

FEDERAL POWER COMMISSION  
WASHINGTON, D.C. 20426

S. 1160 - 89th Cong., ENROLLED BILL  
To amend section 3 of the Administrative  
Procedure Act - "Freedom of Information"

June 23, 1966

The Honorable Charles L. Schultze  
Director, Bureau of the Budget  
Washington, D. C. 20503

Attention: Wilfred H. Rommel, Assistant Director  
for Legislative Reference

Dear Mr. Schultze:

This responds to the Bureau's memorandum of June 21, 1966, requesting the views and recommendations of the Federal Power Commission on the Enrolled Bill, S. 1160, 89th Congress, entitled "An Act, To amend section 3 of the Administrative Procedure Act, chapter 324, of the Act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes."

The Commission is in complete accord with the principle that matters of official record should, to the extent compatible with the public interest, be made available to the general public. On the other hand, the Commission has consistently taken the position in its reports to the Congressional Committees on this bill and its predecessors, that it is not aware of any pressing need for an omnibus amendment to section 3 and is reluctant to see unnecessary amendments which might cause future litigation as to the responsibilities of the affected agencies. We still feel that these problems, if there are any, might better be resolved in the Administrative Conference of the United States.

Specifically, we fear that the agencies will experience considerable difficulty with the two clauses which our General Counsel, Richard A. Solomon, discussed in a letter he wrote on May 3, 1966, to Assistant Attorney General Wozencraft. We attach an extract from Mr. Solomon's letter.

Notwithstanding the foregoing, we doubt that if the bill becomes effective any major permanent impairment to the operations of this agency will ensue as, we are told, may be the case with several other departments and agencies to which the bill would apply. We shall therefore

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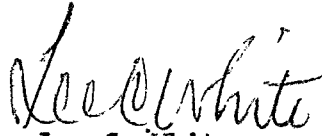
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Hon. Charles L. Schultze - 2 -

leave it to the Department of Justice and the other agencies who may be thus affected to recommend whether the President should veto or sign the bill or to suggest material for inclusion in any statement he may make if he decides to approve it.

In accordance with Budget Circular No. A-19, the Commission advises that the enactment of S. 1160 will have a negligible effect upon the Commission's operating costs.

Sincerely,

  
Lee C. White  
Chairman

Enclosure No. 28526

FEDERAL POWER COMMISSION  
WASHINGTON, D.C. 20426

May 3, 1966

Frank M. Wozencraft, Esq.  
Assistant Attorney General  
Office of Legal Counsel  
Department of Justice  
Washington, D. C. 20530

Subject: S. 1160, 89th Cong. - "Freedom of Information."

Dear Mr. Wozencraft:

In response to your memorandum of April 27, I have examined the Senate-passed version of S. 1160 and I suggest that the text of two of the clauses should be reexamined with a view to clarification:

1. Clause (C) of section 3(b) on page 3, line 6, requires the making public of--

"(C) administrative staff manuals and instructions to staff that affect any member of the public...."

This clause was not included in the 88th Congress version of the bill (S. 1666) and I don't know what it means. A great many instructions to the staff may affect a member of the public even if they are "administrative," but where do we draw the line? While the Committee's discussion of Amendment No. 1, which relates to this clause, explains the amendment, it does not tell us the intended meaning of the whole clause. We have an Operating Manual in the FPC and the staff often receives ad hoc instructions from the Commission, but I feel that it would be almost impossible, in many situations, to ascertain the intent of Congress. What is needed, then, is some explanation of the phrase "that affect any member of the public." Without it the clause means nothing.

2. My other problem is with the exemption clause (5) in section 3(e) on page 5, lines 11-14 of the Bill. It exempts from publication

"(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency;"

The Committee Report discusses this under Amendment No. 8 on page 2. My problem arises from the fact that the amendment undercuts the whole purpose of the exemption. Why should all the public have access to a particular letter or memorandum just because a private party in one case might by law be entitled to it? If it is thought that some such limitation is necessary, the exception in clause (7) would appear entirely adequate (see lines 17-18 on page 5).

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Sincerely yours,

Richard A. Solomon, General Counsel