THE TRANSITION FROM ADMINISTRATION TO REGULATION -- SOME THOUGHTS

An Address By

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Commissioner

Federal Power Commission

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For the second time in two weeks, I am flattered by an introduction from your President, Collis Chandler. Last time, he introduced me to the representatives of the petroleum industry who were gathered to tell their story to the Public Land Law Review Commission and its advisory council here in Denver. Colorado exhibited magnificent hospitality for the Public Land Law Review Commission and RMOGA had a vital role in the planning and execution of the staggering
logistical exercise which that tour of Colorado represented.

There must have been post-tour critiques, and surely in them the question was raised as to whether Colorado's effort was really justified.

From my participation and observation, I judge that the principal objective of the Colorado effort was educational. That objective was largely achieved.

For even those of us who have grown up in this kind of country require a tour of that kind to remind us of the diversity of surface and subsurface resources, the scope of use patterns, and the vastness of the geography of the Rocky Mountain country. For those to whom the exposure was fresh and new, there had to be a penetration of a threshold of comprehension.

In part the tour and the accompanying comment and description served this purpose. So also did the luncheons and dinners hosted by industry and conservation organizations.

I remind you of this meeting of the Public Land Law Review Commission, still fresh in your
minds, because I see a connection between that educational experience, and the educational experience which I am undergoing as the newest member of the Federal Power Commission. The people of Colorado undertook, as their contribution to the work of the Public Land Law Review Commission, to develop for the Commission's education the variety of Colorado's involvement with the public lands and the public land laws, and to do it in a meaningful and interesting way in a short period of time.

Behind this decision was the more basic one -- that the Commission created by the Congress to review the public land laws and the practices and procedures under them can succeed only as its members and advisors are informed.

This is not to say that Colorado expected the members would come to common conclusions as to what the facts meant, but rather that their deliberations and consideration of the issues would be no sounder than their understanding of the basic facts.

I agree with this approach.
Public land administration in the United States is enormously complex, and slavish application of theory, however sound, is bound to produce anomalies and unintended results. Congress has sensed this, and the idea of a review commission with an advisory council representing sixteen or seventeen statutorily specified "interests" illustrates the point.

I confess that as I undertake my new responsibilities, I've given thought to these matters. For example, at my confirmation hearing before the Senate Commerce Committee, and in press comments prior to that, there was speculation about what my "philosophy" or bias was. Was I pro-consumer? Was I pro-industry? Was I indeed a "question mark"?

Perhaps because of this speculation, one of my colleagues on the Commission spoke out on September 16th in words which I would like to adopt. Vice Chairman Carl E. Bagge said that: "The essential function of regulation is to resolve in the broader national interest the
interests of both consumers and shareholders of the nation's utilities. By assuming, either publicly or privately, that any member of a regulatory agency is affirmatively opposed to either the consumer or to industry is to assume that the individual will not discharge the basic function which his public office entails -- that of weighing and evaluating all interests and all points of view. This demeans the individuals involved. It degrades the regulatory process. Indeed, the fact that such a question exists constitutes a reflection upon our entire political system."

Mr. Bagge went on to suggest to both "associations of consumers and to associations of industry that it is time we put aside the old mili-
tancies, the old tensions, the politics of another era."

"Let us regard," he said, "the regulatory process and the seats on regulatory agencies as the property of no interest other than the public interest. That interest is broader than the interests of either
the consumers or the regulated industries. That interest obviously encompasses both. It reflects itself within the context of any particular issue, in a balancing of these competing interests in an effort to discover, to define and to articulate the national interest."

So, as to my "philosophy" of the process of regulation, I see regulation, like administration, as requiring a thorough comprehension of all available facts, and a good deal of testing of theory against practical realities.

The key words in the last clause, "practical" and "realities" have meaning only as one gains knowledge -- knowledge about the law being applied, for regulation is the exercise of a legislative function; knowledge about the industry or business being regulated, for it would be irresponsible to exercise powers granted by Congress without knowing the implications of that exercise; and knowledge about the context or environment of the subject matter of the regulated business. No business, particularly no business as basic as energy, operates in a vacuum or in an environment entirely subject to its own control.
There is a complex interaction between business, and other political, social and economic institutions. It is not given to everyone fully to understand this interaction, but public servants should try to understand it.

The underlying premise of the regulatory statutes I've been studying lately is the "public interest." In times when national security and the world-wide responsibilities of our country dominate our whole economy, I would think it safe to assume that all of the basic industries, including the energy industries, are motivated by patriotism, and an honest concern for the "public interest." Of course, each sees public interest a little differently.

A regulatory agency, charged to make concrete decisions in concrete cases, like an administrator faced with making choices among alternative courses of action, will find that the choice seems oftener to be between right and right, rather than between right and wrong.
It is in the context of disagreements between competing points of view that we become conscious that the public speaks about its "interest" with many voices. Some are more strident, some are more appealing on the surface. Some may be selfish and others selfless. But so far, at least, I haven't found one which has the key to the ark of the covenant of public interest for all situations.

More productive, I think, is to approach "public interest" as a process. The value of the standard lies in our continual search for it. Its nebulosity acquires meaning through the effort to achieve it, the constant weighing of alternatives, the frequent re-evaluation of past decisions and reasoning, and the conscious measuring of theory against reality. All of these prevent the regulator and the administrator from losing sight of their reference points -- the Congressional mandate, court decisions, and the general public acceptance and appreciation of their efforts.

With the perspective of only a week or two, I rather unexpectedly find much wisdom in the
commission concept. A commission's pursuit of the public interest grail involves several members, each approaching his tasks individually. The Commission concept enables a variety of approaches to be focused on problems in a way which I think the Congress truly intended. Five diligent and inquiring minds which must yield concrete decisions to concrete cases may not always reach the right answer, but public interest is likely to be better served that way than would be the case if any one man were given the whole responsibility, however wise he might be.

I'm also comforted by another aspect of my new job, one which appeals to me as a lawyer. Congress provided for court review of most FPC decisions, and in the far-reaching Administrative Procedure Act defined the fair play boundaries of this process. Not only does the process of judicial review provide incentives to do a better job, it also subjects reasoning and conclusions to adversary dissection and the impartial analysis of the judiciary.
As I said at the outset, it is the duty of the decision-maker to be informed, and to try to understand the complexities of most resource questions.

I'm only in the process of probing the question, but this complexity seems particularly marked in the natural gas supply-demand picture in the United States. Such matters as reserves, imports, competing fuels, potential of coal or oil shale gasification or prospective technological developments of other energy systems are difficult enough. The difficulties are compounded when the factors of environment -- water and air quality considerations -- are added.

Effective analysis of such interwoven, complex matters cannot be accomplished entirely through a piecemeal approach. The knowledge which must be the basis of any effective planning by industry or legislatively directed regulation by government, or new legislative consideration by Congress, must be contributed by all segments of the gas industry, as well as by State and local governments.
In this context, a most promising starting point is the proposal for a natural or national gas survey. I find that my colleagues have endorsed such a survey, and their reasons seem to me to be sound.

Their reasoning processes as exposed in their speeches reveal differing emphases. One sees such a survey as both a stimulus to the industry and an opportunity for the Commission to increase its expertise. Another emphasizes the methodology, the need for cooperation and interchange of ideas, and still another points to the educational benefits that will inure not only to the industry about itself but also to the public about the industry.

The publication of the great National Power Survey has encouraged the feeling that the gas industry and the Commission also can work together to achieve a better command of the knowledge necessary to relate and balance industry, consumer, and social interests. There is a developing consensus that conflicting estimates of reserve data can be resolved; that the economics and dynamics of exploration can be mastered; and that the time
has come when cooperative efforts can produce better projections of demand growth.

Selfishly, I'm seeking proper and efficient ways to become informed about the large and complex industries -- gas and electric -- committed to the Commission's jurisdiction for certain purposes.

Commission Chairman Lee White, in remarks to the Independent Natural Gas Association of America earlier this week, reminded the industry that "to one consumer, the gas industry is simply identified with the kitchen stove. To another, with the remarkable progress in automatic space heating. The electric power industry sees a vigorous and aggressive competitor. The investor sees a lusty, youthful industry maturing into a well-run solid and steady investment. Those concerned with the sweeping field of energy and natural resources view the gas industry as a principal energy source of the world and the nation. To those concerned with pollution of our atmosphere, the gas industry is a hopeful means of greatly reducing air pollutants created by other fuels."
In his experienced wisdom, the Chairman sees that every individual is a set of distinct characters when viewed by those who deal with him. Relationships -- principal and agent, superior and subordinate, counselor and counseled, parent and child -- determine how one individual views another, and we all play a variety of roles.

Good experiences are the building blocks of communication; bad experiences can be stumbling blocks and can perpetuate misunderstandings.

You and I have had a lot of experiences related to my role as land administrator. That role involved me with every kind of land user. Now I take up a new role, that of regulation. I have used the occasion of your invitation to speak, which came to me in one role, to attempt to articulate how I feel about the new role.

I appreciate the courtesy of your attention; I hope that my thoughts may stimulate some of yours on this vital subject; and I hope that our new experiences, like the ones behind us, promote understanding.