

STATEMENT OF JOHN A. CARVER, JR.
MEMBER, FEDERAL POWER COMMISSION
BEFORE THE COMMERCE COMMITTEE OF THE UNITED STATES SENATE
ON THE NOMINATION OF ALBERT B. BROOKE, JR.,
TO BE A MEMBER OF THE FEDERAL POWER COMMISSION
FOR THE TERM ENDING JUNE 22, 1974

July 31, 1969

Mr. Chairman and members of the Committee:

I volunteered my appearance at this hearing on the nomination of Albert B. Brooke, Jr., to be a member of the Federal Power Commission for the term expiring June 22, 1974. I did so yesterday after reading an article in a local newspaper which was critical of Mr. Brooke, because I believed it would be useful to the Committee to have direct evidence from a member of the Commission on some of the matters discussed in the article.

At the outset, I want to say that a President's nomination of a Federal Power Commissioner speaks of the special trust and confidence he has in the nominee's integrity and ability. It is my opinion that the trust and confidence of both President Johnson and President Nixon has been and is well placed, in Mr. Brooke's case. I believe he deserves the support of this Committee and of the Senate.

It would be fruitless, I imagine, publicly to speculate on the motivation behind the article in question. The Commission is a public agency, and the record of what commissioners participate and how they vote in our cases, and the transcripts of our oral arguments showing who asks what questions are all public records open for all to see.

Whether the minutes and transcripts accurately measure the performance, worth and effectiveness of a commissioner is as open to question, I submit, as would a similar kind of survey made with respect to the hours of debate or insertions in the Record of members of this body, or the Congress generally.

It should be noted first that Mr. Brooke is not a lawyer. I do not join those who think this to be a handicap -- indeed one criticism of the administrative agencies is their tendency to judicialize. A lawyer appointed to the Federal Power Commission can, if so minded, find a way to apply his professional skills to the due process questions and other procedural niceties which attend all our cases, even if he knows little of the substance of the very technical areas we regulate.

Bush Brooke as I have observed his work, has elected to listen and learn, rather than to get into arguments from the bench or in the Commission's meeting room. I can understand why counsel for litigants or staff members of the Commission would prefer to deal with Commissioners who are willing to debate with them, but this doesn't mean that such a process yields better results.

Particularly in the early period of a Commissioner's service, he should not be criticized for not participating in the cases where his vote is not needed. Some of our cases take a long time, often because they involve close and difficult questions. A new Commissioner who finds the other four evenly split has to vote. But if three or four of them already make a majority, there is no basis for criticizing a man for not participating. Bush Brooke has not ducked any vote where his vote was needed to break a tie.

It was said, I seem to remember, by an eminent Supreme Court Justice that one reason for the Supreme Court's greatness as an institution was that its members did their own work. Good staff members can do much for commissioners-- but the staff members were not appointed by the President and confirmed by the Senate, and I strongly reject the inference (apparently gleaned by the reporter from a staff member) that a commissioner's responsibilities can be distributed among his assistants. Bush and I both served U. S. Senators, and we share the view that the elected member's responsibilities cannot be shifted, either.

Mr. Brooke had a very competent staff assistant until very recently. I believe he has shown appropriate deference to this body in not making an appointment to his personal staff while his nomination is unconfirmed. This does not mean he has been without help. Our Office of General Counsel, our Bureaus of Power and Natural Gas, our economists, and our administrative people are available to him, as to all commissioners. I believe staff assistance is needed, but not for performing the basic responsibilities of a commissioner.

The working habits of commissioners vary a great deal, one of the satisfactions of the job. Great volumes of material must be read and understood, but the reading doesn't have to take place in the GAO building. It can be done at home, on the train, in a library, or in the office, or all of these. I have not found Mr. Brooke to be a part-time commissioner, either in his office hours or in his participation and understanding of the matters before us. He is a great deal less vocal than many or most of his colleagues, but as Senator Hayden used to say, it isn't the speeches or the debates that count, but the votes.

Mr. Brooke's vote has been his own, too. He and I have been on opposite sides of cases, and on the same side. He has not aligned himself with any viewpoint or prejudice, that I have been able to identify. He calls them as he sees them, and he takes a long look before he calls them.

It is not my place to discuss Mr. Brooke's health, or the problems of a man who has had a coronary. I believe that he joins distinguished company in paying better attention than he once did to his health. If he has adjusted his working habits he has probably found that the new schedule could be as productive or more productive than the old, just as other coronary veterans still serving their country have found.

I will close with a word about the working procedures of our Commission and the impact that may result from recent events. The final deliberations of the Commission on all pending cases or policy issues are necessarily conducted in executive session. However, we have been very proud of the fact that staff representation at these meetings has been encouraged and permitted on a broad basis. This is good for discussion and assures full exposure of all questions and viewpoints. To the maximum extent consistent with orderly conduct of public business, this system is an open one; but it cannot work unless the privileged nature of the discussions is honored. That trust has now been breached by some staff member under a cloak of anonymity.

I think it inevitable that we may have to reconsider a practice that has well served the public interest. As a minimum, there will be restraints on the full, free and candid interchange of ideas. A distinct disservice has been done, both to the work of the Commission and to the rest of our loyal staff.