

TESTIMONY OF COMMISSIONER PHILIP A. LOOMIS, JR.,
SECURITIES AND EXCHANGE COMMISSION, BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY
OF THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

September 30, 1975

Mr. Chairman and members of the Subcommittee:

I am pleased to again have the opportunity to appear before this Subcommittee. As the Subcommittee will recall, I appeared and testified on July 17, 1975, with respect to the subject of contributions to officials of foreign governments by American corporations, and at that time, I referred to testimony which I had prepared for the prior appearance which was cancelled because of pressing legislative business. Accordingly, at this appearance, I propose not to comment generally on the subject but rather to restrict myself largely to the questions asked in your letter of September 22, 1975.

In that letter, you requested testimony on the difficulties, if any, which the Commission is having in obtaining information from the Lockheed Corporation regarding their activities in making payments to foreign agents and to foreign officials. In addition, you inquired as to what success the Commission has had in its new program of obtaining voluntary disclosure from corporations on these matters.

With respect to the Lockheed matter, I am under some inhibitions. Our staff is actively investigating the situation and it is generally not our policy to discuss pending investigations or to air our disagreements with companies that we are investigating in public rather than in court. On the other hand, this Subcommittee has specifically asked a question in which it has a legitimate interest, and I will, accordingly, try to be as helpful as I can.

The short answer is that we are having difficulties in obtaining certain information from Lockheed Corporation, specifically with reference to the names, countries and amounts of payments. Our staff has been meeting with representatives of Lockheed with respect to this matter since the middle of June. In all of these meetings Lockheed representatives have expressed great reluctance to provide our staff with information and documents relating to what it appears to regard as details concerning its payments abroad. It would not be in order for me to attempt to explain at length why Lockheed takes that position. This explanation could better come from Lockheed. However, they appear to believe that this conduct should be regulated by Congress rather than as an aspect of disclosure policy, that detailed disclosure would be very harmful to the company since it could provoke adverse reactions abroad and might endanger continuing

contracts in foreign countries, and that this possible injury to the company and its stockholders and employees outweighs any possible public interest in disclosure of the details. Our staff's view is that it must in its investigations obtain all relevant information in order that it may be in a position to make an informed recommendation to the Commission. Lockheed appears to fear that if detailed information is made available to the Commission, the Commission may not be able to safeguard the confidentiality of that information either by reason of the Freedom of Information Act or because of Congressional inquiries.

This concern does raise a problem since if we are unable to safeguard sensitive information obtained in an investigation, then our ability to obtain that information and, consequently, our effectiveness as a law enforcement agency would be gravely compromised.

As the matter stands at present, Lockheed has agreed to let our staff look at the documents which contain the details and this has been done, but Lockheed has refused to turn over the documents or to permit our staff to make notes of identifying details in certain documents. Our staff believes that it can not allow persons under investigation to impose conditions upon the right of the Commission to obtain information.

I hope that this matter can be satisfactorily resolved without the necessity for litigation with Lockheed, which would not only result in delay but, I believe, would be counter-productive both from our viewpoint and from the viewpoint of the company.

With respect to your second question, that is, the success we have had in our new program of obtaining voluntary disclosure from corporations concerning such payments, this has proved to be a slow process. Under the circumstances, however, that is understandable.

First the Company must review its particular situation and decide what to do. While we believe that voluntary disclosure is the proper course of action, as well as being less painful than compelled disclosure, those who have the responsibility for decisions in the company may be uncertain, at least initially, as to what such a decision entails. Even after such a decision is made, considerable time is required to implement it. By that I mean, once a company decides to embark on such an effort, its first step would normally be to make inquiries within its own organization as to the possible scope and nature of the payments which may have been made. In the case of a corporation operating in numerous foreign countries, this will necessitate rather searching inquiries concerning operations in various foreign countries and verification internally of the information thus obtained. It would seem quite possible that officers and employees of the corporation who have engaged in such activities might be reluctant to tell the full story even to their superiors.

Once the information is assembled, the company then has to evaluate it in order to determine the extent and nature of any problem it may have. We would naturally expect that a company which comes to us in order to discuss a disclosure question be in a position to provide us with the necessary information.

I am happy to report to you, however, that there has been what, I think, may be something of a breakthrough in this area in connection with a program voluntarily undertaken by Cities Service Company, after consultation with the Commission's staff, to determine whether any illegal political contributions or illegal payments have been made on behalf of that Company or its subsidiaries either within or outside the United States, as disclosed in a public report filed with the Commission by that Company on September 23, 1975, and in an amendment to a pending registration statement under the Securities Act of 1933 which amendment was filed on the same day. The program was instituted after a preliminary inquiry by the Company indicated the existence of possible illegal payments made in foreign countries.

In summary, the voluntary program undertaken by the Company is as follows:

1. The Audit Committee (composed of outside directors) was directed to conduct an investigation of all matters thus far discovered as well as any similar activities involving the Company either within or outside the United States during the last five years.

2. The Audit Committee was authorized to incur expenses it deemed necessary in carrying out its investigation, including the fees and expenses of outside legal counsel and the independent public accounting firm which the Committee may select to advise it.

3. The Board of Directors directed its foreign subsidiaries to cease all arrangements for the receipt of cash in transactions not accounted for on its books and to report to the Chairman of the Audit Committee that it has complied.

4. The Board directed issuance of a Policy Statement to the effect that the use of Corporate or Subsidiary funds for any unlawful or improper purpose is prohibited; that no undisclosed funds shall be established or artificial entries made on the books; that all employees be made aware of this policy and responsible for reporting any knowledge of actions in contravention of the above; and that certain employees periodically certify compliance with this policy.

The Company's Audit Committee has engaged independent counsel and auditors to proceed immediately with the investigation and to report their findings and recommendations directly to the Audit Committee. Future reports of the Audit Committee concerning the progress and results of the investigation will be filed with the Commission on Form 8-K, which is our form for the current reporting of certain material information.

The Company has also advised the staff that all documents relating to the investigation will be made available to the staff upon request.

I have with me a copy of the Company's report filed on September 23, 1975. While this is a fairly lengthy document, covering about six and one-half pages, I think it might be worthwhile to include it in the record since it contains what I regard as a rather good description of how a company can go about dealing with this problem. I think the Policy Statement which the Board directed its Chairman to issue to all officers and employees of the Company is also of interest. It is to be substantially as follows:

1. The use of Corporate or subsidiary funds or assets for any unlawful or improper purpose is strictly prohibited.

2. No undisclosed or unrecorded fund or asset of the Corporation or any subsidiary shall be established for any purpose.

3. No false or artificial entries shall be made in the books and records of the Corporation or its subsidiaries for any reason, and no employee shall engage in any arrangement that results in such prohibited act.

4. No payment on behalf of the Corporation or any of its subsidiaries shall be approved or made with the intention or understanding that any part of such payment is to be used for any purpose other than that described by the documents supporting the payment.

5. Any employee having information or knowledge of any unrecorded fund or asset or any prohibited act shall promptly report such matter to the Auditor General of Cities Service Company.

6. All managers shall be responsible for the enforcement of and compliance with this policy, including necessary distribution to ensure employee knowledge and compliance.

7. Appropriate employees will periodically be required to certify compliance with this policy.

8. This policy is applicable to Cities Service Company and all its domestic and foreign subsidiaries.

The Board directed that the Policy Statement be distributed to all officers and directors and to each employee whose responsibilities are such that he could violate the prohibitions of the Statement.

I think that this is an encouraging development and I hope that other companies having this problem will be willing to proceed along the same lines.

This concludes my prepared statement and I will be happy to answer any questions which the members of the Subcommittee may have.