

The majority refused to consider, discuss, or acknowledge -- and labored to obscure -- the only question of the case: namely, whether or not it is in "the public interest"^{4/} for a company, in the face of an effective prohibition against the export of surplus Bonneville power and in order to protect its private monopoly position, to expend capital underwritten by the ratepayers in a risky attempt to prevent the construction of an admittedly needed extra-high-voltage regional intertie by the construction of a designedly inferior substitute. Management here, as in all similar cases, obviously considers the risks justified as a means of achieving the ends chosen by management; but the question is whether these means or these ends should be imposed on the ratepayers who must ultimately pay the bill. Our duty is to answer that question. And abdication is not an acceptable substitute for a duty discharged.

In an attempt to extract from the majority some sort of lucid exposition of their refusal to answer the question I included the following passage in my dissent:

"Another favorite thicket of the utility lawyer defending practices such as those under discussion here is the argument that no interference with an enterprise such as this one is proper because the impact of the actions complained of is not sufficient to bankrupt the company even if the worst consequences were to ensue, and the effect upon the individual rate-payer, while not exactly a happy one, would not be disastrous.

"This begs the question and raises a smokescreen of sophistry into the bargain. There is a principle involved here, and a supremely important 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."

^{4/} Apart from its quotation of the statute, and its attempt (both footnoted) to obscure the court holding that says this Commission must require "full disclosure of all material facts" before it can find a proposed undertaking "compatible with the public interest," the majority barely mentions "the public interest" standard.