As each of these constitutes an independent standard, we are legally forbidden to approve an issue unless we can find, in fact as well as in fine-spun legal theory, that the proposed undertaking meets each test.1/

Obviously, the fact that Congress refused to prescribe an alternative standard -- one under which the Commission could have approved or disapproved an undertaking in its discretion -- in no way diminishes the Commission's duty to determine whether a proposed issue meets the five standards Congress did prescribe. Nor does it diminish the Commission's authority and duty to disapprove an issue if the undertaking fails to meet any one of the five standards, each of which has a separate efficacy.2/

In their anxiety to avoid decisional responsibility, the majority have perverted the public law. The first two and one-half pages of their statement describe the application and staff's "careful examination" thereof. Then, after explaining for three pages that the test of "public convenience and necessity" is more discretionary than the test of "the public interest," they rule that we need not apply "the

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1/ The Commission, of course, must make the additional finding that "such issue . . . is reasonably necessary or appropriate" for an undertaking if it satisfies each of the five prior standards.

2/ As introduced, the bill that contained what became Title II of the Federal Power Act (S. 1725 and its House companion H.R. 5423, 74th Cong. 1st) made no reference to "the public interest" whatsoever, or to any of the other standards, in what is now Section 204 (bill Section 206).

Instead, the bill provided at Sec. 204 (of the original) that: "No public utility shall undertake the construction of or extension of any facilities . . . unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction . . ." As this authorized the Commission to exercise precedent, unrestrained certificating authority over all utility construction for interstate purposes, the securities section merely stated that utilities could only issue securities for authorized purposes.

But the Senate and House Commerce Committees chose not to vest unconfined certificating power in this Commission. Accordingly, they deleted the certificating section in its entirety, and inserted five specific standards in the securities section instead. (See S. 2796, in the nature of a substitute for S. 1725, as reported by each Committee and as passed.)

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