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FEDERAL POWER ACT AMENDMENT OF 1967

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND POWER

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

FIRST SESSION

ON

H.R. 5348, H.R. 5637, H.R. 7799, H.R. 8426, H.R. 8919, H.R 9174

BILLS TO AMEND THE FEDERAL POWER ACT, AS AMENDED, IN RESPECT OF THE JURISDICTION OF THE FEDERAL POWER COMMISSION

NOVEMBER 1, 2, AND 3, 1967

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FEDERAL POWER ACT AMENDMENT OF 1967

WEDNESDAY, NOVEMBER 1, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Torbert H. Macdonald (chairman of the subcommittee) presiding.

Mr. MACDONALD. The hearing will be in order.

This morning the Subcommittee on Communications and Power is opening hearings on H.R. 5348, introduced by a colleague on our full committee, Mr. Rogers of Florida, and five other identical bills introduced by members of the Florida delegation.

(The bills and sponsors referred to are: H.R. 5637, Pepper of Florida; H.R. 7799, Fascell of Florida; H.R. 8426, Gurney of Florida; H.R. 8919, Burke of Florida; and H.R. 9174, Cramer of Florida.)

Mr. MACDONALD. These bills would amend the Federal Power Act to exempt from parts II and III of that act certain public utilities (1) which have all their facilities in one State; (2) none of whose facilities are used to transmit or receive electric energy by direct connection from or to another State; and (3) which do not transmit or receive electric energy under contract with an entity in another State.

In addition, the bills would exempt from the jurisdiction of the Federal Power Act any cooperative or nonprofit membership organization which is financed by the Rural Electrification Administration.

H.R. 5348 derives from several bills considered in the 89th Congress, including H.R. 3608, H.R. 5955, H.R. 8089, and S. 1459, which were the subject of extensive hearings and consideration by this committee last year.

At this point in the record we will insert the bill under consideration and such agency reports that are available.

(H.R. 5348 and departmental reports thereon follow:)

[H.R. 5348, 90th Cong., 1st sess.]

A BILL To amend the Federal Power Act, as amended, in respect of the jurisdiction of the Federal Power Commission

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Federal Power Act Amendment of 1967.

SEC. 2. Subsection (f) of section 201 of the Federal Power Act, as amended, is hereby amended to read as follows:

"(f) No provision in this part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly, by any one or more of the foregoing,

or any cooperative or nonprofit membership organization which is financed by the Rural Electrification Administration, or any officer, agent, or employee of any of the foregoing, acting as such in the course of his official duty, unless such provision makes specific reference thereto."

No provision in this part or in the part next following applicable to a public utility shall apply to any public utility all of whose facilities are situated in a single State and none of whose facilities is used to transmit or receive electric energy by direct connection from or to a State other than the State in which such facilities are situated. The foregoing exemption shall not apply to any public utility any part of whose facilities are used to transmit or receive energy under contract with a public utility or other entity in another State.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 27, 1967.

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

DEAR MR. CHAIRMAN: This is in response to your letter of March 13, 1967, requesting the views of the Bureau of the Budget on H.R. 5348, a bill "To amend the Federal Power Act, as amended, in respect of the jurisdiction of the Federal Power Commission."

This bill would exempt from Federal Power Commission jurisdiction certain public utilities now subject to Federal regulation under the Federal Power Act. The bill is similar to legislation considered during the 89th Congress which had the same purpose.

The Federal Power Commission, in a report to your Committee regarding H.R. 5348, recommends against its enactment because of its adverse effect on the capacity of the Commission to effectively discharge its regulatory responsibilities.

Accordingly, for the reasons set forth in the Federal Power Commission's report, the Bureau of the Budget recommends against favorable action on H.R. 5348, the enactment of which would not be consistent with the Administration's objectives.

Sincerely yours,

(S) Wilfred H. Rommel
WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

FEDERAL POWER COMMISSION,
Washington, D.C., June 5, 1967.

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

DEAR MR. CHAIRMAN: Pursuant to your request of March 13, 1967, attached is the Commission's report on H.R. 5348, together with an analysis of the language of the bill. As the attached report explains, the Commission strongly opposes enactment of this bill.

Commissioners Carver and O'Connor have asked me to note that they adhere to the views expressed in their dissent to FPC Opinion No. 517 (*Florida Power & Light Co.*, issued March 20, 1967, rehearing denied May 2, 1967). This bill is intended to exempt companies such as Florida Power & Light Company from the provisions of Parts II and III of the Federal Power Act. In their judgment, expressed in the dissenting opinion to which they adhere, the law does not today extend so far. They anticipate that judicial review of Opinion No. 517 will appropriately test the reach of the existing statute in the near future and believe that it would be best to defer definitive consideration of what the law should be until conclusion of the court test. They point out that deferral of these matters will not affect the position of any party since the Commission has stayed the effectiveness of Opinion No. 517, as requested by Florida Power & Light Company, pending the outcome of judicial review. Accordingly, they respectfully recommend that this bill not be taken up at this time.

The Bureau of the Budget advises that enactment of H.R. 5348 would not be consistent with the Administration's objectives.

Sincerely,

LEE C. WHITE, *Chairman.*

FEDERAL POWER COMMISSION REPORT ON H.R. 5348, H.R. 5637, H.R. 7799, H.R. 8426, H.R. 8919, and H.R. 9174, 90TH CONGRESS

"To amend the Federal Power Act with respect to the jurisdiction of the Federal Power Commission"

H.R. 5348 and the other identical bills would totally exempt a number of public utilities from the provisions of Parts II and III of the Federal Power Act which regulate interconnections, wholesale rates, accounting, conflict-of-interest and other corporate matters. The bill would create an exemption which would be claimed to apply to many utilities that participate in an interstate interconnected network but which own facilities only in one State. Indeed the bill would have exempted a utility in the circumstances held to give rise to Federal jurisdiction a quarter of a century ago.[1] The bill would exempt such companies if they transmit or sell electric energy in interstate commerce but interconnect with out-of-state utilities only through an intermediate company and do not transmit or receive out-of-state energy under contract with a utility in another state. A more detailed analysis is attached.

H.R. 5348 derives from several bills considered in the 89th Congress, including H.R. 3608, H.R. 5955, and S. 1459 and seeks to satisfy some of the objections raised at that time; most notably, H.R. 5348 does not renew the proposal of some of the prior proposals to exempt from rate regulation most of the wholesale sales of jurisdictional investor-owned utilities. However, H.R. 5348 substantially repeats the first exempting section of H.R. 5955 (S. 218). We recommend against enactment.

The bill would also exempt all cooperatives financed by the Rural Electrification Administration, but the Commission has held that these entities, like publicly-owned systems, are already exempt from the Act. *Dairyland Power Cooperative*, Opinion No. 511, January 5, 1967 (petition for judicial review of related case pending in the Court of Appeals for the District of Columbia Circuit). While the Commission is divided as to the scope of the present law, it has expressed a unanimous view that such an exemption is undesirable. It believes the law should, as a matter of legislative policy, be that distribution cooperatives should not be subject to Federal regulation but that generation and transmission cooperatives should be subject to appropriate Federal regulation.

The goal of efficiency and reliability in bulk power supply demands closer coordination and cooperation by all utilities on a regional scale. Present day bulk power supply technology uses transmission lines for two functions. The first function, implicitly recognized in the wording of H.R. 5348, is to receive power from a bulk power supply source and deliver it to a load center. The second and most vital function, disregarded by the bill, is to tie generating stations into reliable systems of bulk power supply and to coordinate company systems into regional systems and pools of power supply. The status exemption for certain public utilities in such regional and interstate systems, proposed by H.R. 5348, would encourage utilities seeking to avoid the Federal Power Act to forgo the advantages of intensive coordination and restrict their interconnections to satisfy the ambiguous standard of the bill and thereby gain the supposed advantages of exemption.

The circumstance that a public utility is not directly connected with one or more out-of-state utilities does not prevent it from participating fully in a multi-state bulk power supply network, including committing generation and other facilities to it, constructing large facilities in accordance with a multi-state plan, and buying, selling and exchanging power under a multi-state agreement. The constitutional restrictions on the ability of states to regulate such interstate operations necessitated Federal regulation in 1935 and the increased sophistication and complexity of such interstate transactions increases the need to keep it now.

The accounting, corporate, and rate regulations under the Federal Power Act has eliminated hundreds of millions of dollars of writeups from public utility books, has helped develop investor confidence in such books, and assists State

[1] *Jersey Central Power & Light Co. v. F. P. C.*, 319 U.S. 61 (1943).

commissions and other consumer-protection agencies with facts supporting, in many instances, substantial reductions in the retail rates, which only the States may regulate. The Congressional plan for State regulation of retail rates and Federal regulation of interstate wholesale rates serves to protect consumers. The exemption for certain privately owned utilities proposed in H.R. 5348 would seriously disrupt the Congressional goals of the Federal Power Act.

The bill would exempt outright important utilities which should be subject to the Congressional mandate. It would also open the door to corporate rearrangements designed solely to seek the supposed benefits of the proposed exemption.

The exhaustive Congressional and Federal Trade Commission hearings which preceded enactment of Parts II and III of the Federal Power Act in 1935 documented the necessity for Federal regulation of the price at which electric energy is sold at wholesale in interstate commerce and for control over the accounting and financial practices of these utilities. The Committee report on this legislation pointed to the fact that even in 1935 "local operating units have been tied together into vast interstate systems" and "were entirely beyond the reach of the states either legally or practically." (S. Rept. No. 621, 74th Congress, 1st Sess., p. 17.)

Congress recognized the need for Federal regulation when only a fraction of the nation's electric systems were interconnected in interstate networks. The National Power Survey shows that such interconnection has progressed markedly. The Nation's bulk power systems are now being linked from coast to coast. Thus the interstate nature of the electric business, and the need for Federal regulation, have steadily risen.

The power of states to regulate wholesale sales in interstate commerce is limited both practically and by state statute. For example, three states have no state commissions,[2] and seven other states with commissions have no authority to regulate wholesales by privately-owned utilities to municipal systems.[3]

What is at stake is the most efficient use of our natural resources. Federal regulation is necessary to assure the availability of low cost power from interstate power pools at reasonable rates to the many small utilities, public and private, whose operations are not carried out on a scale large enough to enable them to generate their own power from the most economical sources. In the absence of Federal regulation, they will be required in many cases to continue to build small and relatively high-cost generating stations which fail to make the most efficient use of our natural resources. In other cases access to low-cost power sources may be a question of survival for the smaller systems.

For the reason stated above, the Commission urges that H.R. 5348 not be enacted.

LEE C. WHITE,
Chairman, Federal Power Commission.

FEDERAL POWER COMMISSION ANALYSIS OF H.R. 5348, H.R. 5637, H.R. 7799, H.R. 8426, H.R. 8919, AND H.R. 9174, 90TH CONGRESS

H.R. 5348 and the other identical bills would provide a status exemption from Parts II and III of the Federal Power Act for public utilities (which meet certain legal tests) now jurisdictional because they transmit or sell for resale electric energy in interstate commerce. Specifically, Section 2 of H.R. 5348 would exempt from FPC jurisdiction all public utilities—

(1) which have all their facilities in one state,

(2) none of whose facilities are used to transmit or receive electric energy by direct connection from or to another state,[4] and

(3) which do not transmit or receive electric energy under contract with an entity in another state.

The third test, that of no contracts with an out-of-state entity, would leave open the possibility of indirect wholesale sales in interstate commerce unregulated under the Federal Power Act. A public utility may receive or transmit electric energy in interstate commerce from or to any number of remote and

[2] Texas, South Dakota and Minnesota.
[3] Delaware, Florida, Mississippi, New Mexico, Ohio, Pennsylvania and Virginia.
[4] We interpret the phrase (p. 2, lines 11–12) "to transmit or receive electric energy by direct connection, from or to any other state" to include transmission or receipt of electric energy within a state with a company operating both in that state and another, rather than only connections at a state border with a company which operates only in another or other states.

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 [5] 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. *Colorada-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-

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[5] 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.

ing from utilization of the new techniques of large-scale generation and extra-high voltage transmission and from participation in energy pooling, interchange and exchange arrangements, they would disable themselves from achieving the lower costs and more efficient operation associated with maximum coordination of electric power systems.

For the reasons stated above, this Department does not favor enactment of H.R. 5348.

The Bureau of the Budget advises that the enactment of this bill would not be consistent with the Administration's objectives.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., November 2, 1967.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 5348, a bill "To amend the Federal Power Act, as amended, in respect of the jurisdiction of the Federal Power Commission."

Federal regulation of electric power companies is governed by the Federal Power Act, 16 U.S.C. 791 et seq. Many aspects of the electric power industry are also regulated by relevant State agencies. Section 201 of the Federal Power Act (16 U.S.C. 824) provides that the generation of electric energy and the transmission and sale of such energy at wholesale in interstate commerce are subject to federal regulation, except that such regulation shall extend only to those matters which are not subject to regulation by the States.

This section has been construed by the Supreme Court, however, to authorize broad and comprehensive Federal Power Commission jurisdiction over wholesale sales of electric energy, notwithstanding the existence of State regulation. In *Federal Power Commission* v. *Southern Calif. Edison Co.*, 376 U.S. 205 (1964), known as the *City of Colton* case, the court held that the FPC had jurisdiction over all sales of electric energy at wholesale in interstate commerce not expressly exempted by the Act itself.

The first paragraph of H.R. 5348 would amend section 201(f) of the Act by adding cooperative or nonprofit membership organizations financed by the Rural Electrification Administration to the list of Federal, State and local governments, and their agencies, instrumentalities, corporations, officers and employees as to which the regulatory provisions of the Act are inapplicable except where specifically included. The Department takes no position and has no comments to offer on this portion of the bill. It might be noted that this portion is probably rendered moot by the Federal Power Commission's decision in *Dairyland Power Coop.*, Opinion 511 (Jan. 5, 1967), which held that REA cooperatives were not subject to the jurisdiction of the Commission.

The second paragraph of the bill provides, in effect, for removal from Federal Power Commission jurisdiction under Parts II and III of the Federal Power Act of any public utility whose facilities are all situated in a single State and are not used to transmit or receive electric energy by direct connection. This exemption, however, is made inapplicable to any public utility any part of whose facilities are used to transmit or receive energy under contract with a public utility or other entity in another State.

This bill is similar to S. 1365 (90th Congress) and, in part, is also similar to portions of S. 218 and H.R. 5955 (89th Congress). In effect, the bill may totally remove a sizeable number of public utilities from the jurisdiction of the Federal Power Commission under Parts II and III of the Federal Power Act.

The Department of Justice is concerned that the absence of such regulatory jurisdiction in the Federal Power Commission could lead to discriminatory pricing, refusal to transmit power, and similar practices by private power companies to the competitive disadvantage of REA cooperatives, municipal power systems and even the Federal Government, as well as other private companies. Regulation of the sale and transmission of electric energy at wholesale, together with the practices attendant thereto, may often serve to protect these entities and others from anti-competitive and discriminatory practices that would be difficult or impossible to reach under the antitrust laws.

Furthermore, the second paragraph of the bill would weaken the power of the Commission to insure reliability of electric power service. Concern for this problem has been accentuated by the recent power outages. In addition, it would also weaken the Commission's ability to provide for an efficient, integrated power system. Accordingly, the Department of Justice recommends against enactment of the second paragraph of the proposed amended section 201(f).

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

Mr. MACDONALD. Mr. Rogers, who is a member of our full committee, will be our first witness this morning.

We are delighted to hear from Mr. Rogers, a very distinguished and fine-looking member of this committee, longtime friend, and a great addition to Congress and to the Committee on Interstate and Foreign Commerce.

STATEMENT OF HON. PAUL G. ROGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. ROGERS. Thank you very much, Mr. Chairman, and members of the committee. I appreciate very much the opportunity to appear in behalf of the bill which I have introduced and other members of Congress have joined in introducing like bills.

The real purpose in introducing this bill is simply to express more clearly what I feel was the legislative intent of Congress when the original Federal Power Act was passed in 1935. Section 201(b) of the Power Act states that the Federal Power Commission "shall not have jurisdiction over facilities used only for the transmission of electric energy in intrastate commerce," within the State, "or over facilities for the transmission of electric energy consumed wholly by the transmitter."

The language is clear and men like Sam Rayburn and Samuel B. Pettengill of Indiana, who were instrumental in enacting the original measure, knew that Congress did not intend just to give plenary power to the Federal Power Commission to regulate any and all utilities regardless of their sphere of activity.

These men were conscious of the concern of the Congress that too much jurisdiction could be given to a Federal agency.

Now, basically as to electric power, the original act has not been changed by the Congress and yet the Federal Power Commission has been steadily trying to move toward plenary jurisdiction through decisions and opinions based principally on the commingling theory.

It is not my position or intention to attempt to prove that a utility which claims to be adversely affected by a Federal Power Commission rule does or does not come within the jurisdiction of the Federal Power Commission.

It is not our role to judge whether a utility which generates, transmits, or sells energy is or is not subject to the jurisdiction of the Federal Power Commission. This would have to be proved by the individual facts of the case.

It is, however, the definite intention to express more clearly what was obviously the intent of the Congress 32 years ago and is the intent today that Rural Electrification Administration Cooperatives and

wholly intrastate electric public utilities are not intended to be subject to the jurisdiction of the Federal Power Commission.

Now, the bill takes nothing away from the jurisdiction of the Federal Power Commission because the Federal Power Commission never had such jurisdiction under the original act of 1935.

The scope of this bill, H.R. 5348, is very narrow. This bill will exempt from the Federal Power Commission's reach only those very few electric utility companies that function wholly intrastate that do not transmit or receive any electric energy by direct connection across State lines, or who do not have contracts outside of the State with any companies to provide power, and whose operations should justifiable be free of Federal regulation under the Federal Power Act of 1935.

Under this bill a company's entire electric system must be intrastate in nature before the company may qualify under the bill and likewise the company seeking exemption from the jurisdiction of the Federal Power Commission when the Federal Power Commission just comes in and tells it, "Well, we have decided you will be under our jurisdiction" can't use any part of its facility to transmit or receive energy under contract with a corporation in another State either in order to foreclose that possible gap.

The provision of this bill prohibits the wheeling of electric energy, the sale and purchase of power under contract to or from a company in another State by transmission through an intermediary company.

Now, the practices, the accounting practices and the regulations of the intrastate company are then left under the State regulating bodies, and I feel that State or local regulatory bodies should exist before a company can claim exemption under this proposed bill. This gives a forum for relief to the consumers.

Now, let me just point out two or three things quickly and I will conclude, Mr. Chairman.

As you know, the Federal Power Commission has no authority to regulate retail rates, none, not in the original act, nor do they even claim it yet. Their jurisdiction was restricted to wholesale rates.

Now, if State regulatory bodies are competent to regulate and set retail prices, and certainly they are, and the law so recognizes this, and this Congress has so decided, then they ought to be competent to regulate the utilities that operate solely within their State and no other State.

Some say, "Oh, well, we have to have the Federal Power Commission to come in to protect the public," that these State regulatory agencies can't do a very efficient job. Let me just compare what has happened for the consumer in America from the actions of the Federal Power Commission and the actions of the State regulatory agencies.

From the years 1962 to 1966, for example, and this is typical, there has been a net decrease ordered in rates by State commissions of $273,400,000, savings to the consumers by State regulations.

You know how many consumers by action taken by the Federal Power Commission have been helped? In the same number of years—here is the great action for consumers that has been taken by the Federal Power Commission—a net decrease of $13,557,896, and that is from their report, Federal Power Commission Report, 1966.

So this becomes pretty academic when we look at the actual facts in a real situation as it exists. This great claim that the American taxpayer

would be hurt by allowing States to regulate industries within their borders where all of their facilities are located, where the companies don't get any power across direct lines, where they don't contract with any companies outside to bring in power, this claim fails. So I think we simply need a restatement to the Commission that this is what the Congress intended. We have had to do this with other regulatory agencies, this committee itself has taken action, as you know, where regulatory bodies tried to expand their authority and even without a unanimous vote of the regulatory body.

I think on a three-to-two decision the Federal Power Commission is saying, "We ought to have this authority," even though the Congress hasn't acted, and I think it is time for us to tell the agencies when we want them to get into these fields which the Congress has preempted them from, where it is wholly intrastate.

We will tell them when to do it, the Congress will, and it is not for the agency to decide. This basically is what the bill does, Mr. Chairman.

It sets it forth very clearly. I think it is a simple bill and I appreciate the consideration that this committee is giving to us today.

Mr. MACDONALD. Thank you very much, Mr. Rogers, for a very fine statement. The one question that I had was the relationship between the Florida company and that of the Georgia Power Co.

Is there now or will there be any interconnection between the two?

Mr. ROGERS. I will let other witnesses explain the details, but let me say this. There is no direct connection between the Florida Power & Light Co. and any company outside. They do have an interconnection which the FPC asked during war years these companies to put in for emergency measures.

The Commission said, "In case of emergency we want you to make an interconnection," but this is wholly an intrastate connection over to Florida Power Co.

Now, it is true that Florida Power has a connection with Georgia, as I recall, but everything that comes across the State there is regulated and will be by the Federal Power Commission, so there is regulation of all electricity that comes into the State any time it crosses that line, so they have jurisdiction of all the power that crosses into the State.

Mr. MACDONALD. We had a bad experience in New England, as I am sure you are aware——

Mr. ROGERS. Yes.

Mr. MACDONALD (continuing). During the so-called Northeast blackout which paralyzed a good part of the section of the country that I come from, and I was wondering if it wouldn't be a good thing to have an interconnection with backup.

Mr. ROGERS. They have an emergency connection where they can be helpful if they need to, which was put in at the encouragement of the Commission during war years, but the blackout situation I think doesn't go to this problem at all.

Passing this bill has no effect on that. In fact, I think that can be gone into by experts, but I know this is sometimes said to confuse the issue, "Well, what about the blackouts? Maybe this will have some effect on blackouts."

Well, it doesn't at all. In fact if those companies had left their switches open they wouldn't have had the problem at all.

Mr. MACDONALD. Mr. Broyhill?

Mr. BROYHILL. Your bill, Mr. Rogers, states, as I understand it, that the FPC would not have dual jurisdiction over wholesale rates to any political subdivision of a State.

Would that include a municipality?

Mr. ROGERS. That would be correct.

Mr. BROYHILL. If a municipality were purchasing power from a company that isn't interstate?

Mr. ROGERS. I presume it is entirely exempted just as REA's would be where they may be getting power. In fact some of the REA's you known go into two or three States and they are still exempt.

Mr. BROTZMAN. Will the gentleman yield?

Mr. BROYHILL. Yes.

Mr. BROTZMAN. I was thinking the same thing, Paul, that last sentence there, in relationship to Jim's question:

> The foregoing exemption shall not apply to any public utility any part of whose facilities are used in transmitter-received energy under contract with a public utility or other entity in another State.

Does that sentence apply only to the strictly intrastate facility, or does it apply back to the provision on municipalities?

Do you understand my question?

Mr. ROGERS. Yes. Section (f) actually sets for the exemption, saying—

> No provision in this part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foreging, or any cooperative or nonprofit membership organization which is financed by the Rural Electrification Administration, or any officer, agent, or employee * * *.

And so forth.

Now the next——

> No provision in this part or in the part next following applicable to a public utility shall apply to any public utility all of whose facilities are situated in a single State and none of whose facilities is used to transmit or receive electric energy by direct connection from or to a State other than the State in which such facilities are situated. The foregoing exemption shall not apply to any public utility any part of whose facilities are used to transmit or receive energy under contract with a public utility or other entity in another State.

As I interpret the language here, it would exclude municipalities, but for the public utility, the problem on a public utility that is trying to contract out of State for power, I think it would not be excluded. Municipal utilities are regulated, you see, by municipal control.

Mr. BROYHILL. I wondered how this would apply in the State of North Carolina. I know that you have explained how it would apply to the State of Florida, but would this bill affect the State of North Carolina where we have 73 municipalities that are providing electric service for the citizens of the various communities? They are purchasing power from private utilities which are in interstate commerce.

Mr. ROGERS. The municipalities are not regulated. They are exempt under the provisions.

Mr. BROYHILL. They contract, the municipality and the public utility, a wholesale power contract. Would that be subject to regulations under this bill?

Mr. ROGERS. I don't think this goes to that problem.

Mr. BROYHILL. You don't think it goes to that?

Mr. ROGERS. No, because all we are saying is the municipality itself is exempt or any subdivision of the State government.

Now, if the FPC has power over your utility company, which I think it does, because you operate in two States there, as I recall—I am not sure of the facts there.

Mr. BROYHILL. The power companies of North Carolina do operate interstate.

Mr. ROGERS. So that the Federal Power Commission now has jurisdiction of what is an interstate problem and whatever power they have would still exist. I don't think they now claim that they have jurisdiction of municipalities in North Carolina, do they?

Mr. BROYHILL. There is quite a controversy over that.

Mr. ROGERS. Well, this would exempt them.

Mr. BROYHILL. One other question. What about indirect sale? Have you touched on that? I am sorry I was somewhat late.

Mr. ROGERS. Yes, I tried to.

Mr. BROYHILL. For example, a company that is wheeling power from another State or another part of the country to Florida Power & Light.

Mr. ROGERS. We tried to prevent this situation existing or applying to any company that would be exempt by this law. We say the connection cannot be direct, first of all, so in Florida this is true, no direct connection across State lines.

Secondly, that no contract can be made with a company outside the State to furnish through an intermediary.

Now, there is a connection between Florida Power with Florida Power & Light in the south end, Florida Power and Georgia. Now it is my understanding they don't bring in power to Florida Power & Light, but the electricity that crosses that State line between that Georgia company and the Florida Power Co. is now regulated and would be. There is no exemption for it.

Mr. MACDONALD. Mr. Rogers, when you say that you mean it is regulated by the FPC.

Mr. ROGERS. FPC, correct.

Mr. BROYHILL. What about that contract between Florida Power & Light and Florida Power Corp.? Is that subject to FPC jurisdiction under this bill?

Mr. ROGERS. Well, you see, what we are saying—I may not have made myself clear—is that any power that comes to the Florida Power Co. is regulated by the FPC as it crosses the State line.

Now, if Florida Power & Light, which is in the southern end of Florida, tried to get a contract with Georgia Power, say, to supply Florida Power & Light, they are immediately under Federal Power control if they tried to do that.

All of the power that goes to Florida Power Corp. is already and would continue to be under Federal Power Commission regulations because it crosses the State line, so I think we pretty well handle the situation. Any electricity that crosses a State line is still covered, as it should be, by the Federal Power Commission.

Mr. BROYHILL. No other questions.

Mr. MACDONALD. Mr. Kornegay.

Mr. KORNEGAY. Mr. Rogers, you state that no connection can be direct.

Mr. ROGERS. This is right.

Mr. KORNEGAY. Interstate.

Mr. ROGERS. There cannot be a direct connection across State lines.

Mr. KORNEGAY. How are you going to get it across a State line without a connection? That is what I am trying to figure out.

Mr. ROGERS. That is right. They must not have a direct connection.

Mr. KORNEGAY. You are talking about the municipalities not having a direct connection. You are not talking about the electricity generally. If you do wheel it and transmit it from one State to another there has to be a connection.

Mr. ROGERS. Yes. Yes, this is right, and if there is a direct connection, it falls under Federal Power. It is interstate commerce.

Mr. KORNEGAY. Controlled by Federal Power.

Mr. ROGERS. This is correct.

Mr. KORNEGAY. So when you say under the terms of the bill that there can be no connection, or no connection can be direct from one State to another, you are speaking with reference to the municipal system; is that correct?

In other words, to fall under the State jurisdiction rather than the Federal jurisdiction?

Mr. ROGERS. They are under State jurisdiction in this bill. This would exclude municipalities from coverage of the Federal Power Commission.

Mr. KORNEGAY. I am trying to get the full information for my own edification as to how they can get it across the State line without having some connection.

Mr. ROGERS. Well, you know all power doesn't come from out of State. In fact, Florida Power & Light generates its power. Many municipalities generate their own power.

Mr. KORNEGAY. And consumed within the same State.

Mr. ROGERS. This is right.

Mr. KORNEGAY. And, of course, would not be subject to jurisdiction of the Federal Power Commission.

Mr. ROGERS. Any power that goes across a State line is subject to interstate commerce regulations by the FPC.

Mr. KORNEGAY. In the hearings we held, I believe last year, in connection with this matter, as I recall, the Federal Power Commission took the position that most all power would be under the jurisdiction of the Federal Power Commission on the theory that now the grid system and most power throughout the country is tied in, and if any electricity put into the system could escape or be transmitted by way of interconnections to another State, then they would have jurisdiction.

Mr. ROGERS. Yes.

Mr. KORNEGAY. The purpose of your bill is to get away from their theory, the Commission's theory, to bring virtually all systems under the authority of the Federal Power Commission.

Mr. ROGERS. Our bill is simply to restate what the law said when we passed it and the intent of the Congress. That is all it is.

Mr. KORNEGAY. In other words, it doesn't change the existing law as you understand it.

Mr. ROGERS. No, sir. It is simply restating the law as passed by this Congress.

Mr. KORNEGAY. But, in effect, it would prevent the Commission from seeking out under the theory which I have just enunciated, which I understood was their theory last year.

Mr. ROGERS. Yes, if it is strictly an intrastate operation.

Mr. KORNEGAY. You say Florida Power & Light is generating in southern Florida and it sells to municipalities.

Mr. ROGERS. Yes; they sell to municipalities.

Mr. KORNEGAY. Suppose you can trace an interconnection between those municipalities and other systems where the possibility exists that that power could get over into Georgia, or Alabama, or any other State?

Mr. ROGERS. I think not. There is no connection for it to get through.

Mr. KORNEGAY. In other words, the direct connection is from the Florida Power & Light to the city of say, Fort Lauderdale, or Palm Beach. Power is consumed there. Than the cities of Fort Lauderdale and Palm Beach would not be under the jurisdiction of the Federal Power Commission.

Mr. ROGERS. That is correct.

Mr. KORNEGAY. Even though some of the power generated by Florida Power & Light might eventually end up in Georgia.

Mr. ROGERS. I don't think it will. They can explain that to you, but they have no direct connection to Georgia at all, so I don't think this is the situation, but the company I am sure can go into the details of that with you and the factual situation.

What I am trying to do is get to the principle involved.

Now, I think every case is going to have to be decided on the facts and if a company is in intrastate, fine. If it is in the interstate, then it is right under the Federal Power Commission.

Mr. KORNEGAY. You are not trying to take any authority or jurisdiction away from the Federal Power Commission.

Mr. ROGERS. This is right. We are just trying to make it clear that the original intent of the Congress should be carried out.

Mr. KORNEGAY. Thank you very much.

Mr. ROGERS. Thank you.

Mr. MACDONALD. Mr. Harvey?

Mr. HARVEY. If our colleague could tell me, how does this differ from the Pickle bill that this committee studied?

Mr. ROGERS. I don't recall all of the particulars. I think Congressman Pickle is coming in here.

Mr. HARVEY. As a matter of history didn't we pass out his bill last year?

Mr. ROGERS. I think you passed out the bill after making some changes in it. I believe the subcommittee made some changes in it, but I think Mr. Pickle will be here shortly and perhaps you might like to go into that with him because I haven't really gone through this to advise the committee on it.

Mr. HARVEY. Because it was my recollection that a year or 2 years ago we passed out that bill and I recall voting for it.

Mr. ROGERS. Yes.

Mr. HARVEY. And I just wondered how this one differed from it.

Mr. ROGERS. Really I think this is more narrow in scope than that bill.

Mr. HARVEY. Thank you. That is all I have.

Mr. MACDONALD. Mr. Van Deerlin.

Mr. VAN DEERLIN. Mr. Rogers, how is the State public utility commission in Florida appointed?

Mr. ROGERS. They are elected.

Mr. VAN DEERLIN. They are elected by the people?

Mr. ROGERS. Yes.

Mr. VAN DEERLIN. In direct popular election?

Mr. ROGERS. That is correct.

Mr. FASCELL. We don't know whether it is popular or not.

Mr. GURNEY. They are all Democrats, I might say. It must be popular.

Mr. MACDONALD. The committee will be in order.

Mr. VAN DEERLIN. It differs from California.

Mr. ROGERS. We hope California will change their system.

Mr. VAN DEERLIN. I hope that I can induce some cross-country thinking on the air pollution bill tomorrow.

What would be the effect of your bill on the interdependent grid system which is supposed to be developed to prevent blackouts from occurring in any part of the country?

Mr. ROGERS. I don't think it will have any effect at all. I don't think it changes the situation at all.

Mr. VAN DEERLIN. The reserves would still be available to be called upon?

Mr. ROGERS. You see, they have emergency connections that they don't use but can if a national emergency or something develops, so it can be used, and I think this is advisable and this is what the companies were encouraged to do and no one ever said because they encouraged them to do that during the war years that, "Therefore, we are going to grab out and get jurisdiction of you," and yet this is exactly what the FPC is trying to do. That is basically it.

Mr. VAN DEERLIN. Do you think the passage of this legislation would have any bearing on rates to consumers?

Mr. ROGERS. Yes, I think it definitely will have a bearing on rates and a reduction of rates rather than an increase because, for instance, if this company in Florida that is intrastate has to go through and simply another accounting system put on, it is estimated it is going to cost them $6 million in the first instance and about $600,000 annually for additional employees to send all the reports up here, and you know those will then have to be passed on to the consumer.

They can get into the details of this and the cost with you, but it is my understanding that this is simply an additional cost which will have to be borne by the consumer.

Mr. VAN DEERLIN. You would be doing nothing except preparing reports for the Federal Power Commission?

Mr. ROGERS. That is basically it.

Mr. VAN DEERLIN. Very interesting. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Brotzman?

Mr. BROTZMAN. Thank you, Mr. Chairman.

Mr. ROGERS. May I just say this?

Mr. BROTZMAN. Do you want me to yield to you?

Mr. ROGERS. If the gentleman will yield 1 minute.

Mr. BROTZMAN. I yield.

Mr. ROGERS. For those who were not here I just want to read these figures again quickly, if I may, as to what State commissions have done in reducing prices to the consumer and what the Federal Power Commission has done as to reducing prices to the consumer.

Take the years from 1962 to 1966. State commissions have reduced electrical rates to the consumers of this country by $270,400,000. And you know what the Federal Power Commission has done, how much savings they have made? $13,557,896.

So I think the State commissions have been doing a pretty good job in looking after the consumer, comparing the record with what the Federal Power Commission has done, and this is a point I think we need to keep in mind because we hear a lot of people say, "Oh, well, the only way the consumer is going to be protected is let the Federal Power Commission regulate."

Well, this simply isn't true.

Mr. KORNEGAY. Will the gentleman yield?

Mr. ROGERS. Yes.

Mr. KORNEGAY. Wasn't that one of the contentions of the Power Commission last year, that the States were incapable of handling it properly?

Mr. ROGERS. Yes; this is a constant argument that doesn't bear up under the figures.

Mr. BROTZMAN. Would the gentleman yield?

Mr. ROGERS. Thank you.

Mr. BROTZMAN. I just want to go over this a bit as to what you said to my distinguished colleague. First of all, if I understand H.R. 5348, it sets up three categories of exemptions.

No. 1 will be relative to the United States, a State, or any political subdivision of the State.

The second will be a cooperative or nonprofit membership organization financed by the Rural Electrification Administration.

Mr. ROGERS. That is correct.

Mr. BROTZMAN. Three will relate to a public utility whose facilities are situated in a single State. Now, with that background, my first question really is, Is the Federal Power Commission presently asserting jurisdiction over any of these three areas?

Mr. ROGERS. They are trying to.

Mr. BROTZMAN. In all of these three cases the Federal Power Commission is asserting jurisdiction.

Mr. ROGERS. I don't know about municipalities, but they did try to assert jurisdiction over three REA's. Now, I think this present Commission gave up the battle, but they have tried to and this shows that they could change their mind and start out again doing it, and they have tried to assert jurisdiction.

Here is a company, for instance, in south Florida, ever since the beginning of the act no one ever said they were under FPC jurisdiction, but then Chairman Swidler came in and he was very active in this field, as you recall, and they said, "We are just going to say you are under our jurisdiction."

What is a company going to do? They have to come in and say, "We don't think we are."

Mr. BROTZMAN. I am not fully familiar with all the provisions of the Federal Power Act, but I would assume that in at least the rationale that gives the Federal Power Commission jurisdiction over—take the easiest case—an intrastate power company located solely within the confines of a State, I would assume that they must be relying upon the interstate commerce power to obtain jurisdiction there, or is it some other power that they claim under the Federal Power Act?

Mr. ROGERS. I think of course basically it is the interstate power, but the commingling theory, you see, is what they also use. They are saying electricity moves back and forth, so an item might get down here that came from New York somehow. It is a rather extended view I think and it is not logical when you look at the operation if a company has all of its generating and all of its facilities in one State.

Mr. BROTZMAN. How is it going to be determined?

Mr. ROGERS. It is on the facts.

Mr. BROTZMAN. I am trying to figure out by what rationale they think they have jurisdiction under the Federal Power Act.

Mr. ROGERS. They think that anyone that has any connection gives FPC authority to regulate. This is really what they are pushing, even in spite of what the law said when we created it, so this is simply a restatement of the law, what we are trying to do, to say, "Yes, you do have jurisdiction" and they ought to have, "When it crosses State lines."

Mr. BROTZMAN. You may have said something about this before. Are there any law suits on this point?

Mr. ROGERS. Yes, there is, I understand.

Mr. BROTZMAN. Many of them?

Mr. ROGERS. I don't know how many. I know there is one on this one. The FPC decision was three to two. It is my understanding. Perhaps they can go into detail with you.

Mr. BROTZMAN. By whom?

Mr. ROGERS. By the Federal Power Commission claiming FPC had had jurisdiction of this company, which is intrastate, has no direct connection, has no contracts to furnish any power in, and simply has an emergency connection.

Mr. BROTZMAN. I am not quite clear.

Mr. MACDONALD. Will the gentleman yield?

Mr. BROTZMAN. Yes.

Mr. MACDONALD. On that point, Paul, you said the Georgia Power Co. and this company——

Mr. ROGERS. Not this company. It is another one.

Mr. MACDONALD. There are arrangements in case of an emergency.

Mr. ROGERS. There is an emergency connection between this company——

Mr. MACDONALD. They have to have a contract, don't they?

Mr. ROGERS. No. You see, this company has no contract or no interconnection with the Georgia company. It is the Florida Power Co. which has that, and they are regulated by the Commission. This one has none of that.

Mr. MACDONALD. Thank you, Mr. Brotzman.

Mr. BROTZMAN. Back to the way we set up originally, the three-exemption theory here, Paul, I can see the rationale on the intrastate facility.

Now, you tell why you think the REA-financed nonprofit organization should not be?

Mr. ROGERS. This has been traditionally so. It is a cooperative where they are supposed to keep their prices down. It is for their membership. Their own membership benefit in any prices. It is a nonprofit operation.

Mr. BROTZMAN. Are they regulating them now?

Mr. ROGERS. No.

Mr. BROTZMAN. Do they assert jurisdiction over those?

Mr. ROGERS. They tried to in three cases.

Mr. BROTZMAN. I thank the gentleman.

Mr. ROGERS. Thank you.

Mr. MACDONALD. Mr. Ottinger.

Mr. OTTINGER. I welcome the Florida delegation to the subcommittee. Why should there not be subject to FPC regulation, following out the line of questioning of Mr. Brotzman, an interstate operation that is municipally owned, or a cooperative, whose operations definitely do affect what happens outside of the State? I can see the rationale of exemptory strictly intrastate operations, but not a municipally owned company that operates clearly in interstate commerce.

Mr. ROGERS. I think what they are trying to say is if the municipal corporation is governed and is controlled by the municipality, it has a definite right to govern itself. It operates just in that area.

Now, you may want to say that if a municipality extends in two States then they will be under the control. The committee can do that if you desire, but, for instance, REA's too, as you know, are not——

Mr. OTTINGER. The intrastate exception to this seems to me to make more sense, but if the utility transmits or receives electrical energy from a public utility or entity in another State then I see no reason for it to be exempt.

Why shouldn't that same kind of language as appears in paragraph 3 be applied in paragraph 8?

Mr. ROGERS. If it is a State we don't regulate a State, and this proposed law is saying we are exempting governmental bodies. In other words, we are not having the Federal Power Commission tell a governmental body what it should do. We are not having them tell the State what to do, which we exempt, or municipality what to do; that is all.

Mr. OTTINGER. So that the only area on which under this bill the FPC would exercise jurisdiction is the investor-owned utility?

Mr. ROGERS. Well, I think basically you would find it would have control over all movement in interstate basically. I think there would be very few exceptions.

Mr. OTTINGER. Suppose in connection with prevention of blackouts, a municipal or an REA hooks into a grid system that is clearly interstate and the utilities in the grid have an agreement, such as we have in Northeast now, whereby any of the utilities may contribute power at a particular time to the grid.

Mr. ROGERS. On an emergency basis?

Mr. OTTINGER. On a regular basis in the Northeast region.

Mr. ROGERS. Our situation is that it is connected only for emergency, you see, where we can help someone out if they need it.

Mr. OTTINGER. As you say, I am not so much troubled by your situation for a wholly intrastate arrangement. In the Northeast, for instance, we are considering bringing power down from Canada, so we would have an international situation where the various States and possibly Canada will all be contributing to the ordinary supply of power to the entire region.

Mr. ROGERS. If it is an interstate movement then it probably would be subject to the Federal Power Commission.

Mr. OTTINGER. But you specifically exempt—I don't know whether they are exempt now—any governmentally owned system even though it was part of that kind of interstate arrangement.

Mr. ROGERS. That is simply exempting them from the control of the Federal Power Commission as to their rates, wholesale rates.

Mr. OTTINGER. Only as to their rates?

Mr. ROGERS. Well, this is basically what it is, the control. It is their accounting. They just have to show an accounting and this sort of thing, but basically it is wholesale rates.

Mr. OTTINGER. What about with respect to the security of the system?

Mr. ROGERS. Well, I would think each system tries to bring about its own security and they tie in wherever they have a need—I think in the Northeast you have the same thing. Probably most of it is under the Federal Power Commission.

Mr. OTTINGER. Would this exempt or render the Federal Power Commission unable to make regulations with respect to the interstate hookups, the actual relays and interchange system that would be required with respect to the interstate grid so far as a municipality owned or cooperative utility is concerned?

Mr. ROGERS. I don't think it would affect anything interstate. It is only intrastate.

Mr. OTTINGER. That is, including a municipally owned cooperative?

Mr. ROGERS. I think so.

Mr. OTTINGER. That aspect of it I think we ought to look into and assure ourselves.

Mr. ROGERS. Yes. Perhaps you would like to go into that with some of the experts here who could be more knowledgeable on the specifics of something like that. I think the committee would like to probably go into that.

Mr. OTTINGER. Thank you very much, Mr. Chairman.

Mr. MACDONALD. Mr. Brown?

Mr. BROWN. I have only one question and that is how many power companies over the country what percentage of the power companies would be affected by this legislation?

Mr. ROGERS. I don't have that figure. I think it would be very few. I think it would not be many.

Mr. BROWN. Why would you say it would be very few? Is it because there are so few intrastate only companies, or is it because there are so few companies that are not interconnected on their power resources?

Mr. ROGERS. I think there are few intrastate or those that don't have direct connection with contracts from the outside so I don't think it would be very many. Perhaps later witnesses could give you actual figures.

However, you see, this is the original intent of the law. This is nothing new. This is the situation that exists now. We are not changing anything. We are simply trying to prevent an encroachment beyond what the Congress has told this agency to do. That is all we are doing.

Mr. MACDONALD. Thank you, Mr. Brown. Thank you very much Mr. Rogers, for coming here.

Mr. ROGERS. Thank you, Mr. Chairman and gentlemen.

Mr. MACDONALD. Before we have our next witness, our colleague and my good friend from Florida, Mr. Fascell—I have listed as witnesses to appear in a panel presentation two people from the Florida Power & Light Co., one from Austin, Tex., one from San Antonio, one from Houston, one from Savannah, Ga., one from Tampa, Fla., and Fort Myers, Fla., and Miami, Fla.

May I ask, just because this committee is limited by time to hold these hearings just 2 days, are all those people going to appear on one panel at one time?

Mr. BEN H. FUQUA (vice president, Florida Power & Light Co.). No, sir, Mr. Chairman. That list was submitted simply as the proponents of the public witness list.

Mr. MACDONALD. It says on the paper that I have, "panel presentation."

Mr. FUQUA. We are all proponents.

Mr. MACDONALD. If we call each person individually with questioning as detailed as it has been, I can see this going on for many more days.

Mr. FUQUA. We will try not to burden the committee.

Mr. MACDONALD. It isn't a question of burdening the committee.

Mr. FUQUA. We will be as brief as we can. We will file written statements, too, of course.

Mr. MACDONALD. I wasn't quite sure what "panel presentation" meant.

Mr. FUQUA. I am not quite sure either. I simply submitted that list as a list of the proponent witnesses. That was all.

Mr. MACDONALD. But each member that is listed on the panel is going to testify separately?

Mr. FUQUA. Yes, sir.

Mr. MACDONALD. Thank you, sir. Our next witness is Mr. Fascell of Florida, who has introduced a bill similar to that of Mr. Rogers.

STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. FASCELL. Thank you, Mr. Chairman and members of the subcommittee. I am very happy to join my distinguished colleagues from Florida, Mr. Rogers, Mr. Gurney, and my other colleagues who have introduced similar legislation being considered by this subcommittee, and to join this distinguished delegation which has come from Florida, from all parts of Florida, and from other States, in a discussion of this matter by the subcommittee.

I want to thank the chairman and the members of the subcommittee for undertaking hearings on this matter which obviously is of considerable import. I have a prepared statement, Mr. Chairman, which I ask permission to file and then I'll make some brief comments, because obviously you need to get to the expert witnesses as soon as you can.

Mr. MACDONALD. Without objection that will be done.

(Congressman Fascell's prepared statement follows:)

STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman and distinguished Committee Members, I appreciate this opportunity to appear before this Committee in support of the bill I introduced on March 23, 1967. This bill, H.R. 7799, if enacted, would amend the Federal Power Act to prohibit the Federal Power Commission from taking jurisdiction over any electric energy cooperative or non-profit membership organization which is financed by the Rural Electrification Administration. It would further exempt all purely intrastate electric energy public utilities from Federal control.

Basically, the measure is strictly a status exemption bill which would clarify the original Congressional intent of the Federal Power Act in that REA cooperatives and intrastate electric public utilities are not intended to be subject to the jurisdiction of the Federal Power Commission.

This proposed legislation would affect very few electric companies, perhaps a dozen or less. Florida Power and Light and Tampa Electric Company are specific examples.

In order to qualify under the provisions of the proposed measure, a company must have all its facilities situated in a single state. In addition, it may not receive or transmit electric energy by direct connection from or to any other state or by indirect connection from or to any other state.

Nothing is taken from the Federal Power Commission since that Commission has never had such jurisdiction or even asserted such jurisdiction until a relatively recent date.

With respect to the Florida Power and Light Company and the Tampa Electric Company, there is no reason why the FPC should assert such jurisdiction. Both companies are now closely, intensely and adequately regulated by the Florida Public Service Commission. The record of rate reduction required during the last several years is sufficient testimony as to the adequacy of Florida Public Service Commission regulation.

As I see it the FPC authority would only duplicate the state commission regulation and lead to conflict, confusion and difficulty with no attendant benefit to the consumer or anyone else. The increased cost would be another disadvantage.

The Florida Power and Light Company has produced testimony in various proceedings that large additional costs and initial and continuing expenses would be incurred in being forced to comply with the burdensome and unnecessary requirements of FPC. This testimony has never been refuted by any documented statement by the Commission or its staff. Such additional costs would be necessarily borne by the customers without any gain or advantage to them.

I feel that in the present situation the FPC has overreached itself and I urge favorable consideration of the proposed bill, H.R. 7799, which will, in my opinion, require carrying out the original intent of the Congress.

Therefore, for these reasons I urge your support of this important bill.

Mr. FASCELL. It seems to me that what the committee is confronted with, among other things, is the question of principle of the application of the law as it now exists and as has been interpreted by the Federal Power Commission in one of several cases, and the question is then whether in your judgment that is desirable or necessary.

I think it is essential to examine the factual situation in order to determine the application of the law. We start out basically with the concept of the Federal Power Commission whose jurisdiction is based on the concept of interstate commerce; balanced by the concept of intrastate commerce with regulation by State power commissions.

We have had this kind of a balance now in the system since 1935 when Congress passed the Federal Power Act and, of course, it is subject to change from time to time. Every day in differing factual circumstances you have to make a decision as to where you want to draw the line with respect to the jurisdiction and the application of Federal law or State law. The matter which is presented by this legis-

lation is exactly that kind of case, and the question is whether we are going to allow the Federal Power Commission to draw the line as they see it in their judgment, because they can make a case for it, obviously, and they have gone ahead and exercised jurisdiction.

The question is, then, Does the Congress agree with that or doesn't it? We submit by way of this legislation that the Congress should not agree with that interpretation of the change in balance of power that has existed heretofore with respect to the jurisdiction of the Federal Power Commission. There is a lot to be said on that side of the case. Florida Power & Light Co. have had since 1941 a contract with the Florida Power Corp. for power on emergency basis.

They have no direct connection interstate, that is, the Florida Power & Light Co. doesn't, but admittedly the Florida Power Corp. has a direct connection interstate. The Florida Power Corp., its connection and that flow of power, is all regulated by the Federal Power Commission.

In 1963 the Federal Power Commission decided that the contract between Florida Power Corp. and Florida Power & Light Co. for emergency purposes only subjected Florida Power & Light Co. to Federal jurisdiction.

It took them 30 years to make up their minds, so it wasn't an easy step, but I don't think it was the right step either, because there are no facts in the case which would warrant, in my judgment, the jurisdiction of the Federal Power Commission over that particular transaction.

This is what seems to be involved in this case. Whether in those kinds of situations we are going to give rise to jurisdiction by the Federal Power Commission. We submit that they should not, because there is no need for them to be.

Obviously, in upholding the theory and the thesis of interstate commerce, you have to draw some lines on where you want that to go, and how far do you want that to extend. What we are submitting is that it is an extension one step too far and neither is it called for because of the public protection or any other rationale, so the question simply then is a definition of interstate commerce. The contractual relationship which invoked Federal jurisdiction had been accepted as a customary business and legal practice for almost 30 years. Now all of a sudden in a review decision by the Federal Power Commission the same practice invokes Federal jurisdiction.

What is the basis for it? The answer is, the FPC decided the practice is interstate commerce.

I am not so sure that the Congress ought to agree to that. There is plenty good reason why it shouldn't. Do we want to maintain that balance of power, jurisdiction, and operational regulation between the Federal Power Commission and the State commissions, and between interstate commerce and intrastate commerce?

Not given any other extenuating circumstances, it would seem more logical and reasonable to leave the situation where it was for 30 years, rather than for no other reason except a new interpretation to enlarge it.

I may not have put my finger right on the whole issue and I may not have been totally accurate about the facts. I think I have, however. Nevertheless, what I have said I think will be subjected to close

scrutiny when the experts from the industry and from the Federal Power Commission are examined by your committee. Then you can determine whether the rationale, the application, the principles which I am discussing are reasonable, sensible, and logical.

I submit that they are.

Mr. Chairman and members of the committee, I don't see any point in my going further into the specifics of the legislation or the facts of the case. I do want to thank all of you again for holding these hearings because, while it doesn't seem like many companies would be affected, there is a principle involved here that is very important. It becomes necessary for the Congress to decide whether the Congress wants to draw that line in the day-to-day operation of the overall system at the same place which has been drawn by the Federal Power Commission.

Mr. MACDONALD. Thank you very much, Congressman. Are there any questions of Mr. Fascell?

Mr. HARVEY. No questions.

Mr. MACDONALD. Mr. Kornegay.

Mr. KORNEGAY. As I understand, the only connection between Florida Power & Light in the southern part of Florida and Florida Power in the northern part of Florida is an interconnection for emergency use only.

Mr. FASCELL. That is correct.

Mr. KORNEGAY. And ordinarily there is no exchange of power between those two companies? In the absence of emergency there is no exchange of power.

Mr. FASCELL. Right. Also this proposed legislation would prevent some indirect method of circumventing the whole concept of interstate commerce.

For example, a company operating wholly intrastate could not make a contract with a company outside the State for delivery to it through an intermediary company. That would be clearly an evasion of the whole concept, so that is specifically prohibited.

There are ways to get at the protection of interstate commerce and the jurisdiction of the Federal Power Commission without this unnecessary extension of the theory. I think that is the whole question that is involved.

Mr. KORNEGAY. Does the Federal Power Commission now or have they in the last 3 years tried to regulate Florida Power & Light?

Mr. FASCELL. That is what is under controversy. By decision they did undertake to do that.

Mr. KORNEGAY. Have they backed off?

Mr. FASCELL. That is under present controversy. That is a present controversy.

Mr. KORNEGAY. Does the Commission as of now, today, still contend——

Mr. FASCELL. As I understand it they have not because the matter is in court.

Mr. KORNEGAY. What?

Mr. FASCELL. I understand that the Commission has not because the matter is still in court.

Mr. KORNEGAY. In other words, it is suspended as a result of the court action.

Mr. FASCELL. I believe that is right.

Mr. KORNEGAY. You don't know of any change of tune on the part of the Commission?

Mr. FASCELL. They haven't changed their decision because the matter is still in court. I think they are kind of waiting for the court to either make up their minds or the Congress, and I don't know that we ought to wait on the courts.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. I would like to welcome my friend before the committee. I have heard Congressman Rogers and Congressman Fascell both say that not many of these organizations are affected by this, and it seems to me like a lot of them would be.

Mr. FASCELL. I don't know about that, Mr. Brotzman. As a matter of fact, industry witnesses are prepared to tell you in detail who is covered or who isn't and how many and how extensive it would be.

All I meant was in the overall context of the total industry it would not seem like that too many would be affected, but it is still an important principle.

Mr. BROTZMAN. The principle was, I think, stated correctly, but I think it will affect quite a few people. But we can get that information from other witnesses.

Mr. FASCELL. I think if the decision is left unchallenged or unchanged it ultimately would affect a lot because obviously the theory is, once you intermingle power it doesn't make any difference where it goes; all companies and transactions would be subject to the jurisdiction of the Federal Power Commission on that interpretation of interstate commerce and their right to regulate it under the law. So the question is were do you draw the line or do you want to draw a line.

Obviously electrical power once it starts on the move goes anywhere. It would theoretically be subject to the Federal Power Commission jurisdiction.

Mr. BROTZMAN. I have no further questions. Thank you.

Mr. MACDONALD. Thank you very much, Mr. Fascell.

Mr. FASCELL. Thank you, gentlemen.

Mr. MACDONALD. The next witness will be a member of our full committee, Mr. Pickle of Texas.

Mr. PICKLE. Mr. Chairman, I thank you very much for recognizing me at this point. I wonder if I might ask the chairman if it would be in order to allow Congressman Gurney to present his testimony. He said he has a meeting that he should be at at 11 o'clock.

Mr. MACDONALD. Of course.

Mr. PICKLE. He says he doesn't have a long statement and if it would be agreeable to you, it would be agreeable with me.

Mr. MACDONALD. Fine.

STATEMENT OF HON. EDWARD J. GURNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. GURNEY. I appreciate that very much.

Mr. MACDONALD. We welcome you, Mr. Gurney.

Mr. GURNEY. I have two dozen people waiting on me right now.

Mr. Chairman and members of the subcommittee I think a lot of meat has been wrestled off this bone so far this morning and if I may request I will file my formal statement with the committee and summarize my testimony.

Mr. MACDONALD. That will be so ordered.

(Congressman Gurney's prepared statement follows:)

STATEMENT OF HON. EDWARD J. GURNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I appreciate the opportunity to come before you and urge enactment of H.R. 5348 and similar bills including H.R. 8426, which I introduced. These bills would amend subsection (f) of section 201 of the present Federal Power Act by exempting from jurisdiction of the Federal Power Commission, rural electric cooperatives, and public utilities, all of whose facilities are intrastate, and none of whose facilities are used to transmit or receive electric energy by direct connection from or to another state.

The bill is necessary because of two recent decisions of the Federal Power Commission.

On January 5, 1967, the Commission held that although the Federal Power Act does not confer authority to regulate rural electric cooperatives, jurisdiction over multistate generating and transmission cooperatives would be in the public interest. Commissioner Bagge joined the majority of the commission in requesting a reappraisal of the issue. To make that reappraisal unnecessary and to guard against a very possible overruling of the decision, I have submitted H.R. 8426.

I have also submitted it because of the highly unusual Commission opinion of March 20, 1967, in which the Commission—in a 3–2 decision—found that it had jurisdiction over public utilities such as the Florida Power and Light Company, all of whose facilities and activities are *intrastate*. The Commission's decision subverts the provisions of the Federal Power Act and the intention of the Congress that passed it, both stating that only interstate companies could be regulated. Thus, it becomes necessary to pass a bill to keep the Commission from operating outside of its authority, perhaps unconstitutionally, certainly beyond the intent of Congress.

In 1935, the Federal Power Act became law. It authorized regulation of interstate activities in the electricity field. The Interstate Commerce Committee of the Senate in reporting the Federal Power Act said "Subsection (a) . . . declares the policy of Congress to extend that regulation to those matters which cannot be regulated by the States and to assist the States in the exercise of their regulatory powers, but not to impair or diminish the powers of any State commission."

The House committee, reporting on the same act, similarly stressed the rights and responsibilities of the States. The Power Act itself states in 201(b) that the Commission shall "not have jurisdiction . . . over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of energy in intrastate commerce."

I submit that if the activities of the Florida Power and Light Company are interstate, as the Commission has decided, the Commission has rejected the entire concept of intrastate activity. If the business of Florida Power and Light is not intrastate, then nothing is.

Basis for jurisdiction over the Florida company was "hooked" upon the nature of less than ⅓ of 1% of its "business."

It was the nature of that "business" which transformed the intrastate company into an interstate one. The company's facilities are connected with four completely intrastate facilities, one of which is interconnected with a Georgia company—and here the Commission found the "interstate hook." "Interstate commerce" is a term which I am aware has been gravely stretched and pounded and mutilated by the courts, but here the Power Commission has gone berserk in its zeal to acquire new jurisdiction.

I submit that there is still another portion of the Federal Power Act which further illustrates that the Commission has no authority to interpret as they have.

Section 202 of the act states that it has as its purpose assurance of economical energy by voluntary interconnection of facilities. Florida Power and Light's interconnections are used to buy and sell energy in emergencies, and transactions for emergency power to and from the four Florida companies amount to only one-third of one percent of the total energy it generates this year. The company has sought to provide its customers with complete electrical reliability, to guard against the very slight possibility of blackouts. The company could not "voluntarily" decide to do this, as the Power Act encourages, if the choice means automatic engulfment by Federal regulation.

The Federal Power Commission has happily seized upon what the act states should be a "voluntary decision" to clamp on the regulations of the Interstate Federal Power Act—at a cost which the Florida Power and Light Company estimates, on the basis of sound study, will be from $4 to $6 million initially, and more than one-half million dollars per year in the way of annual additional expenses—an increase which, I might add, the Florida consumer will have to bear.

Even aside from the fact that the statute does not authorize jurisdiction in situations such as that of Florida Power and Light, and might even be unconstitutional if it did, the public interest does not indicate such a move. Florida Power and Light, like other utilities that operate solely intrastate, is closely and intensively regulated by the State's regulatory commission.

In ten years, the Florida Public Service Commission has demanded ten rate reductions. According to the American Electric Power Service Corporations' compilation in 1965 the company's charge per kilowatt-hour of electricity for residential use is some 12.5 percent below the national average and is the fourth lowest of the twenty largest investor-owned electric utilities in the United States. I fail to see any reason for further regulations—and raising customer rates. I fail to see what Washington can do that Florida cannot—except entwine the fairly simple situation with costly, detailed irrelevancies and further reduce the responsibility of a State which has very admirably accepted it.

The Federal Power Act specifically prohibits regulation of retail rates by the Federal Power Commission. Ninety-nine percent of the Florida company's revenues come from retail customers, under retail rates. Less than $3 million or less one percent of revenue of the company comes from wholesale contracts for electric power sold to rural electric cooperatives which in turn resell to their retail customers. Here, the Florida Public Service Commission is also adequately qualified to regulate.

I ask that this committee enact legislation to prevent the Federal Power Commission from taking over the intrastate electric field. I ask that the States be given leave to enjoy one haven from the current trend of growing Federal regulation—and a haven in which the evidence shows great and successful activity. I think that this bill will give the States the position they were given by the Federal Power Act and that they should be given now—leaving the Federal Government in its constitutionally given role of regulating only Interstate Commerce, a term which has been stretched far enough and too far.

I am grateful for being given the time to express my views on a subject about which I feel very strongly. I would appreciate prompt action by the committee.

Mr. GURNEY. It seems to me of course that my bill, as well as others that are introduced here that you are hearing testimony on, exempts from Federal power jurisdiction the public utility whose facilities are wholly intrastate and who do not transmit or receive electrical energy by a direct connection with another State.

The other part of the bill would exempt rural electric cooperatives, and this is what the bill does. Actually I think it is amazing that the bill is here at all and takes up the time of the committee because the Federal Power Act was never intended to regulate intrastate facilities which do not transmit or receive electrical energy from other States, and that is the problem we have here.

As a matter of fact, this has obtained for 32 years until this year in March the Federal Power Commission by a split decision, 3 to 2, decided that it would take jurisdiction over the Florida Power Co. and some others.

The reason, and this has been gone into before, but I would like to go into it again, for taking jurisdiction, or trying to, over the Florida Power & Light Corp. is an interconnection with the Florida Power Corp., another utility in Florida which operates wholly within Florida, I might say, but does have a connection with a company in Georgia.

Now, the reason I want to go into that again is to emphasize that the connection of the Florida Power & Light Corp. with the Florida Power Corp. and the Tampa Electric Co., and the Orlando Utilities

Commission, and the Jacksonville Utilities Commission is simply for emergency purposes.

As a matter of fact, last year the only use of these emergency purposes was one-third of 1 percent of the electricity consumed by the Florida Power & Light Corp.

Now, when you try to carve that down as to how much comes from the Florida Power Corp. it is infinitesimal, and yet this is what the Commission is trying to hang its hat on.

The witnesses from the power company can't say this, but I can. How silly can you be? It completely throws out of the whole concept of intrastate operation and interstate regulations everything that we know is intrastate, and if the Congress doesn't act on this thing we might just as well throw this interstate commerce business out of complete operation because if you permit the Power Commission to go this far then everything of course would be interstate.

Those are the facts of the matter as far as the regulation is concerned. There are two other things that I think are important.

All of us are trying to hold down costs these days as far as consumers are concerned and if we permit the Federal Power Commission to take jurisdiction over this particular company, Florida Power & Light Co., as well as the others involved, I can tell you as far as Florida Power & Light is concerned it is going to cost them $4 to $6 million to initially submit their information to the Power Commission for the regulations and it will cost them somewhere between a half million and $600,000 yearly to comply with the Power Commission regulation, and the consumers in Florida take a dim view of this I know.

As a matter of fact, we have done a pretty good job in Florida under State regulations. There have been reductions in this particular company involved, Florida Power & Light, 10 in number, over the last 10 years and as a matter of fact right now the average retail rate as far as consumers are concerned in the State of Florida is 12½ percent below that of the national average as far as this company is concerned.

And also their rates rank fourth from lowest among the 20 largest companies in the country, consumer rates. All we are going to do here if we permit this arrogation of authority by the Federal Power Commission is to boost consumer rates in Florida when we are doing an excellent job as it is.

The bill is a narrow one. I think it properly hits only at intrastate facilities and I think it is a proper bill for the committee to pass and I hope they do.

Mr. MACDONALD. Thank you very much, Congressman Gurney.

Are there any questions of Congressman Gurney?

If not, we thank you very much for your contribution.

Mr. GURNEY. Thank you.

Mr. MACDONALD. Mr. Pickle.

STATEMENT OF HON. J. J. PICKLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. PICKLE. Thank you, Mr. Chairman. I have a prepared statement that is only a little over two pages. I think it would save time if I would just present my statement and read it to the committee if this is agreeable.

Mr. MACDONALD. Yes, sir.

Mr. PICKLE. Mr. Chairman, it is a pleasure for me to appear before your subcommittee in support of Congressman Rogers' bill H.R. 5348 and other measures to amend the Federal Power Act.

If you will recall, I introduced a bill, H.R. 3608, 2 years ago to accomplish the same clarification of the law and this bill was considered by this subcommittee and voted favorably out of the subcommittee.

Having served with you on the full committee, I know that the members of this subcommittee will give fair and thorough consideration to achieving a workable solution to the important problems which will be outlined to you this morning.

After these hearings, I hope the subcommittee will promptly report this bill to the full committee for the reasons I will state briefly.

In Texas we have long had cooperation between the State authorities, the municipalities, the cooperatives, and the investor-owned electric systems. Together they constitute the Texas Interconnected System, a coordinated group of systems which is entirely intrastate and isolated from interstate systems.

The State, that is, the Texas authorities, the municipalities, and the investor-owned systems have other witnesses who will present their views on this proposed legislation in greater detail. It is my pleasure to explain the general effect this legislation will have on the cooperatives and the other members of the Texas Interconnected System.

I am fortunate as a Congressman to have four of the largest electric cooperatives in my district serving something between 50,000 and 60,000 consumers. I know they have profited from the fine working relationship that exists in Texas. Their rates are low and their service is reliable.

If there was ever a group of systems which has no need for Federal regulation, for which Federal regulation there is no basis in the Power Act, which regulation might, in fact, do great harm, it is this Texas group.

Two years ago before this subcommittee the Chairman of the Federal Power Commission recognized in his testimony that it is possible to have a true intrastate system. He mentioned the systems in Alaska and Hawaii. The Texas system is operated just like those systems in Alaska or Hawaii except in emergency situations.

Nevertheless, during recent years the FPC has moved against the cooperatives and the one-State companies, over neither of which is the Commission given any jurisdiction in the Power Act. The costs to the cooperatives, in trying to defend themselves against the Commission, have been immense.

The courts will probably rely, as you know, on Congress to clarify the intent of jurisdiction granted to the FPC under the Power Act. Furthermore, it is Congress' responsibility to clarify the law. Only the Congress can effectively stay the Federal Power Commission's hand and this bill by Congressman Rogers, like my bill in 1965, is a step in that direction.

It is true that the FPC has dismissed the *Dairyland* case. Some members of the Commission still feel, however, that they should have jurisdiction over the cooperatives and they can, of course, at any time move against them again. The Commission put the one-State companies on its list of jurisdictional companies in 1963 and still has not taken them off.

I think there were some 189 companies or groups in the United States that were put on that original list and except for the variation that might be affected by the *Dairyland* case those names are still on the list.

The Texas intrastate system is one of the finest in the world, with reliable service and low rates. As long as a member system does not involve itself in contractual commercial arrangements with systems in other States, even though power might in times of emergencies flow to or from other States to furnish or receive help, this bill would preserve the present regulatory status quo. If a member system should involve itself in interstate contractual arrangements, it would become subject to FPC jurisdiction under this bill, as it should, but the other connected systems which are not involved in the interstate contract would not be affected.

In my opinion this is a good bill because it will not prevent the Commission from exercising its jurisdiction over interstate transactions and participants in such transactions, but it will preclude the Commission from extending its jurisdiction to innocent and unknowing cooperatives and to purely intrastate matters.

It reaffirms the intent of Congress when, in 1935, it refused to subject a system to FPC jurisdiction simply because it is connected to some system which is connected to some system and so forth which is transmitting energy in interstate commerce.

Naturally, I am more familiar with power systems operating in Texas than elsewhere. During the last 25 years investor-owned utilities, State authorities, municipalities and governmental cooperatives have worked together in perhaps the most constructive relationship between public and private power in this country.

Certainly these groups have had their differences, but nevertheless they have been devoted to serving their customers and the public in general.

I think this relationship should be permitted to continue and in fact expanded to all parts of our country so that the utility users as well as the public shall become the real beneficiaries. By protecting the public interest which relieving the financial burden of unnecessary regulation H.R. 5348 deserves support as a workable and reasonable solution to difficult problems of interagency Federal-State relationships.

Mr. Chairman, that constitutes my prepared statement, and I would be happy to answer any questions.

Mr. MACDONALD. Thank you very much, Mr. Pickle. I have just one question and it is on page 2.

I was wondering what you refer to when you talk about innocent and unknowing cooperatives.

Mr. PICKLE. What line do you have, Mr. Chairman?

Mr. MACDONALD. Well, it is five from the bottom, "innocent and unknowing cooperatives."

Mr. PICKLE. Yes, I see your place now. I am saying it doesn't prevent the Commission from exercising its jurisdiction on interstate commerce matters but on intrastate it would. When I view the term "innocent" I mean any electric cooperatives which do not think they are subject to interstate jurisdiction and who are in an interpool relationship, and if suddenly jurisdiction is declared against them then they are innocent in that sense. They would be surprised.

Mr. MACDONALD. Innocent of what?

Mr. PICKLE. From the jurisdiction that would be extended or would be allegedly extended against them. By way of example, there is a cooperative in the Panhandle and I think that it cost this cooperative somewhere in the neighborhood of $150,000 in cost in trying to relieve themselves of the alleged extension of jurisdiction. They didn't know that was going to happen to them.

When I use the word "innocent" I guess I am saying that they just didn't think it would happen to them.

Mr. MACDONALD. Thank you very much.

Mr. BROWN. May I ask one question?

Mr. MACDONALD. Mr. Brown.

Mr. BROWN. Do you see anything in this legislation that would discourage either cooperatives or investor-owed public utilities from making pool arrangements?

Mr. PICKLE. Very definitely.

Mr. BROWN. This legislation would discourage them from joining up power resources.

Mr. PICKLE. Mr. Brown, as long as the present allegation is being made by the Federal Power Commission those companies who participate in a pooling or intrastate operation are always reluctant to make further extensions or investments or commitments because if at any point they are concerned interstate and subject to jurisdiction this would have an effect on them and it does have a definite effect.

This has not prevented them from diong it. I might say in Texas we have, as I have testified, a very strong intrastate arrangement and I suggest to this committee that a better answer to the problem than has been proposed is not the extension of all jurisdiction or even an international interconnected grid system.

I personally think a better solution would be strong intrastate pooling systems because we do have a pure and simple intrastate operation in my State and I think it is a better answer than the other provisions that have been made.

Mr. BROWN. Simply, is this legislation going to encourage or discourage interconnections?

Mr. PICKLE. I am not sure I would know how to interpret the effect of it. I think it would say to the people in Florida and to other States that have similar systems that you can operate your own system as you think best and you would have interconnections if it is required by law, but it does not include the extension of jurisdiction. I don't know that it would affect interconnections directly as such.

Mr. BROWN. That is all, Mr. Chairman.

Mr. MACDONALD. Mr. Harvey?

Mr. HARVEY. With that point in mind you would encourage interconnections to the extent the interconnections were for emergency purposes.

Mr. PICKLE. Oh, yes. In fact it would be required.

Mr. HARVEY. You could have interconnections to the extent that they were for emergency purposes; isn't that correct?

Mr. PICKLE. That would be required and it would definitely encourage it.

Mr. HARVEY. I want to ask our colleague from Texas how the Rogers bill would differ from his bill which this subcommittee reported out which I supported back in 1965?

Mr. PICKLE. I would say to the gentleman I was not here when Congressman Rogers testified; but, as I read Mr. Rogers' bill, he is simply trying to state, as I did, that we are not asking for new legislation as much as we are asking for a clarification of the 1935 act.

Mr. HARVEY. I appreciate that.

Mr. PICKLE. Therefore, it is in effect the same approach in principle.

Mr. HARVEY. It is the same categories of exemptions that we are dealing with; is that right?

Mr. PICKLE. Yes. My measure went further. When I got into the element of saying what is intrastate in character, I went into language that was more involved or more technical in the sense that I tried to define what was intrastate in character.

Now, I think, Mr. Rogers' bill is more simple in that respect, but principally the same.

Mr. HARVEY. May I ask just one other question, and perhaps this isn't the place to ask. Whatever happened to the gentleman's bill that was reported out?

Mr. PICKLE. Just was not acted on, that's all. It couldn't get any further action. Time ran out and at the beginning of this session these bills were introduced and, therefore, I had not reintroduced mine just pending the outcome of this, that I appear in support of this legislation.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. MACDONALD. Thank you very much, Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. MACDONALD. Our next witness is also a colleague, and sponsor of similar legislation, H.R. 9174, the Honorable William Cramer. Mr. Cramer, you may proceed as you wish.

STATEMENT OF HON. WILLIAM C. CRAMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. CRAMER. Mr. Chairman, I am delighted to have this opportunity to testify in support of my bill, H.R. 9174, and similar other bills which would have the effect of amending the Federal Power Act with the goal of codifying the jurisdiction of the Federal Power Commission as it relates to that agency's authority to regulate intrastate power facilities.

This legislation would have the effect of retaining the existing exemption from Federal control of wholesale power rates that Florida Power & Light Co. and other intrastate power companies now enjoy. I introduced this legislation because of my conviction that the Federal Power Commission is overstepping its authority by seeking to subject intrastate power companies to Federal Power Commission regulation.

The weight of court decisions dealing with the scope of the commerce clause of the Constitution have held that Congress may constitutionally regulate intrastate activity only if it has a substantial economic effect upon interstate commerce. An analysis of the substation and transmission system of the Florida Power & Light Co., for example, along with the indisputable fact that this company is engaged in the generation, transmission, and distribution of the sale of electricity solely within the State of Florida and has no contracts to buy or sell power from or to any person or system in any other State, clearly

demonstrates that its activities are intrastate in nature and that any effect it may have upon interstate commerce is inconsequential.

This fact is further buttressed by recognizing that this company has no direct connections across State lines.

I must emphasize that my remarks are not intended to suggest that I am opposed to reasonable regulation of wholesale power rates by the Federal Power Commission. Where the proper authority exists, such regulation may be most beneficial to the eventual consumer of electricity. What I do oppose most vigorously is the attempt by the Federal Power Commission or any other agency of the Government to overstep the limits of its jurisdiction clearly placed upon it by the Constitution. To allow the Federal Power Commission to exercise any form of regulation over an intrastate activity does violence to the Constitution.

The authors of the Constitution granted to the Congress the power to regulate "interstate commerce." Had they intended to grant Congress the authority to regulate all commerce, surely they would have said so. Indeed, the power to regulate intrastate commerce is retained by the States.

In my judgment, the Florida Power & Light Co. and other power companies which carry on no commerce with other States must be regarded as intrastate in character if intrastate commerce is to have any meaning whatsoever. This being the case, they must remain immune from Federal Power Commission regulation.

Mr. MACDONALD. Thank you for your views Mr. Cramer. If there are no questions, we shall hear next from another colleague, who has also sponsored similar legislation, the Honorable J. Herbert Burke.

Please proceed, Mr. Burke.

STATEMENT OF HON. J. HERBERT BURKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BURKE. Mr. Chairman and distinguished members of the Interstate and Foreign Commerce Committee, I welcome this opportunity to speak in support of H.R. 5348, to amend the Federal Power Act, which was introduced by my colleague from Florida, Mr. Rogers, who is a member of your committee. I was very pleased to join him in cosponsoring this legislation; and, for this reason, on April 20, 1967, I introduced a companion bill, H.R. 8919.

As you are aware, the proposed amendment is actually a status exemption bill, the primary purpose of which is to clarify the original intent of Congress with regard to the Federal Power Act. The bill would make it clear that the Federal Power Commission has certain specific restrictions in the extent of its jurisdiction. It would amend the Federal Power Act to prohibit the Federal Power Commission from assuming jurisdiction over REA cooperatives and intrastate electric public utilities.

This proposed legislation would affect very few electric companies, probably a dozen or less. Florida Power & Light Co. and Tampa Electric Co., both of which do business in the State of Florida, are specific examples of those involved.

A brief review of the situation in Florida reminds us that from the enactment of the Federal Power Act in 1935 until a very recent date there has never been any question concerning the status of such intrastate electric companies. It was assumed, and I think correctly, that

intrastate power companies were not subject to the jurisdiction of the Federal Power Commission. Since these two Florida companies have all of their equipment within the State of Florida and all of their transactions are of a local nature, a State regulatory agency was responsible for overseeing their plans, operations, and progress in carrying out their responsibilities to the consumers within the State which they serve. In 1963, however, these same companies which had previously been considered intrastate, and therefore not subject to Federal regulation, were notified by the Federal Power Commission that they would thereafter come within the jurisdiction of the Federal Power Commission. Furthermore, this Commission has since formally and officially taken the position that these intrastate power companies are subject to Commission regulation and has directed, among other things, that they must comply with all requirements of the Federal Power Act. This, of course, would include the filing of original cost estimates and the keeping of company accounts in the manner provided by the Commission's uniform system of accounts, thus incurring the increased costs which such additional regulation entails.

In past years the Florida Public Service Commission has achieved a record of effective regulation of all electric companies within the State. Considerable progress has been made in constantly lowering rates to the benefit of the consumer while, at the same time, successfully financed the record expansion of the system to meet the fantastic growth of Florida. There is no question that the proposed control of these intrastate companies by the Federal Power Commission would result in duplication of service and increased company costs which will probably and logically be passed on the consumers.

The present system of control by the State has been satisfactory. I can see no useful purpose in dual control—both Federal and State. Such an unnecessary duplication would undoubtedly lead to increased complexity, confusion, and, as I have already mentioned, increased consumer costs. In other words, extension of Federal control over these companies would penalize the customers served by them. It seems to me that in attempting such a power grab the Federal Power Commission is overstepping its jurisdiction. I feel, therefore, that legislative curbs and limits must be clearly spelled out. And that is the exact purpose of this bill.

I truly believe that in so clarifying the original intent of Congress when the Federal Power Act was passed; that is, in reserving for the States their rightful authority and control over intrastate electric companies, we will be acting to the best interests of the American public. Accordingly, I urge your favorable consideration of this legislation and am hopeful that this measure may soon be enacted by the Congress.

Mr. MACDONALD. The next witness will be Mr. Robert Fite, president of the Florida Power & Light Co., Miami, together with that company's vice president, Mr. Ben Fuqua.

STATEMENT OF ROBERT H. FITE, PRESIDENT, FLORIDA POWER & LIGHT CO., MIAMI, FLA.; ACCOMPANIED BY BEN H. FUQUA, VICE PRESIDENT

Mr. FITE. Mr. Chairman and gentlemen, my name is Robert H. Fite. I am president of the Florida Power & Light Co. and I have with me

here Mr. Ben Fuqua, vice president of the company. We are here to support H.R. 5348 and to urge the members of this subcommittee to report the bill favorably.

Otherwise, Florida Power & Light Co. will become subject to jurisdiction of the Federal Power Commission and will be forced to incur the additional costs which such added regulation entails.

H.R. 5348 is a bill of limited application. You will recall that your subcommittee reported favorably a similar but somewhat broader bill, S. 1459, as amended, late in 1965. H.R. 5348 is a simplified version of that bill. It was drafted in order to achieve two objectives only: (1) the exemption of REA cooperatives and (2) the exemption of the limited number of fully intrastate electric companies.

We believe that H.R. 5348 meets all of the legitimate objections voiced by the Federal Power Commission to S. 1459, as amended.

Proposed regulation by the Federal Power Commission is duplicate regulation. Our company is already subject to broad regulation by the Florida Public Service Commission so that duplicate regulation by the Federal Power Commission will serve no useful purpose and we believe is not in the public interest. The unnecessary added costs will be loaded on the backs of our customers because they are our only source of income.

As a responsible officer of our company, I think it is my duty to come here in the interest of the million customers we serve and do everything I can to prevent these unnecessary costs from being incurred.

For 28 years, from 1935 when the Federal Power Act was enacted until 1963, there had never been any question about our status as an intrastate electric company not subject to jurisdiction of the Federal Power Commission. That matter has been discussed by a number of the witnesses so far and who pointed out that suddenly in the term of office of former Chairman Swidler, we were advised along with many other companies that previously had been considered intrastate, that we came within the jurisdiction of the Commission.

Subsequently in March 1967, the Commission and we took exception to it and had hearings before the Federal Power Commission, the Commission by a 3 to 2 majority, concluded formally and officially that Florida Power & Light Co. is subject to regulation and that we must file original cost statements and comply with all other Federal Power Commission requirements under the Federal Power Act, including keeping of accounts in accordance with the Commission's uniform system of accounts.

There was a vigorous dissent to the majority ruling by two dissenting Commissioners. They concluded that the Federal Power Act does not cover Florida Power & Light Co. and they emphasized that the results found by the majority constitutes "too great a stretching" of the act. Congressman Rogers has already presented in detail the background of the minority decision. His statement is already in the record and does not need to be repeated here.

In spite of the fact that the Federal Power Commission's ruling that we come under their jurisdiction is contested logically and at length by two of the five Commission members, we are scheduled to become subject to all of the audits, regulations and rules of the Commission unless H.R. 5348 or some similar amendment is made a part of the Federal Power Act.

The Florida Public Service Commission has a record of effective regulation of the rates of the electric companies in Florida. Previous witnesses have already mentioned this situation and they have referred to the fact that in our cases there have been 10 rate reductions in the last 10 years totaling about $46 million per year.

The price per kilowatt-hour paid by our customers as a result of these rate reductions and other factors is down 33⅓ percent in the last 10 years. We think we are contributing a little bit to the problem of inflation. We are offering one solution in that connection that meets it.

At this point I would like to include a brief description of the company area that we serve and to try to answer perhaps some of these physical questions about our system that have been asked up to date and I have a map here that I think can be used to good advantage in this case and if I may I would like to step over here, Mr. Chairman, and point out just what the area is.

(The map referred to follows:)

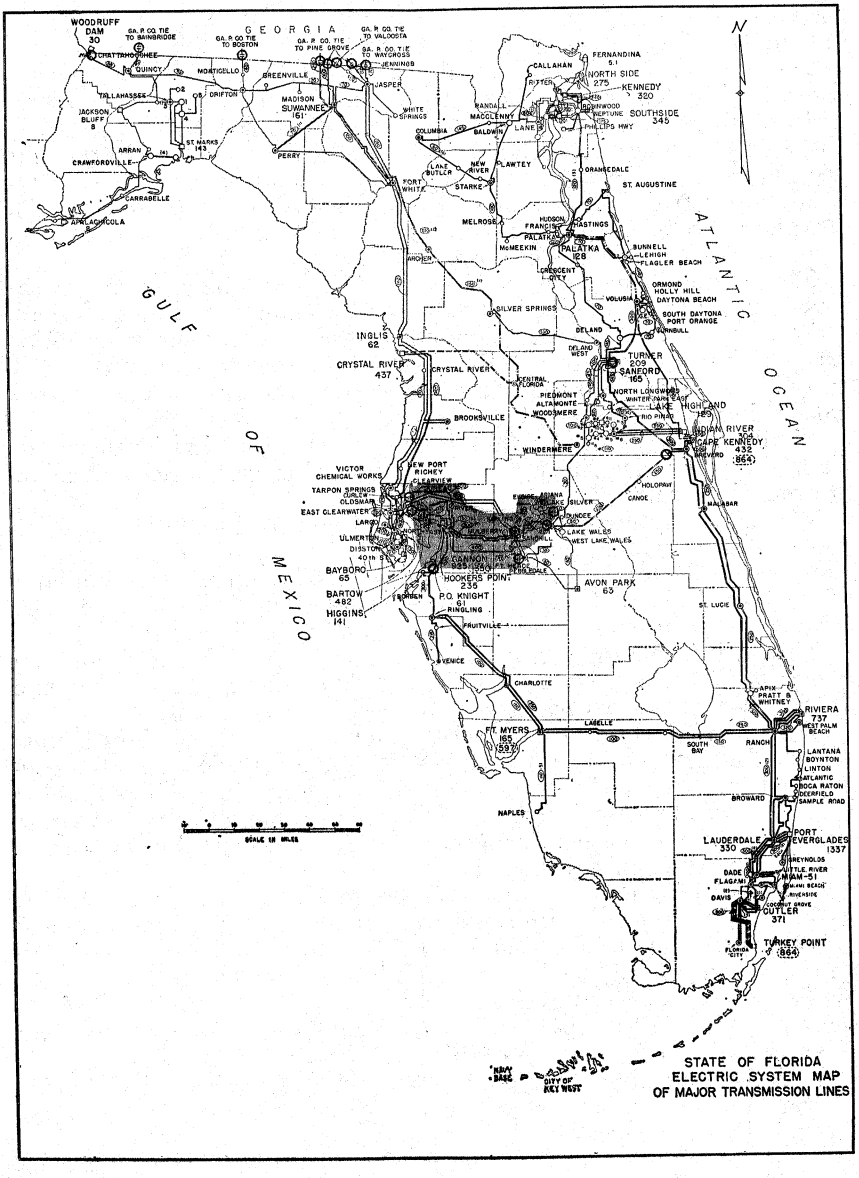

GEORGIA
GULF OF MEXICO
ATLANTIC OCEAN
WOODRUFF DAM 30
CHATTAHOOCHEE
QUINCY
TALLAHASSEE
JACKSON BLUFF 9
CRAWFORDVILLE
ARRAN
ST MARKS 143
PERRY
MADISON SUWANNEE 161
GREENVILLE
MONTICELLO
DRIFTON
JASPER
WHITE SPRINGS
COLUMBIA
LAKE BUTLER
FORT WHITE
STARKE
NEW RIVER
LAWTEY
BALDWIN
RANDALL
MACCLENNY
LANE
CARRABELLE
APALACHICOLA
MELROSE
HUDSON
FRANCIS
HASTINGS
PALATKA
McMEEKIN
ARGYLE
CRESCENT CITY
FERNANDINA
CALLAHAN
RITTER
NORTH SIDE 275
KENNEDY 320
HAMMOND
NEPTUNE
SOUTHSIDE 345
PHILLIPS HWY
ORANGEDALE
ST AUGUSTINE
BUNNELL
LEHIGH
FLAGLER BEACH
ORMOND
HOLLY HILL
DAYTONA BEACH
VOLUSIA
SOUTH DAYTONA
PORT ORANGE
SILVER SPRINGS
DELAND
ORLAND WEST
TURNER 209
SANFORD 165
NORTH LONGWOOD
WINTER PARK
EAST LAKE HIGHLAND 189
RIO PINAR
INDIAN RIVER 509
CAPE KENNEDY 432
INGLIS 62
CRYSTAL RIVER 437
CRYSTAL RIVER
CENTRAL FLORIDA
PIEDMONT
ALTAMONTE
WOODSMERE
BROOKSVILLE
WINDERMERE
VICTOR CHEMICAL WORKS
NEW PORT RICHEY
CLEARVIEW
TARPON SPRINGS
OLDSMAR
EAST CLEARWATER
LARGO
ULMERTON
DISSTON
40th ST
CANNON
HOOKERS POINT 235
BAYBORO 65
BARTOW 482
HIGGINS 141
P.O. KNIGHT 61
RINGLING
SARASOTA
FRUITVILLE
VENICE
CHARLOTTE
FT MYERS 165
LABELLE
NAPLES
HOLOPAW
CANOL
MALABAR
ADIANA
LAKE SILVER
DUNDEE
LAKE WALES
WEST LAKE WALES
AVON PARK 69
ST LUCIE
APIX
PRATT & WHITNEY
RIVIERA 737
WEST PALM BEACH
SOUTH BAY
RANCH
LANTANA
BOYNTON
LINTON
ATLANTIC
BOCA RATON
DEERFIELD
SAMPLE ROAD
BROWARD
PORT EVERGLADES 1337
LAUDERDALE 330
REYNOLDS
LITTLE RIVER
DADE
MIAMI-51
FLAGAMI
MIAMI BEACH
RIVERSIDE
DAVIS
COCONUT GROVE
OUTLER 371
TURKEY POINT 864
FLORIDA CITY
SCALE IN MILES
NAVY BASE
CITY OF KEY WEST
STATE OF FLORIDA
ELECTRIC SYSTEM MAP
OF MAJOR TRANSMISSION LINES

FIGURE 1

Mr. FITE. Our service area is the area served by these black lines. This is Florida Power & Light Co. I will call the gray lines Corporation, so as not to use the word Florida again. I want to make clear that this is the Florida Power Corp., subject to the FPC now and continuing to be subject whether or not this bill becomes law.

It has no effect on this company whatsoever. The black is Florida Power & Light. The shaded area is Tampa Electric Co.

Now, our area is all this in black. You go up here to Live Oak and Lake City. We supply Callahan and cities up north. We come down to this part of the State, West Palm Beach, and go across the State and supply from Bradenton south on the west coast to Naples. The area is connected at this point and at this point and at this point—large black circles—with Florida Power Corp.

Those interconnections were ordered during the war under the emergency powers of the Federal Power Commission and they have existed ever since for emergency purposes. If we have an interruption or one of our generators fails, then the electricity flows from this gray system over into the black and it prevents interruption. It is a good thing.

Similarly if a company fails over here, and that has happened on both sides, the electricity flows back into this gray area and again prevents interruption.

We have an interconnection with the city of Jacksonville, a municipal operation which serves Jacksonville. We have two of them, one here [east of Baldwin] and one there [north of Orangedale]. Similarly if Jacksonville has trouble, the electricity flows into Jacksonville's system from our system and vice versa if there is any need for it.

Now, this is for emergency. This is not a scheduled sale in and out every day. This is only in cases where it is needed for emergency and if the other system has available the electricity to supply it.

We are similarly connected with Tampa Electric Co., right here to the shaded area and again it works the same way. We have no contracts selling electricity to Georgia. We have no connections directly with Georgia. Our line only gets to Georgia by going through the gray lines up northwest with no connection between Jacksonville to Georgia; so this is the end of the line here.

Our electricity flows into the Tampa system in cases of emergency and the only route to Georgia is again through the gray lines here and the amount of electricity that is used for emergency purposes in all of those interconnections in our case is less than one-third of 1 percent of the total amount that we generate in a year, so it is an infinitesimal amount and the Federal Power Commission has always had the power to exert its discretion in cases of this kind if they want to.

So it isn't required that they exert any jurisdiction over Florida Power & Light even though they can trace some electricity from Georgia into our system.

Now, historically over the years FPC has exercised jurisdiction and has had jurisdiction by tracing electricity from here down into some system where they say that they should have jurisdiction.

In the case when they declared jurisdiction over us and we had the hearings they were unable to trace any electricity, so they adopted this Jessel theory, this commingle theory; and they said if somebody up here turns on a bulb in Atlanta it tends to slow down our generators

and therefore we are in interstate commerce and that is basically the controversy we are having with the Federal Power Commission now and this is the area that we are supplying.

That clause that you gentlemen asked about in the bill that removes the exemption if there is a contract wtih a company outside of the State that goes through an intermediary is put in there so there can be no subterfuge. If we were to make a contract with a Georgia power company to buy and sell electricity and then make another contract with the Florida Power Corp., to transmit it for us and act as the agent, we immediately would come under the Federal Power Commission under this bill.

There is one more point I want to make. There is no gap, no Attleboro gap, remaining in the situation here.

The electricity that passes into Florida is regulated at the line when it goes from the Georgia system to the corporation system, I will call it, so as not to get mixed up with us, and it is also regulated when it goes from the corporation system back into Georgia, and it is regulated by the Federal Power Commission and that is going to continue to be the case if this bill becomes law. It doesn't change it in any respect whatsoever.

So there is no transaction that is of a national interest. There is no transaction that we have that has any national interest at all. They are purely intrastate transactions all the way through, so there is no gap that the Federal Power Commission needs to control in our case as was the case when the original Federal Power Commission Act was enacted. It was enacted in order to take care of the so-called Attleboro gap where two systems in two States were transacting business and nobody had control over them. They had to have Federal control.

This doesn't exist in our system. It can't exist in our system unless we try to make this subterfuge and then we get caught by the clause that is there in the law. There are many reasons why we want to avoid duplicate regulation by the Federal Power Commission. While we are thoroughly in agreement that an electric utility, because of its monopolistic characteristics, must be regulated, we think a State regulatory agency is in a much better position to oversee our plans, operations, and progress in carrying out our responsibilities, than is a Federal agency in Washington that is concerned or should be concerned primarily with matters of national scope.

We submit that our interconnections in Florida are in the public interest. We believe in interconnections. We have a good interconnected system inside the State. But we don't believe that they need to go to far-removed sources of power because of hurricanes and because of the high frequency of lightning in peninsular Florida.

We believe that the degree of interconnection can affect blackouts, and that interconnections which are too long and too extensive can cause blackouts instead of preventing them for the benefit of the public.

We submitted in the fall of last year to your committee at the request of your then chairman, a statement which described what we have done in Florida with our system in connection with the interconnected operations in Florida to avoid interruptions of service.

I think this a pertinent report because of frequent references to the blackout situation. It lists all the things we have done and others that

we are planning to do to prevent these blackouts, and to keep our system operating on an interconnected, integrated basis in the State of Florida, not depending on long transmission lines that go to the north to the sources of power there. I have the report here and would like to offer it as part of this record, since I think it is pertinent. I want to offer that for the record. It is the report made to the previous chairman of this committee with respect to reliability.

Mr. MACDONALD. Without objection it is so ordered.

(The information referred to follows:)

FLORIDA POWER & LIGHT CO.,
Miami, Fla., June 14, 1966.

Hon. WALTER ROGERS,
Chairman, Special Subcommittee To Investigate Power Failures, House Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. ROGERS: We are happy to cooperate with you and your Committee by supplying answers to the questions included in your letter of April 19, 1966 to Mr. McGregor Smith, Chairman of the Board, with respect to the Northeast power failure of November 9 and 10, 1965.

Peninsular Florida is served by five principal suppliers. The group comprises Florida Power Corporation, Florida Power & Light Company, Tampa Electric Company, and the municipal systems of Jacksonville and Orlando. These five suppliers are strongly interconnected and comprise what is known as the Florida operating group.

Immediately following the Northeast power failure, the Florida Public Service Commission, which regulates electric utilities in Florida, requested that a study be made to determine the adequacy of safeguards in Florida that maintain continuity of electric service and guard against a power failure such as occurred in the Northeast. The five principal suppliers made a joint report to the Florida Public Service Commission. I believe this report is pertinent to the studies which your Committee is making and I am, therefore, attaching a copy.

An informal committee called the Florida Operating Committee was established in January, 1959 for coordinating mutual problems relating to interconnected operation of the five systems. This committee consists of operating and engineering people from each system, and it meets bi-monthly or more frequently, depending on need. Notwithstanding the fact that each member operates its own individual system in the most economical manner consistent with its individual requirements and policies, there is a strong recognition of the need to coordinate operating matters. This is reflected by the excellent communication services linking the five dispatching offices, by the daily exchange of operating information, by the coordination of spinning reserves, by the coordination of overhaul schedules, and by stability studies and long range studies.

These suppliers, surrounded on three sides by water, subjected to hurricanes and the highest incidence of lightning in the nation, undertake to stand on their own feet and provide their own reserves. The result has been that the power supply for peninsular Florida has been planned to meet increasing load with ample reserves for all situations, and to take care of emergencies without out-of-state assistance.

The population of the State is distributed into certain natural load areas which have set the pattern for transmission systems development and for the location of power sources. Power is generated near population centers and is not transmitted over long distances.

The load areas of the Florida group are interconnected with each other by more than sufficient transmission capability to support each area for any credible forced shutdown of generating capability. This transmission system has never been tested to its full capability. The worst test it has had occurred in January of 1965 when Florida Power Corporation had a forced shutdown of its entire largest power plant, (480 mw) which, at that time, represented about one-half of that company's load. A few weeks later, the Tampa Electric Company experienced a similar situation when it lost generation supplying more than half of its system load. In each of these cases no internal transmission lines became overloaded and no customer service was interrupted, except for one interruptible industrial customer in the first case.

The transmission interconnections between areas presently serve two purposes:

1. Provide backup, or replacement power to an area when large generating units within the area must be off line for maintenance.

2. Provide emergency power to an area when generating units within the area are subjected to forced shutdown.

Good electric service has become an integral and essential part of modern American living. Customers of the Florida group expect good service, and they get it, because each individual member of the group has kept pace with the rapid changes that characterize the territory.

After the Northeast power failure, on re-examination of the Florida interconnected power systems and evaluating the report mentioned above, the Florida Public Service Commission reported, "The study confirms confidence in the stability of our State's integrated systems and discloses arrangements, conditions and safeguards in Florida which apparently were absent in the Northeast.

"The members of the Florida group have developed a variety of safeguards against a widespread power breakdown in the State and are continuing their efforts to further strengthen these safeguards." Key safeguards cited were:

1. Adequate generation and reserve power within the systems and spinning reserve at least equal to the largest generating unit in operation. This reserve is distributed among units on a statewide basis to assure quick response to emergency demands.

2. Sufficient generating capability within the State to make dependency on out-of-state assistance unnecessary.

3. Generation of power near load centers, so that power does not have to be transmitted over long distances.

4. Underfrequency relays—devices which sense an emergency and automatically shed load so power plants can operate without damaging overloads. This helps prevent a systemwide failure if the loss is greater than reserve power.

5. Excellent communications and cooperation between dispatchers of the five organizations.

"These are among the measures which have enabled the Florida companies to meet emergencies time after time so effectively that customers seldom knew an emergency existed," the Commission reported.

I will now address myself to the inquiries in your letter, and will undertake to answer separately, and in order, the nine questions you have asked.

1. Aspects of the failure which are of the greatest concern to you and to the interconnections or pools to which you belong.

The most important aspects of the failure from our standpoint are as follows:

(*a*) Transmission of large blocks of power over extreme distances may not be as beneficial as it is generally thought to be. This is not to say that interconnections and transmission lines are not in the interest of economy and continuity of service, but a super-grid system of EHV transmission lines superimposed on the Florida transmission system and supplying service from remote out-of-state super power plants, is not, in our opinion, feasible for Florida because of frequent hurricanes.

(*b*) The importance of installing underfrequency relays is emphasized by the Northeast power failure. Had such relay protection been available the failure may not have been so widespread. Fortunately, we have extensive protection of this type in peninsular Florida and installation of more such equipment is under study now.

(*c*) The Florida systems maintain adequate spinning reserves, at least equal to the largest unit running in the five systems, and for years have spread this reserve among all the systems and in practically all the plants. Need for adequacy and proper distribution of spinning reserve was emphasized by the report on the Northeast power failure.

(*d*) The magnitude and duration of the Northeast outage is, of course, a matter of great concern. It appears, however, that with the safeguards we have described, the Northeast power failure might not have been so widespread or lengthy.

2. Your internal responses to points raised in question No. 1.

Because of the hurricanes experienced in Florida, the systems have never depended on transmission lines to the extent experienced in many areas. We must be able to continue operation in each area of the State even though a hurricane interrupts the transmission ties between areas. Consequently, Florida Power & Light Company installs adequate generation to supply its own needs plus proper reserves, and normally does not depend on other suppliers.

Load shedding has been used as an emergency operation procedure by members of the Florida group for a great many years. Underfrequency relays have been used to automatically shed load on the systems of Florida Power & Light Company and the City of Jacksonville for nearly ten years. There have been a number of cases where these relays have shed load to achieve a match between generating capability and load, and thereby halt a potential cascading situation. More than one million kw of load can be shed by underfrequency relays under peak conditions on the Florida Power & Light Company system. Similarly, the City of Jacksonville can shed about 150,000 kw. Since the five systems are strongly tied together, this protection has been available to all five members as a second or third contingency backup. We are informed that the other three group members are individually proceeding with studies and evaluations for such installations, and it is expected that the several systems will soon have in operation internal load shedding capability of about 1,500,000 kw.

Spinning reserves in the five Florida systems are constantly studied and reassigned and increased in amount as larger generators are installed, and as the load on the five systems increases. It should be repeated that spinning reserve is most important in assuring continuity of service, and we are very proud of the fact that the Florida operating group has for a long time focused attention on this subject to be sure that sufficient reserves are instantaneously available. This item is covered in more detail under Question 8.

3. Any studies you have made relative to the ability of your system to continue to function upon the sudden impact of uncontrolled energy into the system of the magnitude of the combined output of your three largest generating units.

Study indicates that it would be impossible for the Florida Power & Light Company system to be affected as was the Northeast, by a surge of uncontrolled power on the order of magnitude of our three largest units. Florida Power & Light Company tie lines would trip by relay action, and the Florida Power & Light Company system would continue to operate. Florida Power & Light Company provides adequate generation on its own system and, therefore, is not dependent on remote generation over long transmission lines through neighboring systems.

4. Any studies you have made on the possible weaknesses of concentrating generation in single stations of the magnitude of 2, 3, 4, 5, and 6 million kilowatts.

Present total capability of Florida Power & Light Company is about 3700 mw with another 2400 mw being engineered and constructed. We do not concentrate all our generation in any particular area, and now have nine power plants in our several load areas ranging in size up to 1300 mw. The maximum desirable size of a plant depends on many factors, among them being system and area growth.

We continually make computer load flow studies to determine the effect of outages of generators, lines and substations, and take necessary steps to insure that there will be no adverse effects. Each generating unit is designed so that its loss will not have any significant effect on other generating units within the plant. Each plant is designed so that there are sufficient transmission lines to provide firm transmission capacity. All principal lines are terminated in substations with double busses, using a double breaker or a breaker-and-a-half design.

In the unlikely event of a serious power failure, such as the loss of our largest plant, and in the event that the remaining available reserves both on our system and other Florida systems are inadequate, our underfrequency relays will operate to match load to the capability of the remaining generation and thus avoid a systemwide failure.

5. Any studies you have made on the optimum limit on interconnections.

The optimum limit of an interconnection (meaning a group of interconnected systems) depends on factors such as geographic layout and distances, and on the number of people and systems involved. An interconnection may tend to become unmanageable in some respects if too great an area and too many people are involved.

The optimum limit of interconnections (meaning ties) is determined by the purposes and costs of the interconnections and the economics of alternate plans, such as for local or area generation. Generally interconnections must grow with the systems involved. Size of generating units to be backed up or protected, distances and exposure to natural hazards, such as hurricanes and severe lightning, must all be considered in the plans for interconnection and the determination of optimum sizes.

6. In what ways your individual system of interconnection or poor has protected itself against similar occurrences.

The Florida operating group has frequent meetings to focus attention on spinning reserves, underfrequency relay protection, adequate communication between system operators. The group operates on the premise that each supplier will undertake to stand on its own feet and provide its own reserves. For better continuity of service, the five suppliers are interconnected and in emergencies each supplier aids the system in trouble to the maximum extent of its reserves.

Reliability of service is a dominant factor in the design of systems of the Florida group. This philosophy is also strongly emphasized in operations. For example, it is common practice to avoid taking lines or equipment out of service under conditions which might jeopardize service reliability. When it is necessary to take lines or equipment out of service, precautionary steps are taken such as starting up higher cost generation for area protection.

The match of generating capacity with load in the population centers and the transmission lines between load areas in Florida have produced strong reliable systems. The individual members of the group have for some years projected future generation and transmission system requirements to maintain and even increase this reliability. Intersystem interconnections are being planned and constructed to assure continuing reliability under changing conditions.

The several individual systems of the Florida group for many years have made stability studies to determine how the systems would function under emergency conditions. They demonstrated that the group would remain stable and intact over a wide range of system difficulties. As a result of the Northeast power failure, a new stability study is being made based on more stringent assumptions as to credible incidents than has been past practice. New emphasis is being placed on multiple contingency outages.

To avoid an excessive number of generating units being out of service simultaneously for maintenance and to insure the maximum availability of installed reserves, the individual systems coordinate their maintenance schedules through the Florida Operating Committee.

The several individual systems have always made close and frequent checks of relay settings. These checks are made by people who are constantly in touch with operating conditions. There are sixteen oscillographs located in major substations throughout peninsular Florida. These are valuable tools for analyzing relay operations for fault conditions. Additional installations are contemplated. As a result of the Northeast power failure, the Florida Operating Committee is jointly reviewing relay practices and philosophies of the five individual systems.

Several power plants in peninsular Florida can be started from blackout conditions, but the matter of adequate and properly located auxiliary power supply for emergency startup is under examination. Orlando Utilities Commission is considering conversion to allow emergency startup of its two gas turbines under isolated conditions. Other group members are developing methods of starting steam plants under isolated conditions with the aid of diesel driven emergency generators. Gas turbines are being considered as well as power from certain industrial plants as sources of emergency startup power. Our designers and operators are perhaps among the most conservative in the country, in providing emergency power for communication facilities, lighting, instrumentation, critical small motors, and other equipment necessary for aiding system operation during adverse conditions. However, as a result of the Northeast power failure, these facilities are being examined from the standpoint of reliability under blackout conditions.

Each system has reviewed its operating practices and instructions to dispatching, plant and other operating personnel, and has conducted reviews and refresher courses with these personnel. These reviews stressed procedures and judgments involved in service restoration, and they have included blackboard sessions and dry runs where emergencies have been simulated and solutions practiced and discussed.

The dispatching offices of the individual group members are new and modern. These offices are linked together by excellent communication facilities consisting of microwave, leased circuits, teletype and radio. They are also linked to the power plants and substations by exellent communication facilities. Information is exchanged constantly concerning loads, reserves and unusual operating conditions. In time of emergencies the dispatchers can very quickly communicate and take proper corrective steps on the basis of factual and up-to-the-minute information.

7. Any information in relation to any studies you have made on the system effect of a power surge, such as took place in the northeast area of the United

States on November 9, 1965, when principal interconnecting transmission lines transmit electrical energy by direct current as versus alternating current.

We have followed with interest recent developments in DC transmission, and at this time it does not appear that DC transmission is economically feasible for peninsular Florida.

8. Any operating instructions or studies you have issued or made relative to the fail-safe limits of free spinning reserve.

A substantial loss in generation in peninsular Florida results in separation of the Florida group from the Georgia system. Since the group does not depend on out-of-state help for a loss of substantial generating capacity, it is prepared at all times to take care of its emergencies.

The spinning reserve requirement has always been a matter of continuing review by the Florida group. Members exchange daily information and a review is made at each meeting of the operating committee. Since the formation of the Florida Operating Committee, it has been recognized that the distribution of spinning reserve is extremely important and that a large number of units can increase generation simultaneously and supply a greater amount of power more quickly than a few units with the same amount of total reserve.

Spinning reserve is shared and maintained to protect the instantaneous loss of the largest generating unit in service. The reserve is distributed on enough operating units with proper governor characteristics, so that a frequency drop of less than five-tenths of a cycle will provide the full benefits of each member's share of assistance. The reserve must be available to all members and not restricted by limitation of transformers, lines or other equipment. In abnormal situations where the spinning reserve of a member is either unavailable or only partially available, the member notifies the others so that their spinning reserve may be increased or reallocated as required.

Every system disturbance is thoroughly analyzed by the operating committee to check the response of the generating units of each member in meeting the emergency.

The amount of spinning reserve required is constantly under review. At this time it is felt that it is not necessary to raise the minimum above the capability of the largest generating unit in service, because of the great internal-load shedding capability provided by underfrequency relays.

9. Your procedures for reducing loads and restoring service in the event of outages.

We have already discussed our underfrequency and manual devices for shedding load to match generation and load. Restoration of service is aided by supervisory or remote control of most of the substations on the several systems. This greatly reduces outage time since it is not necessary for a switchman to fight snarled traffic to get to the substation for switching.

The Florida group systems have long been subjected to the hazards of widespread damage from hurricanes, and for many years have had standing emergency procedures. It may be noted here that emergency procedures have continuously been stressed to prepare all personnel for abnormal operating conditions caused by hurricanes. The Florida Power & Light Company storm manual is attached to illustrate the planning for such emergencies. In the case of day-to-day emergencies involving loss of generating units, lines, etc., operating procedures are critically reviewed between and among the companies after disturbances in order to perfect recovery methods. As a result of the Northeast power failure, each member of the group is very carefully examining all standing instructions and emergency operating procedures.

I hope these comments will be helpful to your Committee. We assure you that our efforts to further improve our service will continue.

Sincerely yours,

ROBERT H. FITE,
President and General Manager.

Mr. FITE. I don't think really the subject of blackout has any connection with this proposed amendment per se, but there has been so much talk about it, I would like to say for the record, that the people who are most interested in protecting the customers against blackouts are the companies themselves.

We can't get any revenue if the connections are not being used and if the customers are not using electricity, so we are striving to our utmost to see that the service is the best it can possibly be.

We have a record of continuity which is even better than 99 44/100 percent pure and I think with all the developments that are taking place and the new gadgets that you can buy and install on your system and which we are doing that it is going to be even a better record in the future.

Looking back at that map (fig. 1, p. 35) again, if further interconnections are needed to the north for reliability, they will be made by the Florida Power Corp. We have a good route into Georgia and I am sure they will be made and it won't affect any situation there as far as FPC is concerned.

The truth of the matter is that the diversity of use between Georgia and Florida is so little that there is not much occasion for interconnections from the standpoint of saving any money and the interconnections that are there now are sufficiently good for the emergency part of the situation and as I say if more are needed undoubtedly they will be made, so this bill can't affect the reliability at all.

There have been a number of questions about how many companies would be affected by H.R. 5348. You have raised them here this morning and we are going to try to give you full answers on that right now.

This legislation has been before the Congress for 3 years. We have followed it very carefully, the issue is well known throughout the industry. We have made an analysis and survey in order to find out how many companies would be affected. It is a narrow bill.

Florida Power & Light Co., Tampa Electric Co., Central Illinois Light Co., Savannah Electric Co., and Home Light & Power Co. in Colorado would be exempted, we believe, by this bill. We believe that there are six operating companies in Texas that could, under certain conditions, be exempted by this legislation, so that there appear to be a total of 11 companies which would be exempted.

We have searched for other companies that might be affected because if there are any more we would like them to come up here and help us get this legislation through, but we can't find any others.

Mr. Fuqua here has been particularly connected with this search and with the other companies that are affected and I would like him to add anything he might care to at this point and for you to ask him any question you wish to about this number of customers that are affected or number of companies that are affected.

Mr. FUQUA. Mr. Chairman, I think these that are enumerated here, these 11 companies, are the only truly intrastate companies that could qualify under the terms of the Rogers bill and related bills.

At one time we thought Boston Edison, for example, might qualify, but they say they do not because they have contracts with entities in other States and I have solicited throughout the country at our meetings of our association and so on anybody that would come and testify if they would be affected and if there is anybody else we haven't been able to find them.

Mr. MACDONALD. Right, sir. I was wondering if your company has any plans to interconnection into Georgia?

Mr. FITE. Into Georgia? No, sir; none at all.

Mr. MACDONALD. Do you think it would be a wise thing to do in light of the northeast failure?

Mr. FITE. No, sir; not at all. Under the present development of the art there is no reason for reliability to avoid blackouts or for the saving

of money, of more efficient operation for us to build any lines into Georgia.

Mr. MACDONALD. How far is it from the end of your line into Georgia? I see the map but I can't quite make out the distance.

Mr. FITE. It is very close up there in the north end. It may be within 25 miles of the line, but that is not a heavy line, Mr. Chairman. That is a distribution line. The heavy transmission lines don't go any closer to Georgia than that point below Jacksonville which is probably 100 miles.

Mr. MACDONALD. When you were describing Jacksonville I think you used the phrase that it was a municipal operation.

Mr. FITE. Yes, sir.

Mr. MACDONALD. Where do they get their power? Do they generate it themselves?

Mr. FITE. They generate it.

Mr. MACDONALD. Just by themselves?

Mr. FITE. Yes, sir; they have a generating system.

Mr. MACDONALD. And it is only used in Jacksonville.

Mr. FITE. That is right.

Mr. MACDONALD. And you have no connection with them?

Mr. FITE. We do have connections, two connections with them.

Mr. MACDONALD. Would you explain that to me because I don't quite understand it.

Mr. FITE. Yes. They are for emergency purposes. They were made at the order of the Federal Power Commission under the emergency powers of that Commission during the war. They said we need this to prevent the building of duplicate lines and the use of copper so we were interconnected.

Mr. MACDONALD. I thought you said that the interconnection was ordered during the war, to connect you up with the gray line over there.

Mr. FITE. Well, it did. Both of them were involved.

Mr. MACDONALD. But Jacksonville also——

Mr. FITE. Yes, sir; both of them.

Mr. MACDONALD (continuing). Is interconnected.

Mr. FITE. Yes, sir.

Mr. MACDONALD. Don't you think it would be a good thing to interconnect into Georgia so that perhaps the prices might go down even more? I think you said that it was reduced about 33⅓ percent.

Mr. FITE. I said I do not think so.

Mr. MACDONALD. If I may just finish my question.

Mr. FITE. Yes. Excuse me, sir.

Mr. MACDONALD. And also from the standpoint of avoiding blackout. I am familiar with backouts and blackout conscious and it has happened any number of times in my home State along the last period of a year, a year and a half.

Mr. FITE. Well, I will try to answer each one of your questions separately. With respect to continuity of service and avoiding blackouts, I don't think that further interconnection with Georgia are going to help the situation at all. I think it might even hurt it because if you get much stronger interconnections into Georgia, into the Atlanta area and on into TVA, say, where there are big pools of power, and you begin to depend on them with these hurricanes that we have down

there, we are likely to have a break in the transmission and then we haven't got enough power to supply the system just as was the case in the Niagara-Hudson-Mohawk case when you had the big blackout in the Northeast. We tried to put generation in each of the areas of Florida so that we can take care of the needs of the people with the equipment that is there because of these conditions that I refer to, so I don't think further interconnections now would be of any help on the reliability.

I think it might hurt it. On the case of saving money, the reason that interconnections help you, one of the reasons that they help you save money, is that if Georgia is using power, peak power in the winter and Florida is using it in the summer or vice versa, then these two things fit together like a glove and the equipment up in Georgia can be used offseason in Florida and vice versa.

Now, this condition that did exist to some extent at one time and is mainly the reason why those interconnections are there is ceasing to exist so that I am told by the people at the corporation, this other company there in Florida, that when their contract runs out with Georgia that they now have to have seasonal interchange that they may not even renew it, but leave those lines there for emergency use only.

Mr. MACDONALD. Sir, do I characterize your company correctly when I say it is mostly a distribution company?

Mr. FITE. No, sir, no. We are by no means just a distribution company. We have major generation.

Mr. MACDONALD. You have what?

Mr. FITE. Major power equipment, generating equipment. We have over 4 million kilowatts of power in our powerplants and we are interconnected, those powerplants are, by our own transmission lines of 240,000-volt transmission lines; so we are not a distribution system, if I understand what you mean.

Mr. MACDONALD. If I understand it, you certainly should understand it. It is your business.

Mr. FITE. We have generation, transmission, and distribution, not just distribution only. Does that answer your question?

Mr. MACDONALD. Well in a way. Actually it was going to be a preliminary question, but if the preliminary question is wrong then I am not going to ask the second question.

Are you aware of the bill introduced by the former chairman of this committee, Mr. Harris, in the 89th Congress, H.R. 7430?

Mr. FITE. Yes; I recall that bill.

Mr. MACDONALD. Did that help or hurt you?

Mr. FITE. Well, I don't recall all the details of that bill, but it seems to me that it was pertinent to what really we are trying to say here. There is an amendment to the Federal Power Act in the case of the gas companies. It is called the Hinshaw amendment.

Mr. MACDONALD. Yes; that is right.

Mr. FITE. There is no corresponding amendment in the electric situation and really this is about all we are talking about, is the Hinshaw amendment type of thing. The electricity coming into Florida from Georgia is regulated by FPC and will continue to be, just as formerly the interstate gas that comes across the State line was regulated by FPC and would continue to be; but the FPC is not permitted, since the Hinshaw amendment, to regulate that interstate gas that gets on

down farther into the State after it is once regulated at the gate when it comes over the State line.

Mr. MACDONALD. Right. I remember. We went through that in this committee.

Mr. FITE. That is right. This act, this amendment, is analogous to the Hinshaw amendment. The electricity that comes across the State line is now regulated and would continue to be.

Mr. MACDONALD. Don't you think the Hinshaw amendment is broad enough to cover electricity as well as just natural gas?

Mr. FITE. I would rather not try to answer that. I am not a lawyer. I am not sure.

Mr. MACDONALD. You have one with you, I am sure.

Mr. FITE. No. We don't have any lawyers here.

Mr. MACDONALD. You are the first utility company I ever heard that didn't have a lawyer here. Would you accept a bill like the Hinshaw amendment?

Mr. FITE. I will be glad to take a look at the Hinshaw amendment and try to give you an answer later. I would rather not try to answer that right here.

(See memorandum dated January 29, 1968, sec. II C, p. 57.)

Mr. MACDONALD. Thank you very much. Mr. Kornegay?

Mr. KORNEGAY. I direct this to Mr. Fuqua. He seems to be the man that has the knowledge on how involved this bill is and how many companies in this area would be affected by it.

Mr. Fuqua, would it affect any of the companies, REA's or municipalities in the State of North Carolina, under the Rogers bill?

Mr. FUQUA. In my opinion it would have no effect on the situation in North Carolina at all. Of course, bear in mind, Mr. Kornegay, that these companies that I enumerate—or that we did—are not now jurisdictional.

Mr. KORNEGAY. I know that all the major companies in North Carolina are now subject to FPC and I didn't see anything in this bill that would exempt them.

Mr. FUQUA. Nothing, not a thing in the bill that would affect them at all in my judgment.

Mr. KORNEGAY. I didn't know about some of the REA's or some of the municipality power companies.

Mr. FUQUA. The first part of the bill gives a status exemption to REA cooperatives for the simple reason that they are incorporated under the act.

Mr. KORNEGAY. Then it is automatically exempt.

Mr. FUQUA. Yes, sir; what you have here is the same thing. It is the exact language, in fact, of the so-called Monroney bill which came to your committee, you recall, 2 years ago and you amended it. It simply gives a status exemption to REA cooperatives; yes, sir.

Mr. KORNEGAY. How many generating facilities do you have in your company, Mr. Fite?

Mr. FITE. We have about seven major plants and the total over 4 million kilowatts.

Mr. KORNEGAY. And they are located, I assume, throughout the whole portion of the State.

Mr. FITE. The largest is in the South there at Miami, in that area, in the west Palm Beach area, in the Sanford area, and in the Fort Myers area, and at Cape Kennedy where the missile base is.

Mr. KORNEGAY. I think that is all I have.

Mr. MACDONALD. Thank you. Mr. Broyhill?

Mr. BROYHILL. As Mr. Kornegay, my question concerns the State of North Carolina. To what extent do you have power going into your system from the Georgia Power Co. and from the Florida Power Corp. in emergencies? Does this amount to a great deal of power?

Mr. FITE. From the Florida Power Corp., from Tampa Electric, from Orlando, and Jacksonville all together—I don't have it broken down, but all four of them provide an interchange for emergency uses of less than one-third of 1 percent of the kilowatt-hours we generate in a year.

Mr. BROYHILL. Are these interconnections on a contractual basis?

Mr. FITE. Well, yes.

Mr. BROYHILL. For emergencies only.

Mr. FITE. Yes, sir.

Mr. BROYHILL. There is no power flowing through these lines on a day-to-day basis.

Mr. FITE. Oh, yes, as soon as you connect the line there will be power flowing because of the electrical characteristics and resistance of the lines. There is power that flows around through here all the time or around through here all the time but the amount that goes from our system into Florida Power Corp., it comes back to our system over here and it balances out.

Now, if there is an emergency then in that event the dispatchers call this system over here and say "Can you spare any juice right now." Then they say, "This much."

So instead of the power being equal and balancing out more will come into our system than will go out of our system and we will get some help in that emergency and vice versa. If you take the kilowatt hours that are flowing around because of the electrical characteristics of the system and that includes the emergency too, then the percentage is more than one-third of 1 percent.

I don't recall exactly. I think it is less than 5 percent, maybe 3 or 4 percent. Does that answer your question?

Mr. BROYHILL. Yes. Thank you. No other questions.

Mr. MACDONALD. Mr. Ottinger?

Mr. OTTINGER. Thank you, Mr. Chairman. Is it my understanding that your testimony, Mr. Fuqua, with respect to the number of companies affected only is with respect to the second paragraph in this bill?

Mr. FUQUA. Yes, sir. I am talking about public utility companies and as defined in the Federal Power Act.

Mr. OTTINGER. Intrastate utilities?

Mr. FUQUA. Those 11 are intrastate.

Mr. OTTINGER. It is that second paragraph. That doesn't attempt to count up the number of municipals or REA's.

Mr. FUQUA. No, sir. They are by and large exempt under the act now as far as the municipals and other arms of the Government are concerned.

Mr. OTTINGER. So far as you are concerned if we deleted this whole third paragraph it wouldn't have any effect on your operation.

Mr. FUQUA. That is correct as far as we are now concerned, it would have none. The second paragraph is the one applicable to our company.

Mr. OTTINGER. Thank you very much, Mr. Fuqua.

Mr. MACDONALD. Mr. Brown?

Mr. BROWN. Not having had the benefit of all the previous legislation offered in this area and hearings on it I want to ask a few questions to get this clear in my own mind. It is your contention that if a company interconnects for emergencies only and does not cross State lines then it can qualify as intrastate only and not be subject to the Federal Power Commission under this legislation; is that right?

Mr. FITE. No; that is not the basis exactly of this. This bill provides that if a company connects at the State line with another company directly in another State, then whether it is for emergency or anything else it is subject to jurisdiction.

This bill provides that a company that has all of its facilities in one State and is not connected at the State line directly with a company outside is not subject to FPC.

Now, on the emergency, it just happens that that is the way we operate here in our system. We only use these interconnections for emergency. This is all they are used for. If they were used for transmitting power up into Georgia with a contract through that corporation intervening, then we would lose our exemption under this bill.

Mr. BROWN. Well, the technicality of a written contract doesn't impress me too much. I am trying to get at the actual circumstance. If you are self-sustaining on peak power production and you are not a transmission line from a company producing more than its own needs to a company producing less than its own needs, or to another carrier, and all of your lines are within a State, these qualifications that would exempt you from FPC regulation, isn't that right?

Mr. FITE. I believe that is correct if I understand your question. You must be connected directly in order to be subject. If you are not connected directly under this bill then you are exempt.

Mr. BROWN. I am trying to get what may be the ultimate result of this bill.

Now, the suggestion has been made that there are only a few companies which would qualify in this instance, but would this bill serve to encourage for any reason companies which are completely within a State but are now buying power from other companies to create their own generating facilities so that they could be self-sustaining and then not be interconnected except for emergency purposes?

Mr FITE. No, sir, I don't think so. I don't believe that this bill would bring that about at all.

As a matter of fact, I don't think this bill will bring about any changes of any kind that I can imagine. There are 11 situations involved here, none of which now have interconnections into other States directly and they are not subject to the FPC or at least haven't been in the past, and although jurisdiction has been asserted, it hasn't been established in any one of these 11 cases, so we are only talking about 11 companies and if this bill is enacted they will not be subject.

Now, it won't encourage any other company to do anything that I can think of. It is not intended to. Let me say that. It is not intended to have another company do anything to remove itself from the jurisdiction of the Federal Power Commission.

Mr. BROWN. Are all these companies of which you speak self-sustaining with reference to their own power resources and needs?

Mr. FITE. How about that Mr. Fuqua? Do you know any that are not?

Mr. FUQUA. I am sure that some of them are interconnected in the same way that we are. For example, the Texans here can speak for themselves. They have an interconnected system within their State. The thought is that they are solely in one State and are not directly connected.

Mr. BROWN. That is what I am trying to find out. I am trying to find out just exactly what the point is. Is the question of being self-sustaining or interconnected for emergency purposes only, significant?

Mr. FITE. No.

Mr. BROWN. This is the same question that I asked Mr. Pickle and Mr. Harvey picked it up.

Mr. FITE. No, I don't think so, to answer your question. The word "emergency" is not significant in this case. The significant thing is it is in one State, that you have no direct connections across the State lines and no transactions of any kind with a company in another State. That is the determining thing.

Mr. BROWN. Well, then, you could be merely a distribution company and not a power producer, and as long as you are within one State and even though your power may come from an interconnection with a producing company you would be covered by this legislation?

Mr. FITE. Yes, that is right. In the Senate hearings on the Holland bill the Home Light & Power Co., which is listed as one of the 11 here—it is in Colorado—has no generation of its own. It operates in about one county, as I understand it, there. It buys all of its power from other companies, which in turn are interstate. Power is generated.

I don't know where it comes from, either Colorado or outside the State, but all the Home Light & Power Co. juice is purchased. They have testified that this regulation by the Federal Power Commission which had been stated at the time—they tried to take jurisdiction of the Home Light—they stated that their costs would be so astronomical for that small system they wouldn't have any net revenue left and the hearing itself—I believe it was Senator Pastore who was conducting the hearings—called the Federal Power Commission people up to the stand at the time and asked them if this was true, that they were trying to exert jurisdiction over this company, and they said yes, they were.

He suggested that they ought to take a look at that right quickly and the next day the Commission wrote a letter to this company and exempted them.

Our case is no different I think from the Home Light & Power. We are just larger and we have some generation whereas they didn't have.

Mr. BROWN. Let me ask one other situation question. I don't know about this particular company to which you refer, but perhaps this applies in this company's case. If the power generation sources for that company are in another State but the distribution company is completely within the second State your theory is that under this legislation they would be exempted from Federal Power Commission control, or not?

Mr. FITE. I think that is right, if they are not directly connected, but I want to add this.

Mr. BROWN. Wait a minute. They would have to be connected. They might not be directly connected with the power resource from another State. In other words, let's put the power source in Georgia, just as a theoretical example, and power is transmitted through the Florida

Power Corp. and on to the Tampa Electric Co., which has no sources of its own, and is merely a distribution company.

Is the Tampa Electric Co., under those limited provisions, exempted or not?

Mr. FITE. They can't wheel it; no, sir.

Mr. BROWN. What?

Mr. FITE. They can't wheel the power, but you say if Tampa has no generating facilities of its own?

Mr. BROWN. Yes.

Mr. FITE. But they buy from the corporation?

Mr. BROWN. Yes.

Mr. FITE. They would be exempt.

Mr. BROWN. And the power source actually comes, let's say, from Georgia?

Mr. FITE. Well, it could come from Florida Power Corp.

Mr. BROWN. Well, let's say it comes from Georgia and the Florida Power Corp. is merely a transmission line for that power although it does its own generation, too.

Mr. FITE. It would be regulated when it came across the State line to Florida Power but it wouldn't be regulated when it went from Florida Power to Tampa.

Mr. BROWN. So Tampa would be exempt.

Mr. FITE. That is right.

Mr. FUQUA. Also if Tampa had a contract with a Georgia entity to buy and had Florida Power Corp. to wheel it, that would remove it.

Mr. BROWN. You will have to define that term "wheeling" for me.

Mr. FUQUA. I mean haul it.

Mr. BROWN. OK.

Mr. FUQUA. That is wheeling.

Mr. BROWN. When I asked the question I saw some heads in the audience nod yes and some heads nod no, so I am still a little baffled.

Mr. FITE. If Tampa has no generation, it buys from the corporation and the corporation is willing to sell it, it has generation facilities to sell it, to supply it to, we will say from wherever it comes, then they are exempt, but if Tampa says to Florida Power, "I want to get some juice, we have no generation here," and Florida says, "No; we haven't got any," and they go to Georgia and make a contract with Georgia and then they employ the Florida Power Corp. to bring it down there like a freight train would bring a piece of equipment, then they are subject to FPC and are not subject under this law.

Mr. BROWN. This seems to be something you can structure. Your utility can make a contract with another intrastate corporation to supply it power and then your corporation, in turn, because of the extra needs, makes a contract with Georgia to buy additional power because your corporation is now supplying Tampa.

Mr. FITE. Well, these things are not that simple. There are two or three things that are involved. In the first case you don't get power directly from Georgia. It is by displacement. There are powerplants in between. That is one thing. The second thing is economics come into this. You have to make a contract between Tampa and Florida Power that both of them are satisfied with from the standpoint of cost.

One has to either procure the power somewhere and sell it to Tampa or it has to generate the power and sell it to Tampa, and it wants to

get paid for it and make some money. Tampa on the other hand, has the alternative of generation or buying, and all of these things, these economics, come into the picture and you don't get a situation where they go to another State to get power and have it furnished.

Mr. MACDONALD. Will the gentleman yield?

Mr. BROWN. Yes.

Mr. MACDONALD. The last question has been hypothetical. Now I will ask you a direct question. Why wouldn't you rather be regulated? You are going to be regulated anyway, right?

Mr. FITE. Yes, sir.

Mr. MACDONALD. Why would you rather be regulated by the State than by the Federal Power Commission?

Mr. FITE. Well, No. 1, the Federal Power Commission is prohibited by law from regulating our retail rates.

Mr. MACDONALD. Yes; but I am not talking about that. I am saying: Why do you prefer to be regulated by the State utility board than the Federal?

Mr. FITE. No. 1, they are on hand. They are at home. They know what the local needs of people are. They are more attuned to the situation that applies in that State.

Mr. MACDONALD. You mean they are more pliable.

Mr. FITE. No, I don't mean that at all.

Mr. MACDONALD. I don't mean it that way. You anticipated something I didn't have in the question. By pliable I meant pliable in the sense of knowing the needs of your company and the people of Florida perhaps.

Mr. FITE. Yes; I think that is the major factor. I think that they do know the needs of the people. They know the conditions in Florida. They know the conditions of the company. They know how fast we are growing or how slow we are growing. They know firsthand what it takes for us in the way of financing to get the money that we need to grow and supply the needs of the people there and prevent blackouts and have reliable service.

Mr. MACDONALD. Why can't you show all these things to the FPC?

Mr. FITE. They are so far removed. They have such a big bureau. It is so cumbersome. It takes so long to get anything done that we would never get anything done if we operate under the FPC.

Mr. MACDONALD. But these guys are elected to the board in Florida, as you say. How long do their terms run?

Mr. FITE. Four-year terms. It is staggered.

Mr. MACDONALD. Are they necessarily expert in the field before they get elected?

Mr. FITE. One of them was Mr. Alan Boyd. He was considered to be so expert you brought him up here and took him away from us.

Mr. MACDONALD. And put him in transportation. So I wouldn't call him a prime example because he is in a completely different field as an expert up here.

Mr. FITE. I think in all fairness I should tell you frankly that I think that the expertise in this thing comes from the staff of the Commission itself. There is a staff that has been there for years. I think one of the best authorities on utility regulation in the country is right in that Commission down there, a fellow by the name of Mr. Lewis Petteway who is their executive director. This man I think is a remarkably good regulator and he has been there for years.

So whereas there are Commissioners that are elected that certainly couldn't be considered to be experts, it is the same thing as you have in the Federal Power Commission.

Mr. MACDONALD. Even in Congress when we get elected we don't automatically become expert in everything, but I was just curious as to why you were so anxious to get away from the FPC when you are going to be regulated, anyway. I can understand and I have been through a couple of fights here to take regulation off completely as in the oil wells under the transmission lines.

They didn't want any regulation. But this way since you are going to be regulated in any event I don't really see the difference between being regulated—at least you haven't spelled it out to me—by the State commissions and by the Federal officials.

Mr. FITE. Mr. Chairman, I thought I had right at the beginning. Let me make this point. The main reason that we are trying to avoid this regulation that has been extended by the Federal Power Commission, or is trying to be extended, is to save money for our customers.

It will cost us at least a half million dollars a year to subject to the oversee of our accounting practices by the Federal Power Commission which will be entitled if they take jurisdiction and which will be a direct duplication of what the Florida Public Service Commission is now doing.

There would be two people overseeing our accounting practices and Mr. Lee White so stated himself that it was duplicate regulation and there is no need for it. This is not in the public interest and it is to the disadvantage of our customers.

That is the main reason.

Mr. MACDONALD. Are you talking about the auditing of your company's books as a great expense?

Mr. FITE. Well, the expense comes about from the reports that we have to give them, from the teams of people that they send to Florida to sit in our offices and overlook the accounting regulation along with the State people who are already there and the detail to which they go that the State commission doesn't go.

We know how much money we have invested in our facilities in Florida. We know exactly because every dollar we spend goes on the books a dollar.

Now, we can't tell you what the pole on the northeast corner of Second Avenue in Sanford, Fla., costs. We don't know exactly. But we know what the whole extension costs. The Federal Power wants to know what that pole cost and when it was put in, and we have to keep those records.

Mr. MACDONALD. I want to ask you this and then I will yield to other members. I have used up a lot of time.

Don't the FPC people they send down work pretty closely with the State people too?

Mr. FITE. I think they try to.

Mr. MACDONALD. I don't really see why that would be much bother.

Mr. FITE. Because we have to employ another 27, 28, or 29 people to keep those records in the detail that they want them kept in Washington. That is the main reason.

Mr. MACDONALD. Thank you.

Mr. BROWN. Will the gentleman yield for one final question?

Mr. MACDONALD. Yes.

Mr. BROWN. I would like to ask the staff for some kind of a rationale on this question of intrastate and interstate that would relate the various kinds of Federal regulation that we have over such things as trucking, oil transmission, manufactured products that are sold in interstate, and the electric companies.

I think a rationale has to relate these various matters of transmission of power or transportation resources or transportation of products for sale or whatever you have. It seems me that in some areas just the fact that you are connected with an interstate operation makes you (QED) interstate. In view of the fact that I have asked the staff for some information or some background that relates all these things, I would like to suggest the same possibility to you as a witness if there is a way you can give me briefly your thinking on this.

Mr. FITE. Right offhand I don't know for sure but we could get together. We will certainly make an effort.

Mr. BROWN. It would not have to be done offhand. I would be happy to have a letter on the subject that would give me this background.

Mr. MACDONALD. When Mr. Brown talks about a letter, I think copies should be supplied to each member of the committee and one for the record.

Mr. FITE. Yes.

(The following was subsequently submitted:)

MEMORANDUM, JANUARY 29, 1968

Re: Dual Regulation of Commerce by Federal and State Governments.

I. THE COMMERCE CLAUSE IS NOT A LIMITLESS GRANT OF POWER TO THE FEDERAL GOVERNMENT

The genesis of the theory of dual sovereignty of central and state governments can be traced to the very beginnings of the Republic. By the time of the Constitutional Convention, the United States had become virtually helpless in dealing with foreign nations because of the dispersion of commercial power among the states under the Articles of Confederation. At the same time there existed a destructive hostility among the states due to restrictive measures directed against one another. These were the considerations that caused the framers to draft the Commerce Clause, and thus an original and primary objective of the Clause was to limit the commerce power of the individual state governments and not to grant power affirmatively to the federal government. Corwin, *Commerce Power v. States Rights*, 24–26 (1936).

This duality, or "double aspect", of sovereignity was recognized at an early stage in Chief Justice Marshall's opinion in *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 204 (1824), and amplified in the subsequent cases of *Wilson v. Blackbird Creek Marsh Co.*, 27 U.S. (2 Pet.) 245 (1829); *City of N.Y. v. Miln*, 36 U.S. (11 Pet.) 102 (1837); and *Cooley v. The Board of Wardens*, 53 U.S. (12 How.) 299 (1852). In capsule, the "double aspect" concept recognizes that the grant to Congress by the Commerce Clause is exclusive and consequently a prohibition to the states to exercise the same power. However, the states are permitted to enact laws which in their *operation* may amount to regulation of interstate commerce but, nevertheless, are to be sustained under the reserved powers provided that they have for their *purpose* the accomplishment of legitimate state objectives such as public health, morals, safety, or general welfare, and where the *local interests* thereby served outweigh the interstate or national interests.

The doctrine has been applied continually to the present day, Smith, *The Commerce Power in Canada and the United States*, 220 (1963). A much later Court than Chief Justice Marshall's in *NLRB v. Jones & Laughlin Steel Co.*, 301 U.S. 1, 30 (1937), through creating revolutionary constitutional doctrine itself, has recognized that:

"The authority of the Federal Government may not be pushed to such an extent as to destroy the distinction, which the Commerce Clause itself establishes, between commerce 'among the several States' and the internal concerns of a State."

And as Professor Charles Warren has observed, *The Supreme Court in United States History*, III, at 470:

"However the Court may interpret the provisions of the Constitution, it is still the Constitution which is the law and not the decisions of the Court."

II. FEDERAL–STATE REGULATION IN THE UNITED STATES

Passing on from the question of the Constitutional limit of the reach of federal power under the Commerce Clause, we shall explore briefly in certain selected areas just how this regulatory function is apportioned, in fact, between federal and state authorities. Congress, in an attempt to alleviate jurisdictional disputes, has placed specific limitations on federal authority in its legislation. For example, Sec. 201(b) of the *Federal Power Act*, 16 U.S.C.A. § 824(b), provides in part:

"The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line."[1]

There is other evidence of federal respect for the efficacy of state regulation. For example, Congress frequently has authorized federal aids to state regulators. For many years, the ICC has invited state commissions to join hearings on common problems. The FPC often has supplied information to state commissions and has permitted state agencies to intervene as interested parties in hearings. On occasion, a federal commission has aided a state agency in presenting a case before the Supreme Court. The FCC and some state commissions have worked together on several nationwide investigations, primarily of telephone rates. Federal commissioners associate professionally with state commissioners through the National Association of Railroad and Utilities Commissioners and through regional associations of commissioners. Phillips, *The Economics of Regulation*, 118 (1965).

However, substantial conflict still exists over the allocation of jurisdiction to regulate. Commissioner McKeage of the California Public Utility Commission stated at 72 *Pub. Util. Fort.*, 66 (Nov. 21, 1963):

"* * * an ever increasing centripetal force in our federal government is aggressively destroying local authority and conveying that jurisdiction into the eager and waiting, not to say grasping, hands of the bureaus at Washington."

Though most people now favorably accept federal regulation, many believe that federal agencies have gone too far in regulating essentially "fringe interstate matters" and warn that unless this trend is reversed, "the entire fabric of state regulation of local matters may well disintegrate." Albert L. Sklar, Chairman of the Maryland Public Service Commission, quoted in 72 *Pub. Util. Fort.* 68 (Nov. 21, 1963).

There is increasing evidence that state regulators can be equally effective as, and often more effective than, their federal counterparts in areas primarily of intrastate concern. A striking and most current example of this development is seen in a recent lead article in *The Wall Street Journal*, (November 24, 1967) p. 1, col. 6 entitled "Securities Regulators Tighten Their Control Over Intrastate Sales: States Go Beyond the SEC's Rules on 'Full Disclosure,' Bar Issues Deemed Unfair". There it was reported that an increasing number of states are tightening control over securities transactions within their borders. It was noted that generally the states' regulatory philosophy shows a more far reaching

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[1] In this regard it should be noted also that the use of the so-called *Shreveport* doctrine enunciated by the Supreme Court in *Houston, E. & W. Tex. Ry.* v. *United States*, 234 U.S. 342 (1914), was denied to the Federal Power Commission when Congress enacted Part II of the Federal Power Act regulating electric utility companies engaged in interstate commerce. That case sanctioned the exercise of federal power over intrastate rail rates because they competed with interstate rates to the injury of interstate commerce. This intent to limit the FPC is made clear by the comments of Rep. Cole, a sponsor of the legislation, in 79 *Cong. Rec. 10384*, June 28, 1935, where he said:

"As to the jurisdiction of the States and State commissions, I doubt if any State commission or State officials familiar with the bill as it is now before you will say that the jurisdiction of the States has not been safeguarded and protected in a fair and lawful way. In doing so we have tried—and I think successfully—*to avoid the injection into the Federal control, which this title confers, the extension thereof into intrastate activities in the way that the Shreveport case might permit.*" [Emphasis added.]

concern for the public than does the federal regulatory philosophy, and that the States are moving to regulate practices heretofore left unregulated by the SEC. The report continued:

"Besides interpreting state laws as broadly as possible, more state securities regulators are venturing into areas already policed by the SEC. Securities commissioners in Kansas, Indiana, Texas, Washington and other states say they aren't satisfied with the SEC's requirement that companies issuing stock supply formal prospectuses to purchasers."

A look at three other selected areas shows that, in fact, Congress and the federal courts have in many cases limited the regulatory reach of federal agencies in favor of regulation by state authorities, with apparently successful results.

A. Transmission of Petroleum Products

It has long been settled that states have the power to regulate both the production and the local distribution of oil. Searls, *Present Status of Federal and State Jurisdiction in Connection with Regulation of, Exploration for, and Conservation, Production and Sale of Oil and Gas*, 15th Oil & Gas Inst. 8 (1964). State regulation in the oil industry has been limited almost entirely to conservation efforts including proration programs, "ratable take" statutes, and market demand statutes. These provide all comers a fair chance at extracting and finding ready markets for their oil while at the same time limiting production to current consumption needs in order to conserve the obviously essential natural resource. Mr. Searls points out (*id.* at 12) that "The states have done a magnificent job."

State regulation in this field is complemented by federal activity in a number of ways including antitrust enforcement, the imposition of import quotas, and the requiring of estimates of demand and reports of storage. The federal enforcement of the *Connally Act*, 49 Stat. 30 (1935), 15 U.S.C.A. §§ 715–715(m), which prohibits the shipment in interstate commerce of oil produced in violation of state conservation regulations, is a major factor in making those regulations workable. Searls, *id.* at 18.

A major area of federal regulation over oil pipelines is under the *Hepburn Act*, 34 Stat. 584 (1906), 49 U.S.C.A. § 1 *et seq.* Jurisdiction is given to the ICC over "common carriers" engaged in the "transportation of oil or other commodity . . . by pipeline . . . from one State . . . to any other State . . . ." 49 U.S.C.A. § 1(1)(b).

The *Hepburn Act*, which also regulates common carriers by rail and water, shows a high degree of awareness of the "double aspect" of the regulatory function between federal and state authorities. Intrastate transportation is excluded from federal regulation by Sec. 1(2)(a), which provides:

"The provisions of this chapter . . . shall not apply to the transportation of passengers, of property, or to the receiving, delivering, storage, or handling of property, wholly within one State . . . except as otherwise provided in this chapter."

Transactions involving pipeline carriers were included when subsequent legislation extended the authority of the ICC to include carrier consolidations, 41 Stat. 456 (1920), and intercarrier agreements, 62 Stat. 472 (1948). On the other hand, ICC authority has not been extended to control of the entry of new pipelines or the abandonment of old ones, the regulation of pipeline securities, or the severance of the transportation function from ownership of the commodities transported. Jones, *Cases and Materials on Regulated Industries* 73–74 (1967).[2]

B. Motor Carriers

The states enacted the first regulations relating to the motor carrier industry. Early regulations were designed primarily for safety purposes and control of the use of the public highways. By 1932, every state except Delaware regulated passenger transportation by motor carrier and 39 states regulated the movement of property.

But even at that time the state commissions already had begun to grapple with the problem of the regulation of interstate versus intrastate operations. The Supreme Court had decided in 1925 in *Michigan Pub. Util. Comm'n* v. *Duke*, 266 U.S. 570 (1925), that Michigan could not regulate interstate commerce and

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[2] One case has held that oil pooled from two pipelines, one interstate and one purely intrastate, was subject to either interstate rates or intrastate rates in the proportion of the flow from each line, *Humble Oil and Ref. Co.* v. *Texas and Pac. Ry.*, 289 S.W. 2d 547 (Tex. 1956).

thus could not refuse to issue a permit to an interstate carrier. Following ten years of controversy and Congressional study, in which the ICC recommended federal regulation of both busses and trucks, Congress enacted in 1935 the *Motor Carrier Act* which became Part II of the Interstate Commerce Act. Phillips, *op. cit. supra* at 463–64.

This Act regulates differently common, contract, and private carriers.[3] The ICC is given power to create and apply to all interstate carriers all safety regulations that it sees fit. Private carriers are not subject to any economic regulation. Certain carriers, even though operating in interestate commerce, are exempted from federal regulation by Sec. 203(b), 49 U.S.C.A. § 303(b). Among the excluded categories are local carriers, such as school busses, hotel busses, and taxi cabs, and motor vehicles used by railroads, airlines, water carriers and others for purposes of transferring and delivering freight or passengers in their normal operations. Also exempted by the same section are common motor carriers, even if engaged in interstate commerce, that operate on regular routes within continguous municipalities or their adjacent zones, so long as they are engaged also in intrastate transportation over the entire route and in that capacity subject to state regulation.

Section 205 of the Act, 49 U.S.C.A. § 305, reflects a Congressional attempt to decentralize administration and give the states a share in the regulatory authority over interstate matters by creating joint boards composed of both federal and state commission representatives whenever an ICC matter involves not more than three states, otherwise the boards to be used at the discretion of the ICC.[4]

Another illustration of the "double aspect" of governmental regulation is in the area of highway safety. Although the Act authorizes the ICC "to investigate and report on the need for Federal regulation of the sides and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers", § 225, 49 U.S.C.A. § 325, and to regulate common, contract, and private carriers in order to insure reasonable safety of operation and equipment, § 204(a), 49 U.S.C.A. § 304(a), the preservation and safety of the roads themselves have been left with the state commissions, *Thompson* v. *McDonald*, 95 F.2d 937 (5th Cir. 1938), *aff'd*, 305 U.S. 263 (1938), even where the state regulations apply alike to vehicles moving in interstate commerce and intrastate commerce, *South Carolina State Highway Dep't* v. *Barnwell Bros.*, 303 U.S. 177 (1938). State commissions may determine whether the safety of the travelling public and the preservation of the state highway property can accommodate any additional burden of commerce upon such highways, even if such determination results in a burden on interstate commerce. *South Carolina State Highway Dep't* v. *Barnwell Bros., supra.*

A further example of federal and state division of authority concerns the prescription of time limitations in which judicial actions can be instituted. Section 304(a) provides a federal statute of limitations for all actions at law by a common carrer engaged in interstate commerce, but it provides no limitation time on actions of contract carriers so that, as to the latter, the applicable state statutes of limitations apply. *Minton* v. *General Shale Prod.*

Even more significantly, Congress in 1962 amended the Federal Motor Carrier Act, making it clear that there would be no requirement to secure a federal certificate of public convenience and necessity for "operations in interstate or foreign commerce by a common carrier by motor vehicle operating solely within a single State" which is not controlled by another interstate carrier with operations outside the State, where such carrier has obtained a State certificate authorizing intrastate operations. 76 Stat. 911 (1962), amending 49 U.S.C.A. § 306(a) by adding paragraph (6). While it should be pointed out that the amendment specifically provides that "such operations in interstate . . . commerce shall . . . be subject to all other requirements of this Act," such clear recognition of the importance of single state operations is a major step forward in the continuing development of the concept of the "double aspect" of federal and state regulation.

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[3] Although the term "interstate commerce" in the statute may include transportation between places in the same state through another state, the federal statute does no authorize a motor carrier to do any intrastate business on state highways or interfere with the exclusive exercise by each state of its power of regulation of intrastate commerce by motor carriers. *Atlantic Freight Line, Inc.* v. *Pennsylvania Pub. Util. Comm'n*, 60 A. 2d 589 (Pa. Super. Ct. 1948).

[4] For a fuller discussion of the scope of the Federal Motor Carrier Act see generally, Phillips, *The Economics of Regulation* 463–65 and Jones, *Cases and Materials on Regulated Industries* 484–99.

C. Local Natural Gas Distribution Companies

It is also of interest to note that Congress curtailed the jurisdiction of the Federal Power Commission over local natural gas companies having no interstate activities, in enacting the "Hinshaw Amendment" to the *Natural Gas Act* in 1954 (68 Stat. 36). This amendment added a new subsection (c) to Section 1 of that act (15 U.S.C. § 717(c)) providing:

"The provisions of this Act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. * * *."

The Senate report on the Hinshaw Amendment is most precise as to its purpose (*Sen. Rep. No. 817 on H.R. 5976*, 83d Cong., 2d Sess. July 30, 1953, p. 1):

"The purpose of this legislation is to clarify the Natural Gas Act by further defining the limits of Federal Power Commission's jurisdiction with respect to operations of companies engaged in the local distribution within a State of out-of-State natural gas which has been received by such a company at or within the State borders.

"In making this clarification the legislation reaffirms and is thoroughly consistent with the original intent of the Congress in enacting the Natural Gas Act; namely, that the act was to supplement, and not supplant State regulation."

The Senate report then goes on the say:

"The difficulty giving rise to the need for this bill is that under certain interpretations of the Federal Power Commission, * * * the *Commission has undertaken regulation of some activities* of certain companies engaged in the distribution of natural gas whose operations take place *wholly within a single State* and which can be completely regulated by the respective States. This has *resulted in unnecessary duplication of State and Federal jurisdiction*, and has caused extra expense to individual companies because of overlapping requirements regarding the filing of reports and information. This bill eliminates this duplication by leaving the jurisdiction over these companies exclusively in the States, *as always has been intended*." [Emphasis Supplied]

In summary, it is clear that, as elsewhere, there has been a substantial division of regulatory authority between federal and state agencies in the three industries referred to above. Though constitutionally federal authority could have been extended to a much greater extent, Congress has seen fit to leave large areas for state regulations alone and to share other areas with the state agencies. Congress, to a large degree, has limited its regulatory reach apparently in deference to state regulators deemed competent to cope adequately with the problems of the federal unregulated areas, extending federal authority only where absolutely necessary and avoiding its use in areas where involvement with interstate commerce has been only tangential, casual or occasional. The principal extension of the Federal regulatory reach, in the past 30 years, has been essentially the work of the central government's bureaucracy, abetted by its courts.

III. LOCAL VERSUS CENTRALIZED REGULATION IN OTHER FEDERAL SYSTEMS.

The other great federal systems of government in the English-speaking world are those of Canada and Australia. The Canadian Constitution (primarily the *British North America Act* of 1867), reflecting the view that a federal union must guarantee the preservation of separate provincial status, vests wide general powers in a central parliament and jurisdiction with respect to local matters in provincial legislatures. Smith, *The Commerce Power in Canada and the United States* 15, 17 (1963). Judicial construction of the document has cast the system in the mold of "dual federalism", whereby the reserved powers of the local

governments constitute a limitation upon the powers of the central government. *Id.* at 4.[5]

Canada's Commerce Clause, while similar to our own, has never played a major role in the country's development, being rather "an insignificant source of Parliamentary authority". Canada's Constitution, under which the country has prospered dramatically, thus has not suffered the fate of our own which, "while strictly federal in form, has, under the influence of the Supreme Court, taken on distinctly unitary characteristics," the metamorphosis being due mainly "to the wide sweep accorded the commerce clause." *Id.* at 3, 4 and 6.

The Constitution of the Australian federal commonwealth system (Act of the British Parliament, 1900), a federation of six states and numerous territories, provides that powers not granted expressly to the federal government (§§ 51–52) remain in the states (§ 107), with certain rights reserved also to the British Crown (§ 74), and it contains numerous examples of the dual exercise of power by central and local governments over the same subject matter[6].

Significant too is the role of the Commerce Clause in the Australian system. Dean Zelman Cowan of the University of Melbourne Law School has observed:

"It is interesting to note that while the American commerce power has become a principal instrument of the extension of federal power, the substantially similar Australian commerce power has played a relatively minor role. . . . This leads further to the suggestion that at a period at which the Supreme Court of the United States is interpreting the interstate commerce power in very wide terms and is restricting the scope of constitutional limitations on that power, the judicial interpretation of the Australian Constitution in this respect is following an opposite course." Cowan, *A Comparison of the Constitutions of Australia and the United States*, 4 Buffalo L. Rev. 155, 178, 180 (1955).

In Switzerland's federal system the central government enjoys only limited and delegated powers, a result of the pre-confederation status of the cantons as independent and sovereign states which was preserved to the extent possible upon confederation. O'Brien, *Baker v. Carr Abroad: The Swiss Federal Tribunal and Cantonal Elections*, 72 Yale L.J. 47 (1962). Article 24A of the Swiss Constitution (1848)[7] well illustrates Switzerland's use of the concept of dual regulation by federal and cantonal governments. It provides that the federal legislature shall *enact genral provisions* concerning the public interest in the national use of water-power, and that, subject to the federal provisions, the cantons shall *regulate the utilization* of water-power.

As Lord Bryce pointed out, *The American Commonwealth*, vol. 1, p. 324–5 (1914 ed.):

"One [of the guiding principles of the draftsmen of the U.S. Constitution] was to restrict the functions of the National government to the irreducible minimum of functions absolutely needed for the national welfare, so that everything else should be left to the States. . . . [and it was] adopted by the founders of the present constitution of the Swiss Confederation, a constitution whose success bears further witness to the soundness of the American doctrines."

CONCLUSION

The basic concept obviously underlying the "double aspect" doctrine and the recognition by Congress of the value of state regulation (as illustrated by its regulation of petroleum pipelines, motor carriers and gas distribution companies discussed above) is, as Lord Bryce well put it, "the whole spirit of the Con-

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[5] In the case of *City of Montreal* v. *Montreal Street Ry.* [1912], A.C. 333, the lines of a railroad subject to federal regulation connected at several points within the City of Montreal with those of the purely local Street Railway, and the two companies had agreed to allow the cars of each railway to use the lines of the other to convey passengers from points on one system to points on the other. It was conceded readily that a good deal of this flow was "through traffic" within the meaning of the Federal Railway Act which subjected such traffic to federal regulation. The Privy Council upheld the Supreme Court of Canada in thwarting the attempt of the federal Board of Railway Commissioners to subject to its regulatory jurisdiction the "through traffic" aspects of the local railway's business by holding the federal act unconstitutional. The applicability of the Commerce Clause was dismissed summarily at p. 344 on the ground that other provisions of the Constitution specifically distributing legislative powers with respect to railroads should apply instead: "Taken in their widest sense these words [dealing with regulation of trade and commerce] would authorize legislation by the Parliament of Canada in respect of several of the matters specifically enumerated [elsewhere in the Constitution], and would seriously encroach upon the local autonomy of the province. . . ."

[6] 1 Peaslee, *Constitution of Nations*, 93, 100, 110 (1950).

[7] 3 Peaslee, *Constitutions of Nations*, 122.

stitution, which kept steadily in view as the wisest policy local government for local affairs, general government for general affairs only." [8]

As the record before this Committee makes clear, it is difficult to conceive of any major business operation more local in nature than that of Florida Power & Light Company. The Company is engaged in the generation, transmission and distribution of electric energy solely in the State of Florida, subject to the jurisdiction of the Florida Public Service Commission. All of its facilities are located there, substantially all being south of Cape Kennedy with about 75% of the Company's electric load at the southern end of the east coast from West Palm Beach to Miami, approximately 400 miles south of the Georgia border.

Florida Power & Light owns no facilities which cross state lines, nor does it have any connections with any other electric companies owning facilities which cross state lines.

Florida Power & Light is not in the business of buying and reselling electricity either intrastate or interstate. Its only sales of its own production for resale are to six small local cooperatives. The Company has no exchange arrangements with any electric system except the four local Florida electric systems with which it is directly connected solely for temporary and emergency purposes. No company outside of Florida is obligated to supply any of its needs—either emergency or normal; Florida Power & Light is not obligated to supply any electric utility other than to serve the temporary and emergency needs of those Florida electric systems with which it is directly connected, and then only if the Company has the excess power available.

Because of the unique peninsular location of the Company's system and the frequency and severity of lightning storms and hurricanes, the Company always has designed and operated its system in such a way that it is not and will not be dependent upon others to supply any part of its predictable load.

There is thus simply no relation between interstate commerce and the operation of the Company's system, which is entirely local in nature, having no national characteristics, and not of the sort that Congress intended to be subject to regulation by the Federal Power Commission. The legislative history of the *Federal Power Act* (*Sen. Rep. No. 621*, 74 Cong., 1st Sess. pp. 18 and 48; *Hearings on H.R. 5423 before the House Committee on Interstate and Foreign Commerce*, 74th Cong., 1st Sess. pp. 249 and 495) clearly establishes that Congress was most careful at the time of passage of the Act in 1935 to confine the exercise of federal authority to those matters which could not be regulated effectively by the states and to leave local matters within the jurisdiction of the local authorities.

Such a factual situation would seem, in itself, to be a most compelling reason for the enactment of H.R. 5348, which in its proposed limited restoration of local matters to local control suggests no innovation or revolutionary approach. It is, on the contrary, merely a contemporary and simple reaffirmation of the basic principles of our Constitutional history.

FLORIDA POWER & LIGHT CO.,
HARRY A. POTH, JR., *Attorney.*

Mr. BROWN. Just for a minute I want to explain why I ask this. If we have a different standard for intrastate and interstate in the railroad-trucking industry, for instance, than we do from the utility industry or for products that come under the jurisdiction of the Federal Trade Commission, I think we ought to be aware of it. As a relatively new member of the committee I would like to at least resolve in my mind why we have either a single standard or a double standard in this connection.

Mr. FITE. We will try to do something in that connection. I will say at this time, however, that with respect to interstate movement of gas the view, if this amendment were enacted, would be analogous to what the Congress is already doing with respect to gas. It is regulated by the Federal Government when it crosses over the State line and then the regulation of that interstate gas ceases.

[8] *Id.* at 338. In the same paragraph, Lord Bryce went on to say, "Evils would unquestionably arise. But the Philadelphia Convention believed that they would be kept at a minimum and most quickly cured by strict adherence to this policy."

Mr. BROWN. I certainly think that is germane to this discussion.

Mr. MACDONALD. I have to interrupt. It is also regulated by the Federal Government at the well.

Mr. FITE. Yes. I didn't mean to imply that that was the only regulation, but as far as moving into the State is concerned, when it goes over the State line it then becomes subject to State regulation.

With respect to the item on cost, Mr. Chairman, I would like to add this one point, that in the hearings before the Federal Power Commission when our jurisdictional matter was being reviewed before the examiner we submitted all of this information, the testimony, about costs and there was no witness of the FPC that refuted it or attempted to refute it. It was just passed over very lightly.

Now, since then there has been some statement in the hearings on the corresponding bill in the Senate by the Chairman of the Commission that the costs were not much in his opinion, but there was certainly no effort to oppose the testimony that we submitted during the hearings of this additional cost.

Mr. MACDONALD. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman. Just one other thought that occurred to me as a result of one of the answers you gave just a few minutes ago, Mr. Fite, and that is the Federal Power Commission is attempting to regulate only your wholesale rates, is that correct?

Mr. FITE. No, sir; they are attempting to regulate our contracts. On wholesale rates, we don't have any except the REA.

Mr. KORNEGAY. I am thinking of wholesale and retail. You do not contend they have authority to regulate your retail.

Mr. FITE. No, sir.

Mr. KORNEGAY. That is left up to the State commission.

Mr. FITE. That is correct.

Mr. KORNEGAY. With the Federal Power Commission coming in and the regulating of your wholesale rates does that in and of itself relieve the State commission from regulating your wholesale rates?

Mr. FITE. No, I don't think it does at all.

Mr. KORNEGAY. Do they continue to regulate your wholesale rates?

Mr. FITE. They are qualified to do it and it is a question of what they are delegated by the State to do.

Mr. KORNEGAY. What I am getting at is this: Is this dual regulation?

Mr. FITE. Yes, sir.

Mr. KORNEGAY. In other words, the State commission is regulating your wholesale rates?

Mr. FITE. Well, that isn't true now; no, sir, they are not.

Mr. KORNEGAY. You mean the State commission does not regulate the wholesale rates?

Mr. FITE. Not in Florida. They have not been given that authority by the legislature. We have no wholesale rates in our particular case except the supply of some REA cooperatives.

Mr. KORNEGAY. You sell to REA and municipal?

Mr. FITE. We don't sell to municipal, no.

Mr. KORNEGAY. How about large companies that use——

Mr. FITE. That is subject to the State commission. I mean these interconnections we have with the Florida Power Corp., and with Tampa, are State regulated interconnections.

Mr. KORNEGAY. I am talking about industrial now. Are they regulated?

Mr. FITE. Yes, sir.

Mr. KORNEGAY. By the State commission?

Mr. FITE. Yes, sir.

Mr. KORNEGAY. Then there is no duplication of regulation if all the Federal Power Commission does is regulate the wholesale rates.

Mr. FITE. That is not what they are going to do though. They are going to regulate our accounting practices and our accounting records. I guess that's the main thing that we object to, because there is where the extra cost comes in as I explained a moment ago.

The wholesale rate is not even mentioned in the order.

Mr. KORNEGAY. In other words, on wholesale rates it is just a matter of agreement between you and the——

Mr. FITE. Cooperative.

Mr. KORNEGAY. Co-op that you sell it to.

Mr. FITE. That is right.

Mr. KORNEGAY. Have you any quarrels with the co-ops or they with you on the rates that you are charging?

Mr. FITE. No, sir. I am going to let one of the co-op representatives who is going to testify answer your question, but from my standpoint we have no quarrel with them.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. MACDONALD. Thank you very much.

Mr. FUQUA. Mr. Chairman, before we depart may I offer this document for the record. It has to do with the initial and continuing costs of complying with Federal Power Commission requirements, a Haskins & Sells letter.

Mr. MACDONALD. You want it in the record at this point?

Mr. FUQUA. Yes, sir.

Mr. MACDONALD. Without objection it is so ordered.

(The information referred to follows:)

HASKINS & SELLS,
Miami, Fla., June 2, 1967.

Mr. ROBERT M. FITE,
President, Florida Power & Light Co.,
Miami, Fla.

DEAR MR. FITE: You have asked us to assist you in determining the additional cost that the Company would incur in the event it had to meet the accounting requirements of the Federal Power Commission. Any definitive estimate of such additional cost would require an extensive study of the necessary extention of your present procedures to develop the additional data called for by the Commission.

However, in order to establish a probable range, we have discussed the matter with a number of our other electric utility company clients whose accounting is believed to conform with the Commission's requirements. From these discussions and our knowledge of the Commission's requirements, it appears that the additional cost will be primarily in accounting for plant, on a unitized basis. As a general measurement, we obtained from these clients the number of people required to keep their plant accounting records. While certain variations in functions between plant accounting, valuation, and general accounting departments exist, it appears that the plant accounting departments of the companies whose property accounting complies with the Commission's requirements are relatively about three or four times the size of the present department at Florida Power & Light Company.

The initial cost of developing property records to meet the Commission's requirements is also difficult to establish on a comparative basis, because, among other things, each company has a different starting point. The companies with

whom we spoke had not attempted to accumulate the initial costs incurred by them. The companies who were willing to estimate the initial cost, however, consistently said they believed it ran from one to several million dollars, depending on the extent of the existing records, the need for a property inventory, and similar matters.

In addition to the additional cost of accounting for plant, there would be additional cost incurred for other matters related to Federal Power Commission regulations. We have not attempted to measure these other costs.

Yours very truly,

HASKINS & SELLS.

Mr. FUQUA. Thank you.

Mr. FITE. Thank you very much, sir.

Mr. MACDONALD. Do you have any extra copies of that letter?

Mr. FUQUA. Yes, sir; I have some. I have two or three.

Mr. MACDONALD. Perhaps the committee could utilize some of them.

Mr. FUQUA. I have four copies.

Mr. MACDONALD. Even though the House is in session we will call the next witness because the witness list is quite long and time is fairly limited.

Mr. Sim Gideon, general manager of the Lower Colorado River Authority, Austin, Tex.

STATEMENT OF SIM GIDEON, GENERAL MANAGER, LOWER COLORADO RIVER AUTHORITY, AUSTIN, TEX.

Mr. GIDEON. Mr. Chairman, I have filed a written statement with the committee and being as you have a long list of witnesses I will just try to summarize it.

Mr. MACDONALD. Fine. Without objection, to make it clear for the record, your statement will be inserted as read at this point.

(Mr. Gideon's prepared statement follows:)

STATEMENT OF SIM GIDEON, GENERAL MANAGER, LOWER COLORADO RIVER AUTHORITY

Mr. Chairman, the Lower Colorado River Authority, an agency of the State of Texas, would like to go on record in support of House Bill 5348 (introduced by Congressman Rogers) and is filing with the House Interstate and Foreign Commerce Committee a copy of this letter as reflecting the views and position of the Lower Colorado River Authority.

Lower Colorado River Authority (LCRA) is an agency of the State of Texas which owns and operates an electric generation and transmission system in numerous counties in Central Texas, generally in the area around Austin. The System of the Authority includes hydro generation on the Colorado River (this is the Colorado River in Texas) in a total capacity of 234,000 kilowatts; a recently completed steam plant of 125,000 kilowatts capacity near Bastrop, Texas, with an additional unit of 125,000 kilowatts to be in commercial operation by January 1, 1968; a small steam plant of 60,000 kilowatts capacity we lease; and some 2,000 miles of 69,000 and 138,000 volt transmission lines. LCRA sells at wholesale the entire electric supply for 30 municipalities in the Central Texas area all of which operate their own distribution systems; LCRA serves retail customers directly in 3 municipalities and supplies 11 REA cooperatives in the Central Texas area directly through LCRA transmission lines and indirectly through lines of neighboring utilities.

The transmission system of the Authority is interconnected with the systems of all contiguous utilities including Texas Power & Light Company on the north and east; West Texas Utilities Company on the west; Central Power & Light Company on the south and east; City Public Service Board (the municipal electric system of the City of San Antonio) on the south; the municipal electric system of the City of Austin and Houston Lighting & Power Company on the south and east.

Our System is an integral part of a voluntary power pool called South Texas Interconnected Systems, which has been in existence for some thirty years.

Through our interconnection with Texas Power & Light Company, and through the 345,000 volt EHV transmission link between Houston and the north Texas companies, the south Texas and north Texas groups are in turn solidly integrated in a power pool large enough to gather the economies of scale available in the present state of the art of generation and transmission; and yet not so large as to adversely affect reliability. Our record in the area mentioned above for low rates and reliable service is an excellent record—we are proud of it, and we would like to see it remain under local guidance which has been responsible for such a fine record.

Although, as an instrumentality of a State, LCRA is exempt from jurisdiction of the Federal Power Commission by Section 201 of the present Act, we do have a distinct interest in the legislation you are considering.

LCRA's interest in the matter relates to the situation which is implied by our many interconnections with the neighboring power companies. Over a period of nearly 30 years, we have worked together in a manner which we feel has been and is a highly constructive relationship between public and private power. As you know, hydro power is dependent on rainfall, (and in Central Texas rainfall is very unpredictable and varies from drought to flood) and in years when our watersheds have been dry, the private companies have made available to us energy at low rates with which we have saved the water in our reservoirs for peak loads. At other times the companies have purchased from us peaking power. By virtue of being interconnected, LCRA has been able to operate efficiently and economically in periods of drouth, as well as during periods of floods; and by virtue of the present fine working relationship we have been able to utilize the waters of the Colorado River for the ultimate and best benefit to the public from the multiple purpose standpoint of flood control, power generation, water conservation and recreation. This method of operation has resulted in the LCRA lake area becoming one of the most used water oriented recreational areas in Texas. Further, our Chief Engineer and staff act as an informal headquarters and clearinghouse for the South Texas Interconnected Systems.

LCRA and the Austin and San Antonio municipal systems represent the bulk of public power activities in Texas, and while I do not speak for other public power agencies, I know that the relationships which we have worked out in our own way, and on a wholly local basis, have resulted in a fine workable situation which has been beneficial to the public. As a direct result of this relationship there is more water available in times of drouth to meet the needs of Central Texas, ample low cost reliable power is available to meet all needs of a growing area, and as a by-product, a great recreational water oriented area exists in Central Texas which is used and enjoyed by hundreds of thousands of people each year. The people of Texas (and indirectly, the people of this Nation) are beneficiaries of this situation, and we feel that it should not be disturbed.

LCRA does not have any specific pleadings with respect of the exact provisions of the legislation. I am aware that the companies and Systems with which we are interconnected do not operate in parallel with those in any other State, and that there is no path through which interstate energy can enter or leave our system. If these are the criteria for exemption, then I hope they might be clarified so that our operations and those of our neighbors will remain under local guidance, which we feel has resulted in maximum economies coupled with maximum reliability of service to the electric consumers in Texas and has resulted in maximum benefits to all. We feel that H.R. 5348 will enable us to continue in the future to do what we have been doing for 30 years.

Mr. GIDEON. Thank you. The Lower Colorado River Authority is a State agency of the State of Texas. It pertains to the Colorado River in Texas, not the one that has all the water in it, but the one that once in a while we have rain and we have six hydrodams on it and we also have a steamplant.

We operate in central Texas and we sell to 30-some-odd municipalities who depend on us for all of their electric energy. We also sell to 11 rural electric cooperatives. We are interconnected with what is known as the south Texas interconnected systems. This is a voluntary power pool consisting of the Houston Lighting & Power Co., the Central Power & Light Co., the city of San Antonio, the city of Austin, and the Lower Colorado River Authority.

We have been operating as a voluntary power pool for over 25 years and as a State agency we are exempt from the Federal Power Commission jurisdiction, so naturally you might say, Well, why are you interested in this bill?

We are interested in this bill because we think that the bill will clarify who is subject to the Federal Power Commission jurisdiction and who is not, and that by virtue of that clarification we will be able to better plan our operations and better to work in the future as we have in the past.

The companies that we have worked with in the past have not and are not now subject to the Federal Power Commission jurisdiction. But in their contracts with us what we have been able to do is we have our own generation. All of the members of the south Texas power pool have sufficient generation to take care of themselves. We are interconnected with transmission lines so that if we ever get into any trouble we can help each other and in times of drought these companies have helped us to preserve water so that we would have water for the needs of central Texas and for irrigation purposes and for municipal purposes.

In times of flood they have purchased our power from us because of course you can't hold the water back. It is going to go and as it goes it will make power and we need to dispose of it immediately.

So by virtue of the interconnection we have a very fine operating condition in central Texas that has resulted in very low rates, very reliable service, and as a byproduct one of the largest recreational water-oriented areas in the State of Texas.

We would like to see that maintained and we can maintain it if the operating rules and regulations remain the same because we have operated under those now for some 25 years and, as Congressman Rogers and Congressman Pickle stated today, the purpose as we understand this bill is not to take away any jurisdiction, but is merely to say, "This is what Congress wants, this is what Congress intends," and if it is stated in that way then we can continue to operate in the future as we have in the past, and if we can continue to operate that way then we can continue to bring these great benefits to the people of Texas and therefore we are interested in the bill because in our interconnections with the private utilities they feel that they want to stay intrastate in character.

They are now and they have a provision if by virtue of interconnecting with us and by virtue of our serving anybody we become subject to it or the people that we serve become subject to it and the power floats back through our system into theirs so it could be asserted that they are subject to it then our contracts are automatically canceled and that would be very disastrous to us and that is the reason we are for it.

Mr. MACDONALD. Thank you very much.

Mr. GIDEON. I would be glad to try to answer any question.

Mr. MACDONALD. Mr. Broyhill.

Mr. BROYHILL. No questions.

Mr. MACDONALD. Mr. Brown?

Mr. BROWN. Do you agree with the interpretation made by the gentleman from Florida about the coverage of this bill, that a company that did not produce its own power would be covered by this bill?

Mr. GIDEON. As I understand, if power is generated in Georgia and is brought into Florida, regardless of what purpose it is, it will be regulated because it is interstate power.

Now, if it goes through the Florida Power Co., it is a regulated transaction. If it goes beyond there and gets to a city then the rate of that city, the system of that city, would not be subject to it. I believe that is correct, but the power that came in and the generation of that power and all of that is regulated, so anything that goes in interstate is regulated under this bill.

Mr. BROWN. That is all.

Mr. MACDONALD. Thank you, Mr. Brown. Thank you very much, sir.

Mr. GIDEON. Thank you.

Mr. MACDONALD. As you all know here the bell rang for our appearance on the floor. We still have quite a few people to present their testimony. I would just ask in general are there any people who would just as soon put in their statements for the record as read? If there are, without objection that can be done.

Otherwise we will have to recess now. Is there anybody here who wants to put in his statement?

Mr. Sommers (general manager, City Public Service Board, San Antonio, Tex.). Mr. Chairman, mine is very brief, two pages if you would like it here or I will put it in. It is already filed for the record.

Mr. MACDONALD. Fine. If it is already filed that is just fine because actually we are illegal on two counts now. One, the House has been in session since 12. Now, there is a call of the House and it is mandatory that we have to answer it. I will say that hearings will continue tomorrow morning and I think due to the list of people that we better start not at 10, the usual time. We had better start at 9 a.m.

So the hearing is now recessed until 9 a.m. tomorrow morning.

Mr. SOMMERS. Mr. Chairman, if it is all right I will appear in the morning, if that is satisfactory. My name is O. W. Sommers.

Mr. MACDONALD. Right, sir.

Mr. SOMMERS. I am the next witness.

Mr. MACDONALD. Right. You are the next witness.

Mr. SOMMERS. I will be here in the morning.

Mr. MACDONALD. Actually just so it won't surprise everybody, we have the Federal Power Commission coming up and they asked to go on first which is the courtesy we usually adhere to. So they will go on first but at 10 o'clock which is the usual time. We will take witnesses scheduled here up until ten and then after the FPC finishes.

We will now adjourn until tomorrow morning.

(Whereupon, at 12:33 p.m., the subcommittee adjourned, to reconvene at 9 a.m., Thursday, November 2, 1967.)

FEDERAL POWER ACT AMENDMENT OF 1967

THURSDAY, NOVEMBER 2, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 9 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Torbert H. Macdonald (chairman of the subcommittee) presiding.

Mr. MACDONALD. The hearing will come to order.

Although I did announce yesterday that Mr. Sommers would be the first witness, we have with us this morning Senator Lee Metcalf. Mr. Sommers, if you will excuse us, congressional courtesy dictates that we hear him first.

We are delighted to see you, and as a matter of fact, to have you back on this side. I wish you had never gone over there, even though you have done an outstanding job.

STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. No comment, but I am delighted to be back on this side again. I found it difficult to find my way around with the improvements that have been made on this side and to this wonderful committee room you have.

I also want to commend the committee for holding hearings at this time so we who are in the Senate can come over here and then take care of our regular committee meetings at 10 o'clock.

Mr. Chairman, I am here this morning to discuss one of the most important issues before Congress, the manner in which our largest and most essential industry is regulated. I testified on the Senate companion bill, S. 1365, before the Senate Commerce Committee earlier this year. I also testified on the predecessor legislation, S. 218, in the 89th Congress.

With your permission, Mr. Chairman, and to save the committee's time, I ask permission to place in the record my statement on that bill and accompanying tables, and the statement I made when the House bills were introduced, copies of which I believe are before you and the other members of the committee on your desk.

Mr. MACDONALD. Without objection it is so ordered.

(The documents referred to follow:)

(Excerpt from hearings held by the Senate Commerce Committee on S. 1365, 90th Cong.)

STATEMENT OF HON. LEE METCALF, U.S. SENATOR FROM THE STATE OF MONTANA; ACCOMPANIED BY VICTOR REINEMER

Senator METCALF. Thank you very much, Mr. Chairman.

I have with me my legislative assistant, Mr. Victor Reinemer, who I will ask to participate in this presentation.

Mr. Chairman, as all of us have to do, I was engaged in presiding over the Senate from 10 to 11 this morning. I want to say that the author of this bill, Senator Holland of Florida, relieved me in order that I could come over here and make this presentation, knowing full well that I was going to make a presentation in opposition to the bill.

I certainly appreciate the courtesy that he has demonstrated and shown.

Mr. Chairman, I want to begin by commending this committee for taking testimony regarding the Federal Power Act. This act has been on the books for a good many years—more than 30. The electric power industry—the Nation's largest—which is subject to regulation under the act has become six times larger during that one-third of a century. Changes to strengthen and improve the act are needed. Congress should not whittle down what little authority the Federal Power Commission now has.

The bill under consideration today, S. 1365, is almost as unnecessary, undesirable, and contrary to the public interest as the similar bill in the 89th Congress, S. 218, which this committee considered but wisely declined to approve.

The purpose of S. 1365 is to permit a number of major electric utilities to escape from the little FPC regulation to which they are now subject. The rationale is that the utilities would then supposedly be regulated by the States.

One of the biggest myths abroad in the land, constantly repeated by the utilities, is that they are effectively regulated. They are not.

I note the concluding statement of the previous witness is, "What is there for the Federal Power Commission to regulate in our company that is not already adequately covered?" And he said, "I can't find anything."

I hope he is still in the room and will listen to my testimony because as I go on I will enumerate several things that are not adequately covered by the regulation of the State commissions, and especially by the Florida commission, and if he will go back and search, he will be able to find them.

In State after State, the commissions do not have the staff, the funds, or in some cases the desire to regulate the hundreds or even thousands of companies they are charged by law with regulating. In a few States there is no power company regulation at all.

A number of State commissions lack the authority to regulate wholesale rates, to suspend rate changes, initiate rate investigations, prescribe temporary rates, establish sliding scale rates or to prescribe fair rates of return. Weak and toothless laws permit the public to be overcharged hundreds of millions of dollars every year.

A majority of the State commissions do not control issuance of dividends. Some commissions never or seldom audit utility books. Many commissions do not have the power to require interconnections that are needed to assure reliability of service, or to decide territorial disputes. California's and Wisconsin's commissions are the only ones that have made significant use of automatic data processing in electric utility regulation. In too many States commissions regulate customers rather than the utilities. The hand of the commission is guided by the voice of the dominant utility.

The lack of effective power renders regulation of many electric utilities completely ineffective and makes a mockery of the need to protect consumer interests.

To transfer greater authority to these State commissions, as S. 1365 attempts, would hardly serve to promote thorough and effective regulation. Retail rate regulation in principally a State matter. The Federal Power Commission already has sharply limited jurisdiction. FPC needs to be maintained as a strong, if minor, regulator in order to assist State commissions.

Take, as an example of the limited nature of Federal jurisdiction, the regulation of security issues. One of the loopholes which slipped into the Federal Power Act, at the suggestion of the National Association of Railroad & Utilities Com-

missioners, was section 204(f). It permits States to regulate security issues, in States which have the authority and in which the utility in question operates. So what has happened? The loophole is bigger than the law. Most of the States have jurisdiction over security issues, but they don't have any security analysts.

The people who do know about securities are in the FPC and SEC. But they don't have jurisdiction over utility security issues, except in a few cases. FPC has a commendable policy against electric utility option schemes—and no place to apply the policy.

The insiders in utilities such as Tampa Electric—one of the companies which would get out from under FPC altogether under this bill—or Montana Power Co. in my own State, or some other company quietly institute one of these stock option deals for top executives. The board chairman and president of Tampa Electric have picked up about $400,000 in windfall profits under their option deals, as I figure it. The figuring isn't easy—this is one area where utility officials don't issue press releases.

They did not do as well as the president of Montana Power has done, but not bad for fellows operating a risk-free, Government-subsidized monopoly, which all power companies are.

I understand that Tampa Electric is here today. Perhaps Board Chairman William C. MacInnes or President Fischer S. Black will tell the committee about the options on 19,000 and 16,000 shares, respectively, which they obtained at the bargain price of $17.81 per share.

Most of the State commissions have no research staff. Some do not even know the value of the companies which they supposedly regulate. I frankly don't know how a commission can establish a rate base without that basic information. It is pertinent to recall here that in 1964 the Florida State Commission could not find a rate base for Florida Power & Light Co., which is the principal proponent of S. 1365.

This bill has a new gimmick. It would exempt from FPC jurisdiction utilities which transmit or receive electricity "for temporary purposes." What are "temporary purposes?" Nobody knows. And until the chairman interrogated the previous witness, the proponents haven't said.

Huge blocks of power can be transferred over long distances interstate for "temporary purposes." Long after we are gone the utility lobby will still be around with ambiguous, meaningless phrases like that designated to frustrate the regulatory process and keep the utilities' illustrious legal counsel occupied.

Or take the matter which was in the newspapers here in Washington last month. The Washington Post revealed that Potomac Edison was quietly planning to string a 150-mile, 500,000-kilovolt transmission line alongside Antietam battlefield.

Potomac Edison and other power companies have a State right of eminent domain. Therefore, Potomac Edison did not have to go to anyone, at the local, State or Federal level, to obtain approval of its line.

The Federal Power Act needs to be updated, in my opinion, by assigning the Federal Power Commission authority to regulate long-distance high-voltage transmission lines, to see that they provide for reliability of service, high standards of safety, safeguarding of esthetic and historic values, and to see to it that all power distributors have access to these vital arteries. Monday's blackout underscores the urgency of two bills now before the committee, S. 1834 and S. 1835. I urge prompt hearings on them.

Opening yet another loophole in the Federal Power Act, S. 1365 would undoubtedly lead to greater expense to the taxpayers. That is because the largest electric consumer in the United States is the U.S. Government, which pays an annual electric bill of about half a billion dollars. Last month I testified before Senator Proxmire's Subcommittee on Economy in Government, and talked about Houston Lighting & Power, another one of the utilities here today asking this committee's permission to escape what little regulation the FPC may seek to assert. There is no State regulatory commission in Texas to maintain the fiction of State regulation.

Houston Lighting & Power has a big NASA load—the space center there—and Uncle Sam is a big customer. In 1965, the latest year for which figures are available, Houston Lighting & Power had a rate of return of 11.32 percent. Its return on equity was 16.48 percent. Those figures are from reports from the Federal Power Commission.

The company had an operating income of more than $48 million. Had its rate of return been a reasonable 6 percent, it would have made between $25 and $26

million. In other words, it overcharged its customers, including the Federal Government, almost $23 million in 1 year. And here we are, talking about a bill that would permit utilities that serve Federal installations to slip completely into the loving arms of a commission such as Florida's, whose chairman told this committee, 2 years ago, that "the best regulation is little or no regulation."

There was some criticism about a comment by Senator Kennedy of Massachusetts. Senator Kennedy of Massachusetts and Senator Kennedy of New York are both on the floor in a debate over which I was presiding a few minutes ago. I completely concur with Senator Kennedy of Massachusetts' statement that if this bill passes, Florida Power & Light and other Florida electric utilities will completely escape regulation because under that, as the Florida chairman said, "The best regulation is little or no regulation."

In 1965 Florida Power & Light had a rate of return of 8.21 percent. It overcharged its customers almost $15 million that year. In sharp contrast the stockholders benefited enormously. Market value of the stock has risen 1,600 percent in the past 17 years.

With your permission, Mr. Chairman, I shall put in the hearing record at this point three tables, furnished me recently by Chairman Lee White of the FPC.

One shows the return on common equity of the class A and B electric utilities in 1965.

The second shows the average return on combined common equity from 1937 through 1965, showing how it has risen from about 7 percent in the late 1930's and early 1940's to 10 percent in the 1950's and now, for the first time, to more than 12 percent—12.3, to be exact—in 1965.

The third table shows the overcharged of each of the principal utilities in 1965. It is a most interesting table. It lists the operating income and actual rate of return of each of the utilities, followed by the operating income the company would have received at a 6-percent rate of return. The final column shows the difference between the actual income and what the company would have received had it received a fair 6-percent rate of return. I prefer to call this difference by its real name, "overcharge," and have substituted that word in the table.

I ask that these tables be inserted at this point in the record.

Senator CANNON. Without objection, they will be so inserted.

(The tables follow:)

SCHEDULE A.—CLASSES A AND B ELECTRIC UTILITY COMPANIES RETURN ON COMMON EQUITY, 1965

[Dollar amounts in thousands]

Company	Common equity [1]	Return on common equity [2]	
		Amount	Percent
Alabama Power Co	$237,442	$28,301	11.92
Alaska Electric Light & Power Co	1,354	100	7.45
Alpena Power Co	4,058	347	8.57
Appalachian Power Co	153,152	25,774	16.83
Arizona Public Service Co	124,996	11,379	9.10
Arkansas-Missouri Power Co	9,342	1,465	15.68
Arkansas Power & Light Co	108,128	14,735	13.63
Arklahoma Corp., the	255	22	8.61
Atlantic City Electric Co	66,290	9,264	13.98
Baltimore Gas & Electric Co	245,021	29,452	12.02
Bangor Hydroelectric Co	13,818	1,667	12.06
Black Hills Power & Light Co	12,083	1,077	8.92
Blackstone Valley Electric Co	16,211	1,935	11.94
Boston Edison Co	179,024	17,514	9.78
Boston Gas Co	33,892	2,543	7.50
Brockton Edison Co	14,501	1,843	12.71
California-Pacific Utilities Co	19,409	1,677	8.64
Cambridge Electric Light Co	12,613	1,229	9.75
Cape & Vineyard Electric Co	8,130	873	10.75
Carolina Power & Light Co	156,524	19,949	12.75
Central Hudson Gas & Electric Corp	55,858	6,562	11.75
Central Illinois Electric & Gas Co	33,690	6,092	18.08
Central Illinois Light Co	65,662	8,235	12.54
Central Illinois Public Service Co	93,160	14,779	15.86
Central Kansas Power Co., the	7,193	893	12.42
Central Louisiana Electric Co., Inc	33,445	5,002	14.96
Central Maine Power Co	85,686	9,311	10.87
Central Power & Light Co	97,251	14,664	15.08
Central Vermont Public Service Corp	14,137	1,565	11.07
Cheyenne Light, Fuel & Power Co	3,609	409	11.35
Cincinnati Gas & Electric Co., the	155,189	25,535	16.45
Citizens Utilities Co	17,302	1,520	8.79
Cleveland Electric Illuminating Co., the	229,161	30,888	13.48
Columbus & Southern Ohio Electric Co	96,648	12,950	13.40
Commonwealth Edison Co	882,342	108,947	12.35
Commonwealth Edison Co. of Indiana, Inc	27,000	2,062	7.64
Community Public Service Co	19,083	2,634	13.81
Concord Electric Co	1,938	187	9.69
Connecticut Light & Power Co., the	156,306	18,252	11.68
Connecticut Valley Electric Co., Inc	1,460	118	8.11
Conowingo Power Co	6,087	488	8.02
Consolidated Edison Co. of New York, Inc	1,062,102	89,853	8.46
Consolidated Water Power Co	8,700	527	6.06
Consumers Power Co	469,006	58,268	12.42
Dallas Power & Light Co	101,989	14,047	13.77
Dayton Power & Light Co., the	117,877	16,083	13.64
Delaware Power & Light Co	65,422	10,314	15.77
Detroit Edison Co., the	473,164	57,564	12.17
Duke Power Co	313,656	38,187	12.17
Duquesne Light Co	152,914	25,470	16.66
Eastern Shore Public Service Co. of Maryland, the	24,452	1,630	6.67
Eastern Shore Public Service Co. of Virginia	4,422	05	6.92
Edison Sault Electric Co	3,283	454	13.84
El Paso Electric Co	32,350	,543	17.14
Electric Energy, Inc	7,343	315	4.30
Ellenville Electric Co	887	68	7.72
Empire District Electric Co., the	19,344	2,645	13.68
Exeter & Hampton Electric Co	1,711	187	10.93
Fall River Electric Light Co	10,853	972	8.96
Fitchburg Gas & Electric Light Co	6,757	565	8.36
Florida Power Corp	150,653	18,174	12.06
Florida Power & Light Co	310,566	38,972	12.55
Florida Public Utilities Co	3,107	366	11.79
Georgia Power Co	253,991	31,448	12.38
Granite State Electric Co	2,856	292	10.23
Green Mountain Power Corp	7,612	994	13.07
Gulf Power Co	41,474	4,922	11.87
Gulf States Utilities Co	158,033	20,958	13.26
Hartford Electric Light Co., the	84,660	10,740	12.69
Hawaiian Electric Co., Inc	56,256	4,979	8.85
Hershey Electric Co	1,573	85	5.44

SCHEDULE A.—CLASSES A AND B ELECTRIC UTILITY COMPANIES RETURN ON COMMON EQUITY, 1965—Continued

[Dollar amounts in thousands]

Company	Common equity [1]	Return on common equity [2]	
		Amount	Percent
Hilo Electric Light Co., Ltd	$6,536	$826	12.65
Holyoke Power & Electric Co	559	25	4.63
Holyoke Water Power Co	14,790	965	6.53
Home Light & Power Co	4,478	459	10.25
Houston Lighting & Power Co	244,864	40,341	16.48
Idaho Power Co	119,638	12,115	10.13
Illinois Power Co	164,127	27,260	16.61
Indiana-Kentucky Electric Corp	3,400		
Indiana & Michigan Electric Co	109,328	18,998	17.38
Indianapolis Power & Light Co	80,136	12,037	15.02
Interstate Power Co	44,015	5,404	12.28
Iowa Electric Light & Power Co	47,814	6,362	13.31
Iowa-Illinois Gas & Electric Co	67,308	9,976	14.82
Iowa Power & Light Co	49,633	6,698	13.50
Iowa Public Service Co	51,110	6,496	12.71
Iowa Southern Utilities Co	24,996	3,278	13.12
Jersey Central Power & Light Co	119,192	13,649	11.45
Kansas City Power & Light Co	109,454	12,759	11.66
Kansas Gas & Electric Co	69,683	8,691	12.47
Kansas Power & Light Co., the	78,632	10,022	12.75
Kauai Electric Co., Ltd	1,862	168	9.03
Kentucky Power Co	28,658	3,051	10.65
Kentucky Utilities Co	86,386	10,787	12.49
Kingsport Power Co	5,813	462	7.96
Lake Superior District Power Co	12,079	1,132	9.37
Lockhart Power Co	4,038	243	6.03
Long Island Lighting Co	232,174	28,102	12.10
Long Sault, Inc	2,781	201	7.24
Louisiana Power & Light Co	90,808	10,023	11.04
Louisville Gas & Electric Co	107,820	13,718	12.72
Madison Gas & Electric Co	25,542	2,460	9.63
Maine Public Service Co	8,086	718	8.88
Marietta Electric Co., the	6,815	408	6.00
Massachusetts Electric Co	104,085	7,427	7.14
Maui Electric Co., Ltd	4,933	340	6.91
Metropolitan Edison Co	95,424	12,360	12.95
Michigan Gas & Electric Co	9,880	1,249	12.65
Minnesota Power & Light Co	39,610	5,122	12.93
Mississippi Power Co	44,176	5,276	11.94
Mississippi Power & Light Co	61,547	8,319	13.52
Missouri Edison Co	5,366	566	10.56
Missouri Power & Light Co	17,006	2,462	14.48
Missouri Public Service Co	26,628	3,388	12.72
Missouri Utilities Co	10,245	995	9.71
Monongahela Power Co	51,815	6,686	12.91
Montana-Dakota Utilities Co	47,251	5,029	10.64
Montana Power Co	89,411	15,770	17.64
Montaup Electric Co	22,714	1,312	5.78
Mount Carmel Public Utility Co	2,058	239	11.66
Nantahala Power & Light Co	11,852	833	7.03
Narragansett Electric Co	47,700	4,247	8.90
Nevada Power Co	30,616	3,760	12.28
New Bedford Gas & Edison Light Co	21,968	2,016	9.18
New England Power Co	94,500	10,655	11.28
New Jersey Power & Light Co	32,055	3,906	12.19
New Mexico Electric Service Co	3,916	486	12.42
New Orleans Public Service, Inc	57,889	5,421	9.36
New York State Electric & Gas Corp	165,129	20,940	12.68
Newport Electric Corp	3,267	384	11.78
Niagara Mohawk Power Corp	357,712	43,353	12.12
Northern Indiana Public Service Co	168,045	25,179	14.98
Northern States Power Co. (Minnesota)	231,841	28,933	12.48
Northern States Power Co. (Wisconsin)	48,367	4,043	8.36
Northwestern Public Service Co	12,266	1,864	15.20
Ohio Edison Co	276,684	41,267	14.92
Ohio Power Co	172,091	32,509	18.89
Ohio Valley Electric Corp	10,000	800	8.00
Oklahoma Gas & Electric Co	109,232	18,253	16.71
Old Dominion Power Co	4,567	244	5.36
Orange & Rockland Utilities, Inc	36,555	5,029	13.76
Otter Tail Power Co	28,725	3,225	11.23
Pacific Gas & Electric Co	1,083,309	121,936	11.26
Pacific Power & Light Co	202,274	22,985	11.36
Paul Smith's Electric Light & Power & RR. Co	1,876	84	4.53

SCHEDULE A.—CLASSES A AND B ELECTRIC UTILITY COMPANIES RETURN ON COMMON EQUITY, 1965—Continued

[Dollar amounts in thousands]

Company	Common equity [1]	Return on common equity [2]	
		Amount	Percent
Pennsylvania Electric Co	$153,212	$19,115	12.48
Pennsylvania Power Co	30,335	4,611	15.20
Pennsylvania Power & Light Co	190,559	25,120	13.18
Peoples Utilities, Inc	1,811	101	5.61
Philadelphia Electric Co	426,840	52,306	12.25
Philadelphia Electric Power Co	12,941	1,778	13.74
Plymouth County Electric Co	4,168	378	9.07
Portland General Electric Co	102,134	9,809	9.60
Potomac Edison Co., the	39,969	5,282	13.22
Potomac Edison Co. of Pennsylvania, the	12,191	667	5.47
Potomac Edison Co. of Virginia, the	21,909	1,275	5.82
Potomac Edison Co. of West Virginia, the	20,929	1,322	6.32
Potomac Electric Power Co	226,153	24,001	10.61
Public Service Co. of Colorado	158,599	19,757	12.46
Public Service Co. of Indiana, Inc	188,762	25,278	13.39
Public Service Co. of New Mexico	38,376	4,849	12.64
Public Service Co. of Oklahoma	85,897	11,939	13.90
Public Service Electric & Gas Co	575,828	70,890	12.31
Puget Sound Power & Light Co	89,359	7,438	8.32
Rochester Gas & Electric Corp	105,331	11,984	11.38
Rockland Electric Co	8,741	721	8.25
Rumford Falls Power Co	7,486	343	4.59
Safe Harbor Water Power Corp	10,397	744	7.16
St. Joseph Light & Power Co	12,374	1,394	11.27
San Diego Gas & Electric Co	119,222	12,798	10.73
Savannah Electric & Power Co	21,450	2,646	12.34
Sherrard Power System	1,650	132	8.02
Sierra Pacific Power Co	31,742	3,487	10.99
South Beloit Water, Gas & Electric Co	2,755	89	3.24
South Carolina Electric & Gas Co	81,723	11,335	13.87
Southern California Edison Co	706,818	77,676	10.99
Southern Electric Generating Co	40,945	3,745	9.15
Southern Indiana Gas & Electric Co	30,279	4,365	14.42
Southwestern Electric Power Co	71,213	10,686	15.01
Southwestern Electric Service Co	4,141	512	12.36
Southwestern Public Service Co	91,336	13,799	15.11
Superior Water, Light & Power Co	4,646	484	10.43
Susquehanna Electric Co., the	28		6.54
Susquehanna Power Co., the	31,553	2,063	15.70
Tampa Electric Co	65,746	10,319	7.07
Tapoco, Inc	18,125	1,281	15.58
Texas Electric Service Co	141,572	22,050	17.82
Texas Power & Light Co	139,083	24,782	15.61
Toledo Edison Co., the	64,626	10,088	11.00
Tucson Gas & Electric Co	39,793	4,376	12.55
Union Electric Co	258,768	32,466	8.85
Union Light, Heat & Power Co, the	20,837	1,8	9.46
United Gas Improvement Co., the	62,156	5,877	12.07
United Illuminating Co., the	59,132	7,138	
Upper Peninsula Generating Co	5,037		12.20
Upper Peninsula Power Co	9,764	1,191	9.74
Utah Power & Light Co	107,165	10,435	5.88
Vermont Electric Power Co., Inc	1,123	66	13.41
Virginia Electric & Power Co	339,543	45,515	10.00
Washington Water Power Co	81,399	8,139	15.63
West Penn Power Co	110,858	17,331	15.12
West Texas Utilities Co	45,759	6,918	5.28
Western Colorado Power Co., the	9,571	505	9.69
Western Massachusetts Electric Co	56,659	5,490	12.59
Western Power & Gas Co., Inc	63,216	7,961	7.79
Wheeling Electric Co	8,168	636	7.80
White Mountain Power Co	2,113	164	10.23
Wisconsin Electric Power Co	236,960	24,230	9.77
Wisconsin Michigan Power Co	28,941	2,827	11.00
Wisconsin Power & Light Co	82,744	9,097	12.54
Wisconsin Public Service Corp	64,593	8,097	5.52
Wisconsin Rivel Power Co	10,130	559	8.17
Yadkin, Inc	16,643	1,359	5.22
Yankee Atomic Electric Co	18,959	990	

[1] Proprietary capital less preferred stock, yearend.
[2] Net income less preferred dividend requirements.

SCHEDULE B.—CLASSES A AND B ELECTRIC UTILITY COMPANIES RETURN ON COMBINED COMMON EQUITY, 1937–65

[Dollar amounts in thousands]

Year	Common equity [1]	Earnings available for common equity [2]	
		Amount	Percent common equity
1965	$19,302,943	$2,366,543	12.3
1964	18,353,368	2,184,618	11.9
1963	17,190,109	1,970,897	11.5
1962	16,297,809	1,848,360	11.3
1961	15,366,196	1,673,963	10.9
1960	14,525,003	1,590,791	11.0
1959	13,605,142	1,469,747	10.8
1958	12,575,990	1,340,622	10.7
1957	11,700,764	1,244,703	10.6
1956	10,855,088	1,171,769	10.8
1955	10,216,604	1,093,476	10.7
1954	9,660,995	990,277	10.3
1953	8,961,574	892,423	10.0
1952	8,434,061	818,154	9.7
1951	7,515,926	695,363	9.3
1950	6,981,299	710,823	10.2
1949	6,360,225	653,775	10.3
1948	5,766,490	558,511	9.7
1947	5,324,778	546,486	10.3
1946	5,107,458	532,465	10.4
1945	4,927,102	422,392	8.6
1944	5,269,922	390,062	7.4
1943	5,361,879	377,211	7.0
1942	5,430,266	361,561	6.7
1941	5,539,074	399,573	7.2
1940	5,507,824	424,236	7.7
1939	5,354,381	410,937	7.7
1938	5,295,649	364,533	6.9
1937	5,323,183	383,479	7.2

[1] Proprietary capital less preferred stock, yearend.
[2] Net income less preferred dividends requirements.

SCHEDULE C—CLASSES A AND B ELECTRIC UTILITY COMPANIES

Dollar difference between earnings at rates of return appearing in the Rate of Return section of the 1965 edition of "Statistics of Electric Utilities in the United States—Privately Owned" and an assumed 6-percent return

[Dollar amounts in thousands]

Company	Operating income at published rate of return		Operating income at an assumed 6-percent rate	Overcharge
	Amount	Rate Percent		
Alabama Power Co	$42,972	7.28	$35,416	$7,555
Appalachian Power Co	33,010	7.01	28,253	4,756
Arizona Public Service Co	18,315	5.48	20,053	(1,737)
Arkansas-Missouri Power Co	1,845	8.14	1,360	485
Arkansas Power & Light Co	23,195	7.75	17,957	5,237
Atlantic City Electric Co	15,227	6.92	13,202	2,024
Baltimore Gas & Electric Co	31,303	7.66	24,519	6,783
Bangor Hydroelectric Co	2,459	7.07	2,087	372
Black Hills Power & Light Co	2,006	6.55	1,838	168
Blackstone Valley Electric Co	1,932	9.34	1,241	690
Boston Edison Co	25,971	7.41	21,029	4,941
Brockton Edison Co	2,031	9.11	1,338	693
California-Pacific Utilities Co	1,210	5.82	1,248	(37)
Cambridge Electric Light Co	1,767	8.32	1,274	492
Cape & Vineyard Electric Co	1,266	7.95	956	310
Carolina Power & Light Co	28,752	7.68	22,462	6,289
Central Hudson Gas & Electric Corp	8,414	6.87	7,349	1,065
Central Illinois Electric & Gas Co	5,268	9.66	3,272	1,996
Central Illinois Light Co	9,265	8.63	6,441	2,823
Central Illinois Public Service Co	18,286	8.14	13,479	4,807
Central Kansas Power Co., the	1,117	7.62	880	237
Central Louisiana Electric Co., Inc	7,387	9.23	4,802	2,585
Central Maine Power Co	14,417	6.49	13,329	1,088
Central Power & Light Co	20,504	9.20	13,372	7,131
Central Vermont Public Service Corp	2,840	6.26	2,722	117
Cheyenne Light, Fuel & Power Co	521	6.77	462	59
Cincinnati Gas & Electric Co., the	25,681	8.55	18,021	7,659
Citizens Utilities Co	1,166	9.67	723	442
Cleveland Electric Illuminating Co., the	34,909	8.29	25,266	9,643
Columbus & Southern Ohio Electric Co	17,865	7.69	14,311	3,554
Commonwealth Edison Co	133,337	8.56	93,460	39,876
Commonwealth Edison Co. of Indiana, Inc	5,471	6.42	5,113	357
Community Public Service Co	4,347	8.77	2,974	1,373
Concord Electric Co	289	7.03	246	42
Connecticut Light & Power Co., the	24,108	6.88	21,024	3,083
Conowingo Power Co	492	6.18	478	14
Consolidated Edison Co. of New York, Inc	145,341	5.35	162,999	(17,658)
Consolidated Water Power Co	513	9.60	320	192
Consumers Power Co	56,868	7.95	42,919	13,948
Dallas Power & Light Co	19,277	7.99	14,476	4,801
Dayton Power & Light Co., the	17,424	8.17	12,796	4,628
Delaware Power & Light Co	9,149	7.72	7,111	2,038
Detroit Edison Co., the	76,542	8.38	54,803	21,738
Duke Power Co	50,897	7.90	38,656	12,241
Duquesne Light Co	33,816	8.06	25,173	8,642
Eastern Shore Public Service Co. of Maryland, the	2,245	5.70	2,363	(118)
Edison Sault Electric Co	833	9.41	531	302
El Paso Electric Co	7,524	9.97	4,528	2,996
Electric Energy, Inc	4,523	3.52	7,710	(3,186)
Empire District Electric Co., the	4,063	8.30	2,937	1,126
Fall River Electric Light Co	809	7.89	615	194
Fitchburg Gas & Electric Light Co	816	7.31	670	146
Florida Power Corp	27,992	7.97	21,073	6,919
Florida Power & Light Co	54,902	8.21	40,123	14,778
Georgia Power Co	51,394	7.41	41,615	9,779
Granite State Electric Co	450	7.24	373	77
Green Mountain Power Corp	1,478	6.80	1,304	173
Gulf Power Co	8,272	7.85	6,322	1,949
Gulf States Utilities Co	32,656	8.17	23,983	8,673
Hartford Electric Light Co., the	14,647	6.86	12,811	1,836
Hawaiian Electric Co., Inc	10,875	7.39	8,830	2,045
Hilo Electric Light Co., Ltd	1,207	7.57	956	250
Holyoke Power & Electric Co	54	5.67	57	(3)
Holyoke Water Power Co	2,180	7.37	1,775	405
Home Light & Power Co	600	7.20	500	100
Houston Lighting & Power Co	48,380	11.32	25,643	22,737
Idaho Power Co	20,071	6.74	17,868	2,203
Illinois Power Co	30,270	9.16	19,828	10,442
Indiana-Kentucky Electric Corp	4,845	3.73	7,794	(2,948)

SCHEDULE C—CLASSES A AND B ELECTRIC UTILITY COMPANIES—Continued

Dollar difference between earnings at rates of return appearing in the Rate of Return section of the 1965 edition of "Statistics of Electric Utilities in the United States—Privately Owned" and an assumed 6-percent return

[Dollar amounts in thousands]

Company	Operating income at published rate of return		Operating income at an assumed 6-percent rate	Overcharge
	Amount	Rate Percent		
Indiana & Michigan Electric Co	$29,644	7.71	$23,069	$6,574
Indianapolis Power & Light Co	15,543	9.12	10,225	5,317
Interstate Power Co	8,599	7.30	7,068	1,531
Iowa Electric Light & Power Co	8,132	8.18	5,965	2,167
Iowa-Illinois Gas & Electric Co	8,082	9.07	5,347	2,735
Iowa Power & Light Co	8,181	6.39	7,682	499
Iowa Public Service Co	7,484	7.33	6,126	1,358
Iowa Southern Utilities Co	3,599	9.26	2,332	1,267
Jersey Central Power & Light Co	18,888	7.08	16,007	2,881
Kansas City Power & Light Co	20,094	7.18	16,792	3,302
Kansas Gas & Electric Co	11,750	7.61	9,264	2,485
Kansas Power & Light Co., the	12,466	8.15	9,177	3,288
Kentucky Power Co	5,994	8.02	4,484	1,509
Kentucky Utilities Co	15,161	8.69	10,468	4,693
Kingsport Power Co	726	6.02	724	2
Lake Superior District Power Co	1,745	6.65	1,574	170
Long Island Lighting Co	33,700	7.26	27,862	5,848
Louisiana Power & Light Co	16,719	7.17	13,990	2,728
Louisville Gas & Electric Co	13,858	8.99	9,249	4,609
Madison Gas & Electric Co	2,186	5.83	2,250	(63)
Maine Public Service Co	1,240	5.41	1,375	(135)
Marietta Electric Co., the	443	7.02	379	64
Massachusetts Electric Co	14,222	5.92	14,414	(192)
Maui Electric Co., Ltd	469	6.01	469	0
Metropolitan Edison Co	18,181	7.45	14,642	3,538
Michigan Gas & Electric Co	762	8.72	524	237
Minnesota Power & Light Co	7,224	6.65	6,518	706
Mississippi Power Co	8,594	8.10	6,366	2,228
Mississippi Power & Light Co	11,764	8.42	8,383	3,381
Missouri Edison Co	784	6.77	695	89
Missouri Power & Light Co	2,730	6.92	2,367	362
Missouri Public Service Co	5,073	7.11	4,281	792
Missouri Utilities Co	1,067	6.47	989	77
Monongahela Power Co	10,191	7.64	8,003	2,187
Montana-Dakota Utilities Co	4,508	6.76	4,001	506
Montana Power Co., the	14,326	11.37	7,559	6,766
Montaup Electric Co	2,296	5.69	2,421	(125)
Nantahala Power & Light Co	1,394	10.53	794	599
Narragansett Electric Co., the	7,275	5.58	7,823	(547)
Nevada Power Co	5,634	7.13	4,741	893
New Bedford Gas & Edison Light Co	1,935	8.79	1,321	614
New England Power Co	17,052	6.57	15,573	1,479
New Jersey Power & Light Co	5,948	6.89	5,180	768
New Mexico Electric Service Co	703	11.78	358	345
New Orleans Public Service Inc	14,942	13.30	6,740	8,201
New York State Electric & Gas Corp	26,087	7.27	21,530	4,557
Newport Electric Corp	617	7.55	490	126
Niagara Mohawk Power Corp	55,111	6.22	53,162	1,949
Northern Indiana Public Service Co	23,091	9.13	15,175	7,916
Northern States Power Co. (Minnesota)	38,053	7.87	29,011	9,041
Northern States Power Co. (Wisconsin)	5,666	7.33	4,638	1,028
Northwestern Public Service Co	1,933	7.73	1,500	432
Ohio Edison Co	48,016	8.73	33,001	15,015
Ohio Power Co	39,827	8.05	29,684	10,142
Ohio Valley Electric Corp	5,791	4.26	8,156	(2,365
Oklahoma Gas & Electric Co	26,998	8.93	18,140	8,858
Old Dominion Power Co	376	5.62	401	(25)
Orange & Rockland Utilities, Inc	5,716	7.50	4,573	1,143
Otter Tail Power Co	5,802	7.02	4,959	843
Pacific Gas & Electric Co	146,764	6.87	128,178	18,585
Pacific Power & Light Co	39,185	6.34	37,083	2,101
Pennsylvania Electric Co	29,647	6.95	25,594	4,052
Pennsylvania Power Co	6,629	7.86	5,060	1,568
Pennsylvania Power & Light Co	36,718	6.80	32,398	4,319
Philadelphia Electric Co	62,858	7.21	52,309	10,548
Plymouth County Electric Co	563	7.21	488	94
Portland General Electric Co	17,250	5.79	17,876	(625)
Potomac Edison Co., the	4,964	7.49	3,976	987
Potomac Edison Co. of Pennsylvania, the	645	5.48	707	(61)

SCHEDULE C—CLASSES A AND B ELECTRIC UTILITY COMPANIES—Continued

Dollar difference between earnings at rates of return appearing in the Rate of Return section of the 1965 edition of "Statistics of Electric Utilities in the United States—Privately Owned" and an assumed 6-percent return

[Dollar amounts in thousands]

Company	Operating income at published rate of return		Operating income at an assumed 6-percent rate	Overcharge
	Amount	Rate Percent		
Potomac Edison Co. of Virginia, the	$1,256	5.68	$1,327	($70)
Potomac Edison Co. of West Virginia, the	1,276	5.89	1,300	(23)
Potomac Electric Power Co	37,323	6.58	34,033	3,289
Public Service Co. of Colorado	23,583	7.41	19,096	4,487
Public Service Co. of Indiana, Inc	35,360	8.20	25,873	9,486
Public Service Co. of New Mexico	7,269	8.43	5,174	2,095
Public Service Co. of Oklahoma	17,613	8.10	13,046	4,566
Public Service Electric & Gas Co	84,788	7.22	70,461	14,327
Puget Sound Power & Light Co	14,375	5.59	15,430	(1,054)
Rochester Gas & Electric Corp	11,954	6.84	10,486	1,468
Rockland Electric Co	971	6.81	856	115
Safe Harbor Water Power Corp	1,009	5.06	1,197	(187)
St. Joseph Light & Power Co	2,112	7.53	1,683	429
San Diego Gas & Electric Co	15,224	6.50	14,053	1,171
Savannah Electric & Power Co	5,095	8.26	3,701	1,394
Sierra Pacific Power Co	4,599	6.93	3,982	617
South Carolina Electric & Gas Co	17,045	7.87	12,995	4,050
Southern California Edison Co	113,472	6.69	101,769	11,703
Southern Electric Generating Co	9,119	7.44	7,354	1,764
Southern Indiana Gas & Electric Co	4,712	8.73	3,238	1,473
Southwestern Electric Power Co	16,153	9.06	10,697	5,455
Southwestern Electric Service Co	940	7.13	791	149
Southwestern Public Service Co	21,987	7.93	16,636	5,351
Superior Water, Light & Power Co	456	7.55	362	93
Tampa Electric Co	16,739	8.49	11,829	4,909
Tapoco, Inc	1,337	7.14	1,123	213
Texas Electric Service Co	28,539	8.50	20,145	8,393
Texas Power & Light Co	29,489	9.01	19,637	9,851
Toledo Edison Co., the	13,915	7.31	11,421	2,493
Tucson Gas & Electric Co	6,481	7.89	4,929	1,552
Union Electric Co	45,793	6.97	39,420	6,372
Union Light, Heat & Power Co., the	1,547	7.03	1,321	226
United Gas Improvement Co., the	1,787	6.93	1,547	239
United Illuminating Co., the	10,150	7.79	7,817	2,332
Upper Peninsula Generating Co	642	3.66	1,053	(410)
Upper Peninsula Power Co	2,306	8.69	1,592	713
Utah Power & Light Co	17,810	6.08	17,576	234
Vermont Electric Power Co., Inc	511	5.16	594	(83)
Virginia Electric & Power Co	58,265	7.39	47,306	10,959
Washington Water Power Co., the	14,310	6.21	13,826	483
West Penn Power Co	24,496	7.75	18,965	5,531
West Texas Utilities Co	9,580	9.51	6,044	3,535
Western Colorado Power Co., the	752	5.19	870	(117)
Western Massachusetts Electric Co	7,792	7.72	6,056	1,736
Western Power & Gas Co., Inc	6,255	7.68	4,887	1,368
Wheeling Electric Co	1,050	5.58	1,129	(79)
Wisconsin Electric Power Co	27,959	7.10	23,627	4,331
Wisconsin Michigan Power Co	3,532	5.60	3,784	(252)
Wisconsin Power & Light Co	12,674	7.78	9,774	2,899
Wisconsin Public Service Corp	9,606	7.36	7,831	1,775
Yadkin, Inc	1,404	7.41	1,137	267
Yankee Atomic Electric Co	2,650	7.90	2,013	637
Total overcharge				618,733,000

Senator METCALF. Mr. Chairman, let me read just the names of the top 13 overchargers, those who overcharged their customers more than $10 million each in 1965.

Commonwealth Edison, headquartered in Chicago, $39,876,000.

Houston Lighting & Power, $22,737,000.

Detroit Edison—that's Walker Cisler's company, with the nuclear plant that doesn't work, $21,738,000.

Pacific Gas & Electric—a $3-billion operation, as big as TVA, $18,585,000.

Ohio Edison, which quietly started a stock operation plan to boot not long ago, $15,015,000.

Florida Power & Light, $14,778,000.

Public Service Electric & Gas, up in New Jersey, $14,327,000.

Here's one they call Consumers Power, up in Michigan. But the consumers there got overcharged anyway, $13,948,000.

Duke Power, down in North Carolina, $12,241,000.

Southern California Edison, $11,703,000.

And, right across the Potomac, another company with a lot of Uncle Sam's business, and customers who work here, Vepco—the Virginia Electric & Power Co., $10,959,000.

Philadelphia Electric, $10,548,000; and Illinois Power, $10,442,000.

And, to round out the "Big Thirteen," in the overcharge department, Ohio Power, $10,142,000.

Senator CANNON. Are any of these companies not regulated by the FPC now?

Senator METCALF. Two of these companies—Florida Power & Light and Houston Lighting & Power, under this bill, will get out from any regulation by FPC.

Senator CANNON. That was going to be my next question. Are any of these companies now not regulated by the FPC?

Senator METCALF. Yes. They have a very slight regulation by FPC. And these figures are from the reports that the FPC requires.

Senator CANNON. Are they required to report even though they are not regulated?

Senator METCALF. Yes, they are required to report.

Senator CANNON. Has the FPC taken action to require——

Senator METCALF. The FPC has limited authority regarding wholesale rates. They haven't any authority to require them to cut their retail rates or to modify their rates. Ninety percent of the revenues of electric utilities come from retail sales, which are matters within the control of the regulatory authority of the State commissions. This is why I say that we should not at this time take away any of the power now lodged in the hands of the FPC, but at this time we should even give them more control, more authority, more jurisdiction, at a time when we need to have interstate interconnections.

Senator CANNON. Of course, this bill doesn't go into the question of giving them more control.

Senator METCALF. No. This bill takes some of these out from any regulation whatsoever.

For instance, Houston Power & Light, which is one of the overchargers that I have suggested—$22 million—will not have any regulation at all because Texas doesn't have a State regulatory agency.

And of course, as I have suggested, Florida Power & Light will go under the loving care of a commission who says that "the best regulation is little or no regulation."

Mr. Chairman, the total overcharge of 165 power companies in 1965 amounted to $618,733,000. Mr. Chairman, that is why the power companies would willingly spend millions of dollars to make regulation even less effective. They want that overcharge to stay and to grow.

Twenty-four utilities earned a total of $14,442,000 less than they would have earned at a 6-percent rate of return. But don't get out the crying towel for them. Some of those companies are not operating companies. They are owned jointly by operating companies and sell at wholesale only, to themselves. They don't overcharge themselves as they overcharge their retail customers.

In addition, Consolidated Edison of New York had an income of $17,658,000 less than it would have had at a 6-percent rate of return. But Con Ed was able to pay out more than three times that amount—$64,497,018, in tax-free dividends, in addition to taxable dividends, in 1964. So I don't feel too sorry for Consolidated Edison, which has some peculiar problems.

I recognize that different State commissions have established different allowed rates of return. However, let me emphasize that, on the average, the allowed

rate of return is only slightly above 6 percent. Yet, in 1965, the actual rate of return of the 192 principal I O U's—investor-owned utilities—according to the companies' own reports to the FPC, was 7.39 percent.

A difference of only 1 percentage point in the rate of return makes a tremendous difference in the amount of the annual electric bill. After all, 1 percent of a billion-dollar rate base is $10 million. And there are a number of utilities in that billion-dollar category, including Florida Power & Light.

Mr. Chairman, even without this S. 1365 loophole in the law, the regulation of electric utilities has deteriorated to a point where in many States it is meaningless and in fact misleading, because there is the appearance of regulation. I will use the example of my own State, a majority of whose public service commissioners are members of my own party.

The chairman of the State commission and the president of the leading power company in Montana will both, with a straight face, tell the press that as they figure it the company's rate of return is only 5.33 percent, the lowest in the country. But the company's own reports show, and the FPC statistics verify, that the company—Montana Power—has had a rate of return in excess of 10 percent anually every year since 1962, and that it has climbed steadily each year, to 11.37 percent in 1965.

There's enough padding in Montana Power's rate base to make Twiggy look like Santa Claus.

I'll make on other point about the rate base of electric utilities. One of Florida Power & Light's lawyers and others have claimed that it would cost the company hundreds of thousands of dollars to keep their accounts in the manner prescribed by the FPC.

The preceding witness made that statement in his testimony.

I note that all five members of the FPC, including the two who supported the company in the recent case, discounted that exaggerated statement. I suspect that the real reason for Florida Power & Light's dislike for Federal accounting requirements stems from the examination of that company's rate base by the Securities and Exchange Commission some years ago. SEC pulled $30 million worth of padding out of Florida Power & Light's rate base at a time when its total property was worth only $129 million.

If there's one thing a utility will guard even more closely than its list of retainers, or its stock option beneficiaries, it is the composition of the rate base.

I respectfully suggest to this committee that it encourage the Federal Power Commission to enforce laws and regulations now on the books and give it stronger laws, rather than to diminish the Commission's authority in an area where regulation is needed.

I believe in the concept of regulation by information. I believe that Congress was wise in deciding to reveal periodically who its employees are, and what their salaries are. I think it equally meritorious to require public service companies to put on the public record their retainers, their real owners, their donations, their stock optionees.

Some of the reasonable regulations issued recently by the Federal Power Commission are repeatedly disregarded, but nothing is done about it. I recall that in the 1964 campaign, just a few days before the election, that old power company ad about the 10 little workers—how the Socialists will get you if you don't watch out—appeared in dozens of papers in different parts of the country, under sponsorship of various utilities.

One of them was Montana Dakota Utilities. The FPC had previously issued regulations that had been modified to meet utility objections, but which required that political ads be accounted for as nonoperating expenses, that is, to be borne by stockholders rather than customers.

After those ads appeared in the 1964 campaign, I asked FPC to check on whether MDU had properly assigned the cost of those ads to the stockholders. FPC checked, and found out that they had been charged to the customers. So the Commission told the utility to put the cost over in the nonoperating expense, as MDU knew it should have done in the first place.

Last fall, again just before the election, MDU again ran some political ads. Some were placed in papers outside its territory. I asked FPC to investigate and found that, again, the utility had charged its political ads to the customers.

I think there ought to be strong sanctions in a case such as that. The same holds true regarding utilities' disregard of the Commission's reasonable request for itemization of donations. Utilities frequently make large donations, often to worthy causes, for which they get the credit, though the customer gets the

bill. And sometimes utilities make donations for which they seek no public credit. These are quiet donations to some of the most irresponsible, extremist outfits in the country—Manion Forum, which is headed by a member of the national council of the John Birch Society; America's Future, which does the book reviews for the Birchers; and the Southern States Industrial Council, which thinks that Danny Kaye and the kids who collect for UNICEF every Halloween are part of the Communist conspiracy.

The utilities have no difficulty in applying automatic data processing to our bills, and other uses. They can just as easily furnish full information to the regulatory commissions, State and Federal, in a form convenient and understandable to the regulators, to the newsmen, and to the public.

One of the most salutary things which this committee could do would be to encourage the FPC to hasten full use of automatic data processing in the regulatory process. The whole regulatory system rests on the accounts. There is tax money, and ratepayers' money, to be saved by applying existing technology to the regulatory field.

That is the positive, constructive approach, the direction in which we should move, in my opinion.

I would also like to mention, Mr. Chairman, the proposal advanced here Tuesday by Paul Rodgers, general counsel of the National Association of Railroad & Utilities Commissioners as a substitute for S. 1365. Mr. Rodgers' proposal would have a much greater adverse effect on the Federal Power Commission than would S. 1365. His proposal would take away from the Federal Power Commission its jurisdiction over all wholesale sales to municipality-owned systems and co-ops, the heart of the Commission's jurisdiction. It would do this by exempting not certain public utilities as such as does S. 1365 but merely the wholesale sales of public utilities to those utilities which are not subject to Federal regulation, namely municipalities and co-ops. This exemption is conditioned, for appearance sake, on two meaningless conditions. The first is that the municipality or co-op need have all its facilities in one State where the power is delivered, which virtually all do anyway, and secondly, that sales must be regulated by the State commission or local political subdivision, also a condition met by virtually all sales but which in many cases is completely ineffective and necessitates Federal responsibility in the first place.

NARUC's proposal would therefore, leave the Power Commission with the authority to require financial and other reports from electric utilities under section 311 of the Power Act, but take away all its authority to do anything about it when the financial and other reports show that municipalities or co-ops are being overcharged or discriminated against.

One other point. Testimony was taken Tuesday that Florida Power & Light interstate transactions amounted to only a fraction of 1 percent. I believe the committee will find, upon checking the company's form 12 reports with the Federal Power Commission, that the fraction of 1 percent is a net figure, that the company actually received from other utilities about 5 percent and delivered to other utilities almost 5 percent of their total system generation. In such transactions we simply have to look at the actual amounts received and delivered rather than the net balance in order to obtain the actual picture of interpool and interstate transactions. A company could import half its power and export 49 percent and have a net figure of 1 percent. But it would certainly be heavily involved in interstate commerce.

In conclusion let me reiterate my belief that we should move quickly on legislation to assure power system reliability. Not long ago I was touring the TVA area with TVA Chairman "Red" Wagner. We are talking about blackouts and the possibility of future blackouts.

An example of how strong interconnection can contribute to avoidance of a massive power failure is provided by an incident he related to me and which will interest this committee.

In 1964 generation at TVA's Paradise steamplant in Kentucky was separated from the system during a severe windstorm. This was a massive equipment outage. High winds blew some sheet metal into the 161-kilovolt substation, causing a short circuit.

The plant was generating a total of 1,250 megawatts—approximately enough to serve one and a quarter million people as compared with the 1,500-megawatt load reversal at Niagara in 1965 during the blackout in the Northeast. The system frequency declined only sightly. Loading on the interconnections with neighboring systems increased immediately from a zero level to 1,175 megawatts.

Within 4½ minutes generation on TVA's own system picked up the total generation lost at Paradise. There was no interruption of service other than for a small amount of industrial load supplied directly from the Paradise switchyard.

Perhaps the people at TVA have some ideas and techniques we should hear about.

Thank you for the opportunity to appear here today.

Senator CANNON. Thank you, Senator Metcalf.

In your statement you tell about the Potomac Edison planning to string a line out of here alongside Antietam battlefield. Potomac Edison is under FPC regulation. Would they be affected one way or another by this bill?

Senator METCALF. They may be under some FPC jurisdiction, but the FPC has no jurisidiction over where the company puts those big lines. No one has that jurisdiction. The point I am making today is that this committee, which has jurisdiction over the Federal Power Commission, should be looking forward to additional regulation to cure these things that are occuring in this growing, biggest business in America, rather than taking away some of the jurisdiction from the Federal Power Commission, slight as it is, as this bill would do.

Senator CANNON. This bill would not affect that?

Senator METCALF. It would not. Other bills before this committee, my S. 1834 and S. 1835, would assign FPC this needed responsibility.

Senator CANNON. Under what theory would you regulate a company that is allegedly completely intrastate in operation? In other words, one that has all of its production within the State, and doesn't sell or buy beyond its own State limits. What is your theory?

Senator METCALF. The fact that a company has all its facilities in one State dosen't mean it doesn't operate in interstate commerce. As I point out, when this company says that it has one-third of 1 percent out of State, it is talking, as I pointed out, about its net. Through the pool it receives about 5 percent and delivers about 5 percent of its total generation. So it really is operating interstate. The theory which permits the Federal Government to act is that this is the largest business in America and operates in interstate commerce.

Senator CANNON. Would you make a breakoff point there.

Senator METCALF. No, sir.

Senator CANNON. Do you contend that any company that has, for emergency purposes or otherwise, an interconnection which results in this 1 percent being transported interstate, either for sale of purchase, that that should be regulated by the Federal Government.

Senator METCALF. Yes, sir. Mr. Chairman, my own idea would be that this monopolistic electric utility industry which is so vital to the welfare of the whole of the United States, is an industry that, whether the local IOU facilities are entirely intrastate, or whether it has facilities in more than one State, it should be regulated by the Federal Power Commission because it is part of a national grid.

Senator CANNON. But under what legal theory would you contend we have jurisdiction?

Senator METCALF. Under the commerce clause. The national interest requires, (1) that these systems such as the Florida Power & Light or Tampa Electric or Houston Electric that serve great Federal defense agencies, should be regulated by a Federal agency.

And secondly——

Senator CANNON. Even though they might be completely intrastate?

Senator METCALF. Yes, sir. They are part of an interstate network.

Second, regardless of the fact that one system has all its facilities intrastate, under the present interlocking systems that they now operate, they have a national interest and a national concern.

Senator CANNON. Of course, a lot of companies can have national interest and national concern. I am not sure that we can get into the field of regulation under that theory.

Senator METCALF. Always, Mr. Chairman, these electric utility businesses try to come in here before Congress, before the public, and equate themselves with other businesses such as you have suggested. But here is a subsidized monopoly with a guaranteed income, distributing a most essential product to the people. Compare this with the electronics industries or the aircraft industries or those other very risky, very important industries that we don't try to regulate, which have complete competition. The power company has no competition, in the usual sense of the word. It is a complete monopoly, selling the most important product

in America. The electric utility industry is the largest industry in America today, and it is national in scope, even though it is divided into sometimes intrastate operators.

Senator CANNON. You heard the other witness testify here that their rate of return was 6.95 percent, as of January 1, 1967. I note that you say in 1965 they had a rate of return of 8.21 percent. Apparently the Florida has acted since that time. I am wondering if you have any dispute with their figures of 6.95 percent that they contend they are getting now?

Senator METCALF. I have no statistics, of course, on that. I put in the record the FPC figures, based on the company's own reports, which show it had a rate of return of 8.21 percent.

Mr. Chairman, in a fine, public-spirited newspaper campaign the Miami Herald forced the Florida Public Service Commission to hold hearings on Florida Power & Light's excessive rates. As a result, the rate decrease that was cited was made in January of this year. I would suggest, however, that if past experience is anything we can measure this by, we still have continued padding in the Florida Power & Light rate base, that they have made contributions that they wouldn't even tell about. They said that they don't know what their rate base was. I would like to have an opportunity to analyze it as we have analyzed some of their past figures and showed that they had a much higher rate of return than their advertised of stated rate of return was.

Senator CANNON. Contributions, though, would not affect the rate base, would it? That would go to operating expenses.

Senator METCALF. Yes. I just suggested that at one time they misstated their contributions to the Federal Power Commission. Maybe they need those extra 57 auditors to find out just what goes on in their own company.

Senator CANNON. One of the previous two witnesses testified that there would be possibly 11 companies affected by this bill if it were to pass. You say in a few States there is no power company regulation at all. Do you know whether or not there are some of the States involving those 11 companies that have no regulation?

Senator METCALF. There are six in Texas that would be affected, as Texas has no State regulation. So if this passes, as far as the Texas companies are concerned, it would mean that there would be no regulation whatsoever. However, I believe more than 11 companies would be affected by this bill.

Senator CANNON. What happens in Texas? Do they charge any amount the traffic will bear?

Mr. REINEMER. There is an archaic law providing for regulation by municipalities but it is not effective. So in effect there is no regulation.

Senator METCALF. There is no State commission.

Senator CANNON. And there is no State commission in Texas to review rates or require rate reductions or have any hearings that in effect protect the public interest?

Mr. REINEMER. That is correct. The State regulatory commission in Texas has no jurisdiction over electric utilities.

Senator METCALF. And before this committee 2 years ago, the chairman of the Florida commission said that the best regulation was little or no regulation. So in effect there isn't much regulation in Florida, until the Miami Herald gets after the commission.

Senator CANNON. I don't know. They have indicated 10 rate reductions in 10 years.

Senator METCALF. I wish——

Senator CANNON. That is an average of one a year.

Senator METCALF. I wish that the committee would ask that the previous witness put into the record that list of the rate reductions, because you will find that some of them are very minor.

Senator CANNON. Is Mr. Fite still here?

Mr. FITE. Yes, sir.

Senator CANNON, Mr. Fite, would you supply for the record the dates of the rate reductions you have already said were on application to the commission, and the amount of the reductions over the past 10 years that you referred to?

Mr. FITE. I will be very happy to.

Senator CANNON. Very good. Thank you very much.

(The information requested by Senator Cannon follows:)

FLORIDA POWER & LIGHT CO.,
Miami, Fla., June 12, 1967.

Hon. HOWARD W. CANNON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CANNON: This letter is written in compliance with your request concerning the rate reductions included with my testimony on the 8th day of June before the Senate Commerce Committee.

You will recall that I testified our company had made ten rate reductions in the last ten years, amounting to some $46,000,000 per year. Individual reductions were as listed below.

Date	*Amount of annual reduction*
Apr. 22, 1957	$1,128,000
Aug. 26, 1957	3,597,000
May 26, 1959	2,864,000
Apr. 1, 1960	200,000
Jan. 1, 1961	6,256,000
May 1, 1964	10,000,000
July 1, 1964	242,000
Feb. 1, 1965	3,742,000
Jan. 1, 1966	9,500,000
Jan. 1, 1967	8,722,000
Total, 10 reductions	46,251,000

If there is any other information you need please let me know.

I want to again thank you for the opportunity to testify before the Committee.

Yours very truly,

ROBERT H. FITE,
President and General Manager.

[From the Congressional Record, Feb. 28, 1967]

THE IOU OVERCHARGE

Mr. METCALF. Mr. President, a principal inflationary cost in millions of family budgets is the overcharge in the electric bill.

This extra consumer cost is not generally recognized, for several reasons.

First, there is a lack of understanding of monopoly pricing. The IOU's—investor-owned utilities—rates are not established in the market place. To determine whether a utility charge is excessive you compare the "allowed" rate of return established by a State regulatory commission with the actual rate of return earned by a utility. Few utilities earn only the "allowed" rate. Utlity overcharges in many cases are increasing even though the rates are decreasing because of the sharply decreasing costs of producting and distributing electricity, thanks to interconnections, nuclear generation, larger plants, technological developments and because of the failure of State regulatory commissions to regulate.

In 1946 the return on invested capital of the investor-owned utilities was 5.6 percent. The IOU's averaged 6.2 percent return on invested capital during the 1959–63 period, according to Edison Electric Institute, the IOU trade association. The 35 principal electric utilities, which account for about two-thirds of the industry's profits, averaged an 11.4 percent return on invested capital in 1965, according to Fortune. The electric utility rate of overcharge is increasing more than the bank rate of interest is increasing.

A second reason for the lack of general understanding of utility overcharges is the misleading advertising and public relations program of the investor-owned utilities. The utility promoters have done as much for the managers—if not the customers—of the IOU's as Samuel Insull did when he invented State regulation of electric utilities and had his people help write the laws which make regulation ineffective.

Because of this misleading advertising, financed with customers' money:

First. The growing overcharge in electricity bills is believed to be the biggest bargain in the family budget;

Second. The Nation's largest, safest monopoly—which enjoys 110 percent of parity or more in good times or bad—is considered a prime example of risky, competitive free enterprise;

Third. The electric utilities, though keeping more taxes than they pay, are gratefully cited as the Nation's largest taxpayers, and

Fourth. Customer-owned, locally managed power systems are considered socialistic, while absentee-owned, proxy-managed utilities are equated with junior's lemonade stand and the local mom-and-pop corner grocery.

This remarkable inversion of real life by incessant utility advertising is the biggest hoax since Phineas T. Barnum hoodwinked the public into paying to see his "Feejee Mermaid," contrived of monkey and fish. And it is pertinent to point out that the creator of utility advertising techniques, Samuel Insull, "may be called the link between P. T. Barnum and Madison Avenue," according to the recent biography of Insull which received friendly reviews in the industry press. Forrest McDonald, "Insull," Chicago, University of Chicago Press, 1962.

The third reason for the lack of understanding of utility overcharges is the one which I want to discuss in some detail today. It is the mercenary misrepresentation of basic utility matters by men who know better.

I regret having to make a charge which reflects upon a former high Government official. It is, however, in my considered opinion, essential to sound government to put aside the myths that surround the utility business and begin a discussion based on realities.

It is bad enough when utility propagandists misrepresent facts. It is worse when men who have held positions of trust and respect in the National Government become a party to and instrument of deception.

Mr. President, I was appalled and saddened to read in a recent issue of the Congressional Record—February 16, pages H1483–H1484—a letter written by a former White House assistant, during the Kennedy administration, who formerly served on a regulatory commission.

The letter was written by Myer Feldman to Robert H. Fite, president of Florida Power & Light. Mr. Fite had asked Mr. Feldman, now a Washington attorney, to review legislation introduced in the 89th Congress dealing with exemption of certain utilities from jurisdiction of the Federal Power Commission. Mr. Feldman prepared for Mr. Fite proposed legislation to exclude the utility from FPC legislation. In his accompanying letter, Mr. Feldman wrote Mr. Fite, as follows:

"No public purpose would be served by transferring jurisdiction (of Florida Power & Light) to the Federal Power Commission. On the contrary, the public would have to pay for unnecessary duplicate surveillance, electric bills would go up instead of down, expenses would increase substantially, and the Company, its customers, and its investors would be prejudiced.

"This is clear from the history of the Company. Over the past decade there have been nine rate reductions, almost one every year. If the original rates, prior to the reductions, had been in effect last year, consumers would be paying over $100 million more for their electricity. This is a tribute to both the Florida commission and the company. Federal jurisdiction would reverse this trend, for the company would, by its estimates, have to pay between $500,000 and $600,000 a year more to meet the accounting requirements of the Federal Government. This cost would necessarily be passed to the consumer."

Mr. President, in the first place, no serious student of regulation can say that Florida electric utilities, especially Florida Power & Light, have been subject to meaningful regulation, except perhaps in very recent times, in circumstances which I shall describe. The chairman of the Florida Public Service Commission testified in 1965, in response to a question by the senior Senator from Wyoming [Mr. McGee], during hearings on S. 218, that "the best regulation is little or no regulation." An experienced reporter for the Miami Herald, Mrs. Juanita Green, attempted without success in 1964 to find out from the Florida commission the rate base of Florida Power & Light. She was told, by the director of the commission's finance department, that "where it is, if it still exists, I don't know." Utilities, unlike free enterprise business, receive a percentage of their rate base or investment. So that sorry state of affairs in Florida is comparable to a situation where a county assessor could not show an ordinary taxpayer his assessment.

Second. It is pure poppycock to assert, as Mr. Feldman did, that Federal jurisdiction would cause electric bills to increase. The cost of producing and distributing electricity is steadily decreasing. Monopoly pricing is essentially different from pricing of competitive products or services. Despite slight rate reductions the excess profits of the IOV's are growing ever larger, because of the cost reductions made possible by regional and now national power grids, nuclear power

generation, larger and more efficient plants, and because the savings are not being shared equitably with utility customers.

The return on invested capital of Florida Power & Light was 12.3 percent in 1964. The company's rate of return was one of the most exorbitant in the Nation—8.72 percent, as compared with 7.74 percent in 1961. Had the Florida Public Service Commission kept profits down at the 6.98 percent "allowed" rate which it set for the company some years ago, many millions of dollars in overcharges would have remained with the company's customers.

The principal rate reduction granted Florida Power & Light's customers results neither from the initiative of the company nor the initiative of the commission. It stems rather from the fact that the city of Miami, tiring of overcharges, hired an aggressive utility consultant, and the fact that the Miami Herald decided to cover the utility beat and report on the real world of electric utilities.

Mr. President, Mr. Feldman's reference to accounting requirements also deserves comment. Florida Power & Light is one of the many examples of IOU's which presently disregard the reasonable accounting requirements of the Federal Power Commission. Not long ago the FPC requested Florida Power & Light to itemize more than $400,000 in contributions and other expenses during 1963 which the utility had accounted, contrary to regulations, as a lump sum, and also, incorrectly, as an operating expense to be borne by the customers. In response to the FPC request, the company still did not itemize more than $125,000 in "public relations," "educational" and "donation" expenditures. Interestingly enough, the company did, when pressed for details, report spending more than $1,000 that year on subscriptions to Public Service magazine, a publication which, as the junior Senator from Alaska [Mr. Gruening] pointed out years ago in "The Public Pays," has been part of the IOU's propaganda transmission system for decades.

Public Service magazine is a conglomeration of speeches and articles by leaders of the IOU's and of the extremist organizations which the utilities endow, with your and my money. Among the organizations which receive these special favors from the IOU's and Public Service magazine are the Southern States Industrial Council—which claims that UNICEF is "completely Communist dominated" and that civil rights legislation is Communist inspired, Industrial News Review—the editorial service which distributes to 11,000 editors each week two editorials which praise the investor-owned utilities, Harding College—which in cooperation with the John Birch Society produces and distributes films and pseudoeducational material to schools and civic organizations, the Foundation for Economic Education—whose recommended literature is for the most part also found on the recommended reading lists of the John Birch Society, and the American Economic Foundation—which is the organization of Fred Clark, who has been fronting for the utilities ever since the fight over the Public Utilities Holding Company Act in the thirties.

Let me cite another example of the accounting practices of Florida Power & Light. In 1963 it cosigned with three other Florida IOU's—Florida Power Corp., Gulf Power, and Tampa Electric—an advertisement which put a Communist connotation on the Federal Power Commission's requirement that power companies account for political ads as a nonoperating expense, to be borne by stockholders rather than customers. According to this ad:

A "Berlin Wall" (is) being built in America . . . constructed of subtle and gradual curtailments of traditional American freedoms.

And the FPC "laid the first brick" by its accounting regulations. When queried concerning this ad, Florida Power & Light told the FPC:

The ad was neither reviewed or approved by the chief executive officers of this company. In fact, our name was included by mistake and consequently this company will not participate in the cost of the ad.

That was a new twist. The customers of other power companies would pay for the smear ad that bore Florida Power & Light's signature.

Mr. President, the performance of Florida Power & Light does no credit to the electric power industry, the Nation's largest. Mr. Feldman's performance is certainly no credit to his background.

State commissions have been saddled with impossible jobs and inadequate laws and staffs. We talk of the regulatory lag, but it is the regulatory lapse which should concern State and Federal officials. The supposedly regulated industries account for more than one-fifth of all business in this country and, men with knowledge and responsibilities need to examine and update the regulatory process.

Senator METCALF. The effect of the bills before you would be to diminish what little authority the Federal Power Commission now has over an unknown number of electric utilities. The companies that thus escape Federal Power Commission jurisdiction would be subject to only State regulation or, in a State without a commission, to no regulation at all.

However, the electric power industry is increasingly interstate in operation, through pooling, long-distance transmission, and merger. These technological developments make more difficult than ever the task of effective State regulation.

The Senate committee print, entitled "State Utility Commissions," issued recently by the Senate Subcommittee on Intergovernmental Relations, is a significant reference and a copy of that is also on your desk, Mr. Chairman. It is a summary and tabulation of information submitted by the State commissions, in response to a subcommittee questionnaire.

This information, current and from the commissions themselves, shows that some of them lack the authority to regulate wholesale rates, to suspend rate changes, initiate rate inevstigations, prescribe temporary rates, establish sliding scale rates, or even to prescribe fair rates of return. A majority of the State commissions do not control issuance of dividends. Some never, or seldom, audit utility books. Many do not have the power to require interconnections that are needed to assure reliability of service, or to decide territorial disputes.

Section 2 of "State Utility Commissions" deals with the staffs of these State commissions. Many have only one or two accountants, yet they are supposed to scrutinize the books of hundreds or thousands of huge companies. Some don't have any attorney.

Some commissions which do have large staffs have some policies that ought to be examined rather carefully if, indeed, Congress is going to turn over to some of them the entire job of regulation. County and city governments have a vital interest here, too. I was impressed by the statement made 3 weeks ago by the counsel for the Virginia Association of Counties, relative to taxation of easements of public utilities in Virginia.

In Virginia, utilities pay no taxes on the value of easements which they own over property for pipelines, transmission lines, distribution lines, and so forth. However, the accounting department of the State corporation commission includes the value and cost of public utility easements for ratemaking purposes. Virginia consumer taxpayers have a double burden. The utilities don't pay their share of taxes but collect revenue as if they did.

The cities, counties, and towns of Virginia—and here I am quoting the Virginia Association of Counties' counsel, C. F. Hicks—"are being deprived of millions of dollars of real estate taxes to which they are rightfully entitled."

The most amazing part of his statement, in my opinion, is his finding that this conflicting policy has been practiced for 60 years and that the section of the State commission which assessed property for ratemaking purposes didn't know, until he told them, and at first refused to believe that the public utilities were not paying real property taxes on the easements which they own.

I sympathize with the commissioners and staffs of these State commissions. Many of them are trying very hard to serve the public in-

terest under the most difficult circumstances. The legislatures—and I used to be a member of a State legislature as well as of this House, and know how it works—the legislatures have saddled these commissions with awesome tasks, but not given them the support necessary to do an effective job. So should Congress add to their workload?

I wonder if the members of the Oklahoma State Senate Investigating Committee, which conducted hearings this year on the Oklahoma State Corporation Commission, would want that commission to have additional responsibilities for protecting the public interest.

As I read the Oklahoma Senate committee's report, it has come to some disturbing conclusions about the lax policies, procedures, and practices of the State commission. The legislators seek substantial changes in the system of State regulation. The attorney general of Oklahoma has filed suit to remove from office the chairman and vice chairman of the commission.

I believe this report, and the statement by the counsel of the Virginia Association of Counties, neither of which are very long, are to the point of this legislation and will be of value to the subcommittee. With your permission, Mr. Chairman, I ask that they be included in the hearing record, along with the October 23 editorial in Electrical World which recognizes the need for improvement of State commissions.

May I say that that October 23 editorial is very unflattering to the present witness, but it makes a strong point in my case as to the need for further regulation.

Mr. MACDONALD. Without objection, it is so ordered.

(The documents referred to follow:)

STATEMENT OF C. F. HICKS, COUNSEL FOR THE VIRGINIA ASSOCIATION OF COUNTIES, RELATIVE TO TAXATION OF EASEMENTS OF PUBLIC UTILITIES IN VIRGINIA

Gentlemen, there is one matter in the taxation of property in the State of Virginia which is inequitable. This is the fact that public utilities pay no taxes on the value of easements which they own over property for pipe lines, transmission lines, telephone lines, etc. At the 1966 Session of the General Assembly, utilities complained loudly about the practice which some localities in Virginia had of having a low assessment ratio and a high tax rate, which was inequitable as to utilities, or the practice which other localities had of taxing utilities' property such as transmission lines, pipe lines, telephone lines, and generating equipment as personal property or machinery and tools, rather than as real estate, then having a low rate on real estate and a high rate on personal property and machinery and tools. Both of these inequities which were complained of by public utilities were corrected by the last session of the Legislature.

At that time, discussion was had with the representatives of public utilities and the representatives of the State Corporation Commission, relative to the other inequitable situation, whereby public utilities pay no taxes on easements which they own. Both the utilities and the State Corporation Commission said that they would attempt to work out this matter. Since that time, they have done nothing. In fact, an official of the state Corporation Commission has stated that the State Corporation Commission has not assessed taxes on public utility easements for sixty years, and will not assess taxes on public utility easements unless they are made to do so.

At the same time, in the accounting department of the State Corporation Commission, which has charge of valuing utilities property for the purpose of rate making, they include the value and the cost of public utility easements for rate making purposes. This department was amazed, and at first would not even believe that the public utilities were paying no real property taxes on the easements which they own in this State.

In a recent case in Fairfax County, the Supreme Court of Appeals of Virginia held that a pipe line going through a man's subdivision would destroy the entire economic value of the land through which the pipe line ran; that in effect,

the value of the easement was equal to the value of the property in fee simple. Still, this pipe line company has to pay no property taxes to Fairfax County on this easement. Since this land is still owned by the landowner, he can be assessed with the property taxes; or, if he can prove to the tax assesor of Fairfax County that his land has been decreased in value by the amount of the easement, he would be entitled to have his taxes decreased by this amount. Therefore, Fairfax County is left holding the bag, with acres of land owned by private individuals and used by public utilities on which no taxes are paid.

The cities, counties and towns of this State, collectively, are being deprived of millions of dollars of real estate taxes to which they are rightfully entitled. An easement which a public utility has is in effect an interest in land, to which they have attached property which the General Assembly has said shall be taxed at the rate of real estate, as to poles, transmission lines, etc., rather than as personal property. The poles, etc., are to be taxed as real estate, but they must be attached to some interest in real estate, which is the easement, and this easement should be taxable to the public utilities.

I don't blame the public utilities for not paying taxes on the easements, when the State Corporation Commission does not assess the value of the easements to the public utilities. The State Corporation Commission, under the Constitution of Virginia, must assess all public utility property in Virginia, and report the assessed value to the respective county, city or town, which then levies taxes on it at its regular tax rate. We thus find that within the State Corporation Commission itself, the department which has charge of the assessment of public utility property for local tax purposes is not assessing the value of the easements, and the public utilities therefore pay no tax on the value of the easements; yet the division which has charge of valuing utility property for rate making purposes, is including the cost or the value of these easements for the purpose of fixing rates which the consumers of the public utility services in Virginia must pay.

Since the State Corporation Commission takes the position that they are not going to assess easements of public utilities for local taxation purposes unless they are made to do so, I feel that the 1968 Session of the General Assembly, in fairness to the other taxpayers of this State who must pay taxes on their interests in real estate, should enact a law requiring the State Corporation Commission to assess these easements of public utilities for local taxation purposes, along with other property of public utilities.

It may be true that sixty years ago, these easements were of little value, especially when they were out in the country, because they were over farmland which a farmer could still use for pasture or to plant crops on. Today, these easements in both urban and rural areas, go across land which, because of these easements, cannot be used for commercial or residential purposes. These easements are of value to the public utilities, they are interests in real estate, and the value should be assessed for local taxation purposes by the State Corporation Commission.

Thank you.

REPORT OF INVESTIGATING COMMITTEE UNDER SENATE RESOLUTION NO. 30 AND HOUSE JOINT RESOLUTION NO. 514

To the Honorable Clem McSpadden, President Pro Tempore of the Oklahoma State Senate:

We, the undersigned members of the Investigating Committee, appointed by you, under the authority of Senate Resolution No. 30 and House Joint Resolution No. 514, have completed our investigation and herewith submit our report in compliance with said resolutions.

While the authorization for this investigation, as set forth in said resolution, is broad in scope, the complaints received by the Committee as to irregularities and alleged violations of law concerned primarily the Corporation Commission, the employees of said commission, companies subject to regulation by said commission, employees of said companies and attorneys representing said companies.

In the conduct of this investigation, the Committee adopted a policy of hearing any and all witnesses who desired to be heard, either in person or by sworn affidavit or both and no person was denied an opportunity to be heard before the Committee, either in person or by written affidavit. All of said testimony was transcribed by a certified Court Reporter and a complete transcript of said testimony is likewise herewith submitted.

The Commission began the hearing of testimony on the 12th day of April, 1967, and concluded the hearing of testimony on the 8th day of July, 1967. The Committee heard testimony on 16 different days and on a number of said days the testimony was taken from early in the morning to late in the evening. The transcribed testimony of said hearings consisted of ten volumes of testimony, or a total of 2,723 pages of testimony. The Committee was assisted in its investigation by Mr. Jeff R. Laird, a very capable attorney who has had many years of experience with the Federal Bureau of Investigation, and by a very capable staff consisting of Mr. Fred L. Boettcher, Assistant Investigator, Mrs. Jean Cason, Certified Shorthand Reporter, who transcribed all the testimony in the hearings and Mrs. Margaret Carroll, who was responsible for compiling additional copies of the transcript of the testimony and records and documents to be distributed at the direction of the Committee. Mr. Laird interviewed each witness before he testified before the Committee and those witnesses who were reluctant to appear voluntarily were compelled to appear before the Committee by subpoena or subpoena duces tecum, when records were required.

In addition to the transcript of the testimony and the documents copied therein, a tremendous amount of records and documents were gathered by the counsel of the Committee from the various witnesses, which documents and records were reviewed by the Committee and copies of pertinent documents were reproduced and distributed to the individual members of the Committee.

It should be emphasized that this Committee is a Legislative Investigating Committee and not an accusatory body. It should be further emphasized that this Committee sat as an investigating committee and not as a court, and that the Committee is aware that persons accused of wrong-doing or irregularity are not accorded the opportunity of cross-examination of witnesses appearing before the Committee. This was considered by the Committee to be necessary to insure an expeditious and orderly proceedings. However, it should be acknowledged that this Committee received testimony or other evidence that would not be admissible in any judicial proceedings. Recognizing this fact, the Committee would like to report that the members of said Committee in their deliberations have endeavored to discount and discard incompetent or irrelevant evidence when considering the question of individual wrong-doing, irregularities or misdeeds, but the Committee does point out that such evidence was somewhat beneficial in formulating recommendations for remedial legislation insofar as it suggested possibilities which could be corrected or improved by legislation.

From the beginning and throughout the conduct of this investigation, the Committee adopted two purposes of this investigation, which are as follows:

1. The determination of needed legislation, if any, and the determination of any needed changes in the Constitution of the State of Oklahoma, if any, which said proposed constitutional changes would have to be approved by a vote of the people.

2. The determination of any wrong-doing or law violations, if any, and the referral of any cases of wrong-doing or probable law violation to the proper governmental agency or the proper association for appropriate action, with the realization that this Committee and the Oklahoma State Senate are without authority to prosecute any person for a law violation or to take disciplinary action against any member of any profession.

After hearing many days of testimony of witnesses sworn and examined under oath and after reviewing the voluminous transcript of the testimony and after reviewing numerous documents, including but not limited to income tax returns, cancelled checks, personal records, pleadings in court cases and bank statements, the Committee makes the following findings:

1. That the members of the Corporation Commission and certain employees of said commission have not been and are not now adequately paid and that this has contributed to the members of the commission and the employees seeking other income to supplement the salary received from the Corporation Commission. However, it is the further finding of the Committee that improvement of wages and salaries have been made in the passage of recent legislation and that this is particularly true in the oil and gas division of the Corporation Commission and likewise of the salaries of the members of the Corporation Commission.

2. There is a built in conflict of interest in the regulated industries which must be resolved by the Corporation Commission, in that the commission is charged with the duties of regulating utilities in one division of the commission, the regulating of intrastate transportation in another division and the regulation of correlative rights with reference to oil and gas in yet another division.

This results, in some instances, to damage to those being regulated in one division when beneficial regulation is imposed on those regulated in another division. It also results in the neglect of the rights of those regulated in one division when the Corporation Commission must devote the major portion of its time to the regulation of those in another division. The Committee also finds that there is not a clearly defined separation of duties and responsibilities in each division of the Corporation Commission.

3. The Corporation Commissioners serve a term of six years, with one commissioner being elected every two years in a statewide election. This has resulted in those commissioners not running, usually lending their support to the commissioner who is running and likewise, in the employees of the Corporation Commission generally giving their support to the person running for re-election or to the person endorsed by a majority of the members of the Corporation Commission and this in turn makes it difficult, if not impossible, to have a change of administration in the Corporation Commission. The Committee further finds that the conduct of a statewide campaign necessitates the seeking of large campaign contributions by the candidates.

4. By the very nature of the work of the attorneys of the Corporation Commission, particularly in the division regulating utilities, there is a close association with the attorneys representing public utility companies, and this gives rise to the question as to whether the attorneys for the utility company may not unduly influence the decisions of the attorneys for the Corporation Commission. This question is further emphasized by the fact that former attorneys of the Corporation Commission, in order to receive a greater income, have left the Corporation Commission to become attorneys for the utility companies. Likewise, the question is further emphasized by the fact that some attorneys in the Corporation Commission have associated themselves, while employed by the commission, with attorneys representing utility companies allegedly in cases not involving the regulation of the Corporation Commission.

5. There is strong evidence of lax administration and inadequate supervision on the part of the members of the Corporation Commission and the administrative heads in said commission of those under their supervision, particularly with reference to the checking to see that policies of the Corporation Commission are carried out, and likewise with reference to seeing that those who are assigned to do a particular job, actually perform the job they are assigned to do, and that persons designated to travel in connection with their duties, actually make the trips they are designated to make.

6. Members of the Corporation Commission and certain employees of the commission accepted free transportation on planes owned by oil companies, but the Committee finds that this is not the type of free transportation in and of itself prohibited by law, and the Committee further finds that in many instances said travel would have otherwise been paid by the State of Oklahoma.

7. Clyde Hale, Sr., during his lifetime, and the law firm of Hale, Welch and Hale, offered rooms to members of the Corporation Commission and to certain employees of the commission during the Oklahoma-Texas football games and at meetings of associations and likewise provided tickets for the games in Dallas and likewise furnished small presents at Christmas time to members of the Corporation Commission, employees of the commission and other state officials, but there is a conflict of evidence as to whether the rooms in Dallas and elsewhere, and the Texas-O.U. football tickets were accepted in all instances and whether or not Clyde Hale, Sr., and the law firm of Hale, Welch and Hale, were reimbursed for the tickets and the rooms used. The Committee further finds that the mere acceptance of these gratuities is not a violation of law.

8. Harold Freeman and Ray C. Jones, while they were members of the Corporation Commission, and Ferrill Rogers, while he was an employee of said commission, were instrumental in obtaining financial support for Oklahoma Well Servicing Company, Inc., an oil well servicing company doing business in Oklahoma, and likewise assisted Eugene Blalock, the manager of said company, in making contacts with oil companies which resulted in said oil well servicing company obtaining some business from said oil companies. The business of an oil well servicing company in Oklahoma is not directly subject to the regulation of the Corporation Commission but it is indirectly subject to the regulation of the Corporation Commission in its authority over the regulation of correlative rights in the production of oil and gas in Oklahoma. There is evidence that either Ray C. Jones or Harold Freeman, or both, recommended to Skelly Oil Company and other companies, that said oil well servicing company be given business by

said companies. Some of the contracts with oil and gas companies by said oil well servicing company did result in business for said oil well servicing company. It is the finding of the Committee that the said persons above named, while they were either members or employees of the Corporation Commission, were indiscreet in rendering financial assistance to said oil well servicing company and in assisting in contacts by said oil well servicing company with oil and gas companies which gave the appearance of a conflict of interest with the duties of their offices, in that it is subject to being interpreted as coercive in nature by virtue of the office held by said named persons. In this connection, we further find that members of the Corporation Commission refused to use their influence by interceding in behalf of said oil well servicing company with Pan American Oil Company to cause said Pan American Oil Company to continue doing business with said oil well servicing company.

9. Harold Freeman and Ray C. Jones owned shares of stock in Livingston Oil Company while they were members of the Corporation Commission. There is no prohibition in the law of the State of Oklahoma against a member of the Corporation Commission owning stock in an oil company. However, there is a prohibition in the Constitution of the State of Oklahoma against a member of the Corporation Commission being directly or indirectly interested in any pipeline operated for hire in this state or out of it, or any stock, bond, mortgage security or earnings of such pipeline. The Tenth Annual Report of the Livingston Oil Company, on Page 7 of said report, shows in a listing of the Livingston property, 200 miles of pipeline, including oil and gas gathering and distribution systems, and it likewise shows that Livingston Oil Company receives from plants and pipelines 8.8% of its total revenue. Livingston Oil Company denys that it is a pipeline company and it is not clear from the evidence whether the pipelines shown in the Annual Report were owned by Livingston Oil Company or by subsidiary companies whose stock is owned by Livingston Oil Company. Livingston Oil Company is not chartered as a pipeline company and it is neither assessed or taxed as a pipeline company in the State of Oklahoma. Very well written briefs were submitted by Jeff R. Laird, counsel for the Committee, contending that Livingston Oil Company could be classified as a company operating pipelines for hire, and by Jim A. Rinehart of the law firm of Rinehart, Rinehart and Rinehart, contending that Livingston Oil Company is not a company which operates pipelines for hire. The penalty for a member of the Corporation Commission having an interest in a company which operates pipelines for hire, under the Constitution of the State of Oklahoma, is that said office is declared vacant. The penalty for the violation of this provision of the Constitution of the State of Oklahoma is in effect a forfeiture of office and any forftiture penalty must be strictly construed. While the evidence is not conclusive and a judicial determination of this question would be desirable, it is the finding of the Committee, based upon the testimony given during the hearings of the Committee, the documents presented to the Committee, and after reviewing the briefs of Mr. Rinehart and Mr. Laird, that the Committee is unable to conclude that Livingston Oil Company was a company which operated pipelines for hire, so as to preclude the ownership of stock in Livingston Oil Company by a member of the Corporation Commission, and the Committee cannot conclude that the offices now occupied by Ray C. Jones and Harold Freeman should be declared vacant for this reason. The Committee further finds that appropriate judicial action should be encouraged to resolve the legal issues raised by this stock ownership.

10. James G. Welch and William L. Anderson received payments of money while they were employees of the Corporation Commission from Clyde H. Hale, Sr., while he was representing utility companies in Oklahoma as an attorney for said companies. The payments to Mr. Anderson were monthly payments over a period of time and were allegedly for campaign expenses. The payments to Mr. Welch were allegedly for a "joint venture," legal services, campaign expenses and loans. While the conduct on the part of said parties is not shown by the evidence to be a violation of law, it does give rise to a question of ethics inasmuch as both of said parties are attorneys at law. There is strong evidence taat attorneys representing utility companies before the Corporation Commission split fees with James G. Welch while he was general counsel for the Corporation Commission, and this emphasizes the need for a conflict of interest statute in the State of Oklahoma.

11. The evidence shows that sizeable campaign contributions were made by attorneys for utility companies. There is nothing wrong or illegal about a campaign contribution as such, for if it were otherwise, only a thief or one with

great wealth could run for public office. Therefore, in the interest of good government, persons should be encouraged, rather than discouraged, in the making of campaign contributions. However, the time of and the motive for making campaign contributions should be carefully scrutinized. Corporations are prohibited by law in Oklahoma from making campaign contributions. There is no competent evidence that the contributions by attorneys who represent utility companies as well as other clients were made at the direction of said utility companies and said campaign contribution cannot be traced to funds advanced by the utility companies, except insofar as said funds were fees collected by said attorneys together with other fees from other clients. The evidence also shows that contributions by attorneys who represent utility companies were made to candidates who were running for office in the city, county, state and federal government, and that said contributions were made to candidates in both political parties in the State of Oklahoma. The evidence also shows that in certain instances, contributions were made to opposing candidates running for the same office, by a single law firm. The evidence also shows that in certain instances, the same law firm supported some candidates of each party.

12. The grounds for impeachment set out in the Constitution and the Statutes of the State of Oklahoma are listed as "willful neglect of duty, corruption in office, habitual drunkeness, incompetency or any offense involving moral turpitude committed while in office." There is no competent evidence presented to the Committee which would justify it in the recommending of impeachment proceedings.

13. Morris Head, who is presently an employee of the Corporation Commission, collected travel expenses from the State of Oklahoma at a time when he is shown by the evidence to have been performing services for the Urban Renewal Authority in Oklahoma City, Oklahoma, as an appraiser. The Committee finds that there is strong evidence that Mr. Head made false travel claims and collected expenses from the State of Oklahoma for said travel and that he failed to spend an equivalent time on the job for which he was hired and paid.

14. There is a sharp conflict of testimony among several of the witnesses who testified before the Committee and the testimony of some witnesses is contradicted by documentary evidence. It is the finding of the Committee that there is strong indication in the evidence that false testimony under oath was given by James G. Welch, Clyde H. Hale, Jr., Morris Head and Marguerite Estep. The sharp conflict in the testimony and the convenient lapses of memory of some other witnesses under oath, such as is found in the testimony of Ferrill Rogers, gives rise to the question as to whether some of said witnesses may have given false testimony.

15. There is a code of high ethical conduct for attorneys engaged in the practice of law in the State of Oklahoma, which code of ethical conduct is set forth by the Oklahoma Bar Association and adopted by the Supreme Court of the State of Oklahoma. There is a strong indication in the evidence that James G. Welch, Clyde H. Hale, Jr., William L. Anderson and Ferrill Rogers may have violated the canons of legal ethics required of practicing attorneys in the State of Oklahoma.

16. The Rules of Procedure in the Corporation Commission for proceedings before said commission or any sub-division of the commission are vague and indefinite and there appears to be unnecessary delay in some proceedings in the Corporation Commission. The rules and regulations of the Corporation Commission are not sufficiently codified or updated.

17. The motor carriers of the State of Oklahoma are not furnishing adequate service to the people of the state in the delivery of goods transported by motor carriers. This lack of adequate service is particularly true in the smaller communities of our state and is aggravated by the transfer of permits by those carriers making the long hauls to those making the short hauls. This problem is now under study by the Roads and Highways Committee of the Legislative Council.

18. It is required under the present law that the Corporation Commission submit an annual report to the Governor of the State of Oklahoma. The evidence shows that the last report submitted to the Governor by the said Corporation Commission was for the year of 1964. It is also required by law that with said reports, the Corporation Commission should have any recommended legislation, and it appears that recommended legislation has been omitted from reports of the Corporation Commission filed with the Governor.

19. By practice and by reason of a limited and inadequate staff, the Corporation Commission can not initiate investigations of rates and operations of utility companies in the State of Oklahoma. Limited review of rates depends upon a complaint duly filed in the Corporation Commission, under present procedure. It appears to the Committee that the present law and procedure is inadequate

and that it would be beneficial to all concerned if the Corporation Commission were directly empowered to initiate its own investigations of regulated utilities and industries. In that connection, the Committee would observe that the present personnel of the Corporation Commission are not sufficient in number and not adequately trained to make an analysis of rates of utility companies.

20. The Corporation Commission does not have an adequate system of screening prospective employees and likewise, there is an inadequate policy with reference to the retention, promotion, retirement and discharge of employees of the Corporation Commission.

21. There was called to the attention of the Committee, a book entitled *Overcharge* by Metcalf and Reinemer, and an analysis of this book has been drafted by Senator Don Baldwin, undersigned member of this Committee, summarizing the allegations set forth in said book. This analysis has been made a part of the records of this Committee, together with the comments of the Oklahoma Tax Commission, concerning the effect on Oklahoma taxes as to the allegation contained in said book and summarized in said analysis. The Committee finds that the allegations set forth in said book do not reflect any illegal acts by any one in the State of Oklahoma and the Committee at this time is unable to determine whether or not any additional legislation is needed in this field.

22. The position of Fuel Inspector of the Corporation Commission is now being filled temporarily by L. D. Hoyt, an attorney at law, who assumed the duties of this office upon the death of the former fuel inspector in December of 1966. One holding this position is prohibited by law from having any other employment. Mr. Hoyt was engaged in the practice of law in addition to his duties in the Corporation Commission, prior to his assuming the duties of Fuel Inspector. The Committee finds that inasmuch as this is a temporary assignment and inasmuch as the evidence does not show that Mr. Hoyt has accepted employment as an attorney since assuming the temporary duties as Fuel Inspector, there is not sufficient evidence to show a violation of law by Mr. Hoyt.

Based on the above findings, after reviewing the testimony and reviewing the documents and records submitted to the Committee, the Committee makes the following recommendations.

1. That the Legislative Council make a study of the pay of the members of the Corporation Commission and the employees of said commission, which studies should be made by an appropriate committee of the Legislative Council, and that the Oklahoma Legislature, after receiving such study, enact appropriate legislation to adjust the pay of said members and employees of said Corporation Commission in order that they may be adequately paid in keeping with the duties and responsibilities of said members and employees of the Corporation Commission.

2. That the Corporation Commission be re-organized in three separate and distinct divisions, consisting of a utilities division, a transportation division and a conservation division, and that the regulation of cotton gins be transferred to the State Board of Agriculture; that an expert be selected to head each division. The Committee would further recommend that all reports by employees of the Corporation Commission, with reference to investigation of complaints and regulations, be reduced to writing and properly filed in the Corporation Commission.

3. That the members of the Corporation Commission should be nominated and elected by districts in the State of Oklahoma and your Committee further strongly recommends a continuing legislative study by an appropriate committee of the Legislative Council of a re-structure of the Corporation Commission with particular reference to the advisability of an increased membership in said Commission.

4. That all attorneys of the Corporation Commission and all attorneys who render legal services in other departments of state government should be placed under the jurisdiction of the Attorney General who would be charged with the responsibility of assigning attorneys to the respective departments as the need arose, and no attorney employed by the State of Oklahoma should be permitted to engage in the private practice of law.

5. That the Administrative Procedures Act of the State of Oklahoma be made applicable to the Corporation Commission with the exception that an appeal from a decision of the Corporation Commission should be made directly to the Supreme Court of the State of Oklahoma.

6. That persons or corporations who are subject to the regulations of the Corporation Commission and their attorneys should be prohibited from furnishing transportation, presents or gratuities of any kind to any member of the Corporation Commission or any employee thereof, with the exception that, during a specified time when there is a political campaign, persons other than corporations may make campaign contributions.

7. That a study of further controls of individuals receiving campaign contributions when a campaign is not in progress, should be made by the appropriate committee of the Legislative Council.

8. That it should be illegal for any member of the Corporation Commission or any employee of said commission to assist in the financing of any business, such as an oil well servicing company, or to make any contacts whatsoever for, or to associate himself with any business in any way where the influence of the office could be used to benefit the business. That before any member of the Corporation Commission purchases any stock in any oil and gas company or in any company which is subject to the regulation of the Corporation Commission, either directly or indirectly, he shall obtain a written opinion from the Attorney General that the ownership of said stock is not in violation of the Constitution or the Statutes of the State of Oklahoma, and should a member of the Corporation Commission involuntarily obtain stock in said companies through inheritance or otherwise, he should obtain an opinion from the Attorney General immediately upon receiving said stock as to whether he can legally retain said stock.

9. That Morris Head be discharged from the Corporation Commission and that a copy of this report be delivered to the District Attorney of Oklahoma County and to the Attorney General of the State of Oklahoma for investigation and appropriate action concerning travel claims collected by the said Morris Head.

10. That a copy of this report be submitted to the District Attorney for Oklahoma County for investigation and appropriate action, consistent with the findings set forth in Paragraph 14 of said findings.

11. That a copy of this report be submitted to the Oklahoma Bar Association for investigation and appropriate action concerning the question of the violation of the canons of ethics by James G. Welch, Clyde H. Hale, Jr., William L. Anderson and Ferrill Rogers.

12. That the study of legislation which would spell out what constitutes conflict of interest by officials and employees of the State of Oklahoma be continued by the Legislative Council and by the State Legislature, which said study is now in progress, and that legislation be enacted clearly defining what constitutes conflict of interest and prohibiting by law any action by a state official or state employee which would be in conflict with the duties and responsibilities of any state official or state employee.

13. That the problem of inadequate motor carrier freight service to the people of the State of Oklahoma continue to be studied by the Roads and Highways Committee of the Legislative Council with the further recommendation that legislation be drafted which will insure the best possible service to the people of the State of Oklahoma. The Committee further recommends that the Corporation Commission be empowered and required to more carefully regulate and supervise intrastate motor carrier service and likewise more carefully regulate and supervise the issuance of permits to, and the transfer of permits among, the motor carriers of the State of Oklahoma.

14. That the annual report required under the law, from the Corporation Commission to the Governor of the State of Oklahoma, be brought to date and filed with the Governor as required by law and that there be included in future reports, a recommendations by the Corporation Commission as to legislation, and if there is an opinion of the Corporation Commission that no legislation is needed, the report should so state.

15. That the Legislative Council should study the advisability of enacting proper legislation to enable the Corporation Commission to initiate independent investigations of utility rates and investment returns, and the need for, and the manner of, providing additional personnel to make a proper study of the rate structure of utility companies.

16. That legislation be enacted broadening the notice required in all matters heard before the Corporation Commission so as to ensure that all parties affected by the matter under consideration by the Corporation Commission may be ensured that they have an opportunity to know the time and place said matter is to be heard before the Corporation Commission.

17. That the question be referred to the appropriate committee of the Legislative Council for study of improvement in the selection, tenure, promotion, retirement and discharge of the employees of the Corporation Commission, with the request that legislation be drafted which would set forth a policy which would improve the personnel management of the Corporation Commission. The Committee further recommends that consideration be given to the testing of prospective employees prior to employment and the establishment of a classification for all employees in the Corporation Commission with a job analysis for each

class of positions in said Commission, and that minimum standards be set up for each position.

18. That the analysis by Senator Don Baldwin of this committee, of the book entitled *Overcharge* by Metcalf and Reinemer, together with the preliminary comments of the Oklahoma Tax Commission concerning the effect in Oklahoma of the allegations set forth in the said book and the analysis thereof, be referred to the Revenue and Taxation Committee of the Legislative Council for further study and recommendations.

19. That the appropriate committee of the Legislative Council study the question of the expediting the decisions of the Supreme Court in cases appealed from the Corporation Commission.

20. That the Rules of Procedure of the Corporation Commission should follow, insofar as possible, the Administrative Procedures Act, and that the Rules of Procedure and Regulations of the Corporation Commission should be updated and reduced to writing in a comprehensive codified form. Additional Rules of Procedure should be promulgated to insure a speedy hearing and early decisions of all matters before said Commission.

21. That the Constitution of the State of Oklahoma should be amended where necessary and legislation enacted to carry out all recommendations contained in this report.

22. That in addition to this report and the transcript of the testimony submitted to you herewith, that copies of this report, together with copies of the transcript of the testimony, be delivered to the Speaker of the House of Representatives, the Attorney General of the State of Oklahoma, the District Attorney for Oklahoma County, the Oklahoma Bar Association and the Governor of the State of Oklahoma, with the recommendation that the entire transcript be reviewed, together with this report, and that appropriate action be taken. It is also the recommendation of the Committee that copies of this report, together with copies of the transcript of the testimony, be made available to the Legislative Council and to the Bureau of Investigation of the State of Oklahoma.

While the above findings and recommendations do not represent the personal views of any one member of the Committee, they do represent, in most instances, a compromise worked out among all of the members of the Committee, and in all instances, they represent the views of a majority of the Committee.

Respectfully submitted this 19th day of August, 1967.

ROY E. GRANTHAM, *Chairman,*
DON BALDWIN, *Member,*
FINIS W. SMITH, *Member,*
RICHARD E. ROMANG, *Member,*
GEORGE A. MILLER, *Member,*
Special Investigating Committee of the Oklahoma State Senate.

[From Electrical World, Oct. 23, 1967]

EDITORIAL—UTILITIES HAVE STAKE IN SOUND REGULATION

Investor-owned utilities, and possibly the public and co-op utilities, too, have a big stake in sound regulation at both the state and federal levels.

Some of the more knowledgeable utility executives recognize this very clearly and have spoken out on the subject. Others have chosen to remain silent.

There are signs now that the whole state regulatory process will be publicly questioned. The apparent lack of aggressiveness on the part of some state commissions has been a favorite target for Sen. Lee Metcalf (D-Mont) during his decade-long tirade against investor-owned utilities.

In recent weeks questions of the adequacy of state utility regulatory commissions have been raised in two other quarters. A Senate Government Operations Subcommittee has published a study of commissioner qualifications, staff qualifications, salaries, staff sizes, and areas of authority of the various state commissions (EW, October 9, p 71). In making public the raw data from questionnaires sent to all state commissions, the Senate subcommittee does raise questions of the adequacy of commissioners, staff, and regulatory authority to provide sound regulation in some states.

On another front, the Consumers Assembly, which will hold its annual meeting in Washington November 2 and 3, has said it will focus a part of its program on the adequacy of state regulatory commissions. In advance publicity, the Assembly says that the commissions "with few exceptions are so under-

staffed and underfinanced that it is impossible for them to adequately fulfill their role as protectors of the public."

There is no way of telling whether the Consumer Assembly meeting or the Senate subcommittee report will impress the public any more than Sen. Metcalf has with his ravings over the past ten years. But whether the adequacy of utility regulation will erupt into a political or public issue is aside from the actions that need to be taken now.

First, we think that the individual state regulatory commissions do need to justify themselves to the public. We suggest that they candidly tell the public of their accomplishments and their limitations. And certainly within the means at their disposal, they should seek to overcome these limitations.

Second, we think that electric utilities should publicly asknowledge the necessity of sound regulation and in every appropriate way seek to support the commissions, realizing that the main objective of the utilities and the commissions is the mutual one of serving the public interest.

The industry has a big stake in sound state regulatory commissions. An inadequate commission is going to be more vulnerable to the political winds kicked up by such forces as the Senate subcommittee study and the Consumers Assembly and may act hastily and unwisely under such pressures. A strong commission which has been doing its work and keeping the public informed is much less likely to succumb to the pressures of the moment. Such a commission can provide both the regulation and the stability that the utility industry must have for its health and continued growth.

Senator METCALF. Now there is a lot of enthusiasm for this bill on the part of Tampa Electric and Florida Power & Light. Florida Power & Light even engaged a well-known former White House official to try to paint Federal regulation bad.

I can see why those companies love State regulation. The chairman of the Florida Public Service Commission told Senator McGee, in the Senate Commerce Committee hearings on S. 218, that "the best regulation is little or no regulation."

In a stock option deal approved by that Florida commission Tampa Electric's Board Chairman William C. MacInnes and President Fischer S. Black obtained options on 35,000 shares of stock. That amounts, as I figure it, to a windfall profit of about $400,000.

It is not easy to find out the details on utility stock option plans—that is one thing the companies don't cover in their press releases, so I may be off a few thousand dollars one way or the other. Your subcommittee may want to get the details from the company, provided it will give them to you. I know that the principal power company in my State has declined to furnish such information to stockholders or to the Federal Power Commission.

Another thing interesting about Florida is the way utility property seems to depreciate faster there than in other States. Maybe it is the salt water, I don't know. Anyway, when the city of Miami hired a rate expert he found that depreciation charges imposed on the ratepayers by Florida Power & Light were "patently excessive," and adjustments in the customers' favor were finally made.

Now when I testified on the Senate side on the companion to these bills before you, I pointed out that rate of return and return on equity of electric utilities is steadily increasing as a consequence of the decreasing costs of producing and transmitting electricity and the inability of State commissions to obtain adequate rate reductions.

I was followed by a representative of an investor-owned company who said that instead of looking at the rate of return, and return on equity, as I did, one should look at the rate for given amounts of power. I look at those, too, but as you members of this subcommittee well know, and as I would emphasize, density, fuel costs and the like

differ from one part of the country to the other, and explain part of the rate differential.

Representing a sparsely settled State I am especially aware of the relationship of density to revenue. Nationally the investor-owned utilities obtain about 15 times as much revenue per mile of line as the rural electric cooperatives receive. That density factor was one of the reasons why Congress established the Rural Electrification Administration's 2-percent loan program.

Investor-owned utilities also benefit from these 2-percent REA loans. The biggest loan ever made to a utility serving my State went to an investor-owned utility, Montana-Dakota Utilities, and amounted to more than $5 million. MDU serves a sparsely settled area, as the cooperatives do. Despite MDU's high rates, its rate of return and return on equity are below average.

On the matter of fuel costs, power systems which have access to cheap hydroelectric power in the Columbia Basin are better off than the New England systems which have high fuel costs and which shortsightedly fight hydroelectric projects such as Dickey-Lincoln. The important point to keep in mind on fuel costs is the rapid trend toward nuclear plants.

Federal taxpayers spent more than $2 billion to make nuclear power practical and now the investor-owned utilities are trying to obtain a virtual monopoly on it.

I think Congress needs to face up to this problem of nuclear monopoly. One approach is offered through the Aiken-Kennedy bill, S. 2564, which would insure a reasonable opportunity for all electrical utilities to participate in the benefits of nuclear power.

So to get the full picture we have to look at the rate of return, the components of the rate base and the return on equity.

Any regulatory commission, State or Federal, which is going to protect the interest of the public—and of the Federal Government, which itself has an annual utility bill of $4 billion, with the Department of Defense alone having an annual electric utility bill of more than a quarter of a billion dollars—has to have before it complete information on utility income and expenses. It has to have this information quickly in order to make rate adjustments before the "water-over-the-dam" rule builds up on overcharges which cannot be refunded.

We have the technology to use automatic data processing throughout the regulatory process. It is possible, economical and practical to utilize the Federal Power Commission as a data bank, where any State or Federal regulator, or Member of Congress, or party to a rate case, or member of the public can obtain data on utilities.

I hope that this subcommittee can encourage that approach, which will update regulation and save money both for the Federal Government and our constituents. I think that approach is infinitely better than the one suggested by the pending bill.

Mr. Chairman, in conclusion I wish to comment on two points raised yesterday by the spokesman for Florida Power & Light. He said on page 2 of his prepared statement that two members of the Federal Power Commission vigorously dissented from the FPC ruling "that we must file original cost statements and comply with all other Federal Power Commission requirements under the Federal Power Act, including keeping of accounts in accordance with the Commission's uniform system of accounts."

Commissioner Carver in his dissent, in which Commissioner O'Connor joined, pointedly disagreed with the company on its allegation of increased regulatory costs. "This dissent," said Carver, "does not stem from sympathy to the Florida Power & Light Co., whose arguments against being regulated, particularly in the matter of the impact of conformance with the uniform system of accounts, affront the legislative purpose. Congress did not saddle consumers with unnecessary costs when it directed the Commission to set up a uniform accounting system."

The majority of the Commission in its opinion and order stated that "although Florida Power & Light asserts that it will incur more than $500,000 additional annual cost if it must comply with the Commission accounting requirements, its contention is unsupported on the record before us."

Now, Florida Power & Light has escalated its supposed cost of regulation by an additional figure of up to $6 million, which is almost half the annual budget of the Federal Power Commission.

Estimates of accounting cost by that company obviously even exceed its estimate of depreciation.

Secondly, the witness now says only a very few companies would be affected by the bill.

A significant finding in the Senate hearings on companion legislation was that no one knows how many companies would be affected. I would also remind the subcommittee that if the law is changed some utilities will likely rearrange their territory to suit the new loophole. Not long ago Montana Power Co. initiated action toward sale of its properties in Idaho.

Montana Power got its second big stock option plan approved by lobbying through a law giving control over security issues to the State commission. Almost before the ink was dry the utility obtained approval of the new batch of options before our State commission, which admittedly didn't know the stock options were involved in the transaction at all.

Mr. Chairman, I appreciate very much the opportunity to appear before you and your distinguished subcommittee.

Mr. MACDONALD. Thank you very much, Senator Metcalf, for a very succinct and fine statement which is the tradition that you established in the House before you went to the Senate.

I was bothered yesterday a little bit by the argument that was made by the proponents of the bill that they are indeed just an intrastate operation. Would you have any comment about that, because you are much more an expert in this field than I personally am?

Senator METCALF. Mr. Chairman, more and more we are getting so that the whole power industry is interlocked and dependent one company upon another. You had the experience with power failures in the northeast which emanated from failure to have the proper kinds of relays.

Mr. MACDONALD. Right.

Senator METCALF. In my testimony before the Senate I told a story of how down in the TVA area a similar power failure was averted because of interties which drew power from adjacent areas immediately.

In the first place, this great business of supplying of electric power is a long way from the teakettle or potboiling plant that we started out

with. It has to be interlocked. There have to be interties to give people the benefit of the new technologies, of the exciting things that we have in ultra-high-voltage transmission and direct current transmission, to take advantage of the different time zones, of the fact that we have more conventional steampower, nuclear power, and hydroelectric power interconnected. These companies just can't sit there and say "We enjoy a separation from any interstate commerce."

The second thing of course is the important interest of the Federal Government. I mentioned in my testimony that the various Government agencies pay $4 billion a year for utility services. A good many of the costs of the Department of Defense are right down there in Florida, where many of the proponents of this bill are trying to get the Federal Government out of its limited regulatory role.

The third of course is that because this power industry is interstate and effects commerce in every one of its aspects all companies should report. If we establish a computer data bank, one Commission can check rates, rates of return, return on equity, and so forth, against utilities regulated by another commission, on the same basis and under the same conditions. That is the only way some of the areas such as yours, Mr. Chairman, are going to get power rates that, in spite of the other differences, exceed the power rates that we have out in the area where we have Bonneville power, such as the place where I live.

So that business of withdrawing within the confines of a State isn't an actual part of the business because they are interconnected and intertied.

Montana Power Co. came home with a great deal of fanfare. It was a New Jersey corporation, and said it was going to come home and incorporate in Montana.

And why did it come home? Because if it was incorporated in New Jersey it would be subject to the Federal Power Commission and couldn't have another stock option program, but if it was incorporated in Montana then it would be up to the local public service commission and, as I told you at the conclusion of my statement, they put through their second stock option program and a member of the commission has since told me that they didn't even know the stock option was a part of that order.

So these power companies, especially a great one such as Florida Power & Light, and Tampa Electric, can't operate in isolation. They are a lot more part of interstate commerce than many of the things that this committee considers to be in order to justify jurisdiction over such things as the Wage-Hour Act, and National Labor Relations Board, and many of the others with which we are both familiar.

Mr. MACDONALD. Thank you very much. Mr. Kornegay?

Mr. KORNEGAY. No questions.

Mr. MACDONALD. Mr. Broyhill?

Mr. BROYHILL. No questions.

Mr. MACDONALD. Mr. Brotzman?

Mr. BROTZMAN. Just one question here, Senator. You didn't hear the testimony relative to this particular company. This is a combination, I would say, a joint question, of whether in fact under the law perhaps they are or are not an intrastate company, but let me ask this question.

Senator METCALF. I frequently heard it just the same as they frequently heard my response. They say that the best regulation is little or no regulation at all.

Mr. BROTZMAN. Right. I listened to your answer. I know you didn't have the benefit of that specific testimony before this committee yesterday, or I assume you didn't.

Senator METCALF. No, I did not.

Mr. BROTZMAN. Let me ask you this question. Assuming that you had a company that is in fact intrastate, and this is one that we could debate for hours about jurisdictional aspects, but if there was in fact an intrastate power company would you favor the removal of that under FPC regulation, or do you think that that too should be regulated by the Federal Power Commission?

Senator METCALF. There isn't a question of regulation here. This is largely a question of reporting.

Mr. BROTZMAN. I am sorry I didn't hear what you said.

Senator METCALF. I say this is largely a question of reporting at the present time. There is very little regulation as far as the Federal Power Commission is concerned. It is just a matter of making the same reports to the Commission as other utilities do and some regulation, wholesale rates and so forth.

Most of the regulation is in the local commission.

Mr. BROTZMAN. The State commission.

Senator METCALF. Yes, or in the case of Texas in the localities. In some States there isn't any regulation at all, but sale of electricity nevertheless does affect interstate commerce. The utilities rates and their activities affect interstate commerce just as much as many of the other activities of local agencies affect interstate commerce, especially in view of the fact that this huge industry is so interrelated and interlied that the rates of Tampa Electric, just operating in and around Tampa, affect Florida Power & Light and affect the municipal rates over in the rest of Florida and affect the rates in the TVA, and so I would continue to require them to make the same reports that other interstate corporations make.

I would hate to see Montana Power Co. fail to make even inadequate reports that it makes now to the Federal Power Commission merely by divesting itself of a handful of consumers up there in northern Idaho and becoming strictly a power company that sells its power within the State of Montana, although there is a question there about Montana Power because they buy Bonneville power and they are part of the northwest power pool. But I can't even envisage a situation where there wouldn't be some effect of interstate commerce in the operation of a large electric utility.

Mr. BROTZMAN. So your answer to my question really is "Yes"?

Senator METCALF. The answer is "Yes," yes, sir.

Mr. BROTZMAN. Now, you say reporting, and I am not knowledgeable about all the regulatory practices of the Federal Power Commission I must say, but you say just reporting.

Senator METCALF. Largely reporting.

Mr. BROTZMAN. I would assume the reporting is for the purpose of permitting further regulation. Would that be correct?

Senator METCALF. Not necessarily. Many of us feel, and this whole philosophy has been here, that if the public could get the information and know about it that in itself will be helpful in regulating the utility. I personally feel that if we could get some of the regulation on some of the practices of the utilities in a data bank so that the

reporter for the Washington Post, or the St. Petersburg Times, or the Boston Herald, or whoever it is could go down there and find out just what goes on instead of it being almost impossible to get the information to the people, that in itself would probably take care of a good many of the evils that I am criticizing.

Mr. BROTZMAN. This bill I think also provides an exemption for REA-financed corporations. Do you believe that they should be also under regulation of the Federal Power Commission? I assume they are not now.

Senator METCALF. They are not; no.

Mr. BROTZMAN. Do you believe they should be also under FPC regulation?

Senator METCALF. If these investor-owned utilities will come in on the same basis as the REA's I will introduce a bill over in the Senate and try to get immediate consideration for the exemption of reporting all of the IOU's. The REA's are consumer owned. The same person that owns one share of stock is also the consumer and buys electricity. The day that the Montana Power Co. lets me vote, lets all the other consumers vote, then there won't be any need for regulation. They will get those rates down to where they belong.

Mr. BROTZMAN. Then your answer to my question is——

Senator METCALF. My answer is "No." I don't think that the customer-owned co-ops, which are in an entirely different situation, should be included.

Mr. BROTZMAN. I didn't hear the last. Will you say that again?

Senator METCALF. My answer is that the co-ops which are an entirely different situation as far as the corporate and their stock structure and the ownership of the plant is concerned, should not be included in either Federal or State regulation.

Mr. BROTZMAN. Is it the case now that they are being regulated or the FPC is moving in that direction now?

Senator METCALF. I don't think so.

Mr. BROTZMAN. They are exempt under this bill and I thought there must be some reason for it. I honestly don't know. I am asking you the questiton.

Senator METCALF. The reason for not reporting I think is inherent in the fact that they are consumer owned, that they are under rather strict regulation insofar as the REA adminstration itself is concerned in order to protect money that has been loaned by the Federal Government, and of course they have such a little effect on the wholesale power system of America that it is almost infinitesimal.

Mr. BROTZMAN. Thank you, Senator.

Mr. MACDONALD. Thank you very much, Lee. It is a great pleasure to see you again. You made a great contribution to our hearings. Thank you again.

Senator METCALF. Thank you very much. It has been a pleasure to be here.

Mr. MACDONALD. The next witness will be Mr. O. W. Sommers from San Antonio, Tex.

STATEMENT OF O. W. SOMMERS, GENERAL MANAGER, CITY PUBLIC SERVICE BOARD, SAN ANTONIO, TEX.

Mr. SOMMERS. Thank you, Mr. Chairman. In the interest of time my statement is very brief and I will just read it to you.

The City Public Service Board of San Antonio, Tex., would like to be recorded as supporting H.R. 5348 and is filing a copy of this letter with the clerk of the House Interstate and Foreign Commerce Subcommittee on Communications and Power.

The city public service board operates and manages the city-owned electric and gas systems through a board of trustees of five members established in accordance with the statutes of the States of Texas. The electric and gas systems were purchased in 1942, and the electric system is the largest municipal system in Texas and about the fourth largest in the Nation.

The electric system of the city public service board serves at retail rates approximately the area of Bexar County consisting of about 1,200 square miles and 217,600 customers.

The electric power and energy is supplied by four steam electric plants with a combined capacity of about 1,053,000 kilowatts. The plants and other elements of the system are connected by the usual network of 69,000- and 138,000-volt transmission lines.

In addition to serving customers in Bexar County at retail rates, the city public service board has wholesale contracts with several municipal systems outside Bexar County. It also has an emergency standby contract with one REA.

The electric system is interconnected with the other members of the Texas interconnected system. The connection with this interconnected system is through the Central Power & Light Co., an investor-owned utility, to the south and the Lower Colorado River Authority, a State agency, to the north.

The Texas interconnected system has been in operation for many years and has proven very satisfactory. The combination of investor-owned, State, municipal and REA cooperatives' systems has worked in complete harmony to the advantage of all customers in the area. By providing backup capacity in case of emergencies, greater reliability of service and a reduction in spinning reserve is obtained to the mutual benefit of all concerned.

Due to the foregoing, it is the opinion of the city public service board that any additional regulation of the system is unnecessary and may, in fact, result in hampering an operation that is now highly satisfactory.

The Board of Trustees of the City Public Service Board of San Antonio would like to urge your favorable consideration of House bill 5348.

Thank you, Mr. Chairman.

Mr. MACDONALD. Thank you very much, sir. You say that your operation is highly satisfactory and I am sure it is.

Mr. SOMMERS. That is right.

Mr. MACDONALD. I was wondering who regulates your rates at the present time?

Mr. SOMMERS. The cities regulate the rates of municipal utilities.

Mr. MACDONALD. Who in the city? The mayor?

Mr. SOMMERS. Well, it is the city council or whoever——

Mr. MACDONALD. What yardstick do they use for setting up the rates?

Mr. SOMMERS. I think they are substantially the same as any other commission would have.

Mr. MACDONALD. Well, like what?

Mr. SOMMERS. Of course let me make this clear. In a municipal operation we are not particularly in the same category as an investor-owned utility as far as rate of return and things like that.

In other words, all of our money has to come from the ratepayer who personally uses the service, so whatever is left over after paying all of our operating expenses, bond service charges, and so on is used for the expansion of the system.

Mr. MACDONALD. You mean there is no profit in your company?

Mr. SOMMERS. There is no profit because the ratepayer substantially owns it. The city of San Antonio owns our system.

Mr. MACDONALD. As I understand utilities, don't they usually get 6 percent on their investment?

Mr. SOMMERS. Well, that is a general rule, yes.

Mr. MACDONALD. But you don't.

Mr. SOMMERS. But we don't because we don't have any stockholders to pay off or anything. The only thing is after paying our operating expenses whatever is left over is used to either retire bonds or it is used for the expansion of the system.

Mr. MACDONALD. I see.

Mr. SOMMERS. And in our case we really don't have enough left over so we have to issue improvement bonds from time to time. In fact, we are getting ready right now to have a $30 million bond issue to pay for improvements to the system.

Mr. MACDONALD. Actually everything leans toward the taxpayer owning various things in the United States, but in this case it is actually the fact the people of San Antonio own it.

Mr. SOMMERS. The city of San Antonio is the owner. It is not the individual. It is the city of San Antonio just like the city of San Antonio owns the streets.

Mr. MACDONALD. But if you make a profit, and I don't want to belabor the point, but there is a question in my mind, does the profit go to lower the tax base of the city?

Mr. SOMMERS. Well, we do pay a substantial portion of our revenue to the city of San Antonio which in effect does reduce the tax base.

Mr. MACDONALD. Thank you. Mr. Brotzman?

Mr. BROTZMAN. Just one question, Mr. Sommers. I would assume that you are testifying because you consider yourself to be an intrastate operation. Is that correct?

Mr. SOMMERS. That is correct.

Mr. BROTZMAN. I see you say here that you have connections by the usual network of 69,000- and 138,000-volt transmission lines. You are connected to operations outside of the State of Texas, or are they all within the State of Texas?

Mr. SOMMERS. They are all within the State of Texas. I think you will have a map by succeeding people that will demonstrate what we call our Texas interconnected system, of which we are a part.

Mr. BROTZMAN. Do you furnish any electricity for emergency purposes outside of the State of Texas?

Mr. SOMMERS. No. We don't have any direct connection. We are sitting almost in the center of this system. We are 150 miles from the

Mexican border and probably 300 miles from the north border of Texas. We are substantially in the middle.

Mr. BROTZMAN. That is all. Thank you.

Mr. MACDONALD. Thank you, sir. You understand that under the present Federal Power Act, and it has been called to my attention and I will now read it to you, part II, dealing with regulations of electric utility companies, says:

"No provision in this part shall apply to or be deemed to include the United States, a State, or any political subdivision of a State."

Mr. SOMMERS. I am well aware of that.

Mr. MACDONALD. Texas is independent, but you are still part of Texas I guess, and therefore you are not subject to regulation by the FPC, anyway, so this bill doesn't really affect you, does it? If it does I would like to find out how.

Mr. SOMMERS. Well, the point I was trying to make in my statement there is that over the years on a voluntary basis we have interconnected all of our systems to the degree that we think that we are achieving a highly satisfactory interconnected system.

I don't think that by additional regulation we are going to improve the system.

Mr. MACDONALD. But you are not going to be affected by it is my whole point.

Mr. SOMMERS. We will be. The city of San Antonio will be affected because we are interconnected with investor-owned utilities and they comprise the big part of it.

Mr. MACDONALD. I didn't hear you.

Mr. SOMMERS. We are interconnected with investor-owned utilities and they comprise the large portion of our interconnected system. We are a small part of it. The Lower Colorado River Authority is a small part of it and the city of Austin is a small part of it.

Mr. MACDONALD. Yes; but they are not affected either.

Mr. SOMMERS. Of course that is the point, that we don't want to be affected.

Mr. MACDONALD. You won't be. Have you read the bill?

Mr. SOMMERS. Yes, sir; I read the bill thoroughly, but what I am saying is that we have a very satisfactory working situation now and we don't think it is necessary to make any addition.

Mr. MACDONALD. Whether the bill passes or not it won't affect your situation one iota.

Mr. SOMMERS It could.

Mr. MACDONALD. How?

Mr. SOMMERS If it affects our interconnections.

Mr. MACDONALD. Well, it depends whom I guess you are interested with. If you are interconnected with interstate people——

Mr. SOMMERS. All of ours are intrastate.

Mr. MACDONALD. Well, then you won't be affected.

Mr. SOMMERS. Well, I can't argue that point at this time.

Mr. MACDONALD. Well, you can't argue it. It is a fact. I mean I don't want to argue with you and I am sure you don't want to argue with me, but it is just a fact that that is what the bill says.

Mr. BROTZMAN. Will you yield?

Mr. MACDONALD. Yes.

Mr. BROTZMAN. I think the point the chairman is making is that the bill, H.R. 5348, would seem to be relative to you, as I understand your

circumstances, a restatement. It is going to be the same law, as I read the language here in H.R. 5348. This was the question really that I had in my mind as I listened to your testimony, as to how you would be differently affected.

I don't perceive this either frankly.

Mr. SOMMERS. Well, anything that affects our interconnection and the utilities with whom we are connected would certainly affect our position.

In other words, through this interconnection we have what you might say are some valuable considerations in that we can receive and we can give help to our neighbors in the time of emergency, and that has worked time and time again. It has worked very well.

And what we want to do is to see that that is more or less preserved. That is our interest in it as far as the city public service board is concerned.

Mr. MACDONALD. Thank you very much.

Mr. SOMMERS. Thank you, sir.

Mr. MACDONALD. The next witness is Mr. Charles G. Thrash, Jr., attorney for the Houston Lighting & Power Co., Houston, Tex.

STATEMENT OF P. H. ROBINSON, PRESIDENT, HOUSTON LIGHTING & POWER CO., PRESENTED BY CHARLES G. THRASH, JR., COUNSEL

Mr. THRASH. Mr. Chairman, the Houston Lighting & Power Co. wants to first express its appreciation for the opportunity to be here to make its views known on this legislation that is being considered. I am appearing here today in behalf of Mr. P. H. Robinson, who is the president of the company.

My name, as the statement indicates, is Charles Thrash, and I am a member of the law firm of Baker, Botts, Shepherd & Coates in Houston, which firm is counsel for the Houston Lighting & Power Co.

If I may, with your permission, rather than reading or substantially reading this statement, I would like to introduce it at length in the record.

Mr. MACDONALD. Yes, sir.

Mr. THRASH. And then try to summarize and discuss preferably with reference to several charts and maps that we have.

Mr. MACDONALD. Without objection, it is so ordered.

(The statement referred to follows:)

STATEMENT OF P. H. ROBINSON, PRESIDENT, HOUSTON LIGHTING & POWER CO., PRESENTED BY CHARLES G. THRASH, JR., COUNSEL

It is our understanding that the purpose and effect of H.R. 5348 will be to prevent the extension of jurisdiction by the Federal Power Commission, by arbitrary administrative rule, to intrastate electric systems. We have particularized our understanding of the effect of H.R. 5348 on the wall chart.

The first question is, of course, why shouldn't such jurisdiction be extended? The principal reason is that there is no *need* for such jurisdiction. This may be easily seen when the facts of the internal Texas systems are taken into account.

The principal material facts with regard to the internal Texas systems are as follows:

1. Each system is situated entirely within the State.
2. All generation is accomplished within the State.
3. All transmission is accomplished within the State.
4. All sales, whether at wholesale or retail, are made within the State.
5. All of the energy generated by such systems is consumed within the State.

It may, thus, be seen that, since the entire power sequence—from production to consumption—is accomplished within the State, the State has adequate legal power to regulate and control such transactions.

I should like at this point to refer to the wall map (fig. 2) to explain the relationship of the several internal Texas systems to each other and to those systems which operate outside the State.

You will notice that around the periphery of the State we have a number of systems which are multi-State in nature, in that they operate in two or more States—El Paso Electric Company operates in both Texas and New Mexico; Southwestern Public Service Company operates in New Mexico, Texas and Oklahoma; Southwestern Electric Power Company has facilities in Arkansas, Texas, and Louisiana, and finally, Gulf States Utilities Company operates in both Texas and Louisiana.

Looking now to the interior of the State, you will notice that we have an interconnected system, known as the Texas Interconnected System, made up of public, cooperative and investor-owned systems which are all interconnected with each other but which are not interconnected in any way with the peripheral multi-State systems. The total size of the area served by the Texas Inter-connected System is approximately the same as the combined areas of Ohio, Pennsylvania, West Virginia, Virginia and Maryland. We thus have a situation at the moment which involves electrical isolation of this large regional system in the sense that the Texas Interconnected System is isolated electrically from systems which are situated in whole or in part in other States.

It is possible, however, that this situation of electrical isolation will not prevail forever. If it should cease to exist we will be situated very similarly to the way Florida Power & Light Company is situated now—electrically tied to, but having no *commerce* in electricity with, systems in other States.

When the history of the legal dilemma which resulted in 1935 in the passage of Part II of the Federal Power Act is considered, it is apparent that the *Missouri-Kansas* [1] and *Attleboro* [2] situations are not involved in Texas. In those cases, diagrammed on the wall chart (fig. 3), gas or electricity produced in one State was transported across a State line and sold in another for resale. Such sales were held to be—and we think quite properly—sales in interstate commerce and, thus, beyond the regulatory jurisdiction of any State traversed. In the Texas situation, on the other hand, at least insofar as the Texas Interconnected System is concerned, all of the production, transmission and consumption of energy is accomplished within the State.

A fair inquiry which can be made at this point is why legislation is necessary to resolve this problem. It would seem strange to an uninformed observer that the Federal Power Commission should attempt to extend its interstate jurisdiction to such patently intrastate transactions. Such is the present fact, however. The Part II jurisdiction was originally granted by Congress to reach such situations as the Missouri-Kansas and Attleboro situations but the Commission is now straining its utmost to stretch such jurisdiction to reach such situations as the internal Texas situation I have described. Such intrastate transactions as those involved in the Texas Interconnected System presented no unresolved legal or regulatory problems at the time of Missouri-Kansas and Attleboro, nor in 1935 when Part II of the Power Act was passed, and they present no such problems today.

Another question which might be asked at this point is why the proper remedy does not lie in the Courts? The only answer that can be made to this inquiry is that the Courts are not likely to reverse an extension of jurisdiction by the Federal Power Commission. The Courts ordinarily have reversed the Commission only when the Commission has *refused* to extend its jurisdiction, as in the famous *Phillips* [3] decision in 1954. Thus, if arbitrary and expansive administrative orders by the Commission such as its order in the recent Florida Power and Light Company case, are to be restrained, the restraint must come from Congress.

The arbitrariness of the Commission's ruling may best be understood by pulling the cover off some of its theories. From the time Part II of the Power Act was passed in 1935 until recently, it was generally recognized that energy must be "traced" to determine whether it is in fact produced in one State and consumed in another. The Commission has recently adopted the view that its new "mag-

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[1] *Missouri* v. *Kansas Gas Co.*, 265 U.S. 298 (1924).
[2] *Public Utilities Commission of Rhode Island* v. *Attleboro Steam & Electric Company*, 273 U.S. 83 (1927).
[3] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

netic interlock" and "commingling" theories render such tracing unnecessary. Perhaps the best illustration of the difference can be developed by comparing the *Jersey Central*[4] case, which was before the U.S. Supreme Court in 1943, with the recent decision of the Commission in the *Florida Power & Light Company* case.[5] I have prepared a wall chart (fig. 4) to depict the essential facts involved in these two cases. At the top of the chart, I have illustrated the Jersey Central facts and have used a water trough because its functioning would be exactly like the interconnected electric systems involved and is much easier for me to understand and diagram. These two systems at the left—Jersey Central and Public Service Electric and Gas Company—were both situated in the State of New Jersey. The system at the right, Staten Island Edison Corporation, was situated in the State of New York and served Staten Island. Ordinarily, both Jersey Central and Public Service had generation and the Staten Island system often took power from Public Service. The Supreme Court found that at times Public Service generators were not in operation when Staten Island was taking power. Thus, by analogy, at such times Jersey Central was feeding water into the trough but the Public Service tank was not. Since the only source of supply for the Staten Island system at such times was from the trough being fed by Jersey Central, it was apparent to the Court—and we certainly agree—that the energy received by Staten Island was coming from Jersey Central. Thus, we had a classic application of the language of Section 201c of the Power Act itself—that energy "transmitted from a State" was "*consumed* at any point outside thereof." Because Jersey Central's facilities were found to be so transmitting they were found to be subject to the jurisdiction of the Commission.

On the other hand, if we contrast the Jersey Central facts with those involved in the Florida situation, which are illustrated on the lower half of the chart, we see that the Florida situation involves an entirely different set of facts. The Florida Power Corporation system, which stretches nearly 180 miles from the Georgia line to its nearest point of interconnection with the Florida Power & Light Company system, has numerous generators, most of which at all times feed power into the Florida Power Corporation system. It has not been demonstrated by the Commission, and we do not believe it can be demonstrated, that energy introduced into the Florida Power Corporation system at the Georgia line could reach the Florida Power & Light Company system 180 miles away. Neither has it been shown that energy from the Florida Power & Light Company system could reach the Georgia line. The Commission has gotten around this factual obstacle by arguing and by ruling that the small amounts of energy introduced at the Georgia line become "commingled" with the large mass of power generated by Florida Power Corporation and that, therefore, any energy withdrawn from the Florida Power Corporation System by Florida Power & Light Company must consist, in part, of energy from Georgia. This was not a factual finding but a theory.

The Commission has also placed great reliance upon its theory that the generators in Georgia and in Florida all operate in synchronization or "in parallel" or whatever different words engineers may choose to describe the electrical phenomenon involved in interconnected operations. A Commission staff expert has often referred to this phenomenon as "magnetic interlock," or the simultaneous pulsing of all of the connected generators.

The fact that systems are in "magnetic interlock" when connected proves nothing. The fact that "commingling" occurs also proves nothing. These concepts are not new. Connected systems were in "magnetic interlock" and "commingling" occurred when Part II was enacted in 1935. However, Congress deliberately required *something more* in 1935, because it deleted a provision in the original draft which would have made jurisdiction depend on connection alone and required instead that energy transmitted from one state be *consumed* in another. It is apparent that the process by which companies which were non-jurisdictional then have become jurisdictional now, when the Act has remained unchanged for 32 years, is by the FPC writing its own laws.

As Commissioner Carver noted in his dissent, although Congress was careful to provide that connection alone meant nothing, the Commission has now ruled in such a manner that connection alone determines everything.

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[4] *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U.S. 61 (1943).
[5] *FPC Opinion No. 517*, Docket No. E–7210, March 20, 1967.

It is the intent of H.R. 5348 to leave subject to the jurisdiction of the Commission commerce in (as evidenced by contracts for) electric energy which can be traced across State lines, but to leave beyond the jurisdiction of the Commission commerce in such energy which is wholly intrastate.

In closing, I would like to express our sincere belief that the Commission could not, by extending its jurisdiction to the Texas Interconnected System, bring to our consumers one iota of benefit which they do not already have. Through forward-looking planning, our regional system has always kept capacity ahead of load growth, has enjoyed all of the advantages of modern technology and scale, has had exemplary reliability with low system costs, and has provided rates that are among the lowest in the nation.

Mr. THRASH. The first thing that we would like to address ourselves to is a brief description—and a copy of this chart (fig. 1) is attached to each of the printed statements that we have in case you have some difficulty seeing it—of what we think it is that the bill does because that to us is a cornerstone of our belief that we are in favor of it.

We have tried to illustrate here five different situations in which a system in question, which in each case we have illustrated by a sort of elongated circle there with the letter "Q" in it, the five most typical situations that we think would exist and how this bill would affect a privately owned or investor-owned system in these five conditions.

As we understand the bill, where a system is in two States it would plainly remain jurisdictional just as it is now and if we understand the term "direct connection," as illustrated on line 2, it would involve a situation where the system has a line running to but not beyond a State line, and in such a situation as that a system would remain jurisdictional just as it is now.

So in these first two cases the system in question would remain subject to FPC jurisdiction just as it is now. In the other three situations, which we understand would be indirect connections under this bill, the system in question is remotely connected from the State line and we have dotted in these other systems, or foreign systems, to illustrate the three possibilities. One where the foreign system is in two States; one where the foreign system is within one State but has a connection with a State line, on line 4; and finally, where the system in question is completely separated from a system which is jurisdictional under the Federal Power Act.

Now, the only exception as we understand it to the system in question being jurisdictional on lines 3, 4, and 5 would be where the system in question has a contractual relationship with the system in the other State, as in the example yesterday of a system in Georgia, I believe, selling to a system in southern Florida.

Now, if our understanding be correct, we feel that this is tantamount to an electrical Hinshaw amendment in that it does not reach the question at all of whether the electricity is in interstate commerce.

It is more or less understood that if these people are connected up it is interstate commerce, but since the Federal regulatory power could in each case be asserted at the State line to cleanse the transaction, I suppose you might say, of any attributes which might not be thought to be in the public interest from the Federal regulatory point of view, then from that point downstream it would simply be a line of damarcation between the Federal jurisdiction and the State jurisdiction for regulatory matters and as we understand it this bill would do approximately the same as the Hinshaw amendment would do.

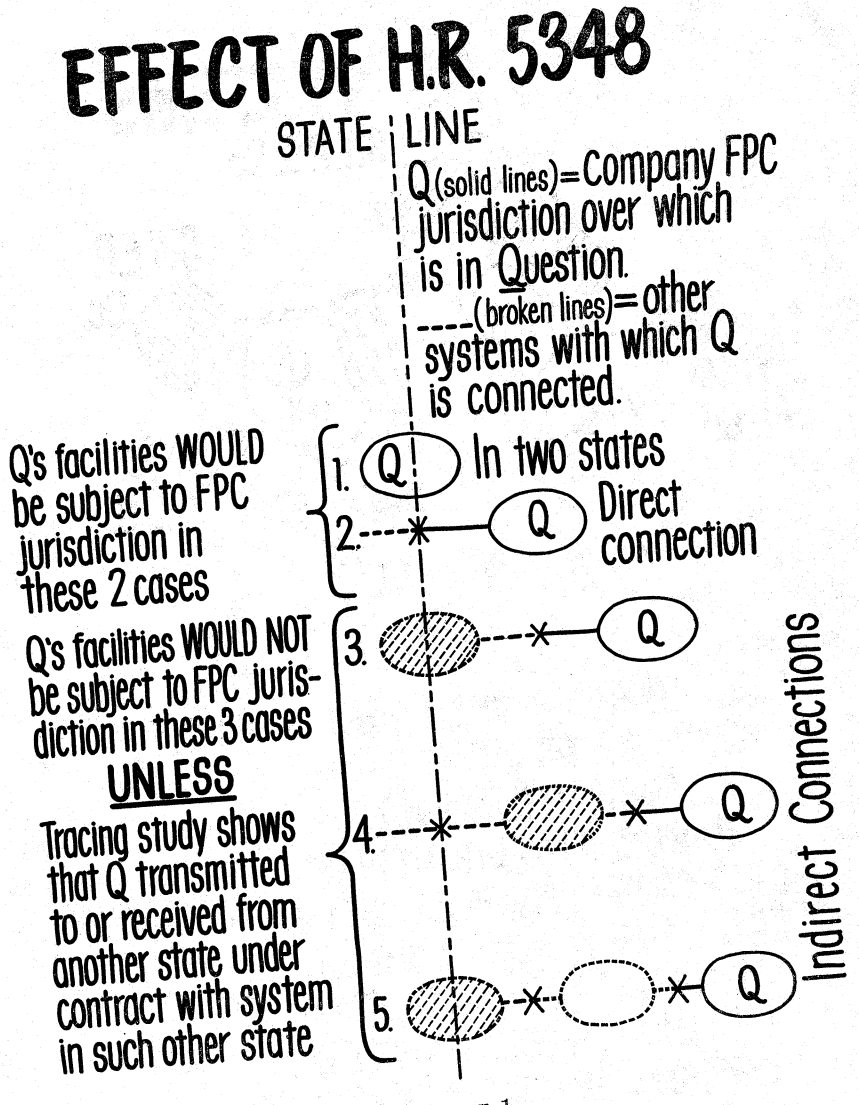
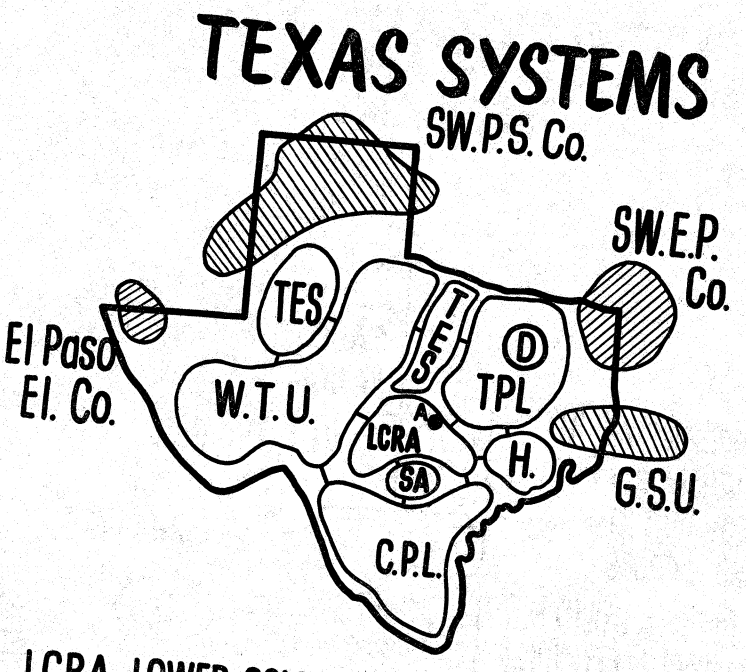

EFFECT OF H.R. 5348
STATE LINE
Q (solid lines) = Company FPC jurisdiction over which is in Question.
---- (broken lines) = other systems with which Q is connected.
Q's facilities WOULD be subject to FPC jurisdiction in these 2 cases
1. Q In two states
2. Q Direct connection
Q's facilities WOULD NOT be subject to FPC jurisdiction in these 3 cases
UNLESS
Tracing study shows that Q transmitted to or received from another state under contract with system in such other state
3. Q
4. Q
5. Q
Indirect Connections

FIGURE 1



LCRA-LOWER COLORADO RIVER AUTHORITY (STATE)
S.A.-SAN ANTONIO (MUNICIPAL)
A.-AUSTIN (MUNICIPAL)
W.T.U.-WEST TEXAS UTILITIES CO.
C.P.L.-CENTRAL POWER & LIGHT CO.
T.P.L.-TEXAS POWER & LIGHT CO.
D.-DALLAS POWER & LIGHT CO.
TES-TEXAS ELECTRIC SERVICE CO.
H.-HOUSTON LIGHTING & POWER CO.

FIGURE 2

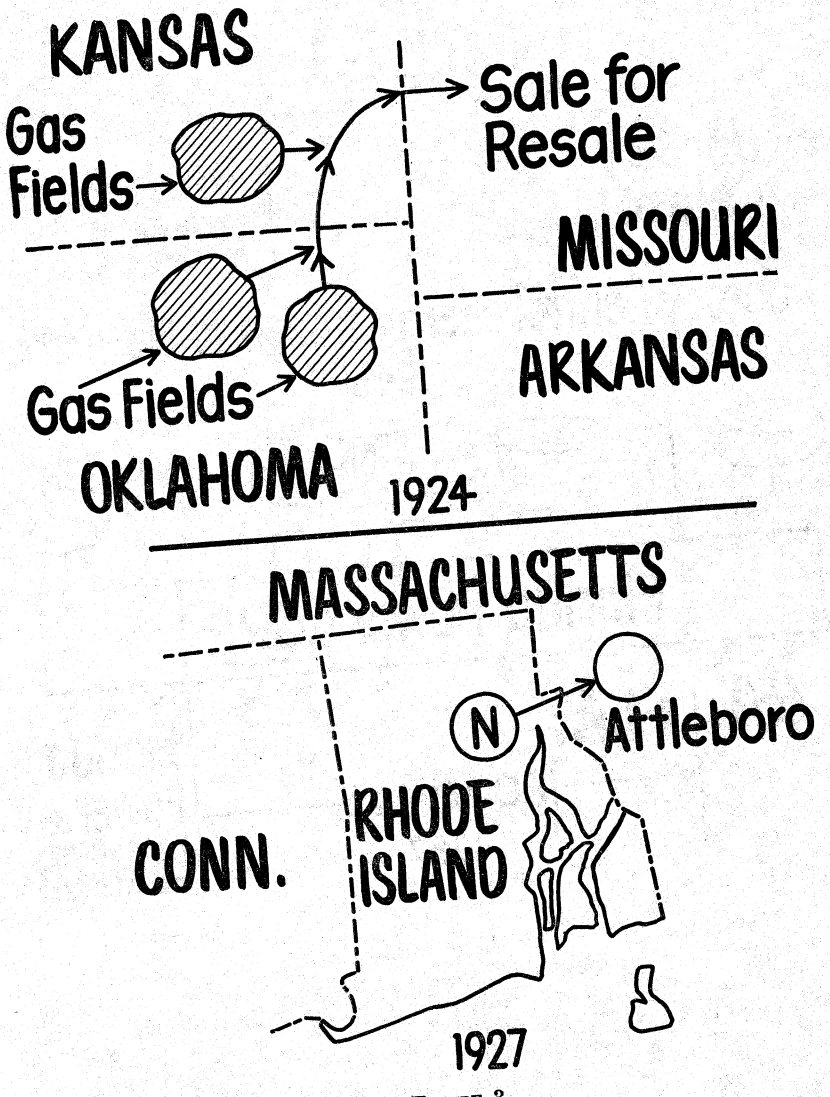

KANSAS
Gas Fields
Sale for Resale
MISSOURI
ARKANSAS
Gas Fields
OKLAHOMA
1924
MASSACHUSETTS
N
Attleboro
CONN.
RHODE ISLAND
1927

FIGURE 3

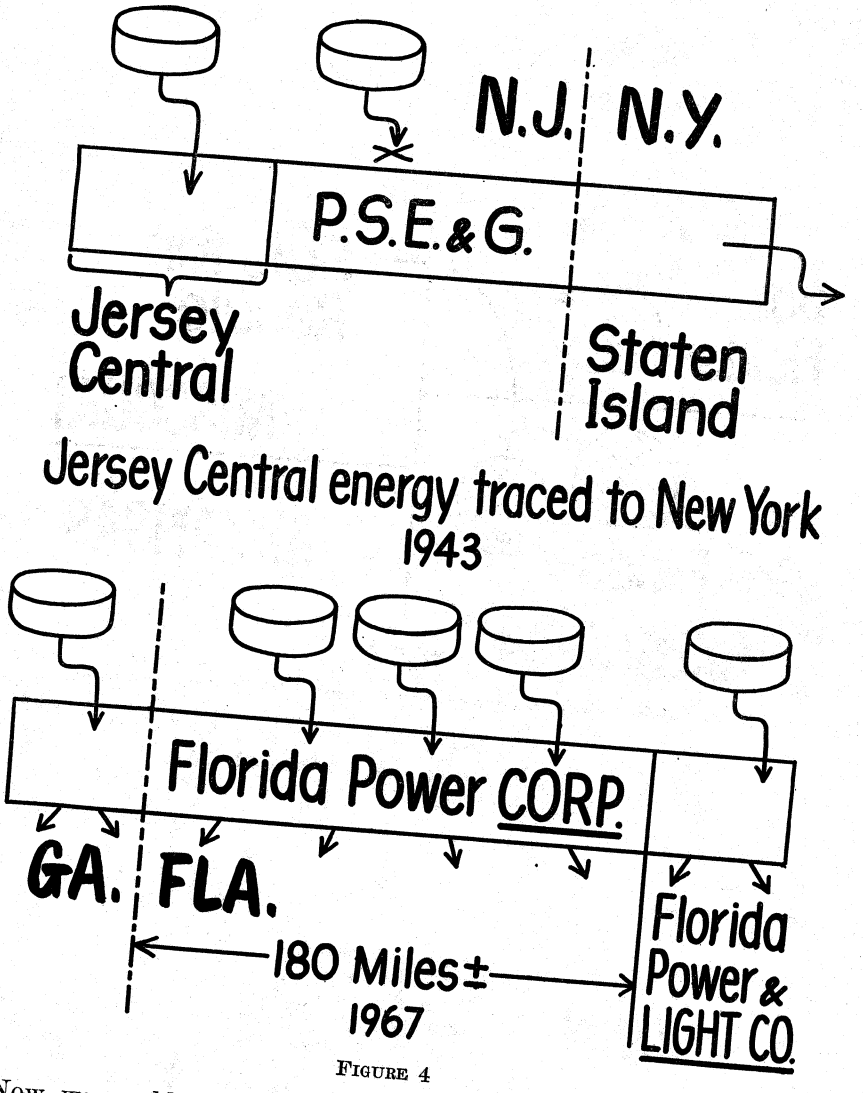


FIGURE 4

Now, we would like to next briefly describe the situation in Texas that we have. We first describe the number of systems which are partly in Texas and partly in other States and these have been illustrated by crosshatched areas here (see fig. 2). The El Paso system, the Southwestern Public Service Co. system in the Panhandle, Southwestern Electric Power Co. System on the Arkansas corner, and the Gulf States system; all of these systems are within Texas in part, but within another State in part.

Now, separate from that group and unconnected to it except in emergency, but all interconnected with each other, are these systems which we have listed here. The first—the LCRA system—is a State authority; the general manager of which, Mr. Gideon, testified yesterday before

the lunch break. The San Antonio and Austin municipal systems are right in the center of the State, and all of these other systems illustrated here are investor-owned systems. They are all interconnected with each other, but they are all electrically isolated from the peripheral systems which are partly in other States.

As of the moment I think it could be said that this bill would not have any immediate effect upon Texas, but Texas is not convinced that a situation of electrical isolation can forever be maintained. Under the present doctrine of the Commission if one line anywhere should in a nonemergency situation be connected to one of these other companies or across the State line everyone in the State would ipso facto become jurisdictional.

Mr. BROTZMAN. May I ask a question right there?

You say if any one of the investor-owned utilities in a nonemergency situation should become attached across a State line that everyone is involved? Is that your line of thought?

Mr. THRASH. Yes, sir; that is the way we understand the thrust and purport of the Commission's decision in the *Florida Power & Light Company* case, which is now, of course, in litigation, but in the Commission's decision early this year, if we understand this position correctly, our interpretation is that a line anywhere, no matter how large or for what purpose, should be extended either to one of these peripheral interstate systems or perhaps a line across—this is a very schematic drawing and it is not intended to be precise.

This company, for example, goes right over to the State line and one of its cooperative customers, for example, might extend the line across the Louisiana border and as we understand it this would, under the *Florida Power & Light Company* decision, make all of these systems jurisdictional from that point on regardless of whether or not any energy produced—let's say by this company—in Texas is consumed outside of Texas, as we understand the test of the Federal Power Act.

Mr. MACDONALD. Sir, before we get more confused and waste more time, the term "Hinshaw amendment" has been thrown around and was thrown around by me yesterday and by you today, but I am not sure that it is applicable, is it?

Mr. THRASH. I beg your pardon. I didn't understand the last word.

Mr. MACDONALD. Applicable.

Mr. THRASH. It is not applicable, sir, except by analogy I think. What I was trying to say was that we conceive this bill to be an electrical counterpart of the Hinshaw amendment.

Mr. MACDONALD. The Hinshaw amendment said, and I am reading from it, that:

> A certification from a State Commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and services of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

So I don't really understand the comparison because there is nothing like that in this bill.

Mr. THRASH. The similarity is that this bill would draw a line of demarcation between the Federal regulatory power and the State regulatory power and that is all that I am trying to say, that this bill would leave the Federal power applicable in these situations at a State line but would leave the matter downstream or inside of that point in the State subject to the State regulatory power.

There are a great many dissimilarities between the two bills and I certainly wouldn't want to——

Mr. MACDONALD. Right. I just wanted to get that point in the record, that you understand the Hinshaw amendment is not included in this bill. It is highly inapplicable.

Mr. THRASH. The Hinshaw, if I understand Hinshaw——

Mr. MACDONALD. I just read the pertinent part here.

Mr. THRASH. The first sentence of the Hinshaw amendment it seems to me is the one that I am addressing myself to where it says that the sale of this gas in interstate commerce, it clearly recognizes that the gas is in interstate commerce, but it cuts off the Federal power of regulation at the State line or at the first sale downstream beyond the State line. That is all I am trying to say.

Mr. MACDONALD. If the State body issues the certificate saying that they are regulating the rate——

Mr. THRASH. In that respect the bills are dissimilar. I understand that.

Mr. MACDONALD. Then I think you cannot discuss Hinshaw any more because it isn't applicable. Yesterday I asked the question of somebody was it and it wasn't known, and I checked with the staff here since and I find out it is not, so there is no sense in discussing Hinshaw because it doesn't have any application.

Mr. THRASH. I respectfully disagree, Mr. Chairman. I think the concept of Hinshaw as a legal differentiation between the Federal and State power is the same case.

Mr. MACDONALD. I can't really follow the charts perhaps very well so I can't follow you completely, but you are not trying to indicate that where you have an interconnection with a system that originates in another State you shouldn't be under the FPC, are you? Nobody has made that allegation. Even the Florida people haven't made that allegation.

Mr. THRASH. I think I can answer that best if you would let me proceed to the next point in my four points that I want to make——

Mr. MACDONALD. I think you can answer that yes or no.

Mr. THRASH. Well, yes, sir; I very definitely believe that under the Power Act as it is written now, if, for example, in situation 4—let's just look at situation 4 on this chart—if this company Q on line 4 generates power which is transmitted to this company but consumed at this point, then the test that is presently in the Power Act states that facilities will be considered to be in interstate transmission of electric energy if energy is produced in one State and consumed in another, and in that case I would not think these facilities were in interstate commerce.

Mr. MACDONALD. Isn't it a fact that if it is produced in one State and consumed in another State it is in interstate commerce?

Mr. THRASH. Yes, sir, I certainly agree with that. It clearly would be. But if it is not consumed in the other State as, for example, if there should be interchanges between the last two companies here on line 5, then in our opinion and as we understand the Power Act these facilities would not be in interstate commerce.

However, under the Federal Power Commission's current view——

Mr. MACDONALD. You know that chart so well and you keep saying line 5 and all I see are little footballs, so I can't really follow what you are saying.

Mr. THRASH. Let me say something at this moment that I had intended to say until I got to answering your question, the situation that existed in 1924, and along with another which I will briefly describe here in a moment. In 1924 gas was being produced in gas fields in Kansas and Oklahoma, being transported to Missouri, and there in Missouri being sold for resale.

This was the kind of regulatory problem that confounded all of the leading scholars at that time and ultimately the Supreme Court because they had to finally hold that no State involved had the power to regulate this transaction and there was no Federal Power Commission at that time, so there was no power to regulate this transaction because the Supreme Court held that no State could regulate it and there was simply no action by Congress.

Subsequently, 3 years later, and this was also referred to several times yesterday I believe, there was the so-called *Attleboro* case or the Attleboro gap, and it was simply a situation very much like the preceding legal frustration that the court had run into where electricity produced in one State, Rhode Island, was sent across to Massachusetts and purchased by Attleboro (see fig. 3), and the Supreme Court said that neither State could regulate the transaction.

Now, this problem came to be known as the Attleboro gap. I think a lot of folks all call it that. At least I heard it. So I use that for want of a better term, since the States couldn't regulate it and there was no congressional legislation.

Now, in 1935, when part II of the Power Act was passed, as we understand it Congress sought to fill this gap by saying that where electricity is produced in one State and sent to another State and consumed that the Federal Power Commission will have jurisdiction, and we certainly agree with that. We think it should continue to have such jurisdiction. We don't have any dispute about that.

However, to differentiate that situation from the one in the Florida case we have tried to set up a very complex matter as simply as we can set it up at the bottom of this chart (fig. 4) down here which is also attached to the prepared statement.

To illustrate the situation involved with the Georgia company, we have illustrated the generators by tanks here supplying by analogy to water troughs supplied by water tanks and water being taken out all along.

The Georgia-Florida line is over to the left and Georgia Power Co. You have intervening the so-called Florida Power Corp. The names are so similar I will just call it "Corp." And at the tail end of this system you have the Florida Power & Light Co. which I will just call "Light Company," with the connecting point about 180 miles plus or minus from the State line.

Now, instead of having this type of situation (referring to Kansas-Missouri chart (fig. 3)) which presented a problem not susceptible to State regulation but which had to be regulated by the Federal Government, in the *Florida Power Light Co.* case you have a matter far into the interior of Florida, which is plainly subject to regulation by the Florida commission, and as far as I know there has never been any evidence that either any Georgia power gets here (pointing to Light Company) or any Florida Power & Light Co. power gets to Georgia.

The theory of the Commission is that some energy becomes com-

mingled at the State line, from Georgia, with this great mass of power that is in Florida and that they just can't tell what happens after that. They also have a theory that all these generators in these several States are operating in magnetic interlock or synchronous or parallel operation or whatever——

Mr. MACDONALD. Sir, I appreciate the lecture and I am sure all the members of the committee do; but I wish you would come to the point. If you are making a point I don't know what the point is. It seems to me Attleboro was settled a long time ago in 1947. The committee settled it and I don't really see what your point is.

If you have a point I wish you would make it. We have a lot of witnesses and we don't have too much time.

Mr. THRASH. All right, sir. I had almost gotten to it. It is very difficult to make this point without some predicate having been laid by reference to something that we all understand here.

If you will allow me to repeat that, this is the crux of our whole theory. The Commission has not required a tracing of power from here to here or from here to here to show that there is any power actually being produced in one State and consumed in the system of the other.

Mr. MACDONALD. Sir, I don't mean to keep interrupting or interrupt you again, but when you say "from here to here" the record won't show where "from here to here" is.

Mr. THRASH. I am very sorry. You are certainly correct. My apologies. I forgot about the record. Basically, it is that the Commission has sought to show not that energy generated in Georgia is consumed in the system of the Florida Power & Light Co., nor that energy generated in the system of the Florida Power & Light Co., is consumed in Georgia, but has sought instead to rely on either, I think, of one of two theories, perhaps both, of commingling or of so-called magnetic interlock or synchronous operation of these generators in these several States.

Our point is, and we think this is of the utmost significance, that these matters of magnetic interlock and commingling were not matters that have just come in existence technologically in the last few years. Systems were in magnetic interlock and this commingling occurred in 1935 when the Power Act was passed. The Commission at that time sought to get Congress to give it jurisdiction not only over facilities in interstate commerce, but also over facilities connected thereto, and Congress refused to give the Commission this power.

This is what the Commission has now assumed, is this power over facilities connected thereto, and as Commissioner Carver noted in his dissent in the *Florida Light & Power Co.* case, although Congress was careful to provide that connection alone meant nothing, the Commission has now ruled in such a manner that connection alone determines everything. And this is what would result in the Texas system, which we have illustrated on the chart, becoming entirely jurisdictional if one line were put across.

As we understand it, it is the intent of H.R. 5348 to leave, subject to the jurisdiction of the Commission, commerce—as evidenced by contracts for—in electric energy which can be traced across State lines, but to leave beyond the jurisdiction of the Commission commerce in such energy which is wholly intrastate.

In closing, I would like to express our sincere belief that the Commission could not, by extending its jurisdiction to the Texas Interconnected System, bring to our consumers one iota of benefit which they do not already have.

Through forward-looking planning, our regional system has always kept capacity ahead of load growth, has enjoyed all of the advantages of modern technology and scale, has had exemplary reliability with low system costs, and has provided rates that are among the lowest in the Nation.

Thank you, sir.

Mr. MACDONALD. Thank you very much. Are there any questions?

Thank you again.

Mr. THRASH. Thank you.

Mr. MACDONALD. Is the Chairman of the FPC here now? Once again it is a pleasure to see you, Mr. White.

STATEMENT OF HON. LEE C. WHITE, CHAIRMAN, FEDERAL POWER COMMISSION; ACCOMPANIED BY F. STEWART BROWN, CHIEF ENGINEER, BUREAU OF POWER; RICHARD A. SOLOMON, GENERAL COUNSEL; AND DAVID J. BARDIN, ASSISTANT GENERAL COUNSEL

Mr. WHITE. Thank you, Mr. Chairman. I have with me to help on any particular questions that may occur—and would like to have them sit at the table if possible—Mr. Stewart Brown, the Chief Engineer of the Federal Power Commission and the head of our Bureau of Power; Mr. Richard Solomon, the Commission's General Counsel; and Mr. David Bardin, the Assistant General Counsel who works on legislative problems for the Commission.

We at the Federal Power Commission, Mr. Chairman and other members of the subcommittee, regard this as an exceedingly important hearing. We are grateful for the opportunity to be here. I have quite a detailed statement. It would be my preference to read it. If, however, it is the preference of the chairman that we do it on a briefer basis, I can go through the highlights or present it in summary fashion.

Mr. MACDONALD. Actually, Mr. White, since the proponents have been heard at length, I think it would be very well for you to read it and give us the benefit of your views on this subject.

Mr. WHITE. Thank you, Mr. Chairman.

Mr. MACDONALD. But I will defer to your wishes, whichever way you want to do it.

Mr. WHITE. And quite obviously, even though it is set up so that we hope that it flows in some logical order, it may well be appropriate and helpful if there are questions that occur for me to be stopped and we will do our best to answer those.

Mr. MACDONALD. Right.

Mr. WHITE. I appreciate the opportunity to present to you, Mr. Chairman and members of the committee, the views of the Federal Power Commission on H.R. 5348 and the identical companion bills. I should like to examine these bills in a somewhat broader context than their immediate effect on the regulation of the rates and accounting of interstate electric utilities. For these bills would not merely provide an exemption for certain public utilities from rate and accounting regulation by the Federal Power Commission; they would also in our view

turn back the clock on the progress the electric utility industry is now making toward lower costs and greater reliability. We therefore oppose the enactment of H.R. 5348 and I should note that this opposition to the bill is unanimous within the Commission.

These bills are before the committee today against a background of sweeping technological changes in the electric power industry. That industry is moving rapidly toward greater regional interdependence, cutting across State lines.

This trend toward greater complexity and integration has resulted in other legislative proposals, principally directed toward channeling into the most productive courses the useful progress the utility industry is making.

The proposed Electric Power Reliability Act, introduced by Chairman Staggers as H.R. 10727 and by Chairman Macdonald as H.R. 10721 represents, we believe, a realistic and constructive reaction to the changes taking place in the power industry.

Interconnections, direct and indirect, among utilities are a far more vital part of the industry's operations today than ever before, and they will be still more vital in the future. Reliability and the economies of scale newly available through use of large generators and long-distance EHV, extra-high-voltage, transmission technology demand that utilities coordinate closely, not on a local or intrastate but on a regional scale.

The Electric Power Reliability Act is intended to facilitate this broad-scale coordination. H.R. 5348 would make it, in many if not most cases, virtually impossible. We believe it would disserve the national interest to induce managements to fragment their operations and neglect opportunities to assist other systems and improve their own service by coordination with their neighbors.

We believe this would be the inevitable consequence if H.R. 5348 were enacted. The commitments the industry is now making indicate that the Electric Power Reliability Act is needed to hasten industry progress. Enactment of H.R. 5348 would in our view be a giant step backward.

WHY COORDINATION IS VITAL

The President's consumer message, transmitted February 16 of this year had the following observation and then I should like to quote from that message:

"It is becoming increasingly clear that greater coordination is needed among the various (electric) utilities to reap the benefits of reliability and economy inherent in huge generating units and extra-high-voltage transmission lines. It is also becoming evident that power systems must be carefully planned, coordinated, and strengthened to protect the consumer against cascading power failures."

The President there announced that proposed legislation would be forthcoming. In response, the Commission submitted to Congress the proposed Electric Power Reliability Act and we believe that proposal will help the power industry move toward greater cooperation and coordination.

While some elements of the industry have expressed serious doubt whether various provisions of the reliability bill will achieve their stated objectives, there has, to the best of my knowledge, been no significant disagreement with the aim of greater reliability and economy

through greater industry coordination and joint planning which the bill seeks to achieve.

If I may depart from the prepared text, I have been advised that yesterday there was some discussion here before the committee to the contrary by representatives of one of the great power companies in this country.

I have not yet had a chance to examine it but I may say so far as I am aware that is the first major utility to make that position. We would like to examine it and I would certainly point out to the committee that the report prepared by an industry advisory committee which was incorporated into the Federal Power Commission's report of July this year as volume 2 is quite to the contrary. It is a lengthy volume. I don't know that it would be appropriate to incorporate it in the record, but I can certainly commend it to the attention of the committee and to all who are interested in this industry.

That report was not prepared by the Federal Power Commission or its staff. It was prepared by an industry advisory committee and takes the view that I have set forth in this prepared statement.

Regional coordination is generally recognized as a national need if greater service reliability is to be realized. As the map on the easel demonstrates, cascading power failures—which do not respect State lines—have occurred in every section of the country. The Northeast blackout of November 1965 and the Middle Atlantic failure of June 1967 were the most striking examples of this kind of interruption.

To reduce the likelihood of these massive outrages, the Commission's Advisory Committee on Reliability of Electric Bulk Power Supply, the group to which I just alluded, composed of outstanding experts from all segments of the utility industry, has urged that:

The electric power industry should pursue every opportunity to accelerate the development of properly planned interconnections among individual systems.

Regional coordination among such individual systems also should be vigorously pursued since such coordination offers the most effective and economical means for assuring bulk power supply reliability for the Nation.

And further, the committee advocated:

The development of contractual arrangements to formalize the purposes, functions, organizational structure and procedures for carrying out effective regional coordination.

Thus, large-scale coordination is not an invention of the FPC which we are attempting to force on an unwilling industry. On the contrary, leaders in the utility industry, with only a few exceptions, have voluntarily committed their companies to such cooperative and interdependent action. The report of the FPC's Advisory Committee on Reliability makes clear that coordination of a type, and on a scale, utterly inconsistent with the assumptions of H.R. 5348, is needed for greater reliability in the power industry.

Mr. MACDONALD. Mr. Chairman, since you asked for interruptions a question occurs.

Mr. WHITE. Yes, sir.

Mr. MACDONALD. Of course I agree with everything you said so far. As you indicated, I introduced a bill which would do this.

Mr. WHITE. Yes.

Mr. MACDONALD. The question that occurs is it is not what the future holds, but what the present law is, and if you could address yourself—perhaps you do later; I don't know—to the present law covering this situation I think it would be helpful.

Mr. WHITE. My statement does, Mr. Chairman, get to that. By way of introduction, however, we have regarded this hearing as an excellent opportunity to in effect focus on what we regard as the other side of the coin.

I am glad indeed that some of the witnesses that you heard yesterday spoke about the impact on reliability because we believe that this is at the heart of the matter.

There are of course other aspects of it that do present themselves and we have our accounting problems, we have our financial surveillance, we have the question of rates, all of which are important, but in all candor the most important is that involving reliability in our view.

I think that I will probably touch upon that in a little more full fashion than I could otherwise do extemporaneously, but if that is agreeable I will continue.

Mr. MACDONALD. Thank you.

Mr. WHITE. Returning to page 5 of the text, I find it difficult to believe that the Congress of the United States would want to reject the progress of the last few years and encourage a weakening of coordination and interconnection.

HOW H.R. 5348 WOULD INHIBIT COORDINATION

The goals of adequate interconnections and sound, comprehensive contractual agreements governing coordination for reliability and economy would be far more difficult to achieve if H.R. 5348 were law.

This is so because that bill would discourage direct interconnection and full participation in interstate pools by exempting any public utility "none of whose facilities is used to transmit or receive electric energy by direct connection from or to a State other than the State in which such facilities are situated."

What is more, some utilities would be discouraged from joining reliability arrangements binding many indirectly connected utilities by the provision that the exemption shall not be available to a utility "any part of whose facilities are used to transmit or receive energy under contract with a public utility or other entity in another State."

This effect of the bill may be illustrated by the situation of the major electric utilities in the Southeastern States today. The companies in Florida have the opportunity to seek admission to a major coordination effort, the so-called CARVA-Southern System Reliability Agreement entered into by the members of the CARVA pool, and the Southern System, a holding company controlling operating utilities in Alabama, Mississippi, Georgia, and the Florida Panhandle.

The CARVA-Southern Reliability Agreement, while undoubtedly not constituting the optimum form of regional coordination for the Southeast, represents an important and useful start in the area's progress toward regional coordination.

In all likelihood, the Florida utilities belong, as a matter of power system engineering, in this coordination group, but they have not

joined, and enactment of H.R. 5348 would certainly tend to inhibit two of them, Florida Power & Light Co. and Tampa Electric Co., from joining in the CARVA-Southern Agreement; that is, they will not "contract with a public utility * * * in another State", as H.R. 5348 phrases it, for fear of losing the promised exemption.

Even if some way could be devised to permit their participation without contracting with the out-of-State members of the agreement, the engineering efficiency of the coordination would be impaired by H.R. 5348.

Thus Florida Power & Light Co.'s service area adjoins directly that of Georgia Power Co., a participant in the CARVA-Southern Reliability Agreement, and Florida Power & Light is the largest utility in Florida (and of course one of the largest in the Nation).

Yet there is no direct interconnection between Florida Power & Light and Georgia Power across the State border, and none would be likely, if H.R. 5348 were enacted, no matter how advantageous it might be operationally.

The 1964 National Power Survey report undertaken by the Federal Power Commission in cooperation with the industry and the Commission's report this year that I mentioned earlier on prevention of power failures, indicated the desirability of stronger ties connecting the Florida utilities to the North and West. Thus the legislation before the subcommittee today would retard the progress of coordination for reliability even in the absence of reliability legislation.

NATURE OF H.R. 5348 AND RELATION TO PENDING COURT CASES

H.R. 5348 would amend the Federal Power Act to create a total exemption from parts II and III of the act for certain public utilities meeting the criteria listed by the bill.

Exactly how many companies would be exempted cannot be predicted, because of some unclear language in the bill. It is certain, however, that public utilities in many parts of the Nation could seek exemption if H.R. 5348 were enacted. The Commission's report and analysis of the bill, previously submitted to the committee, discuss the language of the bill and attempt to interpret its meaning. I request that they be made part of the record and I presume that this has been previously discussed in yesterday's hearing.

We are not sure, Mr. Chairman, whether the Commission's formal report to the Commerce Committee was actually discussed yesterday and made a part of the record. If it was not we believe that it would be a useful addition to the record of these hearings and so request.

(See FPC report and analysis of H.R. 5348, p. 2.)

Mr. BROTZMAN. Mr. Chairman, I would like to see it now. Do we have it around?

Mr. WHITE. I think now, Mr. Chairman, we are approaching that portion of this prepared statement that addresses itself to the matter you raised.

In a sense H.R. 5348 may be regarded as addressed to an FPC case involving the jurisdictional status of Florida Power & Light Co. It is not my purpose here to discuss any particular case. Earlier this year the Commission concluded (two Commissioners dissenting) that Florida Power & Light Co. is a "public utility" within the meaning of the

Federal Power Act and therefore subject to the Commission's existing jurisdiction under parts II and III of the act (37 FPC 544).

The company has petitioned for judicial review of the Commission's decision, as is its right. Pending final disposition of the appeal, the Commission has stayed its order. In view of the pendency of the appeal obviously I cannot discuss the merits of the Commission's decision on the status of Florida Power & Light under existing law and I do not believe this subcommittee would wish me to do so.

H.R. 5348 also proposes to write into the Federal Power Act an exemption for all cooperatives financed by the Rural Electrification Administration. While such legislation was sought by most of the cooperatives of the Nation during the 89th Congress, when the issue of FPC jurisdiction was pending in the so-called *Dairyland* case, that issue was resolved by the Commission, at least so far as the Commission's jurisdiction to make this determination was concerned, in an opinion earlier this year (30 FPC 365).

We held that REA co-ops are now exempt from the Federal Power Commission's jurisdiction. That matter has also been taken to the Court of Appeals in a related case, and the Commission believes that no such legislation concerning jurisdiction as it proposed in H.R. 5348 should be considered at this time.

The Commission has expressed the unanimous belief that there should be appropriate Federal regulation of generation and transmission cooperatives which transmit energy in interstate commerce, but that distribution cooperatives should not be subject to Federal Power Act regulation.

I should note that in that particular case there was one member of the Commission that dissented on the jurisdiction over cooperatives. I think it is fair to state that with respect to the existing law it is possible for reasonable people to examine the very same fact situations, to hear the argumentation, the analysis that is set forth, and then reach conflicting views.

The way our system operates, and so far as we are concerned it is the way that it should operate, any party that is dissatisfied with a determination by the Federal Power Commission is entitled as a matter of legal right, statutory right, to appeal directly to the Court of Appeals and there contend that the Commission or a majority of the Commission was in error.

Subsequently, even if that proves to be unsatisfactory to the party, there is the opportunity to appeal to the U.S. Supreme Court. Clearly, that is not the end of the route either insofar as solving a particular problem. It is the end of the route insofar as interpreting existing language.

If, however, the Supreme Court comes with a decision that is unpopular or unacceptable to a group or one individual there is then the opportunity to petition the Congress to change the law, assuming that it is consistent with the Constitution.

We have here, therefore, two separate instances in which five members of the Federal Power Commission have split on the precise meaning of a section of one of the acts that we administer. We think it, therefore, perhaps would be wiser that there be no action until such time as the courts have resolved this issue or these issues.

Really there are two of them, one involving the Florida Power & Light situation and the other the co-op situation. Both of them now

are actively under judicial review and it is for this reason that we, regardless of the position that we took on the precise meaning of today's statute, believe that this legislation is at best untimely and, as my statement indicates, we believe also that it is unwise, but I hope, Mr. Chairman, I have responded to the question you have raised.

Significantly, H.R. 5348 is not being supported by the National Rural Electric Cooperative Association, an organization which did indeed support legislation in earlier Congresses to exempt co-ops expressly from certain sections of the Federal Power Act.

Nor so far as we are advised, has it been endorsed by the Edison Electric Institute, a privately owned portion of the industry, or the American Public Power Association. Also, the National Association of State Commissions is not supporting this legislation to completely exempt some utilities from the Federal Power Act.

Moreover, as my letter transmitting our report to the committee indicates, the Bureau of the Budget has advised that enactment of H.R. 5348 would not be consistent with the administration's objectives.

THE EXEMPTION PROPOSED BY H.R. 5348 IS UNWARRANTED

H.R. 5348 would exempt public utilities which transmit electric energy in interstate commerce but only through the facilities of other corporate entities and without any contractual dealings with companies in other States.

As I have indicated, any such test of jurisdiction is retrogressive in its effects upon useful interconnection and regional planning. But even in its own terms we do not believe it makes sense.

Specifically, we believe that the regulation of utilities operating in interstate commerce provided by parts II and III of the Federal Power Act is necessary and beneficial to the public and the companies.

If we are wrong, as to that, and the regulatory scheme of the Federal Power Act is obsolete or unnecessary, it should be changed or abolished across-the-board and not just with respect to companies who engage in interstate commerce in the manner prescribed by H.R. 5348.

In short we believe that would be a highly artificial distinction.

Parts II and III of the Federal Power Act were parts of the Wheeler-Rayburn Public Utility Act of 1935, enacted in recognition of legal and practical limits on unaided State action and as a corrective to widespread abuses in the power industry.

The 1935 act, therefore, placed electric utilities engaged in interstate transmission or sale of energy under Federal regulation. The act was premised on the need for a permanent system or utility regulation governing operating companies transmitting or selling energy in interstate commerce.

Let me state clearly that parts II and III of the Federal Power Act do not now apply to utilities which operate purely in intrastate commerce, in isolation from interstate networks. (By way of contrast, the part IV of the Federal Power Act proposed by our Electric Power Reliability Act would include such companies, as well as the exempted Federal, cooperative, and municipal systems for the special purposes of that proposal.)

H.R. 5348 proposes to exempt from parts II and III certain additional companies which do transmit electricity in interstate com-

merce. When proponents of the bill say it would exempt purely "intrastate utilities" they mean that the exempted corporations would be those owning facilities entirely within a single State, even though all or a major portion of their operations could be in interstate commerce.

The dominant rationale advanced for H.R. 5348 is that it will remove from Federal jurisdiction matters concerning only the States, and allegedly so treated until recent decisions of the FPC.

However, H.R. 5348 would not have any such limited effect in our judgment. It would remove from Federal jurisdiction public utilities which sell electric energy in interstate commerce under circumstances held by the Supreme Court to give rise to Federal jurisdiction a quarter of a century ago in one of the earliest cases decided under the Federal Power Act. This is the Jersey Central Power & Light Co., the decision by the Court in 1943.

The National Association of State Regulatory Commissions (NARUC) is not supporting the jurisdictional formula proposed by H.R. 5348. As I shall show, present FPC jurisdiction assists the States in carrying out their vital functions and H.R. 5348 would deny valuable Federal support to State regulatory programs.

Congress in 1935 believed Federal Power Act jurisdiction to be essential in three principal areas for effective regulation of electric utilities: First, wholesale sales in interstate commerce; second, financial operations and books of account; and third, interconnection and coordination of public utilities.

Congress directed the Commission to encourage voluntary interconnection and coordination, also giving it compulsory authority, upon application by a utility or a State commission, to order jurisdictional public utilities to interconnect with their facilities with other electric systems and sell or exchange energy with them.

At the same time, Congress carefully preserved the States' essential regulatory authority over matters of local import. For example, parts II and III of the Federal Power Act do not assign to the Commission any authority over retail rates; this State function covers more than 90 percent of the electric revenues of jurisdictional public utilities. States also may invoke the processes of the FPC to assure adequate interstate wholesale service.

The exemptions contemplated by H.R. 5348 could leave the Commission in the anomalous position of having jurisdiction over some investor-owned members of an interconnected network and without jurisdiciton over other members of that same network.

In the same situation the small systems near the service areas of the exempt companies and the interested State commissions would have no way of seeking the Commission's help in securing permanent interconnections and, thereby, participation in pooling on a nondiscriminatory basis, since section 202(b) of the act authorizing compulsory interconnection would no longer be available.

H.R. 5348 could exempt even utilities which were integral parts of interstate systems and even if their basic function were to generate and supply energy to out-of-state utilities as long as they did not contract directly with out-of-State entities.

Exemption could be available irrespective of the extent of the interstate transactions engaged in, the size of the companies affected, the

number of wholesale customers dependent on them for power supply, and whether or not they were otherwise subject to wholesale rate regulation, uniform accounting, or other corporate supervisions.

In 10 States no regulatory agency would regulate the wholesales, proposed to be exempted by H.R. 5348—these are wholesales—by privately owned utilities to municipal or cooperative systems.

In any event, the engineering and financial ramifications of wholesale power tranactions often extend into other States, where lack of jurisdiction and division of responsibility may make the State regulator's task impossible. It is far easier for the specialized electric rate section of the FPC to deal with the particular problem involved in wholesale rates such as firm service, emergency service, supplementary and deficiency energy, spinning reserve, reserve capacity, standby reserve, wheeling service, seasonal interchange, and economy energy.

Other differences between wholesale and retail sales concern the relationship of the parties. To a large electric utility, even a major industrial establishment is simply a retail customer. Customers who purchase power for resale, however, are often competitiors, actual or potential, in the area where the two systems are contiguous, as well as for the commercial and industrial customers.

Wholesale rate regulation raises peculiar problems which are difficult to meet in the absence of an adequate staff, expert in special wholesale rate problems.

It has sometimes been urged that compliance with the Commission's accounting requirements would be unduly burdensome and would duplicate State commission regulation. As I shall explain, we believe these arguments are based on misinformation; the experience of those utilities which now comply with FPC regulations does not support this claim.

We agree with the proponents of this legislation that "public utilities" within the meaning of the Federal Power Act are subject to accounting regulation by both the FPC and the State utility commissions.

In this respect the accounting situation differs from rate jurisdiction, where the States regulate retail sales and the FPC regulates wholesales. But as Speaker Rayburn recognized when, as chairman of this committee, he sponsored the present system in 1935, dual accounting jurisdiction strengthens both Federal and State regulation; it has generated Federal-State cooperation rather than wasteful duplication.

The system of accounts and finanical reporting in general use in the State is virtually identical with that of the FPC. It is the product of joint study by State and Federal regulatory accounts. Formal interpretations of the accounting systems are closely coordinated through a joint State-Federal committee of NARUC.

Audits of individual companies' books are also coordinated. The effectiveness of our auditing program has materially helped the State commissions.

Whenever possible, joint teams of Federal and State accountants conduct audits. We also provide for State agency review of all our audits before they are made final. I have yet to see a State commission dissatisfied with the cooperative auditing arrangements we share.

Thus, although the phrase "dual accounting jurisdiction" may at first raise questions, the practice, which is long standing now, is widely

appreciated as an effective combination of the resources of both levels of government.

It may also be appropriate to comment on a claim by Florida Power & Light Co. of the high cost of compliance with FPC regulations. The Florida Public Service Commission has required Florida Power & Light to comply with the almost identical NARUC system of accounts, identical to that of the FPC's uniform system of accounts.

The Florida commission system is now being amended to require a breakdown into units of property and continuing property records. Moreover, in 1943, the Securities and Exchange Commission acting under the Public Utility Holding Company Act, required the company to put its books on an original cost basis and to eliminate all write-ups from the company's capital accounts.

Under these circumstances we can see no basis for the claim that compliance with the FPC accounting regulation by the company will be burdensome or cost anything like the sums which have been discussed in the company's testimony before the Congress.

Certainly there is no merit to the only specific claim that has been made—that the company would be required to undertake an expensive aerial survey of its facilities. We have repeatedly made clear it will have no such obligation.

In sum, therefore, the Commission urges this subcommittee to uphold the goals of the Federal Power Act by rejecting H.R. 5348. The Electric Power Reliability Act, which is also pending before the Committee on Interstate and Foreign Commerce, suggests the direction in which most of the power industry is moving, as well as the legislative response we think is appropriate.

H.R. 5348 and the other identical bills, on the other hand, would withdraw regulatory protection to which the American consumer is entitled, and hamper the power industry's progress toward better service and a more abundant supply of low-cost power for this Nation. The Commission is unanimous in urging that none of these bills be enacted.

Thank you. Mr. Chairman. That does conclude the formal statement. There is attached a copy of a map (fig. 1) of the CARVA Southern System to which the statement does allude and I would hope that, too, could be incorporated into the record.

Mr. MACDONALD. Without objection it is so ordered.

(The map referred to follows:)

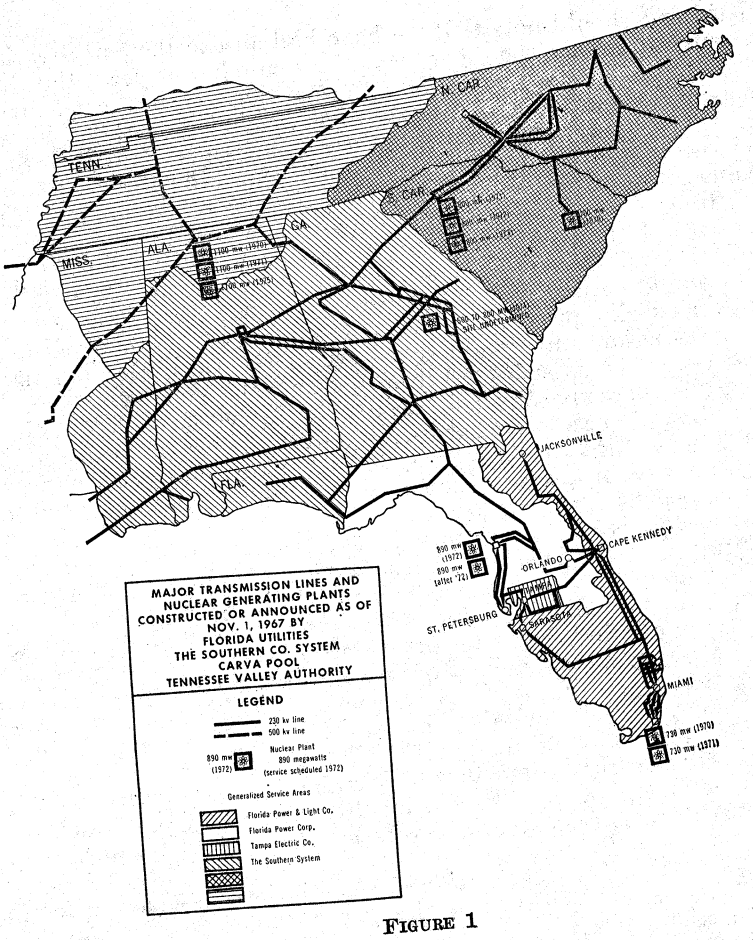


FIGURE 1

Mr. MACDONALD. Thank you very much, Mr. Chairman. I just have two very short questions because you have answered many of the questions that have been raised yesterday and some today.

On page 7, however, I can't quite understand your statement, or at least the Florida Power & Light Co.'s position, that if this bill H.R. 5348 were enacted they would not take advantage of the operational benefits that they might have in joining up with Georgia.

Why wouldn't they want to have benefits of operation between the Georgia Power and Florida Power?

Mr. WHITE. I do understand the question and I can say that it is somewhat presumptuous to make a forecast as to how any utility management will operate in the future, particularly with the way technolgy moves, but the way H.R. 5348 is set up if there is a utility that seeks desperately to avoid FPC jurisdiction, and there is a way that it can be done, and that way is disadvantageous to its own customers, to the need for reliable service of systems that are elsewhere in the region, we would hate to see some sort of an inducement to companies to sort of adjust their operations to the point where they can secure the exemption.

I think I should note that we have had an excellent illustration of where this has gone the other way. For a number of years the Detroit Edison Co., operated its system in such fashion that it was not jurisdictional. Within the past year or so it has concluded that, despite whatever disadvantages they may believe are inherent in FPC jurisdiction, the advantages to their own system stability, to the ability to provide reliable service and economical service, are so overwhelming that they are willing to accept whatever burdens come with FPC jurisdiction, so it may well be that under circumstances that will evolve in the future even if H.R. 5348 were enacted that the management of a particular utility would believe that it is worth the natural advantages to pay whatever psychic price or whatever financial price is involved in the FPC jurisdiction, and I could say almost in defense of the Commission we don't regard it as such a heavy burden or such a penalty.

We think there are considerable advantages that go with FPC jurisdiction. I wouldn't expect that to be a universal view, but certainly we believe, and I think that it is true, that there are many other observers of the industry, including some participants, who have seen some considerable benefit from regulation.

Only yesterday at the meeting of the National Association of State Regulatory Commissions the chairman of the Michigan Public Service Commission gave a rather powerful talk in which he said that he believed it was absolutely essential that the State commissions undertake to do more, that they had sort of left a great deal of the work to Federal agencies, and said that quite honestly he believed that if the States did not do more, if the State commissions and association did not do more, it was inevitable that the Federal Government would move in to solve national problems.

I can't say that this means that he is endorsing our electric reliability, that he is supporting this act, but his theme I thought was well taken and demonstrates that there is a vital role to be played by regulation.

Mr. MACDONALD. My last question is, What is the role—I am trying to reexamine it—between the FPC and, say, the Public Utilities Commission of Massachusetts?

Mr. WHITE. Under our existing legislation the State commissions, including Massachusetts, are entitled to come before the FPC to allege discrimination, to seek our good offices and our procedures for resolving difficulties.

We have, I think, in the past few years seen an increasing working relationship with them. For example, in the work on our National Power Survey we have had serving on our industry advisory committee representatives of the State commissions.

We have, additionally, found ourselves cooperating with them in a lot of specific situations. The one that most recently comes to mind is the Middle Atlantic power failure of last June. We have had a joint meeting, for example, at the Federal Power Commission, meeting with the chairman of the Pennsylvania Commission, the Maryland Commission, the New Jersey Commission, the District of Columbia and the Delaware Commissions, in an effort jointly to pool whatever technical competence we have and the industry has so that our efforts will be harmonious and hopefully cumulatively better than they would be individually.

Mr. MACDONALD. One of the reasons I ask is I am sure you are aware that Massachusetts has been plagued with these blackouts and Senator Edward Kennedy brought this forcefully to the attention of the Senate and at one point I thought that the FPC was about to take some steps to have the Massachusetts Public Utilities Commission take some action with the utilities in Massachusetts. I was wondering if anything ever happened in that field.

Mr. WHITE. The State legislature, Mr. Chairman, set up a special committee headed by State Senator Rurich and by Representative Rorick and we have met with those gentlemen and have indicated that within the budgetary limitations of our own Commission we would indeed be glad to provide some technical competence, staff competence, to assist them.

Nothing definite has yet been worked out, but we have been in communication with them and I believe that this is an appropriate manner in which the Federal Commission can cooperate, can assist, State agencies.

Mr. MACDONALD. Am I correct in assuming you can't tell the State agency what to do?

Mr. WHITE. You are correct, Mr. Chairman. We do not have that authority.

Mr. MACDONALD. You can merely advise and counsel.

Mr. WHITE. Yes, and in all fairness I think the State commissions have been quite enthusiastic about working with us and reviewing our reports. As you may recall, we recently issued a report on the Cape Cod power failure of last summer and we have consulted with the State commission prior to the release of that.

We are hopeful that the suggestions that were contained in that report will be acted upon by the company and that if indeed they are not acted upon by the company the State commission will itself exercise whatever authority or prerogatives it possesses to achieve reliable service for the people of Cape Cod as well as elsewhere in Massachusetts.

Mr. MACDONALD. I would frankly doubt that that ever comes into being, but I hope you are right. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman. Mr. White and members of the Commission, it is certainly a pleasure to have you here with us this morning and you made a very fine statement for your position. I have a few questions I would like to ask.

Mr. White, is it your opinion, the opinion of the Commission, that it would be to the advantage of Florida Power & Light to be intertied or interconnected with Georgia companies?

Mr. WHITE. I understand the question completely and it is the easiest one I am going to get all day. The answer is yes.

Mr. KORNEGAY. Well, I just wanted to know because there is so much controversy about it, about that particular thing, but the reason I guess the point is controversial is, it would appear to me—just looking at the geography of it—it would be much more to the advantage of south Florida being tied in than it would be to Georgia.

They are isolated, so to speak. I really wanted to find out what your opinion is. The thing that sort of troubles me about this particular controversy, that is, assuming as you have, that it would be to the advantage of the South Florida Co. to be intertied with Georgia and

yet they are unwilling to do that because it would definitely bring them under the regulation of the FPC.

Mr. WHITE. Yes, sir.

Mr. KORNEGAY. Now, you have a fine commission. I am sure that the leadership of that great company is fine and all of you are dedicated to the public interest and I have no quarrel or no reason to believe otherwise.

Why would they take the position that it is a disadvantage, assuming that it is, that it is not worth whatever they have to go through to come under the regulation of the Federal Power Commission? My point is that there is something wrong somewhere when reasonable men, assuming all of you see this advantage, can't get together on the procedures of the thing.

Are your rules and regulations so onerous that they outweigh the advantage they might gain by coming under the authority of the Commission?

Mr. WHITE. Well, I make a claim to objectivity, Congressman, but I couldn't really answer that without my biases and prejudices in favor of the Federal Power Commission procedures.

We honestly do not believe that the burdens are so onerous or indeed that the burdens are not greatly outweighed by the advantages. I am in a delicate area now. I have participated in a decision in which that was a controversial issue. It was the heart of the controversy. I have taken my stand.

As you suggest, there were two other members of our five-man commission who had a different view and they are as honorable as I. I don't claim to have a greater public interest blood coursing through my veins than they have, and they reach a different conclusion.

But it is before the courts. I don't know what the court of appeals or the Supreme Court will do, but it is conceivable that they will return that case to the Commission. It is possible it could happen. If it does, I may be called upon to express an opinion a second time on it, so I want to be very careful that I don't get myself into a position where I have prejudiced all of these issues, so I am apt to be a little delicate, but I can still answer your question I think in a manner that may be satisfactory to you.

On the decision made by management—and frankly we in our reliability bill and this bill and in every public utterance by every member of the Federal Power Commission believe the responsibility must rest with management. Ownership or the control in the case of the TVA, they are a management just as much as the president and the board of directors of the Florida Power & Light, as are the members of the boards of the cooperatives.

They must make the decision. I believe that it is reasonable to resist regulation because you know what you have and you don't know what you might get, and we do not take it personally and we have had many people say to us, "You are five fine outstanding fellows, nothing personal, but you won't be here forever and maybe 10 years hence there will be some fellows who aren't so fine," so we try to depersonalize the matter, and I don't think this is involved, either.

But there is the natural tendency of anyone who is in business to resist having someone else tell him how to run his business, to look over his shoulder. I believe that is it.

Mr. MACDONALD. Would you yield?

Mr. KORNEGAY. Yes.

Mr. MACDONALD. Actually, Mr. Chairman, I asked the president of the company—I don't think Mr. Kornegay was here when I asked him—it isn't resisting regulation really, is it, because they are regulated by the Florida Board?

Mr. WHITE. Only partially, Mr. Chairman, in the sense that the Florida commission does not have jurisdiction over wholesale sales, so that is a significant factor.

Mr. MACDONALD. And I would just like either an affirmative or a negative answer. The witnesses said—forget which one, the president or the vice president of the company—said that one reason was that when they are subject to audit by the FPC they have to account for the cost of a telephone pole on Fourth Street in Miami and they say it makes it very difficult for them to make an accounting of what it costs.

They said under the State regulation they only had to account for an area.

Now, is it true that in your auditing system they have to account for what a light pole costs? I could barely believe it, although they are both very honorable men. I am not taking sides on it.

Mr. WHITE. I understand the question.

Mr. MACDONALD. I could hardly believe that the FPC audit would be that finite.

Mr. WHITE. Our uniform system of accounts was developed with the States and in consultation with them. It is my information that the Florida Public Service Commission has recently amended its procedures to track exactly those of the FPC, or virtually exactly that of the FPC, on this matter of property inventory, so that whatever extra burdens there might have been, and I don't really believe that they are very great and I will get to that in just a moment, they are now the same, so if that might have been true 5 years ago, if our information is correct, it is not true today.

As to the cost, this was an item that was discussed and I will tell you frankly I was a little shocked when I heard that jurisdiction or nonjurisdiction might mean as much as $4 or $5 or $6 million to a company. We are not very enthusiastic about adding to the cost of an operating company. We pride ourselves, as does the industry, in trying to lower cost, and it sort of startled me and stunned me a bit to believe that it would have been at all conceivable, so I asked the chief accountant of the FPC to let me have some information: Was this accurate? Was it a rough estimate that was valid?

He came back and said he hadn't the remotest idea where the figures had come from. His estimate was, and he is physically present in the room today, somewhere between $20,000 and $25,000 for the first year of adjustment and that it would be less after the first-year procedures had been employed.

Mr. KORNEGAY. Let me interrupt, Mr. Chairman, and say if I recall the testimony not only was there the initial cost of several million but an annually recurring cost of between $500,000 and $600,000.

Mr. WHITE. Those were the figures. That is correct. Those are the ones, Congressman, that shot me into our accountant's office to find out if this was accurate.

Mr. MACDONALD. Isn't it a fact that even this $25,000 or $30,000 that might be charged to the company is passed on under the rules governing utilities to customers?

Mr. WHITE. Yes, sir.

Mr. MACDONALD. Isn't it capitalized?

Mr. WHITE. Yes, sir.

Mr. MACDONALD. And aren't they guaranteed a 6-percent return?

Mr. WHITE. Those are operating expenses and of course are absolutely proper to be charged to the ratepayers, and we would be very sensitive indeed to be adding millions of dollars on the ratepayers' backs for something that is not required.

May I say that our chief accountant wrote a letter to the vice president of the company whose responsibility it is to come up with financial figures, offering to sit down and to discuss how we could be so far apart because it doesn't seem quite reasonable.

I have the same problem that the Congressman did, that rational human beings could find themselves in such different ball games with one in the millions and the other in the tens of thousands, and we have not yet had that meeting.

Mr. MACDONALD. Thank you.

Mr. WHITE. If I may, to keep this in perspective, the utilities in North Carolina and Massachusetts are paying whatever extra cost there is. We don't think it is very great. The fact of the matter is we don't think this is so disadvantageous and the advantages might offset it and it is a net gain, but I wouldn't even make that claim. But we have not had any cries of outrage from utilities or from the State commissions who have, after all, a responsibility to see to it that the rates that their own citizens pay are as low as consistent with sound operating practice and I can't believe that a State commission wouldn't be knocking on the doors of the Congress if we were imposing such onerous burdens as a result of our regulation.

As you can tell, we do get kind of steamed up about the issue and I agree, Congressman, that on the face of it it looks kind of hard to reconcile what you have heard one day from the next day.

Mr. KORNEGAY. What disturbed me was, if there were definite advantages and yesterday conscientious and dedicated people were unwilling to accept those advantages because they were saying, it seemed to me, the disadvantage was greater than the advantage they were going to receive. That was the only conclusion I could come to.

You mentioned North Carolina. As I understand it from this bill and from the prior testimony it would have no effect on any of the utilities in that State.

Mr. WHITE. That is correct. My guess is if it were enacted that there would be probably no utilities in that State who would want to or would be capable of adjusting their operations so as to be eligible for the exemption offered by this bill.

Mr. KORNEGAY. You make reference to the CARVA pool, which composes the four utilities in the three-State area there. How is the CARVA pool working down there?

Mr. WHITE. I think if you don't mind I would like to ask Mr. Brown, our chief engineer, to speak briefly to that, but generally we have seen in this country, and again not because of the wisdom of the Federal Power Commission, but because of the judgment and the

experience and the wisdom of those who operate utilities, that it makes a great deal more sense for them to coordinate and to integrate their operations so that they mutually help one another. They not only afford reliable service but most of the time more economical service.

It makes good operating sense. As to how CARVA is coming along, Mr. Brown, who is our chief engineer, does work with these people in the various regions and he may have a word or two on that.

Mr. F. STEWART BROWN. The CARVA pool agreement is a rather broad agreement between four of the major utilities in the Southeast and it covers the whole field of generation and transmission, the matter of interconnections, the matter of strengthening interconnections, the matter of scheduling new generation, the matter of staggering generation and being able to construct larger generations so they can share it.

It includes a consideration of reserves and the allocation of reserves among the companies. It includes the opportunity to reduce the overall reserve capability and economies and it also includes the opportunity for economic exchanges, so that we have here an opportunity for a very broad gage improvement in both the reliability and economy of all of these four systems.

Mr. KORNEGAY. I believe you do have under consideration a further integration or enlarging that pool, other than a power generating company, with some who are not selling power to the public, so to speak.

Mr. WHITE. Yes, in the sense that this underlies both our analysis of the past power failures and the legislation which we have pending before the committee that Chairman Macdonald introduced.

Mr. KORNEGAY. That is all, Mr. Chairman.

Mr. MACDONALD. Mr. Broyhill.

Mr. BROYHILL. Thank you, Mr. Chairman. As the gentleman and I come from the same area in question, I would like to clear up one or two points here.

You say that in the *Florida* case, the Florida Public Service Commission, the main thing is the same system of accounts and that other States are adopting the same system of accounts that the FPC requires?

Mr. WHITE. I is my understanding, Congressman, that the Florida Public Service Commission virtually tracks or has identical provisions although on some of the particular items these are comparatively recent actions by the Florida commission.

If it would be helpful for the record we would be delighted to submit a detailed summary of any advantages and differences.

Mr. BROYHILL. I don't think that I would want that for the record, but I want to go on and say and ask if the other States are adopting the system of accounts that the FPC requires.

Mr. WHITE. The anwser is "Yes." I can't claim that it is 100 percent because we have some States that don't even have regulatory commissions. There are three States in the contiguous 48 that simply do not have any agencies set up for these purposes so obviously in that case it is not so.

Mr. Solomon points out that in our relationships with the States it would be better if I recast my answer to indicate that what we are talking about is not something that we have imposed or sort of pressed down on the States and that they are acquiescing and going along with it because they have no alternative.

Rather, as I tried to indicate in my formal statement and earlier, we have worked these out jointly. We have groups that meet from the State commissions and the State commissions are formed into a national association to try to develop accounting practices that are mutually beneficial.

Mr. BROYHILL. What I am getting at is that under the practice today the utilities are not required to keep two or three sets of books?

Mr. WHITE. That is correct and that is the purpose of this joint consultation: to establish principles that meet their needs and the Federal needs and will ease the burden on the company. We believe that if we can send our auditor together with the State auditor to the same company at the same time that it is more economical use, more efficient use, of everybody's resources, including the company's.

Mr. BROYHILL. Does the Internal Revenue Service follow your system, or their own system, or what?

Mr. WHITE. In terms of working with the States?

Mr. BROYHILL. In terms of finding out what is the net profit or gross profit before taxes.

Mr. WHITE. I am not sure I quite follow the question. You mean in terms of the utilities themselves?

Mr. BROYHILL. Yes.

Mr. WHITE. I don't know the answer to that, to tell you the truth. I will have to check into it and find out. Our chief accountant advises, Congressman, the answer is "No; they do not."

Mr. BROYHILL. Then if you come up with a figure of a total capital account the State of Florida would have that same figure as its basis for setting of rates.

Mr. WHITE. To the extent that there is agreement on principles in which basic forms of rate regulation, rate setting, shall be followed, the answer would be "Yes." There could be the case in which a State would take a different view of a particular item than does the Federal Power Commission.

Our effort is to try to direct and focus attention on those areas where there are differences and which are very small and minor in terms of numbers, anyhow—they may have significance beyond the number, but for the great bulk of the accounting practices and determination to be made in accordance with a single system that we adhere to and respect and that the States accept and use for their purposes.

So it is possible we could find the Federal Power Commission reaching a different total capital cost for a utility than would a State. We would, nevertheless, have joint audits. We would still be able to use the great bulk of those areas where our determinations are equal or equivalent.

Mr. BROYHILL. If you ultimately exercise jurisdiction over the Florida Power & Light Co. this means that you will be coming in and actually telling the company how much it can charge for power or how much its rate base is?

Mr. WHITE. If there were a challenge either on the initiative of a customer, on the State commission, or the FPC claiming that its wholesale rates were too high or that they were discriminatory and the FPC decided that this was a legitimate complaint that ought to be explored we could indeed find ourselves doing that just as we can for any other utility in this country that is subject to our jurisdiction.

Mr. BROYHILL. You could challenge the rate on wholesale rates, but not on retail?

Mr. WHITE. That is correct, and under the existing situation even the Florida Public Service Commission does not have authority over the wholesale rates charged in the State of Florida.

Mr. BROYHILL. If the company does not sell any wholesale to anyone what purpose does the FPC jurisdiction serve?

Mr. WHITE. If they are not selling it wholesale?

Mr. BROYHILL. Yes.

Mr. WHITE. Certainly with respect to rates there would be no advantage whatsoever. With respect to accounting practices, I would think there would be some benefit. It might be minimal, and if it were the case that there were no actual wholesale sales between a utility and other utilities we would have no rate problems.

There is, however, a third part of our jurisdiction that I referred to in the formal statement that had to do with the interconnections reliability of service. This is our section 202(b) of the existing Federal Power Act.

Mr. BROYHILL. This is voluntary, is it not?

Mr. WHITE. No, sir.

Mr. BROYHILL. It is not?

Mr. WHITE. No, sir. Under that, for example, we can give you an illustration. A utility in Georgia, municipally owned, claimed that it was not being adequately served by the major utilities in the area. It came to the Federal Power Commission and lodged a complaint, said that its people were not being served, that they had a whole series of power failures, and "under this particular section we are seeking relief" that would not be available to a Florida municipality if I understand your question.

Mr. MACDONALD. Mr. Van Deerlin?

Mr. VAN DEERLIN. Thank you, Mr. Chairman. Mr. White, could you give us an estimate of the volume of power companies, not by number of companies, but I suppose by units of service provided, that would be affected by this legislation? I suppose it turns on legal interpretation of what is intrastate, but how big a slice are we talking about?

Mr. WHITE. You are right, we would have to qualify any answer because first of all there is always a problem of interpreting language and some of this is kind of new and would involve both the decision within the Commission and then ultimately by the courts, but sliding over that and the second qualifier which I think ought to be in the record, and that is you are talking I think the way things are operated today rather than were this enacted, and this is one of our fears, that there would be some companies who would undertake to adjust their operations. They may not believe it is advantageous, but they would make the decision Congressman Kornegay was talking about, that it may be worth escaping our jurisdiction if they adjust their operations.

I would think not and hope not, but to the extent that that is there we can't give you a figure. However, with those two qualifications I would say we are still talking about a pretty small slice and maybe it is two dozen utilities in the country. It certainly wouldn't be any more than that, would be my guess.

We have not made a detailed study. It has been impossible to do for the reasons I have suggested. We are not talking about a large number of utilities. We are I think perhaps, however, talking about some that are quite major in the fact that they are large utilities and serve a large number of people.

Mr. VAN DEERLIN. In the matter of establishing reserve margin standards, something which often imposes extra costs on a power company, what progress has been made in this direction, and establishing greater reliability, in the roughly 2 years that have elapsed since the northwest power blackout?

Mr. WHITE. This is certainly one of the elements that we focused on in our preparation of our reports that came to the Congress. We have regional advisory committees established by the FPC made up of all segments of the industry in six regions of the country and we have undertaken through Mr. Brown, the head of our staff, and through our own relationships with the utility executives that serve on these committees to get them to focus on reserve factors and primarily, as your question suggested, for the purposes of reliability.

It is perfectly evident, and was in the summer of 1966 that we had one area of the country where there was just inadequate capacity. There were explanations for it. This was the St. Louis area. You may remember that persuasive heatwave that lasted for a couple of weeks and hit the whole eastern two-thirds of the country. There just was not enough power to meet all of the daily needs of the people in St. Louis and on the rotating basis the companies serving that area simply dropped loads, what we characterize as a brownout.

We had one very minor one here in the Washington area this past summer where we were operating on slightly reduced voltage in order to make sure that all the powerloads were met.

I would say we are making some progress, to answer your question directly, and I wouldn't want to suggest that it is again our wisdom. It is the management themselves that are focusing on this. There is no utility management that wants to go through a blackout or a brownout. They grew up with service as their watchword and now they do an excellent job by and large.

Mr. VAN DEERLIN. Would these exemptions for the dozen, or possibly 2 dozen companies exempted by this legislation, put a crimp in this kind of planning and activity by——

Mr. WHITE. It is very tempting to just give you a yes, but in fairness I must qualify it.

It would indeed under the existing legislation. If, however, the Congress acts on our electric reliability act I think the answer is it would not really have quite as much significance and may shrink down to an inconsequential area because in that proposal it is aimed at bulk power supply and does not have built within it any exemptions. That includes even the Federal operators.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Brown?

Mr. BROWN of Ohio. Mr. White, in your statement, I would like to pursue just a couple of points and ask one question about this map.

On page 5 you suggest that this legislation would have the effect of discouraging interconnection and I presume the point that you are making is that this would reduce reliability of the individual utility, but I would put the question in another reference.

Wouldn't the discouragement of interconnection encourage the utility to have adequate power sources to meet its peak or emergency load need and, in effect, increase the reliability of that individual utility?

Mr. WHITE. I understand the question completely and I must say I think that virtually all of the engineering systems and analyses in the country, not by the Federal Power Commission but by utility managements, regardless of their form of ownership, indicate exactly to the contrary.

There is no question but what it would be possible for a system to virtually isolate its system to have adequate reserve, but in order to have that adequate reserve it has to make such a large capital investment in facilities in order to have the standby that it penalizes its own consumers by charging, legitimately charging, them more for their electric service than would otherwise be possible.

If you have one utility that is meeting its own needs it has to have another adequate reserve available instantaneously to meet any situation that can be predicted will occur within its system.

If, however, you are able to link that system A with system B then their total reserve of needs are not as great as if they were operating alone because they can move power back and forth when one has an emergency, and you don't assume that they are going to have emergencies simultaneously, so that this is the whole underlying concept for interconnection.

It is not only more reliable, but obviously cheaper. If you don't have to invest in the facilities that you will not use very often but you need them for standby or reserve purposes it makes a far better investment for the company to build transmission lines where it can move that back and forth and enter into agreements so that mutually they protect one another, so that is the answer, I believe, to your question.

Mr. BROWN of Ohio. And if the assumption that both systems would not have peak demands at the same time is not correct, then when they are interconnected they are both out; is that right?

Mr. WHITE. I am sorry, I think I lost you there.

Mr. BROWN of Ohio. If the assumption that they will not both have peak demands or emergency demands at the same time is in error, and they should both have peak or emergency demands at the same time, then both systems are in trouble; is that right?

Mr. WHITE. It depends entirely upon how well designed their reserve situation is. They will indeed be able to provide for single contingencies or even double contingencies. It is conceivable—and don't forget, now, when I am talking about these two, that is for purposes of simplification. The way it actually is working is that this is two within a group of perhaps 30 or 40.

Mr. BROWN of Ohio. Like the Northeast?

Mr. WHITE. Like the Northeast or, more important, like the Ohio area. Ohio now is in the east-central area. We have something like 25 utilities in that region, including Michigan, Indiana, Ohio, western Pennsylvania, West Virginia, part, I think, of the tip of Maryland, and Kentucky.

Twenty-five utilities have gotten together in the reliability undertaking, so that Ohio Edison knows that if they are going to go down

they have a call on the reserve capacity of organizations that are within that, some as far away as 300 or 400 miles, and our lesson from the Northeast power failure is that interconnections are bad, but that if they are to be undertaken they must be strong and effective.

As we sit here today we are seeing lights operating continuously. For all we know Pepco has lost a large generator because it is tied to the PJM system. However, it has the reserve capacity of a number of systems, 11 or 12 other systems, to call upon to meet its immediate need, so that I think really it does work.

I suggest that there was testimony yesterday to indicate the contrary. So far as I know that is the first time any major utility has indicated that interconnections are somehow or other not good and ought to be discouraged. If that is the issue, then I think that these hearings are serving a highly worthwhile purpose to have attention focused on that.

Mr. BROWN of Ohio. Obviously I am questioning in that area because it seems to me that it depends on how much surplus power generation capacity you have in an interconnection just as it depends on how much surplus power generation you have in an individual utility as to whether or not you can meet the emergencies that may arise, and when you tie a lot of utilities together which don't have adequate surplus power generation individually you have a lot of utilities which go down together rather than just one, and the individual utility which can meet its own needs may be able to survive in the middle of that. I rather imagine we will come to that subject in more detail at a later time so I won't pursue it with you.

Let me move on to just pick up another point. If you can answer me very briefly on this I would appreciate it, but I did hear all the comments that were made with reference to the same line of questioning by my colleagues.

What, in addition to auditing and accounting procedures, are the added burdens of regulation by the Federal Power Commission that would make a company prefer not to be regulated by the Federal Power Commission?

Mr. WHITE. That is obviously a question that perhaps someone who has different views than I could answer more forcefully, but I will do my best.

Mr. BROWN of Ohio. In your testimony you suggest that there are a lot of advantages that everybody agrees to and I would imagine if somebody does not want to be regulated he may not agree to all or some of these advantages you cite.

Mr. WHITE. Surely, right. I will tick them off as quickly as I can. The first is just the natural instinct not to have another group of people looking over your shoulders.

Mr. BROWN of Ohio. Regulation per se.

Mr. WHITE. Yes.

Mr. BROWN of Ohio. By an additional body.

Mr. WHITE. Yes. You know, you have your own situation and this introduces an unknown situation and it is perfectly rational and reasonable for somebody to resist that.

The second is that on the question of rates under the situation, for example, in Florida today there is no State agency with authority to control wholesale rates. If this Federal Power Commission has juris-

diction over a particular company in Florida, as the majority of the FPC believes that it does, we will then also have the authority not only to require accounts, but to regulate the rates that are unreasonable or that are discriminatory.

Mr. BROWN of Ohio. This deals with the competitive factors to which you made reference in your testimony.

Mr. WHITE. Yes.

Mr. BROWN of Ohio. The factors of possible competition.

Mr. WHITE. Yes.

Mr. BROWN of Ohio. I want to come back to that.

Mr. WHITE. Or unreasonable rates just because they are set too high or because utility A sells to community C at one price and community D at another price and this is discriminatory. If that is the case then there is a forum where municipal C and D can come and say, "We are being discriminated against," or "Our rates are too high."

Mr. BROWN of Ohio. This is not now in existence?

Mr. WHITE. This is not now in existence in the State of Florida, correct.

Mr. BROWN of Ohio. Are there other factors? That is two more in addition to auditing and accounting.

Mr. WHITE. Yes, there is. The third one relates to this question of interconnection or compulsory linkage between two systems. Under our existing legislation, the ones that we operate under today, we have the authority wherever a public utility is jurisdictional or subject to our jurisdiction to receive complaints either from a State commission or from a utility system that says, "We are in a desperate situation and we want utility A to provide us some power, some emergency power."

Mr. BROWN of Ohio. I understand that. Now, are there any others?

Mr. WHITE. I don't think so. Are there any other points? They are not nearly as important to tick off as the basic ones, but also where a public utility is subject to our jurisdiction if it undertakes to acquire or merge with an additional system that must come to the FPC for approval.

Mr. BROWN of Ohio. And this could in certain States be resolved by the State public utility commission, is that correct?

Mr. WHITE. That is correct. An additional one is the issuance of securities by jurisdictional public utilities. If the States do not regulate that, then the Federal Power Commission under the existing Federal Power Act does regulate or have surveillance over the issuance of securities.

Mr. BROWN of Ohio. But if the State does regulate it then you do not have that regulatory power.

Mr. WHITE. Correct, under existing legislation, correct.

Mr. BROWN of Ohio. On page 15 you make some reference to the idea that customers who purchase power for resale are often competitors (actual or potential, in the area where the two systems are contiguous) for commercial and industrial customers.

How are these competitive differences now resolved in a situation which is under your jurisdiction? Are they resolved at the State level, or the Federal level, or are they not resolved by any formal organization but rather just simply by the marketplace competition?

Mr. WHITE. Under the existing authority of the Federal Power Commission if a utility contiguous to another believes and is a purchaser of power to meet its own customer needs and comes in and

claims to the Federal Power Commission, which it can do—we do have authority—that its supplier has imposed upon it restrictive provisions saying, for example that it will in the contract to supply power from A to B, that that obligation will go only so long as B does not sell to a third party at a certain volume, a competitive situation, we have had before us such a situation at the Federal Power Commission and have found that that was a restrictive provision that was contrary to public interest and have indicated we did not believe it should stand.

Mr. BROWN of Ohio. Well, the reason I ask this question—I don't want to pursue it further or try to press the Chairman too far—is, might this not be a sixth factor in the question of whether a utility might not want to come under FPC regulation?

Mr. WHITE. I thought I put that in when I spoke about rates. When we say rates we mean not only the level, but whether they are discriminatory or restrictive, so it would be a sub point of that.

Mr. BROWN of Ohio. The question that I am trying to get an answer to is whether this situation is now covered in most States by State regulation? In other words, are the companies of the Federal decision in this matter where they might be more confident of the State decision in such a matter, or are the States not speaking to this problem at all?

Mr. WHITE. We do have that authority where we have jurisdiction over a utility. In the States where there is no authority to regulate wholesale sales there is no place to go. There are a few such States.

Where, however, the State commissions do have authority they too can regulate them. There is a dual jurisdiction, so that there are two different forums available to the aggrieved utility who believes it is being treated harshly, unfairly, or at a great disadvantage to its customers where it might elect to go.

Mr. BROWN of Ohio. Thank you.

Mr. MACDONALD. Thank you, Mr. Brown. Thank you very much, Mr. Chairman, for coming here with your group. We certainly learned a good deal and it is a pleasure to once again see you up here.

Mr. WHITE. We thank you, Mr. Chairman, and this has been an excellent opportunity for us to talk about some of the matters that we believe are so important.

Thank you.

Mr. MACDONALD. Thank you. The next witness is Mr. H. L. Baker of the Savannah, Ga. Electric Power Co.

Mr. BROWN of Ohio. Mr. Chairman, there is one point I want to make about the map before it comes down. I want to ask a question about this map because of some knowledge I have of the situation in Ohio.

Does this map only cover peak power capacity failures, or does it include technical failures, and acts of God and man and nature?

Mr. WHITE. What it covers primarily, Congressman, are what we have characterized at the Federal Power Commission in our report to the Congress and the President as major power failures and those that are cascading.

Mr. BROWN of Ohio. You have cities on there designated and I notice you have one in Cincinnati. I presume you indicate that is a power failure. I may be wrong.

Mr. WHITE. That was not a cascading power failure, just as the one in St. Louis was not. Those are ones that were major power failures

in the sense that a large number of people were inconvenienced for a long period of time.

Mr. BROWN of Ohio. The one in Cincinnati was a result of a labor dispute, was it not, or presumed to be?

Mr. WHITE. There is some controversy about it. It was a case in which there was some unexplained damage to facilities and equipment.

Mr. BROWN of Ohio. It was not a peak load or cascading failure.

Mr. WHITE. No, sir.

Mr. BROWN of Ohio. And these then include many other things besides peak load and cascading failures.

Mr. WHITE. Primarily the peak load is a slightly off-beat expression for us. What we are really talking about here for the most part—underneath that overlay there is another overlay that shows the 19 major power failures that I was talking about that relate to the cascading type of failure.

Mr. MACDONALD. May I interrupt, Mr. Chairman? I think this is a subject that the bill that you referred to filed by myself and Mr. Staggers would go to and doesn't really affect this particular issue and therefore I would rather not dwell on it.

Mr. WHITE. All right. We do have, however, a little description of it and if it would be helpful I would send it to you, Congressman.

Mr. BROWN of Ohio. All right. Thank you.

Mr. MACDONALD. My last question, Mr. Chairman—and everyone has a last question—Does the FPC jurisdiction of wholesale rates come from the *Colton* decisions, so called?

Mr. WHITE. It was really a decision by the Congress to vest the Power Commission with the authority and it is, I think, unambiguous and uncontroverted, so that is where it came from.

Mr. MACDONALD. Thank you very much.

Mr. WHITE. Yes, sir.

(The following letter was received by the committee:)

FEDERAL POWER COMMISSION,
Washington, D.C., November 15, 1967.

Hon. TORBERT H. MACDONALD,
Chairman, Subcommittee on Communications and Power, House of Representatives, Committee on Interstate and Foreign Commerce, Rayburn Office Building, Washington, D.C.

DEAR CHAIRMAN MACDONALD: Thank you for your letter of November 3, 1967, asking that I develop further, for purposes of the record of the hearing on H.R. 5348, the matters raised by your closing question concerning the Commission's jurisdiction over wholesale sales of energy by a public utility within a State to municipalities and cooperatives for distribution and resale by them. You also request that I go into the effect of the Colton case on the Commission's jurisdiction. I appreciate the opportunity to do so.

The Commission's jurisdiction over wholesale sales under Part II of the Federal Power Act is tied to not one but two tests, both of which must be satisfied if there is to be jurisdiction. First, the company selling at wholesale must be a "public utility" within the meaning of the Act. This statutory status now arises whenever the company engages either in transmission of electric energy in interstate commerce or in the sale of electric energy in interstate commerce for resale. H.R. 5348 proposes to change the jurisdictional tests bearing upon "public utility" status and would, as a result, exempt some companies which are now "public utilities". If a company is not a "public utility" within the meaning of the Act then none of its wholesales are subject to the regulatory provisions of Part II, and the second test is never applied. In the case of a "public utility" the Commission has jurisdiction over those wholesales which are made in interstate commerce, including sales to municipal and cooperative distribution systems for resale by them.

The Colton case decided by the Supreme Court in 1964 involves only the second test. There, the seller was admittedly a jurisdictional "public utility" but it contended that the wholesale was exempt from Federal regulation. Our General Counsel has prepared a legal memorandum explaining the relationship of the Colton case to the previous construction of the Federal Power Act. A copy is enclosed. I believe you will find his analysis helpful and suggest its inclusion in the record. It indicates, as a legal matter, that Colton did not establish a new area of Commission jurisdiction. Rather, the Supreme Court sustained the broad view of FPC jurisdiction developed by the courts in a series of cases in the 1940's and early 1950's. The only dissent to this line of cases was the lower court decision in the Colton case itself by which the court of appeals would have read a new limitation into the Commission's jurisdiction under the Federal Power Act. The Supreme Court in Colton rejected such a limitation and adhered to the legal principles previously announced.

The practical administration of the Federal Power Act, however, has not been as comprehensive as the judicial interpretations might lead one to expect. On the one hand, as the General Counsel's memorandum discloses, as early as 1938 the Commission regulated some sales within a State by "public utilities" to municipalities, and later to cooperatives. Such FPC regulation of wholesales was a practical reality, long before Colton, in such states as Louisiana, Vermont and Wisconsin. On the other hand, it appears that the judicially established principles were not always applied to some other wholesale sales. In fact, during the late 1950's the Commission's regulation of wholesale sales under Part II of the Act became virtually dormant. There is no doubt in my mind that the decision of the Supreme Court in the Colton case has stimulated utilities who previously ignored the question of FPC jurisdiction over their wholesales to file rate schedules with the Commission covering these transactions. At least as significant, however, Congressional support and encouragement in the 1960's (coupled with technological developments increasing the interstate nature of the industry) reinvigorated the Commission's administration of the statute. The interaction of these developments explains, in my judgment, the present status of FPC jurisdiction which we believe H.R. 5348 would unwisely disturb.

Please let me know if we may be of further assistance.

Sincerely,

LEE C. WHITE, *Chairman.*

LEGAL MEMORANDUM EXPLAINING THE RELATIONSHIP OF THE "COLTON" CASE TO THE PREVIOUS CONSTRUCTION OF THE FEDERAL POWER ACT

This memorandum analyzes the legal impact of the Supreme Court's *Colton* decision[1] which held that the Federal Power Commission has jurisdiction to regulate the sale of electric energy at wholesale by the Southern California Edison Company to the City of Colton, California. The Supreme Court's decision in *Colton* accords with the consistent history of prior judicial interpretation of the Federal Power Act. The Court of Appeals decision in *Colton*, which the Supreme Court reversed, would have signalled a novel departure from the previous interpretations of the law.

It should be noted at the outset that *Colton* is not a case about "public utility" status, which is the threshhold prerequisite to the various aspects of regulation under Part II of the Federal Power Act. Southern California Edison Company was admittedly a "public utility" and indeed, would remain a "public utility" under S. 218 so long as it maintains its present operations which extend to facilities in both Nevada and California. The *Colton* case raised only the issue of jurisdiction over a particular wholesale sale by a "public utility."

The facts of *Colton* may be summarized as follows: Edison acquired in Nevada and California energy generated at Federal dams in Nevada and Arizona, but made no sales in Nevada transmitted the energy into its system in California and sold energy from that system to the City of Colton for resale. The sales to Colton are sometimes described as consisting of "commingled" out-of-state and California-generated energy.

The statutory issue in *Colton* was whether the sale to the City was a "sale of electric energy at wholesale in interstate commerce" within the meaning of section 201(b) of the Federal Power Act. The Federal Power Commission concluded that under well-settled interpretation the sale to Colton met the statutory

[1] *Federal Power Commission* v. *Southern California Edison Co.*, 376 U.S. 205 (1964), reversing 310 F. 2d 784 (CA9, 1962).

test. *City of Colton* v. *Southern California Edison Co.*, 26 FPC 223 (1961), rehearing denied, 26 FPC 492 (1961).

The Court of Appeals reversed. It first held that Federal Power Commission jurisdiction over a sale of electric energy at wholesale in interstate commerce depends upon a finding in each case that the particular sale is national in character. This was a new test. It then concluded that the sale to Colton was not national in character because there was federal control over the acquisition by Southern California Edison of the interstate energy sold to the City, and because Edison has no customers outside of California.

The Supreme Court disapproved the test which the Court of Appeals read into the statute. The Supreme Court said:[2]

"The Court of Appeals expressly rejected the argument that § 201(b) incorporated a congressional decision against determining FPC's jurisdiction by such a case-by-case analysis, and in favor of employing a more mechanical test which would bring under federal regulation all sales of electric energy in interstate commerce at wholesale except those specifically exempted, and would exclude all retail sales. In reviewing the court's ruling on this question we do not write on a clean slate."

The Supreme Court reviewed the relevant decisions under the Federal Power Act and the Natural Gas Act, and then concluded: "our decisions have squarely rejected the view of the Court of Appeals that the scope of FPC jurisdiction over interstate sales of gas or electricity at wholesale is to be determined by a case-by-case analysis of the impact of state regulation upon the national interest."[3]

The Court referred specifically to *United States* v. *Public Utilities Commission of California*, 345 U.S. 295 (1953), and two cases under the Natural Gas Act which "grew out of the same judicial history as that part of the Federal Power Act with which we are here concerned."[4] *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U.S. 498 (1942) and *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission of Indiana*, 332 U.S. 507 (1947).

The jurisdictional provisions of the Federal Power Act have received extensive consideration in the United States Supreme Court and the various courts of appeals. Most of the cases have been concerned with the jurisdictional status of the company involved by virtue of its transmission[5] or sales at wholesale[6] of electric energy in interstate commerce. In some instances, both public utility status and jurisdiction over particular sales have been determined.[7] In other instances, as in *Colton*, the public utility status of the company was not in issue, but FPC jurisdiction over particular sales was contested.[8] S. 218 would overrule all but one of the eight cases upholding Commission jurisdiction cited in the footnotes to this paragraph.[9]

None of the cases involving jurisdiction under the Act have indicated that the

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[2] 376 U.S. at 211.

[3] *Id.* at 215.

[4] The judicial history referred to by the Court is the line of cases decided under the Commerce Clause before the passage of the relevant Parts of the Federal Power Act and Natural Gas Act, defining the limits of state power to regulate electricity and gas in interstate commerce. In *Missouri* v. *Kansas Gas Co.*, 265 U.S. 298 (1924), the Supreme Court held that the sale and delivery of commingled gas at wholesale by an interstate pipeline company is national in character and beyond the constitutional power of the states to regulate. In *Public Utilities Commission* v. *Attleboro Steam & Electric Company*, 273 U.S. 83 (1927), the Supreme Court held that a sale of electric energy at wholesale across statelines is beyond the power of the states to regulate. *Pennsylvania Gas Company* v. *Public Service Commission*, 252 U.S. 23 (1919), and *Public Utilities Commission* v. *Landon*, 249 U.S. 236 (1919), held that sales of gas at retail directly to consumers were local in character and subject to state regulation, even though some or all of the gas originated out-of-state.

[5] *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U.S. 61 (1943); *Arizona Edison Co., Inc.*, 194 F. 2d, 679 (CA9, 1952). These cases are instrumental in defining interstate commerce in electric energy. Compare *Federal Power Commission* v. *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515 (1945). *Connecticut Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953 (1942) cert. den., 319 U.S. 741 (1943); *Safe Harbor Water Power Corp.* v. *Federal Power Commission*, 179 F. 2d 179, 185 (CA3, 1949), cert. den., 339 U.S. 957; *Wisconsin Michigan Power Co.* v. *Federal Power Commission*, 197 F. 2d 472 (CA7, 1952), cert. den., 345 U.S. 934 (1953).

[6] *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953 (1942); *Safe Harbor Water Power Corp.* v. *Federal Power Commission*, note 6, *supra*; *Wisconsin Michigan Power Co.* v. *Federal Power Commission*, note 6, *supra*.

[7] *Pennsylvania Water & Power Co.* v. *Federal Power Commission*, 343 U.S. 414 (1952). *Public Utilities Commission of California*, 345 U.S. 295 (1953); *State of Wisconsin* v. *Federal Power Commission*, 201 F. 2d 183 (CADC 1952), cert. den., 345 U.S. 934 (1953).

[8] *U.S.* v. *Pennsylvania Water & Power Co.* v. *Federal Power Commission*, 345 U.S. 295 (1953); *State of Wisconsin* v. *Federal Power Commission*, 201 F. 2d 183 (CADC 1952), cert. den., 345 U.S. 934 (1953).

[9] The result in *Pennsylvania Water & Power Co.* would not be altered because Penn-Water's customers in Pennsylvania would not be exempt entities under subsection 201(f) as proposed to be amended by S. 218.

Commission should make a finding that a given company or transaction was "national in character." This contention was expressly rejected by the Court of Appeals of the District of Columbia Circuit in 1952 in *State of Wisconsin* v. *Federal Power Commission*, 201 F. 2d 183, 185, n.1. In that case, the Court of Appeals upheld FPC jurisdiction over sales at wholesale by the Wisconsin Power Company to municipalities in Wisconsin. The factual situation resembled that in *Colton* in several material respects. The company, which had no facilities or operatons outside of Wisconsin, purchased from an Illinois company at the state line energy which, commingled with greater amounts of Wisconsin-generated energy, it resold at wholesale to municipalities in Wisconsin.

In the *City of Colton* case the Supreme Court merely reaffirmed the principles which had been established in prior litigation under the Act.

The Supreme Court decision in *Colton* not only reaffirmed existing law, but was also consistent with actual practice. For the Commission had long regulated the type of wholesale sales in interstate commerce to municipalities, cooperatives and other local distribution companies over which authority would be removed by passage of S. 218. See, e.g., *Gulf States Utilities Co.*, 1 FPC 522 (1938) (ordering reduction of rates to several Louisiana municipalities); *Wisconsin Michigan Power Co.*, 10 FPC 17D (1950) aff'd, 197 F. 2d 472, cert. den. 345 U.S. 934 (ordering the company to cease charging improperly increased rates to customers in Wisconsin and Michigan: five municipalities, one cooperative and two investor-owned utilities); *Central Vermont Public Service Corporation*, 7 FPC 890, 992 (1948) (increased rate to village and local distribution companies suspended by the Commission, then withdrawn).

Our records show that as far back as 1947 there were over 250 rate schedules on file with this Commission for wholesale sales to municipalities and cooperatives. By June 1, 1961, just before *Colton* was decided by the Commission, this figure had risen to over 750. It is fair to state that at the time of *Colton* the principal if not the only issue as to Commission jurisdiction over any wholesale sale was whether it was in interstate commerce, and that if the answer to this question was in the affirmative jurisdiction attached.

JUNE 8, 1965.

RICHARD A. SOLOMON,
General Counsel.

Mr. MACDONALD. Our next witness is Mr. H. L. Baker, president of the Savannah Electric & Power Co. Mr. Baker.

STATEMENT OF H. L. BAKER, PRESIDENT, SAVANNAH ELECTRIC & POWER CO.

Mr. BAKER. Mr. Chairman and members of the committee, my name is H. L. Baker. I am president of the Savannah Electric & Power Co., Savannah, Chatham County, Ga. If I may depart from my script the Savannah electric company is not the company Chairman White alluded to in connection with this municipal dispute which was presented to the Federal Power Commission.

I think it is also appropriate at this time to mention that the State commissions are not in a 100-percent accord with the Federal Power Commission on all of these regulatory matters and there is a statement by Ben Wiggins, vice chairman of the Georgia Public Service Commission, which has been submitted in his absence for inclusion in the record. (See p. 262.)

The Savannah Electric & Power Co. was chartered under the laws of the State of Georgia in August 1921. It serves an area of approximately 2,000 square miles in the southeastern coastal section of Georgia with a population of some 220,000.

Approximately 90 percent of its business is in the Savannah Metropolitan area. It also serves most of Effingham County and very limited areas of Bryan, Screven, and Bullock Counties, Ga. It has no power

connections across State lines, purchases no energy from out-of-State sources, supplies no municipalities or cooperatives at wholesale.

The company has two interconnections with the Georgia Power Co. through 115,000-volt transmission lines, the first of which was constructed in 1941 and the second in 1965. A revised agreement for a 5-year term was entered into on May 31, 1961, between Savannah Electric and the Georgia Power Co., covering the terms of the interconnection. This contract was later extended to May 31, 1970, by letter of agreement. As both the original and the second interconnections were considered as strictly intrastate transactions by both companies, subject solely to the jurisdiction of the Georgia Public Service Commission, copies of the agreements were not submitted to the Federal Power Commission at the time of execution.

However, in November of 1965, 24 years after the initial interconnection, the Federal Power Commission requested Georgia Power Co. to file the latest agreement in a manner provided in part 35 of the Commission's regulations under the Federal Power Act.

In late December of 1965, the Federal Power Commission advised Savannah that Georgia had tendered the aforesaid agreement for filing, and advised that Savannah could either file a certificate of concurrence in the form indicated in section 131.52 of the Commission's regulations, or file the instrument as otherwise provided in part 35 of the Commission's regulations.

In compliance with such request, both Georgia and Savannah filed with the Federal Power Commission the rate schedule represented by the contract, dated May 31, 1961, with a covering statement by both companies that the filing was without prejudice to their right to question the jurisdiction of the Federal Power Commission, and both reserved the right to deny the Commission's jurisdiction in the premises.

Although we have cooperated with the Federal Power Commission, the company has consistently reserved its rights to question the jurisdiction of the Commission. On March 23, 1964, we filed an original cost property study, again without prejudice to our right to deny such jurisdiction; and we have also filed other requested reports with the Federal Power Commission, including annual reports, forms 1 and 12, and monthly reports, forms 1 and 12E, which are filed as matters of information.

Under the agreement with the Georgia Power Co., there is no commitment to purchase energy. The purpose of the agreement is for the interchange of reserve capacity for emergency and temporary purposes. Under a formula contained in the contract, the Georgia Power Co. pays the Savannah Electric & Power Co. for surplus capacity, when such surplus exists. When Savannah is deficient in reserve capacity under the formula, it pays the Georgia Power Co. at the same rate per kilowatt as Georgia pays to Savannah when Savannah has a surplus.

As a result of negotiations recently completed, the company has reached a tentative agreement with Georgia, which will have the effect of extending the contract through May 31, 1973, and modifying certain of its provisions with respect to balancing the sale of surplus capacity with payments for deficient capacity over the period of the contract.

The contract is further modified to provide that Savannah maintain approximately 15-percent reserve as against 20-percent reserve capacity in the previous agreement. The new contract also provides a slight reduction in rates for exchange of energy related to capacity being sold or purchased, and provides rates for emergency and economy energy when available.

Savannah has two thermal generating plants within Chatham County. One is located within the corporate limits of the city of Savannah with a capability of 123 megawatts, known as the Riverside Station and located on the Savannah River.

A second and newer plant, located 7 miles upstream on the Savannah River near Port Wentworth, has a capability of 216 megawatts, giving the company a total of 339 megawatts system generating capability. Our 1967 peakload to date occurred in August and amounted to 230.9 megawatts, indicating a substantial current reserve capacity. The company has made a commitment for an additional turbine of 125-megawatt capability for delivery in August 1970, with commercial operation scheduled for May 1971.

The two interconnections with the Georgia Power Co. are both located well in excess of 100 miles from any of Georgia's interconnections with any out-of-State power sources, with substantial load centers on Georgia's system intervening in each instance.

The purchase of energy by Savannah during the 5-year period ended December 31, 1966, which occurred during emergencies or temporary periods of peak shaving, has amounted to only 4,237.6 megawatt-hours of the total system requirements of 4,850,000 megawatt-hours, or less than one-tenth of 1 percent of Savannah's requirements during that 5-year period.

In 1966, the annual report of Georgia Power Co. indicated total sales of 19.62 million kilowatt-hours. During that year, Savannah delivered to Georgia only 20.9 kilowatt-hours, an infinitesimal percentage of Georgia's system requirements.

Savannah Electric is the smallest, investor-owned utility in the entire Southeast, having less than 64,000 customers and current annual revenues of approximately $17½ million. It has a total of 392 employees.

The company is and has been, since its organization in August 1921, subject to the jurisdiction of the Georgia Public Service Commission as to its rates, service, financing, and accounting. As the company operates wholly within the State of Georgia, has no interconnection across State lines, neither buys nor sells to any utilities in other States, serves no municipalities or REA's for resale, and as its interconnection with Georgia is for the purpose of providing reserve capacity and for the exchange of energy during emergencies or temporary periods, it is inconceivable that the jurisdiction of the Federal Power Commission should be interpreted to cover such situations as exist in the operations of the Savannah Electric & Power Co.

The imposition of such jurisdiction would simply impose the burden of substantial additional expense on the company and its customers, and supplant or duplicate the regulation of the company, which has been so efficiently administered in the public interest for all these years by the Georgia Public Service Commission.

Diverting again from the prepared testimony, we listed some of the reports earlier which have to be filed with the Federal Power

Commission. These are by no means all of them and there are substantial differences between the Federal Power Commission and the State commissions as to the treatment of various things, some of which involve interpretations of the intent of Congress.

I refer now to the treatment of the deferred taxes. There are many others.

In view of the Supreme Court decision in the *Colton* case, and the Federal Power Commission's 3-to-2 decision in the *Florida Power & Light* case, we strongly urge favorable consideration of the House bill 5348 to assure the administration of the Federal Power Act, as amended in 1935, as it was intended by the Congress.

As a representative of a modest-size, intrastate electric utility, I deeply appreciate the courtesy of the committee in permitting me to make this appearance.

Thank you.

Mr. MACDONALD. Thank you, sir. Are there any questions?

Mr. BROWN of Ohio. I just want to ask one question. Would you agree or, if you wouldn't agree, would you give me—not here, but in a letter—a list of the reasons other than those ticked off by Mr. White for not wanting Federal regulation?

To remind you, he mentioned regulation by an additional body per se, the rate question with regard to competition and discrimination in wholesale rates, compulsory interconnection, supervision of possible mergers, and supervision of securities where they are not regulated by the State in addition to the auditing and accounting procedures.

Just briefly, is it your thought that there are other reasons, or does this pretty well cover it?

Mr. BAKER. I think that covers the field pretty well. There may be some others that would occur. As I mentioned, the wholesale rate situation doesn't apply to the Savannah Electric & Power Co.

Mr. BROWN of Ohio. Thank you.

Mr. MACDONALD. Thank you very much, sir.

Mr. BAKER. Thank you.

Mr. MACDONALD. Mr. Fischer Black, president of the Tampa Electric Co.

STATEMENT OF FISCHER S. BLACK, PRESIDENT, TAMPA ELECTRIC CO.

Mr. BLACK. Mr. Chairman and members of the committee, I appreciate this opportunity of presenting a very short statement to you on the position of the Tampa Electric Co.

The Tampa Electric Co. is a Florida corporation engaged in the generation, transmission, distribution, and sale of electricity solely within the State of Florida. Its service territory is located on the west coast of Florida in the Tampa Bay area, and includes substantially all of Hillsborough County and adjacent portions of Polk, Pasco, and Pinellas Counties. The map of our system which is submitted herewith (see fig. 1, p. 148) shows our location approximately in the center of the State of Florida with our most northern boundary being about 160 miles south of the Georgia-Florida State line.

(The map referred to follows:)

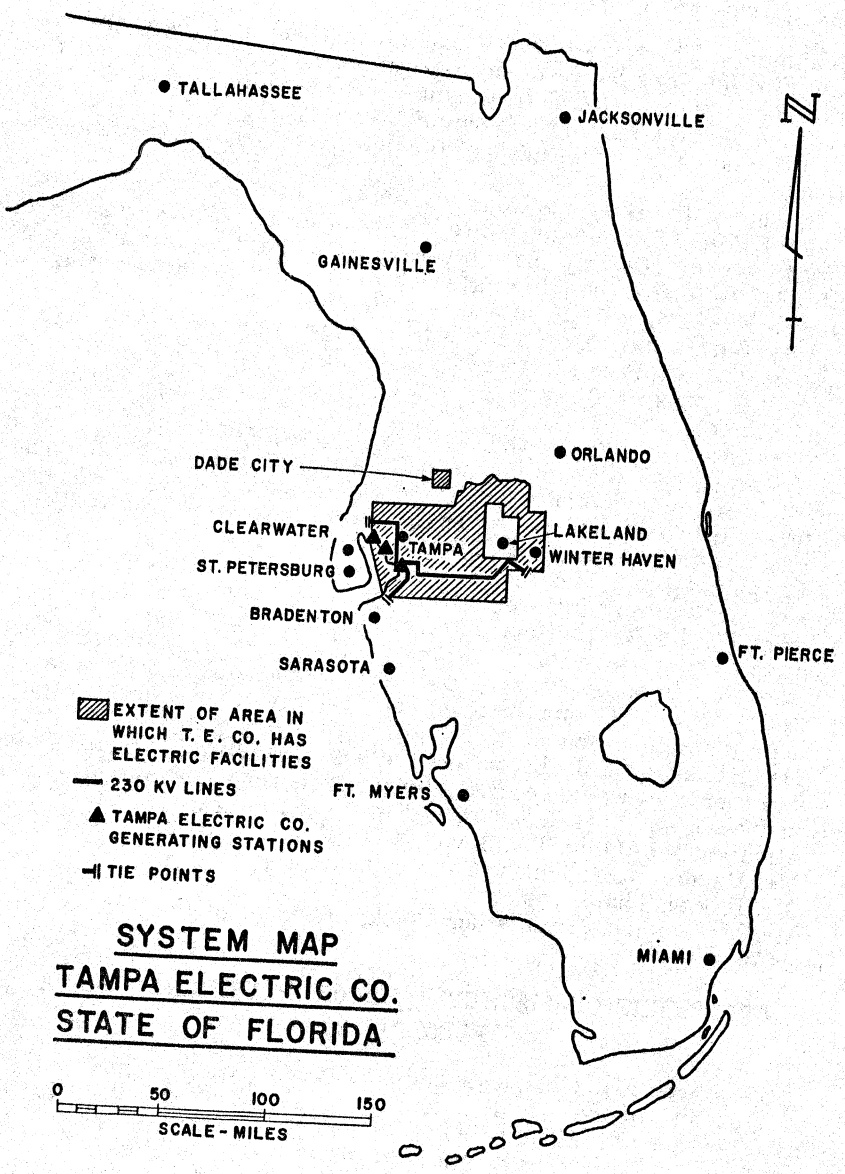


FIGURE 1

Mr. BLACK. We serve 186,000 customers in a territory comprising over 1,900 square miles.

I would like to just refer a moment to this map which was used yesterday. This is the service lines of the Tampa Electric Co. here in the middle of the State. We have very strong ties with the Florida Power Corp. both on the west side of our system and on the east side of our system and a similar tie with the Florida Power & Light Co. on the south side of our system.

These ties are strong enough if the capacity were available to carry the entire load of the Tampa Electric Co. system. I would also like to point out that in tying in to the Florida Power system which is jurisdictional that we have this long stretch of line to the Georgia line and there is no conceivable way that we have been able to figure out how power from Georgia can get into our system.

I would also like to say, still diverting from my prepared statement, that we are basically objecting to further regulation of the Tampa Electric Co. because this further regulation can serve no useful purpose. We have no municipals or cooperatives that we are serving. We are adequately served and regulated by the Public Service Commission of the State of Florida and there is no purpose that we know of that could be served to the benefit of anyone by additional regulation by the Federal Power Commission.

Now to return to my statement.

Tampa Electric Co. provides approximately 15 percent of the total requirements for Florida. Its growth rate, like all areas in the State, has been excellent. The Florida Public Service Commission has closely watched this growth to see that the company provides reliable, high-quality service to its customers at the lowest reasonable rate. The entire State has an enviable service record despite the occasional severe weather due to hurricanes.

We have a very fine service record in the State of Florida with regard to outages. This record has been accomplished primarily by designing our facilities for high reliability during such disturbances. However, our transmission interconnections with neighboring utilities offer further protection to our customers during these emergencies. These interconnections enable each of us to draw on each other for surplus power when it is available and can be distributed advantageously for consumption in Florida.

We are also using these interconnections to improve service reliability and to increase available reserve capacity through coordination of generation maintenance schedules, with other utilities. We do not operate in isolation. We have very strong ties.

However, Tampa Electric's interchange of energy with its neighbors is entirely intrastate. No other State has any interest in such transactions, and since concededly the State commission regulates the retail sales of all Florida companies, we can see no reason why the consumers should be burdened with additional regulation by the Federal Power Commission.

I would like to point out here that we report our rate of return to our State commission monthly. Also the Federal Power Commission now receives regularly monthly reports on power transactions and each year a full report on investment, income, expenses and all other facts useful for any studies which they may wish to make. They do not need additional jurisdiction over the Tampa Electric to secure this information.

The Tampa Electric Co. has not entered into any contracts that involve any State other than Florida. We have no connection and no power flow to another State. Therefore we see no reason for a Federal agency to assume jurisdiction over us.

But notwithstanding these facts, on December 24, 1963, as in other case the Federal Power Commission advised the Tampa Electric Co.

by letter (a copy of which is submitted herewith) that Tampa Electric Co. was a "public utility under the meaning of section 201(e) of the Federal Power Act."

(The letter referred to follows:)

FEDERAL POWER COMMISSION,
Washington, D.C., December 24, 1963.

TAMPA ELECTRIC CO.
Tampa, Fla.
(Attention of Mr. W. C. MacInnes, President)

GENTLEMEN: Your company is included in this Commission's "List of Electric Power Suppliers with Annual Operating Revenues of $2,500,000 or More Classified as Public Utilities under the Federal Power Act," as of January 1, 1963. Information available to the Commission, including data set forth in the 1962 FPC Form No. 1, Annual Report, and in the 1962 FPC Form No. 12, Power System Statement, covering your company and companies with which it interconnects directly or indirectly indicates that you own or operate facilities for the transmission or sale for resale of energy in interstate commerce, and are thus a public utility under the meaning of Section 201 (e) of the Federal Power Act.

Public utilities under the Power Act are required to comply with all accounting rules and regulations of this Commission. As applied to your company, those requirements necessitate the maintenance of your plant accounts on an original cost basis as prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees; and the preparation and filing with the Commission of reclassification and original cost studies of electric plant. The form of those studies is as specified in the Commission's order dated May 11, 1937 "Electric Plant Instruction 2–D, Uniform System of Accounts" and Section 120.3 of the Commission's Regulations under the Power Act (18 Code of Federal Regulations 120.3).

Additionally, your attention is invited to the Commission's tax accounting provisions relative to deferred income taxes arising from rapid depreciation expense write-offs pursuant to Section 167 and 168 of the Internal Revenue Code of 1954, and investment tax credit pursuant to Section 2 of the Internal Revenue Act of 1962. The former provisions appear in the pamphlet copy of the Commission's Uniform System of Accounts (Accounts 281, 282, 410 and 411). The latter provisions are interim accounting provisions prescribed by the Commission's Order No. 261 issued January 9, 1963, a copy of which is enclosed for your convenience.

Information available to the Commission also indicates that your company transmits or interchanges, and sells electric energy in interstate commerce for resale to a number of purchasers. Rate schedules for such transactions are required to be filed with this Commission in the manner provided in Part 35 of the Commission's Regulations under the Federal Power Act. A copy of the Commission's Order No. 271 issued September 26, 1963 revising Part 35 of the Commission's Regulations under the Federal Power Act is enclosed for your convenience.

In addition to the documents heretofore mentioned there are also enclosed herewith copies of the following documents:

Order of May 11, 1937
Uniform System of Accounts Prescribed for Public Utilities and Licensees
Regulations to Govern the Preservation of Records
List of Units of Property
Federal Power Act
Regulations under the Federal Power Act
Rules of Practice and Procedure

Additional copies of the Federal Power Act, Uniform System of Accounts, Commission Regulations and other Commission publications may be obtained upon payment of the nominal charges as indicated in the enclosed Commission publication list.

Your company is requested to advise the Commission within sixty days concerning your plans for submitting the original cost studies and rate schedules.

Very truly yours,

GORDON M. GRANT, *Secretary.*

Mr. BLACK. We disagreed with the Commission's conclusion on the grounds that the Tampa Electric Co.'s customers are adequately protected by the fair and just regulation furnished by the Florida

Public Service Commission whose primary concern is the price and service to the ultimate consumers in Florida and because transactions of the Tampa Electric Co. are local in character and come clearly within the statement of congressional policy contained in the present act that Federal regulation should "extend only to those matters which are not subject to the regulation by the States."

As you know, the Federal Power Commission has recently ruled that the Florida Power and Light Co. is a public utility under the Federal Power Act, primarily due to their interconnection with the Florida Power Corp. The Commissioners ruled that the company was jurisdictional on a very unusual and theoretical premise which has been referred to before.

This same type of reasoning would most likely be applied to the Tampa Electric Co. in a similar case since we are interconnected with Florida Power Corp.

The Commission's decision sets out a theoretical basis which would undoubtedly conclude that power from Tampa Electric Co. could flow to Georgia and that power from Georgia could flow to Tampa Electric.

However, repeated studies fail to show that any out-of-State power enters the Tampa Electric Co. service area or that any Tampa Electric Co. power leaves the State of Florida.

To illustrate another fallacy in this decision of the Federal Power Commission, consider this situation. Company A is connected to company B and both companies are wholly intrastate. Company B elects to interconnect across State lines with another utility. Company A, through no action of its own, would, under the recent *Florida Power & Light* decision, automatically fall under the jurisdiction of the Federal Power Commission merely because of the interconnection with company B.

Under the Federal Power Commission theories, this could involve not just the two parties, but could involve jurisdiction over an innocent bystander several systems removed from the State line purely because they were interconnected, and this was previously illustrated by the Texas situation.

Such actions by the Federal Power Commission clearly spell out the need for clarification of the Federal Power Act to prevent FPC jurisdiction where none is needed and where none was intended.

It should also be recognized that dual regulation is conflicting regulation. Federal regulatory agencies do not always agree with the State commissions. Federal regulation results in the adoption of standard practices and shortcuts that bypass the more complete knowledge and awareness, by the State commission, of local needs and conditions. Conflicts between regulatory agencies are bound to result. Such conflicts are not only unnecessary but may well be injurious to the utilities and their customers.

For instance, great confusion now exists in the area of accounting for the temporary tax savings which result from the use of accelerated depreciation.

The Federal Power Commission has in many cases ordered utilities to "flow through" these savings to the customer. This lowers present rates at the expense of future customers.

On the other hand, most of the States have adopted the so-called "normalization" approach which assumes, for rate purposes, the con-

tinued use of a straight-line depreciation even though a faster method is being used for tax purposes. This approach provides the utility with funds to invest in facilities as originally intended by Congress.

Tampa Electric Co. "normalizes" and uses the reserves created thereby to invest in property for benefit of the customer. But they could not do this under the Federal Power Commission's accounting regulations.

Failure to pass the proposed legislation would mean that customers of the Tampa Electric Co. would be required to pay the added costs of unnecessary and burdensome dual regulation—once by the State regulatory commissions and once by the Federal Power Commission.

However, if enacted, the legislation would leave the regulation of the wholly intrastate utility companies to the State commissions. The history of rates and service reliability in the State of Florida clearly demonstrates there is no need for dual regulation. In the past 2 years Tampa Electric Co. has reduced rates some $4 million.

The bills being considered by this committee clearly spell out and remove any possible doubt as to jurisdiction. A company to be exempt must be totally situated in a single State. It must have no transmission lines connecting directly with a utility in another State and it must have no contracts with a utility in another State.

Therefore, H. R. 5348 and related bills leave commerce across State lines subject to the Federal Power Commission. It leaves commerce within the State subject to the jurisdiction of the State commission. Thus, the bill merely reaffirms the original intent of Congress.

We urge the approval of House bill 5348 or a similar bill.

I do appreciate this opportunity to appear before you.

Mr. MACDONALD. Thank you, sir. I just have one question. Does your company have any wholesale sales?

Mr. BLACK. No, sir.

Mr. MACDONALD. I think it is a word of art in the field of power and I know in other fields it is different. Would you describe for me just briefly the difference between retail and wholesale. What is a wholesale sale in power?

Mr. BLACK. Under the Federal Power Act it is wholesale for resale. In other words, we have a community of Lakeland, the town of Lakeland, next to us and we had a contract with Lakeland to sell to them and they are reselling to their customers that is a wholesale sale for resale under the terms of the Federal Power Act.

Mr. MACDONALD. Are there any power companies in Florida that do have wholesale sales?

Mr. BLACK. Yes. Florida Power Corp. is a good example. They have numerous cases.

Mr. MACDONALD. That is the only one you know?

Mr. BLACK. Well, if it is a case of selling to cooperatives, I think the Florida Power & Light Co. sells to some cooperatives.

Mr. MACDONALD. Well, under that theory they would come under the FPC jurisdiction, would they not?

Mr. BLACK. A jurisdictional company comes under the jurisdiction of the Federal Power Commission.

Mr. MACDONALD. Excuse me.

Mr. BLACK. In a jurisdictional company. In other words, the Florida Power Corp. is under the jurisdiction of the Federal Power Commission.

Mr. MACDONALD. Right.

Mr. BLACK. And therefore, their wholesale sales for resale come under the jurisdiction of the Federal Power Commission.

Mr. MACDONALD. Do you happen to know if the company in this case that appeared here in favor of this bill has wholesale sales?

Mr. BLACK. I don't believe I understood your question.

Mr. MACDONALD. It is simple. I distinguish between the names of the two companies. I guess the Florida Light——

Mr. BLACK. Florida Power and Florida Power & Light.

Mr. MACDONALD. Yes.

Mr. BLACK. Florida Power & Light is the one that appeared here?

Mr. MACDONALD. Right. Do they have any wholesale sales that you know of?

Mr. BLACK. I think they are right here and they can answer that question for you.

Mr. MACDONALD. I don't want to get them back on the stand and that is why I was going to ask you if you don't mind I will ask them.

Mr. BLACK. I say they do sell to electric cooperatives.

Mr. ROBERT H. FITE (president, Florida Power & Light Co.). Our company serves seven electric cooperatives wholesale and they resell electricity to their customers. We sell to no municipalities for resale.

Mr. MACDONALD. Wouldn't you come under the FPC under that theory?

Mr. FITE. If we were jurisdictional the FPC would have control, have jurisdiction, of those seven contracts, but we are not jurisdictional yet. We hope we won't be, and they do not now have control jurisdictionally over those sales. The State of Florida doesn't either, but the commission in Florida has asked the legislature to give them that permission and authority.

The State can do that. It is just up to the legislature. A bill was introduced in this last session of the Florida State Legislature. It was not enacted into law, but the commission asked that it be so enacted and they are in favor, so they say, of assuming this jurisdiction. They are certainly perfectly capable of regulating wholesale rates.

Mr. MACDONALD. Thank you very much. Mr. Broyhill.

Mr. BROYHILL. I just have one question, Mr. Chairman. I wouldn't like to go into a lot of detail, Mr. Black, but in your statement at the bottom of page 4 you say:

> Conflicts between regulatory agencies are bound to result. Such conflicts are not only unnecessary but may well be injurious to the utilities and their customers.

My question is in two parts. Can you explain briefly what conflicts you are talking about? No. 2, what injury could result from such conflicts?

Mr. BLACK. The best illustration is the one on page 5 where there is the disagreement with regard to the accounting for the temporary tax savings, which result from use of accelerated depreciation. If we are allowed for tax purposes as the law permits to take accelerated depreciation for tax purposes, the difference between the book depreciation and the accelerated depreciation are funds that we retain until the tax eventually comes due and these funds are not included as part of our rate base and the customer gets the benefit of these tax-free funds until such time as we have to pay them out in taxes.

This runs to a lot of money. Right now we have accumulated several million dollars in these accumulated funds due to the use of accelerated depreciation and the customers are getting this benefit.

Mr. BROYHILL. You are saying that somehow the customers will have to pay an increase.

Mr. BLACK. Yes, because eventually you will have to pay these taxes. Under accelerated depreciation you accelerate your depreciation of your property for tax purposes in the early years, but when you run out of depreciation, obviously you can no longer take it, and so in the latter years then of the life of the property you have already depreciated for tax purposes and therefore in setting up your books for tax purposes you no longer have it.

It is fairly complicated, but it is a fact.

Mr. BROWN of Ohio. Will the gentleman yield on this question?

One of the theories of accelerated depreciation has to do with inflation, doesn't it?

Mr. BLACK. It encourages you to invest your money in property, which we do, but it has nothing to do with inflation as such.

Mr. BROWN of Ohio. Doesn't it also provide for consideration of the possibility that the replacement or repair of this facility that you are depreciating may require additional funds beyond a simple 100 percent replacement value?

Mr. BLACK. No. If I understand what your question is I think it is primarily a device that Congress set up in order to encourage people to make investments in plant and what you do is you save taxes during the early life of this equipment over your normal depreciation.

In other words, we depreciate at 3 percent. Let's assume the accelerated depreciation was 6 percent for tax purposes.

Mr. BROWN of Ohio. We are saying the same thing I believe. Maybe I am not saying it in an accountant's language, but what I am trying to suggest is that you are encouraged not to maintain plant and equipment beyond its depreciated life, but rather to reinvest in replacement or new equipment earlier so as to get a higher depreciation rate.

Mr. BLACK. That is correct. It encourages industry to replace their equipment, their old equipment.

Mr. BROWN of Ohio. You have the option then of either replacing it or——

Mr. BLACK. Building new equipment or adding to it.

Mr. BROWN of Ohio (continuing). Or not replacing it and not getting the advantage of depreciation.

Mr. BLACK. That is right, unless you make the investment that you take the depreciation on, you don't get it.

Mr. BROWN of Ohio. Well, just one more point if I may. The theory also includes the thought that replacement in and of itself may lower costs.

Mr. BLACK. Yes. That is correct.

Mr. BROWN of Ohio. So that if you reinvest when you have run out of depreciation, you not only get the advantage of the higher rate of depreciation, but you also get the savings of more efficient equipment?

Mr. BLACK. I think that is quite true.

Mr. BROWN of Ohio. And this in turn results in a savings to the customer or greater return for the utility, doesn't it?

Mr. BLACK. That is correct, but the Federal Power Commission doesn't permit you to retain these funds. They make you flow them through to the customer in rate reductions.

Mr. BROWN of Ohio. But you are talking about a business decision here when you are talking about the increase in cost because the depreciation is reduced. This is a decision of the individual utility and if the utility doesn't make that decision then its customers pay for it in higher rates or it pays for it in reduced profits?

Mr. BLACK. Well, in our case of course we add equipment basically to supply the needs of a customer. In other words, we have to put in a generator because the load demands it, the service demands it. So we are going to put this generator in most likely anyway.

So if you view it from this perspective that this equipment is going in anyway, then the difference in the accounting treatment is the vital factor. We don't have the opportunity to say whether we put the generator in or not. We have to put it in in order to serve our customers.

Mr. BROWN of Ohio. But that generator has a depreciable life of—you said, 3 percent, so I presume the depreciable life is—33 years or something in that nature.

Mr. BLACK. Right.

Mr. BROWN of Ohio. If it has a depreciable life of 33 years from an accounting standpoint and actually lasts 50 years, the fact that you keep it on the line for 50 years is a decision——

Mr. BLACK. Is a management decision

Mr. BROWN of Ohio (continuing). A management decision, yes, and the accounting procedure and the depreciation allowed is to encourage you to replace that sooner and presumably the customer would benefit also if you replaced it sooner, isn't that the case, or isn't there that much change in technology?

Mr. BLACK. At the end of its life——

Mr. BROWN of Ohio. Accounting of life or real life?

Mr. BLACK. Accountingwise there isn't any difference after 33 years, because taxwise you got some of it earlier in the period. In the latter period you got less depreciation taxwise. So far as books are concerned you have the same depreciation each year.

Mr. BROWN of Ohio. Yes, but it is the tax business that you started out talking about just a few minutes ago and that is what I am trying to get at.

Mr. BLACK. I am sorry I don't seem to make it clear.

Mr. MACDONALD. I think maybe this should go before the Ways and Means Committee.

Mr. BLACK. I will be glad to try to clarify it and drop you a note.

Mr. MACDONALD. May I ask a question?

Mr. BROWN of Ohio. Please do.

Mr. MACDONALD. One last question. What is the rate of return on investment for utilities in Florida?

Mr. BLACK. Well, it is different for each utility. The rate of return allowed to the Tampa Electric Co., is slightly under 7 percent.

Mr. MACDONALD. Well, I am sure you know what the other companies are. How does it vary?

Mr. BLACK. They are in this range.

Mr. MACDONALD. From 6 to 7 percent and from 7 percent up.

Mr. BLACK. From about six and three-quarters, six and a half to seven and a half, in that range.

Mr. MACDONALD. Thank you. Do you have any further questions?
Mr. BROWN of Ohio. No, sir.
Mr. MACDONALD. Thank you very much, sir.
Mr. BLACK. Thank you, sir.
Mr. MACDONALD. I have a statement here by Mr. William T. Crisp on behalf of the Tarheel Electric Membership Association, Inc., of Raleigh, N.C., and without objection it will be inserted in the record at this point.

(The statement referred to follows:)

STATEMENT OF WILLIAM T. CRISP, GENERAL COUNSEL, TARHEEL ELECTRIC MEMBERSHIP ASSOCIATION

Mr. Chairman, my name is William T. Crisp. I serve as general counsel for, and this statement is presented on behalf of, Tarheel Electric Membership Association, Incorporated, of Raleigh, North Carolina. Tarheel Electric is the statewide trade-service association of North Carolina's rural electric cooperatives. These cooperatives furnish electric service to some 240,000 meters—representing about a million individual people, businesses and institutions—from a network of approximately 44,000 transmission and distribution lines in 98 of North Carolina's 100 counties. The KWH input into their systems is well over 1 billion annually. All but a negligible portion of this power is "interstate" in character, since it is either purchased directly from, or in any event is delivered over the facilities of, four major investor-owned power companies. A portion of the power is delivered by power companies on behalf of Southeastern Power Administration, which sells directly to the cooperatives out of the Federal Government's Kerr, Philpott and Hartwell Reservoir Projects. (While these sales are not subject to FPC's "interstate wholesale sales" jurisdiction, the rates applying to these sales must be approved by FPC. 16 U.S.C.A. 825s.) The preponderance of our power supply is purchased at wholesale directly from the four companies (Virginia Electric & Power Company, Duke Power Company, Carolina Power & Light Company and Nantahala Power and Light Company), and these sales are subject to FPC's jurisdiction and have been so treated.

We have identified ourselves thusly so as to emphasize to the Subcommittee our familiarity with—and our concern to preserve and protect—the regulatory surveillance now exercised by the Federal Power Commission over our wholesale rates. We oppose H.R. 5348 because we apprehend that it will give rise to arrangements under which some if not all of our wholesale purchases from investor-owned companies will become exempted from this regulatory surveillance.

In further stating our opposition, let us first inform the Subcommittee that we have read carefully—and that we hereby adopt as our own—the statement in opposition to H.R. 5348 prepared and submitted, or to be submitted, by the National Rural Electric Cooperative Association, of which both Tarheel Electric and every electric cooperative in North Carolina are members. In supplementing that statement, we enjoin the Subcommittee to give consideration to the following:

In *Federal Power Commission* v. *Southern California Edison Company et al*, 84 Sup. Ct. 644 (1964) ("Colton"), the Supreme Court of the United States made it clear that FPC had—and that state regulatory commissions lacked—jurisdiction over interstate wholesale sales, even though such sales were *de minimus* in amount with respect to the particular wholesale (in-state) customer involved.

In *Indiana & Michigan Electric Company* v. *Federal Power Commission*, 365 F2d 180 (1966), the United States Court of Appeals, Seventh Circuit, affirming FPC, held that the Commission's jurisdiction applied even though *actual tracings* to prove that interstate energy had been involved in the subject (in-state) wholesale sales had not been performed.

In view of these two particular decisions, as well as the cases cited in the NRECA statement, it would be anomalous indeed if the Congress enacted H.R. 5348, thereby not only exempting certain wholesale sales in the State of Florida but establishing statutory exempting criteria on the basis of which many, many other such sales in other states will surely avoid FPC surveillance via the circumventing *legal* devices that will predictably be created for that purpose.

We emphasize the word "legal" for reasons grounded in firm Supreme Court interpretations on this subject. Both in the *Colton* case and in *Connecticut Light*

& *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.)

FEDERAL POWER ACT AMENDMENT OF 1967

FRIDAY, NOVEMBER 3, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Torbert H. Macdonald (chairman of the subcommittee) presiding.

Mr. MACDONALD. The hearings will come to order.

The first witness, as announced yesterday, is Mr. Homer T. Welch, of Fort Myers, Fla.

STATEMENT OF HOMER T. WELCH, JR., GENERAL MANAGER, LEE COUNTY (FLA.) REA ELECTRIC COOPERATIVE, AND REPRESENTING THE FLORIDA REA STATEWIDE ASSOCIATION

Mr. WELCH. Good morning, Mr. Chairman.

My name is Homer T. Welch, Jr. I am general manager of the Lee County Electric Cooperative, Inc., organized and incorporated under the nonprofit statutes of the State of Florida, with headquarters at North Fort Myers, Fla. We serve over 17,000 urban and farm members in Lee, Charlotte, Hendry, and Collier Counties.

I am also here representing the Florida REA Statewide Association which are some 15 in number, and have been requested to present their feelings and full support of H.R. 5338 and related bills.

Our cooperative purchases all of its power from the Florida Power & Light Co., and we are very well pleased with the service we have received; we consider the rates they have been charging are most reasonable. We have never requested a source of power nor help in our operations from the Florida Power & Light Co. that has not received immediate attention. We have had a territorial agreement with the Florida Power & Light Co. for many years and we have never had any reason to complain about the manner in which they have lived up to their agreement.

We have heard our Florida Public Service Commission kicked around as a weak outfit that doesn't exercise much control over the utilities in our State. Our group does not concur with that opinion one bit. Although our cooperative does not come under the jurisdiction of the Florida Public Service Commission, we have, on several occasions, done business with the commission and we have always been treated respectfully and our rights and needs have always received the attention which we felt was needed. They have been most fair in their treatment of our organizations.

We believe that the placing of our utilities that operate wholly within the boundaries of the State of Florida under the jurisdiction of the Federal Power Commission would be just another erosion of our State rights. We have seen too much of the authority, which should be in the hands of our local people who are responsible to the electorate of our State, sent to Washington. We do not think our utilities would be better regulated by the Federal Power Commission.

In the past whenever our cooperative association has had to work out wholesale rate problems or territorial problems, we have been able to solve these by discussions between our association and the private utilities involved. We have never had any help from the Federal Power Commission. The only time that the Federal Power Commission has intervened in a cooperative's rates the cooperative came out a heavy loser.

Our group is also disturbed because of the proceeding now pending before FPC on behalf of several Florida municipalities who are buying their power from Florida Power Corp. These municipalities are seeking to have their rates cut down to the rates given the REA's and the net result might well be a raise in the rate of the REA's. The same avenues were open to them as to us. When we were told the rates would be such-and-such and didn't approve, we got our rate people, made a thorough study of the situation, proved our point, and got the rates which are enjoyed today. The municipalities could have done likewise had they seen fit to do so.

The Federal Power Commission has agreed that they will not directly exert any control over the cooperatives but when they take control of our intrastate power companies they indirectly take control over the cooperatives' wholesale power rates.

The subjecting of our utilities to the jurisdiction of the Federal Power Commission would just create an unnecessary burden to our cooperative and the private utilities. It would force all of our companies to spend considerable time and money running back and forth to Washington to defend our companies from the unneeded control of this Commission.

Our cooperatives are very democratically controlled by our own members and their duly elected boards. We are also very thoroughly watched in our operations and rates by our own Rural Electrification Administration in Washington.

The people of the State of Florida, through their own utility commission, have certainly had their affairs very efficiently handled and, as far as rates are concerned, we think the history of the rate reductions, brought about by our commission over the last several years, speaks for itself. Our people have been well taken care of by our own commission.

May I also state for the 15 Florida cooperatives that we are not satisfied to leave this matter in the hands of the FPC for decision, for it was shown through Commissioner Bagge's dissenting opinion (opinion No. 511) issued January 5, 1967, the confusion which exists within the Commission with regard to FPC jurisdiction over cooperatives. We point further to the testimony of the former chairman of the Commission, Mr. Swidler, when he appeared before this committee in 1965. His testimony strongly supported the retention of jurisdiction of cooperatives by the FPC. The dissenting opinion of Commissioner Bagge and

the testimony of former Chairman Swidler points up the fact that the Commission, depending upon its composition, could at any time reverse the decision of the Commission as announced in the opinion No. 511 of January 5, 1967. It seems to us that, if for no other reason, this fact strongly indicates the need for favorable consideration of the pending bill.

Therefore, we all feel that putting our utilities under the jurisdiction of the Federal Power Commission would just be a duplication of controls and one that is not needed at this time.

We are certainly grateful to you for allowing us to express our feelings in regard to H.R. 5348 and related bills. We feel that our Congressmen are doing a fine job in keeping control of our affairs in the hands of our own people. We approve of this bill and respectfully request that you report it favorably.

Thank you, Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Welch. I just have two short questions of you.

Is there a national organization of the REA?

Mr. WELCH. Yes; the National Rural Electric Cooperative Association. They will take an opposite view from that which our statewide association has taken at the present time, sir.

Mr. MACDONALD. How do you explain that?

Mr. WELCH. We feel in our group that we have a different situation in Florida than that which has existed in other parts of the country, sir.

Since we have been respectfully treated by the majority of our people down there we felt we were better able on our own grounds to take care of our affairs than to have it taken care of here in Washington. Our national people do not agree with this. We are not here without the knowledge of our administrator, Mr. Clapp. He knows we are here and he has approved of our action. He says "I can't agree with what you are thinking but you boys are down there running your own show. You have done a good job of it. I am not going to interfere or bother with it."

Mr. MACDONALD. All right. The second question refers to page 2 in your statement. You said that the only time that the Federal Power Commission has intervened in cooperatives' rates, the cooperative came out a heavy loser.

Mr. WELCH. Yes.

Mr. MACDONALD. Would you like to document that?

Mr. WELCH. Mr. Chairman, I don't think the Commission, at the time they reviewed this case—and it was a case between the city of Clewiston——

Mr. MACDONALD. The city of what?

Mr. WELCH. Clewiston, Fla. The city of Clewiston is known as the "sugar town of Florida" and for many years the policies and affairs of that utility down there have been handled more or less by the U.S. Sugar Corp. They had a rather unique situation in which the Florida Power & Light Co., was selling power to the cooperative. Florida Power & Light Co., has no commitments to any municipality. The municipality of Clewiston was buying its power from the U.S. Sugar Corp. The Sugar Corp., did not have enough power as the city grew to take care of it. So it appealed to the cooperative and the cooperative

built transmission lines and expended a great deal of money serving that load. The people of Clewiston, from what we gather, have somewhat gotten out from under the control of the Sugar Corp., and they decided they wanted a better rate situation. When the Federal Power Commission was appealed to by the people of Clewiston they came in, intervened in the case, and I do not think that they gave the cooperative quite a fair break. The co-op right now is practically wheeling this power at very, very small margin. I do not believe they will be able to pay out the investment that they have made, in a great many years. At least, that is the story as we get it, sir.

Mr. MACDONALD. But you have no personal knowledge of it?

Mr. WELCH. No, sir; no.

Mr. MACDONALD. Thank you. Mr. Broyhill?

Mr. BROYHILL. Mr. Chairman, that was the question I was going to ask, whether or not he had any further documentation on that point.

Mr. WELCH. All we have is what came up—I am on the executive board of the Florida Statewide Association. And this was the word that was brought up to us by our member cooperative.

Mr. BROYHILL. I want to thank you for a very clear, short and to-the-point statement.

Mr. WELCH. Thank you, Mr. Broyhill. We appreciate the opportunity to appear.

Mr. Chairman, your kindness is appreciated, sir.

Mr. MACDONALD. Thank you very much.

The next witness is Mr. Augustus Fortner of Miami, Fla.

STATEMENT OF AUGUSTUS "TOMMY" FORTNER, BUSINESS MANAGER, SYSTEM COUNCIL U–4, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Mr. FORTNER. Mr. Chairman, I appreciate the opportunity to appear here in support of H.R. 5348 and other related bills introduced by the various Congressmen from our State.

My name is Augustus "Tommy" Fortner, business manager of the International Brotherhood of Electrical Workers, System Council U–4, representing 2,991 employees of the Florida Power & Light Co. My interest in House bill 5348 has come about as a result of the Federal Power Commission's recent attempt to put the Florida Light & Power Co. under their jurisdiction. I do not feel that it is necessary to impose this jurisdiction on a company that operates solely within the boundaries of one State. This company has been under the effective regulation of the Florida Public Service Commission of the State of Florida for 16 years. It is certainly evident that the State commission has done an excellent job of regulation when we consider that the price paid per kilowatt-hour by our residential customers has been reduced about one-third since 1956.

According to Mr. William L. Webb of the FPC's Office of Public Information, the Commission has 1,120 employees who are paid a salary of $12,050,000. Now, it seems obvious to me that the Federal Power Commission is going to have to increase its payroll and incur other additional expenses to bring this company under regulation. If they do not have to increase their work force, they have too many employees on the payroll now. With an average salary of better than $10,000 per

employee, I, as a taxpayer, do not wish to see them increase the number of employees to regulate Florida Power & Light Co., which until recently was considered to be outside of the Federal Power Commission's jurisdiction and has been under State regulation for many years. As taxpayers of the United States, my membership can see no justification for this Government agency to incur additional costs.

I am not alone as a union representative. There are other union groups who have joined me in supporting this legislation and similar legislation in the Senate. The Florida Electrical Workers Association voted unanimously to support this. I have a letter here from System Council U–25 of Chicago, representing a membership on Commonwealth Edison that I would like to read into the record:

MAY 11, 1967.

Hon. EVERETT M. DIRKSEN,
U.S. Senate, Washington, D.C.

DEAR SENATOR DIRKSEN: This System Council representing the 8,500 physical and clerical employees of the Commonwealth Edison Co., request your support of Senate bill 1365 which amends the Federal Power Act with respect to the jurisdiction of the Federal Power Commission.

We are concerned with the FPC acquiring jurisdiction over the Florida Power & Light Co., which the records will show is ably regulated by the Public Service Commission of Florida.

I would appreciate hearing from you as to your position on Senate bill 1365.

Best wishes.

Respectfully,

VINCENT A. O'REILLY,
Secretary-Treasurer.

I have another letter from the National Federation of Post Office Motor Vehicle Employees that I would also like to read into the record:

JULY 6, 1967.

Hon. CLAUDE PEPPER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN PEPPER: The National Federation of Post Office Vehicle Employees, AFL–CIO, in support of the employees of the Florida Power & Light Co., would like to take this means of thanking you for introducing H.R. 5637.

Since I am a resident of Dade County, and have many friends among the employees of the Florida Power & Light Co., I am acquainted with their desire to see this important bill become law.

I know that you will continue to support this bill which is of the utmost concern to the employees of the Florida Power & Light Co., and I want you to know that if there is any way that this union can be of assistance to you in this regard, please feel free to call on us.

I remain,

Sincerely yours,

CHESTER W. PARRISH,
National Secretary-Treasurer.

While supporting Senate bill 1365, I wrote to Senator Smathers and and mentioned that I did not feel that the customers and employees of the Florida Light & Power Co. should be saddled with the additional accounting cost that this company would incur by coming under Federal Power Commissioner jurisdiction. Senator Smathers sent a copy of my letter to the Commission. In answer to Senator Smathers' letter, Mr. Solomon, FPC counsel, wrote that the Commission found no evidence to show that compliance would put "burdensome" accounting requirements on the Florida Power & Light Co. I, in my capacity, do not have easy access to the accounting procedures of the Florida Power & Light Co. nor to the requirements of the Federal Power Commission.

I certainly am not an accountant, but I, in my capacity, do make reports to the Federal Government. These reports are referred to as simple, uncomplicated reports, but they cost my membership money to maintain them and send them. I'm not saying that the reports that I make are not necessary but they have convinced me that any unnecessary Government reporting or controls should be eliminated. The Federal Power Commission's definition of "burdensome" is a matter of opinion. Whether this reporting will be burdensome in their opinion or not, it will cost additional money unnecessarily—money that, in my opinion, can be shared by Florida Power & Light employees and customers on that property.

It is for these reasons that my membership and I are supporting House bill 5348 which, in our opinion, will put some limits on how far this Government agency can reach out and regulate the American public's life.

Again, I appreciate the opportunity for testifying.

Mr. MACDONALD. Thank you very much, sir, for your contribution to the hearings.

Once again, I just have two questions of you. As I understand it from your testimony on page 5, you talk about the necessity of you, as a union official, having to report to the Federal Government.

Mr. FORTNER. Yes.

Mr. MACDONALD. That is under the Taft-Hartley regulations, is it not?

Mr. FORTNER. Some under the Taft-Hartley, but primarily under the more recent Landrum-Griffin Act, such as sections 1, 2, and 3 of the Labor Union-Management Reporting and Disclosure Act.

Mr. MACDONALD. My point is that there is no requirement in Florida, is there, that you have to report to the State legislature or the Governor of Florida?

Mr. FORTNER. You have to report to Tom Adams, secretary of state, in order to obtain a business manager's license and to keep them up.

Mr. MACDONALD. Yes, but I am talking about the workings of your union.

Mr. FORTNER. None, other than in negotiations, or something of that type, where you have to keep them up to date; not the State mediation but the Federal mediation agency updated.

Mr. MACDONALD. So the analogy is not quite accurate, then, of duplicate reporting, which you draw between the Florida Power & Light Co. and that of your union.

Mr. FORTNER. No, sir. The point I was trying to make, Mr. Chairman, is that all the information that I can obtain leads me to the belief that it is obvious that the FPC asserting jurisdiction over the company would require the company to file duplicate reporting. I say that money—in my position as business manager—I would rather have the opportunity to try to negotiate that money for my membership than spending it for Federal regulation.

Mr. MACDONALD. Yes, sir. My last question: Are you here representing just your local or is this the position of the AFL–CIO?

Mr. FORTNER. I am here representing the System Council U–4, which is comprised of 11 local unions in the State of Florida. We are affiliated with the national AFL–CIO.

Mr. MACDONALD. Do you happen to know the position of the national organization?

Mr. FORTNER. Yes, I know it very well. Mr. Biemiller and all of them are aware of my testifying here. But, you see, I checked with my people——

Mr. MACDONALD. I understand that. You would not get elected unless you did.

Mr. FORTNER. Could I answer your question?

Mr. MACDONALD. You have not answered my question.

Mr. FORTNER. I am fixing to right now. I checked with my people, and that is what I get paid to do. Now, as far as the national AFL–CIO's position, I do not know, have any knowledge whatsoever of any representative consulting or checking with the affiliates of the AFL–CIO before they assumed their position.

Mr. MACDONALD. Do you know what the national, if I can use that term because I guess you represent—are you an international representative?

Mr. FORTNER. I am not an international representative. I am business manager for System Council U–4 of the International Brotherhood of Electrical Workers, which is affiliated with the AFL–CIO.

Mr. MACDONALD. Right. Now, as an affiliate of the national AFL–CIO, do you happen to know how they feel about this?

Mr. FORTNER. Yes, sir. They are opposed to this bill. They are 180° out from my membership. The Florida Electrical Workers, which is approximately 15,000 electrical workers in the State of Florida, as I say in my testimony the Florida Electrical Workers did have the bill, they discussed it, debated it, and voted unanimously to support this bill and related bills. They are also affiliated.

Mr. MACDONALD. If I could just ask—and I see I am more deeply into this than I intended, and perhaps Mr. Brotzman will have some other questions—but why? You know, it is very unusual to have any labor union vote unanimously about anything, as far as I can tell, because we have many disputes that come before us that involve labor, such as the railroad strikes and other things of that nature, and the votes by the unions are never unanimous.

Mr. FORTNER. That is a very true statement in most cases, but this can be documented from the records of the Florida Electrical Workers.

Mr. MACDONALD. I am sure it is true. I am not questioning the fact that it is true. But I was just asking for the reason. Why do you think it is true?

Mr. FORTNER. Why do I think it is true?

Mr. MACDONALD. Yes.

Mr. FORTNER. Well, No. 1, I think it will be true because all the knowledge and information that we have is that we have an elected regulatory body in Florida which the evidence will show has done a good job and looked out for the customers and, I might say, the consumers, a lot of them are union members. Now, we presented it. We did not flower it up. People in Florida just do not care too much about any more Federal regulation than is necessary.

Mr. MACDONALD. You think it is done on the basis of States rights, which was mentioned here?

Mr. FORTNER. No, I do not; not from my position it is not, certainly.

Mr. MACDONALD. Then what is the benefit to your membership, your union membership, who are the employees of the company, so that they would vote unanimously for this bill?

Mr. FORTNER. Well, I think the benefit, as I have stated in my testimony, in our opinion it is regulation and would impose additional expense on the company. We, and myself as chairman of the committee and other members of the negotiating committee, are charged with the responsibility of trying to get a little more money for wages and better working conditions. I think that is the primary thing. We just do not see any need for it.

Mr. MACDONALD. Actually, if there were—and I don't say that there will be—but if there were additional expenses, wouldn't that be passed on to the consumer?

Mr. FORTNER. Yes.

Mr. MACDONALD. So it really wouldn't have anything to do with your wages.

Mr. FORTNER. No, sir; no, sir. But it would have something to do with the consumer. The greater part of the consumers are the working people and I am a representative of the working people. I mean, just to spend the money and raise the membership's electric rates falls in the same category as throwing union funds away and having to raise their dues. We are charged with the responsibility of looking out for that.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. I would like to thank this gentleman for appearing here. We are glad to have you appear before our committee. I was interested in one sentence particularly in which you point out that the price paid per kilowatt-hour by residential customers has been reduced about one-third since 1956.

Mr. FORTNER. Yes.

Mr. BROTZMAN. That does not just mean the customers of Florida Power & Light Co., but is extensive throughout the State of Florida; is it?

Mr. FORTNER. No, sir. This pertains only to the consumers of Florida Power & Light Co. I have access to those figures.

Mr. BROTZMAN. Your position is, as I understand it, you speak for your organization which was unanimous, but your national union is opposed to that position?

Mr. FORTNER. The national AFL–CIO—and I think the witness list will show that Brother Andy Biemiller will testify 180 degrees out from what I am doing. I would like to clarify one other thing: The Florida Electrical Workers voted unanimously. It is a statewide association of electrical workers and each local union is entitled to send x number of delegates to the association. The association is what voted unanimously to support this legislation, not the rank and file back home.

I did not want you to be misled on that. It was the delegates representing the membership of the Florida Electrical Workers.

Mr. MACDONALD. Actually, I was not misled. I was just curious about it because it is very unusual to have any union vote unanimously.

Mr. FORTNER. Well, we are one of the few.

Mr. MACDONALD. In economic matters there are always a few dissenters who do not want to accept the contract that you might negotiate.

Mr. FORTNER. Sometimes there are a lot of them.

Mr. MACDONALD. This is why I said, and I don't want to make too much of it, that it seems peculiar that this vote would be unanimous. I have had some dealings with labor unions. This committee has, too. At one point the leaders of the union negotiated a settlement of an airline strike and it was not accepted by the membership.

Mr. FORTNER. Yes, sir; but it was unanimous here. I would go further verbally, if I may—it is not in my formal statement—but I am not up here as a maverick. I checked with my Florida AFL–CIO president and the first vice president, as I have with the Florida Electrical Workers and my own membership. Strange as it may seem, the president has corresponded with some of the Senators in favor of the proposed legislation.

Mr. MACDONALD. You do not mean President Johnson, you mean the president of the State union?

Mr. FORTNER. No; I am talking about the president of the Florida AFL–CIO.

Mr. MACDONALD. I see. Are there further questions, gentlemen?

Mr. BROTZMAN. No.

Mr. MACDONALD. Thank you very much.

Mr. FORTNER. Thank you very much.

Mr. MACDONALD. We appreciate your coming here.

Mr. Tally is the next witness. He is general counsel of the North Carolina Munipically Owned Electric Systems Association.

I would like to yield before you start, to both of the gentlemen from North Carolina. First I would like to welcome the witness. Your State is very ably represented here on this subcommittee.

Mr. TALLY. Thank you, sir.

Mr. MACDONALD. I think perhaps they would like to welcome you.

Mr. KORNEGAY. Thank you very much, Mr. Chairman. I will say a word or two about my good and longtime friend, Mr. Joe Tally. He is one of the most distinguished citizens of our State, having been, among many other things, the mayor of his hometown, and president of the International Kiwanis Club at one time. He occupies positions of great leadership and is one of the leading members of the bar of our State. I will say also, maybe to the disbelief of many here because of our physical appearances nowadays, but at one time he was one of my law professors. He worked for our law school. I have passed him in years now, by all appearances.

Mr. MACDONALD. I wouldn't say that.

Mr. BROYHILL. I would like to join my colleague in welcoming Mr. Tally. I have known Mr. Tally for the last several years. He is general counsel of the Municipally Owned Electric Systems Association of which there are 73 in North Carolina. We certainly welcome his testimony before the committee.

STATEMENT OF J. O. TALLY, JR., GENERAL COUNSEL, NORTH CAROLINA MUNICIPALLY OWNED ELECTRIC SYSTEMS ASSOCIATION

Mr. TALLY. Mr. Chairman, I am very grateful for your kind remarks and those of Congressman Jim and Congressman Horace. I guess I always say about Horace, you can see he has fared better as a student than I have as a professor; because I have lost a lot more hair than he has lost.

I want to say also, Mr. Chairman—I think perhaps this ought to be said some time—I have been testifying before committees of this House and the other House for a long time. I am impressed with the number of your members who appear, considering their manifold duties and commitments. I just do not see how you manage to have so many so often. I am impressed also with the degree of the questioning and their attendance here.

I should like, it I may, to read my statement and I will try to read it quickly.

Mr. MACDONALD. Yes, sir.

Mr. TALLY. Mr. Chairman and gentlemen, a cynical clinche of French politics is: The more things change, the more they remain the same.

About H.R. 5348 and related bills, the cynicism is more chilling: The more things progress, the more these bills want us to go backward.

That great southerner, Sam Rayburn, no less concerned than the sponsors of these bills with history and the proper division of responsibility between States and the National Government, and in the far less complicated and stressful times of a generation ago, fathered in 1935 this jurisdiction of the FPC to regulate wholesale electric rates—because the FPC, being a national authority, was the only authority which would protect all our people.

How much greater today the danger. How much greater today the need. Nearly 95 percent, actually 97 percent by the National Power Survey, of the electric energy of America flows through a few great grid systems of our land from coast to coast, border to border.

Recent area and regional blackouts have taught that we need more, not less, national supervision of the safety, reliability, and economic aspects of electric generation and transmission. Unenlightened thinking can turn off the lights all over America.

This business of electricity is the largest business in our country. And technology in this business in the past 30 years has made it a continental, unitary business.

No Canute command of these bills can roll back these economic and technical tides. And no Congress should repeal the protection Americans need and have and can have only by Federal Power Commission jurisdiction.

I represent the North Carolina Municipally Owned Electric Systems Association. We are 73 cities and towns of North Carolina, and we serve as our customers about 1 million of the citizens of North Carolina.

We purchase, in all but a few of the 73 cases, our power at wholesale from private utility companies, and retail it to our citizens.

These bills pose the greatest threat of this generation to fair rates for our people and the general economy of our cities and other communities owning and operating their own electric distribution systems.

Under the present Federal Power Act the Federal Power Commission, in general, has supervisory authority over rates charged by private utility companies for sales at wholesale of power to such cities, cooperatives, and other such groups who, in turn, retail electric power to their citizens and members.

This authority is based upon the vast interstate power pool interconnections of these private power companies.

In addition, the Federal Power Commission has authority to enforce fair and honest auditing and to establish other fiscal controls for these companies.

These bills would cut the heart out of most of this vitally protective authority.

Their approval and passage would leave cities, cooperatives and other such groups practically defenseless before repeated and unfair and excessive increases of wholesale rates, thereby greatly increasing electric bills and threatening the growth of the economy of all affected communities.

As to wholesale rates and conditions of power purchase we are now under the protectice authority of the Federal Power Commission.

We want to keep that protection.

We are not enchanted by the profession of any States rights principles by private power companies.

We believe that, in a democratic society, the ultimate rights to be protected are the rights of the people—and in the communities where they live.

When the Federal Power Commission is needed to protect those rights, we want the Federal Power Commission.

We were given that protection in 1935.

In 1947 when the Miller bill, like H.R. 5348 and related bills here being considered, similarly sought to assault our protection, for the same sound finding, that bill died in subcommittee.

The courts, including the Supreme Court, have sustained the authority the Congress gave the Commission.

There is every reason for public, locally owned electric systems to continue to have this protection.

Not only do we passively want it; we actively seek it.

Too many of our consumers suffer from wholesale rates that we believe we can establish as unfairly high and unlawful. We can take action to obtain our rights under this very law that is attempted by these bills to be drawn and quartered.

But if any of these bills were to be enacted the millions of citizens served by their own public local systems would be subjected, helplessly, to more and more, higher and higher wholesale rate increases.

We are unwilling to trust our public purse and our private pockets to the consciences of private power companies and to the chances of State regulation. The States already have more than they can do in regulating retail rates, a field which accounts for 85 percent or more of all sales.

Every private electric utility is, by nature, in practical effect, and in law, a monopoly. It does not run the risks of ordinary private business. By law it is assured a fair profit on its business.

But the private power companies have never been satisfied to make just a fair profit. They want to make all they can get—with no more lawful control than they are forced to take. And they have made more money than most people have known or have supposed the law to allow them. The case against them is fully documented in "overcharge"; and no private power company has been able to refute a single part of that case.

You need to look no further than wholesale rate reductions ordered by the FPC in recent years to know why the private power companies

now suddenly want bills like these. When the law was not being enforced against them, they did not care. Now that it is, they want to destroy the law.

These cities and towns for whom I speak, like their counterpart over the country, deserve the respect of the Congress for the honorable history they have had. For the same reason that impelled the Congress to create the opportunity for rural electric cooperatives—that people concerned could get no electric service unless they got it for themselves—these cities and towns—a generation before that time—faced the fact that their people could get no fair and adequate electric service unless they got it for themselves. And get it they did—in the inventive, democratic way.

These small, local, public systems have been established these decades by our fathers and by the votes of our people. They are sustained and retained by our citizens by their votes and their taxes.

These bills would insult our communities. They would impair or destroy our systems, public property. They would burden our economies. They would destroy our work.

In that connection, Mr. Chairman, may I insert a comment because there have been several questions of previous witnesses.

Inadvertently Mr. White and others have replied to questions by Mr. Kornegay and Mr. Broyhill and others about the application of H.R. 5348 and related bills to North Carolina. It is not true that H.R. 5348 would have no impact in North Carolina. It would immediately exempt the Nantahala Power Co. It is a perfect example of the definition given in this bill of a public utility, "all of whose facilities are situated in a single State and none of whose facilities is used to transmit or receive electric energy by direct connection from or to a State other than the State in which such facilities are located." So far as I know, it has no contracts with out-of-State utilities and can certainly immediately terminate such contracts if it did have them. In addition, one of the most evil imports of this bill is the incentive that it would give for artificial, legalistic, unrealistic, and entirely selfish reasons to private power companies to form paper corporations that would themselves come under H.R. 5348. I should like to read you just one sentence from the statement which has been filed in writing by Mr. William T. Crisp who is the general counsel of Tarheel Electric Membership Association, the REA association in North Carolina. This is the one sentence I should like to read from his testimony which has been filed with you, Mr. Chairman, in opposition to these bills.

> 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.

Not only is that a real possibility for Carolina Power & Light Co., Duke Power Co., and Vepco, it is a real possibility for any power company even though jurisdictional today under the FPC, by an artificial corporate reorganization to set up the paper corporations that will take the power from across the State line and then simply, by contract, within the State and therefore sanitize, as was suggested yesterday, make the real operating entities exempt from the Federal Power Commission.

That has always been a danger even with traditional generation, fossil fuel. Now, in the age of the peaceful atom we are witnessing as of now what amounts to, thank goodness, a peaceful, beneficial revolution in the cost of generation of electricity.

Probably within a few years nuclear plants will be, if not the only, principal means of electrical generation.

In North Carolina and in South Carolina with our companies today we are already experiencing a further squeeze with this new technology so that these giant private power companies are able to apply for licenses to build these atomic plants and further increase the monopolistic position they have vis-a-vis our REA's and our municipals.

It would be absurdly easy under this bill to set up a separate corporation to own and develop an atomic energy electrical plant that would not then be in interstate commerce under these artificial distinctions and would further burden us, the result of which is the last of my statement.

In our local, publicly owned, publicly operated, close-to-the-people electric systems, we have a great substance—and a great heritage to defend.

And we have our own people to defend.

And you gentlemen have, largely in your hands, the shaping and securing of America's future. Let us progress, not regress.

The process and the problem with which these bills deal is as intricate as the 20th century itself, as wide as our land. So wide and so competent must be our jurisdiction and our way of dealing with it.

Let us brighten and broaden what we already have.

Let us consign these bills, and not our country, to darkness.

Mr. MACDONALD. Thank you very much, Mr. Tally, for a concise and, it seems to me, clear picture of your views.

I have just one question. This deals with the case that you cited made against the private power companies in "Overcharge." Frankly, maybe it is just lack of experience in the field but I never heard of "Overcharge." What kind of a case is that?

Mr. TALLY. That is a book of Senator Metcalf entitled "Overcharge," written by him and his administrative assistant, Victor Reinemer.

Mr. MACDONALD. Thank you very much.

Mr. TALLY. Thank you, sir.

Mr. MACDONALD. Once again I would like to congratulate you, not only on your statement but on the fact that the people of North Carolina have seen fit to send to our Congress and to our committee two of the hardest working and best members of our body on this committee.

Mr. Kornegay?

Mr. KORNEGAY. Thank you very much, Mr. Chairman, for that very fine, flattering statement.

Mr. Tally, I learned somewhat to my surprise in the first days of these hearings in questions of the president of the Florida Power & Light Co., that the commission in the State of Florida does not regulate or supervise or require, as I gather it, the matter of wholesale rates. Is that the general law and procedure throughout the country with reference to the State commissions?

Mr. TALLY. That is the law, as fully declared by the Supreme Court in the *Colton* case. As Mr. White mentioned yesterday, I believe, anyone who had not had to be involved in this controversy of public versus private power or State versus Federal regulation over the years, who could come with a fresh mind to read the 1935 act, would agree with Mr. White in saying that the language is plain and unambiguous, that

the Federal Power Commission had from 1935 on jurisdiction to supervise wholesale sales of electrical power in interstate commerce.

Actually, they did not have to wait until the *Colton* case. The *Jersey Central* case in 1943 which went to the Supreme Court made that clear, but all of us apparently woke up to the clarity of this with the *Colton* case. It made it absolutely clear that the Federal Power Commission has the jurisdiction and exclusively that jurisdiction to supervise wholesale rates in interstate commerce, even though State statutes may have given that power to the individual State commissions.

The Federal Government, by the 1935 amendments to the Federal Power Act, occupied that field. So that you have to realize as the Supreme Court said in that case, and as repeated since then, the Congress drew a bright, clear line leaving to State commissions jurisdiction over retail rates and to the Federal Power Commission jurisdiction over wholesale rates when they were in interstate commerce.

Mr. KORNEGAY. Does the North Carolina Commission exercise that right to supervise wholesale sales?

Mr. TALLY. In our State our statutes in terms permit the North Carolina Utilities Commission to regulate wholesale and retail rates but because of the Court interpretation of the Congress having occupied this field they would be bound by that and therefore they do not have the power to regulate wholesale rates even though such statutes still are on the books.

Mr. KORNEGAY. Thank you, sir.

I am sure that you are familiar with the contentions made by Florida Power & Light, familiar with the contentions and the view heard here in the testimony. In your opinion are they engaged in interstate commerce?

Mr. TALLY. I think there is no question at all about it. Of course, the matter is still before the courts but the precedent of these cases, the Indiana and Michigan case particularly, make it plain I believe that they will be held to be in interstate commerce. I think that is a lot more predictable than a football game.

Mr. KORNEGAY. Is that by reason of the fact that they do have these interties for emergency purposes only?

Mr. TALLY. It is by reason of their having within their system electrical energy that comes from outside the State. The Court again has made it plain following the language of the statute. The statute is cast in terms of interstate energy, not in legalistic terms about which corporation buys and which sells, but interstate energy. As the Court itself said at one point, and I think this is quite a commonsensical and clear understanding of it—this was from the case of *Connecticut Light & Power Co.* v. *the Federal Power Commission* and was a repetition of what they said in the *Colton* case—"We have said of part II of the Power Act that Federal jurisdiction was to follow the flow of electric energy and engineering and scientific fact rather than a legalistic or governmental test."

There is no question that in that engineering and scientific context they have interstate power flowing through their conductors. That is why I think it would be safe to predict that the circuit court would affirm the Federal Power Commission and the Supreme Court will deny certiorari.

Mr. KORNEGAY. Thank you very much. It is nice to have you before our committee.

Mr. TALLY. Thank you, sir.

Mr. MACDONALD. Mr. Broyhill.

Mr. BROYHILL. Thank you, Mr. Chairman.

Mr. Tally, you were the general counsel for the North Carolina Municipally Owned Systems Association. Your board has approved this statement and your opposition to this?

Mr. TALLY. Yes, sir.

Mr. BROYHILL. Are all of the 73 municipally owned systems, the cities themselves, do they support this view or is there any opposition within the association?

Mr. TALLY. So far as we know, there is none. Not all of the 73 are entirely up to date in payment of their dues and one thing and another, as you would expect. There are a few small ones that are late. There is no opposition so far as I know.

Mr. BROYHILL. Thank you very much.

Mr. MACDONALD. Mr. Van Deerlin?

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

I gather, from your remarks, sir, that you feel the estimate that we have received ranging from 11 companies to possibly two dozen companies across the entire Nation might be a rather low estimate of the number of companies that would be exempted from FPC regulation under this bill?

Mr. TALLY. Actually, of course, I do not know the situation over the country. If we were to extrapolate from North Carolina, I know one that would be affected, whereas it has been said there would not be any. Then it might be said there would be quite a number of existing companies far above the estimate given you.

In any event, the potential number would be great, for under this bill there would be no reason that they could not reorganize corporately to set up these paper corporations to receive power on the high side of the line here and transmit it on the low side here, and by just that artificial entity escape regulation.

Mr. VAN DEERLIN. If the estimate were accurate, only 11 companies at present would be affected by it. But there are any number that could do a little revised housekeeping and come within its umbrella?

Mr. TALLY. Yes, sir.

Mr. VAN DEERLIN. I should think in a State like North Carolina, which has undergone some change in its industrial emphasis through the decline in the cotton industry—and which is strongly reliant on another major agricultural crop, tobacco—and which seeks to diversify and increase its sources of income—I should think there would be great concern over any legislation tending to increase power rates.

I think this would very strongly buttress the position that you have taken this morning.

Mr. TALLY. Sir, you are quite correct. We see it every day. The day before I came up here, an industry was seeking to settle in my own city of Fayetteville and had its representatives there. That is the first thing they asked: What does power cost? They sharpened their pencils on that as one of the first items.

The technology, as perhaps you know, in electrical generation and distribution in recent years has advanced so rapidly that there are tremendous savings that can be passed on to all consumers if there is a proper regulatory scheme at the State level to see that it is passed

on to retail rates and at Federal level to see it is passed on to the wholesale rates. If that is not so, then our consumers do not get their benefit.

We brought a rate case against the Carolina Power & Light Co. on behalf of my own city a couple of years ago, and we made a feasibility study of what it cost us to generate our own, standing as an isolated city. Using that and other evidence, we were able even before coming to the hearing stage of the Federal Power Commission to effect a settlement with Carolina Power & Light Co. that will save our citizens in the city of Fayetteville alone millions of dollars in the next 15 years. If we had not had Federal Power Commission jurisdiction, we would not have had that and we would not have had that opportunity.

Mr. VAN DEERLIN. Not having been born yesterday, you are not overly persuaded by the contention that the mere removal of a necessity for reports, preparation of auditing reports dispatched to Washington, would automatically result in savings in cost of power at the local level?

Mr. TALLY. No, sir. I am not really impressed with that.

Mr. VAN DEERLIN. I do not want to put words in your mouth.

Mr. TALLY. No. None of us likes paperwork, but the amount of pawerwork concern for filings with the FPC is not today significantly greater than that required by the State commissions. The State commissions do not have the personnel, the expertise, and the money, and being just individual compartmented State commissions, do not have the jurisdictional reach to grasp what is going on in these vast interstate pools. They require today essentially the same reporting as the Federal Power Commission and we are not talking about any $4 or $6 million or $500,000 or $600,000 annually, that sort of thing.

It is very easily done. Our own city reports to the Federal Power Commission on its sales, and I am sure that our taxpayers would run the city council and power commission out of office if they wasted money like that on paperwork.

Mr. VAN DEERLIN. Thank you very much, Mr. Chairman. I have seldom heard such thunder in such a mild voice.

Mr. MACDONALD. If you permit, I would like to observe that North Carolina has done such a good job in lowering power rates that it has, for lack of a better word, pirated away from New England our textile industry.

Mr. KORNEGAY. Attracted is a better word.

Mr. MACDONALD. Pirated is not a bad word. Sometime I am going to take a poll and see how they voted on the Lincoln-Dickey Dam, which I think would help us in New England very much.

Mr. TALLY. It would help you greatly, Mr. Chairman.

Mr. MACDONALD. Perhaps in competition with you then. Maybe that is why we will take a survey about how members of this subcommittee voted, but I would be very interested in finding out.

Mr. TALLY. You lack a yardstick in New England. You need one badly.

Mr. BROYHILL. Mr. Chairman, a question was brought up in the colloquy between Mr. Tally and Mr. Van Deerlin.

Mr. Tally, you indicated that you were granted a rate reduction from Carolina Power & Light Co. Was this rate reduction passed on to

the residents of the city or was this added to the general revenues of the city?

Mr. TALLY. We passed on every penny of it. When we filed the complaint with the Federal Power Commission we put in the sworn document itself the pledge to do that. The day the agreement was signed we revised the rates and passed every penny of it on.

Mr. BROYHILL. In Fayetteville and these other cities which are operating electric systems, is it true that a substantial part of their revenue comes from the sale of power?

Mr. TALLY. Yes, sir. If a municipal system does what it should, if it is run in the sense of a public trust and in the way a good business should be run, then they should pass on to the general budget of the city only what would be the equivalent of Federal and State taxes and dividends and other items that private power companies would otherwise have to account for. The utilities operation of a municipality should never jeopardize its own operations by underestimating their reserves for depreciation or for future development, or any other good business principle or practice, nor should they subsidize the general budget of the city.

I am aware there are always possibilities of abuse in that, but in our city, and I hope in most of the 73 cities and towns so far as we encourage it and supervise it, we are trying to have them understand that must be so.

Mr. BROYHILL. The two major utilities operated in North Carolina are Duke Power and Carolina Power & Light. How are the retail rates that they offer compared with the retail rates offered by the municipally owned systems?

Mr. TALLY. First let me say that you are correct. They are the two major ones; but Vepco serves quite a large portion of northeastern Carolina. The rates of our 73 municipals, generally speaking, are comparable to and as low as or as high as—however you care to use the word—the three private power companies that we have mentioned. In the case of our larger municipal systems, such as Fayetteville and High Point and Statesville and the like, not only are our rates as low as those of Duke and Carolina Power & Light, but in some instances they are lower.

That may seem strange on the surface but you have to realize one fact of the strange economics of electrical generation, transmission and distribution. These giant private power companies are taking advantage of a technological phenomena, as they should: the advantage of scale or size.

In generation and transmission the larger you are the cheaper you put the product at the point where it is going to be distributed. When you come to the distribution part of it, that is the third phase, generation, transmission and distribution. When you come to the distribution part of it, the figures from the Federal Power Commission collected over a great number of years show that even medium to small-size distribution systems, whether they are privately owned or publicly owned, as REA or municipals, do that part of the economic process in the electric power industry, as cheaply as can these giant companies. Indeed, the record is even better over the last decade for municipals and other publicly owned medium to small-size distribution systems than for the big private power companies. They have actually cost their

customers less even though the figures have been weighted for the public companies not having to pay State and Federal taxes.

Mr. BROYHILL. Thank you.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

Mr. Tally, you are familiar with H.R. 5348, the bill that we have under consideration?

Mr. TALLY. Yes, sir.

Mr. BROTZMAN. As I listened to your testimony, you have testified relative to one of three exemptions set up in this particular bill. Your remarks have been directed toward the so-called intrastate exemption. As I read H.R. 5348, I notice there is another exemption that we might call the municipal exemption. The other would appear to be the REA exemption. You are familiar with these other two provisions.

Listening to your testimony, I understand that you express opposition to the intrastate exemption which is one of the three. What is your attitude relative to the municipal exemption and the REA exemption in this bill?

Mr. TALLY. Mr. Brotzman, I think that the subcommittee, which, Lord knows, has enough to do anyway, can simplify its task by just forgetting the entire first paragraph of section 2 relating to municipals and REA's because that is the law already. Under the Federal Power Act, municipals and instrumentalities of the States and Federal Government have never been subject to FPC jurisdiction. As you may remember, in the *Dairyland* case recently decided by the FPC, which is on appeal to the courts in a related matter, the FPC decided in interpreting this act REA's are not subject to that. I am assuming that the first paragraph was put in as an icing on the cake. It is certainly superfluous and ought not to concern you gentlemen at all.

Mr. BROTZMAN. Probably should not, but this is a matter of concern to me. I have never been through hearings in this regard before. Of course, we have the right to pass the laws here, and I just would not take the time to be edified a little bit to make these distinctions. What would your attitude be toward Federal regulation, let us say, of municipalities, and would the same arguments redound to the benefit of the consumers of municipals as you have indicated might for an intrastate regulation?

Mr. TALLY. My attitude to that would be an extension of the statement made by Mr. White yesterday as to the attitude of the Federal Power Commission members, both those who are for and those who are against Florida Power & Light jurisdiction in that case, and both the majority and the minority in the *Dairyland* case.

You may recall that he said that their attitude on both sides, the full Commission attitude, is that REA's that generate electricity and transmit electricity in interstate commerce should be subject to the jurisdiction of the Federal Power Commission. If they are merely distribution REA's to their own customers, they should not be. I think the same thing would be my attitude about municipals. I think if there is a municipal that is large enough so that it is generating and transmitting power that is in interstate commerce, the way power can be found in the Florida Power & Light system, there certainly can be no conscientious reason why it should not be under the same status.

Mr. BROTZMAN. Are there such?

Mr. TALLY. As a matter of technical fact, I do not know. I think there are not municipals that are so. There are public utility districts that are so. They are excluded by the express language of the present Federal Power Act as being instrumentalities of the Government. They are certainly in interstate commerce, particularly out in the Midwest and Western areas. By the scheme then set up by the Congress in the Federal Power Act, they were excluded as the Federal Government itself was excluded. In the reliability act that you gentlemen will be considering soon, you know that if you pass that in its present form you are going to bring even the Federal Government's electrical facilities under the jurisdiction of the Federal Power Commission as to these reliability features.

In the 1935 act, what we are now talking about, rates and conditions, service and the like as to Federal Government activities, State activities and State subdivision activities and instrumentalities (this goes to REA's public utility districts), they were all excluded.

The rationale of that, I suppose, was that—and I think it is still good, perhaps always will be good—perhaps, after all, these are entities that are owned and controlled, voted and directed by the people themselves. They can directly change their trustees, conditions, rates, conditions of service and the like. I suppose that it would always be a reasonable distinction to leave them out from under FPC jurisdiction. If you wanted to say that you were going to be consistent so far as FPC jurisdiction is concerned, just interstate commerce, then you would say, if you generate and transmit in interstate commerce——

Mr. BROTZMAN. This is what is required.

Mr. TALLY. REA or municipal.

Mr. BROTZMAN. Consistency of jurisdiction.

Mr. TALLY. Yes, sir.

Mr. BROTZMAN. One other question. It so happened that you were in the committee room when there was testimony just prior to yours. They were talking about the consumer interests. I noticed that the witness just before you stated that in the case of the Florida Power & Light Co., he said that the price paid per kilowatt-hour by residential customers had been reduced about one-third since 1956.

I do not know if you are familiar with the operation of the company. You may not be, but would you believe that there would have been a greater reduction had there been Federal Power Commission control over this particular company? Do you think that they have not gone the full measure?

Mr. TALLY. First let me say, of course, I assume he was speaking of retail rate reductions since they, as I heard their testimony——

Mr. BROTZMAN. I would assume that.

Mr. TALLY (continuing). Do not have any municipal wholesale customers.

So it would be hard for your question to operate in their actual case because if they do not have any wholesale customers they are not selling at wholesale in interstate commerce, it gets to be academic.

It is worth noticing this——

Mr. BROTZMAN. Let us take this just a minute to follow this up. Would it in fact make a distinction between the wholesale and retail regulation? Retail being regulated, I assume, by the elected Florida regulation agency.

Mr. TALLY. Yes, sir.

Mr. BROTZMAN. FPC controlling the wholesale rates.

What is the relationship between these two in this particular industry? This is what I never quite understood.

Mr. TALLY. As to the Florida Power & Light Co., they have certain wholesale customers that are REA's. They do not have any municipal wholesale customers. Your question can be answered this way: If the Florida Power & Light Co. is selling at wholesale in interstate commerce as the FPC has decided in that case, and if the court sustained them in that, then the FPC will be able to set the fair rate for wholesale sales to these REA's.

If upon examining the books of the Florida Power & Light Co. they find that the rate base of that company attributable to its wholesale business, not retail, house by house but in blocks of power to these cooperatives, if they find that that rate base attributable to that part of their business is in any way improper or inflated, then they will have the power, the jurisdictional authority, to reduce the allowable rate that Florida Power & Light Co. can charge these REA's for those wholesale blocks of power.

If they are so reduced then the REA's would have the opportunity and then have the moral responsibility to pass on that reduction in the retail rates that their customers, consumer-owner members, have to pay. That way you get down to the man that we are all supposed to be working for, the consumer. That was the case that I mentioned about my own city of Fayetteville and the Carolina Power & Light Co. when we were able to demonstrate before the Federal Power Commission, and were able in the settlement even before coming to hearing on it, that Carolina Power & Light Co.'s rate base to its wholesale customers, the cities that it was serving, was inflated, not justified by the law. Then they had to make substantial reductions in our wholesale rates that we then were able to pass on penny for penny in totality to our customers.

Mr. BROTZMAN. Thank you very much.

Mr. MACDONALD. Thank you very much, sir.

Mr. TALLY. Thank you, sir.

Mr. MACDONALD. The next witness is Mr. James E. Baker, of Shrewsbury, Mass.

Mr. TALLY. Mr. Chairman, Mr. Baker asked me to say to you that he had to leave town to get back to Massachusetts and he filed his written statement with the clerk.

(Mr. Baker's prepared statement follows:)

STATEMENT OF JAMES E. BAKER, MUNICIPAL ELECTRIC ASSOCIATION OF MASSACHUSETTS AND THE SHREWSBURY MUNICIPAL ELECTRIC PLANT

My name is James E. Baker. I am Manager of the Municipal Electric Plant of the Town of Shrewsbury, Massachusetts and Chairman of the Power Planning Committee of the Municipal Electric Association of Massachusetts.

I appear here to express the opposition of this Association and of Shrewsbury to H.R. 5348 and related bills because they would remove the necessary protection which many municipal electric distributors in Massachusetts are receiving from the Federal Power Commission under the Federal Power Act in their wholesale purchases of power from public utilities. The Massachusetts Department of Public Utilities cannot effectively regulate wholesale interstate energy transactions. To pass such a bill would leave our member plants unprotected in their dealings with large and powerful public utilities.

The Municipal Electric Association of Massachusetts is an organization of the officials of 39 of the 40 municipal electric plants which distribute and sell

electricity within Massachusetts to approximately a quarter of a million customers. The object of the Association is to assist its members in providing electric service at the lowest rates consistent with sound business principles.

All but two of these systems are more than 50 years old, and many were founded prior to the turn of the century. Most of these plants were constructed to bring electric energy into their communities for the first time. Thirty-four of the 40 municipal electric systems purchase all of the power they sell from private power companies, while three of the systems purchase part of their power requirements and generate the balance. Only three plants generate their total requirements.

The Town of Shrewsbury has a population of 18,000, and is located in the center of the State. Its municipal electric plant was founded in 1908 and now sells to some 6100 customers.

New England retail electric rates are the highest in the country, and the rates in Massachusetts are among the highest in New England.

The matter of wholesale electric rates in Massachusetts, however, is even more serious. For example today the Municipal Electric Systems pay an average of 12 to 13 mills per KWH for wholesale power while the National average is slightly less than 5 mills per KWH. As bad as our present situation with respect to rates appears, it is vastly improved over our experience before Federal Power Commission jurisdiction became effective over the wholesale power contracts between wholesale power suppliers in the municipal systems. Prior to F.P.C. jurisdiction in 1963 for example the average wholesale price for power paid to the power companies by Massachusetts municipal electric plants ranged from 13.1 to 17.1 mills per KWH with a total average of approximately 14.1 mills.

In general the wholesale rates still range from 50 to 100% higher than comparable wholesale power costs paid by municipal distributors in other sections of the country. While high fuel costs in New England are often cited as the cause of high rates, it is noteworthy that Connecticut Light and Power Company sells power to Connecticut municipal systems for 0.89 mills per KWH.

High wholesale rates have always been a source of concern to the municipal distributors, and a serious economic detriment to their electric systems and communities. We are now bringing our problems to the Federal Power Commission, and see a realistic prospect of improving our situation as a result of the Commission's regulatory activity.

As a result of both formal and informal cases settled with the aid of the F.P.C. during the past two years, savings in wholesale power costs of Massachusetts municipals are now running well over $2,200,000 annually. Further reductions are in the offing at this time.

Currently, the Commission is reviewing the obsolesence of generating equipment in the New England Power Company System. A recent study by the Association engineers shows that the obsolence of four steam generators alone result in excess power costs of over $15,500,000 a year. One plant, for example, has fixed charge costs of $80 per kw per year, while modern equipment can be built for a total cost of $118.81, according to the *Electrical World* issue of October 16, 1967. I have a copy of our letter of October 5, 1967 (attachment A) to the Federal Power Commission which contains a summary of the results of these studies, and request that this be copied into the record.

[ATTACHMENT A]

WASHINGTON, D.C., *October 5, 1967.*

Re: New England Power Company—Rate R–3, September 1, 1967, Filing.

FEDERAL POWER COMMISSION,
Washington, D.C.

GENTLEMEN: This is a letter of comment on the submission of New England Power Company, ("NEPCO") of September 1, 1967, which tenders for filing revised contracts incorporating new terms and a lower schedule of rates with NEPCO affiliates. These affiliates are Narragansett Electric Company, of Rhode Island; Massachusetts Electric Company, of Massachusetts; and Granit State Electric Company, of New Hampshire. There is also tendered a revised contract with Green Mountain Power Corporation, a non-affiliate resale customer, for a small purchase of some 400 kw.

This letter is submitted on behalf of the undersigned Massachusetts Municipal customers of NEPCO who purchased over 600,000,000 kwh in 1966. These

customers object to the acceptance for filing of the tendered contracts and request that they be suspended for one day, that the Commission order a formal investigation, and that the Commission allow the filing to become effective subject to reduction and revision retroactive to the effective date.

The primary municipal objection is to the rolling of obsolete Massachusetts Electric and Narragansett generating equipment into the total NEPCO power supply which results in excess annual costs of over $15,500,000 as compared with costs resulting were there substituted modern equipment.

The New England Power Service Company filing letter states that "These filings are made in accordance with the terms of the Settlement Agreement dated September 1, 1965 * * *." We disagree, Paragraph 3(a) of the Settlement Agreement required NEPCO:

"To review the economics of retaining the steamelectric generating plants of Massachusetts Electric Company as a part of System power supply in the light of possible alternatives, and to determine what, if any, program should be established for the accelerated retirement of such plants."

No such review has been made of the Massachusetts Electric generation; and not only does NEPCO propose to integrate this obsolete equipment into the NEPCO power supply, but, without any effort at economic justification, it proposes to compound the error by doing the same with the obsolete Narragansett generating plants. This roll-in would be accomplished under the following provisions of the proposed contracts:

Narragansett Contract:

Original sheets nos. 13–17 (Exhibit C)
Original sheet no. 21 (Exhibit D, Section III)

Massachusetts Electric Contract:

Original sheets nos. 13–17 (Exhibit C)
Original sheet no. 22 (Exhibit D, Section III)

The extreme obsolescence of the Narragansett and Massachusetts Electric generating plants is obvious upon analysis of the cost data filed by NEPCO in support of the proposed contracts. This data is summarized on Schedule D attached hereto.

The fixed capacity costs[1] of the Narragansett generating plants is $39.20 per kw year which is over double the standard for current equipment as set in the recent testimony of Dr. Joseph Jessel, Assistant Chief of the Commission's Bureau of Power in the Northfield Mountain case. (*Western Massachusetts Electric Co.*, et al, Project Nos. 1889 et al.). Dr. Jessel's comparable capital costs, as set forth in the Examiner's decision of September 12, 1967, are as follows (pp. 7–8):

Peaking fossil-fueled steam	$16.46 per kw year
Base load fossil-fueled steam	$18.36 per kw year
Northfield Mt. pumped storage	$12.08 per kw year

Jessel's peaking steam plant includes units of 210 mw size and a fuel cost per kwh which is less than that of the Narragansett plants.

Indeed, the out-of-pocket costs alone of the Narragansett plants come to $21.40 per kw year (local taxes, operation & maintenance, insurance, general) which is substantially larger than the total capital and out-of-pocket costs of modern equipment.

The obsolescence of the Massachusetts Electric generation is even more extreme. The fixed capacity costs of the Webster Street plant are $83.04 per kw year, and of Lynnway $34.05 per kw year, while together they average out to $52.62 per kw year. Comparing these to Dr. Jessel's standards, the fixed capacity costs are three times what they would be if replaced by modern equipment. In addition, the modern equipment would save on fuel costs.

A closer look at the makeup of the Massachusetts Electric costs is instructive. Out-of-pocket costs *alone* (local taxes, operation & maintenance, insurance, general) total $31.67 and thus are about double total capital and out-of-pocket costs of modern equipment. In the case of Webster Street, operation and maintenance costs alone come to $27.17 per kw year, and local taxes add another $13.60 per kw year.

Accordingly, there is no question but that these plants are hopelessly obsolete and inefficient, that management cannot justify their continued operation—except perhaps on the basis of imprudent past decisions against modern replacements, and that the Commission should not now permit the roll-in of these costly

[1] This excludes all fuel costs and treats all other costs as fixed costs. Any variables thus included in the above fixed costs would be *de minimus* in this context.

plants into the NEPCO power supply pool. Rather, if the Commission is to roll together the load of the total New England Electric System and also the System's power supply, it should do it on the basis of adjusting cost of service to reflect modern replacement for the obsolete Massachusetts Electric and Narragansett plants.

A study has been made by Messrs. Herbert Westfall of R. W. Beck & Associates and Alvin Rowe, Jr. of Van Scoyoc & Wiskup, Inc. to determine the size of the adjustment involved, and they have concluded that modern replacement would reduce the cost of NEES' power supply by $15,591,000, or an average of 1.5 mills per kwh. A summary of their results is shown on Schedules A, B and C attached hereto. Their workpapers are available to the Staff and Company representatives.

The obsolescent condition of these plants has been known for at least five years. In this particular study, it is assumed that management planned five years ago, on the basis of then known technology, to replace this capacity so as to best serve total New England Electric System ("NEES") requirements. While there may be a number of different ways this can be accomplished, based upon available information, it was decided to use a 630 mw base load generator at Brayton Point as a fair choice for this testing purpose, having a fixed capacity cost of $19.30 per kw year.

It was assumed that this new unit would be operative in 1966 as a replacement for the obsolete Massachusetts Electric and Narragansett generators, and for all purchased power except the single-unit purchases. The reconstructed System was then dispatched against the 1966 actual NEES load.

The result was a total savings of $15,591,000, using the company-proposed 6½% rate of return, although we consider it excessive. On this basis, average cost of power supply is reduced from 8.7 mills per kwh to 7.2 mills per kwh. This by no means represents the low limits of the power supply cost of service, and continuing studies are expected to refine this cost further. The study is sufficient to demonstrate to the Commission the need for a formal investigation because of the magnitude of the additional rate reduction involved.

The $15,591,000 excess does not allow anything for further amortization of the unamortized portion of the generating facilities involved. We are satisfied that NEES' record of performance cannot justify such amortization; but rather, that the record will show a failure of management to discharge its obligation to keep its equipment modern and its costs down. The prudence of installing some of this equipment is very questionable under then contemporary standards, and the imprudence of continuing their use long after obsolescence is obvious. What stockholders may not have recovered in the form of excessive returns in the past they may now have to lose. But there is no guarantee of any particular profit level in public utility equities, and the reason returns on the order of 8 to 10% are allowed to equity holders is because of the risk involved. And, there are times that the holders of any high return paper (for example, a 10% 2nd trust on real estate) must recognize that a loss has eventuated. Here it has happened, and the amount involved can be absorbed.

Regulation should provide economic results for a monopoly industry comparable to that which competition would produce in ordinary industry. In ordinary industry, when machinery becomes obsolete, so that the manufacturer can no longer meet the prices of his competitors, he must write off the old equipment, take his losses, and install such modern equipment as will enable him to reduce his costs and remain competitive.

The lack of competition has enabled NEES these last years to charge wholesale rates some two to three times higher than the national averages, while continuing to utilize obsolete equipment. If NEES were competing against the national market, however, NEES could not have survived without modernizing, top to bottom. A regulatory agency should fix rates which would cover the full cost of service, including adequate return, *only* of a modern plant; it should not allow recovery against each piece of equipment simply because it is still intact.

However, if the Commission were to decide to the contrary that the unamortized portion of these obsolete plants must be restored to the stockholders, there would still be a further rate reduction of well over $10,000,000 a year. Reports to the Commission indicate that the net depreciated plant involved is in the order of $48,000,000. Retired at this point, this would become a tax loss and deduction in the same amount (adjusted for the difference between tax and book depreciation) and, therefore, a tax saving of some $24,000,000. This would leave another $24,000,000 to be recovered through rates; and, spread over ten years, this would amount to $2,400,000 a year. This would still leave a handsome $13,000,000 or more rate reduction.

There are other terms and conditions of the tendered contracts which are questionable, but these do not have so large an impact on rates to be charged to the municipals as may be the case if the Commission allows the proposed roll-in of obsolete generating equipment into the NEPCO pool. Any suspension and investigation related to the roll-in problem would necessarily cover these other questions; and, therefore, we do not deal with them here.

Our views concerning the cost of service, and rates, to the municipal customers, as well as their contract terms and conditions, will be conveyed in connection with the filing of the proposed revised municipal contracts.

Respectfully submitted.

GEORGE SPIEGEL,

Attorney for the Municipal Electric Light Departments and Plants of Ashburnham, Boylston, Danvers, Georgetown, Groton, Hingham, Holden, Hull, Littleton, Mansfield, Marblehead, Merrimac, Middleton, North Attleboro, Paxton, Peabody, Princeton, Shrewsbury, Sterling, Templeton, West Boylston, Massachusetts, and Power Planning Committee of the Municipal Electric Association of Massachusetts.

Attachments:

SCHEDULE A

COMPARATIVE COST OF POWER SUPPLY FOR SYSTEM SHOWING EXCESSIVE COSTS ARISING FROM INEFFICIENT OPERATIONS AND PURCHASING PRACTICES, YEAR ENDED DEC. 31, 1966

Description	Cost of service	Cost per kilowatt-hour in mills
(1)	(2)	(3)
NEES proposal at 6.5 percent [1] return level with Yankee Atomic Electric Co. purchases costed at comparable earnings level	$91,801,000	8.7
As adjusted to reflect efficient power procurement costs including a 6.5 percent [1] return level	76,210,000	7.2
Excess costs arising from inefficient operations of obsolete facilities and purchasing practices	15,591,000	1.5

[1] Illustrative return only; for purpose of direct comparison with company filing.

SCHEDULE B

COST OF POWER SUPPLY FOR SYSTEM—NEES PROPOSAL AT 6.5 PERCENT [1] RETURN LEVEL WITH YANKEE ATOMIC ELECTRIC CO. PURCHASES COSTED AT COMPARABLE EARNINGS LEVEL, YEAR ENDED DEC. 31, 1966

Sources of power	Capability at Dec. 31, 1966, in kilowatts	MWH	Cost of service	Cost per kilowatt-hour in mills
(1)	(2)	(3)	(4)	(5)
Generation:				
Steam	1,265,500	7,205,020	$63,322,000	8.8
Hydro	514,000	1,344,522	11,398,000	8.5
Diesel	19,850	10,193	377,000	37.0
Total generation	1,799,350	8,559,735	75,097,000	8.8
Purchased power:				
Gross purchases	467,522	2,092,428	17,064,000	8.2
Less redeliveries to other utilities	(90,000)	(55,015)	(360,000)	6.5
Net purchases to load	377,522	2,037,413	16,704,000	8.2
Total sources of power	2,176,872	10,597,148	91,801,000	8.7

[1] Illustrative return only; for purpose of direct comparison with company filing.

SCHEDULE C

COST OF POWER SUPPLY FOR SYSTEM AS ADJUSTED TO REFLECT EFFICIENT POWER PROCUREMENT COSTS, INCLUDING A 6.5 PERCENT [1] RETURN LEVEL, YEAR ENDED DEC. 31, 1966

Sources of power	Adjusted capability in kilowatts	Megawatt-hours	Cost of service	Cost per kilowatt-hour (in mills)
(1)	(2)	(3)	(4)	(5)
Generation:				
Steam	1,441,400	7,824,165	$55,232,000	7.0
Hydro	514,000	1,344,522	11,398,000	8.5
Diesel	19,850	10,183	377,000	37.0
Total generation	1,975,250	9,178,870	67,007,000	7.3
Purchased power	204,000	1,418,268	9,203,000	6.5
Total sources of power	2,179,250	10,597,138	76,210,000	7.2

[1] Illustrative return only; for purpose of direct comparison with company filing.

SCHEDULE D

ANNUAL FIXED CHARGES AND OPERATING COSTS OF OBSOLETE GENERATING FACILITIES AND DERIVATION OF ANNUAL COST PER KILOWATT OF INSTALLED CAPACITY—THE NARRAGANSETT ELECTRIC CO.

	Cost (thousands)	Cost per kilowatt
Return	$2,639,000	$7.98
Federal income tax	1,602,000	4.85
Depreciation	1,657,000	5.01
Subtotal	5,898,000	17.84
Insurance	60,000	.18
General	547,000	1.65
Property tax	1,387,000	4.20
Operating cost (excluding fuel)	5,077,000	15.36
Subtotal	7,071,000	21.39
Total costs (excluding fuel)	12,969,000	39.23
Fuel	5,616,000	
Total costs	18,585,000	
Nameplate capacity, in kilowatts:		
South street	188,625	
Manchester	132,000	
South county	10,000	
Total	330,625	

Source: Capacity, 1966 annual report to FPC; costs rate filing dated Aug. 31, 1967; section entitled "The Narragansett Electric Co., Cost of Generation, 1967."

MASSACHUSETTS ELECTRIC CO. GENERATING STATIONS

	Lynnway		Webster		Total	
	Cost	Cost per kilowatt	Cost	Cost per kilowatt	Cost	Cost per kilowatt
Return	$154,757	$2.74	$432,181	$12.53	$586,938	$6.45
Federal income tax	83,500	1.48	233,300	6.76	316,800	3.48
Depreciation	300,850	5.32	702,214	20.35	1,003,064	11.02
Subtotal	539,107	9.54	1,367,695	39.64	1,906,802	20.95
Insurance	8,300	.15	9,500	.28	17,800	.20
General	63,870	1.13	81,106	2.35	144,976	1.59
Franchise tax	9,580	.17	26,754	.78	36,334	.40
Municipal tax	543,737	9.63	442,375	12.82	986,112	10.84
Operating costs (excluding fuel)	759,055	13.43	937,390	27.17	1,696,445	18.64
Subtotal	1,384,542	24.51	1,497,125	43.40	2,881,667	31.67
Total costs (excluding fuel)	1,923,649	34.05	2,864,820	83.04	4,788,469	52.62
Fuel	207,700		257,900		465,600	
Total costs	2,131,349		3,122,720		5,254,069	
Nameplate capacity in kilowatts		56,500		34,500		91,000

Source: Capacity—1966 annual report to FPC; costs—rate filing dated Aug. 31, 1967; section entitled "Massachusetts Electric Co., Steam Contract With New England Power Co., Nov. 16, 1966."

Mr. BAKER. It is interesting to note that when hearings were held on a similar bill which would have drastically curtailed the F.P.C. jurisdiction about two years ago, many of the companies which testified claimed to be doing business only in intrastate commerce. These same companies were blacked out in the infamous Northeast blackout which occurred shortly after the hearings closed. The blackout proved conclusively that these companies should be regulated by the F.P.C. and that additional regulatory authority is needed so that these same companies and others can be required to—better coordinate their system planning—pool their power sources on a regional basis—install the necessary interties and exercise control over high voltage transmission.

Because of the many and serious conflicts in all phases of the electric business, it is necessary that the Federal Power Act be strengthened so that the benefits of the vast technological strides made in recent years can be fully utilized in the public interest and for the common good. H.R. 5348 runs counter to these ends and should be rejected.

This need is shown by a recent F.P.C. staff brief in the Northfield Mountain case (Re *Western Massachusetts Electric Co.*, et al, Project No. 1889) which concludes generally that the Massachusetts municipals have been improperly excluded from regional planning activities and this may be a violation of the antitrust laws, and, in any event, should be rectified by the Commision action.

As the brief states:

"The reality of the situation, abundantly clear from the testimony and exhibits received in evidence, is that the municipals are pressing to secure new sources of bulk power and the investor-owned utilities are resisting their effort on a variety of fronts. If one is to conclude that the exclusion of the municipals from planning involves no anticompetitive element, one must be blind to this underlying reality." (Pages 26–27.)

I am submitting a copy of this brief (attachment B) and request that it be copied into the record because it presents a good statement of the antitrust issues as they affect the work of the Federal Power Commission.

(The document referred to follows:)

[ATTACHMENT B]

BEFORE THE
FEDERAL POWER COMMISSION

Western Massachusetts Electric Company	)	Project No. 1889
The Connecticut Light and Power Company The Hartford Electric Light Company Western Massachusetts Electric Company	)))	Project No. 2485

COMMISSION STAFF BRIEF ON EXCEPTIONS

George F. Bruder
Commission Staff Counsel

Washington, D. C.
October 12, 1967

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BEFORE THE
FEDERAL POWER COMMISSION

Western Massachusetts Electric Company)	Project No. 1889
The Connecticut Light and Power Company) The Hartford Electric Light Company) Western Massachusetts Electric Company)	Project No. 2485

COMMISSION STAFF BRIEF ON EXCEPTIONS

I. STATEMENT OF THE CASE

The Presiding Examiner in his initial decision of September 12, 1967, granted the application of The Connecticut Light and Power Company, The Hartford Electric Light Company, and the Western Massachusetts Electric Company for a license under Part I of the Federal Power Act for the proposed Northfield Mountain pumped storage development, Project No. 2485, on the Connecticut River in northern Massachusetts. The Examiner also granted the application of the Western Massachusetts Electric Company to amend its license for the existing Turners Falls development, Project No. 1889, to authorize the raising of the Turners Falls reservoir so that it may be used as the lower pool of the pumped storage development. Since no application had been filed for the Northfield Mountain project transmission

facilities, the Examiner made any rights under his order contingent upon the Western Massachusetts Electric Company's applying for and obtaining authorization under the Act for these facilities (Initial Decision, pp. 22 and 42).

The Commission staff supports the Examiner's grant of the applications as thus conditioned. Its exceptions to the initial decision are limited to the Examiner's conclusions respecting applicants' obligations under Section 10 (h) of the Act, prohibiting restraints of trade (16 U.S.C. 803 (h)).

A. The Massachusetts Municipals' Antitrust Contention

The Municipal Electric Association of Massachusetts and the electric departments of the City of Chicopee, Town of Shrewsbury, and Town of Wakefield, Massachusetts, joint interveners in these proceedings, raise the issue as to whether applicants are in compliance with Section 10 (h). The burden of their claim apparently is that applicants are party to the concerted exclusion of the municipals from various bulk power projects which are being developed or planned in New England. They argue that this exclusion is being accomplished, at least in part, by barring the municipals from the regional planning activities conducted under the auspices of the Electric Coordinating Council of New England. It should be noted

that the Massachusetts municipals do not contend that applicants or the Council are engaged in arrangements to fix the wholesale rates at which the investor-owned utilities sell power to their municipal customers. (Massachusetts Municipals Petition to Intervene, pp. 6 and 9-10; Massachusetts Municipals Br., pp. 5, 23-27, and 32).

B. The Staff Position before the Examiner

The Commission staff in its brief before the Presiding Examiner indicated that the exclusion of the municipals from the Council's planning activities does, indeed, present certain antitrust problems (Staff Br., p. 63). The staff said, however, that despite these problems, the issuance of the Northfield Mountain license and the amendment of the Turners Falls license need not be delayed. By statute, Section 10 (h) would become part of any Northfield Mountain license and is already a part of the Turners Falls license. Thus, the Commission would retain authority and responsibility in antitrust matters even if the applications were to be granted. The staff recommended "that the Commission consider including in its opinion language indicating that if appropriate arrangements to allow all segments of the electric industry in New

England to participate in the planning activities of the Council are not worked out on a voluntary basis within six months of the grant of the applications, the Commission may initiate action as it considers necessary under Section 10 (h)." (Staff Br., p. 64). The applicants in their reply brief denied that there is any possibility of a Section 10 (h) violation (App. Reply Br., pp. 14-28).

C. The Examiner's Conclusions on the Section 10 (h) Issue

The Presiding Examiner in his initial decision, while stating that "it may well be argued that inclusion of the Massachusetts Municipals in the planning activities of ECCNE would result in better inter-regional coordination insofar as the generation, transmission and distribution of electric energy in the Northeast region is concerned," concluded that the staff's recommendation to the Commission "does not appear to be well taken" (Initial Decision, pp. 17-18). He acknowledged that there might be an antitrust violation if it could be shown that the purpose of excluding the municipals from the Council was to prevent them from acquiring a valuable business service, but he stated that such showing has not been made. Furthermore, he said, the

interests and objectives of investor-owned utilities and publicly owned utilities are so disparate and diametrically opposed as to justify the existence of a separate investor-owned utility organization. In any event, the Examiner stated, the Section 10 (h) issue "is a matter entirely collateral to the intended purpose of the instant proceeding." (Initial Decision, pp. 17-18).

The Examiner's analysis, it is submitted, does not do justice to the antitrust problems presented, and for the reasons set out in the argument, the staff renews its recommendation for inclusion of language as described above in any order granting the applications.

II. ARGUMENT

A. Facts Relating to the Section 10 (h) Issue

1. The Massachusetts Municipals' Efforts to Get a Bulk Power Source

The Municipal Electric Association is composed of 39 of the 40 municipal electric utilities in Massachusetts. The electric departments of Chicopee, Shrewsbury,and Wakefield are members of the association. The 40 municipal utilities, which served some 239,000 customers in 1965, had a load of

464 megawatts (for comparison, the Connecticut Valley Electric Exchange (Convex), consisting of the applicants and the United Illuminating Company, had a load of 2,700 megawatts) (Tr. 1264; Ex. 109, column "1965," line 12). Five of the municipals operate generating plants which have a total capacity of 130 megawatts (Tr. 1264). The balance of the municipals' power requirement (i.e., some 72 percent of their 1965 load) is purchased from investor-owned utilities.

James E. Baker, policy witness for the Massachusetts municipals, testified that his group is engaged in a continuing effort to obtain a source of bulk power. Aside from seeking to purchase peaking power from the Northfield Mountain project, the municipals have negotiated through Vermont-New England Power Corporation for a block of base load hydropower from Canada. They are also trying to get an interest in new nuclear plants, which increasingly will become New England's basic bulk power source. These plants are too large for any one utility in the region to install conveniently, and several utilities combine to sponsor them, each taking a "piece" of the output. The plants are built and operated by separate corporations which are wholly owned by the sponsoring