

one. How can we condone practices on a limited scale which, if indulged on a larger scale, would unquestionably threaten the solvency of an entire utility system? Where is the line of demarcation beyond which "tolerable" practices become intolerably dangerous?

Here too the respected regulatory agencies have refused to be led down the primrose path. There are industries, particularly in the extractive mineral field, wherein gambling is such an essential and customary part of their business practices that the courts have, without prejudice, likened them to a poker game. The electric utility industry has never been considered one of these. It should not become one under the aegis of the Federal Power Commission.

Section 204 (a) provides that public utilities may not issue securities unless the Commission finds, among other things, that the purpose for which the proceeds will be spent is "compatible with the public interest." This provision has never been interpreted by the courts. Nevertheless some light as to the responsibility and burden which it imposes on the Commission and utility, respectively, can be gleaned from the court's interpretation of the similar but less stringent requirements of Section 203. The latter section prohibits electric utility mergers unless the Commission finds them to be "in the public interest." In Pacific Power and Light Co., et al. v. Federal Power Commission, 111 F. 2d 1014 at 1016, the court explained that the purpose of this provision is to insure

"against public disadvantage through a requirement of a showing that mergers . . . will not result in detriment to consumers or investors or to other legitimate national interests."

For this reason, it continued,

"the Commission properly requires applicants to make a full disclosure of all material facts. The burden is on them of showing affirmatively that the acquisition or merger is consistent with the public interest. The Commission must necessarily take an over-all view and in many cases it will . . . be called upon to weigh considerations pro and con." (Emphasis supplied.)

In the light of that pronouncement, I am unable to agree that the applicant here has made, or has been required to make, the showing clearly called for by the Act prior to granting the authorization requested. Section 204, as will be seen, is prohibitory in character; it permits authorization of securities "only if" the Commission has obtained information on which it can make the detailed findings that are conditions precedent to its action thereunder. In pertinent part, Section 204 (a) of the Federal Power Act (16 USCA 824c) provides that: