

out-of-state utilities in accordance with a multilateral plan and on a regular basis and yet it may contract to pay only an in-state public utility over whose lines it directly receives the energy. A public utility so doing (and which meets tests (1) and (2)) could claim exemption under H.R. 5348.

The bill, if enacted, would allow some utilities to arrange their operations and contracts<sup>5</sup> with out-of-state utilities or multi-state networks to bring themselves within the exemption definitions. As a result, some members of a coordinated bulk power supply system buying and selling large amounts of energy from other states would be subject to Commission jurisdiction and other members deriving the same benefits would not, depending upon which of the pool companies happened to be directly connected with the out-of-state sources and which were not, and which bought or sold electric energy "under contract" with an out-of-state utility.

The first section of H.R. 5348 would exempt from FPC jurisdiction "any cooperative or nonprofit membership organization which is financed by the Rural Electrification Administration". The Commission has held that such cooperatives are now exempt. *Dairyland Power Cooperative*, Opinion No. 511, January 5, 1967. A petition for judicial review of a related case is pending in the Court of Appeals for District of Columbia Circuit. *Salt River Project Agricultural District v. Colorado-Ute Electric Association, Inc.*, Order issued January 6, 1967, pending on petition for review filed *sub nom Salt River Project Agricultural District*, CADC No. 20960, May 2, 1967. The Commission is divided on the scope of the present law but has unanimously stated, as a matter of legislative policy, that distribution cooperatives should not be subject to the Act but that generation and transmission cooperatives which transmit electric energy in interstate commerce should be subject to appropriate Federal regulation.

DEPARTMENT OF AGRICULTURE,  
Washington, D.C., June 13, 1967.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of March 13, 1967, for a report on H.R. 5348, a bill "to amend the Federal Power Act, as amended, in respect of the jurisdiction of the Federal Power Commission."

H.R. 5348 would amend subsection (f) of section 201 of the Federal Power Act, by making Part II of the Act inapplicable to and noninclusive of REA-financed cooperatives or nonprofit membership organizations, and would make Parts II and III of the Act inapplicable to a public utility whose facilities are situated in a single State and are not used to transmit or receive electric energy by direct connection from, or under contract with a public utility or other entity in, another State.

The position of this Department, of which the Rural Electrification Administration is a part, that the Federal Power Commission has no jurisdiction over REA-financed systems under Part II of the Federal Power Act, was confirmed by the Commission's January 5, 1967, decision in Docket E-7113, Opinion No. 511. Unless this decision is overturned, there is no need for enactment of the first paragraph of section 2 of the bill.

The second paragraph of section 2 deals with public utilities which are now subject to regulation under the existing provisions of Part II of the Act. The electric cooperatives, as wholesale customers of these public utilities, and other such customers, have little to gain and potentially a great deal to lose, if they are deprived of an effective regulatory remedy in cases of unreasonable and discriminatory rates, refusals to furnish any service or to correct poor service, and inequitable and unwarranted limitations and restrictions in their wholesale power contracts. State regulation over these matters is often completely absent or is not effectively exercised.

There is also to be considered the possibility that enactment of this second paragraph will tend to encourage electric utilities to isolate and segment their operations so as to qualify for exemption thereunder. This might be accomplished by confining their operations to conform to the criteria of H.R. 5348. By refrain-

<sup>5</sup> What is meant to be encompassed by the term "contract" is unclear. The law, in certain cases, recognizes unwritten agreements (which often govern inter-company transactions in an interconnected network) as "contracts" but the intent of "contract" in the bill is not stated.