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COMMITTEE MEETING

before

SENATE JUDICIARY COMMITTEE

Nomination of Robert N. Guido, to be a member of the
Board of Public Utilities, to succeed himself,
for the term prescribed by law

December 14, 1987
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Edward T. O'Connor, Chairman
Senator Raymond J. Zane, Vice Chairman
Senator Gabriel M. Ambrosio
Senator John A. Lynch
Senator Carmen A. Orechio
Senator Donald T. DiFrancesco
Senator John H. Dorsey
Senator William L. Gormley
Senator Lee B. Laskin

ALSO PRESENT:

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

New Jersey State Library

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Meeting Recorded and Transcribed by
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State House Annex
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EDWARD T. O'CONNOR
Chairman
RAYMOND J. ZANE
Vice-Chairman
GABRIEL M. AMBROSIO
JOHN A. LYNCH
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DONALD T. DIFRANCESCO
JOHN H. DORSEY
WILLIAM L. GORMLEY
LEE B. LASKIN



New Jersey State Legislature
SENATE JUDICIARY COMMITTEE
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MEMORANDUM

December 9, 1987

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE
FROM: EDWARD T. O'CONNOR, CHAIRMAN
SUBJECT: COMMITTEE MEETING, DECEMBER 14, 1987

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

The Senate Judiciary Committee will meet on Monday, December 14,
1987 at 10:30 AM in Room 424, State House Annex, Trenton.

The following nominations will be considered:

TO BE A MEMBER OF THE BOARD OF PUBLIC UTILITIES:

Robert N. Guido, of Paramus, to succeed himself, for the term
prescribed by law.

TO BE A MEMBER OF THE STATE BOARD OF PROFESSIONAL PLANNERS:

R. Lee Horbaugh of Bayville, to succeed himself, for the term
prescribed by law.

TO BE MEMBERS OF THE LITERACY IN THE ARTS TASK FORCE:

Ernest L. Boyer, Ph.D. of Princeton, for the term prescribed by law.

Robert J. Callander of Lebanon, for the term prescribed by law.

Brann J. Wry of Trenton, for the term prescribed by law.

Penelope E. Lattimer, Ph.D. of East Brunswick, for the term prescribed
by law.

Eduardo Garcia of Plainsboro, for the term prescribed by law.

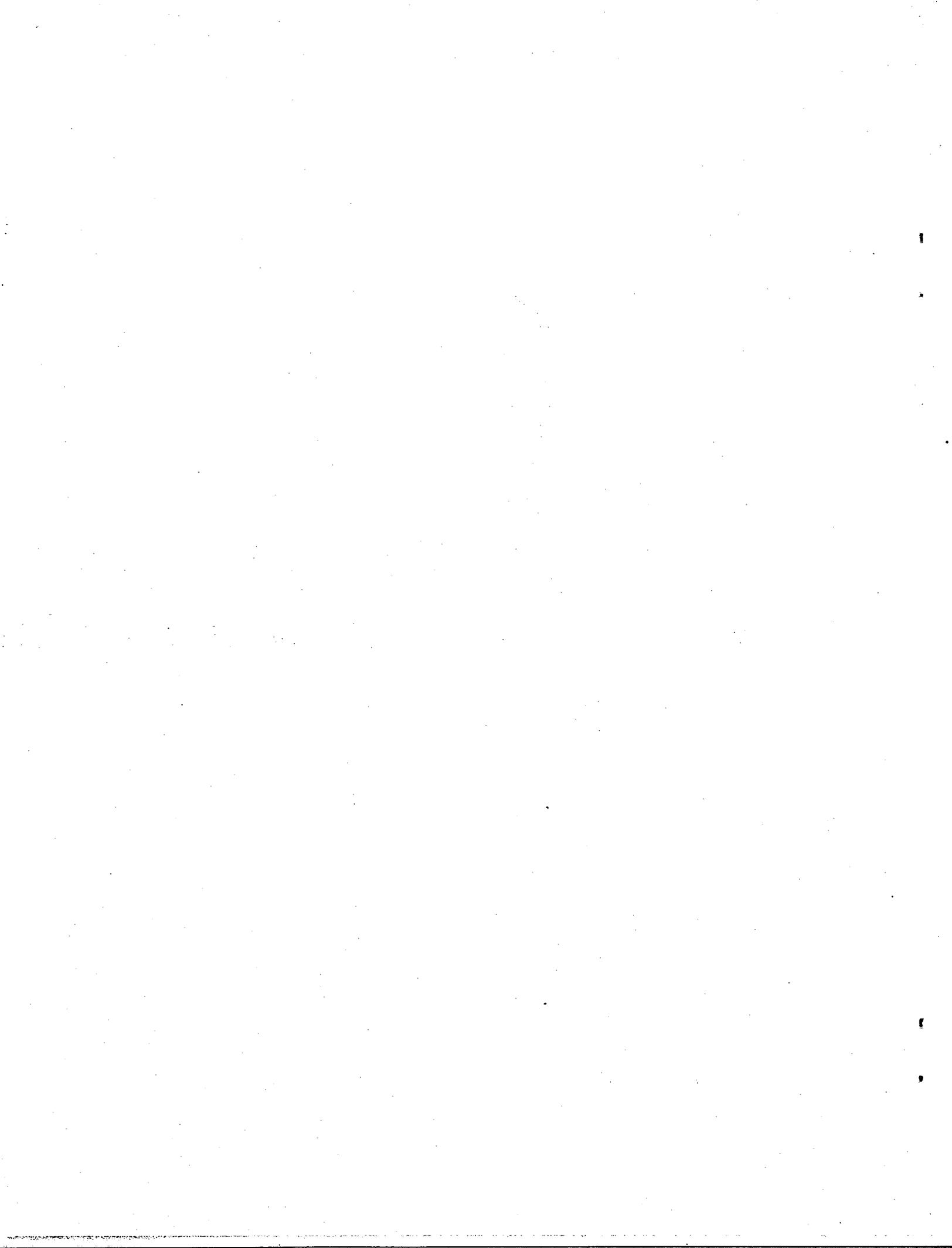
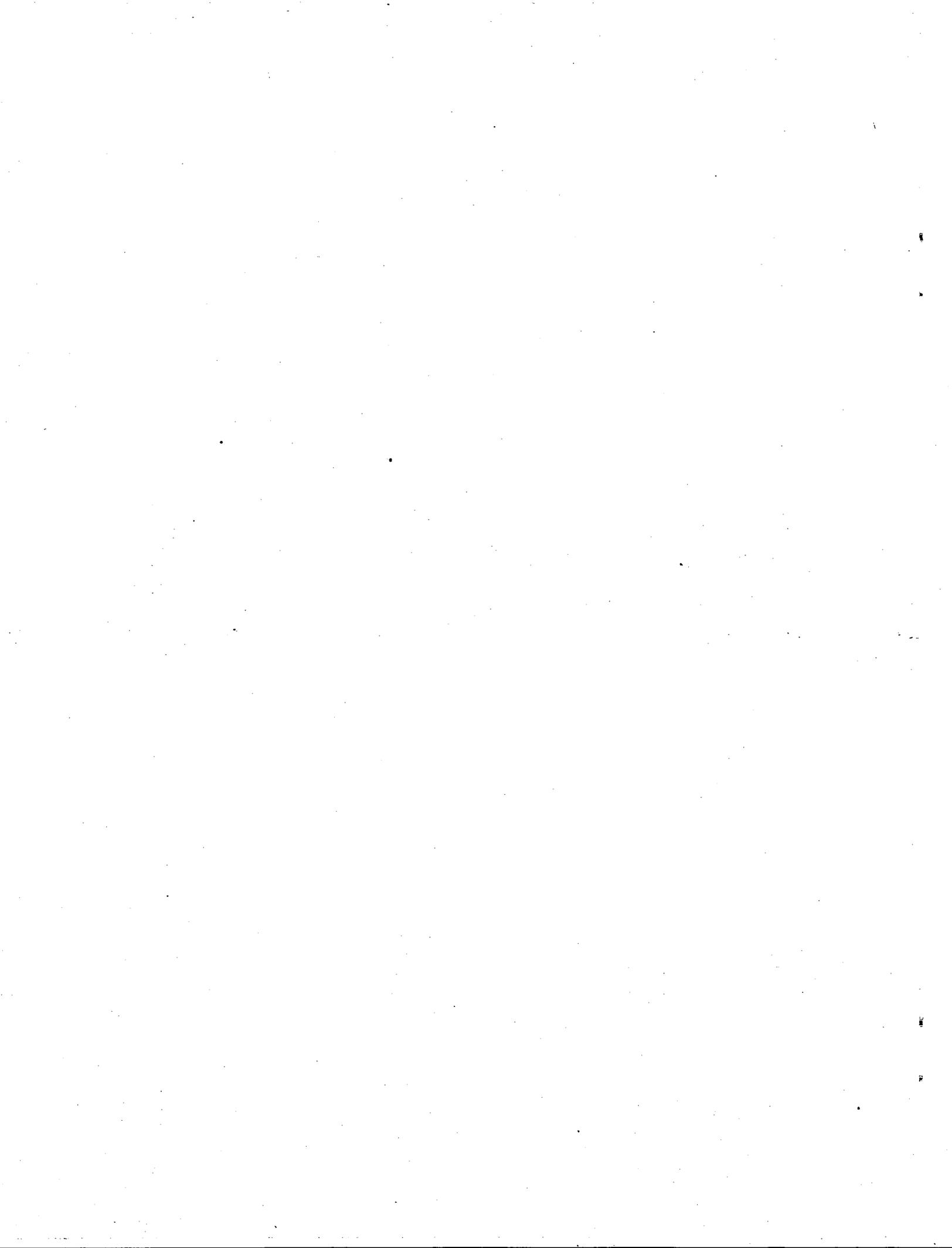


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SENATOR EDWARD T. O'CONNOR (Chairman): As is our custom, the home county Senator will make the introduction of the nominee. Mr. Ambrosio?

SENATOR AMBROSIO: Mr. Guido, you've been introduced to the members of the Committee. I'd like to Committee to know that Mr. Guido has been a fixture in Bergen County for many many years. He served in various posts, both civic and public service. He is currently serving a term on the Board of Public Utilities that he was appointed to in 1985. He has previously served as Chairman of the Bergen County Utilities Authority, and was Treasurer of the Bergen County Sewage Authority. He's held various posts in the Borough of Paramus. And it's my pleasure to introduce him to the Committee.

SENATOR O'CONNOR: Thank you, Senator Ambrosio. Mr. Guido, you're nominated to succeed yourself on the Board of Public Utilities. I note that there was a story that appeared in The Bergen Record that speculated about your potential return to the Bergen County Utilities Authority as its executive director. This was a story that ran apparently in November of this year. Is there any truth to that? I mean are you contemplating that type of a move either now or in the immediate future?

ROBERT N. GUIDO: No, I am not. I was-- I don't know where the story came from, because nobody asked me. Nobody offered the job to me. So that it's really run by the Commissioners, and the Commissioners are the ones--

SENATOR ORECHIO: Mr. Chairman will you have him turn himself on? (referring to microphone)

SENATOR O'CONNOR: I'm sorry. Mr. Guido, if you'll hit the white button--

MR. GUIDO: I'm sorry. I've never been offered the job, so that's all speculative. And I have no intentions of leaving the BPU, assuming I get reappointed. Because, I believe that the crisis we have today on the garbage situation

requires at least, to some degree, somebody with some amount of experience, whether short or otherwise. And we presently only have two Commissioners, and if one Commissioner were to leave, the Board would be paralyzed until another Commissioner is brought on board. And I think I have too much responsibility, both to myself and to the people of my county and the State, to walk away from the job.

SENATOR O'CONNOR: Before you became a BPU Commissioner, you were the executive director of the Bergen County Utilities Authority. Am I correct?

MR. GUIDO: No, I was not. I was--

SENATOR O'CONNOR: What position did you have there?

MR. GUIDO: I was chairman of the Bergen County Utility Authority's Board of Commissioners. Before that, my actual profession was that of an actuary, and as an expert witness for the insurance field at that time.

SENATOR O'CONNOR: How long were you the chairman of the Bergen County Utilities Authority?

MR. GUIDO: Two and a half years.

SENATOR O'CONNOR: And was that the two and a half years immediately before becoming a BPU Commissioner?

MR. GUIDO: No, I was on the Commission for about four or five years until the party I was in took power, and therefore I was then elected chairman of the BCUA at the time. And subsequent to that -- after I had at that point in time successfully negotiated a resource recovery program and had set the money aside under a grandfathered clause, so that we wouldn't have to get bitten by the tax situation -- I then left the Authority and came onto the BPU.

SENATOR O'CONNOR: All right. My question was, your service, though, to the Bergen County Utilities Authority immediately preceded your becoming a Commissioner with the BPU?

MR. GUIDO: Absolutely.

SENATOR O'CONNOR: Okay. And that was for some four or five years, the last two and a half years of which you were the chairman?

MR. GUIDO: Correct. Yes, sir.

SENATOR O'CONNOR: All right. So the story then that ran in The Bergen Record had no truth to it. You had not been offered the position of executive director. Did you have any discussions with anybody from the Bergen County Utilities Authority about going back to that position?

MR. GUIDO: No one from the Authority. Other people had asked me, in reference to, because there was a garbage crisis building up in Bergen County, and they felt I had sufficient expertise to be able to run the job, that I should consider the job. I said it's never been offered, so therefore I can't consider anything that hasn't been offered. Plus I have a responsibility to the BPU.

SENATOR O'CONNOR: Who did you speak to about going back to Bergen County?

MR. GUIDO: They were political leaders in Bergen County.

SENATOR O'CONNOR: I'm sorry?

MR. GUIDO: Some of the political leaders of Bergen County.

SENATOR O'CONNOR: Were they people that were in a position to offer you the position?

MR. GUIDO: No. They were just people who would have had some influence in trying to offer the position.

SENATOR O'CONNOR: Do you recall when your conversations with them took place in reference to when this story ran in The Bergen Record?

MR. GUIDO: A couple of weeks before that I think.

SENATOR O'CONNOR: So in point of time--

MR. GUIDO: A short--

SENATOR O'CONNOR: When would that have been, October-November?

MR. GUIDO: Correct. October or November of that year.

SENATOR O'CONNOR: Now, during the time that you're sitting as a BPU Commissioner, there was a case that was decided in which the Bergen County Utilities Authority was one of the major parties. I'm referring to the case in the matter of the petition of the Bergen County Utilities Authority and the Hackensack Meadowlands Development Commission for the inclusion of a decrease in rates charged for solid waste disposal at the Kingsland Landfill.

MR. GUIDO: I would assume that probably is true. If the HMDC filed it -- the Hackensack Meadowlands Authority?

SENATOR O'CONNOR: Yes, yes. This was a rate case that was--

MR. GUIDO: Right. I probably served on it, yeah.

SENATOR O'CONNOR: And this was a case that was decided on November 6, 1987.

MR. GUIDO: Correct.

SENATOR O'CONNOR: Do you think you can be objective and fair in a situation involving the Bergen County Utilities Authority, having been its former chairman, and having served as one of its Commissioners for some four or five years?

MR. GUIDO: Absolutely. The facts will determine the case, and the facts are generally discerned by the staff, who makes recommendations to the Board. Now the question then becomes whether we have sufficient votes on the Board to pass the case as they so outlined it.

SENATOR O'CONNOR: In that case -- the one I just referred to -- isn't it a fact that you and Commissioner Barbour rejected the recommendations that had been made by the administrative law judge?

MR. GUIDO: If that's the income-- I mean the averaging, I believe so. Yeah, correct.

SENATOR O'CONNOR: Right. And that was a situation in which he had recommended that some \$3,155,487.00, representing

a decrease in revenue requirements due to additional appropriations from retained earnings not to be considered as part of the Bergen County Utilities Authority's annual budget, along with some \$1,500,000.00 in a self-insurance fund related to resource recovery and some \$648,000 for capital expenditures.

MR. GUIDO: I believe so. Those numbers sound familiar.

SENATOR O'CONNOR: That totaled some \$5,303,920.00, which is approximately, I guess, about 1/6th of the \$29 million BCUA budget for the year. The question I guess I'm getting to, and you've answered already is that the fact that you were a former BCUA chairman -- that did not affect you with respect to the way you would have decided that case as a BPU Commissioner?

MR. GUIDO: No. I think the cases would all be similar in nature. That was a case proposed by the HMDC at that point in time, and they were strong for it, and so was the staff of the BPU. I just-- It required two votes, so therefore, I had to vote; otherwise there'd be no -- there'd be a problem with doing any business on that action. I had no problem voting for or against Bergen County, as long as the facts determined that they should be.

SENATOR O'CONNOR: And it's your position that the decision that was made there was one that resulted from recommendations of staff?

MR. GUIDO: Correct. Strong recommendations.

SENATOR O'CONNOR: In spite of the administrative law judge's decision?

MR. GUIDO: Yes. Well, the administrative, in some cases, does not have sufficient expertise to provide the information, since this is a matter of computations of various items in a budget. And the staff's position was very strong that the thing shouldn't be carried; that the OAL judge should be overridden, and--

SENATOR O'CONNOR: That case resulted from an appeal of the Board's order which made the BCUA rates part of the uniform rate of average rates. Correct? And, under that decision, which came out in January of 1987, the rates for compacted solid waste would have been reduced from \$5.54 per cubic yard to \$5.31 per cubic yard. Correct?

MR. GUIDO: I couldn't tell you if it's-- You know, it sounds within reason.

SENATOR O'CONNOR: Okay, I'm taking that right from the language of the decision, so you can assume that that's accurate. And as a result of the BPU's decision then, which overturned the decision of the administrative law judge, what happens to the average rate that people from places like Jersey City and Paterson will be paying for their dumping there?

MR. GUIDO: I don't know the exact numbers. I would assume they would--

SENATOR O'CONNOR: It would go back up, right?

MR. GUIDO: Sure, it would go up. Absolutely.

SENATOR O'CONNOR: And at the same time, that would inure to the benefit of the people who are the users of the Bergen County Utility Authority, correct?

MR. GUIDO: Yes. But prior to that, when they were paying-- When they had a lower rate, and had to pay at a higher rate, it worked in the reverse. It depends on what framework of time we're talking about. The overall case -- the averaging was done in order to balance out the various phases in time in which these numbers would go into effect.

SENATOR O'CONNOR: All right. Let me jump to another subject. In reaching its decision on the Hope Creek rate case last February, the BPU Commissioners, essentially, rejected the advice of the professional staff and allowed Public Service Electric & Gas Co. a rate increase which was far in excess of what staff had recommended. Can you explain to us why the Board took this action, in light of the recommendations of staff, which you told us you relied on often?

MR. GUIDO: Let me correct that. Let me correct the misinterpretation of what the staff-- The staff did not have a unanimous decision on Hope Creek. What had happened is there was a division in the staff as to whether they should go into market pricing or the normal traditional rate making privilege. A division instinct-- The head of the electric division favored market pricing. Some of his individual within his division did not. And the senior technicians in the BPU were opposed to it, including the head economist, who was opposed to the position of going into market pricing.

So, there was no unanimity on the staff at all. So what we had to do was go through about 200-odd hours of review of hearings, and then make a decision on the premise of what happened. My decision on that was on for the following reasons:

One, the State, to some degree, about 5 or 6 years ago, spoke to the company because of the need for future electric supply, and gave the impression which was that traditional rate making would be the final analysis of the case. Supporting the Executive Branch, which I believe -- that was before my time -- was the Department of Energy, and the Public Advocate's office had signed off on that. Now they get to the end of the game, somebody thinks that what they've got to do is change the rules in order to have a lower rate. Well, the problem is, the company had already laid out \$4 billion plus money, and had to find a way to get that back into the rate situation.

The other items that I took into consideration were that market pricing was reviewed in 11 other jurisdictions in the United States, including California and New York, who have a very rigorous regulatory climate. In other words, it's very difficult to invest there because of their rigorous climate that they've created there. Both rejected -- both states rejected, plus the other nine states rejected market pricing as a panacea to solve the problems of future electric problems.

Those were two of the key items that persuaded me, plus the evidence that was presented to me in arguments originally was that we don't really need all that electricity. Every expert witness, regardless of what group it belonged to, and who paid for it, testified that there was a need for Hope Creek and it was an essential need for the year, maybe, 2000, but still an essential need.

So those are basically some of the criteria I used in making my decision. But the key point I wanted to make is there was no unanimity among the staff. There was a wide division in the staff as to how the approach should be used in determining. The papers had constantly printed that the "staff said." The staff did not say. The staff was divided on the issue.

SENATOR O'CONNOR: All right. Well, as a general rule, when the Commissioners disagree with the recommendations of staff, what's the process, if there is a process, that you go through in making your decision? What data do you use, and what do you base your decision on?

MR. GUIDO: Well, actually we have to use only the evidence produced either in the case or on a hearing. We can't bring in the extraneous stuff. But on the other hand, what the staff does, it prepares briefs on the various items. There's a division of staff that'll prepare two or three briefs from the various elements, and each Commissioner will decide as to which type of policy they will determine. So it really becomes a matter of who is convinced. In the last several years we had quite a few 2 - 1 votes, because of the issue.

SENATOR O'CONNOR: On the subject of staff, do you think that the BPU's present budget is adequate for staff, given the fact that the Board oversees almost \$10 billion per year in rates charged consumers by New Jersey utilities?

MR. GUIDO: Well, at the moment we're strangling under the garbage situation, because we have been spending

approximately 75% of our time dealing with the solid waste crisis. And it is a crisis because there's county after county coming in for emergency problems. It seems to me it's an item that should have been probably reviewed and handled eight months ago by some super agency or something to put together the various groups that are involved in this. But we are spending a considerable amount of money and time in just the solid waste situation.

SENATOR O'CONNOR: Do you think the budget for staff is adequate given the workload?

MR. GUIDO: No, I think the staff should have a -- you know -- more money. And I believe that we-- My own opinion is, from reviewing other staffs from other states, that we're probably one of the top three states in the Union that have a substantial staff, and a knowledgeable staff. We have some areas that we're weak in. Solid waste we're extremely weak, and we're trying to build up. So it's going to take money and expertise. The problem is there isn't too much expertise in solid waste.

SENATOR O'CONNOR: What do you say of the criticism that some people make that the BPU should not be located in Newark where many -- I shouldn't say many, but -- where some of the State's largest utilities are headquartered, and the fact that there might be too much of a proximity there, and why shouldn't you be in Trenton where State government in general is located?

MR. GUIDO: Well, it's very difficult-- Under the old-- Let me re-- We were at the old building, people could walk off the street and walk right into our offices. Now we're located under the building owned by Prudential PruPac, or Prudential Life, or whoever owns it, and the security is so tight it's difficult for people to get in, which makes it easier for us to do our work, and keeps our staff from becoming inundated by the various elements of the industry or

otherwise. If we came to Trenton, we would be subjected to the same type of pressure and problems from these industries anyway. Their lobbyists would be here instead. Over there, at least we have in the new building, a higher degree of security which prevents these people from coming right off the streets and walking right into our offices.

SENATOR O'CONNOR: I think you've lead us very naturally into the next area that we'd like to take up, and I'll yield the floor to the Vice Chairman, Senator Zane.

SENATOR ZANE: Mr. Guido, something close to my area that I'm concerned about. There was an application, I believe, by B.F. Goodrich in Gloucester County that, according to information I have, you were involved in a decision there. I think what they were attempting to do was to get an alternative source of power out of this State, and if they were unable to do that, indications were that they may in fact have to remove themselves from this State. Are you familiar with that and your decision on it?

MR. GUIDO: That's not a cogeneration project, is it?

SENATOR ZANE: It's my understanding that B.F. Goodrich in Gloucester County had a program or a plan that they presented in order to be able to cut its fuel bills, they were going to buy waste and refinery gas from a company that was in Delaware through existing pipe lines--

MR. GUIDO: Oh, now, yeah. I understand that now.

SENATOR ZANE: And, they indicated at the time that this would permit them to remain competitive, or otherwise they may have to abandon the plant.

MR. GUIDO: I think our decision was that they should file under a utility. Is that the one that-- I believe it's the one that we said that our decision was that they must file as a utility, and they are now in the course arguing that they're not a utility.

What happens when a big plant like that, a big outfit leaves a gas company or something like that, what it does is it takes away the base of the other company to operate and spread some of the cost. So, what happens is it falls on the homeowner, because he has no place to go. He has no other utility to use. So when you pull out a big chunk of the base, you now have spread the cost onto the consumer primarily -- or to the homeowner.

So, we had, I believe what we decided in the case is that we considered them a utility and that they must file under a utility. And they're presently in the courts. It's the same case I'm talking about.

SENATOR ZANE: There's a-- Let me ask you this. The Executive Commission on Ethical Standards, after investigating certain allegations concerning the BPU concluded that a pervasive atmosphere of ethical insensitivity existed at the BPU. And that's in their report. And although the Commission decided not to penalize any individuals, its statements indicate that certain past activities of all the Commissioners, including yourself, contributed to this atmosphere. I guess my question to you is do you think the Commission's findings should have any impact on your continued service on the BPU, and also what has the Board done to ensure the public that the Board is maintaining a proper relationship with companies under its jurisdiction?

MR. GUIDO: Well, I was obviously not happy with the decision of the Ethics board, the way it was written and the way it was phrased, because I think it was not properly phrased out.

SENATOR ZANE: How would you have phrased it?

MR. GUIDO: Well, I'll just deal with my subject primarily, and I'll explain the situations, the charges against me, or the allegations made against me, and explain those as I go along.

One is that there was a party at a convention in New York -- National Convention of Regulatory Utility Commissioners -- where Commissioner Barbour was elected president of the national association, a position of prestige and a lot of help to this State when it came into being. Mr. Barbour -- or I should say, NARUC-- It's been a practice that any state that had an individual elected, generally had some type of affair or dinner for him. I was new on the Commission, but it seemed to me like a reasonable thing. I didn't see it out of order. Because when I read the law, the only thing sent to me when I was first appointed to the Board was a copy of the law, and the law had a phrase -- a paragraph, the operative paragraph -- which stated, you cannot accept any favors or etc. that is with the intent of the company to purchase favor from you. You know, to buy your vote. So, when they held this affair for Mr. Barbour, I had no problem. I was new on the Commission, but I went to it. It was not--

SENATOR ZANE: Was there a fee to attend that?

MR. GUIDO: No, it was free. However, it was free, and it included Commissioners from other states, included regulatory people from other states, it included prominent people from the State of New Jersey, and it was paid for by a large group of utilities that ran the gamut of all of them, plus some of the Wall Street bond people -- whoever it is, I guess underwrote the-- To me it was not a cheap ride. I had to rent a tux, I had to get my wife dressed up, and I had to go pay for parking. So to me it was not a cheap ride. Plus, as you can see from my size, my wife is a good cook. I really prefer eating home than I do eating at some restaurant in New York. That was the first issue, which--

The second issue is that I took -- that I accepted tickets to a football game at Giants Stadium. What they failed to point out is the individual who invited me is an individual who I've known for over 15 years, because we were in politics

together in Bergen County. He was a mayor of his town, and I was the political leader of my town. So I've known him for 15 years. When there was Boat Jumpers dinner, I took him to the Boat Jumpers, which is one of the top dinners in Bergen County. I paid his fee. All I--

SENATOR ZANE: Who were the tickets to the football game offered by?

MR. GUIDO: Mr. Marione (phonetic spelling) from Bell Telephone.

SENATOR ZANE: From Bell Telephone?

MR. GUIDO: Yeah.

SENATOR ZANE: And they are somebody that comes before the BPU for rate adjustments -- Bell Telephone?

MR. GUIDO: Not at that point in time; they later came on. But, the box -- I think the box holds 20 people, and there were 40 people. I just stopped by, because we had tickets to the game. We stopped by the box, met with these people. I could have easily gone over to the Meadowlands Commission box, because I know quite a few of the Meadowlands Commissioners, and sat on the 50 yard line and saw the game, but I went to the 2 yard -- to the end zone -- and met with these people, because I know some of the people who were going to be there. There were people from the Legislature, State, county and local elected officials, and we talked football. We didn't talk politics or we didn't talk government. We talked football. That was the second item.

SENATOR ZANE: How many times were you invited to the Meadowlands to football games?

MR. GUIDO: I went twice.

SENATOR ZANE: Was the second time the same scenario?

MR. GUIDO: Yes. Basically, the same.

SENATOR ZANE: No discussion about rates, no discussion about applications, no discussion about the BPU and its function?

MR. GUIDO: Correct. Then the last item, which is the one I find the most difficult to speak about because of a personal problem, is I supposedly took a yacht trip on the Hudson. Well, the yacht was not a yacht, it was a sailboat, what they call a 50-year-old twelve meter boat that I had to lay down and hang onto the rope. I had to hang on to the rope and hang on for my life. And the reason that the invitation was extended, it was extended to my daughter as an act of charity, because my daughter had a terminal illness, and she never did get to see the next 4th of July. So that's the only part of all the attacks made on me, the only part that I felt resentful for was that because, it had nothing to do with me, it was my daughter, and yet I got my brains beat in by the papers. And I accept it, because I'm in the kitchen. Otherwise I wouldn't take the heat.

Those are the three items that supposedly led me to this ethics thing. I believe the Ethics Commission generalized. And I don't know what happened before I was there, but I can't really believe that anybody was bought for such simple terms as they claimed.

SENATOR ZANE: It's my understanding that PSE&G has recently filed for a \$200 million rate increase. And that primarily -- again, my understanding -- primarily the reason for the requested rate increase is due to the poor performance at the nuclear generating stations that PSE&G is involved in. Am I accurate so far, that they've applied and that those are the reasons?

MR. GUIDO: I believe they have applied. I'm not sure that it's a question of their poor performance, because we have performance standards. You know, we're one of the few states that brought in performance standards. Now that we have performance standards, and everybody had requested that we put them in, now I'm not sure that the Public Advocate wants to have performance standards. Because it might work in reverse.

SENATOR ZANE: Well, let's assume for the moment that the facts are that there's a \$200 million rate increase -- I think that is a fact -- requested, and let's assume that the facts are that the reason is because of poor performance at the nuclear generating stations. Do you feel that that burden should fall upon the consumers for that rate increase, or do you feel that some of these should be shared possibly by the company as well as the consumer, and what's your general attitude about that type of a rate increase?

SENATOR DORSEY: Excuse me, just a matter of inquiry of you, Senator Zane, do you think you should really be inquiring of a case that's now pending before the BPU, which he's sitting as a Commissioner? I mean, I wouldn't want to do anything here that would ultimately have him disqualified from the case because he was to discuss a specific case. I remember when we had Chief Justice Wilentz here, we deferred from asking questions about pending cases. Perhaps that would be appropriate in this instance.

MR. GUIDO: Well, I can answer this in general, because it's a general-- There are performance standards. If the company does not perform according to the rules, and according to those standards, the company must accept the penalties. That means, the stockholders will accept the penalties. It's my philosophy since I've been on, that companies have a right to make a profit, but they also have a responsibility to run their business right. A company that fails -- makes an error because of some personnel within their ranks, that company has to absorb that error. Now, I voted on that issue several times, and some people don't fully agree. But it's my philosophy that if you have a company, you have to perform properly, or you have to absorb the problems of not performing properly.

SENATOR ZANE: Mr. Guido, is there any trend that you see in people that leave the BPU and seek other employment? Is

there any trend as to where they generally seem to go, to a percentage that's significant enough to suggest that there's a trend?

MR. GUIDO: Well-- The one's I know are all lawyers, so I assume they go back into the practice of law, and--

SENATOR ZANE: Do you know the answer to that question?

MR. GUIDO: No, I don't. I only know the last--

SENATOR ZANE: Do you notice any significant indications that would suggest that many people who are involved in the rate process, etc. -- I'm not talking secretaries, or clerical people -- but do they find their way into the utility industry in this State?

MR. GUIDO: Not during the period I've been there I haven't seen any significant-- I assume that's the only area they can go into, but I haven't seen any. We haven't lost any of our key personnel, anyway.

SENATOR ZANE: When rates are struck, and there is an investigation or a hearing -- and I don't mean investigation like anything improper -- a hearing, doesn't the BPU primarily rely upon the information and data that is supplied by the applicant?

MR. GUIDO: It starts with that premise, and then those numbers are reviewed by our staff, to determine which numbers are proper, and which are not proper. I know, like the insurance business, the statistics are really kept by the insurance company. So, I would assume they have to supply the statistics, but it's our responsibility to examine those statistics to see they make sense, and where they don't make sense, correct them.

SENATOR ZANE: But there's no-- I mean, the BPU itself doesn't have its staff of people go out and develop its own set of numbers, do they? They rely upon the numbers presented by the utility, isn't that correct?

Small case record book

MR. GUIDO: There is no way of sending-- What we do is send examiners out to examine their books.

SENATOR ZANE: Do you think that puts you at a disadvantage in determining whether a rate application is fair and just?

MR. GUIDO: Well, it would be more advantageous if we had our own statistics coming directly to us.

SENATOR ZANE: And have you ever recommended that in fact the BPU staff may be beefed up so that you can get those yourselves?

MR. GUIDO: I have never recommended it because it seems to me like an impossible task, because the people who put the numbers together are the companies. The numbers come to them directly. We have to then pry it out of them. So regardless of what we do, if we create our own data base, we have to create it from them. Same with the --- I did the reverse for the insurance company. I was an actuary, and I used to prepare their numbers for them, so it was difficult for the insurance departments to create their own data base, because they had to come to the companies to start with the base. But it would be, you know, a real find if there was a way of determining the numbers without having to go through the companies.

SENATOR ZANE: Are the companies themselves actually audited by the BPU?

MR. GUIDO: Yes.

SENATOR ZANE: Only at the time of a rate application, or periodically?

MR. GUIDO: I believe, only at the time of rate applications. And now we've done some audits to see how the companies operate and how their staffs operate. I don't know if that's going to be an annual thing, because it's very expensive, but it would be a good idea if we were able to perform a constant spot audit here and there.

SENATOR ZANE: I have no further questions.

SENATOR O'CONNOR: Are there any other questions by the Committee? Senator Ambrosio, and then Senator Dorsey.

SENATOR AMBROSIO: Mr. Guido, I'd like to just direct your attention to the solid waste industry for a moment. With the enactment of A-901, the licensing bill, and the stringent screening requirements of that bill, and the intent of that bill to get the bad actors out of the industry, would you agree with the statement that with the stringent enforcement of the licensing that there would no longer be a need for the economic regulation of the solid waste industry by the BPU?

MR. GUIDO: Well, it's a difficult-- A good deal of it should not have any-- I mean, I felt that for a long time, since I've been on there, that a guy with one truck or two trucks, it didn't make sense. The large companies still need some type of review. I don't know if it has to be at least an audit of their books at some periodic time. But this constant having to pass on whether a guy buys a truck or rents a piece of equipment never made sense to me, except that's the way the law is, and we're bound to go through the process.

SENATOR AMBROSIO: Was it your estimation that 75% of the time and effort at BPU is spent on solid waste?

MR. GUIDO: Yes, sir. And we're still -- we're losing ground.

SENATOR AMBROSIO: And was it also your testimony that the expertise to deal with the problem is not there?

MR. GUIDO: I would say it's improved in the last year or two, but it still needs a long way to go.

SENATOR AMBROSIO: Thank you.

SENATOR O'CONNOR: Senator Dorsey.

SENATOR DORSEY: Commissioner, just straighten out a few points in connection with PSE&G and the Hope Creek project. You became a Commissioner at BPU in I think it was June 6 or 7 of 1985. Is that not correct?

MR. GUIDO: Correct.

SENATOR DORSEY: Now, the fundamental agreement which essentially established the framework upon which the BPU would have to establish rates for Hope Creek was actually entered into between the State, PSE&G, and approved by the Public Advocate I believe at least two and a half years before you became a Commissioner. Is that not so?

MR. GUIDO: Yes.

SENATOR DORSEY: And that agreement is often referred to as a cost-containment agreement, but basically what it did, did it not, was authorize PSE&G to expend, I think, up to \$400 million in connection with that project within certain cost-containment limitations that were placed on it? Is that correct?

MR. GUIDO: Yes.

SENATOR DORSEY: So that, when the matter came up before you, in terms of establishing a rate, there was this history in which the State had essentially authorized and committed PSE&G to expend and to build a particular facility under the regulatory framework that had always existed up until that point in time. Is that not so?

MR. GUIDO: Yes.

SENATOR DORSEY: So then, in other words, you had to consider the rate in that framework rather than starting from scratch. Are you also familiar that you mentioned that there was a disagreement between members of your staff on the issue of market pricing? Are you also familiar that we had a similar disagreement in connection with a bill that was sponsored in the Senate about a year ago -- 2801 -- which dealt with the same issue of market pricing?

MR. GUIDO: Yes.

SENATOR DORSEY: And so, market pricing apparently is a very debatable issue which has not been resolved in the favor or -- well we wouldn't say in the favor of -- market pricing, even at the legislative level.

A great deal of time will undoubtedly be spent in connection with rate increases granted by the Board. And I believe you also have put into place a number of rate decreases even when utilities have applied for increases. Is that not so?

MR. GUIDO: Correct.

SENATOR DORSEY: And one of those that comes to mind is Rockland Electrico, in which they applied for a 12% increase and the Board essentially effectuated a decrease?

MR. GUIDO: Right.

SENATOR DORSEY: And, am I correct that in connection with the case involving New Jersey Natural Gas, in which there was an enormous sum spent in connection with a proxy battle between various members of that, that you, unlike your two fellow Commissioners, voted very specifically against allowing any of those costs to be worked into the rate base.

MR. GUIDO: That's correct.

SENATOR DORSEY: No further questions.

SENATOR O'CONNOR: Senator Dorsey, it sounds like you have an open mind. I think that was as an effective a redirect examination as I've seen.

SENATOR DORSEY: Thank you, counselor.

SENATOR O'CONNOR: Are there other questions? Senator Orechio, and then Senator Gormley.

SENATOR ORECHIO: Mr. Guido, with reference to the occasions that you visited the box of New Jersey Bell, didn't you have your own tickets to that football game? You weren't given a pass, you used your own tickets, right? You were told to come and visit the box and watch the game, maybe have a coke or something. Is that right?

MR. GUIDO: No, we had tickets. Right. That is correct.

SENATOR ORECHIO: According to this report, it mentions about passes, so I wanted to get that point squared away. A second point is, I guess Senator Zane questioned you

about what the trend was. I guess with respect to Commissioners, I imagine the trend probably now is that they go into the investment banking field. - Isn't that (inaudible) where Barbara Curran has gone?

MR. GUIDO: That's correct. Yeah.

SENATOR DORSEY: Just at the time it all collapsed, too. (laughter)

SENATOR ORECHIO: This dinner that was held in New York to honor Commissioner Barbour becoming president of the national association, which Commissioners from New Jersey were there besides you and Barbour? Was Barbara Curran there? And secondly, were previous Commissioners who had served as BPU Commissioners there, and who were they?

MR. GUIDO: It was, I know Barbara and I were both there, and I believe former Commissioner McGlynn, and former Commissioner Hyland, and people like that. There were several others I'm sure, but I--

SENATOR ORECHIO: What did those tickets cost down to? Do you recall?

MR. GUIDO: I don't know. The only people that knew that was the Ethics Committee had some calculation, I believe.

SENATOR ORECHIO: How much did it cost you to prepare for that dinner? You said you had to get formal clothes?

MR. GUIDO: Yeah. A couple of hundred dollars.

SENATOR ORECHIO: No other questions, Mr. Chairman.

SENATOR O'CONNOR: Senator Gormley?

SENATOR GORMLEY: I won't go over any particular order from my county; I don't think that would be appropriate.

SENATOR O'CONNOR: That never usually bothers you, Senator, but go ahead.

SENATOR GORMLEY: Let's not get personal, Chairman. I'm curious, since all this arose as to the stadium -- whether the criticism be right or wrong -- has the Board instituted any different procedure since that time?

MR. GUIDO: Well, it was my understanding that we should have put in a code of ethics for each division. The problem was that during the period of time that that edict was handed down, we were a part of the Department of Energy. And the Department of Energy, I guess the report came to them, and never seeped it down to us. So, we never knew about it until we were told, "Where was your code?" And we said, "What code of ethics?" and I showed them the law that I had received. So now we have instituted a very rigorous and very rigid code of ethics, and I think we were one of the first of all the divisions in the State. What we simply said is it should be applicable to everybody. You know, not just BPU Commissioners, but everybody else. I have no problem with it.

SENATOR GORMLEY: Is it monitored after any other code of ethics that you're familiar with? Was it patterned after a particular model?

MR. GUIDO: I think what they did was combine it from other codes of ethics that may have been created by other groups, but it's pretty rigorous and rigid.

SENATOR GORMLEY: Thank you.

SENATOR O'CONNOR: Any other questions? Senator Laskin?

SENATOR LASKIN: Mr. Guido, I have some questions that deal with the concept of regulation of public utility. They don't have anything to do with these questions that I've been reading about in the newspapers. And I wonder whether you can comment on some of these thoughts that I have?

About ten years ago I prepared a very very comprehensive piece on public utility regulation, with some suggestions as to what should be done. And as is the custom with many of the pieces that I prepare, they get filed away and nothing really happens with them. But about ten years ago, there was a serious, serious crisis with oil pricing. And at that time there was this big push all over the country by

politicians, consumers, advocates, whatever you want to call them, that we should shift to coal. That was going to solve the problems of the world if we shifted to coal and no longer relied on oil and gas, because of the price.

Of course we couldn't, in New Jersey, shift to coal so easily. And we continue, I assume -- correct me if I'm wrong -- rely most heavily on oil, primarily and gas secondarily for the generation of our power. Am I right?

MR. GUIDO: Correct. Yeah.

SENATOR LASKIN: That's still pretty much the same. Now that the oil prices have sort of modified and actually come down a bit, is that being reflected -- is that lower cost being reflected in our bills?

MR. GUIDO: Yes, it is. It's fit into the formula--

SENATOR LASKIN: I don't mean by the-- No, no, I don't mean by the adjustment clause. Is it being reflected -- and this may be because I don't understand the system -- is it also being reflected in the cost of the production of the electricity?

MR. GUIDO: It is part of the cost of electricity. It should be part and parcel of the formula. When you do the computations you must make adjustments on one year ahead. You have to estimate-- Let's say it's \$18 a barrel, then you have to include that in the cost side of the equation.

SENATOR LASKIN: So that the lower oil prices have brought some benefit in our monthly bills?

MR. GUIDO: Absolutely.

SENATOR LASKIN: Okay. Since the so-called crisis of ten years ago, when everybody was talking about shifting to coal because oil prices were so high, have you seen any legitimate planning? In the couple of years you've been on the Public Utility Board, have you seen long-range planning come across your desk, either advocated by BPU or advocated and implemented by the utility companies, which would alleviate a

problem at another crises? In other words, have the companies started to look for alternative means of producing this energy other than the strict reliance on oil and gas?

MR. GUIDO: I think, basically, those are the reliances. They're attempting to be able to have sufficient gas, if we can pipe it down from Canada, so that we wouldn't hit a crisis. And sufficient oil so that we'll have, when the oil goes up, they'll have to find a way to switch to gas. But I agree with you, I don't think there's any way you're going to switch to coal.

SENATOR LASKIN: Okay. In New Jersey.

MR. GUIDO: Right, in New Jersey.

SENATOR LASKIN: Now, also there was talk some years ago -- and again, it may have been implemented, but I don't think it has -- about lower rates for off-peak hours. Has the BPU implemented such a program?

MR. GUIDO: I believe it has; I'm not quite sure. But I believe it has. (confers with aide) Yes, it does have it.

SENATOR LASKIN: Does the public know anything about that?

MR. GUIDO: Well, we've opened up in the last year or two, several satellite offices in order to notify the people of what their rights are, and the type of--

SENATOR LASKIN: Let me explain what I mean--

MR. GUIDO: --what they expect their bills to look like.

SENATOR LASKIN: --and I hope that you and all your staff will do something a little more with regard to the off-peak price. There was a time when I would visit Vermont once a year to ski. I don't do it any more, but on all the utility items in a house, there would be signs posted, on the oil burner, on the stoves, on anything to do with utilities, advising the public that if they didn't use that particular source during hours 3 to 9, or whatever the hours were, and

decided to use them at other hours -- in other words wash clothes instead of 10 o'clock in the morning, if they washed their clothes at 12 o'clock at night, it would cost less money. But the public was advised of all these money-saving techniques. Do we have such a system in New Jersey?

MR. GUIDO: Well, we don't have a direct system like that, and probably it does have some merit and we should review that. But we have a system where the utility is supposed to inform the public as to all these nuances that are available.

SENATOR LASKIN: Yeah, but they don't. But they don't.

MR. GUIDO: Well, what happens is they put it in the bill, and people just take the bill out.

SENATOR LASKIN: No, I understand that, but they don't. I'm telling you that there's a way of putting a sign up so you see it when you flick the light switch on, or when you have your dishwasher or your washing machine. But this bill that nobody understands that comes once a month is no way to inform the public that not only could we save money, but we could save energy by using the energy sources at different times. So, nothing's being done there.

MR. GUIDO: I think you've got a good point. As I said, we also have these satellite offices trying to speak to groups.

SENATOR LASKIN: No, I understand that. But as a consumer -- and you are one -- you try to go into one of these satellite offices, and if you're lucky you get in the front door, and after that nobody cares what you're doing there anyway. And you know what I'm saying.

There's another thing that I uncovered some years ago which had to do with utilization of regional methods of creating energy. For example, in the Midwest or West, there may be 10 or 11 states which are together in purchasing the supply to make the energy. And as a result, costs were lower. Sort of a regional approach to purchasing. Is anything like that being done in New Jersey?

MR. GUIDO: No, I think the problem lies in when you come to the big crunch, and you start running out, the state that controls it is going to take it first. And then those who have-- That's one of the problems of market pricing. You know, if you're buying spot electricity, at a time when electricity becomes a problem, you aren't going to find it; somebody else is going to find it. So, you have to have sufficient-- I believe you have to have sufficient resources within your state to make sure that you -- periodically -- that by the year 2000 you have sufficient to cover to the year 2000. And it should be a constant review program.

SENATOR LASKIN: Okay. I could go on and on, but I don't imagine that the Committee wants to get into all these things. But there were so many good ideas that were discovered by me and the staff that helped prepare the report to save money, but I just don't see that desire by the BPU. Now, maybe they're not empowered to go out and initiate an affirmative action program to do these kinds of things.

MR. GUIDO: Well let me say this. We have in the last year attempted to meet the problems before they occur. The problem is if we meet with the company on a problem that may occur, somebody then is going to say that we're trying to set up something for the company.

SENATOR LASKIN: No, I understand that.

MR. GUIDO: But I suggest that if you can give me this list of materials, either myself or the next Commissioner -- whoever it is -- can review some of this stuff and see what--

SENATOR LASKIN: Well let me give you an example more specific. Over in a small county in Pennsylvania -- I'll use Pennsylvania again because I've seen the off peak situation work there -- they had a special meter which you put in your house, which you could understand; not the meters that are in our houses today that only the meter man understands, but that Mr. and Mrs. Average could understand. And it would tell them

how many kilowatt hours were used in peak times and off peak times, and as a result the consumer or homeowner could allocate the usage of the energy in order to gain the lowest possible price each month. That's not done in New Jersey.

MR. GUIDO: Right. Not that I know of.

SENATOR LASKIN: Okay. I'll stop now and maybe I will rewrite this thing and send it to you.

MR. GUIDO: I'll be glad to read it. I'll have my staff review it.

SENATOR O'CONNOR: Send us all a copy if you would, Senator Laskin. I think that would make some interesting reading. Senator Orechio?

SENATOR ORECHIO: Mr. Chairman, I have just a couple of questions that require some brief answers. Mr. Guido, does your position as a Commissioner require you to meet every day, and secondly, how often do you have public meetings?

MR. GUIDO: We have one board meeting a week at least. And due to the garbage crisis we've been meeting practically every day on some problem or another, on one county or another, to get the staff the briefers to find out where we're going. I mean, we have counties where we may have garbage piling up in the streets soon if we don't find a way of solving that problem. But there's a conflict -- not a conflict, but dual responsibilities between us and DEP create conditions which sometimes are not the best working.

SENATOR ORECHIO: Now, my second question is, with the breakup of AT&T, there's been a proliferation of phone companies. Have you had any complaints brought to your attention regarding excessive rates charged by some of these new companies? I know I had a constituent several weeks ago talking about a charge on a bill that involved calls made on his credit card. He didn't seek operator assistance but he received some assistance, and as a result, for a three minute call I think it cost him \$12, for a call that was from Newark to Paterson for example, and they were excessive.

MR. GUIDO: Well, that looks excessive to me.

SENATOR ORECHIO: And I was wondering whether or not you've had been notified of any of those kinds of complaints?

MR. GUIDO: Not among consumers, the persons. You know, individuals. But I think some of the companies have had problems where AT&T may be converting into a different system. What we did was we said, "You've got to deal with each problem as it comes along and try to solve the problems." Some problems you cannot solve if the company is using an old piece of equipment. But the point you made, it seems to me that there may be some validity. We have a staff that handles all those problems.

SENATOR ORECHIO: I'm going to send a copy of that bill to you.

MR. GUIDO: Absolutely.

SENATOR ORECHIO: My third and final question is this: According to the guidelines that were promulgated by the Executive Commission on Ethical Standards, one and two refer to full disclosures being made, "upon receipt of a gift or any other thing of value from a person, corporation, or association with whom you've had contact in official capacity." I'll give you a hypothetical scenario. You're invited to a football game. You've decided you want to live longer, so now you're on a diet and a fast. So you're invited into a box -- New Jersey Bell, let's say -- and you don't drink anything and you don't eat anything. The only thing you're doing is maybe sparing yourself from exposure to cold. Have you received a gift, in your opinion? If you had an invitation like that would you turn it down?

MR. GUIDO: Well, I didn't think it was a gift until all of this--

SENATOR ORECHIO: You haven't eaten and you haven't had anything to drink. You have tickets yourself on the 40 yard line. You're in the end zone, and you're invited by a

utility company to watch the game in warmth. Are you violating this standard?

MR. GUIDO: In my own opinion it isn't, but however there is a perception that it may be. I believe that's the accusation. There is a perception that I may have gotten a gift.

SENATOR ORECHIO: So you wouldn't go if you were invited?

MR. GUIDO: No. Not any more.

SENATOR ORECHIO: No other questions, Mr. Chairman.

SENATOR O'CONNOR: Thank you, Senator Orechio, and thank you, Mr. Guido. If you would, now we're going to hear from three persons who have asked our permission to address the Committee on the nomination. So, if you'd take one of the other seats, or take a seat--

MR. GUIDO: Can I sit in the back? If I'm going to get abused I might as well sit in the back.

SENATOR O'CONNOR: You will have the opportunity to respond.

MR. GUIDO: Thank you very much.

SENATOR O'CONNOR: The first speaker that we will hear from is Senator Paul Contillo.

SENATOR PAUL CONTILLO: Gentlemen, good afternoon. This is a difficult session for me to attend. Not as difficult I guess as for Bob Guido, but difficult nonetheless. I've known Bob myself for over 20 years, and we come from the same town.

I guess in the early spring the suggestion was made to me that there was an ethical problem and I should deal with it. Obviously it dealt with the Executive Branch, and we could not-- We directed them to that branch. The second suggestion that was made to me was that I use this mystical power called senatorial courtesy if I agreed with some of the allegations, and simply not allow this to take place. That I couldn't do.

I believe the system works, and I think we all have a stake in finding out if it really does work. I'm here this morning to lay out some facts to you that were brought to my attention. And I said, I have the dual feeling of being the Senator from the county, and a lot of information was brought to me and a lot of suggestions were brought to me.

The first thing, I'd just like to set the perspective of what we're doing here this morning. And I'd like to read from the statement from the Executive Commission on Ethical Standards. It's a single paragraph, and it deals with the Executive Commission on Ethical Standards' views, the role and responsibility of the Board of Public Utilities as unique in New Jersey, and is unique in the State government.

"The Board of Public Utilities, under special provisions of law, regulations, and judicial pronouncement, is the sole governmental regulator that stands between New Jersey residents, ratepayers, and the utilities. The Board not only regulates how the utility companies conduct their business, and how much they can charge for service, but also assesses and evaluates rates of returning and overhead charges; and makes economic determinations of novel and emergency situations. Because of the Board of Public Utilities' unique and powerful role as the ultimate protector of the ratepayers' wallet, the Commissioners, officers, and employees comprising the Board have a special and unparalleled obligation to conduct themselves in a manner deserving of the public's respect and confidence in their decisions regulating criteria and proclamations."

The Executive Commission -- these are their own words by the way-- They couldn't determine at what point in time is the longstanding practice called no social contact; no social contact between the regulators and those that are regulating. It's unique. It applies to no other form that we know of in the State government. And they talk -- as Senator Zane talked

about -- a pervasive atmosphere of ethical insensitivity within that agency.

Now there are a number of indications where the Commission felt that the Conflicts of Interest Law was violated, but because it was violated so many times by so many people they were not going to make any negative findings. I find that of course quite hard to understand. If indeed it's wrong and it's against the law, it's against the law. The fact that it's happened many times and over a long period of time is certainly no reason to ignore it.

The items they talked about where: One, the sporting events. But there was another item they talked about -- accepting the tickets, and they called it again no social contact. There was a dinner that was really instigated by Mr. Zarillo, and as they say here, "The Commissioners informally encouraged him and told of their appreciation of his efforts for Mr. Barbour." In other words, this Commissioner himself encouraged the dinner for Mr. Barbour, that was paid for by not only the utilities companies, but it is interesting to note the strange interest that Drexel Burnham and Merrill Lynch and Kidder Peabody has in the rate payers of this State. They also came up with their equivalent amount. I think the Commissioner figured it was about \$300 per person was the cost.

I think on the basis of that alone, and the conclusion of the Committee, this nomination should be rejected. The Committee said, "Largely due to the unprecedented widespread ethical insensitivity in backsliding from stringent policies of the Board, the Executive Commission has determined that the Board of Public Utilities will be the first organization to participate in the statewide ethics education initiative." It's going to be a one-day program for the Board. The point is, they're going to educate them as to what the law is today. They violated existing law. They've clarified it possibly, they've updated it, but the existing law was violated. That's the first problem I have with it.

The second problem that I had was, as a member of the Energy and Environment Committee, I was privileged -- I think along with Senator Laskin -- to sit through the hours and hours of testimony on the Hope Creek situation. I'm not going to burden you this afternoon with that. I'd just like to go over a very short memo, and these are my own notes. I wrote to Barbara Curran and the members of the Board because I was somewhat infuriated with the direction of that hearing. The paragraph I wrote to her-- The one line I'd like to read to you, "That I was impressed at both the Board's staff and the Public Advocate have reached the same conclusion; that from a cost control perspective, the plant could have been constructed for nearly \$1 billion less." Their own staff and the Public Advocate came to that same question.

And these are Mr. Guido's own words as I sat in the first row back there; that he makes up his mind based on the facts from his staff. And when he didn't like the facts from his staff, which indicated that maybe the public should not be paying the high rates that they were paying -- this is the report from their own staff on Hope Creek -- they rejected it and had a new summary made. We're talking about people paying 17 1/2 cents a kilowatt hour from the nuclear plant, as opposed to what may be three and a half cents could be purchased from the-- (inaudible) It was a huge, huge, difference. Not only does it appear to be a rape of the taxpayer, it seems to me the economy of this State is going to suffer by these very very high rates, that more justly should have been borne by a stockholder and the management of Public Service.

And utilities themselves are really at fault. Why should we only punish those who appear to break our Conflicts of Interest Law? Why shouldn't those who know full well the law -- and maybe better than those they're dealing with -- have to pay a price for it? I would say to you that if the law was wrong, change it. The law wasn't wrong. We should enforce

it. And I would ask you gentlemen not to approve this nomination. Thank you.

SENATOR O'CONNOR: Thank you, Senator. Before you leave, are there any questions of Senator Contillo? (no response) Thank you, Senator.

The next witness is Mr. George M. Solomon, representing the Paterson Interfaith Communities.

G E O R G E M. S O L O M O N: Good afternoon, gentlemen. I'm very grateful for the opportunity and privilege of addressing this group. I represent the St. Paul's Episcopal Church to the Executive Committee of the Paterson Interfaith Communities Organization, usually referred to as PICO. In the interest of clarity, in the interest of saving time, I'd just like to read a very short statement.

On behalf of PICO -- the Paterson Interfaith Communities Organization -- I want to urge the Judiciary Committee to vote against the reappointment of Commissioner Robert Guido to the Board of Public Utilities.

As you may recall earlier this year, our organization made a request that Commissioner George Barbour be disqualified in an electric rate case because the utility seeking the increase has sponsored a party in his honor at the exclusive Pierre Hotel in New York -- and that's been discussed here already. All the Commissioners, including Mr. Guido, at that time denied our charges and denied our request. They denied any special friendships or personal dealings with any of the utilities they regulate.

Last January, in a letter to the BPU Commissioners, we first charged that one Commissioner was a guest of a utility company at the July 4th celebration, and one Commissioner received passes to a utility box at the Meadowlands arena. Again, those things were already discussed. But on February 5, 1987, the three Commissioners completely sidestepped the charges. In their response to PICO, signed by Mr. Guido, the

Commissioners wrote that, "No present BPU Commissioner attended a 4th of July party sponsored by PSE&G, nor have any of the present BPU Commissioners ever received passes to a PSE&G box at the Meadowlands Arena."

Almost one year later, the results of the State's Executive Commission on Ethical Standards investigation, shows that Commissioner Curran -- who recently resigned -- Commissioner Barbour, and Commissioner Guido, were clearly less than truthful in their response about the gifts and passes they received from the utility companies which do business in our State. When we finally did ask the Executive Commission to investigate our charges of ethics violations, Mr. Guido denied any wrongdoing. He denied that gifts from utilities would compromise his position. He denied seeing the code of ethics rules.

It is for all these reasons, therefore, that we are here to encourage you to deny Mr. Guido's reappointment to the Board of Public Utilities. There is a cloud hanging over the BPU. As we all know, the Executive Commission discovered a pervasive atmosphere of unethical behavior at the agency. We were disappointed the Executive Commission did not lay the blame for this pervasive atmosphere at the feet of the Commissioners. We were disappointed the Executive Commission did not fine or penalize the guilty individuals in some way. But you have it in your hands to do that today. And we're hoping that it's just the beginning of restructuring the process for choosing future Commissioners.

Until the remaining Commissioners investigated by the ethics panel are off the Board, we cannot have much confidence in the BPU's decisions. There are many important issues and decisions facing the board. Right now for example, PSE&G has filed for a huge electric rate increase. It will be a controversial case. The public has the right to know that the Commissioners who rule on their cases are completely objective,

and not swayed by any personal friendships or gain from the companies they regulate. If those who allowed the pervasive atmosphere of unethical conduct to continue remain in office, the cloud of doubt and suspicion will also remain. Thank you very much.

SENATOR O'CONNOR: Thank you, Mr. Solomon. Are there any questions of Mr. Solomon?

SENATOR ZANE: Yes. I'd just like to clarify one thing. I think you said that the letter that you received back said that none of the Commissioners had received any tickets or attended a sporting event at PSE&G's box at the Meadowlands. Wasn't the allegation that it was Bell Telephone's?

MR. SOLOMON: Not at the time. I think the letter said PSE&G. I have it here. (examines letter) Yes, it says PSE&G, but we stand corrected if it was Bell Telephone.

SENATOR ZANE: Well, I don't want you to stand corrected. I mean, you're making reference to their letter. Their letter says PSE&G?

MR. SOLOMON: Yes. It says right here, "No present BPU Commissioner attended a 4th of July party sponsored by PSE&G, nor have any of the present BPU Commissioners ever received passes to a PSE&G box at the Meadowlands Arena."

SENATOR ZANE: Well let me ask you this: We're talking about the truthfulness of the letter. Is the boat ride that was made reference to, is that supposedly the PSE&G party, or are we talking about something separate? I just want to know, is there a possibility that the letter is truthful?

MR. SOLOMON: Well it's from the State of New Jersey Board of Public Utilities, Barbara A. Curran. I mean, this is the letter.

SENATOR ZANE: Were there specific questions that had been asked that that letter is in response to?

MR. SOLOMON: Yes, the charges, you know, the Meadowlands thing and the Pierre Hotel dinner. This letter was in response to those charges, all the things that were brought up at the investigation -- the ethics investigation.

SENATOR ZANE: Let me understand this. Did your organization send a specific letter and ask for specific responses?

MR. SOLOMON: Yes.

SENATOR ZANE: Did you specifically ask in the letter, "Did anyone attend a PSE&G party?"

MR. SOLOMON: I don't have that letter here, so I can't quote it. That question I really couldn't answer accurately. If I had the letter here with me, I could have answered it.

SENATOR ZANE: Well, you said that that--

MR. SOLOMON: But this was in response-- The letter from the Board of Public Utilities was in response to those questions that we had asked about the New York City dinner and the sports tickets.

SENATOR ZANE: I just want to have in my mind a little clarification. The party you're making reference-- You said the letter was less than truthful, or something like that.

MR. SOLOMON: Well, the reason we said it's less than truthful, is they denied any involvement with that, and here they admitted to it.

SENATOR ZANE: Yeah, but that's what I want to ask you. Where was the PSE&G party that they supposedly attended?

MR. SOLOMON: I think it was at the Hotel Pierre in New York City.

SENATOR ZANE: That was at PSE&G's--

MR. SOLOMON: Yeah.

SENATOR ZANE: And you are also saying that the box that was attended for sporting events-- Was your question "Did they attend PSE&G's box at the Meadowlands?"

MR. SOLOMON: Oh, I'm sorry. Just one minute. (consults with unidentified member of audience) The charge was that one Commissioner was a guest of a utility company at the July 4th celebration, and one Commissioner received passes to the utility company box at the Meadowlands Arena. Now, actually the charge that they're answering, we didn't mention PSE&G. They mentioned--

SENATOR ZANE: Oh, okay.

MR. SOLOMON: In their return answer to us they mentioned PSE&G. Does that clarify it?

SENATOR ZANE: Yeah. Who signed the letter?

MR. SOLOMON: All three Commissioners, Barbara Curran, George Barbour, and Robert Guido.

SENATOR ZANE: Okay. Thank you.

MR. SOLOMON: You're welcome.

SENATOR ORECHIO: Mr. Chairman, one point should be clarified, that there are no such things as passes. As a matter of fact I've attended sporting events at the Giants Stadium, and I've always used my own tickets. So if you have game tickets that's all you need to get into the box if you're invited. There's no such thing as passes.

SENATOR O'CONNOR: Thank you, Senator Orechio. The last witness we'll hear from is Lincoln Borman, representing the New Jersey Public Interest Research Group.

L I N C O L N B O R M A N: Good morning. My name is Lincoln Borman. I'm speaking on behalf of Edward Lloyd and the New Jersey Public Interest Research Group. Ed Lloyd was originally scheduled to speak for PIRG today, and the testimony you have was written by him. Unfortunately he had to undergo surgery this morning, which prevented him from appearing.

SENATOR O'CONNOR: All right. Mr. Borman, we do have a copy of his statement, which has been printed and circulated. Each member has a copy of it, so that will be made part of our record. I would ask that you not read it to us.

If you want to summarize it, or if you want to make your own statement, that would be very much appreciated.

MR. BORMAN: I would just summarize that first of all, New Jersey PIRG opposes the nomination of Robert Guido to the Board of Public Utilities. I'd add that PIRG does not come to this decision lightly. This is the first time we have appeared before the Senate Judiciary Committee and testified against gubernatorial cabinet level appointment. Our reasons for doing so are many. The two basic aspects we have problems with with this nomination are with regards to Mr. Guido's stances on consumer issues, and his ethical qualifications for this position.

I would add a small section from this written testimony, just because I think it's quite important.

SENATOR O'CONNOR: Mr. Borman, I think the house mike is the one to your left. (witness adjusts microphone) That's it. So if you'll speak--

MR. BORMAN: Is this working?

SENATOR O'CONNOR: If the button is down, it's working.

MR. BORMAN: Last spring, a BPU staff analysis showed that New Jersey Bell was earning \$50 million to \$100 million, and that Bell's rate of return allowed by the BPU -- 15.5% -- was far too high because their cost of capital at that time was only about 12%. Mr. Guido's response to this situation was to hold private meetings with Bell to discuss Bell's "revenue stability plan." The plan was to exempt certain very profitable services, such as the Yellow Pages and Centrex, from BPU oversight for three years, in exchange for Bell's agreement not to file for a rate increase for three years. The BPU adopted the plan over staff opposition, despite the fact that Bell admitted the Yellow Pages was earning a return of over 300% and that consumers were immediately entitled to a rate reduction of Bell's over earnings.

Unfortunately, this is all too typical of a response from Mr. Guido. When rates to consumers should be reduced, the BPU adopts utility proposals for rate stability by slowing the rate of reduction in utility charges. But the BPU takes exactly the opposite stance when rates are going up. When the solid waste industry negotiated a new labor contract earlier the year, the BPU allowed them to immediately pass on all of those costs to consumers, despite the fact that on cross examination it was admitted that the increased costs of the labor contract amounted to only a 1.5% increase in total costs to the industry.

Mr. Guido's pro-utility and anti-consumer bias is not limited to just small consumers. I was going to mention the B.F. Goodrich case, but as it's already been brought up I see no reason to discuss it further.

I'd like to draw also on the Hope Creek example, and I don't see any reason to summarize that again. I would just like to make some conclusions based on the cases you've heard before you already today. The examples that have been mentioned are only a few of the examples of the disgraceful record that Mr. Guido has established in his short tenure at BPU. There are many more questions and decisions that the Committee should thoroughly examine before even considering the Guido nomination. Mr. Guido's questionable ethics, his permitting PSE&G to charge consumers twice the value of the Hope Creek Nuclear Plant as established by his own staff, and the BPU's rental of its office space from a regulated utility, are just a few. New Jersey PIRG urges the Committee to initiate such an investigation, and PIRG offers to assist the Committee in these efforts.

But this record alone is enough basis for the Committee to soundly reject the Guido nomination. Mr. Guido's failure even to analyze cases; his practice of meeting privately with utilities while their cases were pending before

the Board; his failure to monitor utility earnings; and his failure to protect the consumer from monopoly pricing, which is what the BPU was created to do, all cry out for a rejection of this nomination.

This sorry record should not be rewarded with a renewed six-year no cut contract. This Committee should send a strong signal to New Jersey's utilities that they will be regulated, and the Legislature will not tolerate a Board of Public Utilities that is all utility and no public. The Legislature has a unique opportunity to do just that. It should take that opportunity and say no to Mr. Guido. Thank you.

SENATOR O'CONNOR: Thank you. Are there questions of Mr. Borman?

SENATOR AMBROSIO: Yes, Mr. Chairman.

SENATOR O'CONNOR: Senator Ambrosio?

SENATOR AMBROSIO: In your letter, you referred to private meetings with vendors. What do you have to back that up?

MR. BORMAN: I believe those meetings are relatively common knowledge in and around BPU, but I--

SENATOR AMBROSIO: Well, they're not common knowledge with me, and I'd like to know what specifics you have.

MR. BORMAN: I would urge you not to take our word for it. I would urge you to call BPU Commissioners before this Committee, and BPU staff as well, to testify under oath.

SENATOR AMBROSIO: But you have no specifics of private meetings that you can refer to?

MR. BORMAN: I do not currently. I would refer you to Mr. Lloyd. He would be more than happy to answer that question.

SENATOR AMBROSIO: Thank you.

SENATOR DORSEY: Mr. Chairman?

SENATOR O'CONNOR: Senator Dorsey?

SENATOR DORSEY: I don't have any questions of this witness, but I take some objection of him coming here and making some very broad characterizations, and then when asked by Senator Ambrosio a very basic question as to what his factual basis was for this statement, he urges us not to rely upon that statement. I frankly think that the statements that are made are very broad, and simply seek to blame Robert Guido for every error and omission that the Board of Public Utilities may have made in its entire history. And I think that's really unfair.

SENATOR O'CONNOR: Any other questions or comments?
(no response) Thank you, Mr. Borman.

Mr. Guido, would you like the opportunity to address the Committee with respect to anything that's been raised by any of the three speakers that you've just heard?

MR. GUIDO: Well, most of it is repetitious, so I'll just go over it briefly. First, I was not on the Commission when this dinner was created, so obviously how do you say go out and start building up a dinner?

SENATOR AMBROSIO: Mr. Guido, would you turn the mike on?

MR. GUIDO: Oh, I'm sorry. You're right.

SENATOR AMBROSIO: Thank you.

MR. GUIDO: I was not on the Committee when the dinner was first created. I came on in June of that year, and the dinner was sometime in November. Obviously it takes quite a bit of time before you put together these affairs. So, I don't know how I could have stated, you know, "Let's go all out and create a dinner."

The letter from PICO dealt with one litmus test which we were expected to condone too, and that was the Hope Creek case. Their attack was basically on PSE&G's conditions, and the implications of what I've gotten from then was that we were in PSE&G's pocket. That's why their response that I have not

been with PSE&G to any ball game -- and I believe they have a box somewhere in the stadium -- and I never took a boat ride with them is a fact, regardless of what they say.

SENATOR LASKIN: You mean you didn't go on a 12-meter with PSE&G?

MR. GUIDO: No, that was AT&T. I was hanging on for dear life and--

SENATOR LASKIN: I don't know how many people in this room know about a 12-meter, but I'm surprised that you even went on it.

MR. GUIDO: You're right. I was sorry I did. (laughter) It was my biggest regret. I was hanging on for my life. But everybody assumed, because they read The Bergen Record, that it was big yacht and we were sipping cocktails in the back. But obviously it was far from it.

And then the last testimony from-- Now, this Mr. Lloyd I've heard before because they've been writing these letters trying to get him the appointment. We have several letters in the office where they have tried to have me removed so he can get the appointment. So, I mean, I find it difficult to accept some of the things that he said in here because-- One is that we're giving Bell Telephone all this stuff. Well we haven't. We have a case that will be pending as to determine the rate of return. And these issues were all in compliance with the Public Advocate's office at the time. So, a lot of it is half-truths. I'm not saying that they attempted to state-- It's just that they misunderstand what they're talking about, and they generally put it down. And then you put it in writing, and it makes like I did everything else in this world that you can think of. I just don't want to be held responsible for what's happening in Iran and Iraq and things like that. I don't mind holding my own share of responsibility.

If there's no further questions, I would like to thank the Committee for their gracious manner in which they handled me. I figure I'd get my lumps. That's my part of the game. Thank you.

SENATOR O'CONNOR: Okay. Thank you, Mr. Guido. At his point, gentlemen, what's your pleasure?

SENATOR DORSEY: Mr. Chairman, I'll make a resolution to release favorably the nomination of Commissioner Guido to the BPU. I think he's done a fine job. I think he's added a certain amount of balance to that Commission. And I think it's unfair to blame him for every decision that any consumer in the State may feel injured by, because it doesn't take into reflection the fact that the BPU must deal within a particular framework, much of which they are not responsible for, and much of which in fact the Legislature has established or custom has established over a long period of time. So I'll move the nomination.

SENATOR GORMLEY: Second.

SENATOR O'CONNOR: Motion by Senator Dorsey.

SENATOR ZANE: Mr. Chairman, I'm concerned about the appointment, and very frankly I think I'm going to make a motion that it be tabled. I feel that there is more information that's needed. Maybe the bait has been put out to us to seek that information. But I in good conscience could not vote either way with what I have before me.

I think -- and I'm not in the least bit persuaded by what PIRG had to say. I would suggest to them that I never saw a more poorly drafted attack in my life. Those kind I could handle all the time. If I were Mr. Guido I would welcome that kind of attack. What a poor job you people did.

But aside from that, I just have some questions. I think what position is more important in this State. It's very accurately pointed out that they are involved in raising as much money as the State is involved in, and directing the

expenditures of it. It's a very very vital position, and I think that there are some questions raised. So, I can't vote either way. I'm making a motion to table, and do as you see fit. That's my conscience.

SENATOR O'CONNOR: For the purpose of the vote, I'll second Senator Zane's motion. On the motion to table?

MR. TUMULTY (Committee Aide): Senator O'Connor?

SENATOR O'CONNOR: Yes.

MR. TUMULTY: Senator Zane?

SENATOR ZANE: Yes?

MR. TUMULTY: Senator Lynch?

SENATOR LYNCH: Yes.

MR. TUMULTY: Senator Orechio?

SENATOR ORECHIO: No.

MR. TUMULTY: Senator Ambrosio?

SENATOR AMBROSIO: Abstain.

MR. TUMULTY: Senator Dorsey?

SENATOR DORSEY: No.

MR. TUMULTY: Senator Gormley?

SENATOR GORMLEY: No.

MR. TUMULTY: Senator Laskin?

SENATOR LASKIN: No.

MR. TUMULTY: Four no, three yes, one abstain.

SENATOR O'CONNOR: The motion loses. We have a motion on the floor by Senator Dorsey to release the nomination. Seconded by anyone?

SENATOR GORMLEY: Second.

SENATOR O'CONNOR: Seconded by Senator Gormley.

MR. TUMULTY: Senator O'Connor?

SENATOR O'CONNOR: Abstain.

MR. TUMULTY: Senator Zane?

SENATOR ZANE: I don't like to abstain on any motion, but I can't vote yes, and I don't know enough to vote no. I abstain. I guess I have to.

MR. TUMULTY: Senator Ambrosio?

SENATOR AMBROSIO: I'd like to speak on the motion, Mr. Chairman. In examining this applicant, we've, very peripherally, looked at the function of the Board and his performance for the short period of time that he's been there. And I've seen nothing that's been presented to this Committee that would lead us to the conclusion that, based upon his performance in the short time there, that he should not be reappointed. The issue that obviously has troubled some of us are the ethics implications that particularly were raised by Senator Contillo. However, on balance, considering the short term that he's been there, and his testimony concerning those events, I'm not persuaded that those considerations should be used to block his reappointment. Based upon what I've heard at this hearing today, I'm going to vote to release the appointment.

MR. TUMULTY: Senator Lynch?

SENATOR LYNCH: Yeah, I have one comment as well. I voted to support the motion to table. I think that was in order because Mr. Guido is a sitting member of the BPU. He's a holdover. His term will not be affected by such a motion. There are obviously some questions that need to be clarified, probably some more work to be done by this Committee that would serve the public well in assuring them that, not only is Mr. Guido qualified to serve, but has the credibility to do so. However, personally, I've been satisfied all along that he is competent, credible. That he is a victim to some extent of circumstances, and maybe some unwise decisions, but certainly given his track record and his background he's qualified and capable of serving the State well as a member of the BPU. So while I voted to table because I didn't think there was any harm to be done, and I think some of those questions ought to be resolved so that the public has a full understanding, I feel myself personally that he is competent, and that we should

advise and consent in the nomination if we're not left with the other alternative. So, I'm going to vote favorably on the nomination.

MR. TUMULTY: Senator Orechio?

SENATOR ORECHIO: I'd just like to make a comment. I guess over a year ago a contractor in a community within my area had called and said he wanted to see me. When he did come in he said he had a matter before the Commission, and he wanted to sit down Mr. Guido. He said that Mr. Guido would not sit down with him because he said he's a member of a quasi-judicial body. And I think that demonstrated to me very effectively and very loud that he certainly has integrity, and he's certainly well qualified. I'm very happy to say yes to his nomination.

MR. TUMULTY: Senator Dorsey?

SENATOR DORSEY: Yes.

MR. TUMULTY: Senator Gormley?

SENATOR GORMLEY: Yes.

MR. TUMULTY: Senator Laskin?

SENATOR LASKIN: Yes.

MR. TUMULTY: The nomination is released. Senator DiFrancesco asked also to be voted in the affirmative. The nomination is released.

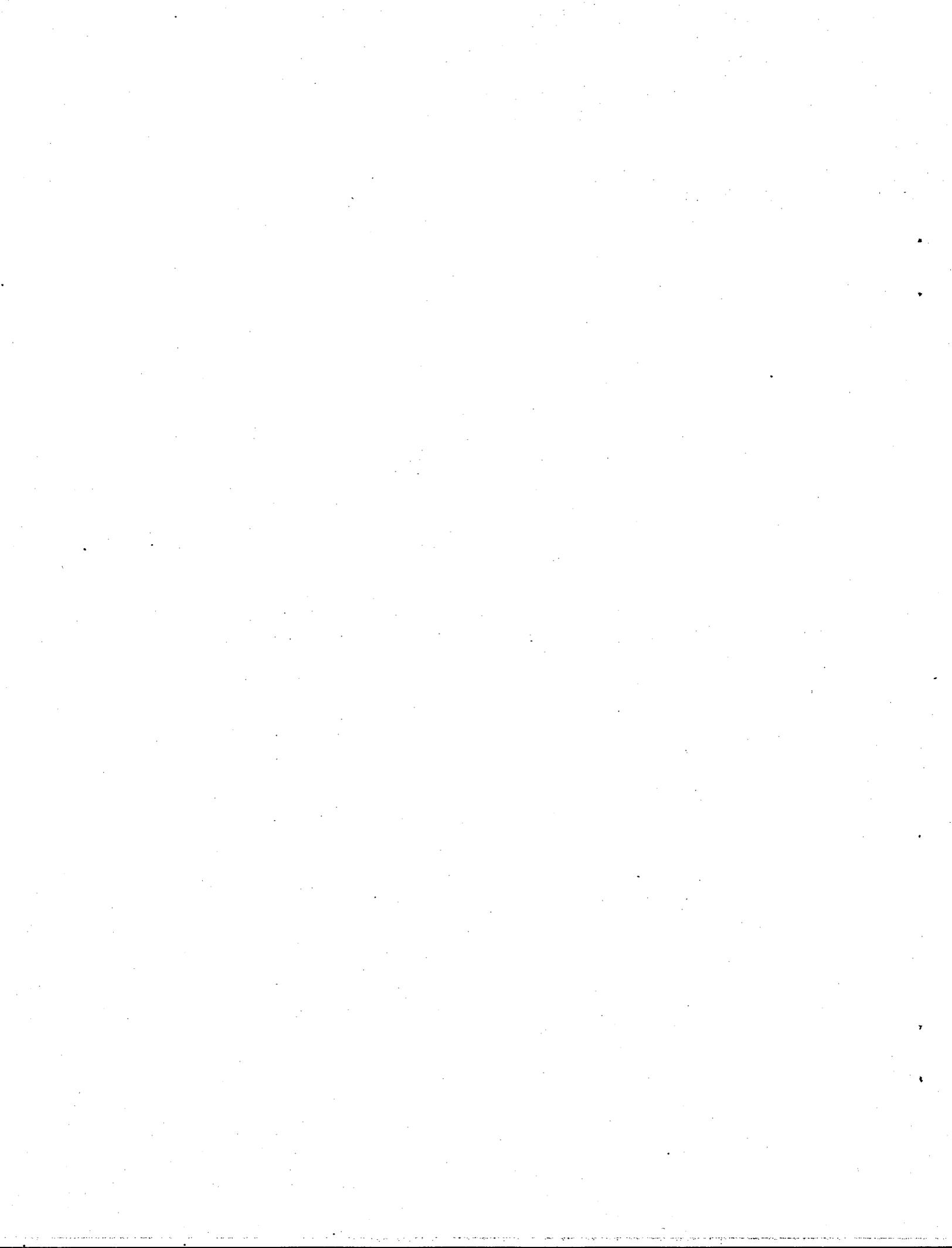
SENATOR O'CONNOR: Congratulations, Mr. Guido.

MR. GUIDO: Thank you.

SENATOR O'CONNOR: That concludes our business, and we are now adjourned.

(HEARING CONCLUDED)

APPENDIX



**TESTIMONY OF NJPIRG
BEFORE THE NEW JERSEY SENATE JUDICIARY COMMITTEE
PRESENTED BY EDWARD LLOYD, NJPIRG GENERAL COUNSEL
DECEMBER 14, 1987**

Good morning. My name is Edward Lloyd. I am General counsel for the New Jersey Public Interest Research Group (NJPIRG). Thank you for giving me the opportunity to present NJPIRG's position on the nomination of Robert Guido to a full term on the Board of Public Utilities (BPU). NJPIRG is a nonprofit, nonpartisan, research and advocacy organization with over 70,000 citizen and student members throughout the State of New Jersey.

NJPIRG opposes the nomination of Robert Guido to the Board of Public Utilities. PIRG does not come to this decision lightly. This is the first time that NJPIRG has appeared before the Senate Judiciary Committee and testified against a gubernatorial cabinet-level appointment.

But this is not a routine appointment. the BPU is a unique governmental agency. It is not merely an executive agency, but a creature of the legislature. Before the BPU was created in 1911 (the agency has had different names over the years, but for simplicity's sake, I will refer to it as the BPU throughout the testimony) , the legislature made all decisions concerning the rates that utilities were allowed to charge. The BPU was created to take over the ratemaking functions from the legislature. Thus, it has been delegated these legislative/ratemaking functions by the legislature and carries out those functions in the place of the legislature. For this reason, it's history and function are unlike any other cabinet agency.

A BPU commissioner, unlike any other cabinet official, serves a term of office independent of the Governor. Indeed, the term that Mr. Guido is being nominated for expires in March, 1993, long after Governor Kean leaves office.

The BPU exercises as much control over the pocket books of New Jersey consumers as the legislature itself. Last year, the BPU controlled utility revenues of over \$10 billion, roughly equal to last year's budget for the entire State government. Thus, the three BPU commissioners who never stand for election and whose terms of office extend longer than any legislator, and even longer than the governor, control as many revenues as the entire legislature. The BPU routinely makes decisions on rate increases in the hundreds of

millions of dollars after only a few hours of meeting time. Indeed, this is precisely what happened in the largest rate increase in the State's history. Last February, the BPU approved an increase in base rates for PSE&G of over \$300 million after a mere two hour open session (of course, all discussions among commissioners with regard to rate increases must be held in open session under the State's Open Public Meetings Act). The legislature would, to its credit, give such a proposal far more discussion and debate before passing on such massive cost increases to consumers if they were to pass them on at all.

For all these reasons, the appointment of a BPU commissioner is a rare but extremely important occasion. It may be the only time that the legislature can truly and effectively control the ratemaking authority that the BPU exercises. NJPIRG knows that you take this responsibility very seriously and that after you have examined Mr. Guido's record, you will reject his nomination.

Let us review that record. Last Spring, a BPU staff analysis showed that NJ Bell (Bell) was earning \$50-\$100 million, and that Bell's rate of return allowed by the BPU, 15.5 percent, was far too high because their cost of capital at that time was only about 12 percent.

Mr. Guido's response to this situation was to hold private meetings with Bell to discuss Bell's "revenue stability plan." The plan was to exempt certain very profitable services such as the Yellow Pages and Centrex from BPU oversight for three years in exchange for Bell's agreement not to file for a rate increase for three years. The BPU adopted the plan over staff opposition despite the fact that Bell admitted the Yellow Pages was earning a return of over 300 percent and that consumers were immediately entitled to a rate reduction because of Bell's over-earning.

Unfortunately, this is all too typical a response from Mr Guido. When rates to consumers should be reduced the BPU adopts utility proposals for "rate stability" by slowing the rate of reduction in utility charges. But the BPU takes exactly the opposite stance when rates are going up. When the solid waste industry negotiated a new labor contract earlier this year, the BPU allowed them to immediately pass on all of those costs to consumers, despite the fact that on cross-examination it was admitted that the increased costs of the labor contract amounted to only a 1.5 percent increase in total costs to the industry.

Mr. Guido's pro-utility anti-consumer bias is not limited to just small consumers. When B.F. Goodrich sought to cut its fuel bills in Gloucester County by buying waste and refinery "gas" from a company in Delaware so that it could remain competitive and not join a long list of abandoned plants, Mr. Guido vetoed the idea. He protected South Jersey Gas Company from losses caused by their own over-priced gas on the theory that other consumers should have to pick up those losses.

Mr. Guido's record with resource recovery facilities is even worse. He and his fellow commissioners approved the contract for the Pennsauken facility without any analysis or report from the staff and before even permitting discovery in the case to be completed. He short-circuited and ignored the entire regulatory process.

The contract that Mr. Guido and the BPU approved for the Essex county resource recovery facility is even more disastrous for consumers. In private meetings with the vendors of the facility, Mr. Guido agreed to make no substantive changes in the contract ignoring concerns expressed by the BPU staff and without the benefit of any staff review. The contract allows the vendor to take out-of-state waste at the vendor's facility and allows the vendor to decide what to charge for burning those wastes. In addition, the residents of Essex County must pay the cost for the disposal of all of the ash from the incinerator whether it comes from their garbage or from out-of-state garbage. Unlike any other contract, the Essex County contract makes no provisions whatsoever for alternate disposal of garbage if the facility shuts down for any reason. Of even greater concern is the fact that the ash is to be dumped in three landfills near Buffalo, N.Y. , one of which is suspected of containing radioactive waste, and another is being sued by Canada for leachate contamination. Disposal at these sites could expose the citizens of Essex County to liability well beyond that directly related to their wastes.

Mr. Guido has also been unduly kind to PSE&G. He and the BPU denied a rate reduction to PSE&G customers for over a year just so they could cover-up the massive increases in rates caused by the Hope Creek nuclear plant. The BPU granted a \$700 million rate reduction in February of this year but the customers of every other electric utility in the State had already received reductions (some of them twice) in their rates to reflect the huge drop in oil prices that all utilities experienced in 1985-1986. PSE&G customers were denied

their reduction and were held hostage by the BPU until the BPUI was ready to grant the Hope Creek increase.

These are only a few examples of the disgraceful record that Mr. Guido has established in his short tenure at the BPU. There are many more questions and decisions that the Committee should thoroughly examine before even considering the Guido nomination. Mr. Guido's questionable ethics, his permitting PSE&G to charge customers twice the value of the Hope Creek nuclear plant, as established by his own staff, and the BPU's rental of its office space from a regulated utility are just a few. NJPIRG urges the Committee to initiate such an investigation and NJPIRG offers to assist the Committee in these efforts.

But this record alone is basis enough for the Committee to soundly reject the Guido nomination. Mr. Guido's failure even to analyze cases; his practice of meeting privately with utilities while their cases were pending before the Board; his failure to monitor utility earnings; and his failure to protect the consumer from monopoly pricing, which was what the BPU was created to do, all cry out for a rejection of this nomination.

This sorry record should not be rewarded with a renewed six-year no-cut contract. This Committee should send a strong signal to New Jersey's utilities that they will be regulated and that the legislature will not tolerate a Board of Public Utilities that is all utility and no public. The legislature has a unique opportunity to do just that. It should take that opportunity and say no to Mr. Guido.