard, or the fact that there's just not enough Commissioners right now to render a decision?

MS. HAUKE: Senator, I was referring to the way it existed under -- when the DOE existed. And, as Commissioner Weiner referred, that is really the system we are putting back into place, in effect, and we did have considerable frustrations under that situation.

SENATOR VAN WAGNER: No, I think the example you gave was the system that occurred after the DOE was abolished and Energy became part of Commerce. And I believe that was the letter-- It was the Department of Commerce that was setting the capacity plan, and yet you were having to go to the BPU to get answers on the rates that you were going to set and it took-- And no one seemed to be communicating with each other. I thought that was the point you were trying to make.

SENATOR RAND: When was that 13-month delay?

SENATOR VAN WAGNER: In 1988.

MS. HAUKE: It started-- I have letters of support documented. It started in 1987 and went through 1988.

SENATOR VAN WAGNER: The DOE was already abolished as a Department, I believe, right?

MS. HAUKE: My understanding was that it was not actually totally abolished until 1989.

SENATOR VAN WAGNER: Well, I don't think it had a Cabinet-level status.

MS. HAUKE: No, it did not. No, it did not, but the functions of what a utility had to do and the different masters that we've had to answer to, was in effect at that time.

SENATOR RAND: Then if I'm to understand you, the BPU at that time was certainly ineffective in reviewing what you wanted reviewed. Is that correct?

MS. HAUKE: From what I understand--

SENATOR VAN WAGNER: In other words, was your frustration with the fact that the DOE was in the process of being phased out, its functions were being moved over to another department, or was your frustration with the fact that you had one level of approval going in one direction, and another level of approval going somewhere else?

MS. HAUKE: Well, the way the system worked, you had to first put your proposal to one system, and then when they were finished and approved it, it went to the BPU.

SENATOR VAN WAGNER: Well, see, that's the point I'm trying to make. What the Commissioner is proposing-- What I'm saying to you is that I understand what you're saying, but what the Commissioner--

MS. HAUKE: It could have been the fact that it was in transition. I really don't know that. I wasn't with the company at the time. And there's probably people in this room that could have probably helped us out with that.

SENATOR VAN WAGNER: Barbara, I'm not trying to be difficult. What I'm trying to get at is-- What you just said is what the Commissioner said he's trying to address by bringing these functions under one roof.

MS. HAUKE: Yes, I understand that that's what the Commissioner said. I've shown this testimony to the Commissioner, and my Chairman has spoken to the Commissioner about this. He understands that this is not-- He has acknowledged that these are some of the problems that could possibly arise and need some working with.

SENATOR VAN WAGNER: In other words, you and Mr. Smith still feel that there's not a clear understanding of where that decision will be made, even with the consolidation of these functions.

MS. HAUKE: That's true.

SENATOR VAN WAGNER: Okay. I want to understand the point of that. I think Senator Rand did, too.

SENATOR RAND: Okay, I'm satisfied.

SENATOR VAN WAGNER: Okay. Was it ever resolved?

MS. HAUKE: Yes.

SENATOR VAN WAGNER: But it took 13 months?

MS. HAUKE: It took 18 months in total for us to get an answer from the two different bodies that we were working with at that time.

I think I'm picking up my testimony where I left off:

Today, as societal and regulatory agendas are undergoing profound change, new ways of dealing with topics such as least-cost planning, demand-side management, and competitive bidding are always welcome.

If there are any responsible persons left in America who don't understand the urgency of sensible energy planning, they must have slept through the Persian Gulf crisis. What New Jersey does to deal with-- How New Jersey deals with these issues obviously will have a dramatic impact on its residents and the on nation as a whole.

In closing, we at Rockland Electric support the Legislature and the Governor in their efforts to make the State of New Jersey's government work better. Reorganization and consolidation, with the proper safeguards in place to avoid the creation of new bureaucracies or bottlenecks, can accomplish this worthwhile goal. We would welcome the opportunity to work with everybody to accomplish this.

Thank you.

SENATOR VAN WAGNER: So, in your view, the thrust of what has been presented is worthwhile, based on your past experience?

MS. HAUKE: That's correct.

SENATOR VAN WAGNER: With some concerns--

MS. HAUKE: Basically, we recognize, very much, the fact that energy and the environment have come closer and closer and closer together, and that to deal with these two things under one roof, and to be able to understand them together, is ultimately very, very important.

SENATOR VAN WAGNER: Okay. Thank you, Barbara.

What I'm going to try to do-- The Chairman didn't leave me any particular order here, but what I'm going to do is-- We had some representatives of the utility, one more person to testify, and then I'm going to move to -- if it's okay with everybody -- change the format and move to the environmental side a little bit. Then I'm going to move back to independent energy areas, so that we get kind of a mix. I'm going to call now Mr. Fred De Santi of Public Service Electric and Gas.

The mike is on. Just press the red light. If it's already on, it's on.

F R E D R I C K D. D e S A N T I: Thank you, Senator. Good afternoon, members of the Task Force. My name is Fred De Santi, General Manager, State Governmental Affairs for PSE&G.

Public Service appreciates the opportunity to comment on Governor Florio's Reorganization Plan and supports the important deliberations of this Task Force in attempting to further define the proposed regulatory structure, the working relationships of the combined agencies, and in understanding the ramifications of this major reorganization as it will ultimately relate to public utility regulation.

PSE&G recognizes the present day relationships between energy and environmental policy-making and regulation, and we

are cognizant of the important cost control objectives incorporated in the Plan as outlined in our Governor's message to the Legislature.

In echoing many of your comments, Senators, this morning, Commissioner Weiner's proven experience as President of the BPU gives us confidence in his abilities in dealing with complicated areas of utility regulation and in managing a large agency, as demonstrated during his tenure with the BPU and, thus far, with the DEP.

The magnitude of this reorganization, however, must be viewed not only in the near term, but also with an eye towards the longer term when future administrations may not be in a position to nominate leaders with such broad hands-on experience in both Departments.

New Jersey's public utility regulation, through an independent regulatory body, has existed since Governor Woodrow Wilson first created this autonomous agency. Since that time, the Board of Public Utilities has not only set rates and created energy policy in accordance with its statutory responsibilities under Title 48 of the New Jersey statutes, but also participated with other agencies, such as the DEP, in resolving crosscutting issues.

Late in 1988, changes in the industry brought together the electric utilities in our State in a joint effort to raise issues of concern to New Jersey's energy future. The issues were presented in a document entitled, "New Jersey's Electric Future -- Issues and Challenges," the purpose of which was to initiate a dialogue on issues, with the goal of building public participation and support in an expanded partnership of consumers, regulators, entrepreneurs, and utilities working together to meet the electric needs of New Jersey in the next decade and beyond.

In March of 1989, Governor Kean convened a group including yourselves -- Senator Van Wagner, Senator Dalton --

and other government officials, State industry, the electric utilities, nonutility power producers, and the public interest groups, to identify and address issues critical to our State's energy needs. I have available copies of that document and another which summarizes the findings of the March 1989 conference. One of the major recommendations stemming from that conference was the consolidation of regulatory functions, planning, policy, and regulations under the BPU, and to make the BPU a Cabinet-level agency.

Placing the BPU within the DEP, in less than an equal role, and removing energy policy and planning considerations from the Board, conflicts with the recommendation of those key policymakers assembled at the electricity conference. We would like to propose, however, some administrative recommendations which we believe will improve the character of the Reorganization Plan, accomplish the important goals sought, and yet keep intact the substance of the recommendations of the energy summit.

While there is no doubt that a considerable synergy exists between the environment and the creation of energy policy, we question the need for a single agency to balance environmental, energy, and public utility regulations under a single management team. Can we be sure that environmental policy will be sufficiently insulated from economic considerations so that the process for review of energy producing facilities ensures that the best alternative is being selected on the basis of environmental and economic terms? Can the public be sure that an independent and balanced review caused the right questions to be asked in determining which energy producing facilities are the best "fit" for New Jersey?

Under the provisions of the Reorganization Plan, we are not at all sure that a sufficient measure of autonomy and clear distinction exists between the Department of Environmental Protection and Energy and the Board of Regulatory

Commissioners. This stated concern may, however, be accommodated by amending the Plan to permit the Board of Regulatory Commissioners to retain administrative and budgetary powers over its own organization, while simultaneously folding the agencies together in close working relationships which will maximize collaborative policy efforts under Commissioner Weiner. Simply stated, it is our opinion that the goal of collaboratively developing energy and environmental policy that makes the best sense for New Jersey can be achieved by carefully coordinating these efforts within Commissioner Weiner's newly created Office of Policy and Planning, without compromising the independence of the Board of Regulatory Commissioners.

This amendment would appear to accomplish the goals of the Reorganization Plan in cost savings by making clear through close working relationships where administrative and technical duplication of effort exist and yet administrative autonomy of the BRC would permit the independent assessment of energy policy we believe is necessary to the process of energy regulation.

One final observation relates to the Governor's new authority to nominate an acting member to the Board of Regulatory Commissioners from among the employees of the DEP or the Board for a period not to exceed 120 days. While it is recognized that this limited authority is intended to assist the Board in its ability to carry out its regulatory functions without delay, we are concerned that even this limited authority may begin to politicize the regulatory process. The Plan requires that the vacancy be filled by an employee of either the DEP or the BRC. This individual's ability to decide rate cases independent of his or her future work back at the agency is of some concern to us. Additionally, as has been pointed out, this action may be inconsistent with the

requirements of our State Constitution, and consequently we respectfully suggest that this proposal be deleted from the Plan.

In conclusion, PSE&G recognizes the important goals which may be accomplished through reorganization, and respectfully submits that the long-term interest of the State might better be served by making the modifications we have suggested.

I would be pleased to answer any questions you may have with regard to my testimony at this time.

SENATOR DALTON: Senator Rand?

SENATOR RAND: Mr. De Santi, do you have written copies of that, or--

MR. De SANTI: Yes, Senator, I do. I will distribute them.

SENATOR RAND: You're going to distribute them? Okay. You had an amendment in there, prior to your concern about the interim appointment. Do you want to repeat that?

MR. De SANTI: Yes, sure.

This stated concern may be accommodated by amending the Plan to permit the Board of Regulatory Commissioners to retain administrative and budgetary powers over its own organization, while simultaneously folding the agencies together -- in, but not of -- in a close working relationship which will maximize the collaborative policy efforts under Commissioner Weiner. So, essentially, we're suggesting that "in, but not of" can mean something in a department where people work closely together, with the idea being collaboration, cooperation, without sacrificing the autonomy of the agency.

SENATOR RAND: Thank you very much. Thank you, Mr. Chairman.

SENATOR DALTON: Thank you, Senator Rand.

Let me, if I could, refer to the present statute and relationship between the Board and the Department of the Treasury:

"The Board shall be independent" -- I'm quoting now, Fred -- "of any supervision or control by the Department of the Treasury or by any officer thereof, and unless otherwise expressly provided by law, the Board shall be independent of any supervision or control by the Division of Energy Planning and Conservation in the Department of Commerce, Energy and Economic Development or by any officer thereof."

Is that what you're referring to?

MR. De SANTI: Yes, Senator.

SENATOR DALTON: Okay. So you're suggesting that we retain the present language or the Reorganization Plan retain the present language with regard to the Board's relationship to the Department of the Treasury?

MR. De SANTI: That's correct, Senator. But, simultaneously, taking advantage of the strong manager that we now have in the DEP so that we can get collaborative policy and it not be in the "in, but not of" situation that exists right now with the Treasury.

SENATOR DALTON: There's nothing in this, by the way, that suggests to me that there is not the ability to collaborate in the language that I just gave you.

MR. De SANTI: That's correct.

SENATOR DALTON: Okay. I have no further questions.

MR. De SANTI: Thank you very much.

SENATOR DALTON: Thank you, Fred.

Kevin Lynott, JCP&L.

K E V I N L Y N O T T: My name is Kevin Lynott, Director of Public Affairs with Jersey Central Power and Light Company.

Throughout the last 15 years, we have seen a number of changes in State government in the way they address the energy industry. We've seen the creation of DOE; we've seen it moved

around different departments; we've seen BPU of DOE, and BPU of the Department of the Treasury. When we first read the reorganization, we looked upon this as another change in government structure in the way the utility industry is going to be regulated.

Our major concern doesn't revolve around the structure itself; it revolves around the people that are finally selected to fill the sensitive post of regulating us, and setting public policy in New Jersey. And that's not part of the debate today, where the people are finally selected.

We see a positive aspect of this reorganization and that is the sort of marrying of the energy industry and the environmental issues. As everyone else has mentioned before, many of the things we want to accomplish in serving our constituents directly revolve around environmental issues, whether we're trying to site transmission lines or provide energy we need to service our customers.

Our concern is based along the independence issue. We would like to see the same independence that exists now within the Department of the Treasury. We think this structure can work, and we look forward to working with it, but we think there's positive aspects of it, and we also have these concerns.

SENATOR DALTON: Is that-- Basically, Kevin, are you saying the same thing Fred said?

MR. LYNOTT: Essentially, yes. And that concludes my remarks.

SENATOR DALTON: Okay. I have no further questions.

Is Rob Stuart here from New Jersey PIRG? (no response) Okay. Robert Thompson from United Telephone Company of New Jersey.

R O B E R T E. T H O M P S O N, III: Good afternoon. My name is Bob Thompson and I'm Vice President and General Manager for United Telephone Company of New Jersey. I'm the Chief Operating Officer of the company and my responsibilities there

are to manage the day-to-day operations of the company and to ensure that the telecommunication needs of United Telephone's customers are met.

United Telephone of New Jersey serves over 145,000 customer access lines in portions of northwest and west central New Jersey as part of the nationwide united telephone system which serves nearly four million customers in 17 states. United Telephone employs over 500 people in this State and has invested over \$100 million in a new plant and equipment in the State over the last five years.

The purpose of my remarks today, of course, is to provide comments, on behalf of United Telephone, regarding Governor Florio's proposed Plan to move the Board of Public Utilities from the Department of the Treasury to the Department of Environmental Protection. A significant portion of United Telephone of New Jersey's operations are regulated by the BPU and, as such, the company has a significant stake in the proposed Reorganization Plan.

Just last month, the Board of Public Utilities released the results of an independent study that they commissioned to explore the relationship between telecommunications and New Jersey's economy, and to assess whether the State's traditional regulatory policies governing telecommunications should be modified to reflect the evolving role of telecommunications in New Jersey.

The report concluded that, as New Jersey continues to shift from a strong manufacturing base to a more service-based economy, the widespread availability of an advanced telecommunications network will become a critical factor in promoting economic development and growth. What this means to regulatory policymakers and telephone company officials alike is that a significant strategic opportunity exists to advance the public agenda in New Jersey through the accelerated deployment of a reasonably priced, advanced telecommunications

network in the State. Therefore, we must ensure that changes in regulatory policy be made with an eye toward ensuring that New Jersey is well able to compete as a national, and even world leader, in the emerging information age.

The proposed Reorganization Plan to move the Board of Public Utilities from the Department of the Treasury to the Department of Environmental Protection does not appear to have any material impact on the way that United Telephone of New Jersey is regulated or on the way in which we serve our customers. Our experience generally, over the past several years, has been that the BPU has been willing to listen to, and consider United's positions on telecommunications issues. While the decisions they have made have not always been in our favor, we do believe that the BPU has acted expeditiously and that we have seldom been left without a clear regulatory direction. Further, Governor Florio has maintained, and Commissioner Weiner has reinforced this morning, that the autonomy of the Board will remain intact, and that's a critical portion of our support of this move. As a matter of course, United Telephone does support initiatives in State government that promote efficiencies of management and progressive regulation.

I would like to close my remarks by thanking Senator Dalton and Senator Lynch for their invitation to participate in this proceeding, and I would also respectfully request the opportunity to participate in a similar forum to address the Governor's parallel plan to ultimately relocate telecommunications oversight from the Board of Public Utilities to the Department of Commerce.

Thank you, and I'd be glad to answer any questions.

SENATOR DALTON: Bob, where does it say in the Reorganization Plan that there will be independence between the Board of Public Utilities and DEP? You indicated that you were assured because the Governor has maintained that there will be

independence between the Board of Public Utilities and DEP. Where do you see that in the Reorganization Plan?

MR. THOMPSON: Well, my comments were based, primarily, on Commissioner Weiner's answers to your questions.

SENATOR DALTON: Our voting yes, no, or amending, is based on the Reorganization Plan.

MR. THOMPSON: I understand. I guess there's an implied assumption there that if the Oversight Task Force is satisfied that that autonomy will remain intact, then we can support the plan.

SENATOR DALTON: Okay. So what you're suggesting is that if we are satisfied that there is independence, then you can support the plan.

MR. THOMPSON: Yes, Senator, that's correct.

SENATOR DALTON: Okay. Thank you, Bob.

MR. THOMPSON: Thank you.

SENATOR DALTON: Anyone else? Is Dolores Phillips here? (no response) Maurice Miller, President, Kenetech Energy Systems.

MAURICE MILLER: Good afternoon. I apologize for the voice. I'm suffering from the longest cold in history.

My name is Maurice Miller. I'm a Vice President of Kenetech Corporation and President of its subsidiary Kenetech Energy Systems. Kenetech Corporation is a diversified developer of alternative and independent energy projects and its subsidiary, Kenetech Energy Systems, is the subsidiary that accomplishes the development of those projects, including the development of cogeneration and biomass projects throughout the United States. Another subsidiary of Kenetech Energy Systems, for which I have managerial responsibility, is Kenetech Energy Management, which is a fully integrated developer of energy conservation projects. In addition, Kenetech Energy Systems finances projects for U. S. Windpower, Inc., which is the

world's largest developer of wind energy power plants. Other Kenetech subsidiaries operate and construct independent power projects throughout the United States.

Since Kenetech's inception in the late 1970s, it has developed, constructed, and continues to operate more than 500 megawatts of independent power projects and conservation projects, utilizing technologies which are consistent with the most stringent levels of environmental protection at the time of their development.

A little background on myself: Since joining the company in 1985, I participated in financings totaling approximately \$1 billion worth of power plants. Prior to assuming my current job, I was Vice President of Finance for the company, Treasurer of the company, and counsel to Kenetech. I currently serve on the Board of Directors of Kenetech Energy Systems and several of its subsidiaries. I also serve on the Board of Directors of Energy Investment Management, Inc., which manages energy investors on LP. That fund is a limited partnership which makes equity-oriented investments in nonutility independent power projects. The fund's general partners include subsidiaries of John Hancock Mutual Life Insurance Company, Niagara Mohawk Power Corporation, and Kenetech Corporation.

I have a B.S. degree in Chemical Engineering from the University of Notre Dame, and an M.S. in Chemical Engineering from California Institute of Technology. I'm also an attorney and member of the California Bar.

The purpose of my testimony today--

SENATOR DALTON: And where did you go to high school?
(laughter)

MR. MILLER: I'm sorry. I haven't been in New Jersey and didn't know what the standards were.

The purpose of my testimony today is to support the Reorganization Proposal that would confer part of the

Department of Environmental Protection and its Commissioner the authority to implement important goals of coordinating and integrating the State's environmental and energy policies.

Specifically, I wish to support the proposed transfer of the Division of Energy Planning and Conservation, the Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation, and a responsibility and authority vested in the President of the Board of Public Utilities, to act as Chairperson of the Energy Plan Master Committee, all to the Department of Energy -- Environmental Protection and Energy and its Commissioner.

I concur with the Plan's findings that this Reorganization would ensure full coordination between the State's implementation of environmental and energy policies. The proposed Reorganization is indicative of New Jersey's willingness to explore new ways to best serve the State's growing energy needs in a manner consistent with important goals of environmental protection. An example of this forward-thinking policy has been the contribution the BPU has made to encourage energy conservation by stressing the need for demand-side management activities and lend that to utility and nonutility supply options.

Kenetech Energy Management, Inc. was a successful bidder in last year's integrated supply and demand side bidding systems by Public Service Electric and Gas Company, and Orange & Rockland Utilities. It has entered into two contracts with Public Service Electric and Gas, and one contract with Rockland Utilities, all of which have been approved, or which are pending approval by the BPU.

In addition to its New Jersey activities, KEM has entered into several contracts with Orange & Rockland Utilities and several Boston-area utilities for the provision of energy conservation services in their service territories. Pursuant to these contracts, Kenetech guarantees a certain amount of

energy conservation savings to the utilities over a term of contract in return for payments based on the cost which the purchasing utility would have paid for operating more expensive generating units. Kenetech fulfills its obligation to design, procurement, financing, installation, operation, and maintenance of the conservation measures within the industrial/commercial institutional facilities. Kenetech pays substantial damages in the event that it fails to provide these conservation measures.

Energy conservation technologies provide among the most environmentally sound electrical energy additions to the utilities systems through the installation of highly efficient motors, lighting, and the like. Facilities utilize less energy and consumption is reduced, allowing that growth of electrical demand be supplied through existing sources. New Jersey's in the forefront for these technologies. Initiative apparently being implemented by the Board of Public Utilities was largely a result of the policy of the State's Energy Master Plan--

SENATOR DALTON: Maurice, I don't want to interrupt you and I certainly don't want to appear rude, but can you get on to the Plan?

MR. MILLER: Sure.

As the citizens of New Jersey become more, the need for close coordination of energy and environmental policy in the State government becomes more and more important. State energy and environmental policy and how they work together will, in large part, answer the question as to whether residents of New Jersey can, without sacrificing their standard of living, maintain an environmental-quality life. To the extent energy and environmental policies are set by more than one agency, objectives set by one agency can, at times, be inconsistent and unrealistic when compared with objectives of another agency with overlapping responsibilities. This primarily arises in the area of environmental sensitivity to

new generation resources. The proposed reorganization should lessen the impact of one agency -- perhaps the BPU -- setting goals which are unrealistic in terms of the regulatory policy for another agency -- perhaps the Department of Environmental Protection.

The need for integration of environmental and energy issues and the adoption of State policies has been a chief component in recent energy conservation issues in New Jersey. Consolidating energy policy functions of the BPU into the new Department is not only consistent with this stated policy objective, but should also make for efficient government. The consolidation should limit, or eliminate, inconsistencies that may develop or worse, discourage independent power conservation and energy project development in New Jersey.

Thank you.

SENATOR DALTON: Thank you, Maurice, for your time. Any questions from the members? (no response) Thank you very much. I appreciate it.

Bob Swain.

R O B E R T E. S W A I N, JR. ESQ.: Thank you, Senator. My name is Robert Swain. I'm an attorney and I practice law in the State of New Jersey. I represent a number of public- and private- sector clients involved in the solid waste industry. Prior to my private practice, I was the Director of the Division of Solid Waste in the New Jersey Board of Public Utilities for two years, and prior to that, a regulatory officer with the Board for approximately eight years. I suspect that's why you asked me to come here. I appreciate that.

SENATOR DALTON: I remember you well, Bob.

MR. SWAIN: Thank you, Senator.

I guess I'm affected primarily -- and my clients are affected primarily -- by the merger of the Division of Solid Waste and the subsuming of the Division of Solid Waste of the

Board of Public Utilities by the Department of Environmental Protection's Division of Solid Waste. I think it's high time that that initiative, whether it be through legislation or through the Reorganization Plan, took place. The industry is presently overburdened with regulation, the current regulation, the dual fines, dual assessments, dual everything, and anything to do with a streamlined process, I think, should be supported and endorsed. I would suggest, however, that there be some thought and some modifications, perhaps, to the Plan.

Presently, the Board of Public Utilities, as you know, as an independent authority, sets rates for traditional utilities. With the instant reorganization, it would be my understanding that the Commissioner would have the independent authority to set rates over disposal facilities, which are more akin to our traditional type utilities. That would be one of my concerns that I think could be readily addressed. Otherwise, with that I would support it.

Also, I would endorse some of the comments made heretofore, that there needs to be a maintenance of independence of the New Jersey Board of Public Utilities in its traditional rate-setting methodologies and policies. I would suggest that that may be accomplished by means of the amendment that was suggested beforehand, for which the Board would maintain its own authority to adopt its budget and maintain its own administrative responsibilities over its own personnel. With those two caveats, I would support this initiative of the Governor, and whether it be through legislation or the Reorganization Plan, I would heartily endorse it.

Thank you, Senator.

SENATOR DALTON: Thank you, Bob. Any questions?
Senator Contillo.

SENATOR CONTILLO: Bob, do you represent people now that you used to regulate?

MR. SWAIN: Yes, I do.

SENATOR CONTILLO: That's very interesting.

MR. SWAIN: Pardon me?

SENATOR CONTILLO: I said, that's very interesting. You said something else I wasn't quite sure of. The Commissioner's-- You're talking about the regulation of the solid waste facilities.

MR. SWAIN: That's correct.

SENATOR CONTILLO: You could support it if certain things happened, you said? I couldn't hear what you said.

MR. SWAIN: No, disposal facilities, Commissioner -- Senator, excuse me -- are more akin to our traditional type utilities. For example, they have franchise areas. They have designated waste flows. They are, in essence, monopolies. Their rates are presently set by the Board of Public Utilities which is, again, an independent rate-setting authority, subject to the constraints of the Open Public Meetings Act, with various other protections within there, although--

SENATOR CONTILLO: The BPU sets the rates for the solid waste facilities?

MR. SWAIN: Yes, it does.

SENATOR CONTILLO: They're not set by the contract that would--

MR. SWAIN: No, they're not. In fact, in the recent situation at the transfer station, a number of contracts--

SENATOR CONTILLO: Well, how about the burners? The BPU doesn't set the rates for burners.

MR. SWAIN: For resource recovery facilities? Those are set by contracts--

SENATOR CONTILLO: Contracts.

MR. SWAIN: --but they're reviewed by the Board of Public Utilities Commission.

SENATOR DALTON: It can go either way. It can go either way. Gloucester County facilities are set by the Board -- regulated by the Board of Public Utilities.

SENATOR CONTILLO: But that's the contract that's been written.

SENATOR DALTON: Well, it's under the McEnroe legislation. They have-- They can go a dual path, as I understand it, with regard to rate making.

SENATOR CONTILLO: But up-front you said you support it?

MR. SWAIN: Well, I guess my concern would be that, and I would recommend, perhaps, that the rates were set for privately owned public utilities that were not without any set disposals-- Utilities which are privately owned-- Perhaps if the Board retains some sort of rate-making jurisdiction over that.

With respect to, I guess, county facilities such as maybe Monmouth County Reclamation Center, which is, in essence, owned and operated by the County, I would suggest that that would be appropriately regulated by the Commissioner of the Department of Environmental Protection. It would eliminate some of the regulatory lag, and everything like that, that is inherent in the present process.

With respect to privately owned utilities, I would suggest that, perhaps, it may be a good idea to obtain some rate-making jurisdiction in an independent agency, such as the BPU.

SENATOR CONTILLO: Are you now encumbered by some of those rules that you helped promulgate?

MR. SWAIN: Yes. Unfortunately, yes.

SENATOR CONTILLO: Okay. Good. Good. (laughter)

MR. SWAIN: Anything else?

SENATOR DALTON: Any other questions? Senator Rand?

SENATOR RAND: Just one more, Mr. Chairman, through you. You said you wanted to be under one roof. I can understand that.

MR. Swain: Yes.

SENATOR RAND: But deregulation of the solid waste industry hasn't happened yet. In fact, it's still languishing-- Is that the word, Mr. Chairman, "languishing"?

SENATOR DALTON: That would be one way of putting it.

SENATOR CONTILLO: It's in our Committee, Senator.

SENATOR RAND: I'm glad you said ours. (laughter)
But that hasn't happened, as yet.

MR. SWAIN: Well, unfortunately, it has not. You're right, Senator. I do this as a means by which to expedite that process. I think that's what the ultimate goal of this administration is, and I believe, as many people who are involved in the industry, that the collection side in any event, Senator, should be deregulated.

SENATOR RAND: Thank you. Thank you, Mr. Chairman.

SENATOR DALTON: Bob, you have a much better tan, by the way, than when you used to work for the Board. I just wanted to note that. (laughter)

MR. SWAIN: Well, I don't have those neon lights up there.

SENATOR DALTON: There you go.

MR. SWAIN: Thank you, Senator.

SENATOR DALTON: Thank you.

Before we get back to the Commissioner, I'd like to get one more person. Is Wayne DeFeo available?

W A Y N E D e F E O: I'm here, Senator. Good afternoon, and thank you.

My name is Wayne DeFeo, and I'm the Regional Manager for the National Solid Wastes Management Association.

On behalf of the New Jersey Chapter of NSWMA, I would like to thank you for the opportunity to testify on the proposed merger of the Department of Environmental Protection and the Board of Public Utilities.

As you know, these are very difficult times for the solid waste industry in the State of New Jersey. Many small

and intermediate-sized companies find it difficult to survive, due to the excessive regulatory climate and fees imposed by both the DEP and the BPU. Those that will be able to survive are forced to engage in lengthy rate cases before the Board to recoup the costs of compliance, and these costs cannot be passed through the customers.

Currently, the industry is forced to pay at least three separate licensing fees to operate in this State. There is the A-901 fee -- a program fee which we support wholeheartedly even given its current increases; truck registration and licensing permit fees -- which are currently proposed to undergo massive increases within the Department, and this causes us great concern; and a one-fifth of 1% gross revenue assessment paid to the Board of Public Utilities. These fees, combined with the very high cost of doing business in New Jersey, lead us to conclude that any action by a State agency that will lead to the diminution of bureaucratic oversight is welcome.

It is our hope that by combining the Board of Public Utilities and the Department of Environmental Protection, the need for multiple assessments will be eliminated. We urge the Legislature to act quickly to eliminate the one-fifth of 1% assessment on gross revenues upon approval of the merger. Additionally, we anticipate that at least one problem currently fostered by a very high DEP schedule will be resolved. That is the problem of an increase in DEP fees resulting in companies having to pay \$15,000 to \$20,000 in legal costs to recoup those fees via a Board rate case.

It is our hope that by merging the two agencies, the DEP fees will at least become "pass-throughs," as they should already be, although, I point out to you, "pass-throughs" are not the solution to high fees. However, "pass-throughs" do allow companies to compete on an even cost level. We also hope that the merger will eliminate the contradictory decisions of two agencies when environmental problems require resolution.

Currently, a departmental order to improve environmental protection may result in a net loss to a company as the Board may choose not to allow cost recovery via rates. It is hoped that this merger will result in environmental orders being allocated as business expenses.

Our support for this merger rests, in part, on our high level of confidence in this Legislature passing an economic regulatory reform bill which will ultimately lead to the economic deregulation of solid waste collection companies. We believe that the time for this legislation is ripe, and if I may quote Commissioner Weiner from a prior hearing, "Economic regulation is a concept whose time has come and gone."

We also anticipate that the merging of the two Departments will lead to an efficiency in regulatory operation. We specifically refer to the need for the streamlining of information flow; the ability of companies to gain information readily from a single source; and the elimination of conflicting regulations.

For example, grass clippings are currently deemed to be municipal waste, ID 10, for the purposes of Board regulation, but are vegetative waste, ID 23, for the purposes of the Department's regulation. This leads to confusion as to what is the best way to handle this particular waste stream. We are now seeing grass clippings leaving the State of New Jersey to out-of-state composting facilities, because those facilities can operate more economically than those in our State as they do not face either regulatory confusion or excessive fee structures.

Finally, we anticipate that this merger will allow industry to concentrate its efforts on monitoring services for which fees are paid. As the Department becomes more fee driven, we anticipate that by dealing with a single agency and a single Commissioner, we can expect greater returns on our investment, i.e., more effective enforcement, creation of even

playing fields, faster and more efficient review of petitions for permits and permit changes, and generally a more uniform regulatory approach.

We commend the Legislature for holding these hearings, and trust our concerns will be addressed by the administration within this merger, or by the Legislature at a date in the near future.

Again, I thank you for your invitation, and if you have any questions, I'll be happy to answer them at this time.

SENATOR DALTON: Members of the Committee? (no response) Wayne, thank you for showing up. I just want to note, for the record, how ironic it is for the former Director of the Division of Solid Waste to be calling for doing away with bureaucratic oversight. (laughter)

MR. DEFEO: Thank you, Senator.

SENATOR DALTON: Commissioner?

SENATOR CONTILLO: Didn't have enough, huh?

COMMISSIONER WEINER: What's that?

SENATOR CONTILLO: Didn't have enough?

COMMISSIONER WEINER: That isn't a question. It's more that you didn't have enough of me.

SENATOR DALTON: The order of questioning is: Senator Van Wagner was in the midst of his questions when the Commissioner took his break. We'll go to Senator Van Wagner. Senator Schluter has not had his first round of questions, yet, so we'll go to Senator Schluter, and myself, and then we'll start a second round, if there is a need.

Senator Van Wagner?

SENATOR VAN WAGNER: Oh well, anyway, poor energy planning.

Commissioner, I was pursuing a direction in my questioning, although you may not have been able to detect it. I guess what I am trying to get at -- okay? -- was covered, in some part, by some of the utilities when they came here. That

is, very simply, I can understand the thrust of what you are trying to do in terms of energy planning, environmental regulation, and the other synergies that you talked about. However, I still sense that there is a distinct conflict that will take place when you superimpose on that the so-called Board of Regulatory Commissioners.

I was getting toward another area of my concern, which revolves around economic planning -- economic development. Obviously, economic development encompasses a lot of considerations, not the least of which is energy. The question I was posing, or the hypothetical I was posing, was: Let us assume that there is an economic development plan in place that requires a certain type of energy siting to be implemented for that policy to be forthcoming, and that it runs in contravention to the policies and decisions that are being made within your new department, or someone else's new department, or whatever.

I guess what I am driving at is, what is wrong with developing some type of process within this department for settling disputes and controversies that may arise as a result of those types of conflicting goals, rather than having to seek Appellate Division relief?

COMMISSIONER WEINER: I understand and, again, if you will indulge me, I think this is an important point you are making that transcends even this Reorganization Plan. I told the story that when the Governor nominated me for my current position, a number of people came up to me and said, "Commissioner, or Commissioner-to-be, I hope you realize that it is not your job to balance competing interests. Your job is to be a single-minded advocate for the environment." And I said, "Well, where is the balance supposed to take place, if it is not taking place in the day-to-day fabric of the Department?" They said, "Well, in the Cabinet room." And

using an economic development example, they said, "It's up to you and Commissioner Zoffinger to argue it out, and ultimately the Governor decides."

While there is some truth in that, I suggest that, in fact, there is a degree of balance understanding the underlining mission that we have to do today at DEP. I will get to answering your point in a second, but at the Department of Environmental Protection, as it is now constituted, we have a clear obligation in terms of our environmental responsibilities that cannot be done in a vacuum. I would suggest that the problem has been not that there have not been forms for resolving these conflicts, but that decision-makers, at times throughout the history of government, have been too limited and too narrowly focused on the criteria which they have to apply. Nobody should read this broadly, because I think the statutes give us all the guidance we need as decision-makers.

Some of the history that we come to this Reorganization Plan with under a prior organizational structure before the Division of Energy Conservation and Planning was moved to the BPU, was that utilities were asked by the Department of Energy, and then its successor, the Division of Energy Conservation and Planning in Commerce, to file conservation plans, and those conservation plans could be reviewed by the Division of Energy and then passed on to the BPU for implementation through a rate structure.

Although I was not in the room, my intuition tells me that at least one utility pointed to that as an example where different departments would struggle and cause bureaucratic creases, where the regulated community, and ultimately the ratepayers, were caught in this bureaucratic trap, because you have DOE saying one thing, and then passing it on to the BPU, who could say, from their perspective, "This is all nice policy, but let's think about it in reality in terms of the impact on ratepayers, notwithstanding our obligations."

My comment, Senator, is that by bringing everybody in under the same departmental tent and respecting the independence of decision-making, we will be able to bring about some of that understanding of implications that will hopefully provide for the balance I think you are seeking.

Right now -- where we ended our dialogue before -- the State does not have a system of preapproval of capacity needs, other than the Certificate of Need process, which has its own shortfall. One of the things that we--

SENATOR VAN WAGNER: Well, we have seen that in health plans--

COMMISSIONER WEINER: Yeah, but I--

SENATOR VAN WAGNER: --not just energy plans.

COMMISSIONER WEINER: --can't begin to talk about health issues.

SENATOR VAN WAGNER: No, I don't want you to.

COMMISSIONER WEINER: The point you are raising really, where frankly I got a little tongue-tied before, is still an unanswered question: How is capacity planning done? Right now it is done through the rate-making process at the BPU in an ex post facto way, and this is traditional for utility regulators. A facility could go up and then in comes the utility to say, "We want to include this in rates," and a utility board will take a look at it and say, "You didn't need this capacity. We are not going to include it in your rate base."

Over the years, attempts have been made to correct that. In New Jersey, probably the most significant piece of legislation was the Certificate of Need legislation, which required preapproval of the capacity needs for 100 megawatts or more of facility. The all source bidding movement that the Department of Energy was drifting to is another way to do that. More and more states are moving toward sitting down with the utility and in the front-end of the decision saying, "We

agree for all the reasons of the state's economic development, its vitality, its health, that we need so many more megawatts of capacity in this location within the state."

Now, how do we get it? In the olden days, we would just go out and build a new base load plant. We have moved, along with other states, to say, "You have to think about conservation first. Conserve that kilowatt," and go out and bid for both demand side management plans and others. It is a cooperative venture, and we believe that by bringing it under the same tent, respecting the rate-making decisions of the BRC and the policy decisions of the Commissioner of Commerce and Energy, we will be able to provide that type of balance you are seeking.

SENATOR VAN WAGNER: See, that is where I think a lot of the concerns of the Committee get raised. I agree with the hypothesis of what you are saying -- okay? -- that it is better to be proactive and to set the policy, and then to indicate to those who have to implement any of it, through rate setting or the Certificate of Need process or the granting of permits, to be on notice that this is the policy. There is no disagreement in that.

However, if you look at Chapter 52 -- all right? -- and see the clearly established requirement for the independence of the rate-making process as it is spelled out -- and I think the Chairman read it before -- there seems to be created a dilemma -- an existing dilemma, and perhaps a future dilemma -- and then to say, "Well, we can resolve that dilemma by virtue of the Appellate Court," I think gets us back into the same kind of circular frustration that many of the members have already talked about.

COMMISSIONER WEINER: I agree with your--

SENATOR VAN WAGNER: So I think we have to separate that out. I think part of the change that has to come about is to separate out this BRC function.

COMMISSIONER WEINER: --hypothesis in wanting to avoid that kind of a dilemma. Where I don't know yet if I agree with the entire analysis is the putting of the two functions together. Again, the BPU was a part of the old Department of Energy. It was in, but not of the Department of Energy.

SENATOR VAN WAGNER: I understand that.

COMMISSIONER WEINER: I am not saying that I even thought it was a good thing. Maybe that was a bad thing in and of itself. But when I went to the BPU in 1990, there was serious concern among many people who follow these issues that energy policy -- Division of Energy Conservation and Planning -- should not be housed in the BPU; that the utility regulators should not have the same energy planning function. I am not saying they were proved right or wrong, but I think to the extent that there were concerns that by definition utility regulators should not have the same responsibility, they were swayed, not that there might not be a better way to do it.

So, I just make that observation. I think we share the same concerns and, you know, we will continue to work together as we deal with issues of capacity planning and regulation.

SENATOR VAN WAGNER: Well, you know, perspective I have a concern because I have a sense that, at least in this State, thanks to legislation crafted by Senator Dalton, myself, and others, nonutility production is going to become a bigger and bigger part of our energy mix in this State. It already has. It has far surpassed anything that we predicted it would be back in the late '70s and early '80s, when we passed our original legislation creating a window for cogeneration, which has now advanced beyond cogeneration to the establishment of IPPs.

COMMISSIONER WEINER: That's right.

SENATOR VAN WAGNER: I just want to end by saying personally, and through you, Mr. Chairman, I hope we will have

the opportunity to submit some amended thoughts on this Reorganization Plan and to get your response to those thoughts prior to our June 25 deadline.

COMMISSIONER WEINER: As I said before, I will be conferring with the Governor and members of his staff on the requests that have been made today when this hearing concludes. As soon as I can see him, that will be communicated. I will look forward to working with you.

SENATOR VAN WAGNER: Thank you. I am not going to ask any more questions today, Mr. Chairman. I appreciate the time you have given me.

SENATOR DALTON: Thank you, Senator Van Wagner. Senator Schluter?

SENATOR SCHLUTER: Thank you very much, Mr. Chairman. First let me commend you and Senator Lynch for having this forum for us to express ourselves. I think this format of bipartisan input to the proposed Executive Order is very healthy and very good and is producing some beneficial results.

I think also, if I may, Commissioner, I would like to add what has been said from up here on both sides of the political aisle, that you are coming into your position with a great deal of support and a great deal of hopefulness by all of us that you succeed, and an expectation that you will succeed in a very difficult Department.

I am not going to stray, Mr. Chairman, from the basic questions here, but I do want to back up my statements with a little bit of preliminary comment: I was at a meeting last night where one of your deputies said that you had instituted a slogan, a saying for the Department of six words. You want DEP to be "open, to be fair, to be accessible, efficient, predictable, and firm." I commend you on that particular credo, and in using that. I would urge you to carry that forth with your Department.

I think we get to the basic question here today, as legislators, as to the present position of the Department of Environmental Protection and what the position might be six months from now if you bite off this big, big chunk and try to swallow and digest the BPU functions.

I can see many reasons for absorbing parts of energy and other functions into DEP; for example, recycling. Recycling and the policy on recycling are very, very important with respect to the planning for, and the policies on solid waste management. Waste flow regulations-- There is a clear duplication between the BPU and DEP, and I think there are some functions and components of energy which should properly be in DEP.

Incidentally, I think I can say, with all of the legislators who are up here, that I was the only one in the Legislature when the Department of Environmental Protection was set up back in 1970, and it was set up by legislation. At that time, it combined components from the Department of Health, the Division of Clean Air and Water, with the Department of Conservation and Economic Development. There were certain spin-offs, but it was a legislative proposal that put together a Department of Environmental Protection whose time had come. I, incidentally, was also present when the Legislature enacted the first solid waste jurisdictional law, the Solid Waste Utility Control Act of 1970. Yes, that has caused the solid waste industry some problems now, but believe me, at that time, it was very, very essential. The hearings that were held as to the monopolistic practices in the hauling industry were so convincing, that we had to do something, and we did it at that time.

Generally and generically, Commissioner, you speak about the Department taking on certain functions of Energy, but there are other particular functions which could be taken on by DEP. You talk about EMF, which is really something dealing

more, I think, with the Department of Health, rather than the Department of Environmental Protection. The point has been made before about wetlands and alignments and the use of recycled materials for road building. The Department of Transportation could have a responsibility in those.

So, my first question, very generally, is: Why are you singling out this particular narrow area of responsibility for DEP? What has happened to the good old-fashioned coordination between departments, and even as you alluded to, Cabinet officers getting together and having joint committees, which are going to come up all the time. You cannot predict everything that is going, at this time, to fall into DEP and that will fall into DEP forever.

COMMISSIONER WEINER: I think, Senator, it has to be a balance of those various structures. Although some people's views are interesting, I personally do not think anybody would suggest that DEP and the Department of Transportation be merged, and there are obvious interrelationships there. Commissioner Downs and I and our staffs work closely together. I think energy policies, for the reasons that I articulated this morning, present a different set of issues in terms of policy formation which are inextricably linked to the environment.

In terms of the burden, again I just want to stress a point very briefly that the DEPE, particularly the Commissioner of the newly structured Department, is not assuming BPU functions. There are three points that have been raised: Number one, the review of the budget. I would hardly say-- I mean, it is an important task; it is a serious task, but it is not a massive responsibility. The two others are administrative support to existing staff -- budget support, supporting budget update, and personnel support, serving as a personnel department. The BPU, now the BRC, would continue, as

I have said, as in, but not of, the Department. It would have its own staff. It would be directing its own staff and doing its own work.

With respect to the other synergies on EMF, having sat as a BPU Commissioner, having to decide whether or not an electric transmission line should be energized, and a lot of EMF concerns, and now sitting as the DEP Commissioner with the responsibility for promulgating EMF standards, I would be happy to give it to Health. I would be happy to give it to Health, but for all the reasons that have preceded me, it has been determined that DEP and the BPU, because of our other responsibilities, have these responsibilities. Again, Transportation, I think, is-- There are obvious linkages. Commissioner Downs, Commissioner Primas, myself, and other members of the Cabinet meet regularly, and our staffs meet regularly. I understand your point. I just think that energy policy and the discrete function, and frankly the 25 current, hopefully one day a few more people, is a different task than merging a 4000-person Department, DEP, with another 4000- or 6000-person Department, Transportation.

SENATOR SCHLUTER: Next, Commissioner, as an observation, this hearing today has really concentrated on solid waste management and its absorption into DEP through the BPU -- phases of solid waste management into DEP and energy policy. But with this Executive Order, and with the regulatory functions of the BRC or the BPU, you would also, if there is an influence over energy rates, if there is an influence over solid waste disposal rates because of the closeness of -- the proximity of the agency-- This would also apply to water supply, which is part of DEP, and your critical areas and all these other things that impact the water supply program and the rate making, have the same kind of symbiotic relationship. The same way with energy siting.

COMMISSIONER WEINER: Yes.

SENATOR SCHLUTER: So, it is not just solid waste, and it is not just energy. It is the other--

COMMISSIONER WEINER: Yes, yes.

SENATOR SCHLUTER: --parts of the regulated community.

COMMISSIONER WEINER: But there is a distinction, if I may. With solid waste, the direct regulatory responsibility resides with the Commissioner of the Department. With the others -- water, electricity capacity planning -- it would not, but the staff would be under the same organizational tent.

I am glad you brought up the question of water and water supply, because this is an area where, in fact, the crevice of State government has been much too broad. Again, I say that as someone who was a BPU Commissioner responsible for water utility rate setting and water utility planning. I used to preach at the BPU that it is much, much more than just setting rates, because we have to make sure that the infrastructure exists to get the water to where we want it to go, how we are going to fund that; how we are going to have the capital formation to do that. That is a very important role for the BPU, and DEP's role in that issue goes without saying.

Yet, despite the efforts of Commissioner Yaskin and I to bring those staffs together, we found it extraordinarily difficult. That is just because of the institutional inertia that was there. I would suggest, again as I said -- and I do not want to belabor the point -- that in rate-making decisions, the independence is anticipated by the Plan, but by bringing the staffs under the same departmental umbrella, it may sound like form over substance, but it is trying to drive home the message that people cannot make decisions in isolation. The statutes define the decision-making criteria, but it is not enough to just think about rates. We need to think about capital formation. We need to make sure that the capital infrastructure is there to move. Those issues become even more extreme in terms of environmental impacts on rates when we think about the Clean Water Act.

SENATOR SCHLUTER: Commissioner, I think you have made a good point that there is a lot of duplication and you want to become more efficient and you want to eliminate the duplication where possible. But I think what you are hearing from this side of the room is the real concern, at least for me -- and I will say it just as one individual -- of the independence of BPU rate making, the absolute independence of BPU rate making.

Yes, I understand that capital planning comes into BPU considerations, the Certificate of Need, and all the rest. Maybe the duplicative structure is the price we have to pay for that independence. I am just wondering. If I were in the regulated community, I would be very, very concerned about having a rate-making agency which is tied in with DEP, whether by proximity, whether by common administrative agencies, or whatever. I would be very, very concerned about the ability to play that down in a fair way in the future.

I know you expressed how that would be separated, but that still bothers me, because basically we have a market economy in this State, and nothing we are going to do here is going to change the fact that we have a market economy and we should have regulation.

Which gets down, really, to my summary here, and I think you have heard this from every representative up here. Incidentally, I want to comment that if Mr. Contillo has been too hard on you because you are leaving Bergen County, I will try to make up for it because you are moving into District 23 in Pennington, and we welcome you. And we apologize for Mr. Contillo in Bergen County.

Be that as it may, in the interest of what is good for government and what is good structure, there is a very clear message. I do not know the final answer. I would not have the wisdom to understand all the ramifications of this issue. But if I had to vote as a member of the Senate on a resolution rejecting this, I would have to vote for that resolution

rejecting it with the knowledge I have today. From what I understand, no Executive Reorganization Plan has ever been turned down by legislative resolution. I would urge that this one not be the first, sir, respectfully, for your well-being in your efforts to carry out the DEP mission, on which we all wish you well.

So, with that I thank you for allowing me to stray a little, Senator Dalton, and I will turn it back to you.

SENATOR DALTON: Thank you, Senator Schluter.

Commissioner, the arrangement, as you know, that has existed heretofore between the BPU and other executive agencies, is one of complete separation, i.e., Treasury. BPU is in, but not of. The Reorganization Plan we have before us today mixes functions and seems to mix staff. If you tell me it doesn't, then show me in the Reorganization Plan.

Would you be amenable to maintaining that BPU is not only in, but not of, but completely independent of any supervision or control by the Commissioner, his agents, or his employees?

COMMISSIONER WEINER: Well, let me say, Senator, that the message of this morning, the view of you and your colleagues, has not been lost on me. I also want to point out that this is the Governor's Reorganization Plan, and I would like the opportunity to discuss it with the Governor. Also, I would like the opportunity to think and reflect upon the comments I heard today.

SENATOR DALTON: That doesn't help me today, Commissioner.

COMMISSIONER WEINER: I understand that.

SENATOR DALTON: What is your position? You are here to discuss this Reorganization Plan today, okay? I want your position with regard to it.

COMMISSIONER WEINER: My position, Senator--

SENATOR DALTON: It is in, but not of -- in, but not of, with regard to BPU's relationship with DEP as it exists within this Reorganization Plan.

COMMISSIONER WEINER: Senator, if I am upsetting you, I apologize. I came here today--

SENATOR DALTON: That is the fundamental question. The reason you are upsetting me, to be quite honest with you, is because you have given answers to everybody else. Okay? You didn't say, "I have to go back and talk to the Governor."

COMMISSIONER WEINER: Senator--

SENATOR DALTON: The fundamental question that this Committee has asked over and over and over again is about the relationship between the Board and the Department.

COMMISSIONER WEINER: Senator, I have tried, as best I could, in over three hours of testimony, to explain, as I understand it, the functioning relationship between those two Departments. There is a Plan that has been signed by the Governor. With all due respect, it is not my Plan. I am here as the Governor's representative. I am here to discuss this. I am not here to negotiate changes.

I apologize if I am disappointing you. I apologize if it appears that somehow I am not meeting my obligation. I have tried as best I could to explain the relationship as I see it. I think the Plan, as stated, serves all the goals that you have stated. I think the goal of independence is one that the Governor shares and that this Plan achieves. I tried to explain how it does.

SENATOR DALTON: Then, what is your objection to the present language in Title 52: "The Board shall be independent of any supervision or control by the" -- in this case the Department of the Treasury, in the Reorganization Plan, DEP, "or by any officer thereof, and, unless otherwise expressly provided by law, the Board shall be independent of any supervision or control" -- and I know this needs modification

-- "by the Division of Energy Planning and Conservation in the Department of Commerce, Energy and Economic Development"?

If you take the two lines, "The Board shall be independent of any supervision or control by the Department of Environmental Protection or any officer thereof--

COMMISSIONER WEINER: To the extent that that phrase is directed at the decision-making of the Board, I would agree that that is what is intended. There was an obvious intent to merge the staffs for purposes of administrative support, for budget support, and to underscore the fact that, in fact, this is all part of a common thread and a common Department.

So, if your question is, do I believe that the decision-making authority of the BPU/BRC Commissioner should be independent of any control of the Department, the answer is yes.

SENATOR DALTON: How about staff?

COMMISSIONER WEINER: The staff-- The way it has been designed is that in day-to-day work, yes, it would be, but it is all part of the same Department. Now, I think that some very important points were raised today. Again, I will not pretend to be precipitous. This is not my Reorganization Plan.

SENATOR DALTON: Who did this Reorganization Plan?

COMMISSIONER WEINER: The Governor signed the Reorganization Plan, Senator.

SENATOR DALTON: Who developed it in the Governor's Office?

COMMISSIONER WEINER: Oh, there must have been dozens of us who were involved.

SENATOR DALTON: Were you involved?

COMMISSIONER WEINER: Indeed I was.

SENATOR DALTON: Okay.

COMMISSIONER WEINER: I am involved--

SENATOR DALTON: And, do you agree with this Reorganization Plan?

COMMISSIONER WEINER: Yes, I do.

SENATOR DALTON: Okay, then please defend it.

COMMISSIONER WEINER: I have been defending it for four hours.

SENATOR DALTON: Okay. No, you just told me that you had to go back to the Governor's Office--

COMMISSIONER WEINER: No, you asked--

SENATOR DALTON: You said you had to go back to the Governor's Office.

COMMISSIONER WEINER: Senator, I apologize, because obviously I am saying something to set you off. I do not have the authority to negotiate this Reorganization Plan in this forum and to agree to certain changes in it. I don't know how you could expect I would. I am here to defend it; I am here to discuss it.

SENATOR DALTON: I am asking for your opinion on the present law and saying basically taking that -- okay, the present law? -- in, but not of--

COMMISSIONER WEINER: Yes.

SENATOR DALTON: --and saying, "Let's put that in the Reorganization Plan."

COMMISSIONER WEINER: I have explained why that specific language, "independent of any supervision or control" -- why we wanted to have some merger of the Department at the administrative support level, at the departmental designations -- everybody is part of one Department. I have spent time explaining why decision-making will be independent and not subject to the supervision of the DEP Commissioner. I have spent-- I have done it as clearly as I can.

SENATOR DALTON: Then all you have to do is say it in the Plan, Commissioner. All you have to do is say it in the Plan. The Plan is not clear when it comes to that.

COMMISSIONER WEINER: Senator, I understand that you and your colleagues believe it is not clear. I have pages of notes, as does my staff. We will be going back and reviewing it with the Governor. I am simply not--

SENATOR DALTON: You better review it with this Committee, too -- or, the Task Force, I would suggest.

COMMISSIONER WEINER: Absolutely, Senator, but before I am in a position to sit here and change words on a Governor's Executive Order, and say, "I agree that this should be done, and it will be done," I am going to go back and talk to the person I represent.

Now, again I apologize. I have tried as hard as I can. I have been as forthright as I can.

SENATOR DALTON: Would you make a recommendation to the Governor that that language should be in the Reorganization Plan?

COMMISSIONER WEINER: I want to consider what I have heard. I told you that I think the decision-making--

SENATOR DALTON: So, you are not ready to make a determination just yet?

COMMISSIONER WEINER: Senator, if your question is, do you believe, Commissioner Weiner, that the BPU/BRC should be structured the same way it is in the Department of the Treasury -- exactly the same -- I am going to tell you that I want to think about that. I want to reflect upon the comments of today. If you say to me, do you think the decision-making authority of the BRC should be independent, I would say, yes, I believe it is. If you say to me, as you have, we don't believe that independence of decision making is clear enough, I would say I want to think about it, because you may be correct and there may be language that can be added, but I want to discuss that with the other people who are involved.

SENATOR DALTON: Commissioner, so we are very, very clear on this, please be advised that I am very concerned with regard to your role with regard to the BPU budget, and/or any future DEP Commissioner's role with regard to the BPU budget--

COMMISSIONER WEINER: I understand that.

SENATOR DALTON: --whether it is a review, recommendation, etc., regardless of who is chief executive, because we all know that regardless of who is chief executive, that person will ultimately be charged with the budget. But you have added in this Reorganization Plan another step; i.e., the DEP Commissioner's review, the DEP Commissioner's recommendation to the Governor's Office.

I would suggest to you, sir, that if, in fact, you have control over their budget, you control their operation, and that is not independent. Any student of government will tell you that. You control the operation, as well as other parts of their anatomy, if I can be a little more blunt.

COMMISSIONER WEINER: Senator, if I may just explore the thrust of your question-- If a Governor -- any Governor -- was to say to a Transportation Commissioner, "I would like you to review and have your comment on DEP's budget to see how it reflects and provides for coordination between your missions," would you object to that?

SENATOR DALTON: Not at all.

COMMISSIONER WEINER: Okay.

SENATOR DALTON: Not at all. And I think that when you are in, but not of -- okay? -- there can be, not a sharing of staff, but there can be communication within that staff. As a matter of fact, there should be communication with your staff, as you indicated, between the Department of Transportation, between the Department of Economic Development -- Commerce and Economic Development -- but none of them, or any of their entities are in, but not of your Department, but you still have that communication. Right?

COMMISSIONER WEINER: That's right. I don't disagree with that. Again, these are design issues. I don't mean to denigrate it. But you could also have not 19 departments of State government. You could have 40 departments of State government, as some states have. It all depends on how you

want to organize the blocks and how you want to structure who is under the same departmental mission and goals.

SENATOR DALTON: One of the things I would also ask you to take a look at, Commissioner, with the Governor and any number of people -- using your words -- within the Governor's Office who had a role in the development this Plan, is the interim appointment, because if you do have an interim appointment, and that interim appointment does come from DEP, again, sir, I would question the whole issue of independence.

COMMISSIONER WEINER: I understand the point. May I ask a question so I can understand your concern? There are two points you raise: One is the question of having the--

SENATOR DALTON: I might not want to negotiate with you in this forum, Commissioner. Okay?

COMMISSIONER WEINER: That's fine. I respect that. I am just trying to understand.

SENATOR DALTON: I am just being facetious. Go ahead.

COMMISSIONER WEINER: I just want to understand, Senator. What I was going to say is, you raise two points: One is the interim appointment itself, and the other is that the interim appointment would come from the ranks of the DEPE. Assuming that the interim appointment did not come from the ranks of the DEPE-- I mean, that might only interest one half of the problem. Some other Senators today said they had concerns about the concept of an interim appointment at all, and I am wondering whether or not it was--

SENATOR DALTON: I have concerns with regard to the whole issue of interim appointments. I mean, one of the things about your Reorganization Plan that is not true -- that is not clear, is that, indeed, it is interim. You say 120 days, but it does not say 120 days and then it stops, and then we shall appoint a permanent Commission. All it says is that it should be an interim appointment of 120 days. We can take it from that, because it is not clear, that 120 days can go on ad infinitum. So I think we ought to clarify that, as well.

The solid waste under the Plan: The role of the Division-- Will it be charged with setting rates?

COMMISSIONER WEINER: The role of which Division? I'm sorry, Senator.

SENATOR DALTON: The Division of Solid Waste.

COMMISSIONER WEINER: The rate-setting authority will reside with the Commissioner.

SENATOR DALTON: The rate setting will reside with the Commissioner, okay. Will the rate cases be referred at all to the Office of Administrative Law?

COMMISSIONER WEINER: Yes, in the same way they are now. The referral to the Office of Administrative Law is discretionary by the BPU, or the Commissioner, depending on whether they want to take advantage of the time and availability of an OAL judge. While I was at the BPU, some rate cases were referred. Most were because of their complexity and the time it would take to hear a case. Some cases were not, and were heard directly by the Commissioners. I anticipate that the Commissioner would exercise the same discretion that the BPU Commissioners did in determining which cases were appropriate for OAL hearings.

SENATOR DALTON: When you say the Commission shall be charged with rate making, does that mean that the Division of Solid Waste has no role in rate making?

COMMISSIONER WEINER: No. Of course they have a role, but it is the same modeled right now at the BPU. Right now, the BPU-- The Commissioners are charged with rate making. It is the Commissioners who set the rates, not the Division staff. The Division staff makes recommendations to the Commissioner.

SENATOR DALTON: So the Division will make a recommendation to the Commissioner with regard to the solid waste rate making, and the Commissioner shall make the ultimate determination.

COMMISSIONER WEINER: That is correct.

SENATOR DALTON: Is this with regard to, say for instance, the small haulers and resource recovery facilities?

COMMISSIONER WEINER: The answer is yes. Right now, the decisions that are made by three BPU Commissioners would be made by one Department Commissioner.

SENATOR DALTON: In all cases, regardless of what activity within solid waste they would be involved in?

COMMISSIONER WEINER: We're talking about rate-making decisions. I will tell you that my experience, Senator, at the BPU, was that all decisions were made by the Commissioners. As a Commissioner, it gave me a great deal of accountability. When I came to DEP -- and you've heard me talk in other settings -- a lot of decisions were delegated, I think improperly. I am going to start out if, in fact, this goes through and I am the Commissioner, continuing to make rate-making decisions. There may be appropriate decisions to be delegated, as many Commissioners do. I am not yet inclined to delegate rate making.

SENATOR DALTON: Commissioner, the language, or lack thereof, in the Plan with regard to the whole rate-making process -- solid waste rate-making process -- is not clear. Would you be amenable to taking a look and adding some language to this so we can get some clarity as to what the solid waste rate-making process will look like under your proposed Plan?

COMMISSIONER WEINER: I would certainly consider that again. I don't want anyone to think that we were trying to be less than clear. We were just following the experience of the Act and all of the provisions of Title 48 and that the Solid Waste Utility Control Act would continue. Rather than those responsibilities residing in three Commissioners, they now reside in one Commissioner.

SENATOR DALTON: Commissioner, I asked you earlier -- and Senator Schluter referred to it, Senator Van Wagner

referred to it, Senator Rand referred to it -- about the whole issue of this 60-day review. You have indicated that you cannot speak for the Governor, but let me make it very, very clear to you that if, in fact, we are not granted more time-- As of June 25, if we do not have-- I would suggest August 1 as being an appropriate amount of time, because we have a budget crisis, as you well know, sir, in this State, and the members of this Committee will be engaged in trying to address that, perhaps, but hopefully not the whole month of June. We are going into a holiday, and then we go right into the Legislature's consideration of that budget, and all that that entails.

I would like to get from you when we can hear from you with regard to whether this 60 days will be extended or not.

COMMISSIONER WEINER: I will tell you, Senator, that as soon as this hearing is over, I will be walking across the hall, so to speak, and you will either be hearing from myself or from a member of the Governor's staff.

SENATOR DALTON: When?

COMMISSIONER WEINER: As soon as we can meet with the Governor.

SENATOR DALTON: Well, would you suggest that is a matter of days, a week, two weeks?

COMMISSIONER WEINER: I would assume it would be days..

SENATOR DALTON: Okay. I am, as every other member of the Committee indicated, very willing to work with you with regard to this Reorganization Plan. As a matter of fact, I look forward to it. I would love to have the opportunity to sit down with you and members of the Governor's staff and members of this staff and the other members of the Committee who choose to participate, and address some of these very, very significant issues. We have never been able to have that opportunity heretofore. As a result, that would be something I would want to do.

However, if, in fact, we do not get an August 1 deadline, then I would agree with Senator Schluter; then we are put into a box, to approve or disapprove. As the Plan is presently constituted, I would be forced to vote no, or to vote for a resolution disapproving it. So, I want you to understand that. I want to make myself very clear about that.

Thank you, Commissioner.

COMMISSIONER WEINER: Thank you.

SENATOR DALTON: Senator Contillo?

SENATOR CONTILLO: No, you have covered it.

SENATOR DALTON: Senator Rand?

SENATOR RAND: Senator Dalton, I think you really summarized it well. I would just say to the Commissioner three mores: more time, more input, and more clarification. I think we could go forward with those three components in mind.

Thank you, Mr. Chairman.

SENATOR DALTON: Thank you, Senator Rand. Senator Bennett?

SENATOR BENNETT: Thank you, Mr. Chairman. Commissioner, could you tell me presently of the two members who are serving on the BPU, who has been designated as the President?

COMMISSIONER WEINER: Neither one.

SENATOR BENNETT: Okay. Could you share with us-- I understand the failure to appoint a Republican member to the Board. I am confused as to why there has been no designation as President. Is there a reason for that that you are aware of?

COMMISSIONER WEINER: Not offhand.

SENATOR BENNETT: Okay. Prior to an absence of a President, you were the President. Is that correct?

COMMISSIONER WEINER: That is correct.

SENATOR BENNETT: And, in that capacity, were you able to attend, like your predecessor in the presidency, meetings of members of the Governor's Cabinet?

COMMISSIONER WEINER: At the invitation of the Governor.

SENATOR BENNETT: But, was that a reality for those months that you were, in fact, the President?

COMMISSIONER WEINER: That is correct.

SENATOR BENNETT: So, the input the President of the BPU would be giving the Cabinet members has been absent since you vacated that office?

COMMISSIONER WEINER: That is correct.

SENATOR BENNETT: Okay. Maybe that would be another answer we might like to have as to why-- If I am being asked to accept this Reorganization Plan based upon-- The appointments are so important, it would make me feel a little better if I were able to feel more comfortable that some of the appointments were, in fact, done. The lack of having a President of the BPU troubles me almost as much as not having a member filled.

COMMISSIONER WEINER: I understand, Senator. I just want to point out, so we are clear, that since the BPU is no longer a principal department of State government, and since the Cabinet exists only by designation, really, of the Governor, it is the Governor's designation of who attends the Cabinet meetings. I attended Cabinet meetings not merely because I was the President of the BPU, but I was attending at the invitation of the Governor. There are many members who attend Cabinet meetings who are not heads of principal departments.

SENATOR BENNETT: I understand that, but neither member of the BPU -- those Commissioners -- are attending those Cabinet meetings now, are they?

COMMISSIONER WEINER: No, but my point is--

SENATOR BENNETT: And for years, in fact not only in this administration, but previous administrations, a

representative -- in fact, the President -- attended the Cabinet meetings at the invitation of whichever Governor was sitting?

COMMISSIONER WEINER: In fact, what happened was, when the BPU was a principal Department--

SENATOR BENNETT: The answer is yes, I know.

COMMISSIONER WEINER: No, but there is a history. When the BPU was a principal Department, it continued-- All three Commissioners attended. But when it was no longer a principal Department of State government, during the remainder of the Byrne administration, all three Commissioners continued, as a tradition. When the administration changed, I was led to understand that at the first meeting of the Cabinet, the then Governor suggested that only the Republican member of the Board attend. That continued as a tradition. When this Governor was elected, there was a question as to whether or not the BPU Commissioner, or Commissioners, would be invited. I was invited. I cannot tell you I was invited as the President of the Board or I was invited as Scott Weiner.

SENATOR BENNETT: Under Title 48:2-8, it specifically says: "No member or employee of the Board shall have official or professional relations or connection with or hold any stock or securities in any public utility as herein defined operating within the State, and more specifically, or hold any other office of profit or trust--

COMMISSIONER WEINER: Right.

SENATOR BENNETT: --under the government of this State or of the United States."

The interim appointment-- Does an interim appointment-- How does that impact on the employee of DEP who is to be appointed for up to 120 days -- this statute?

COMMISSIONER WEINER: As I mentioned this morning, my interpretation -- and I am talking as a layperson right now --

is that the person would have to devote all of his time and attention and resources to the Board's responsibilities and, in fact, would be unable to hold stock in--

SENATOR BENNETT: I am not worrying about the stock. I am wondering how they are going to continue to hold any other office at the same time as they are serving as BPU Commissioners.

COMMISSIONER WEINER: Again, I will give the same answer I gave this morning. I would leave it to the lawyers, and particularly to the Attorney General's Office, to clarify that, whether it happens by leave of absence or a transfer of assignment, as the case may be. That is an appropriate personnel question.

SENATOR BENNETT: Okay. Under the Executive Reorganization Act of 1969 specifically, I would offer that perhaps it would be appropriate for us to at least secure an Attorney General's opinion with respect to this proposal that is being offered on whether or not you, as a Commissioner, would have the authority to do the rate making as an individual Commissioner. My understanding is that the rate-making authority obviously is a legislative function and is assigned by the Legislature to a Board that they so choose.

Having that function being designated to a three-member Board which supposedly is to be bipartisan -- unfortunately that has not been the case for 18 months-- It was supposed to be bipartisan and enable a forum of three individuals interacting to make a decision on rate making. How this changed to one individual to solely make the determination in his or her authority, would relate to the statutory authority. I would offer, based on my review of the Reorganization Act of 1969, that that would exceed the authority allowed, and that that may not. So perhaps the Attorney General's opinion would be helpful.

COMMISSIONER WEINER: Needless to say, you know, I will relay that, but OLS staff should certainly feel free to contact the Attorney General.

SENATOR BENNETT: The issue raised by Senator Van Wagner I thought was excellent on the potential for conflict. These potential conflicts-- I am seriously troubled by them. I mean, I understand that if the Commissioner is serving as the Chairman of the Energy Master Plan Committee, that that will give him certain functions. And I understand what you said with respect to balancing. I may philosophically disagree with you, but what is before us today is, what type of an advocate that Commissioner of Environmental Protection should be.

Certainly, there are going to be possibilities, at least in my opinion -- and I am going to ask you your opinion -- when you are to try to make sure that a utility is to have a reasonable rate of return, to keep those rates as low as possible.

COMMISSIONER WEINER: No, I would not.

SENATOR BENNETT: No?

COMMISSIONER WEINER: No. Respectfully, Senator, under the Reorganization Plan, I would have absolutely no role in setting rates for, you know, a B- or C-regulated utility.

SENATOR BENNETT: You are not going to be setting rates on solid waste at all?

COMMISSIONER WEINER: On solid waste, yes.

SENATOR BENNETT: Okay. There is certainly a solid waste relationship between what those rates are and how they could be affected by an environmental concern.

COMMISSIONER WEINER: Okay, I apologize. I wasn't thinking solid waste. I was thinking electric, water, and natural gas.

SENATOR BENNETT: Oh, no, no. I'm sorry. It may have been my fault, and I'm sorry if that is the case.

COMMISSIONER WEINER: Okay, so id waste.

SENATOR BENNETT: Certainly there are times as DEP Commissioner -- and, of course, we have recently been engaged in some solid waste issues on policy -- when there are environmental concerns as to what impact a particular form of solid waste disposal may have on the environment. Obviously, there may be at the same time that that method of disposal would impact ultimately on a rate case as to what should be done.

How would a Commissioner balance those two actions and still be an advocate for both?

COMMISSIONER WEINER: I think you have to separate out the decisions although they are coincident in time. The first decision to make is the environmental one. What actions, restrictions, requirements should be imposed in order to achieve the environmental objective? Should the landfill be closed? Should the disposal site be open? Should a new boiler be imposed? Should methane recovery be required? Any of those environmental decisions.

SENATOR BENNETT: Why are they first, though?

COMMISSIONER WEINER: What's that?

SENATOR BENNETT: Why are they first?

COMMISSIONER WEINER: Because until then there is no rate to question. Until you make that decision, there is no rate issue. The rate issue arises when you take some regulatory action that impacts on a company's activities. So, first you make that decision. Then you have to consider the rate implications of that decision. How are those costs going to be recovered? Who should be paying for those costs? Should it be stockholders, ratepayers? Over what period of time should they be amortized? How does that fit into other aspects of the company's financial status? There are questions that are coincident that are related to each other, but they have to follow in sequence.

I would respectfully suggest that if any decision maker tried to put the cart before the horse, or tried to answer them simultaneously without going through that decision-making process, they would, by definition, end up with a bad decision.

SENATOR BENNETT: I think the potential exists, with all due respect, for the conflict, because while you may have to do one in time first, they are totally interrelated. What the economic ramifications are going to be at the next step should probably be a factor in the first step. I do not see how one advocate can do both. But, that is just my own personal opinion.

Last question: My understanding, under the BPU budget presently, is that there is a single entry now that comes in for revenues and an entry that goes out for expenditures on the financial flow. Will that type of situation continue to remain? The revenues that will come in-- I think we are talking about rate making, that aspect of it. Those revenues that come in, and then they are able to be traced right out-- Will that merge, or will that--

COMMISSIONER WEINER: As a Department budget-making function?

SENATOR BENNETT: Yes.

COMMISSIONER WEINER: Our money?

SENATOR BENNETT: Yes.

COMMISSIONER WEINER: I think it is more than one line, but we would be designing a system that would provide for audit control, so people could see where the money was coming in and how it was being spent. Again, to reiterate the point I made this morning, a utility assessment dollar would not be used to hire a park ranger, but that is the same issue the Department does today when a permit fee in solid waste does not go to support water quality, unless there is some connection.

SENATOR BENNETT: I will conclude by saying that I certainly appreciate your spending the time. I feel, quite frankly, that after 80 years of development, that four or five hours of an interchange between the legislative and the executive branches is not excessive. In fact, it is unfortunate that we were unable to have even additional time beforehand which would have resulted.

I frankly continue to believe that a reorganization of this magnitude would far more appropriately be done through a legislative change. That is a position, obviously, that I have shared with you prior to today's hearing. I feel you have been quite candid. The ability of you, as an individual, to be able to pull this off, if you will, may not be as questionable as it would be with others.

But, quite frankly, I think we have to look beyond the individual sitting in the chair, because on both sides of the table -- ours and yours -- they will come and go. The long-range issue as to the ability of any Commissioner to maintain and assume what I believe are additional vast responsibilities that are under the Reorganization Plan, should not be something that should be taken lightly.

I join with the Chairman and so many other members who have said that additional time would perhaps make the Plan better. I think all of us should be looking toward that end. I, as one individual, feel there is a philosophical difference there that candidly I am probably not going to be able to buy into. I will tell you that straight-out. But, if there is going to be a reorganization that takes place, it is in all of our interests to make it as best as we possibly can. Even if some of us do not want it at all, if it is going to be a reality, I think we have to work to make it the best it can be.

So I would reiterate the same call that everyone else has for additional time. Certainly, to whomever you have to take that message, I would appreciate it if you would take that back.

COMMISSIONER WEINER: I will be talking to the Governor.

SENATOR CONTILLO: Senator Schluter?

SENATOR SCHLUTER: Thank you. I had not planned to speak again, but I would like to associate myself with the remark of Senator Bennett when he spoke about a Commissioner being able to separate his or her identity from rate making and from environmental protection on solid waste matters. It just boggles my mind. They are interrelated.

When a standard is changed for environmental programming which would affect the economic situation in a particular disposal or a particular environmental program, clearly the decision is going to be made. Can the ratepayers absorb that? Maybe they have just had a raise -- had an increase just recently. Maybe now is not the right time. I just think that those functions would have to be separated. I happen to agree with Senator Bennett.

COMMISSIONER WEINER: If I may follow up on your example, Senator Schluter, I respectfully suggest that the scenario you painted argues for the consolidation, because under the current model, environmental regulations could be adopted and, in fact, be imposed, without any concern as to cost. Then the only task for the rate makers is to say, how will these costs be passed on, not whether or not they will be passed on.

SENATOR CONTILLO: Are there any other questions of the Commissioner? Well, I think you have answered a lot of questions. I think you are just about free to go now.

COMMISSIONER WEINER: May I say a word first?

SENATOR CONTILLO: No, I have nothing more to add. I think everything--

SENATOR RAND: No, he wants to say a word.

SENATOR CONTILLO: Oh, I was going to give him that opportunity.

COMMISSIONER WEINER: I just want to sum up by saying two things: First of all, on a very personal level, I don't want anyone on the Committee or your colleagues to think I do not appreciate the support I have been given, not just in this job, but in the other jobs I have held in State government over the past, I don't know, 15 years that I have been in and out of State service. I have worked with most of you in those settings. I have found them to be productive and rewarding. I found today to be the same.

I also want to again thank you, as I said in the beginning, for the opportunity to come to discuss this with you. These are very important issues. I understand that; the Governor understands that; you understand that. I think the whole process was enhanced by today's hearing, and I thank you for the time you spent with me. I tried as best I could to explain the rationale behind it.

SENATOR CONTILLO: Commissioner, I have always admired you for so many reasons, not the least of which is that you are a very perceptive person. But even someone less perceptive than yourself will have gotten the message today, I think. (laughter)

COMMISSIONER WEINER: Thank you.

SENATOR CONTILLO: We have a couple more people who wish to speak. Rob Stuart, New Jersey PIRG?

R O B S T U A R T: Good afternoon, Mr. Chairman and members of the Task Force. My name is Rob Stuart. I am the Program Director for New Jersey PIRG. These comments are also written comments which I will submit to staff for the record. I will not read all of them.

SENATOR CONTILLO: Rob, could you speak up a little bit, please?

MR. STUART: Okay, how's this? I was just saying that given the hour of the day, I don't want to read our entire statement, in that it covers a lot of ground which has been

covered by Senators and previous witnesses. I do want to just hit the high points, though, and suggest that there are some elements of the Plan that I think make some sense, and obviously, we have concerns. In my conclusion, I will note that we hope this Plan will come back in a different form, one which clarifies very clearly the need for the independence of the BPU.

Let me say first that in the area of energy planning, we have long supported a State role in a comprehensive energy planning accomplished by a Cabinet level agency. We supported the Department of Energy in the late '70s. We opposed the death, by reorganization, of the Department of Energy in the late '80s, and we continue to support a Cabinet level agency for energy planning.

In the absence of this independent State agency, we believe DEP is the most logical Cabinet level agency in which to locate an energy planning function. Energy conservation and energy efficiency, the hallmarks of an effective and economic energy master plan, are perfectly compatible with the role of DEP in the preservation of natural resources. We believe that the Reorganization Plan's transfer of energy planning functions to the DEP will vastly improve the ability of State government to implement its proposed energy master plan and should be supported by the Legislature.

In terms of the independence, we believe as it has been covered for the last 80 years, the Board of Public Utilities has been an independent agency exercising authority delegated by the Legislature to set rates. The BPU is unlike any other State agency. Prior to its creation in 1911, the Legislature, itself, set the rates for public utilities. When the Legislature determined to delegate those responsibilities to an administrative agency, it created an agency that was independent of the rest of the executive branch. The BPU Commissioners are appointed by the Governor for staggered

six-year terms independent of the term of the Governor or of the Legislature. Thus, the BPU Commissioners do not serve at the pleasure of the Governor.

We believe the independence of the BPU should be preserved. While there are some aspects of the Plan that preserve the independence of the BPU by maintaining its status as an "in, but not of agency," by maintaining the Board's authority for "the allocation of its budget and the assignment of Board personnel," and by requiring that "upon the request of the Board, the DEP Commissioner shall make available Department resources to the Board to carry out its responsibilities."

The Plan is not as clear as it could be in guaranteeing the independence of the BPU. The in, but not of status is subject to exceptions provided elsewhere in the proposed Plan. "All responsibility for budget, fiscal, and personnel matters is transferred from the Board of Public Utilities to the Commissioner of the Department of Environmental Protection." And the Board shall make budget "recommendations" to the DEP Commissioner. These provisions in the Plan create at least some question as to the ultimate independence of the BPU under the Reorganization Plan.

Thus, we believe that an amendment to the Plan that would include language -- and Senator Dalton read the language earlier -- that is currently in the statute, should be added to the Plan.

Further, we believe we could accomplish the independence of the BPU by deleting paragraph 7 from the Plan and replacing it with the following: "There shall be one office in the DEP for budget, fiscal, personnel, payroll, and administrative services to serve the needs of both the DEP and the BPU. This office shall report to the Commissioner of DEP and the BPU President shall have the use of such personnel from this office as he or she deems necessary to carry out the BPU's responsibilities."

In terms of the role of the Legislature in the Reorganization Plan, we believe this proposes, obviously, major changes in the authority, structure, composition, and function of the BPU. For example, under current law, no BPU Commissioner may act as a member of the Board until she or he is confirmed by the Senate. This Reorganization Plan proposes to dilute this legislative control of the BPU by allowing the Governor to appoint an acting BPU member without the confirmation by the Senate.

Infringements such as this on legislative prerogatives should be fully debated and approved by the Legislature before they become law. Such a change in an agency with an 80-year life ought to be accomplished through the normal channels of legislative enactment with the full debate and give-and-take of the Legislature.

Indeed, we support earlier comments that the Legislature should reestablish its proper role in enacting the laws of the State by seriously considering amending the Executive Reorganization Act to limit the extent of the Governor's power.

In conclusion, while there are some benefits to be realized in the provisions of the Plan, we believe there are flaws which point out the inadequacy of this process. We believe the Task Force is on the right track in beginning to discuss the corrections and amendments that would strengthen the Plan by either enacting independent legislation or proposing to the Governor, through the Commissioner, amendments such as we have outlined above, for inclusion in the Plan.

Thank you very much.

SENATOR CONTILLO: Any questions? (no response)
Thank you, Rob.

I have one more person who has signed up from the Cogeneration Partners of America, Howard Solganick.

H O W A R D S. S O L G A N I C K, P.E.: You got it right. Thank you.

SENATOR CONTILLO: I got it right? That's amazing.

MR. SOLGANICK: Good afternoon. I am Howard Solganick, Vice President of Business Development for Cogeneration Partners of America, whose principal office and headquarters are located in Cherry Hill, New Jersey. We are presently constructing a 117 megawatt cogeneration facility which will supply steam and electricity to the B. F. Goodrich Company and electrical energy and capacity to Atlantic Electric. That facility is located in Pedricktown, New Jersey, and will be on-line in a commercial operation on February 1, 1992.

CPA is also constructing a facility in Binghamton, New York, which will serve the energy needs of International Paper and the local utility in that state. CPA has other projects in development both in New Jersey and in other states.

On a more personal note, I have testified before the New Jersey Board of Public Utilities on rate matters, load forecasting, conservation, and demand site management a number of times in the past decade. I have also worked with the Division of Energy Planning and Conservation, and I coordinated the filing of the first Notice of Intent for a Certificate of Need under the Electric Facility Need Assessment Act.

The reorganization proposal that is the subject of your hearing today is needed, and it is needed now. Energy and the environment have been, continue to be, and will always be intertwined. The Electric Facility Need Assessment Act recognized that situation years ago. Many of the recent initiatives by the Board of Public Utilities, such as cogeneration and demand site management, were in response to the impact of energy production on the environment.

While the various agencies of State government have managed to coordinate their input, the process is cumbersome and, in some cases, slow. As we approach the future when the economy of New Jersey returns to its robust health, the

citizens of New Jersey will need more energy resources. At the same time, the citizens of New Jersey have demonstrated that they will not compromise their environment to meet their energy needs. Significant new issues are approaching the State. These issues combine the environment and energy. The implementation of the Clean Air Act is the most significant example. Integrated resource planning has not reached its potential because environmental aspects have not been able to be included in the least-cost planning process.

For this reason, the Reorganization Plan proposed will allow for efficient coordination of energy planning and its impact on the environment to the benefit of the citizens of New Jersey. This reorganization should allow a better and more complete analysis of the interrelationships between energy, environment, and utility regulation, and it should be able to do so more rapidly with no sacrifice of quality.

Delays in permitting of energy facilities risk interruptions in service to customers, with the resultant economic and social impacts. Just the financial community's fears alone that there will be delays in the permitting process for an energy facility raises their costs. These costs then translate into higher energy prices for all consumers.

Again, thank you for the opportunity to provide input during your consideration of this proposed change. If you have any questions, I will be glad to answer them.

SENATOR CONTILLO: Questions? (no response) Thank you.

MR. SOLGANICK: Thank you.

SENATOR CONTILLO: Roger Naill, AES Corporation? Then I will have Ed Cornell, who will be the last witness.

R O G E R F. N A I L L, Ph.D.: Mr. Chairman, members of the Task Force: Thank you for giving me the opportunity to make comments here. I have written testimony, which I will not read. I am just going to make a few oral comments to try to summarize, as it is getting late.

I represent a company called the AES Corporation. It is an independent power producer that is trying to do an independent project in New Jersey. I am here to support the reorganization as proposed. Basically we think it will help to implement least-cost planning here in New Jersey, which we think is a laudatory goal.

For the past year we have been somewhat frustrated in our efforts here in New Jersey. We have been attempting to develop a plant that we believe is least cost, which is encouraged, in fact, by the New Jersey master plan. We have been frustrated, I think, by the permitting process specifically. Listening to the comments today, I think we are an example of some real costs, in addition to the \$4 million that has been talked about today that are really wasteful costs that happen in projects like ours when the regulatory process is implemented in an inefficient way.

We believe the proposed regulation will help that process in New Jersey and will help to coordinate that regulatory process with the master plan, and I think that is a laudatory goal.

Two ways specifically where we think it will help: It will, hopefully, avoid conflicting guidance from DEP to people like ourselves. Hopefully it will also allow more timely attention to projects that are consistent with a least-cost plan. That should, and it will if it is implemented properly, I believe, decrease the costs of energy projects in New Jersey, which will provide benefits which will be passed directly on to New Jersey's ratepayers.

Thank you for your attention.

SENATOR CONTILLO: Did you say you have been trying to get your permit through DEP for a long period of time?

DR. NAILL: We have spent the last year interacting with DEP trying to get guidance for submittal of our project. Because of a certain vagueness and different stories we got

from them, we have had to go back and-- Particularly the most expensive thing we have had to go was essentially reconfigure the engineering, essentially what kind of plan it is going to be.

SENATOR CONTILLO: For DEP?

DR. NAILL: Through DEP.

SENATOR CONTILLO: Okay. How would this Plan accelerate that? If you are having problems now with DEP getting your permits, how will this Plan make it easier for you to get permits?

DR. NAILL: There were some cases, for example-- I think if the Plan helps to coordinate the least-cost planning process, which I mentioned before, with DEP's process, I think it will help, in that it should allow DEP clearer guidance on how to prioritize projects, I would hope.

SENATOR CONTILLO: Didn't you say you are having an engineering problem with them?

DR. NAILL: Yes, but that engineering problem gets translated through the levels of the-- Well, the engineering problem stems from the way the law is implemented through the DEP: I agree with you that--

SENATOR CONTILLO: Are you sure you are here to support the Plan? I guess that is my question.

SENATOR BENNETT: I was wondering the same thing.

DR. NAILL: Yes.

SENATOR CONTILLO: Okay, thank you. Do you have any questions, Senator Bennett?

SENATOR BENNETT: No, thank you.

SENATOR CONTILLO: All right, thank you.

DR. NAILL: Thank you.

SENATOR BENNETT: They are slow in what they do, but if we give them more to do, they might be able to do both better.

DR. NAILL: I see your point about "more to do." I am assuming that the reorganization will be an efficient one. I agree with you that if it is bad--

SENATOR BENNETT: We have to be very careful in State government when we assume.

SENATOR CONTILLO: I must be crazy to question the almost last witness.

SENATOR BENNETT: Thank you.

SENATOR CONTILLO: Ed Cornell?

E D W A R D M. C O R N E L L, JR.: Thank you, Senator. It says here, "Good morning," but, good evening. My name is Ed Cornell. I am the Executive Director of the Waste Management Association in the State of New Jersey. We represent about 75 to 80 members. I would like to thank the Chairman and the members of the Task Force for inviting us here today to address this Reorganization Plan.

The Plan hopes to provide for an increased consolidation and coordination of the public utility, environmental protection, and energy policies which we hope will yield a savings in State funds.

It has always been a universal feeling that the definitions of solid waste collection and hauling have no resemblance to the common definition of a public utility. Unlike electric, gas, water, sewers, telecommunications, and cable television, we have no wires or pipes which would cause our privately owned companies to be considered monopolistic in nature.

We represent one of our nation's most environmentally oriented industries. For years we have collected and disposed of the State's waste with no public health hazard visible. During this time, our government showed little care or concern for the welfare of our citizens regarding garbage. Until 1971, no one talked about garbage and no one wanted to admit the environmental hazards associated with so-called sanitary

landfills. Then the industry was investigated for possible antitrust violations, which resulted in a new focus on the environmental concerns of garbage disposal. From these investigations came the awareness of illegal dumping, improper chemical disposal, possible price gouging, and violations of property rights and antitrust.

These revelations resulted in our industry being identified as a public utility for economic control. The Reorganization Plan which is before us today is probably the result of the most comprehensive study of modern day public utilities and their related environmental issues and problems. The Plan offers fresh starts. For us, it could result in a safer, adequate, proper, and economic approach to the removal and disposal of New Jersey's solid waste.

Our industry has been the target of regulations from both the Board of Public Utilities and the present Department of Environmental Protection. In many cases during the landfill closure crisis, the two Departments found themselves in conflict concerning the bureaucratic maze of regulatory enforcement. Consolidating various functions into the new Department will reduce the costs of these bureaucracies. What was environmentally sound was not necessarily economically feasible. Regulations offered duplication, confusion, and, at times, duplicity.

In the transferring of the responsibility and the authority now under the Board of Public Utilities to the NJDEPE, we feel confident that our industry will be regulated and serviced in a much more organized manner than in the past decade. Our companies are presently being considered through current legislation for regulatory reform, which would relieve us of public utility tariffs and rate base, rate of return pricing structures. Eventually, the industry would become economically deregulated and able to compete once again in the marketplace.

Resource recovery facilities, transfer stations, and landfills will remain economically controlled as public utilities. The NJDEP waste flow directives are the conduits which identify these facilities to remain public utilities.

The franchises granted for disposal of waste must be price controlled, while all economic and environmental regulations are to be severely enforced by the NJDEPE. The public and the collector/hauler must be protected. The new Board of regulatory Commissioners must regulate this level of our solid waste industry

Merging solid waste law and regulation responsibilities of both the Department and the Board is acceptable to our industry. We would welcome any coordinated approach which would result in economies in management, reduction of red tape and fees, and, eventually, a more acceptable level in the price of disposal. However, if all hauling companies are not treated with equality under the laws and regulations, all of this will amount to nothing but a game of musical chairs. Timely efficient and stringent enforcement of existing laws has failed our industry. Unlicensed truckers have been frustrating legal, law-abiding haulers. They do business without proper permits, dump where they wish, and, without tariff, service our price-outraged customers with prices under the tipping fees. As an Association, we have reported such unfair competition to the authorities, yet the scabs continue to illegally operate.

We hope this review of Reorganization Plan No. 001 1991 and the possible recommendation to approve it will carry with it the codification of all solid waste laws and regulations and the repeal of all those that show duplication, overlapping, and being outdated. A strong recommendation on the part of the Task Force to enforce all the remaining laws in a fair and timely manner would be appreciated by our industry.

Thank you very much.

SENATOR BENNETT: I have no questions.

SENATOR CONTILLO: Thank you. That will conclude this hearing.

(HEARING CONCLUDED)

APPENDIX

Proposed Testimony
Reorganization Plan Hearing
May 23, 1991

Good morning Chairman Dalton and members of the task force, my name is Fred DeSanti, General Manager--State Governmental Affairs for PSE&G. PSE&G appreciates the opportunity to comment on Governor Florio's Reorganization Plan and supports the important deliberations of the task force in attempting to further define the proposed regulatory structure, the working relationships of the combined agencies, and in understanding the ramifications of this major reorganization as it relates to public utility regulation.

PSE&G recognizes the present-day synergies and relationships between energy and environmental policy-making and regulation, and we are cognizant of the important cost control objectives incorporated in the Plan as outlined in our Governor's message to the legislature. Clearly, Commissioner Weiner's proven experience as President of the BPU gives us confidence in his abilities in dealing with complicated areas of utility regulation and in managing a large agency as demonstrated during his tenure with the BPU and, thus far, with the DEP.

The magnitude of this reorganization, however must be viewed not only in the near term but also with an eye towards the longer term

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when future administrations may not be in a position to nominate leaders with such broad hands-on experience.

New Jersey's public utility regulation through an independent regulatory body has existed since Governor Woodrow Wilson first created this autonomous agency. Since that time, the Board of Public Utilities has not only set rates and created energy policy in accordance with its statutory responsibilities under Title 48 of the New Jersey statutes, but also participated with other agencies, such as the DEP, in resolving crosscutting issues.

Late in 1988, changes in the industry brought together the electric utilities in our State in a joint effort to raise issues of concern to New Jersey's energy future. These issues were presented in a document entitled "New Jersey's Electric Energy Future... Issues and Challenges." The purpose of which was to initiate a dialogue on issues with the goal of building public participation and support in an expanded partnership of consumers, regulators, entrepreneurs and utilities working together to meet the electric needs of New Jersey in the next decade and beyond.

In March of 1989, Governor Kean convened a group, including yourself, Senator Dalton, other government officials, state industry, the electric utilities, non-utility power producers and public interest groups to identify and address issues critical to our State's energy needs. I have available copies of that document and another which summarizes the findings of the March 1989 conference. One of the

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major recommendations stemming from the conference was the consolidation of regulatory functions, planning, policy and regulations under the BPU and to make the BPU a Cabinet-level agency.

Placing the BPU within the DEP, in less than an equal role, and removing energy policy and planning considerations from the Board, however, conflicts with the recommendation of those key policy makers assembled at the electricity conference. We would like to propose, however, some administrative recommendations which we believe will improve the character of the Reorganization Plan, accomplish the important goals sought, and yet keep intact the substance of the recommendations of the energy summit.

While there is no doubt that a considerable synergy exists between the environment and the creation of energy policy, we question the need for a single agency to balance environmental, energy and public utility regulation under a single management team. Can we be sure that environmental policy will be sufficiently insulated from economic considerations so that the process for review of energy producing facilities assures that the best alternative was being selected on the basis of environmental and economic terms? Can the public be sure that an independent and balanced review caused the right questions to be asked in determining which energy producing facilities are the best "fit" for New Jersey?

Under the provisions of the Reorganization Plan, we are not at all sure that a sufficient measure of autonomy and clear distinction

exists between the Department of Environmental Protection and Energy and the Board of Regulatory Commissioners. This stated concern may, however, be accommodated by amending the plan to permit the Board of Regulatory Commissioners to retain administrative and budgetary powers over its own organization, while simultaneously folding the agencies together in close working relationships which will maximize collaborative policy efforts under Commissioner Weiner. Simply stated, it is our opinion that the goal of collaboratively developing energy and environmental policy that makes the best sense for New Jersey can be achieved by carefully coordinating these efforts within Commissioner Weiner's newly created office of policy and planning without compromising the independence of the Board of Regulatory Commissioners.

This amendment would appear to accomplish the goals of the reorganization plan in cost savings by making clear through close working relationships where administrative and technical duplication of effort exist and yet administrative autonomy of the BRC would permit the independent assessment of energy policy we believe is necessary to the process of energy regulation.

One final observation relates to the Governor's new authority to nominate an acting member to the Board of Regulatory Commissioners from among the employees of the DEP or the Board for a period not to exceed 120 days. While it is recognized that this limited authority is intended to assist the Board in its ability to carry out its regulatory functions without delay, we are concerned that

even this limited authority may begin to politicize the regulatory process. The Plan requires that the vacancy be filled by an employee of either the DEP or the BRC, this individual's ability to decide rate cases independent of his or her future work back at the agency is of some concern to us. Additionally, this action may be inconsistent with the requirements of our state constitution and consequently we respectfully suggest that this proposal be deleted from the plan.

In conclusion, PSE&G recognizes the important goals which may be accomplished through reorganization and respectfully submits that the long term interest of the state might best be served by making the modifications we have suggested.

I would be pleased to answer any questions you may have with regard to my testimony at this time.

5x

REMARKS OF ROBERT E. THOMPSON, III, VICE PRESIDENT & GENERAL MANAGER
ON BEHALF OF UNITED TELEPHONE COMPANY OF NEW JERSEY, INC.
BEFORE THE NEW JERSEY SENATE TASK FORCE TO REVIEW REORGANIZATION PLAN NO. 001
TRANSFER OF FUNCTIONS TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
FROM THE BOARD OF PUBLIC UTILITIES

GOOD MORNING. MY NAME IS BOB THOMPSON AND I AM VICE PRESIDENT AND GENERAL MANAGER FOR THE UNITED TELEPHONE COMPANY OF NEW JERSEY, INC. AS CHIEF OPERATING OFFICER FOR THE COMPANY, MY RESPONSIBILITIES ARE TO MANAGE THE DAY-TO-DAY OPERATIONS AND ENSURE THAT THE COMMUNICATIONS NEEDS OF UNITED TELEPHONE'S CUSTOMERS ARE MET.

UNITED TELEPHONE OF NEW JERSEY SERVES OVER 145,000 CUSTOMER ACCESS LINES IN PORTIONS OF NORTHWEST AND WEST CENTRAL NEW JERSEY AND IS PART OF THE NATIONWIDE UNITED TELEPHONE SYSTEM WHICH SERVES NEARLY 4 MILLION CUSTOMERS IN 17 STATES. UNITED TELEPHONE EMPLOYS OVER 500 PEOPLE IN NEW JERSEY AND HAS INVESTED OVER \$100 MILLION IN NEW PLANT AND EQUIPMENT IN THE STATE OVER THE LAST FIVE YEARS.

THE PURPOSE OF MY REMARKS TODAY IS TO PROVIDE COMMENTS, ON BEHALF OF UNITED TELEPHONE, REGARDING GOVERNOR FLORIO'S PROPOSED PLAN TO MOVE THE BOARD OF PUBLIC UTILITIES (BPU) FROM THE DEPARTMENT OF THE TREASURY TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION. A SIGNIFICANT PORTION OF UNITED TELEPHONE OF NEW JERSEY'S OPERATIONS ARE REGULATED BY THE BOARD OF PUBLIC UTILITIES AND, AS SUCH, THE COMPANY HAS A SIGNIFICANT STAKE IN THE PROPOSED REORGANIZATION PLAN.

JUST LAST MONTH, THE BOARD OF PUBLIC UTILITIES RELEASED THE RESULTS OF AN INDEPENDENT STUDY COMMISSIONED TO EXPLORE THE RELATIONSHIP BETWEEN TELECOMMUNICATIONS AND NEW JERSEY'S ECONOMY, AND TO ASSESS WHETHER THE STATE'S TRADITIONAL REGULATORY POLICIES GOVERNING TELECOMMUNICATIONS SHOULD BE MODIFIED TO REFLECT THE EVOLVING ROLE OF TELECOMMUNICATIONS IN NEW JERSEY.

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THE REPORT CONCLUDED THAT, AS NEW JERSEY CONTINUES TO SHIFT FROM A STRONG MANUFACTURING BASE TO A MORE SERVICE-BASED ECONOMY, THE WIDESPREAD AVAILABILITY OF AN ADVANCED TELECOMMUNICATIONS NETWORK WILL BECOME A CRITICAL FACTOR IN PROMOTING ECONOMIC AND GROWTH AND DEVELOPMENT. WHAT THIS MEANS TO REGULATORY POLICY MAKERS AND TELEPHONE COMPANY OFFICIALS ALIKE IS THAT A SIGNIFICANT STRATEGIC OPPORTUNITY EXISTS TO ADVANCE THE PUBLIC AGENDA IN NEW JERSEY THROUGH THE ACCELERATED DEPLOYMENT OF A REASONABLY PRICED, ADVANCED TELECOMMUNICATIONS NETWORK IN THE STATE. THEREFORE, WE MUST ENSURE THAT CHANGES IN REGULATORY POLICY BE MADE WITH AN EYE TOWARD ENSURING THAT NEW JERSEY IS WELL ABLE TO COMPETE AS A NATIONAL, AND EVEN WORLD LEADER, IN THE EMERGING INFORMATION AGE.

THE PROPOSED REORGANIZATION PLAN TO MOVE THE BOARD OF PUBLIC UTILITIES FROM THE DEPARTMENT OF THE TREASURY TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION DOES NOT APPEAR TO HAVE ANY MATERIAL IMPACT ON THE WAY THAT UNITED TELEPHONE OF NEW JERSEY IS REGULATED OR ON THE WAY IN WHICH WE SERVE OUR CUSTOMERS. OUR EXPERIENCE GENERALLY, OVER THE PAST SEVERAL YEARS, HAS BEEN THAT THE BPU HAS BEEN WILLING TO LISTEN TO, AND CONSIDER UNITED'S POSITIONS ON TELECOMMUNICATIONS ISSUES. WHILE DECISIONS HAVE NOT ALWAYS BEEN MADE IN OUR FAVOR, WE DO BELIEVE THAT THE BPU HAS ACTED EXPEDITIOUSLY AND THAT WE HAVE SELDOM BEEN LEFT WITHOUT A CLEAR REGULATORY DIRECTION. FURTHER, GOVERNOR FLORIO HAS MAINTAINED THAT THE AUTONOMY OF THE BOARD WILL REMAIN IN TACT. AS A MATTER OF COURSE, UNITED TELEPHONE SUPPORTS INITIATIVES IN STATE GOVERNMENT THAT PROMOTE EFFICIENCIES OF MANAGEMENT AND PROGRESSIVE REGULATION.

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I WOULD LIKE TO CLOSE MY REMARKS BY THANKING SENATORS DALTON AND LYNCH FOR THEIR
KIND INVITATION TO PARTICIPATE IN THIS PROCEEDING, AND WOULD RESPECTFULLY REQUEST
THE OPPORTUNITY TO PARTICIPATE IN A SIMILAR FORUM TO ADDRESS THE GOVERNOR'S
PARALLEL PLAN TO RELOCATE TELECOMMUNICATIONS OVERSIGHT FROM THE BOARD OF PUBLIC
UTILITIES TO THE DEPARTMENT OF COMMERCE.

THANK YOU.

8x

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COMMENTS
PRESENTED TO
THE SENATE TASK FORCE
TO REVIEW RE-ORGANIZATION PLAN NO. 001
BY
The NEW JERSEY CHAPTER OF THE
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION

Transfer of Function to the Department of Environmental
Protection from the Board of Public Utilities:

Members of the Committee:

My name is WAYNE DeFEO; I am the Mid-Atlantic Regional
Manager for the NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION.

On behalf of the New Jersey Chapter of NSWMA, I would like to
thank you for the opportunity to testify on the proposed
merger of the Department of Environmental Protection and the
Board of Public Utilities.

As you know, these are very difficult times for the solid
waste industry in the State of New Jersey. Many small and
intermediate sized companies are no longer able to survive
financially due to the excessive regulatory climate and fees
imposed by both the DEP and the BPU. Those that can survive
are forced to engage in lengthy rate cases before the Board
to recoup the costs of compliance.

Currently, the industry is forced to pay at least three
separate licensing fees to operate in this state. There is
the A-901 fee - a program fee which we supported whole-
heartedly even upon its recent increase; truck registration
and licensing permit fees - which are currently proposed to
undergo massive increases which causes us great concern; and
the one-fifth of one percent gross revenue assessment paid to
the Board of Public Utilities. These fees, combined with the
very high cost of doing business in New Jersey, lead us to
conclude that any action by a state agency that will lead to
the diminution of bureaucratic oversight is welcome.

It is our hope that by combining the Board of Public
Utilities and the Department of Environmental Protection, the
need for multiple assessments will be decreased by at least
one; namely, that the Legislature will see fit to eliminate
the one-fifth of one percent assessment on gross revenues.
Additionally, we anticipate that at least one problem

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National Solid Wastes Management Association

NSWMA

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5/23/91

currently fostered by very high DEP fees will be resolved. The problem posed by an increase of \$15,000 in fees which results in companies paying \$15,000-\$20,000 in legal costs to recoup those fees via a board rate cases.

It is our hope that by merging the two agencies, DEP fees will at least become "pass-throughs," as they should already be. Although, I point out to you that "pass-throughs" are not the solution to high fees. However, they do allow companies to compete on a more even cost level. We also hope that the merger will eliminate the contradictory decisions of the two agencies when environmental problems require resolution.

Currently, a Department order to improve environmental protection may result in a net loss to a company as the Board may choose not to allow cost recovery via rates. It is hoped that this merger will result in environmental orders being allocated as business expenses.

Our support for this merger rests in part on our high level of confidence in this legislature passing an economic regulatory reform bill which will ultimately lead to the economic deregulation of solid waste collection companies. We believe that the time for this legislation is ripe and that, to quote Commissioner Weiner, "...economic regulation is a concept whose time has come and gone."

We also anticipate that the merging of the two departments will lead to an efficiency in regulatory operation. We specifically refer to the need for the stream-lining of information flow; the ability of companies to gain information readily from a single source; and the elimination of conflicting regulations.

For example, grass clippings are currently deemed to be municipal waste (ID 10) for the purposes of board regulation but are vegetative waste (ID 23) for the purposes of departmental regulation. This leads to confusion as to what is the best way to handle these particular waste streams. We are currently seeing grass clippings leaving the State of New Jersey to out-of-state composting facilities because those facilities can operate more economically than those in our state as they do not face either regulatory confusion or excessive fee structures.

Finally, we anticipate that this merger will allow industry to concentrate its efforts on monitoring services for which fees are paid. As the Department becomes more fee driven, we anticipate that by dealing with a single agency and a single commissioner, we can expect greater returns on our

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investment, i.e. more effective enforcement, creation of even playing fields, faster and more efficient review of petitions for permits and permit changes, and generally a more uniform regulatory approach as we anticipate dealing with one division director on solid waste matters.

We commend the legislature for holding these hearings. We trust that our concerns will be addressed by the Administration within this merger, or by the Legislature at a date in the near future.

Again, I thank you for your invitation to present the concerns of our membership and I will entertain any questions, if you have them.

10X



New Jersey
Public Interest
Research Group

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TESTIMONY BEFORE THE NEW JERSEY SENATE
ON REORGANIZATION PLAN NO. 001 (1991)
MAY 23, 1991

Energy Planning

NJPIRG has supported a strong state role in comprehensive energy planning accomplished by a cabinet level agency for at least fifteen years. It supported the creation of the New Jersey Department of Energy in the late seventies and opposed its death by Reorganization Plan in the late eighties. NJPIRG continues to support a cabinet level agency for energy planning and the recreation of the NJDOE, but in the absence of a state energy department, the DEP is the most logical cabinet level agency in which to locate the energy planning functions of state government. Energy conservation and energy efficiency, the hallmarks of an effective and economic energy master plan, are perfectly compatible with the role of DEP in the preservation of natural resources. The Reorganization Plan's transfer of the energy planning functions to the DEP vastly improves the ability of state government to implement its proposed energy master plan and should be supported by the Legislature.

Independence of the Board of Public Utilities

For the last eighty years, the Board of Public Utilities (BPU) has been an independent agency exercising authority delegated by the Legislature to set rates for the state's public

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utilities. The BPU is like no other state agency. Prior to its creation in 1911, the Legislature itself set the rates for public utilities. When the Legislature determined to delegate those responsibilities to an administrative agency, it created an agency that was independent of the rest of the executive branch. The BPU commissioners are appointed by the Governor for staggered six-year terms independent of the term of the Governor or of the Legislature. The BPU commissioners do not serve at the pleasure of the Governor.

The independence of the BPU should be preserved. The Reorganization Plan does preserve the independence of the BPU by maintaining its status as an "in but not of" agency, by maintaining the Board's authority "for the allocation of its budget and the assignment of Board personnel ..." and by requiring that "[u]pon the request of the Board, the DEP Commissioner shall make available Department resources to the Board to carry out its responsibilities."

However, the Plan is not as clear as it could be in unequivocally guaranteeing the independence of the BPU. The "in but not of" status is subject to exceptions provided elsewhere in the proposed Plan. "All responsibility for budget, fiscal and personnel matters ... is ... transferred from the Board of Public Utilities to the Commissioner of the Department of Environmental Protection" And the Board shall make budget "recommendations" to the DEP Commissioner for inclusion in the DEP budget "subject to the review of the Commissioner" These provisions in the Plan create at least some ambiguity as to the ultimate independence of the BPU under the Reorganization Plan.

These ambiguities could be eliminated by the amendment of the Plan to include language definitively clarifying the independence of the BPU. For example, the elimination of the limiting language following the designation of the BPU as an "in but not of" agency and adding the following language used by the Legislature in the current allocation of the BPU in N.J.S.A. 52:18A-2.1 would strengthen the BPU's independence:

Notwithstanding this allocation, the Board of Public Utilities shall be independent of any supervision or control by the Department of Environmental Protection or by any officer thereof, and, unless otherwise expressly provided by law, the board shall be independent of any supervision or control by the Division of Energy Planning and Conservation or by any officer thereof.

[See N.J.S.A. 52:18A-2.1].

The independence of the BPU could be further solidified by deleting paragraph 7 from the Reorganization Plan and replacing it with the following:

There shall be one office in the DEP for budget, fiscal, personnel, payroll, and administrative services to serve the needs of both the DEP and the BPU. This office shall report to the Commissioner of DEP and the BPU President shall have the use of such personnel from this office as s/he deems necessary to carry out the BPU's responsibilities.

The Role of the Legislature in the Reorganization Plans

The Reorganization Plan proposes major changes in the authority, structure, composition, and function of the BPU. For example, under current law, no BPU commissioner may act as a member

of the Board until s/he is confirmed by the Senate. The Reorganization Plan proposes to dilute this legislative control of the BPU by allowing the Governor to appoint an acting BPU member or members without the confirmation by the Senate. Infringements such as this on legislative prerogatives should be fully debated and approved by the Legislature before they become the law. Such a change in an agency with an eighty year life ought to be accomplished through the normal channels of legislative enactment with the full debate and give-and-take of the legislative process. Indeed, the Legislature should re-establish its proper role in enacting the laws of the state by seriously considering amending the Executive Reorganization Act to limit the extent of a Governor's power. Currently under the Executive Reorganization Act, a Governor may literally adopt substantial changes in state government leaving the Legislature in the position of merely saying yea or nay to the change without the ability to exercise its traditional functions of debate, compromise, and amendment.

In conclusion, there are clear benefits to be realized in the provisions of the Reorganization Plan. There are also flaws which point up the inadequacy of the Reorganization Plan process. The Legislature should correct and strengthen the Plan by either enacting independent legislation or proposing to the Governor Plan amendments, such as those detailed above, for inclusion in an amended Plan.

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(QF's) under PURPA. AES is one of the original entrants in the independent power market and today is one of the largest independent power producers.

utilities for increasing the conservation of electricity, New Jersey is expected to need new generating capacity in the future.

In 1988, prior to the establishment of New Jersey's bidding system, AES and a New Jersey utility had discussions where the utility expressed an interest in AES' approach to developing and operating power plants. With that encouragement, we sought a New Jersey site which would meet the utility's needs.

feasibility--the system awards more points to bidders who are substantially far along in the permitting process (recognizing that permitting is the most difficult part of the development process). Unfortunately, however, New Jersey's environmental regulators have not incorporated this policy into their review process and are reluctant to give an independent power producer's project timely attention if the IPP does not have an electricity contract. Furthermore, many of the permits call for a justification of need for electricity (for example, CAFRA), which the regulators define as an electricity contract. Merging the DEP with the BPU would provide coordinated review policies, and ultimately should decrease the cost of electricity by decreasing the time and expense of developing an IPP.

In short, as an independent power producer which has invested substantial time and

NEW JERSEY'S

ELECTRIC ENERGY FUTURE....

ISSUES

AND

CHALLENGES

SEPTEMBER 1933

PREPARED BY:

**ATLANTIC ELECTRIC
JERSEY CENTRAL POWER AND LIGHT / GENERAL PUBLIC UTILITIES
PUBLIC SERVICE ELECTRIC AND GAS**

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FOREWORD....

The electric energy infrastructure in the State of New Jersey is undergoing a transformation. The roles and responsibilities of all participants are being realigned portending basic changes in the planning, ownership, operation, regulation and pricing of electric energy services. Many of these developments offer significant opportunity, others are experimental and their outcomes are unknown.

New Jersey's investor owned utilities have examined these impending developments and offer four basic observations:

- ☐ *The utilities' control of the planning, production, transmission and distribution of electric energy is being diminished;*
- ☐ *The complexity and uncertainty associated with providing a reliable electric supply are increasing while utility control of options to deal with unforeseen events is narrowing;*
- ☐ *The utilities will nevertheless likely be expected to continue to provide safe, adequate and reliable power at economic prices;*
- ☐ *Public confidence in an expanded partnership of consumers, regulators, entrepreneurs and utilities is essential if tomorrow's needs are to be met safely and reliably.*

These observations raise a number of strategic policy issues that deserve the full attention of State public policy makers. The intent of this document is to initiate that dialogue by raising issues, not necessarily providing answers. Our goal is to build public confidence and support in an expanded partnership of consumers, regulators, entrepreneurs and utilities working together to meet the electric energy needs of New Jersey in the next decade and beyond.

INTRODUCTION....

Modern society requires many "infrastructures" to support social and economic well being: education, transportation, waste management, health care, water and sewerage services are only a few of the prominent examples. Electrical energy is also a basic infrastructure requirement - society simply could not function without a safe, secure and reliable supply of electricity. At both the State and Federal levels, several significant changes to the fundamental underpinnings of the electric energy industry are being considered. These modifications need to be approached with care and forethought to ensure that present and future societal needs are satisfied.

The electric energy infrastructure in New Jersey has two basic components, one physical and one institutional. As of December 1987, the *physical* component included utility owned generating facilities, power purchases and non-utility generation totaling almost 16,000 megawatts. The transmission network which takes power from the generators and delivers it to the load centers is made up of 500,000 volt and 230,000 volt circuits that stretch for over 1,200 miles. There are tens of thousands of miles of distribution lines that move the energy to the ultimate consumers be they homes, offices, hospitals or factories. The total embedded investment in this physical infrastructure exceeds \$14 billion.

Just as important as this physical plant is the governance that surrounds it - the institutional infrastructure. The *institutional* infrastructure is the intricate body of laws, regulations and practices that guide and control the complex business of providing electric energy services. This infrastructure, working and evolving for many decades, is now being critically re-evaluated at both the State and Federal levels with an eye towards increasing the influence of competitive market forces in various segments of the business. Improved economic efficiency is the hoped for result.

The linchpin that unites these two infrastructures and makes them operate in a unified fashion is a relatively simple principle commonly referred to as the *obligation to serve*. Created by the institutional infrastructure, it conveys the exclusive right to serve a particular area in exchange for assuming the obligation to safely and reliably meet all of the area's electric energy requirements. It is a carefully balanced equation that must be kept in equilibrium if the entire system is to function effectively.

This document has been prepared to initiate the public dialogue required to examine and assess contemplated changes to the New Jersey electric energy infrastructure. It attempts to review:

- .The current status of both the physical and institutional infrastructures to provide a framework for understanding the structural changes being contemplated.
- .The projected energy needs of New Jersey that a changing institutional infrastructure will have to address, and
- .The relationship among utilities, customers and the regulatory structure.

The intent is to highlight impending changes as well as the opportunities and risks associated with them. Perhaps the best starting point for the discussion is the linchpin that makes it all work.....the obligation to serve.

THE OBLIGATION TO SERVE....

The State of New Jersey, through various governmental agencies, has granted certain franchises to public utilities in return for which the State imposes specific duties, obligations and responsibilities. Their observance is subject to the general supervision and control exercised by the New Jersey Board of Public Utilities (Board). The New Jersey public utilities statutes and regulations require each entity coming under their provisions to safe, adequate and proper service and to maintain its property and equipment in condition to perform such service.

New Jersey's electric utility industry has matured around this social compact under which utilities have accepted the obligation to provide established levels of service to customers in return for a protected franchise and a regulated, but not guaranteed, rate of return on its investment. Society was given the assurance that it would receive adequate and reliable service at a price controlled by society. This price was not based on what the market would bear, but was based on the cost of providing that service.

The Board has provided the buffer and balance between the interests of customers and the needs of the utilities. A basic objective of traditional regulation has been to insure that

neither party was at the mercy of the other. This delicately balanced social compact is extremely important for two very basic reasons:

.It is the foundation for the laws, regulations and practices that comprise the institutional infrastructure, and

.It imposes a societal obligation on the electric utilities to be ready, at all times, to meet all the electric energy needs of all members of society, be they individuals, civic or business entities.

In essence, this latter point is the fundamental mission of each electric utility operating in New Jersey. Historically, this social compact has determined:

.How they are organized and operated.

.The type and quantity of human and capital resources applied to the task, and

.The level and timing of strategic investment decisions.

Taken collectively, these decisions and actions are responsible for the physical infrastructure as it exists today. The end result of these decisions, driven by the societal obligation, is typically a generating plant, a transmission line, a substation, a distribution circuit or a service to the ultimate customer.

Before exploring some of the public policy issues inherent in the obligation to serve doctrine, it may be helpful to review the physical infrastructure it has produced over many decades.

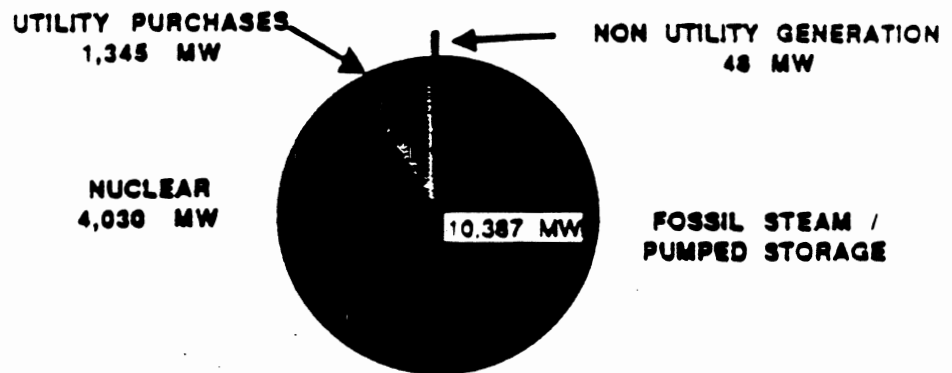
THE PHYSICAL ELECTRIC ENERGY INFRASTRUCTURE....

The demand for electric energy in New Jersey is now being met through a system that includes almost 16,000 megawatts of electric generating capacity, an integrated and interconnected transmission network and the resources of the Pennsylvania, New Jersey, Maryland (PJM) power pool which manages bulk power purchases and interchanges.

GENERATING CAPACITY

About three quarters of the 16,000 megawatts of electric capacity - 12,000 megawatts - consists of utility owned and operated facilities in New Jersey. Facilities located in Pennsylvania account for almost 2,400 megawatts and the remainder is capacity purchased from outside New Jersey. Non-utility generation represented less than .5% of the State's production capability but is expected to grow significantly.

NEW JERSEY ELECTRIC CAPACITY - 12/31/87



TOTAL ELECTRIC CAPACITY IS 15,810 MW.

By the turn of the century, the average age of existing generating units will be over thirty years and it is anticipated that a significant number of these units will be retired before the year 2010. Actual retirement dates will depend on the feasibility of service extension programs along with cost and environmental factors.

THE TRANSMISSION AND DISTRIBUTION SYSTEM

The difference between transmission and distribution is one of voltage level, power handling capability and distance. Transmission carries high voltage, bulk power over longer distances while distribution is at lower voltages and covers smaller areas to provide local service.

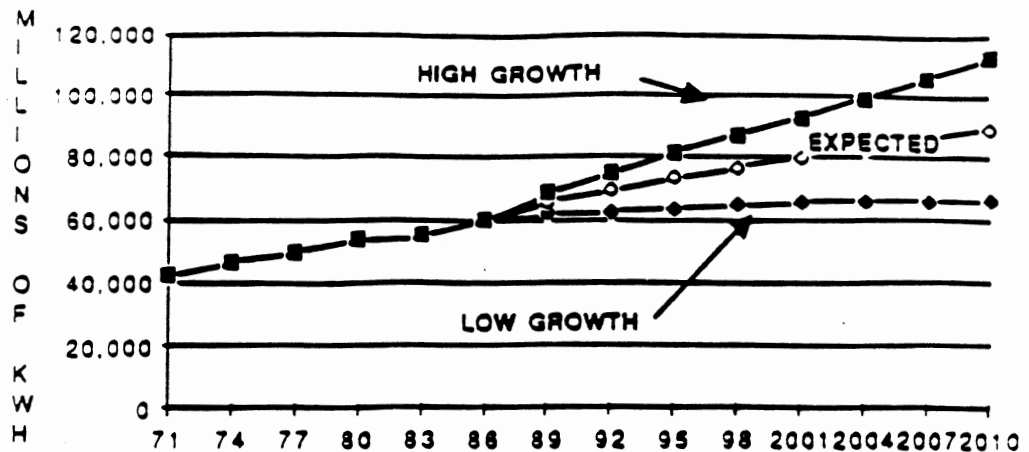
The existing New Jersey bulk power transmission system includes about 300 circuit miles of 500,000 volt transmission, which provides the means for the long distance delivery of power from outside the state, and almost 1,000 miles of 230,000 volt transmission which represents the backbone of the intrastate power network. New Jersey's 500,000 volt system is fully integrated into the 500,000 volt grid operated by PJM which facilitates the movement of power into the State from surrounding regions. There are additional interconnections with PJM as well as several links with New York utilities.

The transmission network cannot send a specific package of power from point A to point B. To best understand the concept of electric transmission, one must keep in mind that the power grid is similar to the plumbing system in a home. Just as the flow of water in pipes varies depending on which taps are open and which are closed, the flow of electricity in a network varies depending on generation levels at many possible points and usage levels at many load center points at a particular time. Like the water in a plumbing system, electricity spreads through the PJM grid seeking a path of least resistance.

REQUIREMENTS FOR THE FUTURE

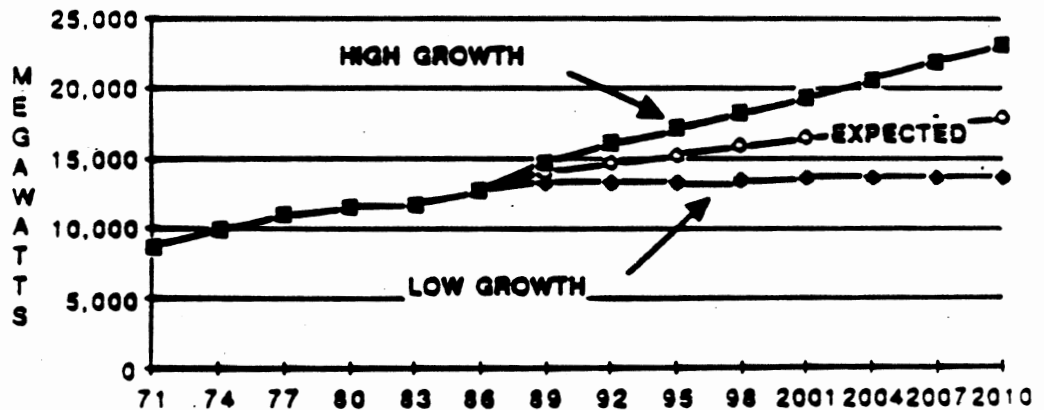
By the year 2000, there is little doubt that New Jersey will need both new generating facilities and expanded transmission facilities to meet the needs of its residents. Annual growth in both overall energy usage and peak demand have averaged almost 4% over the past five years. Aggressive load management and conservation programs combined with anticipated economic trends are expected to slow this growth to less than 2% a year through the year 2000. This seemingly small growth rate compounds over time and suggests a 26% increase in total energy consumption and a 19% increase in peak demand by the year 2000.

NEW JERSEY ELECTRIC ENERGY CONSUMPTION

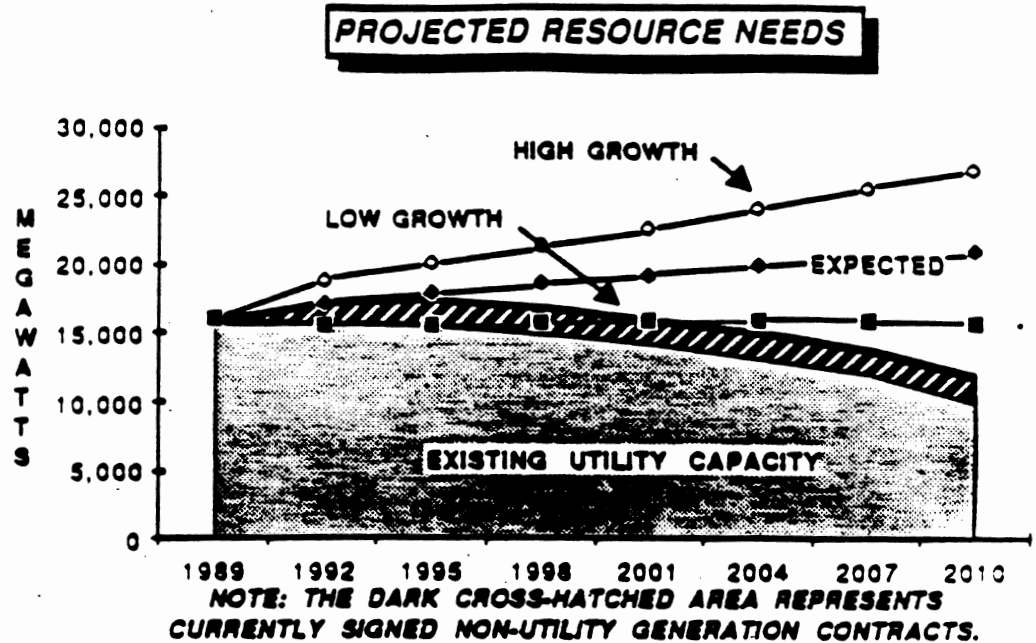


Peak load is the maximum demand that must be met and determines generating capacity requirements. In New Jersey, peak loads occur during hot summer weather when air conditioners add heavily to normal demand. Peak loads persist for periods of hours on relatively few days.

NEW JERSEY PEAK DEMAND



In addition to capacity to match peak load, a reserve capacity is also required to accommodate forecast uncertainty, planned outages for repair and maintenance as well as the inevitable unplanned outages forced by storms, equipment failures, etc. For New Jersey, the presently required reserve is about 15%-20% of peak load.



Forecasts based on the above data indicate that New Jersey will require over 2,650 megawatts of additional generation capacity by the year 2000 and over 9,000 megawatts by the year 2010. These projections anticipate relatively moderate economic growth in New Jersey and an efficient and ongoing energy conservation program. Under different growth scenarios, New Jersey's 2010 capacity needs could range from almost 4,000 megawatts to in excess of 15,000 megawatts.

Regardless of economic assumptions, New Jersey will need new generating capacity merely to replace existing equipment as units retire and purchase agreements expire. Some 5,800 megawatts of present capacity and purchases are nominally slated for retirement or phaseout by 2010. Programs studying the feasibility of extending the useful lives of existing units have been underway for some time.

Currently, there are four means available to collectively meet New Jersey's future energy needs:

- ☐ Conservation and load management.
- ☐ Purchased power from non-utility generators.
- ☐ Purchased power from utilities outside the State, and
- ☐ Construction of new utility owned facilities.

In all likelihood, all of these alternatives will be employed. Undoubtedly, there is a spectrum of workable combinations but the bounds are uncertain and may change with time.

THE INSTITUTIONAL ELECTRIC ENERGY INFRASTRUCTURE....

For most of this century, the electric utilities have been considered regulated monopolies. From a societal point of view, it was deemed more efficient to have one entity responsible for the generation, transmission, distribution and customer service needs of the populace in a particular geographic area. Vertically integrated utilities, i.e., entities involved in each stage of the electric energy process, were granted franchises to supply these essential services within a specific geographic area. To compensate for the lack of competitive forces, comprehensive regulation at both the Federal and State level was imposed on every facet of the business to protect the ultimate consumer, as well as investors, from potential abuses that could arise from such a concentration of economic power. Central to this economic/regulatory balance regarding societal benefit is the requirement that the utility stand ready to serve any and all customers at all times. This concept was referred to earlier as the obligation to serve. The compact has served the State's citizens well.

Utilities traditionally had the responsibility of identifying the energy needs of their service territory, hopefully in advance of the time when the facilities would be required. They planned and designed facilities taking into account such things as technology, siting, fuel mix, fuel availability, operating costs, environmental factors, capital costs and system efficiencies. The final facility decision normally rested on the option that would yield the required level of reliability and the lowest customer cost for the system as a whole over the

long term. Using borrowed and invested funds, the utility would construct and own the required facilities. When ready for service, a formal and detailed regulatory review (one of many along the way) would be conducted. It covered the need for the facility, its costs and the overall management prudence in pursuing the investment. Based upon this detailed review, the regulatory body would set prices to allow the utility a return of the initial investment, an opportunity to earn a return on the investment and some additional monies to cover normal operating expenses. The facilities would be integrated into the embedded plant base and made available to all customers as part of an integrated system. Periodically, in the context of rate filings, these ongoing costs would be scrutinized to insure they were reasonable and were being managed effectively.

This institutional infrastructure has weathered several difficult and unprecedented events: the oil embargo, double digit inflation causing expensive construction programs, and the accident at Three Mile Island to name just a few. It is probably fair to say that no one interested constituency - the utility, its customers, its shareholders, the regulators or the body politic - has been completely satisfied with the resultant outcome of any individual one of these complex decisions. But, it is also fair to say that, taken collectively, the existing infrastructure has managed to produce a safe, reliable and economic electric energy supply for the citizens of New Jersey.

Technology, market conditions and other circumstances are changing, in some cases markedly. It is imperative to have the infrastructure in step with these changes if the desired results are to be achieved. The logical objective today should be to define an infrastructure that will produce long term results superior to what the electric infrastructure would otherwise produce. It is a complex task, befitting a complex industry. Care must be taken to avoid the tyranny of little decisions, many small individual decisions taken collectively must continue to produce a safe, reliable and economic electrical supply.

Perhaps the best starting point for this discussion is to outline the institutional changes currently being contemplated at both the State and Federal levels. Hopefully, this will highlight the changes from existing practice and lead to the identification of the public policy issues that need to be addressed if the overall objective is to be realized.

THE VERTICALLY INTEGRATED CHAIN

Virtually all of the electric energy consumed in the State is produced by utilities that own and operate generation, transmission, distribution and customer service facilities. A major focus of the restructuring debate is centered on the first step in that vertically integrated chain, generation. Is it still a natural monopoly? Does society benefit by having only one supplier?

....GENERATION

In response to criticisms regarding the implementation of the 1978 Public Utility Regulatory Policies Act (PURPA), in addition to pursuing a number of policy proposals, the Federal Energy Regulatory Commission (FERC) has developed a series of proposed rulemakings. By way of background, PURPA was an outgrowth of the energy shock of the mid 1970's. One of the legislation's principal aims was to harness and nurture the inherent efficiencies of cogeneration technology. It created two special classes of "qualifying facilities", cogenerators and small power producers, and gave them several incentives:

- .Relaxed regulatory treatment,

- .Favorable tax incentives, and

- .A guaranteed market for their electric output, i.e., the local utility would be obligated to buy the power at its "avoided cost".

The growth of these facilities under the original legislation exceeded all expectations. In some states, not all of that growth turned out to be in the best interests of the ultimate consumer of that power. To remedy this situation, FERC has proposed two important changes. One is an effort to increase competitiveness and efficiency in the *wholesale* power supply market by encouraging additional entrants, independent power producers or IPP's, into the market through reduced regulatory burdens. Almost any "entity" could be an IPP: equipment manufacturers, an individual, a gas pipeline, an architect/engineering firm, even an electric utility. The difference, however, is that as currently proposed a utility *cannot* be an IPP in the geographic area it is obligated to serve and would not be relieved of several regulatory requirements not applicable to all other IPP's. The second proposed change would allow power from either qualifying facilities or IPP's to come to the market through procurement

contracts which regulated utilities obtained or awarded through a competitive bidding program. On August 24, 1988, the New Jersey Board of Public Utilities gave final approval to a unique set of guidelines for the purchase of power through competitive bidding by non-utility sources.

Changes being contemplated in the next step of the vertically integrated chain, transmission, can have equally profound effects but the public debate surrounding this issue is less developed and more contentious.

....TRANSMISSION

The question of transmission deregulation is currently a matter of heated discussion at the Federal level and, unfortunately, not one that is easily addressed. On one side of the issue is the argument that a truly competitive wholesale market cannot be developed if there is one entity, the local utility, controlling a bottleneck facility. On the other side is the argument that the present transmission system was constructed and is operating as part of a tightly integrated system moving power, by design, from existing generation sources to existing load centers. In some cases it is being operated at or very near its design capacity. Unbridled access to it could yield severe physical and financial dislocations.

FERC, at this time, has "addressed" the issue by deferring it. Some believe that transmission access is the key to successfully implementing most, if not all, of the other current proposals. Others believe that the topic can be approached serially and subsequent to the initiatives being actively pursued. At the State level, there is a stipulation in effect that facilitates the transmission of qualifying facility power among all of the State's utilities, subject to physical constraints of the system. That service is priced at embedded cost and is a function of the amount and distance the power must travel.

Given this discussion, it is very difficult to draw any specific conclusions or observations regarding transmission infrastructure modifications likely to emanate from the Federal level or to what degree they will be compatible with existing State policy. It would be reasonable to anticipate some degree of change and to recognize that even a small change could have profound impacts on the integrated system as it exists today.

....DISTRIBUTION AND CUSTOMER SERVICE

The final two steps in the vertically integrated chain are distribution services, the direct link to the ultimate customer, and customer services. At this time, there are no formal proposals being entertained that concern themselves with distribution or customer services. This is not to say that modifications are not being contemplated in several quarters. Two specific issues are worthy of note: retail wheeling and market based pricing.

Retail wheeling is generally considered to be the ability of a non-utility supplier to deliver power to a retail customer who may or may not be affiliated with the supplier. It is a concept being discussed on the fringes of the deregulation debate and represents a significant extension of the desire to introduce more competitive forces into the electric services industry. It should be noted that all other reform proposals under active consideration are directed at the wholesale transaction level. This concept would apply at the retail level. Potential cost distribution inequities for all customers are immense.

"Market based pricing" is a relatively new concept that deals with how electric energy prices at the consumer level are determined. The basic concept was framed by the Governor's Task Force On Market Based Pricing and, at this writing, is still undergoing substantial analysis and review. Its basic premise is relatively simple: The existing regulatory scheme, based on cost, is economically inefficient and customers would be better served by attempting to determine a proxy for market price. The proxy would be implemented in the form of a retail rate cap(s) that is phased in over a period of time, gradually replacing traditional cost based regulation.

In summary, there are significant changes being contemplated in every sector of the institutional electric energy infrastructure. Any revised infrastructure will shortly have to face the critical task of addressing the State's electric energy needs projected for the next two decades. How well that goal is accomplished will have a significant impact on the social and economic well-being of every citizen. New Jersey's electric utilities believe that reasoned public debate of several critical policy issues is the first step in defining an infrastructure capable of the task. The people of New Jersey deserve nothing less. To that end, the next several pages are an attempt to begin that dialogue.

CRITICAL POLICY ISSUES....

There are massive changes being contemplated in key areas of the institutional electric energy infrastructure at both the State and Federal levels. From a State energy policy perspective, several items are worthy of note:

Generation is no longer considered a natural monopoly and regulatory impediments to new market participants will essentially be removed.

New generation market participants can enter and leave the market based primarily on financial considerations.

The utilities can participate in the wholesale generation market but not to service their own franchise territory and cannot leave one market, their retail franchise territory.

The vertical integration of generation, transmission and distribution is being altered. Electric utilities will be able to specify the technical/operational characteristics of their system but will be unable to control the identity and performance of their new generation suppliers.

Transmission ownership and control are important factors in the deregulation debate but specific recommendations in the areas have been deferred.

Structural adjustments at the retail market level, distribution and product pricing, could significantly alter existing expectations of costs, risks and reliability. The effects will be disparate and their global impact is unknown.

How many of these changes will actually be implemented? How fast will they occur? Does a clear vision of the revised institutional infrastructure exist? These are very complex public policy questions that defy simple solutions. It is clear, however, that this evolving infrastructure will shortly have to address the immense task of keeping the State's physical infrastructure in step with society's needs. The latter simply will not wait for the former.

Rationalizing the institutional infrastructure requires thoughtful consideration and debate of the following observations as well as the questions that they raise:

Demographics, economics and meteorology will continue to drive customer demand for electric energy services.

How much energy will the citizens of New Jersey need in the year 2000?

How much latitude for uncertainty can we accommodate?

The bulk power generation market is envisioned as having many more participants than it does today.

Will the non-utility participants have a legislatively defined social obligation addition to their contractual one with the utility? How many of the contractors for plants will actually be constructed? How many will operate for the term the contract? How will they perform? Who will provide contingency supply?

Currently, the Department of Commerce, Energy and Economic Development has co-extensive energy policy responsibility throughout all State agencies.

Will all market participants operate under the same set of rules? Will facility siting and permitting requirements be common to utility and non utility projects? How will free market activities be incorporated in the State Energy Master Plan? How will other stakeholders actively participate?

Efforts to balance New Jersey's future supply and demand will, in all probability, involve demand side management programs, purchases from other utilities, purchases from non-utility generators and utility owned and operated facilities.

What is a proper mix of these elements? What are the criteria to be used in developing portfolios? What contingency plans would be reasonable and prudent?

Significant changes in the transmission, distribution and customer service sectors are being discussed by a wide variety of interested parties but no firm positions have yet been framed.

What collective impact would modifications have on all stakeholders? Are there limits of prudence in the nature and pace of these changes?

How are they coordinated with the changes already underway in the generation section of the market? Who is responsible for performing the coordination function?

The "obligation to serve" doctrine is the linchpin that connects the physical and institutional infrastructures and makes them function as an integrated whole.

If significant modifications are made to the institutional infrastructure, will the delicate balance inherent in the principle be preserved? If not, what changes would be required to return it to equilibrium?

These are very complex questions, the answers to which will have a profound and direct impact on the social and economic well-being of New Jersey's citizens. Reasonable people can and will disagree on what course of action is best, but, there is growing sentiment that the time to initiate the dialogue focused on New Jersey's electric energy future is now.

PROPOSED ACTION....

The scope of these contemplated changes is immense. In all probability, they will proceed in an evolutionary fashion over a period of many years. A clear risk to avoid is allowing these unknowns to stifle or paralyze prudent actions that can be taken now to ensure the New Jersey physical infrastructure meets the growing electric energy needs of its citizens.

To begin the process of sharing and discussing information, concerns, views and opinions, New Jersey's investor owned electric utilities suggest that these observations be structured into a policy agenda and a suitable forum for addressing this agenda be created.

An urgent priority in this discussion should be a review and rationalization of the energy planning process. Successfully meeting tomorrow's needs begins with prudent planning today. These plans will have to acknowledge many more uncertainties and unknowns than in the past. All participants in this process

must believe that the risks of being unprepared for the myriad of potential outcomes in five, ten and twenty years have been minimized.

This can only be accomplished by building public confidence in a new, expanded partnership of consumers, regulators, entrepreneurs and utilities designed to meet tomorrow's electric energy needs safely and reliably.

NEW JERSEY'S

ELECTRIC ENERGY FUTURE

ADDRESSING

THE

ISSUES

NOVEMBER 1989

PREPARED BY:

ATLANTIC ELECTRIC
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PUBLIC SERVICE ELECTRIC AND GAS

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NEW JERSEY'S ELECTRIC ENERGY FUTURE
ADDRESSING THE ISSUES
EXECUTIVE SUMMARY

Electric energy is one of the necessities for the social and economic well-being of our modern society. From powering appliances, lighting, heating and air conditioning to powering our manufacturing plants, electric energy is relied upon by society to be available at the "flip of a switch".

During the past decade, New Jersey has experienced a resurgence of economic growth. Coupled with that growth has been an expanding need for electric power. Even if growth moderates in the 1990's as expected, there is little doubt that New Jersey will need to add electric generating capacity and expanded transmission facilities to meet the needs of its residents.

Yet during this period of growing needs, the entire electric infrastructure, particularly the institutional component that controls the physical component of this infrastructure, is undergoing radical change. On both Federal and State levels, legislation and regulation are reshaping the electric energy world. For example, alternative electric energy suppliers are now available to utilities in addition to traditional utility sources, bringing with them both opportunities and concerns. Major commitments to non-utility generation have already been made, and further commitments are contemplated. Changes to the ways in which the transmission system capabilities are allocated in the service of customers are also being contemplated.

These changes give rise to issues and challenges which must be addressed to ensure that adequate, reliable and economic electric service is maintained. For example: Are there sufficient environmentally acceptable sites in New Jersey to locate new generation, and is New Jersey willing to allow such

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usage of sites by the electric business? Recognizing that the future is highly uncertain, how can we decide how much new generation and transmission to commit? How can we balance the costs and risks of oversupplies versus undersupplies? How many of the contracted for non-utility generation plants will actually be constructed, and how many will operate for the term of the contract? How will contingency supply be provided?

It was with the recognition of these issues that in the fall of 1986, planners, engineers and economists representing the State's three major electric utilities undertook a joint effort. The culmination of that effort was a document entitled "New Jersey's Electric Energy Future... ISSUES AND CHALLENGES", published in September, 1988. The document raised a number of strategic policy concerns that merited the full attention of State public policy makers. Its purpose was to initiate a dialogue by raising issues, not necessarily providing answers. The goal was to build public confidence and support in an expanded partnership of consumers, regulators, entrepreneurs and utilities working together to meet the electric energy needs of New Jersey in the next decade and beyond.

During March of this year, the Governor convened a conference on electricity policy, planning and regulation. The participants in the conference were key government officials, legislators responsible for energy issues, the chief executive officers for the electric utilities serving the State, and business and public interest representatives. The meeting focused on New Jersey's electricity needs, how those needs could be met, and approaches for strengthening the State's policies and institutions involved in electricity planning and regulation. The conference participants reached specific conclusions in six areas:

- Continued economic and population growth in New Jersey is likely to require substantial increases in electricity services;

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- The level of additional resources required is highly uncertain. Based on a plausible range of economic growth scenarios, additional capacity need projections range from almost 4,000 megawatts to over 15,000 megawatts by the year 2010;
- Environmental concerns associated with meeting this need are of increasing importance;
- A wide diversity of options must be considered to meet the potential need;
- Government and the private sector must work together, form a new partnership, and share responsibility for planning and providing safe, reliable, economic and environmentally acceptable electric energy to meet the State's needs; and
- Planning for the State's future needs must begin now.

The conference participants agreed upon an action plan including recommendations, action steps, responsibilities, and milestones to be completed by early 1992. A number of items have already been addressed: The Governor issued an Executive Order moving all energy planning activities under the Board of Public Utilities; a BPU Staff committee issued a draft report on incentive based conservation. The momentum generated by the March 1989 conference is continuing, with BPU Staff leadership in some areas, and utility leadership in other areas.

Present and future policy makers have a tremendous opportunity to build upon the Forum's optimism and open dialogue. A partnership of all stakeholders expeditiously moving forward to complete the remaining action steps will better allow New Jersey to plan and take control of its electric energy future.

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NEW JERSEY'S

ELECTRIC ENERGY FUTURE

ADDRESSING

THE

ISSUES

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INTRODUCTION

In the past decade New Jersey's residents have enjoyed one of the lowest unemployment rates in the nation and per capita income has been among the highest in the United States. Old urban areas of the State, such as the Hudson waterfront, are beginning to undergo a rebirth. The past decade has seen a transition from a highly industrialized state to a service, high tech, market driven economy.

These changes bring with them an ever growing need for New Jersey to carefully rationalize its planning processes, to ensure that all resources are best utilized, and that adequate infrastructures will exist to serve New Jersey's residents into the future. One vital infrastructure is electric energy.

On March 6 and 7, 1989 the Governor convened a conference of key State administrators and legislators, the State's electric utilities, independent electric power suppliers, and business, industry and public interest representatives to address electric energy planning and public policy issues. The participants of that conference emerged with a commitment to: revise the State's electricity planning process; consolidate planning, policy and regulation under one entity, the Board of Public Utilities; and, through regulatory and legislatively defined incentives, increase conservation and efficiency of electricity use.

This paper is intended to help maintain the momentum generated by the March 1989 Governor's Conference recognizing the transition that is underway in the government policy-making sector. The intent is to bring a contemporary perspective on electric power issues in New Jersey to these new policy-makers, to identify actions agreed upon by the Governor's conference participants, and to summarize ongoing efforts and the remaining work necessary to complete a credible roadmap for success.

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ISSUES & CHALLENGES

The societal need for an electric energy infrastructure to support the social and economic well being of the citizenry of the State of New Jersey is well understood and accepted. Society simply could not function without a safe, secure and reliable supply of electricity.

NEW JERSEY'S ELECTRIC ENERGY INFRASTRUCTURE

Until recently, society concluded that the most efficient and effective means for meeting its electric energy needs was to have one entity, a utility, responsible for planning, constructing, maintaining and operating a physical infrastructure of electric generation, transmission, and distribution facilities. Utilities were given franchises to serve specific geographical areas and the opportunity to earn a regulated, but not guaranteed, return on investment.

The codification of this social compact has evolved into an institutional infrastructure of intricate laws, regulations and practices at both the Federal and State levels. This institutional infrastructure protected customers from abuses that could derive from these natural monopolies, assured adequacy of energy supply to customers and priced services to provide an adequate return for use of investors' capital.

As of December 1987 the physical infrastructure included a generation system capable of supplying almost 16,000 megawatts of electricity. The sources of this power included 75% from utility-owned and operated facilities in New Jersey, 15% from facilities located in Pennsylvania, 9.5% from capacity purchased outside New Jersey and 0.5% from non-utility generators. In addition, the infrastructure included a transmission network (500,000 and 230,000 volt circuits) with over 1,200 circuit miles

and a distribution network measured in the tens of thousands of miles. The total embedded investment in these facilities is in excess of \$14 billion.

While the physical infrastructure was expanded in the last fifteen years, the institutional infrastructure weathered several difficult and unprecedented events. The oil embargo, double digit inflation causing expensive construction programs, and the accident at Three Mile Island are just a few examples. Even though each particular constituency - the utility, its customers, the regulators, or the body politic - can describe improvements that it would like to see in this current infrastructure, this infrastructure has produced a safe, reliable, adequate and economic energy supply for the citizens of New Jersey.

Beginning with Federal action in 1978 and followed by State and Federal initiatives either already implemented or being contemplated, institutional changes have occurred such that:

- Generation is no longer considered a natural monopoly and regulatory impediments to new market participants will essentially be removed.
- New generation market participants can enter and leave the market based primarily on financial considerations.
- The utilities can participate in the wholesale generation market but not to service their own franchise territory, and cannot leave one market, their retail franchise territory.
- The vertical integration of generation, transmission and distribution has been altered. New generation suppliers are competing with utilities to build facilities and supply wholesale electric energy needs.

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- Transmission ownership and control are important factors in the deregulation debate but specific recommendations in these areas have been deferred.
- Structural adjustments at the retail market level, namely distribution and product pricing, could significantly alter existing expectations of costs, risks and reliability.

THE UNCERTAINTIES OF THE ENERGY FUTURE

Figures 1 and 2, taken from the September 1988 "Issues and Challenges" document, released by the New Jersey investor owned electric utilities, illustrate peak demand and projected resource need trends.

Forecasts of "expected" growth indicate that New Jersey will require over 2,650 megawatts of additional capacity by the year 2000 and over 9,000 megawatts by the year 2010. These projections anticipate relatively moderate economic growth and an efficient and ongoing energy conservation program. Under different growth scenarios, New Jersey's additional capacity needs in the year 2010 could range from almost 4,000 megawatts to in excess of 15,000 megawatts.

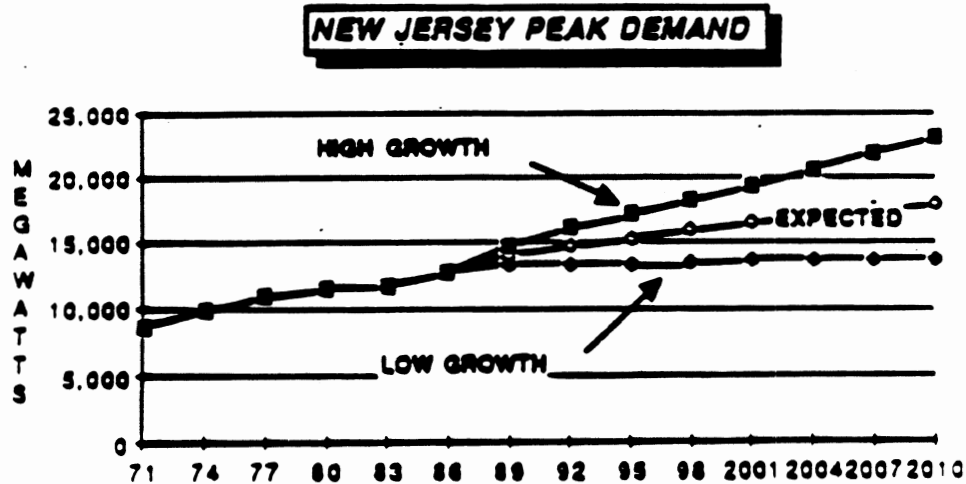


Figure 1.

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Regardless of economic assumptions, New Jersey will need new capacity to replace existing equipment as units retire and/or purchase agreements expire. Some 5,800 megawatts of present capacity and purchases are nominally slated for retirement or phaseout by 2010. Programs studying the feasibility of extending the useful lives of existing units have been underway for some time.

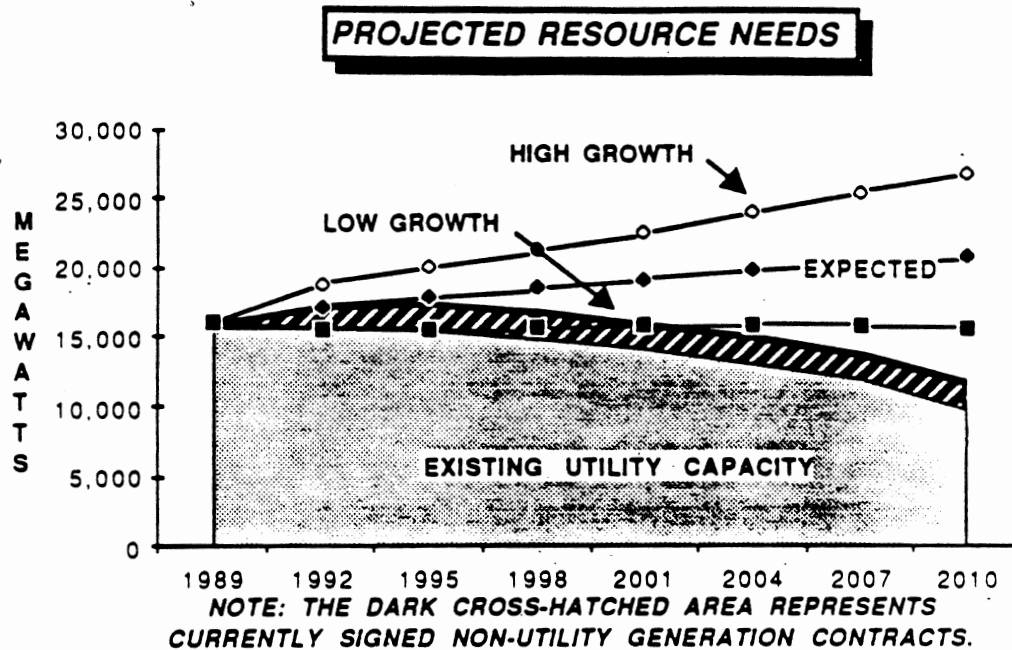


Figure 2.

Traditionally, each utility estimated the needs of its own service territory and then planned, designed and constructed facilities which were expected to yield the required level of reliability for the system and the lowest customer cost over the long term. During the planning process, consideration was also given to technology, siting, fuel mix, fuel availability, operating costs, environmental factors, capital costs and system efficiencies. The utility of today must now consider resources other than its own generating capacity, including:

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- Demand Side Management Programs
- Purchased Power from Non-Utility Generators
- Purchased Power from Utility Sources Outside the State

These other sources bring with them new opportunities, new participants, and new risks and uncertainties. Therefore, the following observations and questions add to the challenges facing New Jersey's electric energy policy-makers.

- Demographics, economics and weather will continue to drive customer demand for electric energy services.

How much energy will New Jersey need in the year 2000? How much latitude for uncertainty should we accommodate?

- The bulk power generation market is envisioned as having many more participants than it does today.

How many of the contracted for plants will actually be constructed? How many will operate for the term of the contract? How will they perform? How will contingency supply be provided?

- As the result of a recent change, co-extensive energy responsibility now resides within the Board of Public Utilities.

Will facility siting and permitting requirements be common to utility and non-utility projects? How will free market activities be incorporated in the new planning processes recommended by the Governor's Conference. How will other stakeholders actively participate in the new processes?

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- Efforts to balance New Jersey's future electric energy supply and demand will, in all probability, involve demand side management programs, purchases from other utilities, purchases from non-utility generators and utility owned and operated facilities.

What is a proper mix of these elements? What are the criteria to be used in developing portfolios? What contingency plans would be reasonable and prudent?

- Significant changes in the transmission, distribution and customer service sectors are being discussed by a wide variety of interested parties but no firm positions have yet been framed.

What collective impact would modifications have on all stakeholders? Are there limits of prudence in the nature and pace of these changes? How are they coordinated with the changes already underway in the generation section of the market? Who is responsible for performing the coordination function?

- The "obligation to serve" doctrine is the linchpin that connects the physical and institutional infrastructures and makes them function as an integrated whole.

If significant modifications are made to the institutional infrastructure, will the delicate balance inherent in the principle be preserved? If not, what changes would be made to the traditional utility obligation?

These questions and concerns must be addressed. In September 1988, New Jersey's investor owned electric utilities released a document entitled "New Jersey's Electric Energy Future ... ISSUES AND CHALLENGES." That document suggested that a policy agenda be developed and that a suitable forum for

addressing the agenda be created. The utilities further suggested that State policy-makers participate in the forum and that top priority be given to a review and rationalization of the electricity planning process.

It further demonstrated that electric energy planning would have to acknowledge many more uncertainties and unknowns than in the past. A specific objective of the suggested forum was to seek a consensus that the risks of being unprepared for the myriad of potential outcomes in five, ten and twenty years should be minimized. To accomplish this would require an expanded partnership of consumers, regulators, entrepreneurs and utilities designed to meet tomorrow's electric energy needs safely and reliably.

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BUILDING AN EXPANDED PARTNERSHIP

ENERGY FORUM

The first major accomplishment in addressing the issues and challenges facing New Jersey's electric energy future occurred on March 6 and 7, 1989. Governor Thomas H. Kean convened a panel of New Jersey's key electric power policy makers and stakeholder representatives to discuss and provide recommendations for action in electricity planning and regulation. The panel represented a wide spectrum of viewpoints and levels of involvement in the current and future process. It included officials from government, industry, the State's electric utilities, non-utility power producers, and public interest groups.

The conference identified and addressed numerous issues that are critical to meeting the State's energy needs into the next century. Much of the initial discussion centered on how public policy needs to deal with two key areas. The first was economic growth, leading to increases in the use of electrical energy, which in turn leads to environmental impacts. The second area was uncertainty, which leads to risk and to issues of who will have responsibility for risk.

By the end of the second day, agreement had been reached on a number of consensus points and a series of action steps and recommendations had been prepared. There was agreement that the need for electricity services will continue to grow. Uncertainties regarding the proper mix and amount of additional supply were also acknowledged. It was concluded that mechanisms must be developed to enable utilities and government to share the responsibility for dealing with these uncertainties.

In the area of non-utility generation, it was agreed that, to reduce risk, a diversity of energy sources including non-

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utility generation is essential. Contingency planning should include such actions as parallel pathing of siting and engineering for utility construction and over-subscription to non-utility generation contracts. The sanctity of long term contracts was deemed crucial if non-utility generation is to remain a viable option. It was also agreed that although the current "stipulation" that governs competitive procurement of non-utility generation is a reasonable start, some elements will need refinement.

In discussions regarding utility-built capacity, it was determined that the utility will accept the cost risk (including some incentives and penalties). Also acknowledged was the need for a process which minimizes second-guessing, a process that is based on up-front regulatory participation, approval and periodic review. The group also agreed that major projects, once approved and undertaken, should be periodically reviewed in a regulatory process for continuing need and prudence of expenditures. Approval, in such a periodic review, should be evidence of the continuing prudence of the project and hence a sound basis for cost recovery by the utility.

The promotion of, and need for, improved efficiencies and the elimination of redundancies was acknowledged by all of the participants, as it relates to conservation, energy use, and the permitting and approval processes.

There was general agreement that understanding and cooperation must be increased among the State's planners, regulators, utilities, and citizens. There was also an agreement that the State planning process must be overhauled and the permitting process made more efficient. A new three-tier process was outlined. Discussion of the State's Energy Master Plan resulted in the conclusions that in the new process, the Tier 1 Plan should provide a framework, be visible, provide vision, set goals (leaving implementation and details to the utilities), be

the result of a participatory process, be adequately funded, and be done at the BPU.

A final report on the Conference was released in early June. It details the topics which were discussed and the various consensus points and recommendations for action. It also includes an Action Matrix which summarizes the key recommendations and indicates leading and supporting responsibilities for action steps and suggested due dates for their completion. The three major recommendations can be summarized as:

- Increase conservation and efficiency of electricity use
- Revise the State electricity planning process
- Consolidate regulatory functions, planning policy and regulation under the BPU.

Additional details are shown in Figure 3. Work on these recommendations and the associated action steps is proceeding.

RELATED ACTIONS

These recommendations and the other topics discussed at the forum are crucial to New Jersey's electric energy future. Noteworthy progress since the conference includes:

- On June 15, 1989 Governor Thomas H. Kean issued a Reorganization Plan (No. 002-1989) "to provide for the increased coordination and integration of the State's energy regulation, planning and policy formation by the State through the transfer of the Division of Energy Planning and Conservation from the Department of Commerce, Energy and Economic Development to the Board of Public Utilities." The reorganization took effect on August 14, 1989.

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FIGURE 3.

GOVERNOR'S CONFERENCE ON ELECTRICITY
POLICY PLANNING AND REGULATION

RECOMMENDATIONS

- | | | |
|---|--|---|
| <p>1. INCREASE CONSERVATION AND EFFICIENCY OF ELECTRICITY USE</p> <p>1a. Stricter standards</p> <p>1b. Financial incentives to utilities and others</p> <p>1c. Increase public education</p> <p>1d. Pricing to encourage efficiency</p> <p>1e. Increase understanding of conservation attitudes and opportunity</p> | <p>2. REVISE STATE ELECTRICITY PLANNING PROCESS</p> <p>2a. Process to include three tiers</p> <ul style="list-style-type: none"> - Basic direction and goals from State Plan - Long range implementation plan from util. - Short term action plan from utilities to define needed decisions and approvals <p>2b. State plan to provide clear, concise framework and vision, establish broad goals and leave implementation to utilities</p> <p>2c. Planning and review process to include broad participation</p> <p>2d. All options included in common framework</p> <p>2e. Action plan approval and certification process to be combined</p> <p>2f. Planning, certification and permitting process to be more efficient</p> <p>2g. All project developers take responsibility for cost performance - appropriate rewards and penalties</p> <p>2h. Periodic state reviews determine continued need and reimburse utilities and developers for no longer needed projects</p> <p>2i. Involve environmental and consumer interests in non-utility contract approval</p> <p>2j. Contract sanctity assured, all normal rate case participants involved in approval</p> <p>2k. Utilities provide and get reimbursed for back-up efforts to non-utility projects</p> <p>2l. Periodic review of Stipulation</p> <p>2m. Make permitting process more efficient</p> <p>2n. Public Advocate participation and funding</p> | <p>3. CONSOLIDATE PLANNING, POLICY AND REGULATION IN BPU</p> <p>3a. BPU given overall responsibility for electricity and energy planning, certification of needed projects, prudence evaluation of new or ongoing projects, approval of non-utility contracts, rate setting</p> <p>3b. BPU established as Cabinet level agency</p> <p>3c. BPU President to be Cabinet officer</p> <p>3d. Number of Commissioners increased</p> <p>3e. Appropriate qualifications for future Commissioners considered</p> <p>3f. Resource level for new Board responsibilities defined</p> <p>3g. Increased funding provided from utility assessment</p> |
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- On June 20, 1989 Representative Rodney Frelinghuysen introduced Bill No. A 4803 which "Increases the maximum assessment allowed to the Board of Public Utilities for regulatory expenses" to cover the additional expense of bringing the Division of Energy Planning and Conservation into the BPU.

- On July 26, 1989, a BPU Staff committee released a draft report which suggested changes in the State's conservation programs. The objective here was to propose changes that would, for the first time, provide utilities with balanced financial incentives for pursuing conservation. Although not binding, on the Board, the report put forth several recommendations including: utilities should be provided with a clear, measurable reward, tied to savings, for conservation; the BPU should restructure rates in a manner that encourages conservation; commercial and industrial customers must fully assess conservation opportunities before they are permitted to break ground on new or additional facilities. In October 1989, the utilities provided the BPU with their comments and insights on the Staff reports and on the concept of financial incentives for demand-side management.

- Since mid-August 1989, informal discussions have been held among BPU staff and representatives of the State's electric utilities regarding: the consolidation of functions of the Division of Energy Planning and Conservation into the BPU; the revision of the electric energy planning process; the structure and composition of the planning process task force; and, proposals to increase the efficiency of electricity use.

The State's electric utilities are actively developing incentive based proposals for increased conservation and efficiency of electricity use. In addition, they are performing an

in depth review of the planning process to identify areas where duplication of effort or information is evident, and to identify and suggest revisions to make the entire planning process more efficient, consistent and participative. It is understood that BPU Staff is actively pursuing development of Tier 1 as recommended by the Conference. The utilities are providing their thoughts and insights as well. The utilities are developing proposals for Tiers 2 and 3 for broader discussion in the very near future.

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REMAINING CHALLENGES

In addition to addressing the issues, the Governor's Forum provided the cornerstone for maintaining the dialogue among all stakeholders in New Jersey's electric energy future. Participants widely recognized that everybody is needed in this effort, and that the solutions won't be found with an "us or them" attitude. Furthermore, it was recognized that future energy needs cannot be met by an over reliance on any one option. New Jersey needs a diverse mix of demand side management, life extension of existing plants, power production from independent power producers, and new utility generation.

This dialogue has produced a tremendous optimism, a shared sense of future customer needs and acknowledged uncertainty regarding the magnitude of those needs. An explicit, broad-based commitment to continued reliable and cost effective service to all New Jersey residents in the coming decades has been renewed. The stakeholders in electricity policy, planning and regulation have all made a commitment to effectively deal with today's and tomorrow's energy issues. The foundation for a process to create a credible roadmap for success has been established.

However, much work is still needed to carry the Forum's initiatives forward, including:

- Further State organizational development to consolidate electric energy planning, policy, and regulation in the BPU in accordance with the conference consensus;
- Developing in more detail, and then establishing the regulatory principals and process that should govern the recommended three-tiered approach to planning;

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- Developing incentive based regulatory approaches to demand-side management;
- Developing in more detail the regulatory process and the principles that should govern utility construction of generation, including addressing the issues of "need" certification, prudence, and project related risks; and

The real challenge is to build upon the opportunity and dialogue created by the Governor's Conference, to maintain the vision and momentum generated by that conference. We the utilities pledge to do our part.

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