

I should like to have placed in the record copies of the covering memorandum from General Counsel Fly to Messrs. Assist. Chief Engineer Bock and Chairman Morgan, dated May 17 and June 2 respectively.

Exhibit 19:

Mr. Carl A. Bock, Assistant Chief Engineer
James Lawrence Fly, General Counsel
May 17, 1937

POWER CONTRACT WITH ARKANSAS POWER AND LIGHT COMPANY

Pursuant to your oral request of Mr. Barr, I am attaching hereto a copy of the latest draft of the proposed contract with the Arkansas Power and Light Company.

The representatives of the Company and of the Authority are in substantial agreement on the substance of the contract, but there is still a wide diversity of views on the form. This draft incorporates certain suggestions made by the Arkansas Company's representatives which we have not yet accepted.

I regret that I do not have an extra copy of the latest draft of the Contract with the Aluminum Company available. However a copy has been sent to Chairman Morgan together with an explanatory memorandum, and it may be that these will be available to you. If not, I shall be glad to secure for your use the Legal Division's file copies. You will note that in the Aluminum Company contract, unlike the Arkansas Company contract, there is substantially complete agreement as to form but no agreement on some of the most important matters of substance.

JAMES LAWRENCE FLY

Attachment
cc Dr. A. E. Morgan

Exhibit 20:

Dr. A. E. Morgan, Chairman
James Lawrence Fly, General Counsel
June 2, 1937

PROPOSED POWER CONTRACT WITH ARKANSAS POWER & LIGHT COMPANY

I am attaching hereto for your information the latest revision of the proposed contract with the Arkansas Power & Light Company.

JAMES LAWRENCE FLY

Attachment

In short, Mr. President, the contract was enacted by the TVA staff members under my direction which they thought was fair and desirable. The contract was, of course, drafted, subject to Board approval and neither the Board nor any member had given such approval. The chairman made a suggestion belatedly, it is true, for improvement. The suggestion was adopted by the staff and no vote on the contract was taken at the meeting in which the suggestion was made. A suggested revision incorporating the chairman's idea was incorporated into the draft. The contract, thereupon, was un-animously approved. This is the story of the Arkansas contract joker and the supporting data I should like to hand to you.

[Part 2 of 3]

Exhibit 21:

The Board of Directors
David E. Lilienthal
April 8, 1937

The Board has been advised from time to time of the negotiations between officers of Ebasco Services, Inc., acting for the Arkansas Power and Light Company, and the Tennessee Valley Authority, looking toward the purchase and sale of a substantial block of power to be delivered, roughly, at the end of the new TVA line to Memphis.

Conferences on engineering and rate matters have been carried forward vigorously, and I submit herewith an outline of a proposed contract between the Arkansas Company and TVA. This outline has the approval and is recommended by TVA conferees, Messrs. Glaeser, Evans, Swidler, and Muir. I believe it represents a fair contract, if the remaining outstanding provisions can be agreed upon on a proper basis.

The only important provisions not passed upon in this outline are (1) resale provisions, (2) reciprocal standby arrangements, and (3) cancellation privileges. The Arkansas Company understands that resale provisions must be included in the contract, and they stated to our conferees yesterday that they would promptly submit a proposed schedule of reduced rates in Arkansas. Recommendations with respect to these proposed resale provisions will be made to the Board as promptly as possible.

This contract is an important one for TVA, involving as it does a guaranteed minimum annual revenue of \$600,000 (which will probably actually on the average amount to about \$750,000) and jointly utilizing investments heretofore made for another purpose, namely service to the City of Memphis.

The Arkansas Company is in need of an additional source of power, and therefore I hope we may proceed to a determination of this matter as promptly as feasible. May I suggest early study of these terms, pending the bringing of the matter to the Board for oral discussion.

Dictated by Mr. Lilienthal
over the telephone.

David E. Lilienthal

DEL:BB (Copy to Messrs. J.B. Blandford, M. G. Glaeser, L. Evans,
J. C. Swidler, E. J. Muir (2))

Exhibit 22:

The Board of Directors
Joseph C. Swidler, Chairman, New Contracts Committee
April 27, 1937

CONTRACT WITH ARKANSAS POWER AND LIGHT COMPANY

At Mr. Lilienthal's request, I am handing you herewith a copy of the tentative draft of power contract between the Authority and Arkansas Power & Light Company.

This tentative draft, a copy of which has been sent to representatives of the Company, is the result of conferences which were held in Chattanooga and in New York. This draft, however, introduces a definition of run-of-stream secondary power which has not been agreed to by the Arkansas Power & Light Company.

Further conferences probably will be necessary to get this tentative draft in final form, but the present draft will inform the Board as to the present status of negotiations.

Joseph C. Swidler

Attachment
JCS:ml

MR. LILIENTHAL: In connection with the Arkansas alleged joker in the Arkansas contract, the statement was made by Chairman Morgan in his letter to Congressman Maverick, February fourteenth, a statement comparable to the one made this morning about someone being disciplined for furnishing data on which I think the facts ought to be presented to you because it is a reflection on the integrity of the staff and the Board. In this letter, Mr. President, the chairman refers to the member of the engineering staff, who, because of his participation in the Arkansas Power and Light contract action and who advised that a provision more favorable to the TVA with respect to secondary power should be inserted, was being disciplined by "insecurity of tenure" in the TVA. This presumably refers to Mr. Barton M. Jones, Acting Chief Design Engineer, inasmuch as he was the only one formerly on the chairman's staff when the chairman was Chief Engineer, who participated in the Arkansas Power and Light discussion. I should like to present the facts with respect to that because of the very disturbing effects it has had.

Mr. Barton Jones was first employed by the Authority on the twenty-sixth of June. He had previously been a Professor of engineering at Antioch College. In September 1933 he was made construction engineer at the Dam. On November 19, 1936 he was informally placed in charge of a design department without official designation by unanimous action of the Board following upon the rather sudden resignation of Mr. Byron Steel, who was chief design engineer. In that connection I should like to submit the memorandum to the Board by Mr. Carl Bock, assistant chief engineer in connection with that temporary appointment. On August 13, 1937 upon recommendation of the Assistant Chief Engineer, Mr. Bock (I may add parenthetically) Mr. Bock had for many years previously been a business and professional associate of Chairman Morgan. The director of personnel and general manager -- on their joint recommendation the Board approved the official designation of Mr. Jones as Acting Chief Design Engineer with the provision that "permanent status in this capacity is subject to review after appointment of the chief engineer," a subject which was then under discussion. On December 30, 1937, on recommendation of the Assistant Chief Engineer, the director of personnel and the General Manager and with the unanimous approval of the Board, and following, as you will see, some six months upon the so-called discipline and the so-called joker incident, Mr. Jones' position was reclassified to a higher grade and higher salary without changing his title. At no time does the record indicate any positive or suggested statement questioning the confidence or qualifications of Mr. Jones except as may be found in the memorandum of November 19, 1936 from Mr. Bock, who the Board of Directors, in which he says: "We have several possibilities in mind (that is for the position of chief Design Engineer) and are investigating them as rapidly as possible." Mr. Bock apparently was not prepared on November 19, 1936 to make a formal recommendation to the Board of Directors at that time that Mr. Jones be made chief Design Engineer. Some months later when the title Acting Chief Design Engineer was officially conferred by the Board upon Mr. Jones, I am informed that the director of personnel following the conversation with Mr. Jones, at Mr. Jones' initiative, raised the question of early designation and with the concurrence of assistant chief engineer Bock and the General Manager unanimous official Board action was taken. It seemed advisable at that time to make the official designation that of Acting Chief Design engineer in view of the fact that we were then attempting to set up machinery through which the selection of chief engineer could be made and consequently it was believed that this permanent designation of assistant chief engineer should await the appointment of a chief engineer who should have some say in a matter of that importance. Nothing has arisen, so far as I know, which should lead Mr. Jones to believe that continuation of his temporary designation arises out of questions raised with respect to his competence and surely not with respect to a suggestion he made with respect to the Arkansas contract which suggestion was received and adopted.

MR. LILIENTHAL: In a new organization, particularly during a period of reorganization such as we now have been going through, temporary designations have necessarily been more frequent than is generally desirable and have longer duration than might be advisable under ordinary circumstances. The Acting General Manager carried that designation of Acting General Manager for more than a year. The Acting Chief Conservation Engineer has carried that designation since the early summer of 1937. There is no valid reason so far as I can see for interpreting the temporary designation of Mr. Jones as a specific or general reflection either upon his competence or his security of tenure nor can it by any stretch of the imagination be regarded as a form of discipline for his participation and helpful participation in the Arkansas contract. I should like to append -- I should add that on March 4th following the letter, following the date of the letter of Chairman Morgan and Mr. Maverick which was written some time in February in which this charge of disciplining and insecurity of tenure was made, Mr. Bock, the Assistant Chief Engineer, wrote a memorandum dated March fourth in which he complains of the continued designation of Mr. Jones as Acting Chief Design Engineer. But that followed Chairman Morgan's charge. I should like to offer the memorandum of Mr. Bock to the Board and Mr. Clapp's memorandum to Mr. Bock. I believe that states the facts with respect to the so-called and inferentially corrupt charge regarding the Arkansas contract.

Exhibit 23:

The Board of Directors

Carl A. Bock, Assistant Chief Engineer

November 19, 1936

APPOINTMENT OF ACTING CHIEF DESIGNING ENGINEER

Mr. Steele's resignation, as reported in my memorandum of November 11, made it necessary to appoint temporarily an acting head for his department. I discussed this situation immediately with the Chairman and with Mr. Bass and with Mr. Clapp. They concurred with my proposal to assign B. M. Jones to act for the time being. I reported this situation to Mr. Blandford as soon as I could reach him by phone. I was unable to reach Mr. Lilienthal.

With Mr. Clapp's approval I have informally designated Mr. Jones as Acting Chief Designing Engineer. We have several possibilities in mind and are investigating them as rapidly as possible. There are several other important vacancies in the design organization which we are trying to fill.

Carl A. Bock

CAB:TO

CC to John B. Blandford

Neil Bass

G. R. Clapp

Exhibit 24:

Mr. C. A. Bock, Assistant Chief Engineer

Gordon R. Clapp, Director of Personnel

December 15, 1937

RECOMMENDATION WITH RESPECT TO BARTON JONES

We are forwarding the proposed reclassification of Barton Jones' position to the General Manager's office for Board action. The recommendation is as we discussed it, namely: reclassification to an entrance rate of \$8750. As you perhaps recall the Form 78 carrying your recommendation proposes elimination of "Acting" from Mr. Jones' title. I tried to get you on the phone today to discuss this but find that you are out of town for several days. I believe it was our understanding at the time Mr. Jones was made Acting Chief Design Engineer that the title would remain that way until such time as the position of Chief Engineer is filled in order that it might be reviewed at that time. I am, therefore, entering the word "Acting" on the Form 78. This, of course, should not affect the proposed reclassification.

Gordon R. Clapp

GRC:GES

THE PRESIDENT: Chairman Morgan, we are, I must repeat, examining charges of malfeasance or corruption. Have you anything to say in regard to the statement in regard to the Arkansas Power and Light Company matter which Mr. Lilienthal made.

ARTHUR E. MORGAN: The first statement I made covers my reason for not commenting upon these statements.

THE PRESIDENT: We now come to a third charge. In Chairman Morgan's letter to Representative Maverick he says "Some of the reasons for my concern are the explicitly misleading and evasive reports and, in my opinion, explicitly false reports which have been made to the President, to Congress and to the public concerning the TVA by a TVA director or by the two directors acting in unison." In view of the high trust which public officers hold in respect to the public, Congress, and the President, there could be no more serious breach of their fiduciary duty than making wilfully false reports. Therefore, I ask you to specify any reports which you refer to which you believe were explicitly misleading, evasive or false.

CHAIRMAN MORGAN: My first statement gives my reasons for not participating in this alleged inquiry of facts.

THE PRESIDENT: That amounts to a refusal to answer the question. I ask Dr. H. A. Morgan and Mr. Lilienthal whether in view of the refusal of the Chairman to specify in any shape, manner or form what reports were explicitly misleading, evasive or false or wherein any reports were explicitly misleading, evasive or false. Have the other two members of the Board any statement they wish to make?

MR. LILIENTHAL: Mr. President, we are in this unprecedented situation. We have been accused over the signature of the Chairman of the Board of the Tennessee Valley Authority whom, like ourselves, you appointed, with dishonesty and in this case with falsifying the records -- a subject which is not only malfeasance and not only affects our personal honor as the President of the Country has construed it and properly construed it, but probably is subject to the grand jury action and clearly libelous. We are denied the privilege in the presence of the Chief Executive of the United States of having the facts presented on which we can present a reply. I find it difficult to state as temperately as I must in this in view of the importance of this hearing the unfairness -- the bitter unfairness of thus being subjected to public charges going to our personal honor, and then being refused in the presence of the President of the United States an opportunity to reply. We can't reply to a charge on which there is no specifications. And I may add this, that I -- we challenge anyone in the United States -- anyone at any time to submit a single line supporting that charge.

THE PRESIDENT: I now come to a fourth statement by Chairman Morgan. In his letter to Representative Maverick, speaking of his colleagues, he says "There is a practice of evasion, intrigue, and sharp strategy with remarkable skill and malevolent habit of avoiding direct responsibility which makes Machiavelli seem open and candid. It took me a year or more of close association to be convinced that the attitude of boyish open candor and man to man directness was a mask for hard-boiled selfish integrity." Elsewhere in the letter Chairman Morgan refers to "misrepresentation, intrigue and arbitrary action". A plain reading of the English language makes it clear that these words ascribe sinister malpractices to his colleagues. I therefore ask Chairman Morgan to give me any or all facts upon which these statements are based.

DR. ARTHUR E. MORGAN: My first statement covers my reasons for not taking part in this process.

THE PRESIDENT: Again Chairman Morgan has declined to answer a straight question. I asked Dr. H. A. Morgan and Mr. Lilienthal if they wished to make any statement in regard to these charges.

MR. LILIENTHAL: Mr. President, the reference, the descriptive reference in the latter part of the quotation, obviously refers to me. Naturally, I certainly in this presence, and nowhere else, care to engage in a controversy as to my personal desirability. I certainly wouldn't argue whether I have a pleasant personality. Unless we have facts on which those charges are based, I am powerless to answer the accusations. I have been, Mr. President, and you have been, trained as a common law lawyer. One of the fundamental decencies of Anglo-American law is that when charges are made there shall be an opportunity to respond to those charges. That fundamental decency is not accorded to me at this time and, therefore, I find no way of responding to vague charges.

THE PRESIDENT: It is perfectly clear to me that the last two charges which we have discussed are not charges relating to differences in the Board on issues of policy or organization; but they are charges of intrigue and conspiracy. Therefore, they cannot be separated from the necessity of answering those specific charges. Today we are not going into the question of policy or problems of organization, on which there has been a difference of opinion in the Board, as there is in almost every Board charged with conducting government affairs. There are two or three other charges which will not take very long.

DR. H. A. MORGAN: May I make a statement, Mr. President?

THE PRESIDENT: Yes.

DR. H. A. MORGAN: I don't know what those charges are based on. I do know that for three years this Board went down the program of the Valley unanimously, with^{out} a dissenting vote. There was nothing else for us to do but to go down together. And the Chairman left us on the very last program of the last three years. Therefore, for my part, we went on with the program under the plan of the three previous years. It was after the reappointment of Mr. Lilienthal when this reaction on the part of the Chairman came to the general program of the previous years. As Mr. Lilienthal has indicated, it is difficult to discuss questions of great public interest when personalities are driven into it.

THE PRESIDENT: The next charge relates to conspiracy. Chairman Morgan, in his statement on the Berry claims, said this of the situation: "To a steadily increasing degree, however, I have contended with an attitude of conspiracy, secretiveness and manipulation". Chairman Morgan, can you give me facts in substantiation of that charge?

DR. A. E. MORGAN: My first statement covers my attitude.

THE PRESIDENT: Mr. Lilienthal, are there any facts you care to bring out on that general charge?

MR. LILIENTHAL: I have only this to say: In studying these charges that have been made, and trying to find what the possible basis in fact may have been, the only time that such a charge was made before that that I recall comes to my mind. On December 22, I am speaking now of '37 - I am speaking in memory, at a meeting of the Board, Chairman Morgan handed to the members of the Board and read a one page memorandum, in which he makes specifically this general charge, basing it I recall on the basis that Dr. Morgan and myself conferred together prior to the Board's meeting and concluded with the charge that this was against public interest, which must cease, quoting now from memory:

"On such a vague basis and without supporting facts I find it difficult to make any response to that, but I call attention to the fact the charge has been made and we have been cognizant of it at least since December, 1937. Previous to that, we were cognizant of it only by reason of newspaper columnists' comments, which, for reasons I am sure are apparent, vague assertions were made. In other words, this was an administration of collusion and conspiracy, and so on."

THE PRESIDENT: The next relates to the aluminum company contract. In Chairman Morgan's letter to Representative Maverick, he said "With reference to the aluminum Company's contract I feel that the relations of the T.V.A. to the Aluminum Company has failed to protect the public interest. I have protested to the Board repeatedly on this matter". In the context of Chairman Morgan's letter, which generally charges serious wrong-doing to the other members of the Board, this statement in the plain interpretation of the English language lends itself to the interpretation of a sinister relation between the majority members and the Aluminum Company. I asked Chairman Morgan if that was your intention, and if so, to support a charge with any facts you may have.

CHAIRMAN MORGAN: My first statement covers all that I wish to say on that.

THE PRESIDENT: Chairman Morgan has declined to answer the question. Dr. Harcourt Morgan and Mr. Lilienthal, do you wish to introduce any facts in relation to this contract?

MR. LILIENTHAL: Mr. President, it was my responsibility to negotiate the contract referred to and I should like to respond in respect to it. In this situation, we know what the charges are, even if there is a declamation to submit the facts to you, because we have in the Board records, complete exchange of views, memoranda, and otherwise, on the matter. Chairman Morgan charges that the Aluminum Company contract does not protect the public's interest. In other words, that we were derelict in our duty to you, and to the Congress, and to the public, is based on the Board's refusal to enter into a contract which the Chairman had urged over considerable period which involved the construction by the Authority of the so-called Fontana Dam on the Little Tennessee River, and instead of entering into such a contract - - entering into regular contracts for the sale of power to the Aluminum Company of America without any regard to construction by the T. V. A. of the proposed Fontana Dam. In the opinion of the majority after exchange of views, the contract proposed by the Chairman we felt, would be against the public interest and we therefore decline to agree to it. Without our arguing the relative merits of the two contracts, it is still necessary in view of the charge of malfeasance to discuss some of the facts as briefly as I can, which will show the viewpoint of the majority was, to say the least, not arbitrary, not unreasonable, and not contrary to public interest.

The contract proposed by the Chairman and by the Aluminum Company, which I shall call the Fontana Contract, provided, briefly, for the sale by the Aluminum Company to the Authority of its Fontana dam site, owned by the Aluminum Company for a number of years, and a substantial amount of acreage likewise owned by that company at a price of three and a half million dollars to be payable in secondary power of the Authority.

This proposed contract, with which we declined to agree, also provided for the integrated, what was called the integrated, operation of the Aluminum Company's three existing dams on the Little Tennessee River, integrated with the dams of the Authority on the Tennessee River and its tributaries. As payment for agreeing to integrate these operations, the Aluminum Company, under this proposal made by the Chairman, was to be assured an amount of power largely in excess of the amount of power they are now able to generate in their plants without such integration. Of course, the construction of Fontana Dam, which is above the Aluminum Company's existing three dams on that same river would increase the flow of those plants and would, in effect, create a part of this additional power, and the rest of the excess over this addition was an allocation between the Aluminum Company and the Government of the United States of the benefits of this integration.

Deliveries of power in excess of the present capacity of the Aluminum Company's plants were to begin, according to this proposed contract, after ten years and continue for the remainder of the life of the contract, which was proposed to be for fifty years. In addition, the contract provided for the sale of additional blocks of secondary power to the Aluminum Company.

Now, it is important in this record to recall, Mr. President, that before this draft of the contract was presented to the Board of the TVA in May 1937, the Authority had requested the House Appropriations Committee to authorize the acquisition of the site and the construction of a Fontana Dam as a part of the integrated -- as part of the unified plan for the development of the river.

The House Appropriations Committee specifically declined to authorize that and criticized the proposed transaction in its report, and that Committee's conclusion was supported by the Congress. Had Congress authorized the construction of the Dam, the Authority could have entered into the contract with reasonable assurance that by the end of the ten-year period the dam would have been constructed and the power benefits called for by the contract could have been paid for out of the actual increase in available power which Fontana Dam's integrated operation would create. In view of the refusal of Congress to authorize this project, signing the contract, we think, would have risked obliging the Authority to deliver to the Aluminum Company free for over a period of forty years a large amount of power generated by the Aluminum Company's other dams.

Chairman Morgan contended that the matter should be reopened with Congress. This the majority of the Board considered to be unwise, since Congress had in effect rejected the basis of this transaction. Moreover, the transaction was predicated in part upon the payment in power for the site, which was authorized by a provisions of the Act which expired in May, 1936, and is no longer effective. To put the deal through would have required not merely an appropriation and authorization of the dam but an outright amendment of the TVA Act, and these steps we regarded as unwise.

There were other objections to the contract as a piece of good business for the Government which can be best explained by comparing the provisions of the power contract which we actually signed and which is charged as being contrary to the public interest, which we will call the "Executed Contract", and compare that with the so-called "Fontana Contract".

In the first place the Fontana Contract provided for free power to the Aluminum Company plus the sale of secondary power. The Executed Contract, the one we entered into, does not provide for any free power and provides for the sale at a higher price than in the proposed contract, as well as secondary power.

In the second place, the price for power in the proposed Fontana Contract had not been settled. The Authority's representatives had offered power to sell at \$13.08 per horse power year, while the Company contended that the price should only be \$10.56 per horse power year.

Secondary power of a poorer quality than this, less useful, was actually sold to the Aluminum Company in the executed contract, the one now under attack, at a price which varies, depending on the number of interruptions, from \$12.77 per horse power year to \$21.00 per horse power year. The TVA offer in the proposed Fontana Contract, which Chairman Morgan urged, was at the rate of approximately two mills per kilowatt hour. The contract we actually entered into for a poorer grade of power will average approximately 2.5 mills per kilowatt hour.

And then there is this extremely important matter, which took a great deal of study and deliberation to ascertain and on which Dr. H. A. Morgan asked for extended memoranda from the engineers to clarify this extremely complex proposal. The contract urged by Chairman Morgan recognized the right of a private down-stream owner of a dam to the full benefits of headwater storage by Government dams above, a principle which is contrary to that provided in the Federal Water Power Act. In the opinion of the majority of the Board, this was an unwise and unnecessary concession, which in my opinion we had no right to make, after deliberate consideration, on a fundamental matter of principle.

On May 26, 1937 I had one of a series of conferences here in Washington with Mr. Arthur V. Davis, Chairman of the Board of the Aluminum Company of America, with respect to the contract that was finally executed. I should like to read one paragraph which illuminates this extremely important fundamental question on the conservation of our water resources in this country.

I am quoting now from this memorandum and I should like to submit the entire memorandum afterwards. "I indicated" (to Mr. Davis, of the Aluminum Company of America) "that there was a serious question in law, as I understood it as to whether the Government project is obligated to compensate"—that being the theory — "for 'benefits' under these circumstances, although it was clear that where benefits were conferred by the Government on a licensed private agency the benefits must be compensated for."

The Aluminum Company projects are not licensed under the federal statutes. I said to Mr. Davis, "that under the action of the Board pertaining to this negotiation, I was not authorized to go beyond the matter of power sales, nor were any of the Authority's representatives so authorized."

Finally, the Fontana Dam, the proposed Fontana Dam, is still part of the unified plan which the Board recommended to the Congress in March of 1936 and it will be constructed depending on Congressional authorization. Nothing in the power contracts we actually entered into forestalls this development or forestalls the possible later unified operation of the Aluminum Company's projects and the Authority's projects, provided an agreement can be worked out which protects the public's interest and particularly this important principle referred to.

In the meantime the existing arrangements under the contract under attack, protects the Authority against the gift of power and the sale of power without adequate compensation, and the Board's engineers testified at a Board meeting at which the executed contract was approved that this contract, if entered into, would aid flood control in the Tennessee Valley.

I have summarized these proposed contracts urged by Chairman Morgan, and vigorously urged, not for the purpose of proving Chairman Morgan wrong in urging that the Authority proceed on a different basis with respect to the Aluminum Company, but merely to show that the Board acted with reasonableness and consistently with public interest.

THE PRESIDENT: We will resume in one hour, at twenty minutes past two.

(The Hearing was resumed at 2:30 o'clock P.M.)

MR. LILIENTHAL: Mr. President, previous to adjournment I expressed the desire to add to the record the memorandum of a conference between Arthur V. Davis, of the Aluminum Company of America, and myself, representing the TVA, dated May 26, 1937.

THE PRESIDENT: (Examining memorandum) Memorandum of conference between Arthur V. Davis of the Aluminum Company of America, and David E. Lilienthal of the Tennessee Valley Authority, accepted.

Exhibit 25:

Memorandum of Conference between Arthur V. Davis, Aluminum Company of America, and David E. Lilienthal, Tennessee Valley Authority, Wednesday, May 26, 1937, at 3:00 P.M., in the Washington Office of the Tennessee Valley Authority.

Mr. Davis stated that before discussing the draft of the proposed contracts for power sales, he would like to know my position on the construction of Fontana. I repeated the substance of my statement to the House Committee on Appropriations on this subject.

Mr. Davis then stated that Mr. Crowden on behalf of the Company had discussed certain plans with Mr. Bock for the construction of dams on two sites owned by the Aluminum Company--the Nantahala and Glendale projects. He stated that before discussing the power contract (the stated subject of the meeting) he would like to know if there was agreement on principle as to the payment to the Aluminum Company in power for the "benefits" accruing to TVA at the various dams lying downstream from the Aluminum Company dams, arising out of the storage of water by the two new projects.

I indicated that there was serious question in the law as I understood it as to whether a Government project is obligated to compensate for "benefits" under these circumstances, although it was clear that where benefits were conferred by the Government on a licensed private agency the benefits must be compensated for. I said that under the action of the Board pertaining to this negotiation, I was not authorized to go beyond the matter of power sales, nor were any of the Authority's representatives so authorized.

Exhibit 25 (continued):

Mr. Davis stated that whether he would be willing to buy power at a particular price might depend upon how the Board decided to exercise its powers under Section 26a, as to "benefits" etc. I said that I thought this would be an ambiguous position to take before the public, as it might very well seem a bargaining for or purchasing of regulatory approval; but that of course his views on the matter would be placed before the Board, not only as a result of this discussion, but also through the hearings on his application for approval of plans under Section 26a.

We then proceeded to a discussion of the power contract. He thought that the representatives had agreed on a division of 40,000 run-of-stream and 20,000 firm, but upon an explanation, appeared ready to agree to a 30,000 - 30,000 division.

On the tenure of the agreement I suggested that perhaps a five-year term would be better than a ten-year term inasmuch as other industries producing soil building materials might require the power in the future, and that TVA had an obligation in that direction. I thought he could operate under a short term arrangement because he has alternate sources of supply on the Little Tennessee. Ten years he felt to be a minimum. I also indicated that the Board might not feel it should sell as much as 50 per cent of all of our remaining secondary power to one concern, since it might be deemed a form of discrimination against other industries and other sections.

As to price, the rates were explained by Mr. Swidler, but Mr. Davis made no comment and asked for further conference Thursday at 11:30 A. M.

A. E. MORGAN: May I speak a minute in reference to this one. The statement with reference to the Aluminum Company issue contains significant and vital inaccuracies, misrepresentations and omissions. It is a long, fragmentary, technical statement and I think clearly indicates the futility, as a fact finding process, of such a meeting as this was intended to be.

THE PRESIDENT: How long would it take you, Chairman Morgan, to present what you consider to be the correct facts in regard to this memorandum?

A. E. MORGAN: I haven't any statement on that row.

THE PRESIDENT: You do not want to present one to the President?

A. E. MORGAN: I haven't any further statement to make, I think, than I have made.

THE PRESIDENT: Before I go on with the seventh charge, I want to make two matters a little more clear. Lest there be any thought that any injustice has been done to Chairman Morgan in asking him to be here today and to answer questions relating to facts, I make the statement that the decision to hold this hearing was not made until the morning of Tuesday, March eighth. By Noon Secretary McIntyre started to get in touch with the three members of the Authority and the record shows that Chairman Morgan received such notification by that afternoon. The decision was communicated to the press at the press conference the same day. Neither of the other members of the Board had any advance notice of this hearing. They were on exactly the same basis of information as to the hearing as the Chairman. I knew, of course, that the Chairman had been in Florida for some weeks, I think --

MR. A. E. MORGAN: Yes.

THE PRESIDENT: -- But assumed that because he had made the statements of March 3 and March 5 from Florida that he had made those statements on the basis of facts in his possession at that time. As a matter of fact, therefore, for the purposes of this hearing I assumed, I think with justification, that Chairman Morgan knew a great deal more about the allegations and charges than either of the other two members, and would be prepared today to answer questions in regard to the charges.

I cannot emphasize too strongly, and I think in the public interest, that Chairman Morgan should be willing to participate in this inquiry to ascertain the truth of the personal charges that are here involved. It should be made clear that until these charges of dishonesty, of lack of personal integrity, and of personal misconduct in office are definitely removed from the realm of controversy, there can be no constructive inquiry by me or by anybody else into power policies, navigation policies, fertilizer policies or any other policies of the Tennessee Valley Authority. All of us who want those policies considered and even reviewed on their merits ought, as a matter of public duty, to cooperate to dispose immediately of these personal attacks in general form which only obscure and confuse fundamental issues of policies.

Chairman Morgan has offered the thought that the Davis memorandum contains inaccuracies. I do not see how, in the absence of a statement as to what those inaccuracies are, it is possible to get much further. I have asked for a list of the inaccuracies. Chairman Morgan has declined to give them to me. I now ask Dr. H. A. Morgan and Mr. Lilienthal if they want to say anything further in regard to the charge of inaccuracies which has been made without specification.

MR. HARCOURT MORGAN: I have nothing to say.

MR. LILIENTHAL: I have nothing to say.

THE PRESIDENT: We now come to the final charge. Chairman Morgan in his statements on the so-called Berry claims said that the situation in the TVA Board was not due primarily to differences in power policy or to just another family quarrel, but the real difficulty was to secure "honesty in government". He stated, "The Berry marble case as I have said is an instance of this difficulty". He thus charges that there are other instances of dishonesty, that is obvious from reading the English language. In his letter to Representative Maverick in speaking of the present TVA situation, Chairman Morgan said, "In my opinion, good government and the welfare of the TVA demand that the situation be cleaned up and that standards of openness, fairness and honesty shall prevail". I am compelled to ask Chairman Morgan what instances of dishonesty he had in mind when he made those statements.

CHAIRMAN MORGAN: My reasons for not answering further were included in my first statements.

THE PRESIDENT: Chairman Morgan declines to answer the question. Dr. H. A. Morgan and Mr. Lilienthal, have you anything you want to say on that question?

DR. H. A. MORGAN: Not without a statement by the Chairman.

THE PRESIDENT: Commencing over a year ago, Chairman Morgan made a series of statements that seemed to attack the propriety of his colleagues' conduct, statements which they have regarded as impugning their personal integrity. The Chairman's public utterances have culminated in the last few weeks with statements that unmistakably and unequivocally attack the motives and personal honor and integrity of his colleagues in discharging their public duties.

Generally speaking, I think it is only fair to say to Chairman Morgan that these statements on his part must be interpreted as a whole and that in that effect they place a heavy cloud not only on other members of the Board but also on existing important operations of the TVA. The press, as you know, has been practically unanimous in solely interpreting your attitude as reflected in your public utterances. There has been no correction nor retraction on your part and I think, Chairman Morgan, that you have a heavy responsibility to the government and the public to support now the position that you have taken and there has been so universally ascribed to you and therefore I must ask you again whether you have any other facts that you had in mind when you made these charges of dishonesty and lack of integrity and in broadcasting them so widely and then in acquiescing in the interpretation that has been universally placed on them.

CHAIRMAN MORGAN: I have nothing to add to the first statement I made on that point.

THE PRESIDENT: It is not my desire that this inquiry should be in any sense uni-lateral. Dr. H. A. Morgan and David Lilienthal, you also have made charges against Dr. Arthur Morgan, charges that relate to obstructing the carrying out of the decisions of the Board. You made your charges not public, not to the press, but to the President in his official capacity. Those charges were sent to me under date of January 18, I think it was. I ask that they be identified and made part of the record. They were printed in the New York Times, March 5. These charges were not made publicly but were made to me. It is true that the majority of the members of the Board did not make them public but that I chose to make them public after Chairman Morgan had made repeated public charges against the majority. These charges by Dr. H. A. Morgan and Mr. Lilienthal do not necessarily reflect on the personal integrity of Chairman Morgan but they do reflect on his willingness to cooperate in decisions reached by the Board in the manner prescribed by law. These charges against him are equally serious, particularly as they suggest that Chairman Morgan is obstructing the work of the Board and has cooperated with interests which may be adverse to the interests of the Tennessee Valley Authority. These charges, while not reflecting on Chairman Morgan's personal integrity, do impute misconduct in office to Chairman Morgan. The charges go so far as to assert that his "opposition and obstruction have occupied virtually his entire time to the exclusion of his attendance on Board meetings". I am, therefore, obliged to take note of these charges and especially to take note of them by virtue of the investigatory powers conferred on the President by Section 17 of the Act. Before I ask you for substantiation of the charges, I remind you again that I am not concerned at this inquiry with matters of policy or of organization but I am concerned with your charges that Chairman Morgan has improperly obstructed the work of the Board. As your charges against him are couched in general terms, I must now ask you also to give me specific evidence to support each of the several charges enumerated in part 3 of your memorandum to me. I think everybody has seen a copy of that memorandum. There is about a page of general charges. The first specific charge is: "It is not permissible as Arthur E. Morgan has done repeatedly in public statements to attach the personal motives in good faith and the pure integrity of his associates on the Board - not by associates' direct charges. What are the facts upon which this general charge is based?"

DR. HARCOURT A. MORGAN: Mr. President, commencing over a year ago, Chairman Morgan engaged in what we regard as a campaign of attack upon the personal motives and the integrity of the other Directors. This was done in the form of widely circulated public speeches and articles. However, to support this charge are, of course, the actual published statements, some of which you refer to -- many of which you referred to, this morning. I have here a list of them, as well as copies which I shall submit for the evidence.

THE PRESIDENT: This list of speeches and articles contains five. I list the five in the hearings by name and the actual articles are appended. I do not think the record need copy all the articles. They are available.

MR. EARLY: Identify them but do not include the text.

THE PRESIDENT: Identify each of the five by the Exhibit number; the text need not be copied but is available.

- Exhibit 26: Remarks of Arthur E. Morgan, Chairman of the T.V.A. as chairman of a discussion on power at the annual meeting of the American Economics Association, December 30, 1936.
- Exhibit 27: Article in the New York Times of January 17, 1937, headed as follows: "Dr. Morgan pleads for 'Cooperation' with the Utilities".
- Exhibit 28: Tennessee Valley Authority release to afternoon papers April 26, 1937, entitled "Multiple Purpose River Control".
- Exhibit 29: Article in the Saturday Evening Post, dated August 7, 1937, entitled: "Yardstick -- And What Else," by Dr. Arthur E. Morgan.
- Exhibit 30: Article in the Atlantic Monthly, dated September, 1937, entitled "Public Ownership of Power" by Arthur E. Morgan.

DR. H. A. MORGAN: These speeches and articles are largely taken up with policies and issues with which the T.V.A. is concerned. Our charge, however, does not in anyway question Chairman Morgan's right to express views on these matters differing from those of the majority. Our charge challenges the Chairman's statements only insofar as they attack the personal motives and the integrity of the majority by wholly unsupported innuendo, indirection, and aspersion.

To illustrate, Mr. President, the method that Chairman Morgan has used, I should like to refer to a few quotations, and here I read from some of the passages quoted in the Atlantic Monthly to which you referred this morning:

"The writer is a minority member of the Board of Directors of the Tennessee Valley Authority, of which he is Chairman. In important respects he differs from what he judges to be the actual power policy of his associates. This statement, therefore, reflects his personal views and not the working policy of the power issue. Neither does it undertake to criticize in detail what the writer believes to be the improprieties of the policy".

Quoting again, "If the Tennessee Valley Authority Act is fairly interpreted and administered, it can mark a great advance in the planned and orderly development of a great river system. In many cases, referring to the Tennessee Valley Authority - - -

THE PRESIDENT: (Interrupting) Let me interrupt: Did that quotation say "fairly administered"?

DR. HARCOURT MORGAN: "Fairly interpreted and administered".

THE PRESIDENT: "Fairly interpreted and administered".

DR. HARCOURT MORGAN: Quoting again, in many cases referring to the Tennessee Valley Authority projects, "Some large dam can serve for navigation control, flood control and for power; if the operation of such a system is in the hands of persons interested only in power, such a multiple purpose project can be abused, perhaps with serious results. For private interests to try to force a high price by obstructive litigation or for public men to try to secure an unreasonably low price by threat of duplication or dismemberment leads to suspicion, conflict, and social waste.

PRESIDENT: In other words, am I correct in this, that your allegation there is that by that language Chairman Morgan is, by imputation or innuendo charging that these dams and projects are not being run for multiple purposes but only for power purposes?

DR. H. A. MORGAN: I so interpret it. In the continuing quotation is evidence. In the operation of the "public yardstick", which is in quotation, "Systems, there should be no hidden subsidies, no undisclosed Government assistance to local public power systems. It is due both to private investors and to municipalities which considering their power systems that full and actual cost of service be publicly disclosed. If there is Government subsidy, it should be in the open".

THE PRESIDENT: Again, on that, am I right in saying the allegation is that that language, by imputation or innuendo charges that the members are guilty of giving hidden subsidies or Government subsidies without disclosing the fact to the public?

DR. H. A. MORGAN: May I answer that in the concluding statement? The point of these remarks was not missed, for the article was immediately seized upon by the utilities attacking the authority in a so-called letter of rebuttal in the contributor's column of the same issue of the Atlantic Monthly. Mr. Willkie commented as follows:

Exhibit 31:

New York City

Dear Atlantic,-

In his article for the September number, Dr. Morgan refers to two abuses in the utility industry which would be impossible of repetition under present laws. One of them is the type of extravagant financial promotion represented by the Insull affair, which is an almost inevitable accusation in any article directed against utilities. The other has to do with the excessive charges which Dr. Morgan states are frequently rendered by service companies.

The relationship between the service company and the operating company is now thoroughly regulated under the Public Utility Act of 1935. In The Tennessee Electric Power Company, the charges of the mutually owned, non-profit service company represent five sixths of one per cent of the company's gross income -- an amount so small that its total elimination would not affect in the slightest the cost figures of labor, taxes, interest, or materials and supplies which I set out in my original article and upon which Dr. Morgan comments. Likewise, the elimination of every officer's salary in the entire system would amount to only a fraction of one per cent of the company's gross and could not affect the conclusions to be drawn from the figures cited. Neither the Federal Trade Commission nor any other commission or investigating body has ever claimed that there was a dollar of overcapitalization in The Tennessee Electric Power Company. The Tennessee Electric Power Company keeps its books in strict compliance with the rules of the Federal Power Commission, and the Commonwealth and Southern Corporation keeps its books in accordance with the regulation of the Securities and Exchange Commission. Therefore Dr. Morgan's questioning of the figures cited must have been made without examination of the facts. There are no intermediate holding companies in the Commonwealth and Southern Electric System.

Dr. Morgan, a public official, questions the honesty of other public officials. If he is correct that state regulation has failed through corrupt public officials, then he doubly warns us against the adoption of public ownership, where the opportunities for corruption by public officials would be greatly multiplied.

Dr. Morgan makes one charge which I must acknowledge. He charges the Alabama Power Company with propaganda against the public ownership of power. To state that thus the Alabama Power Company is 'taking away from the American people the long-established right directly to administer essential public services' is as logical as to say that Dr. Morgan's article or 'propaganda' in favor of public ownership is taking away the people's right to private operation of industry.

I am, of course, in entire agreement with Dr. Morgan when he states that 'it is coming to be the recognized duty of management to provide the widest and best possible service at the lowest possible cost consistent with a fair return.' I think the industry has well deserved his praise for 'its excellent technical work,' and for the fact that the larger part of its investment is 'prudent, necessary, honestly made.'

Dr. Morgan is the only government official of standing who has had the courage to state that 'in the operation of public "yardstick" systems there should be no hidden subsidies.' He of course would not say this if he were not conscious that such exist. Unfortunately, he has not carried the decision in the councils of those who control government power policy or the TVA.

Dr. Morgan stated that one of my proposals -- i.e., that of the Power Pool, suggested by President Roosevelt -- was "too vague to be conclusive." I think that that is probably a just criticism. It was my hope that the President's proposal would become much more specific as a result of the power conference called by the President last autumn. Unfortunately, however, that conference was terminated by the President a short time after engineers on both sides had started their research into the details of a pooling agreement. It was reported at the time that a majority of those active in the government power programme wanted, not cooperation with the utilities, but their elimination. If we can get back to the cooperative attitude, it should not be difficult for reasonable men to settle the problem in a reasonable way.

Faithfully yours,

Wendell L. Willkie

DR. HARCOURT A. MORGAN (Continues): "Dr. Morgan is the only governmental official of standing who has had the courage, the courage (with emphasis), to state that in the operation of public yardstick systems there should be no hidden subsidies. He, of course, would not say this if he were not conscious that such exist." The implication is very clear.

THE PRESIDENT: In other words, in order for that letter from Mr. Willkie to the Atlantic Monthly to have appeared in the same issue as the original article, it was necessary that Mr. Willkie have a copy of Chairman Morgan's article before it was printed and have the opportunity given him by the editor to write a letter in regard to that article before the article was published. Correct?

DR. H. A. MORGAN: Correct. And in no case was the statement for this article ever submitted to the board. "Unfortunately, (Continuing this same quotation) he has not carried the decision into the councils of those who control government power policy or the TVA". Mr. Willkie continues the statement, "Dr. Morgan, a public official, questions the honesty of other public officials. If he is correct that regulation has failed through corrupt public officials", corrupt public officials (with emphasis), "then he doubly warns us against the adoption of public ownership where the opportunities for corruption by public officials would be greatly multiplied".

MR. EARLY: All of that is quotation?

DR. H. A. MORGAN: Yes, that is the end of the quotation.

THE PRESIDENT: Chairman Morgan, do you wish to say anything in reply?

DR. A. E. MORGAN: Yes. May I see a copy of this, please? I have no data whatever with me. May I see a copy?

THE PRESIDENT: Yes.

DR. ARTHUR E. MORGAN: Not the article but the charges of the two members of the board, the letter of January 13.

DR. H. A. MORGAN: That will be reported in the minutes.

MR. LILIENTHAL: That is that mimeographed statement.

MR. EARLY: Oh, I have copies of it.

DR. H. A. MORGAN: I take it that is a copy of the published statement.

MR. EARLY: This is a copy released by the TVA.

DR. H. A. MORGAN: Released by the President.

THE PRESIDENT: This was released at my request on Tuesday afternoon, last.

DR. A. E. MORGAN: Yes. There are only two or three things that in presenting to the press are so misleading here that I think I must comment on them. One relates to the last statement about the dishonesty of public officials in Mr. Willkie's comments. That is a comment on certain public servant officials who are corrupted by utilities, and the context shows it. It is not referring to Tennessee Valley Authority at all, but it was in my discussion of the necessity for disciplining the utilities that they had at times corrupted public utility officials and that is what Mr. Willkie refers to which is the significant point.

THE PRESIDENT: Did you have any communication with Mr. Willkie with regard to your Atlantic Monthly article?

DR. ARTHUR E. MORGAN: I had no communication with Mr. Willkie or any kind or any way. He did not get his copy from me. That was furnished him by the Atlantic Monthly, I suppose. Also it has been inferred that I had a copy of his paper. After my article was in page proof, his succeeding article was sent to me and I made two or three interlineations after my article was substantially completed and was in page proof. Then I saw his and made one or two interlineations after my article was substantially completed. I saw his as it came from the Atlantic Monthly to me. That has not been cleared.

THE PRESIDENT: In other words the Atlantic Monthly sent you your article to him and when his reply or addition was sent to them they sent that to you?

DR. ARTHUR E. MORGAN: The situation is this. When -- I think that his article appears before mine. You see.

MR. LILLIENTHAL: That is correct because you referred to it in your article.

DR. ARTHUR E. MORGAN: No, that is not the case. My article appeared before his. My article had been submitted supposedly completely. I corrected the galleyproof. It was in page proof. And when it was in page proof, I happened to be spending a few days in Massachusetts, near Boston, on other matters entirely and the Editor of the Atlantic Monthly sent me that and told me if I could get the copy to his office by two o'clock the next afternoon there would be opportunity for me to comment on Mr. Willkie's article. Mine was in page proof, the last day before it went in. That was how I happened to receive page proof.

THE PRESIDENT: But he must have had a copy of your article before he wrote his letter.

DR. ARTHUR E. MORGAN: But his letter was not his article.

THE PRESIDENT: I am talking about his letter.

DR. ARTHUR MORGAN: The Atlantic Monthly sent a copy of my article to him and he commented.

THE PRESIDENT: Did you see a copy of his comment?

DR. ARTHUR E. MORGAN: No.

THE PRESIDENT: But, you saw a copy of his article in the next number.

DR. ARTHUR E. MORGAN: Yes. There is one other point that I want to mention.

CHAIRMAN MORGAN: I would like to quote one statement that was quoted by Dr. Harcourt Morgan, "Arthur Morgan has increased both the scope and intensity of his attacks upon majority action until in recent months this opposition and obstruction have occupied practically his entire time even to the exclusion of his attendance upon Board meetings". That is an incorrect statement.

HARCOURT MORGAN: In connection with the Chairman's statement I should like to submit my evidence, the resolutions of the Board of August 31, with reference to this article and —

THE PRESIDENT: I think those are in already.

CHAIRMAN MORGAN: At various times members of the Board have been absent from meetings for considerable periods. On one occasion one of the other members was absent five months in the year, and in other cases members have been absent for considerable periods. It has been my custom to inquire of Board members or of the General Manager of his office whether a meeting was desired and my calls for meetings have been very few because those calls have gone through the general manager's office and have been left to him. I might say when recently I did call for a meeting that call — the meeting did not come as called by me but by all three members of the Board. It was taken up with the other two — if I and one other member are present at Knoxville very often it is not feasible to get a meeting; if the other two members are present it is feasible to get a meeting. I am in an adverse position there.

As to carrying on the work of the Board, especially recently the Board meetings have been largely comparable to this meeting where I was on trial. They have been quite similar in appearance to this meeting and there has been a piling up of records and terms against my record. That has been to a very considerable extent. Aside from the routine of the Board we have no difficulty.

THE PRESIDENT: Are records of those meetings kept?

CHAIRMAN MORGAN: Yes.

THE PRESIDENT: Stenographic records?

CHAIRMAN MORGAN: No, that has stopped. They are not kept. My attendance at a meeting in which the vote on any controversial matter is all arranged beforehand is somewhat limited. There is a vast amount of work in the TVA. The way in which I can most effectively work is a matter to some extent of my own judgment. I am keeping up even when away from Board meetings, I am keeping up with the current work of the Board. Material is sent to me if I do not happen to be in my office and I find under present conditions I can do more effective work in public service and for the TVA where I can have quiet and no antagonism. I can be of more service than if in formal meetings. I am serving the TVA as best I can with my own judgment, with all my time and energy except during a period of illness recently.

And the statement that opposition and obstruction have virtually occupied my entire time is complete inaccuracy and to indicate that I am not giving my time and energy and judgment to the TVA is an entire inaccuracy.

THE PRESIDENT: Chairman Morgan, you have just said something to the effect that decisions and policies are arranged and decided on before a meeting by the two majority members. I take it that on any board of management, that the members of a board of management or administration have a perfect right to consult together before a meeting, to decide on policy, whether it be a private corporation or a government agency, and that that is common practice. You have had the same opportunity to consult with each of your fellow members before me as they have had to consult with each other. Is that not true?

MR. A. E. MORGAN: The statement I have just made was to refute the implication that I was no longer a member of the Board and that I had abandoned my duties.

THE PRESIDENT: That does not answer the question.

MR. A. E. MORGAN: I introduced the statement at that time to relieve that false impression. Beyond that I do not want to go any further. I want to rely on my original statement. I made that particular statement lest it be inferred that I had practically abandoned my duties.

THE PRESIDENT: Did you not have the same opportunity to confer with your fellow members before a meeting or during the meetings as they had to consult with each other?

CHAIRMAN MORGAN: No.

THE PRESIDENT: Why?

ARTHUR MORGAN: That is a long story. I don't think I should enter into it here.

THE PRESIDENT: There again, Chairman Morgan, you have, in making the verbal statements which you have just offered, imputed improper methods of discussion between Board members before me. Did you mean to do that?

ARTHUR MORGAN: I prefer to limit my statements to indicate that I have not in any way withdrawn from the activities of the Board and I wish the force of my statements to be limited to that. That point I wanted to make very clear because otherwise --

THE PRESIDENT: (Interposing) You have imputed improper methods of consultation in what you have said.

ARTHUR MORGAN: Only where necessary to indicate that I have been performing my duties to the TVA. I don't want to go any further than that.

THE PRESIDENT: You made an imputation. Do you stand on that imputation of improper practices?

ARTHUR MORGAN: Yes.

THE PRESIDENT: You are not willing to state what they are?

ARTHUR MORGAN: Not at this time and place.

MR. LILIENTHAL: I assume that at the proper time there will be an opportunity to answer the additional charges that have been made in this meeting?

THE PRESIDENT: Yes.

ARTHUR MORGAN: I have made no additional charges in this meeting.

THE PRESIDENT: Chairman Morgan, I must disagree with you in the statement. You have made an additional charge of improper practices on the part of your two colleagues, that of making improper decisions and of conferring together in an improper manner before Board meetings.

ARTHUR MORGAN: I made those same charges publicly. There is nothing new in those charges. They are the same.

THE PRESIDENT: You are not willing to specify what those charges are?

ARTHUR MORGAN: No. I can only say that I have added nothing.

THE PRESIDENT: Vice Chairman Harcourt Morgan has offered this exhibit, resolution of August 31, 1937 relating to the Atlantic Monthly article.

The exhibit, numbered 32 (previously identified in the record) reads as follows:

Exhibit 32:

TENNESSEE VALLEY AUTHORITY
Knoxville, Tennessee
August 31, 1937

WHEREAS, Arthur E. Morgan, Chairman of the Board of Directors of the Tennessee Valley Authority, in an article entitled "Public Ownership of Power", appearing in the September issue of the Atlantic Monthly, has impugned the integrity of the Tennessee Valley Authority and the honesty and motives of its Board of Directors; and

WHEREAS, It is recognized that each member of the Board has the duty to express his opinion upon every question presented for action, and the privilege of expressing his dissent when his views do not prevail, nevertheless attacks, such as those in the article referred to, on the honesty and motives of associates who hold contrary views, are inappropriate to the discussion of public affairs, handicap administration, and are alien to the best traditions of public service; and

WHEREAS, A due regard for the responsibility of administering this project precludes the Authority from answering attacks of this character in the forum which Dr. Morgan has chosen; therefore, lest the Authority's silence be interpreted as acquiescence in the use of the aforesaid methods,

BE IT RESOLVED, That the Tennessee Valley Authority hereby disavows such methods in the discussion of its problems as injurious to the project and to the public interest.

MR. HARCOURT MORGAN: I should like to ask the Chairman, if permissible, to whom he refers as being absent from Board meetings five months.

THE PRESIDENT: To whom do you refer?

ARTHUR MORGAN: To Mr. Harcourt Morgan. Not in one period of time but in the course of a year.

HARCOURT MORGAN: I would like to explain that situation. I think you are possibly informed of my very serious illness. I was in a hospital for more than three months. I can give you the dates. The last date that I was present in August 1936 was August 11. I was then threatened with a nervous condition and I went away and came back on the tenth of September. At that time I was threatened with a serious carbuncle on the back of my neck. I went to bed. A Board meeting was called on the 15th of September, I think, and contrary to the doctor's direction I got up and went to that meeting.

HARCOURT A. MORGAN (continues): And then went home and went to the hospital. If I recollect right I didn't get out of the hospital until the last days of November -- three weeks of that period it was a question of which way I was to go. During the convalescence in December, during which time I had a nurse in my home, but carried on -- that is, authoritative activities with representatives of the staff and held two meetings. Two meetings were held during December in my home out of deference to my condition. I was unable to go to the office. I was unable to go to the office until some time in January and the first meeting I attended in January was on January 15. I think that explanation of the Chairman's statement is essential.

CHAIRMAN MORGAN: I'd like to add, there was no inference whatever of undesirable evidence.

HARCOURT A. MORGAN: It still is an open statement without any comment.

CHAIRMAN MORGAN: That is correct, but my implications that that same flexibility should apply to all members of the Board.

THE PRESIDENT: The next allegation on the part of Dr. H. A. Morgan and Mr. Lilienthal in the memorandum of January 18, reads as follows: "It is not permissible for Arthur E. Morgan as an expression of disagreement to engage in unsupported attacks upon the integrity, professional ethics, and competence of key members of the staff and to harrass and interfere with them while they are carrying out duties resulting from decisions duly arrived at by a majority of the Board of Directors."

Dr. Harcourt Morgan and Mr. Lilienthal, upon what facts was this charge made?

MR. LILIENTHAL: Mr. President, this is an extremely grave charge, and presents a situation -- a series of facts which are very distressing -- were very disruptive, and which to explain requires an extended statement of facts. I hope that in view of the importance and gravity of the charge that we may have an opportunity to state this matter in the detail which it deserves. The first set of facts upon which this charge is predicated relates to the attacks upon counsel for the Authority during the trial at Chattanooga, Tennessee, of the so-called 18 utilities case, which, as you recall, was an attack upon the constitutional validity of the Tennessee Valley Authority Act. This instance is illustrative of the type of opposition -- of disruptive opposition from within the Authority from which we have suffered -- from which the T.V.A. project has suffered -- from Chairman Morgan in varying degrees. Because it is so serious and so illuminative of the Administrative problems with which we are confronted, I should like to submit as an Exhibit to this statement a completely documented file, rather extensive, which gives the entire story and demonstrates, I think, unquestionably the accuracy of the general charge which I shall outline. The full significance of what has occurred in this instance can only be appreciated from a study of this documentary record, and everything that I shall say is based upon this record. I find that in this record -- in this file -- there are one or two memoranda from Mr. E. L. Chandler to Mr. James Florence Fly, dated sometime in November of 1937, which have been omitted from the files. I find it here.

I happen to regard these as immaterial, but Chairman Morgan has stated in the discussion of this matter with the Board that he regards them as very significant. I want to assure you that we will promptly supply copies for the record of those additional memoranda which are extensive. Mr. President, six days before the 18 companies suit came to trial at Chattanooga, Chairman Morgan appeared in Chattanooga at the request of Mr. Fly, General Counsel of the Authority, to discuss the possible testimony by the Chairman in that litigation. The telegrams requesting his appearance and so on are part of this file. A long conference was held, attended by Chairman Morgan, Mr. Fly, and Mr. John Lord O'Brien, whom I am sure you are familiar with, a distinguished attorney of Buffalo, New York, who has been for some years special counsel for the Tennessee Valley Authority in its constitutional litigation. In that conference, certain statements were made. It was an extended conference. A report of the conference in detail is included in this documentary file in a memorandum dated November 17, 1937. I should like to quote certain portions of that record: "He (the Chairman)/and parenthetically in the course of this discussion with Mr. Fly and Mr. O'Brien/ pointedly criticized some of the power transactions and some of the lines and construction jobs and expressed the idea that it would be possible for the Court to declare some of such activities illegal without affecting the whole plan." "Further," in the memorandum, "he (Chairman Morgan) questioned us /meaning Mr. Fly and Mr. O'Brien/ somewhat upon the legal series of the case; how the case might be divided up; what the grouping of the charges were, and sounded us out on the legal possibility that the court could and would take the view that some of the power operations might be enjoined and the rest of the program remained intact. Mr. O'Brien and I soon gathered the drift of this discussion and tried to impress upon him the significant point that anything which damaged any phase of our case, particularly anything coming from a man in his position, could not but damage the entire case. We expressed the thought that if the court concluded that the plan was bad, it was very likely to defeat us on the entire cause."

Another quotation -- and these are excerpts from the entire record: "Again the Chairman drifted into an oral criticism of the other Board members, and, finally backed to a discussion of the theories of the case. Repeatedly, he came back to the same problem of finding some theory of the case or possible judicial decision whereby certain of the power activities might be enjoined." According to a memorandum of November 18, from Mr. Fly, it is stated "A third point which was not mentioned in the rough draft of yesterday, was that the chairman asked for a list of the proposed witnesses." (Parenthetically, meaning the witnesses of the T.V.A. as of course the Power Company witnesses were not made available to us.) "I gave him a list of our own engineering staff and did not volunteer a list of the outside witnesses; however, he said he wanted the latter and I gave them to him. He indicated that he expected to talk to the witnesses in the next few days, but he drew no sharp line between the engineers in our own organization and those which we have retained specially on the case. The Chairman has in fact been talking extensively to our own engineers but I do not know with any accuracy the scope of his work with them. It has not been reported to me."

At the same time, six days before this momentous constitutional litigation was to begin and while counsel and engineers were all under great strain of preparing for this case against some 50 lawyers headed by the late Newton D. Baker, the Chairman, in writing, charged counsel first, collusion with the other directors in excluding him from the case; second, endeavoring to commit him to unapproved policies, and third, violating administrative procedure in calling directly upon engineers for assistance, and fourth, calling upon at least one engineer for an improper type of evidence. I am not referring at the time to the place in the voluminous record where these statements are documented. These charges which were made in writing were also repeated orally.

THE PRESIDENT: Who were they made to?

MR. LILIENTHAL: To Mr. Fly.

THE PRESIDENT: Counsel for the TVA?

MR. LILIENTHAL: Counsel for the TVA, and in our opinion they were without any foundation in fact, as the subsequent analysis of this record shows, and they constituted an improper harrassment of counsel at a critical time. This is in support of a specific charge in this memorandum to you.

THE PRESIDENT: Was the trial then on or was it just about to begin?

MR. LILIENTHAL: This was six days before the trial began. In this memorandum by Chairman Morgan to General Counsel Fly and in these conferences the Chairman emphasized the significance of his position as Chairman, his standing as an engineer, his experience in adjusting rates between conflicting interests, and asserted that he ought to have a guiding hand in the conduct of the case.

Despite the foregoing embarrassments (to understate the case) Chairman Morgan, at the suggestion of counsel, attended a number of conferences concerning the proposed testimony of different witnesses. He requested and he received a list of prospective witnesses. As the trial proceeded, he was forwarded complete copies of all hydraulic engineering testimony of the opposition which, of course, presented its case first. He had offered no suggestions in aid of the preparation.

Some weeks later, in the midst of the trial, on the fourteenth of December Chairman Morgan wrote Mr. E. L. Chandler, a TVA engineer of very high standing and ability, reprimanding him for preparing engineering data of false or misleading character, stating that this was improper professional conduct and advising the engineer to write the General Counsel and withdraw the material submitted. The memorandum to which I refer is No. 87 in this - for ready reference - in this file which I desire to submit as an exhibit, supplemented as it will be, as I have said before by additional memorandums.

Forwarding a copy of that memorandum the Chairman wrote Mr. Fly, with a copy to Mr. John Lord O'Brian, that a number of engineers had expressed to Chairman Morgan their embarrassment at being called upon to give testimony of a misleading character. Mr. Fly, on December 20, (memorandum in this record) called upon the Chairman to support his charges or to withdraw them. On December 22, Mr. John Lord O'Brian made a similar demand. I need not point out the extreme seriousness of any such charge unless made with the fullest support of the facts.

The Chairman did not respond to these demands for support of these charges or a withdrawal of them in the alternative. On December 29, after being reliably informed that the Chairman was secretly conferring with engineers in the specific attempt to procure evidence of unprofessional conduct by the lawyers and the engineers or in the alternative, the lawyers or the engineers, Mr. Fly again called upon the Chairman to support the charges specifically or to withdraw them.

I call your attention, Mr. President, to the fact that during this time this extremely crucial case was on trial. On December 30, in a memorandum which is No. 74 in this file, the Chairman responded, discussing vaguely (that is to say without specification) three cases, one of which involved Mr. Chandler, and as shown by this file that is entirely without merit in our opinion.

Since that time, although frequently requested by both Mr. Fly and Mr. O'Brian, the Chairman has refused to give any further information as to the basis of his charges of unprofessional conduct. He has persistently refused to give the names or the circumstances under which prospective witnesses were alleged to have been improperly influenced by counsel. Both Mr. Fly and Mr. O'Brian felt that such charges against counsel could not go unnoticed. In the midst of the case they were forced to carry on an extensive inquiry and the long series of communications with the various witnesses and with all the parties who had been considered as witnesses, none of which would have been necessary if the supporting facts to this grave charge had been furnished. Evidently the entire field was covered and the complete file establishes the utterly groundless character of the charges. Every one of the witnesses used, or men who were prospective witnesses, whether within the TVA or outside the TVA, have filed statements in this record in that respect.

This incident came at a time when the Authority's life was at stake, and more than the Authority's life was at stake. In many ways it may be said that the future of the conservation policies of this country were at stake. And the burden of it fell upon the men who were charged with this grave responsibility. As Mr. O'Brian stated, the making and the continuance of those charges was a grave harrassment of counsel under these extreme circumstances and was disruptive of the work on the case itself. I think we all know enough about the conservative character of Mr. John Lord O'Brian, of his own experience in the trial of cases and the counselling of important interests and I should therefore like to read orally and to refer in the record to his second letter to Chairman Morgan dated January 9 in this respect.

"Dear Dr. Morgan:

"I have your letter of December 30, 1937 (This is a memorandum containing unsupported charges).

"Prior to the trial and during the trial I have actively participated in and have closely observed the preparation and presentation of the testimony. Since receiving your recent letter, I have again gone over the file of material concerning the preparation and presentation of the engineer's testimony in the case now on trial, and have talked with the attorneys and also with a number of the witnesses. As a result, I am more than ever confirmed in the opinion which I previously expressed to you that the case has been handled with unusual ability and in accordance with the highest standards of integrity.

"To this I desire to especially call your attention. Your charges, coming while the case was actively on trial have had a disrupting and demoralizing effect upon all the attorneys and upon the conduct of the Authority's case.

"After careful review of the matter I am convinced that charges must have originated in some misunderstanding that have no real foundation in fact. The matter ought to be definitely cleared up in justice to the lawyers and also in justice to the Authority's case which needs the best efforts of all of the attorneys. As all the attorneys are now under great strain in the stages of this trial I am writing to ask whether you will not clear the record and set the members of the legal staff free from a very heavy and, I think, unwarranted burden of anxiety at this critical time." That is the end of Mr. O'Brian's letter.

Now, at about this stage, the Board received copies of these memoranda and, being cognizant of the situation felt it imperative to recognize the gravity of this interference of the conduct of the case; and it held a meeting and the circumstances of that meeting are set out, the difficulties we had in securing the chairman's presence, the necessity for several recesses and respectful request to him to appear, as otherwise the matter could not be cleared since it was a matter in which he had made charges.

The Board, by resolution gave a vote of confidence to the legal and engineering staff concerned after a study of the record and a discussion and the discussion was taken down except the very first part of the board meeting, by stenographers and is available, whether in this record or not I am not sure. Two resolutions were adopted, one condemning this conduct as disruptive and an interference with the conduct with the Authority's business and second, a vote of confidence in counsel and the engineers. Chairman Morgan declined to vote in favor of a resolution which embraced both engineers and lawyers, although he stated on the record that he would be willing to approve a resolution if it were confined to the engineers alone. At the board meeting at which this resolution was considered I asked Chairman Morgan, and a member of the legal division asked Chairman Morgan in fairness to these lawyers whose professional integrity had been attacked, in fairness to the case, in fairness to the court, to name the people against whom pressure had been exerted and against improper influence had been exerted. Chairman Morgan, as in this hearing, persistently refused to give even a clue as to the circumstances under which the allegedly unprofessional pressure had been put upon witnesses and likewise refused to withdraw the charges. Despite the fact that from his own statement in this record it is clear, it seems to me to any fair student of this record that the charges were reckless and without foundation in fact the Chairman has continued to this day in his tenacious refusal to withdraw the charges or to give the names of the witnesses concerned or any other specific information, and I hope that the President of the United States today will seek to secure the names of those witnesses which the members of this Board and the legal division were unable to secure. As I say, I should like to submit as an exhibit to that portion of the statement this entire file with the supplement referred to. (File not submitted at this time.)

Another instance of facts supporting this same charge of interference and harrassment in the conduct of Authority's business is the position and conduct of Chairman Morgan in the matter of the negotiations of the contract with the Aluminum Company, which contract I described this morning. You will recall I stated there the background of those negotiations and the reasons, which we thought were good reasons why the Authority declined to enter into a contract respecting a division of so-called benefits to be derived by the parties from the proposed construction of Fontana Dam. The decision of the Board not to pursue negotiations relating to Fontana Dam was reached May 19th, 1936, at a conference of all the Directors here in Washington shortly after a conference with you, Sir. It soon came to the attention of the Board, however, that Mr. Adolph J. Ackerman, a former employee of the Aluminum Company, one of the engineers, who had been designated by Chairman Morgan to carry on Fontana Dam negotiations for the Authority, was continuing unofficial negotiations with the company on the Fontana Dam matter, notwithstanding the fact that the Board had limited negotiations in its May 19th meeting for the future to the purchase and sale of power. In those unofficial negotiations, I want to make it clear I am not ascribing to Mr. Ackerman any dishonesty or corruption, in continuing the negotiation. All I am saying the fact that that is what happened. Thereupon on June 2, 1936 Chairman Morgan being absent, the beginning of an extended absence of some six weeks for a rest -- and I am not criticising the absence -the Board adopted a resolution providing that there should be no further communication with Congress during the current session with reference to Fontana Dam and no futher negotiation with the Aluminum Company with regard to that Dam.

THE PRESIDENT: The appropriation having been turned down by the Committee by this time?

MR. LILIENTHAL: Yes, sir. And by the company. I am submitting a copy of this resolution for the record.

EXHIBIT 33:

MINUTE ENTRY
BOARD MEETING HELD ON JUNE 2, 1936.

"As a result of its lengthy discussion concerning the proposed Fontana Dam construction project, the Board arrived at the following conclusions:

1. No further communication is to be had with Congress concerning authorization to construct the Fontana Dam.
2. All negotiations with the Aluminum Company of America involving the acquisition of the Fontana Dam site are to be immediately discontinued.
3. The conclusions of the Board with regard to the acquisition of the Fontana Dam site are not to preclude further negotiations with the Aluminum Company of America relating to the interchange and sale of electric energy."

Nevertheless, early in August, 1936 Chairman Morgan conferred in New York with Mr. Arthur V. Davis, Chairman of the Board of Aluminum Co. According to Chairman Morgan's own statement in writing of that conversation in a memorandum dated August 15, 1936, he told Mr. Davis that he disagreed with the Board action in discontinuing Fontana negotiations and that he would seek reconsideration by the Board. Moreover, without prior consultation with the Board he outlined to Mr. Davis a basis upon which an agreement might be worked out if Fontana negotiations were resumed. He not only questioned the appropriateness of the Board action but also asked Mr. Davis "whether discontinuance of negotiations responded to the wishes of the Aluminum Company and to what extent they were informed of his action." The memorandum of August 15 to which I refer I submit as an exhibit.

Exhibit 34:

The Board of Directors
Arthur E. Morgan
August 15, 1936

ALUMINUM COMPANY NEGOTIATIONS

While I was in New York last week, I spoke for a moment to Mr. A. V. Davis of the Aluminum Company. I told him of the action of the Board to the effect that negotiations with the Aluminum Company should be discontinued and that therefore we could not go further with negotiations with them. I told him that inasmuch as I considered the matter to be vital to the unified control of the Tennessee River, it was my intention to bring the matter to the Board again and to ask for reconsideration of their action. He asked in case of any renewal of negotiations what would be the first step.

My reply was substantially as follows: Technical negotiations have been carried on through the Aluminum Company's assistant chief engineer, Mr. Growden. It is the opinion of our engineers that Mr. Growden has a theory concerning the distribution of the additional power which will result from unified operations, with which our engineers cannot agree. Mr. Growden, in their opinion, assumes that of the additional power which would result from integrated control a very large part should go to the Aluminum Company. Our engineers do not agree with this suggested apportionment. It seems that perhaps the next step would be for the Aluminum Company to bring in some outside disinterested engineer who was not committed to any theory about the matter to make a review of the situation with our engineers to discover whether the Aluminum Company would find a more moderate position acceptable. Unless that result can be achieved, it would seem to be an almost impossible gap between the engineers of the Aluminum Company and those of the TVA from the point of technical appraisal. Mr. Davis indicated that he would not be averse to such an appraisal. I reiterated to him, however, that the Board had taken official action discontinuing negotiations.

In view of the fact that the engineers under my direction were carrying on these negotiations, I was desirous of knowing whether discontinuance of negotiations corresponded to the wishes of the Aluminum Company and to what extent they were informed of such action. Mr. Davis told me he had had no information as to the action of the Board.

(S) Arthur E. Morgan

cc Mr. John E. Blandford
Dr. H. A. Morgan
Mr. David E. Lilienthal

Dr. Glaeser in a memorandum which he wrote to Mr. Lilienthal on January 9, 1937 stated that the appraisal unit under Chairman Morgan's direction had assumed the job of valuation as well as appraisal and pursuant to its own theories of valuation had adopted methods of conducting its appraisal which did not conform to the valuation theories of the committee constituted by the Board.

In the same memorandum Dr. Glaeser also complained that both Chairman Morgan and the engineers on his staff seemed reluctant to supply him with data essential to the work of allocation and that there was a delay of four and a half months in securing from Dr. Morgan's staff certain data essential to the work of allocation.

Partly as a result of these delays and partly due to the complexity of the problem no recommendations on allocation had been made to the Board by the valuation committee at the time of the appropriation hearings in April of 1937 before the House Appropriations Committee. Board discussions had clearly revealed that no allocation could be made pending the solution of many problems which were still open. Nevertheless, when Congressman Taber questioned Chairman Morgan on dam allocations he proved to have at his hand a complete set of allocation figures for the dams constructed, under construction and scheduled for construction, and these he forth with supplied the Committee, although they had never been supplied to the Board and the Board was unaware that they had been prepared.

The Chairman's explanatory statement, again illustrating his use of the prestige of his office in support of his personal views, in presenting this grave administrative problem with which we were contending is as follows. This is a quotation from his testimony before the House Appropriations Committee:

Dr. Morgan. I have a statement here that has not been approved by the T.V.A. Board, but I can give you my own opinion. I am satisfied personally that it is an excellent allocation. The Board has not acted upon it either pro or con, but our engineers, under my direction have worked it out.

That appears on page 366 of the Hearings before the Subcommittee of the Committee on Appropriations of the House, Second Deficiency Appropriation Bill for 1937, April 12, 1937.

While Chairman Morgan thus explained that the allocations were his own and that they had not been approved by the Board, his proposals to a Committee of Congress in effect operate as a commitment of the Authority. Unless the ultimate allocation figures are substantially the same as those recommended by Chairman Morgan, opponents of the Authority's power activities will, of course, attempt to make capital of every deviation.