

opportunity for a hearing to determine whether the line is 'compatible with the public interest' . . ."

As this was the sole and separable question of the case, its determination did not require us to delay the remainder of the issue. The sections of the Act referred to above specifically give us the power to separate a single project for detailed investigation; to withhold approval of the expenditure of capital for such a project pending completion of the investigation; and to approve the issuance of capital securities and the expenditure of the proceeds on all other projects while such an investigation takes its course. That is the procedure -- and it is the only procedure -- which I advocated in this case.

Regardless of the "politically controversial" nature of such an inquiry, our statutory responsibility and oath of office require us to consider questions which can only be answered by such an inquiry. The majority's obdurate refusal to inquire cannot be concealed by distorting my position.

But the more serious result of the majority's position is not their refusal to determine whether "the construction of facilities . . . for a future use which may not materialize" is "compatible with the public interest." Nor is it the majority's refusal to define or even discuss "the public interest" as a standard. The more serious result is that -- acting on behalf of the Federal Power Commission, and in the first and only exposition this Commission ever made of Section 204 -- the majority have totally discarded "the public interest" as a standard, despite its unobscurable presence in the statute!

Section 204 (a) clearly and with no trace of ambiguity states that before it may approve a security issue this Commission must satisfy itself that the specific undertaking to be financed --

- (1) is lawful, and
- (2) that the company is legally authorized to perform it, and
- (3) that its performance "will be compatible with the public interest," and
- (4) that it will be consistent with the proper performance of public utility service, and
- (5) that it will not impair the company's ability to serve as a public utility.