& Power Co. v. *Federal Power Commission*, 324 U.S. 515 (1945), the Supreme Court, ruling on the requisite jurisdictional fact of an interstate flow of power into wholesale sale transactions, said:

"We have said of Part II of the Power Act that 'federal jurisdiction was to follow the flow of electric energy, *an engineering and scientific fact, rather than a legalistic or governmental*, test.'"

The emphases in the foregoing quote are the Court's, not ours! This interpretation of the Federal Power Act goes to the heart of the purpose and history of FPC wholesale rate regulation. It also reveals clearly and succinctly the precise object of the instant H.R. 5348: To create a *legalistic* means whereby many interstate wholesale sales will, immedaitely or foreseeably, be exempted from the Commission's jurisdiction.

We think it important for the Committee to consider just how easy it will be for *legal* devices to be erected to achieve this avoidance of jurisdiction—if this legislation becomes law. Consider the facts in the precedent-setting case of *Shrewsbury Municipal Light Department* v. *New England Power Company*, 54 PUR3d 449, 55 PUR3d 410 (1964), affirmed by the United States Court of Appeals, Second Circuit. New England Power Company ("New England") delivered power to Massachusetts Electric Company ("Massachusetts"), its wholly owned subsidiary, over a 69 kv line and into a 69/13.8 kv substation, Massachusetts taking delivery at the low voltage (on the "low side" of the transformation equipment). The substation had a nameplate rating of only 22,500 kv. Massachusetts then transmitted the power only a few feet to its adjacent switching station—at which delivery was made to the final wholesale customer, the municipality of Shrewsbury—all within the same substation area. The case involved Shrewsbury's petition for service directly from New England (the parent corporation), in lieu of service from Massachusetts (the intermediary subsidiary corporation), for the simple reason that the former's wholesale rates were considerably lower than the latter's.

What do the facts in the Shrewsbury case have to do with your assessment of H.R. 5348? Simply this: If H.R. 5348 is enacted, we may anticipate the creation of many "Massachusetts"—paper corporations forming the *legal* means for qualifying under the exempting criteria of this legislation. Indeed, we are emboldened to predict that, if H.R. 5348 passes, we shall witness the manifold increase in the number of "power companies" in the United States. A completely insulating procedure (if H.R. 5348 is enacted) will call for existing company A to create wholly owned subsidiaries B and C. A will deliver to B at the "high side" of a transformer (which will be owned by B); B will deliver to the "low side" of the same transformer (which will be owned by C); and C will deliver to an adjacent substation owned by the ultimate wholesale customer, D, whose purchases will escape the regulatory protection of FPC's jurisdiction. Of course, A will contract with B, B will contract with C, and C will contract with D.

The absurdity of such an arrangement, legalistically, is pronounced enough. That such an absurd arrangement could be used to eradicate the otherwise jurisdictional and realistic "engineering and scientific fact" of interstate wholesale transactions is what should concern the Congress. For, just as surely as the Subcommittee sits in session today, that is the type of arrangement that will proliferate throughout the electric industry if H.R. 5348 receives passage.

Thus, what may be proferred as legislation to "cure" the Florida situation (and we hold no brief for the need for any such thing), we are dealing here with a fundamental change in statutory jurisdictional criteria, a change that is by no means indigenous to Florida but that will be taken advantage of wherever the power companies choose to create the paper corporations to do it. The Congress ought not to permit it to be done.

For all of which reasons, supplementing those ably advanced by NRECA's prepared statement, we respectfully urge the Subcommittee to give H.R. 5348 an unfavorable report.

Mr. MACDONALD. At this point the House is already in session for 20 minutes so we will adjourn the hearing until tomorrow at 10 a.m. The first witness will be Mr. Homer T. Welch, and I repeat my offer that if anyone wants to submit his statement for the record, it will appear as though read.

(Whereupon, at 12:25 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Friday, November 3, 1967.)

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