utilities. Power is sold by these corporations to the sponsors at cost and generally in proportion to the sponsors' respective ownership interests. No municipal utility shares in the ownership of any nuclear plant now in operation or directly purchases its power. Witness Baker said that the Massachusetts municipals are attempting to get a part in the Vermont Yankee Nuclear Corporation's proposed project at Vernon, Vermont, and the Maine Yankee Atomic Power Company's proposed project at Wiscasset, Maine. The municipals would be willing to participate in these projects either by sharing in the ownership or by directly purchasing power. (Tr. 1266-1267).

2. The Value of Regional Planning to a Utility

The Massachusetts municipals' attempt to obtain a share in the Vermont Yankee and Maine Yankee plants illustrates the value to the municipal utilities of being able to participate in the electric industry's regional planning activities. The municipals apparently began their effort to get into these projects after the basic planning and ownership arrangements had been worked out. Because they did not participate in the discussion and study of these

projects prior to the firming up of the sponsors' obligations, the municipals are at a distinct competitive disadvantage in trying to get a share in these bulk power sources. One obvious reason that the municipals seek admission to the industry's regional planning activities is that in the future they want to participate in the consideration of nuclear power and other cooperative ventures from an early stage. (The Massachusetts municipals are currently pursuing their attempt to get admitted into the Vermont Yankee project before the Securities and Exchange Commission (Docket No. 70-4435) and the Atomic Energy Commission (Docket No. 50-217) and into the Maine Yankee project before the Massachusetts Department of Public Utilities (Docket No. 15337)).

In general, the business advantage to a utility -- whether publicly owned or investor-owned -- of participating in regional planning activities is that it is in a better position to know what opportunities are available to it and to propose a course of action which will serve its needs. To use a simple illustration, a utility which is privy to regional planning will usually have a better knowledge of where power might be bought and where it might be sold. Or if a utility knows of plans for an emerging regional grid, it will be able to propose changes

in the design and location of the lines to its advantage, and it can more efficiently develop its own transmission system and schedule the installation of generation. Suppose, for example, that a utility has a good site for a generating station. The decision as to what size plant to install at the site may depend in part on the proximity of extra high voltage lines. A utility which is not familiar with the plans for regional transmission is at an obvious disadvantage in making the judgment as to how large a plant it should build. (Conversely, of course, those planning the grid are handicapped if they do not know of the utility's plans for the site.) Illustrations of this sort could be spun out at great length. The point is that in an increasingly interconnected and interdependent electric industry, regional planning constantly grows more valuable to the individual utility.

3. The Council and Its Planning Committee

The most active regional planning agency of the electric industry in New England appears to be the Planning Committee of the Electric Coordinating Council of New England. The committee consists of the top engineering personnel of the utilities represented on the Council (Tr. 316; Ex. 6, p. 4).

Those utilities account for about 80 percent of the power available in New England (Tr. 345). There are 13 members on the committee, three of whom represent applicants (Ex. 128). The Committee establishes task forces for the purpose of studying particular subjects. For example, there has been a task force on the purchase of Canadian power and a task force on 1980 peaking capacity (Ex. 129). The members of the task forces are personnel of the utilities having representatives on the committee. Consulting firms sometimes are engaged by a company or jointly by several companies to conduct studies for the committee or one of its task forces (Tr. 316-317).

The Council itself, organized in 1947, is a group of the chief executives of investor-owned utilities which operate chiefly within the New England states (Tr. 313-314; Ex. 6, pp. 2 and 5). There currently are 19 members of the Council, including the three board chairmen of the applicant companies (Ex. 126). The Council has an annual meeting, and other meetings are held occasionally, perhaps three or four times a year (Tr. 317). The organization's greatest activity has consistently been in its Planning Committee (Tr. 338). There is also a Connecticut River Watershed Committee and a Public Information Committee (Ex. 127). The latter committee is organized and functions in somewhat the same way as the

Planning Committee. Publicity campaigns are planned by the committee, but the advertising is placed and paid for directly by the participating companies (Tr. 319).

4. The Exclusion of the Massachusetts Municipals from the Council's Planning Activities

The Massachusetts municipals applied for membership in the Council in April 1966 (Tr. 321-322; Ex. 76). While membership apparently has always been limited to executives of investor-owned utilities, the limitation was made explicit in 1964 by amendment of the by-laws (Tr. 330-333; Ex. 6, pp. 1-2). The Council, in considering the Massachusetts municipals' application for membership, discussed whether the limitation should be removed and decided to retain it (Tr. 322; Ex. 77-83).

Applicants' policy witness was Howard J. Cadwell, chairman of the board of Western Massachusetts Electric Company and chairman of the executive committee of its parent, Northeast Utilities (Tr. 100). Mr. Cadwell is a member and past president of the Council, and he is chairman of the Council's Connecticut River committee and public information committee (Tr. 310; Ex. 127). The witness was present at the discussion in the Council of the Massachusetts municipals' application for membership (Tr. 322). Asked why the Massachusetts municipals

should be excluded from the Council, Mr. Cadwell gave the following two reasons.

(a) He speculated, first, that the membership of a large number of members who neither generate nor transmit, whether they be public or private, might not further the expeditious conduct of the Council's business (Tr. 315). In this connection, it should be noted that the Massachusetts municipals' application for membership in the Council made clear that they would participate either through their association or as individual electric departments, according to the Council's preference, and James E. Baker, their policy witness, stated that they would be willing to send an individual or small representative group (Tr. 1308-1309; Ex. 76). It should also be noted that under the original by-laws of the Council, a requirement of membership was that the executive's company have "a primary load of over 30,000 kilowatts," but witness Cadwell said that by 1964 "it was felt undesirable to have a size limitation," and the requirement was abandoned (Tr. 333; Ex. 6, p. 2). The witness estimated that there are 15 or 20 investor-owned utilities in New England having a primary

load of 30,000 or less kilowatts. Executives of five or six small companies have applied for and been admitted to membership in the Council. (Tr. 334; Ex. 126).

(b) Mr. Cadwell also said that the positions of the municipal utilities and investor-owned utilities on certain policy issues, such as whether the United States should build the Dickey-Lincoln School project, are so fundamentally opposed that participation by the municipals in the organization would not be conducive to the achievement of its purposes (Tr. 336-340).

5. The Lack of a Comparable Alternative Planning Group

The municipals, of course, have their own planning groups. The Municipal Electric Association of Massachusetts has had a Power Planning Committee for six years (Tr. 1269), and the Northeast Public Power Association has recently formed such a committee. But because the municipal systems are small and have limited generating capacity, and because they are scattered and are not interconnected (except, coincidentally, through their wholesale suppliers), their planning activities are necessarily of an entirely different order than those of the Planning Committee of the Electric Coordinating Council of New England.

It simply is not possible for the municipals to conduct true regional planning except in cooperation with the investor-owned utilities of New England.

B. The Law of Exclusionary Arrangements

1. Section 10 (h)

In the prolonged struggle for water-power legislation Congress early manifested an interest in including a provision such as Section 10 (h). Precursors of that section appeared in the Ferris and Adamson bills of 1914 (the year, incidentally, in which the Clayton and Federal Trade Commission Acts were passed) (Section 3 of the Ferris bill, H.R. 14893, 63d Cong., 2d Sess., and Section 15 of the Adamson bill, H.R. 16053, 63d Cong., 2d Sess.). The Shields bill of 1916 also contained an antitrust provision (Section 12 of S. 3331, 64th Cong., 1st Sess.). The Administration bill, which eventually became the Federal Water Power Act of 1920, initially did not have such a provision (H.R. 8716, 65th Cong., 2d Sess.). Section 10 (h), then numbered 10 (g), was inserted in the bill by the Committee on Water Power (H. Rep. No. 715, 65th Cong., 2d Sess. at pp. 7 and 17 (1918)). This section was carried through every draft

of H.R. 3184, the Administration bill in the 66th Congress, and became part of the Act. The section reads as follows:

> Sec. 10. All licenses issued under this Part shall be on the following conditions:
>
> * * *
>
> (h) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

This language is derived from the Sherman Act, and it plainly must be interpreted in the light of the case law development under the antitrust statutes.

2. The "Bottleneck" Boycott

The type of antitrust violation which the Massachusetts municipals appear to allege in these proceedings has been called a "bottleneck" agreement. A. D. Neale, author of a leading treatise on antitrust law, states the proscription against such agreements in these terms:

> The Sherman Act requires that where facilities cannot practicably be duplicated by would-be competitors, those in possession of them must allow them to be shared on fair terms. It is illegal restraint of trade to foreclose the scarce facility. (Neale, The Antitrust Laws of the U.S.A. 69 (1962)).

The Supreme Court, in a decision handed down shortly after publication of Neale's treatise, stated the proscription in somewhat broader terms:

> A valuable service germane to petitioners' business and important to their effective competition with others was withheld from them by collective action. That is enough to create a violation of the Sherman Act. /Citations omitted./ (Silver v. New York Stock Exchange, 373 U.S. 341, 349 at n. 5 (1963)).

The bottleneck agreement belongs to the category of collective boycott or concerted refusal to deal. But unlike, for example, exclusive-dealing agreements between wholesalers and retailers, the bottleneck agreement is among persons at the same level of the market (others may be coincidentally involved, of course). The objective of bottleneck agreements and other collective boycotts, rather than directly to fix prices, is to enhance a position of power in the market. However, like price fixing, collective boycotting is considered illegal per se, meaning that there is an irrebuttable presumption of its harmfulness. See generally Neale, supra, at 65-77 and 131-137.

3. The Silver, Associated Press, and Terminal Railroad Cases

In the Silver decision, quoted above, which is the Supreme Court's most recent statement on bottleneck situations, two Texas broker-dealers in over-the-counter securities who were

not members of the stock exchange had arranged to establish private wire connections with exchange members.

Pursuant to rules promulgated by the exchange under the Securities Exchange Act of 1934, the members applied to the exchange for approval of the connections. The exchange granted temporary approval and the connections were established. After an investigation of the broker-dealers, the exchange, allegedly acting at least in part on the basis of derogatory confidential information about them, denied the applications, and the members accordingly discontinued the connections. Despite requests, the exchange declined to explain its action or grant hearing. The broker-dealers, claiming loss of business, sued for injunctive relief and treble damages under the antitrust laws. The exchange's defense was that it had immunity because it acted pursuant to a Federal regulatory statute. The Court, in terms similar to those previously quoted, stated (373 U.S. 347):

> It is plain, to begin with, that removal of the wires by collective action of the Exchange and its members would, had it occurred in a context free from other federal regulation, constitute a per se violation of §1 of the Sherman Act. The concerted action of the Exchange and its members here was, in simple

> terms, a group boycott depriving petitioners of a valuable business service which they needed in order to compete effectively as broker-dealers in the over-the-counter securities market. Fashion Originators' Guild v. Federal Trade Comm'n, 312 U.S. 457; Associated Press v. United States, 326 U.S. 1; Klor's, Inc., v. Broadway-Hale Stores, Inc., 359 U.S. 207; Radiant Burners, Inc., v. Peoples Gas Light & Coke Co., 364 U.S. 656.

The Court proceeded to hold that the exchange was not immunized from the broker-dealers' suit by the Securities Exchange Act.

In another leading case in point, Associated Press v. United States, 326 U.S. 1, 15 (1945), the Supreme Court observed that "the Sherman Act was specifically intended to prohibit independent businesses from becoming 'associates' in a common plan which is bound to reduce their competitor's opportunity to buy or sell the things in which the groups compete." The Associated Press had adopted by-laws which made admission to membership more difficult for newspapers which were in competition with existing members than for those which were not. Non-competing applicants could be admitted by the board of directors. But the board could not admit the competitor of an existing member without the member's consent. If consent were not given, the application was referred to a meeting of the association, where it was acted upon by a majority vote

of the regular membership. If the applicant were admitted to membership at such meeting, it still faced two further requirements. First, it had to relinquish any exclusive rights which it might have to news from other sources and, at the competitor's request, require that any news which was available to it would be made available to the competitor on equal terms. Finally, the applicant had to pay the association ten percent of the total payments which had been made by the competitor since 1900. News from the Associated Press or any of its members could not be obtained by newspapers which did not belong to the organization. The United States sought an injunction against observance by the association of its by-laws.

The Supreme Court observed that the "inability to buy news from the largest news agency, or any of its multitude of members, can have most serious effects on the publication of competitive newspapers . . ." (326 U.S. 13).

> It is apparent /the Court said/ that the exclusive right to publish news in a given field, furnished by AP and all of its members, gives many newspapers a competitive advantage over their rivals. /Footnote omitted./ Conversely, a newspaper without AP service is more than likely to be at a competitive disadvantage. (326 U.S. 17-18).

The by-laws of the association, by setting up obstacles to the admission of any competitor of a member, were found to limit seriously the opportunity of a newspaper to enter a city against an established, wire-service newspaper. "Trade restraints of this character, aimed at the destruction of competition, tend to block the initiative which brings newcomers into a field of business and to frustrate the free enterprise system which it was the purpose of the Sherman Act to protect." (326 U.S. 13-14).

The classic case of a bottleneck violation is found in United States v. Terminal Railroad Association, 224 U.S. 383 (1912). A group of railroads had set up a jointly owned company which controlled practically all terminal facilities in the vicinity of the twin cities of St. Louis, Missouri, and East St. Louis, Illinois, where much of the nation's east-west traffic crossed the Mississippi River. The railways which served the Eastern United States terminated on the Illinois side of the river, and those which served the Western region terminated on the Missouri side. The terminal company owned the lines connecting the various rail termini on each side of the river with the only two bridges and ferry which were available for crossing. The contract setting up the terminal

company provided that railroads other than the sponsors could be admitted in ownership only by unanimous consent of the directors and upon payment of such consideration as they might fix. In other words, the sponsoring railroads retained the power to veto the use of the terminal company's facilities by other railroads and to discriminate against other railroads in charges. The United States alleged that the terminal company suppressed competition.

The Supreme Court held that it would not normally be a restraint of trade for railroads to combine in unifying terminal facilities. If the sponsors withheld the facilities from other railroads, or if they offered them on discriminatory terms, the other railroads would have recourse to obtaining their own facilities. In St. Louis, however, there was no practical recourse of this type (224 U.S. 396-397):

> The city lies upon a group of great hills which hug the river closely and rapidly recede to the west. These hills are penetrated on the west by the narrow valley of Mill creek, which crosses the city about its center. Railways coming from the west use this valley, but its facilities are very restricted and now quite occupied.

The Court concluded that in view, largely, of the topographical circumstances of the case, the terminal company was in violation of the Sherman Act and that it should be reorganized so that its

properties would be available to all railroads on non-discriminatory terms. See, as a more recent case involving a somewhat similar situation, Gamco, Inc. v. Providence Fruit & Produce Bldg., 194 F. 2d 484 (1st Cir. 1952).

The antitrust law as it relates to the proceedings presently before the Commission is described in the following passage from the Neale treatise, which is quoted in full here, despite its length, because it is an apt and accurate summary of the subject:

> The Associated Press case is a clear guide to this aspect of the law. It shows that for refusal of entry into an association to constitute illegal restraint of trade there must be some important facility -- sometimes a virtual 'bottleneck' -- in the association's control, such that by keeping it exclusive to themselves the members of the association impose a real handicap on would-be competitors. [Footnote omitted.] This handicap need not be fatal: the facility need not be 'indispensable': it is enough that the association's exclusive hold on the scarce resource confers significant competitive advantages on members as against outsiders. Finally, it is no defense that the members have built up a facility -- such as the Associated Press news service -- for themselves; new entrants must still be allowed to share it on reasonable terms unless it is practicable for them to compete without it.
>
> In this field there is clearly some scope for the Rule of Reason. Sometimes it is only fair that the newcomer should pay rather more for a facility than those who have invested in it over a long period. How much more is reasonable? Sometimes, as in the Associated Press case, the newcomer can find facilities of a sort elsewhere than in the association; but they may be far inferior. How much worse

> must the inferior ones be to make it illegal to keep the better ones exclusive? These are questions which the courts have to answer by reference to 'the facts peculiar to the business' in each case. What they are really trying to get at is the actual competitive situation; and, once again, the prudent businessman, who wants to steer clear of antitrust trouble, should reckon that if his association's exclusiveness really does harm the newcomer or outsider, then the courts will discover the harm and penalize it. But they will not simply infer injury where it does not exist from the sheer fact of exclusiveness. (Neale, supra, 70-71).

For an application of these principles in an administrative context, see Agreement Establishing Air Cargo Incorporated, 9 C.A.B. 468 (1948). See also Fulda, Competition in the Regulated Industries: Transportation §§ 7.27, 7.28, and 9.9 (1961).

4. The Vermont Yankee Case

Note is made of the recent decision of the Vermont Public Service Board in Vermont Yankee Nuclear Power Corp., 68 P.U.R. 3d 6, 26-32 (Vt. Pub. Serv. Bd. 1967). The proceeding in that case was on a petition by the Vermont Yankee corporation for approval of a stock issuance. Two Vermont municipal systems and three cooperative systems complained of their exclusion from the Vermont Yankee project. The Board found that there was an "inequitable ownership pattern," and while it approved the stock issuance to avoid delaying the project, it said: "We shall expect the petitioner to give all Vermont

distribution utilities a reasonable opportunity to participate in ownership of petitioner's stock when future stock issuances are proposed" (68 P.U.R. 3d 32). The Board's decision was founded on a state statute requiring that stock issuances be "consistent with the general good" and did not, at least in terms, involve antitrust considerations. (The Massachusetts municipals had submitted a petition to the Board, but the Board, finding the petition to be untimely, declined to consider it.)

It is understood that after the Vermont Board issued its decision, the Vermont companies among the sponsors of the project offered to sell stock in the jointly owned company to the various publicly and privately owned Vermont distribution utilities. The amount of stock offered was fixed pro rata on the basis of total kilowatt hours sold to ultimate consumers in 1965. Under the formula, the City of Burlington, for example, was offered 5.5 percent of the Vermont Yankee stock, and it has indicated its intention to accept the offer, subject to approval of the necessary bond issue by the voters. The Vermont sponsors offered, alternatively, to sell power to the distribution utilities at the incremental cost, including profit to Vermont Yankee, of its production at the project.

C. Errors in the Examiner's Analysis

The Commission staff takes exception to four major points in the Examiner's antitrust analysis.

1. Examiner's Assumption that Anticompetitive Purpose Is a Necessary Element of a Bottleneck Boycott

The Examiner assumes that there cannot be an antitrust violation without a showing of anticompetitive purpose on the part of applicants and other members of the Council (Initial Decision, p. 17):

> If it could be shown [the Examiner says] that the purpose of ECCNE's exclusion of the Massachusetts Municipals from membership was to prevent them, as pointed out by Staff, from acquiring a valuable business service which would enable them to compete effectively for the procurement of bulk power, among other things, it is possible that such exclusion could constitute a violation of the antitrust laws, Silver v. N.Y. Stock Exchange, 373 U.S. 341, 347 (1963), but such has not been shown to be the case.

The law unmistakably is that if an exclusionary arrangement has an anticompetitive effect there is an antitrust violation, regardless of the purpose of the exclusion. (And conversely, for combinations which are illegal per se, there is a violation if there is an anticompetitive purpose, regardless of effect.) The Silver case itself, cited by the Examiner in the above

passage, stands for the principle that purpose is not germane in a bottleneck boycott. There the New York Stock Exchange could gain no competitive advantage by ordering its members to discontinue their wire connections with the plaintiff broker-dealers, and the members, which were otherwise willing to provide the service, broke off the connections strictly in order to comply with the exchange's regulations. Indeed, the holding of Silver on the question of purpose has entered into the black letter law. See Kintner, An Antitrust Primer 236 (1964), where the holding of Silver is encapsulated as "purpose of boycott unimportant." On this point, it is noted, Silver is in line with the earlier case of Fashion Originators' Guild of America v. FTC, 312 U.S. 457 (1941).

While it is unnecessary to establish an anticompetitive purpose, the staff does not agree with the Examiner that an inference of such purpose may not be drawn from the record in these proceedings. 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.

2. Examiner's Conclusion that Differences on Policy Justify Exclusion from Cooperative Planning Activities

The Examiner concludes that because the municipal utilities and the investor-owned utilities have differences on such subjects as legislation, taxation, and public policy, they should not be required to work together in planning activities (Initial Decision, p. 17).

The staff in its brief before the Examiner made explicit that the antitrust laws present no bar to the exclusion of the municipals from those activities of the Council, centered primarily in its Public Information Committee, which are designed to get public and legislative support for various policies and programs advocated by the membership (Staff Br., p. 64):

> /T/he investor-owned and publicly owned segments of the electric industry . . . each has the right to be able freely to develop and present its views on . . . matters /of public policy/, not only to legislative and other governmental bodies but also to the public. This right is protected even if the public policy urged is anticompetitive.

The right is recognized in Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961) and United Mine Workers of America v. Pennington, 381 U.S. 657, 669-670 (1965).

There is no reason, it is submitted, why the municipal utilities and the investor-owned utilities cannot exercise their unfettered right to dispute about public policy with one hand while cooperating in regional planning with the other. It is not denied, certainly, that there are some areas where public policy and system planning merge (the desirability of the United States' building the Dickey-Lincoln School project is an example), but also it is clear that there are many areas where they are quite discrete. The Commission's experience has demonstrated that the publicly owned and investor-owned segments of the industry are capable of cooperating when the need is made plain and that the cooperation may be mutually beneficial and much less difficult than either side had thought. To say that the municipals may be permanently excluded from regional planning because they are at loggerheads with the private segment on certain policy questions would be to put them at a disadvantage which would be crippling and perhaps eventually fatal to their generating and bulk power programs.

3. Examiner's Belief that Section 10 (h) Decision Is Collateral to the Purpose of These Proceedings

The Examiner believes that "discussion of possible Section 10 (h) or antitrust law violation is a matter entirely collateral to the intended purpose of the instant proceeding" (Initial Decision, p. 17). His reasons for reaching this conclusion appear to be twofold, as follows:

(a) He states that the "proceeding is concerned with whether the public convenience and necessity will be served by issuance of a license for construction of the Northfield Mountain Project by the Applicants" (Initial Decision, p. 17). The implication intended, presumably, is that an antitrust inquiry is extraneous to the purpose of such a proceeding. The problem with this analysis is that it ignores the mandate given to the Commission in Section 10 (h). Moreover, even if Section 10 (h) were not in the Act, the analysis would be of questionable validity under the Supreme Court's established interpretation of the scope of inquiry in public convenience and necessity proceedings. The Court, for example, stated in California v. FPC, 369 U.S. 482, 484-485 (1962), that "evidence of antitrust violations is plainly relevant in merger applications, for part of the content of 'public convenience and

necessity' . . . is found in the laws of the United States." And in the recent case of The Denver and Rio Grande Western Railroad Co. v. United States, 35 U.S.L. Week 4531, 4533 (U.S. June 5, 1967), the Court observed: "Commonsense and sound administrative policy point to the conclusion that such broad statutory standards /as 'public interest' and 'lawful object'/ require at least some degree of consideration of control and anticompetitive consequences when suggested by circumstances surrounding a particular transaction." See also: FCC v. RCA Communications, Inc., 346 U.S. 86, 94 (1953); McLean Trucking Co. v. United States, 321 U.S. 67, 86 (1944); National Broadcasting Co., Inc. v. United States, 319 U.S. 190, 222-224 (1943); City of Pittsburgh v. FPC, 237 F. 2d 741, 754 (1956).

(b) The Examiner's second reason for concluding that the antitrust issue is "collateral" apparently is that if the Northfield Mountain license is issued, the Commission will have continuing authority and responsibility under Section 10 (h) (Initial Decision, p. 18):

> Section 306 of the Federal Power Act specifically provides for a method of bringing violations of the statute to the attention of the Commission. Insofar as the future operation of the Northfield Mountain Project is concerned, Section 10 (h) is required by statute to be included in the Northfield Mountain license and is presently a part of the Turners Falls license.

On this point, the Examiner's decision echoes language in the initial decision in Pacific Northwest Power Co., 31 F.P.C. 247, 350 (1962), where Washington Public Power Supply System contended that the four sponsoring utilities of Pacific Northwest violated Section 10 (h) by combining to apply for a license for the last important hydroelectric site in the region and that licensing Pacific Northwest would give its sponsors an unlimited opportunity to fix the price of power:

> . . . Section 10 (h) of the Act /the Examiner said/ deals with conditions to be imposed upon the grant of a license and not with prequalifications for the issuance of a license. Its legislative history indicates it was designed to protect the public against the misuse of an FPC license by authorizing Commission sanctions for antitrust violations (Senate Committee Report No. 180, 66 Cong. 1st Sess. p. 4 (1919)).

This rationale, it is noted, was not utilized by the Commission in its decision on the antitrust issue in that case (31 F.P.C. 274-275).

The legislative history of Section 10 (h) does not, in fact, support the conclusion that the section is only for the limited purpose of enforcing the antitrust laws against existing licensees. Senate Report 180 at page 4, cited as the sole authority for the Examiner's construction of Section 10 (h) in Pacific Northwest, merely recites, as part of the history of

the struggle for water-power legislation, that President Roosevelt some ten years before had offered as one of his reasons for vetoing the James River bill that "the license should be forfeited upon proof that the licensee joined in any conspiracy or unlawful combination in restraint of trade." There is nothing in the document to show that Congress intended that Section 10 (h) would not apply in licensing proceedings. Nor has anything been found elsewhere in the legislative history to show such purpose. Indeed, the interpretation is an impossibly strained one, for it assumes that Congress in the same breath prohibited restraints of trade under Part I of the Federal Power Act and authorized the Commission to issue licenses to those who are engaged in them. If the interpretation were correct, presumably the procedure for keeping a license out of the hands of someone who is in violation of the antitrust laws, but is otherwise qualified as a licensee, would be to issue the license and immediately begin a proceeding to revoke it. It cannot lightly be inferred that Congress had in mind any such pointless and wasteful exercise. The staff submits that the antitrust question pressed by the Massachusetts municipals is properly presented and must be directly faced and resolved. The recommended method of resolution is discussed below.

4. Examiner's Assumption that Applicants Are not Responsible for Their Activities Through the Council

The Examiner, pointing out that applicants do not have voting control of the Council, stated that it is not "made clear by what means or method the alleged sins of ECCNE could or should be visited on the Applicants . . ." (Initial Decision, p. 18). The answer is that applicants are held, under the antitrust laws, no less responsible for their actions through the Council than for their actions elsewhere: they are not, after all, compelled to participate in the Council's activities. The Commission in a licensing proceeding has the authority and obligation to take account of the antitrust implications of applicants' actions. If the Commission were to determine that the exclusion of the municipals from the Council's planning activities is, indeed, a bottleneck boycott, it could either deny the applications or grant them on terms which make clear that the boycott must be ended or applicants must no longer be party to it. And, of course, if the applications were to be granted on such terms, but the licensees persisted in unlawful activity through the Council, action pursuant to Section 10 (h) could be taken against them.

The staff's proposal is that the Commission grant the applications but make clear that it recognizes the existence of an improper exclusionary practice and that it expects applicants to take the necessary action either to terminate the practice or at least to free themselves of any further association with it. The staff recommends that the Commission allow applicants some six months to deal with this matter. This proposal is believed to be the most practical solution to a difficult problem. It will allow applicants to proceed with the construction of the Northfield Mountain project, which is thought to be a well conceived development and one which is needed to meet the power needs of the region. At the same time, the proposal will present the Commission, it is believed, with a license order which will be defensible in the courts. (See, however, on the problems of an administrative agency's postponing consideration of antitrust problems raised on an application, the recent case of The Denver and Rio Grande Western Railroad Co. v. United States, 35 U.S.L. Week 4531, 4535-4538 (U.S. June 5, 1967)).

APPENDIX A: Factual Error in the Examiner's Discussion of Primary Lines

In discussing what transmission lines are subject to license as primary lines of the Northfield Mountain project, the Examiner says, "The Applicants point out . . . that some power from other sources will at all times be transmitted on . . . /the/ lines /extending south to the Ludlow switching yard and north to the Vermont Nuclear switching yard/ . . ." (Initial Decision, p. 12). The staff, while supporting the Examiner's order on transmission lines, notes, to prevent confusion, that the above assertion is inaccurate, both as a representation of applicants' position and as a statement of fact relating to the transmission situation. It is believed that the Examiner may have misread applicants' correct statement that the Ludlow and Vermont Nuclear lines will always be carrying some power (App. Br., pp. 50-53; Tr. 1510-1511). However, on occasion the power carried will be entirely from the Northfield Mountain project. Staff witness Joseph J. A. Jessel testified that when the Northfield Mountain and Vermont Nuclear projects are generating at full capacity to meet the Convex system peak demand, these lines will be loaded only with Northfield Mountain power (Tr. 1511). For purposes of determining what transmission lines are part of the project, this condition is perhaps the most important one to be examined.

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of §1.17 of the Rules of Practice and Procedure.

Dated at Washington, D. C., this 12th day of October, 1967.

George F. Bruder
Commission Staff Counsel

Mr. MACDONALD. Fine. Our next witness will be Mr. Kelly, director of public utilities, Gainesville, Fla.

STATEMENT OF JOHN R. KELLY, DIRECTOR OF PUBLIC UTILITIES, CITY OF GAINESVILLE, FLA.

Mr. KELLY. Mr. Chairman and members of the committee, I appreciate very much the opportunity to appear before you today in speaking in opposition to House bill 5348 and other related bills.

My name is John R. Kelly. I am director of public utilities for the city of Gainesville, Fla., and I have held this position for 17 years. Prior to being appointed director of public utilities, I held various positions of responsibility within the utilites department. Altogether, I have had 38 years of experience in municipal power system management and operations. I have been twice president of the Florida Municipal Utilities Association.

My request to appear here today on behalf of the Department of Public Utilities of Gainesville, Fla., is to express our opposition to H.R. 5348 and related bills which would amend the Federal Power Act to create an exemption from parts II and III of that act for some investor-owned power companies now subject to the jurisdiction of the Federal Power Commission, which administers the act.

H.R. 5348 would also exempt from the Federal Power Act rural electric cooperatives, but this does not change existing law as the Federal Power Commission has ruled that cooperatives are now exempt from FPC jurisdiction.

The most dangerous part of H.R. 5348 is that which creates an exemption from FPC jurisdiction for private electric utilities.

H.R. 5348 masquerades as legislation to reaffirm the original purpose of the Federal Power Act, but in reality it would negate an important part of that act, the promotion of interconnection and coordination, among utilities for the benefit of the American consumer.

Gainesville operates one of the largest isolated generating and distribution systems in the country and could improve the economics of its operation if interconnected and coordinated wth a large electric system, particularly with the Florida pool. Both Florida Power Corp. and Florida Power & Light have high-voltage transmission lines accessible to Gainesville, and the city is willing to build at its cost an interconnection to one or both of these systems. Some 30 years ago, Florida Power Corp. invaded Gainesville's territory and now serves the university and other customers not only within the metropolitan area of Gainesville, but in some cases within Gainesville's city limits. Gainesville is able and willing to meet this competition and does not need an interconnection for this purpose. An interconnection and exchange agreement, however, would be of substantial benefit to both systems. Florida Power Corp. has refused to interconnect with Gainesville. First, it refused flatly and then it purported to be agreeable only if Gainesville accepted unreasonable demands for exclusive territorial rights. Since Florida Power is also subsidizing through low rates the competition by Clay Electric Cooperative in Gainesville suburbs, the total effect of the company's demands would have been to strangle the growth of the city's electric system.

Accordingly, Gainesville sought an agreement with F.P. & L. for an interconnection since the city does not compete with it. There is available for a Gainesville-F.P. & L. interconnection the 115-kilovolt transmission line which has excess capacity and was previously used for later connecting Jacksonville and F.P. & L. This is approximately 20 miles from Gainesville, and the city is willing to build the whole interconnection without cost to F.P. & L. We were, however, unable to obtain an agreement with F.P. & L. either, which, among other things, insisted as a condition that the city work out a retail territorial agreement with Florida Power. In other words, although the companies deny it, it appears that the two companies are working together hand in glove. In these circumstances it does not make sense to place F.P. & L. beyond reach of FPC regulation, while Florida Power is regulated. In the case of Gainesville, since FPC had not yet established its jurisdictional finding over F.P. & L., the city had no choice but to apply to FPC for an interconnection with Florida Power, irrespective of the comparative merits of an interconnection with F.P. & L., or with both.

The testimony before FPC, and the Commission's staff briefs, show that the interconnection will save both Gainesville and Florida Power millions of dollars, and improve the reliability of both systems. We believe that FPC will ultimately order that connection and we believe that, absent FPC jurisdiction, we would not be able to obtain the interconnection.

Actually, what Gainesville needs is to become a member of the Florida pool, and there has been extensive technical staff testimony at our hearings showing the desirability of such membership, and also showing the need for expansion of the activities of the pool, particularly an increase in coordination activities. However, under the proposed amendment, FPC would apparently be unable to reach the two other principal members of the pool; F.P. & L. and Tampa Electric Co.

There was also testimony at the FPC hearings in the *Gainesville* case showing that, in the public interest, Gainesville might ultimately provide a transmission intertie between Florida Power and F.P. & L. Again, this desirable objective might be beyond FPC jurisdiction if the act is amended.

There is no question in our minds that the Florida Public Service Commission cannot fill the regulatory gap. It does not have the muscle to deal with these large companies. During the Gainesville proceeding, an effort was made to obtain the terms of the operating and interconnection arrangement between Florida Power and F.P. & L. Florida Power said it was on file with the Florida Public Service Commission, but upon inquiry the Florida Commission would not release a copy. When Florida Power finally produced the paper, under threat of FPC subpena, it turned out to be a 1½-page unsigned memorandum prepared by Florida Power, never reviewed by F.P. & L., and in this shape was accepted for filing by the Florida Commission. Counsel for Florida Power, who was responsible for this memorandum stated, "* * * to my knowledge, unless they had looked at the record, they haven't paid any attention to this instrument and they do not join in this expression of the oral operating arrangement" (FPC docket No. E–7257, St. Petersburg deposition, transcript p. 89).

Morever, the memorandum was incomplete on its face, stating:

The methods of operation and the means of settlement are a combination of "left overs" from an old contract, verbal agreements to conform to some clauses of the Tampa contract and oral agreements between the two companies as transactions are made.

However, nobody, from President William Clapp down could tell us what these "left overs" and "verbal agreements" are, nor could they tell us the names of anyone who would know. Finally, the company's trial counsel laid it on the line:

* * * I don't know and I don't know anybody in the company who does know. As I understand it, the only man who did know is a Mr. McKean who is dead. (FPC Docket No. E–7257, St. Petersburg deposition transcript p. 102.)

There is submitted herewith the unsigned, unilateral memorandum, which the Florida Public Service Commission was willing to accept as the basis upon which two great public utility systems, serving great cities and the largest part of Florida, purport to do business with each other involving millions of dollars, and, of course, the interests of millions of rate payers and electric users. Incidentally, only the first portion of the memorandum had been filed with the Florida Commission, the "Addendum January 1966" had not been filed, as of the June 1966 depositions.

(The memorandum referred to follows:)

STATEMENT OF OPERATING ARRANGEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND FLORIDA POWER CORPORATION FOR INTERCONNECTION AND INTERCHANGE OF POWER

Florida Power Corporation and Florida Power & Light Company operate two interconnections. The tie at Lake City is normally open unless either party specifically makes a request for assistance. This tie is considered to be of little value to the "pool" operation.

The tie at Sanford is normally closed and performs all the functions of a regular interconnection. On a reciprocal basis, the tie carries normal inadvertent energy, emergency capacity, overhaul capacity, etc. The tie also renders the same services in connection with the pool operation. In this instance the capacity and energy could possibly be for a third or fourth party (Tampa and Orlando).

In accounting for the energy at the end of each month, settlement is made only for the "scheduled" energy (as defined in the minutes of the "Pooling Agreement Meeting").

Energy at the Lake City tie is usually based on the previous month's operating costs at Florida Power Corporation's Suwanee Plant or Florida Power & Light Company's Palatka Plant (depending on the supplying company).

Energy at the Sanford tie is usually based on the previous month's operating costs at Florida Power Corporation's Turner Plant or Florida Power & Light Company's Sanford Plant (depending on the supplying company).

Both of the above are the total-fuel, operation and maintenance costs per KWH of the supplying plant plus 10%, plus one mill.

There have been occasions when capacity was requested by one party and the other party was required to start up a high cost unit to provide this service. In that case, the costs of the high cost unit were used to determine billing.

The methods of operation and the means of settlement are a combination of "left-overs" from an old contract, verbal agreements to conform to some clauses of the Tampa contract and oral agreements between the two Companies as transactions are made.

July–1964.

Addendum January–1966:

On April 19, 1965, Florida Power & Light Company dismantled the Lake City interconnection. In August, 1964, a new point of connection was established between Florida Power Corporation's West Lake Wales Substation and Florida

Power & Light Company's Brevard Substation. This new point of interconnection, known as the Brevard interconnection, operates and functions the same as the previously-described Sanford interconnection.

Mr. KELLY. There seems to be no recognition that the public interest requires proper coordination between these two great systems in order to minimize the cost of electric service (and Florida is one of the highest retail rate areas in the country) and insure the reliability of such service. This obviously requires firm and definite contractual obligations between major systems. It is not in the public interest that they be free to operate like two rug merchants on a wholly when, as, and if basis. The FPC presiding examiner questioned President Clapp closely concerning the memorandum as follows (deposition transcript p. 18):

* * * It says Florida Power and Light or Florida Power will exchange power with each other during peak periods in the event of an emergency, if they want to, or if they desire to. There is no obligation to; isn't that correct?
The WITNESS: That's right.

This point is critical in the case of Florida Power which, unlike most systems, does not plan its power supply capacity so as to assure the availability of backup power in the event its largest unit breaks down at the time of its annual peak. For such a system, it is essential that there be a definite peaktime, backup arrangements. Yet, here we find that Florida Power's principal interconnection is: First, on terms unknown to the president, or any other living member of his staff; and, second, is understood at best to rest entirely on the momentary desires of the parties.

We submit that the willingness of the Florida Commission to permit this state of affairs to exist demonstrates its inability to cope with major interconnection problems. This demonstrates the need for the expert interconnection resources of the Federal Power Commission, in Florida, as in so many other parts of the country.

Federal Power Commission, once its jurisdiction over F.P. & L. is established, will be able to require Florida Power and F. P. & L. to adopt a definitive and comprehensive agreement which will benefit both companies, and their customers, although it may curb some of the now limitless prerogatives evidently claimed by the heads of these companies.

To amend the act as proposed in H.R. 5348 or similar bills would, in my opinion, deprive Gainesville of its opportunity to best develop its system to serve the public because it would disable or attempt to disable FPC from ordering Gainesville into the Florida pool. It would similarly bar other municipal electric generating plants in Florida from contributing to and sharing the benefits of the Florida pool. Even more important, it would leave the protection of the vast Florida public to the uncontrolled acts of the particular persons heading up Florida Power and F.P. & L. at any particular moment.

Accordingly, I would strongly urge that the Federal Power Act not be amended to reduce the authority of the Federal Power Commission; but, if anything, that authority and jurisdiction should be strengthened and expanded.

Mr. MACDONALD. Thank you very much, Mr. Kelly, for a very informative statement.

I have a question concerning page 2. You say the Florida Power Corp. refused to interconnect with Gainesville. You say it refused and

it would do it only if Gainesville accepted unreasonable demands for territorial rights.

Mr. KELLY. That is correct.

Mr. MACDONALD. Were these demands couched in direct terms or indirect terms?

Mr. KELLY. They were in direct terms, Mr. Chairman, in that when we originally approached them after annexation which expanded our city limits from some 5½ square miles to about 22 or 23 square miles, we were able to purchase some 130 customers of Clay Electric Cooperative in the expanded city limits without difficulty; but when we approached Florida Power Corp., they had some 25 to 28 customers in the city, and at that same moment we asked them to consider an intertie with us and they said, well, they would intertie with us only on condition that we stayed within the then new city limits and they would sell these customers at 2.75 times annual revenue; but if we would not agree to stay within the city limits, the price would then be 5 times annual revenue.

Mr. MACDONALD. Is that not just plainly illegal?

Mr. KELLY. We think so.

Mr. MACDONALD. Did you take an appeal to the Florida Utility Commission?

Mr. KELLY. We now have an appeal, as borne out by my testimony, before the Federal Power Commission to force the interconnection; but again, the territorial issue has been raised.

Mr. MACDONALD. I have read your testimony, and it is very interesting. It is a very forthright statement. Did you not take it up with the Florida Utility Commission?

Mr. KELLY. No, sir.

Mr. MACDONALD. Why not?

Mr. KELLY. I guess the feeling of our city commission at the time was that it would probably be useless to take it before the Florida commission because we have been somewhat disillusioned in watching this commission in operation and with some of the statements made. If you will recall, on the Senate side on S. 218, the chairman of the commission stated that he thought the best regulation was little or no regulation. So, I think in view of some of these statements made, they felt it would be rather an exercise in futility.

Mr. MACDONALD. Just to cover your flanks, it seems to me you would file a case, just to see what would happen.

Mr. KELLY. This has been considered, but it never has been implemented.

Mr. MACDONALD. You state that the two companies work together hand in glove. Would this not be the basis for antitrust action?

Mr. KELLY. Yes, sir.

Mr. MACDONALD. Has any company ever brought this to the attention of the Department of Justice?

Mr. KELLY. We have also in the back of our mind to pursue this further.

Mr. MACDONALD. But you have not done it yet?

Mr. KELLY. We haven't done anything yet.

Mr. MACDONALD. Are there questions?

(No response.)

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

Mr. KELLY. Thank you, sir.

Mr. MACDONALD. Mr. Crisp, the next scheduled witness, has already filed a statement.

Mr. Biemiller, of the AFL–CIO, has filed a statement for submission for the record.

That brings us to Mr. William C. Wise, counsel for Mid-West Electric Consumers Association, Washington, D.C.

STATEMENT OF WILLIAM C. WISE, COUNSEL FOR MID-WEST ELECTRIC CONSUMERS ASSOCIATION

Mr. WISE. Mr. Chairman and members of the committee, my name is William C. Wise. I appear here in behalf of Mid-West Electric Consumers Association, which is a regional service organization for the rural electric cooperatives and the municipal electrics of the nine States comprising the Missouri Basin. We have about 250 electric systems which are members, who in turn serve about a million and a half consumers.

At our annual meeting last year held in Denver in December, the association voted unanimously to oppose any bill presented at this session of Congress which would cut down the jurisdiction of the Federal Power Commission over the investor-owned utilities.

Our reason for opposing H.R. 5348 is that, in our opinion, it would interfere strongly with the objective of our members to serve their consumers adequately at the lowest possible cost. Even more important than that, we think that the rates for a number of consumers throughout the country will be increased if this bill is passed.

As has been pointed out, both by questions and by testimony, it is impossible, at least it seems to me impossible, to tell exactly how many companies will be affected by this bill. We believe there might be three in our own area, although we cannot be positive. However, we are certain that the suggestions made here by different witnesses, particularly by Mr. Tally, that companies will reorganize their method of operation so as to come under it, is not a bogyman, but is an actual fact. We base that on history.

A number of rural electric cooperatives, prior to the time the Federal Power Commission aggressively assumed jurisdiction over electric utilities, roughly 6 years ago—now, of course, the Commission asserts jurisdiction even though the facilities are located within a State if the particular company is transmitting or selling at wholesale in interstate commerce. Prior to that time, a number of cooperatives close to the State line would have a high cost of power from their present supplier but would have been able to buy it considerably cheaper across the State line from the company which was operating very close to the State line. In a number of cases the latter company refused to serve and was very frank about it. The reason they would not do so was that they did not want to come under Commission jurisdiction. We would anticipate this would happen in many cases. It would be fairly simple for the companies to bring about this result.

Most of our members are either small municipalities, small electric systems, or they are rural electric cooperatives serving a very sparsely settled rural area of the Midwest in the Missouri Basin. The average number of consumers served by our cooperatives is less than 3 per mile, and we have a number of members who serve less than one consumer

per mile. There will be one ranch along their line per mile of line. This means that the cost of wholesale power is of extreme importance to them.

The minimum percentage of the total operating expenses of cooperatives, and also the municipalities, in our area, which represents the wholesale cost of power, is roughly 44 percent. That is, of our total operating expenses, 44 percent goes for the purchase of power. For the smaller systems, that increases. We have two or three municipalities in our area which are paying 65 percent of their total operating expenses for the power which they must purchase.

Our experience has been that we can get relief in this matter from the Federal Power Commission. We have been able to in the past few years. Generally, this is brought about by an informal conference on the part of the staff of the Commission with the company and the wholesale customer of the company.

I came here this morning from a settlement conference we were holding with the staff of the FPC. I have a complaint against the staff. They started the conference at 8:30 in the morning. I think you ought to pass some law to outlaw that. But we did start at 8:30. As a result of the informal complaint filed by the cooperative, the Commission staff investigated and made a tentative cost study. They found that the company was earning 8.6 percent on its money with a considerable overcharge. That is, the amount in excess of a fair rate of return was considerable.

After meeting all day yesterday, we resumed at 8:30 this morning, and the company offered a settlement reducing that overcharge by half; in other words, to reduce the rate to cut the overcharge in half. That was the result of 1 day's conference. You can see how it works. We refused to accept that. This illustrates how important this bill is to cooperatives and to the smaller municipalities.

The reason the cooperative complained to the Commission in the first place was that a new industry is considering locating there. It is also considering three other locations. It prefers to locate within this cooperative's area, which is in a very isolated part of Nevada, I might say, where any industry is of the greatest importance to them. The economy is really stagnant in this particular area. The industry said, "We will locate here if you can offer us power at a certain rate." That rate was several mills less than the cooperative could offer in view of its wholesale cost resulting from this overcharge. We told the Commission staff today that we would accept any offer which would enable us to offer a rate that would attract that industry.

The reason for accepting less than the complete elimination of the overcharge is to save the expense of a rate case. However, in order to obtain that industry, we will go ahead with the rate case before the Federal Power Commission to get that down. We feel certain that the staff has done an excellent job and that the minimum redution we will get is the full amount of overcharge showed by the staff, because it was very conservative in its approach so the company would not be in a position to have its study knocked out either before the Commission or in the courts.

This is of the greatest importance. In the last fiscal year the staff of the Commission accepted rate filings which brought about reductions of $6.5 million, and to small purchasers that is a very substantial amount.

In addition to getting assistance in connection with rates, we have also succeeded in getting additional delivery points and connections where the company refused to give a connection. As you well know, Mr. Chairman, the *City of Shrewsbury* case in your State is a landmark case, and that is being followed now. There are not too many formal cases, although there are a few, but there are many instances where we are obtaining that same result informally through the actions of the staff of the Commission.

We are also getting restrictive provisions removed from contracts. In certain contracts a company will say to the wholesale customer:

> You are not allowed to serve any industrial load with the power you purchase from us or, if you serve a load in excess of a certain amount—in one case now pending before the Commission, that amount is 175 kw—if you have a customer with a load in excess of 175 kw, you will have to pay a considerably higher rate for that electricity than for the other electricity resold to customers with smaller loads.

About 2 years ago there were 20 companies that had such provisions. It is now down to three. We have one case pending before the Commission in which we are very hopeful that provision will be eliminated, because they have already eliminated similar provisions in other cases, and that will leave only two, and we hope to get them to agree to the deletion of the restrictive provisions by negotiation.

The question arises: Why do you come in here and so strenuously favor jurisdiction by the Commission over investor-owned utilities and oppose such jurisdiction over the cooperatives? I have cited on pages 4 and 5 of my testimony two cases, one decided by the Supreme Court of the State of Washington and the other by the Supreme Court of the State of Utah, which emphasize very concisely why there is no need for regulation of cooperatives. Legally, the answer is the cooperatives do not hold themselves out to serve the public, and therefore they are not public utilities. That is expressed in the middle of page 4.

Mr. MACDONALD. May I interrupt? Are you for or against this bill?

Mr. WISE. We are against this bill, very definitely.

My only reason for mentioning the cooperatives is the question asked of Mr. Tally why he favored exemption of municipalities. I thought it important to make our position clear as to why we favor exemption of cooperatives and not of the companies. If you have the time to read those opinions——

Mr. BROTZMAN. You said you directed your attention to that problem in your testimony. Is that in your statement?

Mr. WISE. Yes, sir; on pages 4 and 5.

Mr. BROTZMAN. Thank you.

Mr. WISE. This has to do with cooperatives and not municipalities, Congressman, but we have a number of court cases on this.

What I would like to do is have any statement copied into the record, and I will simply summarize it.

Mr. MACDONALD. Without objection, the entire statement of Mr. Wise will appear at the end of his remarks.

Mr. WISE. The Supreme Court of Utah, on page 4, points out that "In a cooperative all sell to each. The owner is the seller and buyer." It also makes this comment: "On the contrary it appears that there is no need for regulation of true cooperatives * * *. There is no conflict of consumer and producer interests—they are one and the same

* * *. The function of the Commission in approving rates, capital structure, et cetera, is unneeded by GarKane," which was the cooperative, "its members, or the communities which it will serve."

This is not an issue any more because the Commission, in the *Dairyland* case, expressly decided it did not have jurisdiction over cooperatives. So, there is no need for the provision in the bill before you now which would expressly exempt them. The Commission has held they are exempt under the present law. I mention it now only to show you we are not being inconsistent here.

Our objection to having the cooperatives under FPC jurisdiction, in addition to these legal reasons, is that it would serve no purpose. It is not the cost of submitting reports, but that it would create a forum whereby the companies could come in and oppose loans to cooperatives. In those State jurisdictions where the Commission does regulate cooperatives, our experience has been on any controversial loan——

Mr. MACDONALD. Could I ask a question at this point. In the Federal Power Act, section 201, paragraph (f), are not co-ops covered?

Mr. WISE. Yes, sir. The Commission held they are covered by the language, the word "instrumentalities," in that they are instrumentalities of the Federal Government. The Commission also held the legislative history in section 201(a) of the act makes it clear that Congress did not intend to regulate a cooperative.

Mr. MACDONALD. Therefore, I appreciate your testimony, but I think you are belaboring a point which perhaps does not need belaboring because it does seem clear to me that co-ops are exempt. I appreciate your testimony. Personally, having heard all the testimony, I think I know where I stand by now. I appreciate your coming here to testify. When your testimony goes to being opposed to the bill, that is one thing; but I think it is spinning wheels to talk about the exclusion of co-ops when they already are.

Mr. WISE. My only reason to mention it is to try to show our position is not inconsistent. We are opposed to the bill. We think there should be complete regulation.

The reason is that in connection with profitmaking utilities, as I point out on pages 5 and 6, conflicting interests between the seller and buyer do exist, and the purpose of regulation is to resolve that conflict and it is necessary that you have regulation of such utilities. The legislative history of the Federal Power Act, including the very exhaustive study made by this committee when "Mr. Sam" was chairman of the committee, before he was Speaker, as well as the study by the Federal Trade Commission which was made at that time, shows conclusively that local regulation will not work, and we would like to refer you back to those studies. The technology of the electric utility industry of today simply cannot recognize State lines, which makes very clear that local regulation cannot work today, even more so than was the fact back in 1935.

I have cited some statistics on page 7 to show how much we are being overcharged by the companies. These statistics are taken from the Federal Power Commission "Statistics of Electric Utilities in the United States, 1965—Privately Owned." They show that of the 192 companies studied, 27, or 14 percent, had a rate of return of less than 6 percent; 39, or 20 percent, had a rate of return of more than 6 but less than 7; 70 had a rate of return of more than 7 but less than 8; 34 had more than

8 but less than 9; 17 had more than 9 but less than 10; and 5 had more than a 10-percent return.

I might say included in that list are the two Florida companies. For that year Florida Power Corp. had a rate of return of 7.97 percent, and the amount of the overcharge was $6,910,000; and Florida Power Corp. had a rate of return of 8.21 percent, with a total overcharge of $14,778,000. I also cite figures in there for the companies in our own region. One of them goes up to 11.4, and there are a number of them with 8 or almost 8 percent returns.

Also, a number of the State commissions operate on the basis of fair value in determining the rate base, which results in a considerably greater rate base on which earnings are permitted than in those States, as in the case of the Federal Power Commission, which do not use fair value. It also means they are getting a rate of return on a large amount of money which has never been invested in the facilities.

I would like to close by saying if you study the history of the last few years since the time the Commission has assumed aggressive regulation over the companies, you will see they have not suffered from this and their earnings have not gone down but, on the contrary, have gone up, and they are in a very successful state today.

Thank you very much.

(Mr. Wise's prepared statement follows:)

STATEMENT OF WILLIAM C. WISE, COUNCEL, MID-WEST ELECTRIC CONSUMERS ASSOCIATION

Mr. Chairman: My name is William C. Wise. I am appearing here today as counsel for Mid-West Electric Consumers Association.

Mid-West, with headquarters at Denver, Colorado, is the regional service organization of the rural electric and municipally owned systems in the nine States comprising the Missouri Basin: Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, South Dakota and Wyoming. Our organization is composed of approximately 250 systems, which serve almost 1,500,000 consumers. Our organization was formed to obtain an adequate supply of low cost electric power for these groups, and generally to promote the interests of electric consumers in the region.

At Mid-West's Annual Meeting, attended by several hundred representatives of its members, held in Denver, Colorado, last December 1966, the membership voted unanimously to oppose the passage of any bill resembling S. 218, which had been introduced last year, or any other bill which would restrict the jurisdiction of the Federal Power Commission over investor-owned electric utility companies. The membership resolution urged Mid-West to take all action possible to oppose the passage of any such legislation introduced this year.

Mid-West opposes the enactment of H.R. 5348 for the reason that it believes its enactment would be harmful to the efforts of its consumer-owned electric utility systems to furnish adequate electric service to their ultimate consumers at the lowest possible cost. Of even greater importance is the fact that it is our belief that the enactment of H.R. 5348 would ultimately result in higher electric bills for an extremely large number of consumers in the nation.

If H.R. 5348 were to be enacted into law, the FPC no longer would have jurisdiction over any public utility which has all of its facilities in one State, none of whose facilities is used to transmit or receive electric energy by direct connection from or to another State, and which does not transmit or receive electric energy under contract with an entity in another state.

It is most difficult to be certain as to which power companies would be immediately exempted from FPC jurisdiction by H.R. 5348. It is clear that the number which would be exempted would be considerable.

It would appear that at least three in our area would no longer be subject to the jurisdiction of the Commission were the bill to be enacted into law. It would, also, appear that a number of companies in the States represented in our membership would isolate and segment their operations so as to qualify for exemp-

tion. Prior to the time the FPC vigorously asserted its jurisdiction over all public utilities transmitting electricity in interstate commerce, including those whose facilities were situated within a single State, rural electric cooperatives located near State lines, from time to time, were often refused service by nearby power companies, the facilities of which were close by but were located across State lines. The companies gave as the reason for the refusal their desire to escape FPC jurisdiction. The history of the efforts to which the companies have gone to avoid being subjected to the jurisdiction of the Commission would make it seem most likely that such companies would exert every effort to adjust their systems to come within the exemption provided for in H.R. 5348. It is our fear that a number of companies would be successful in accomplishing this in the future.

Almost all of Mid-West's members purchase their electric power and energy requirements at wholesale. Many of them are very small, municipal systems. The cooperatives are not only small compared to the power companies, but serve in most sparsely settled areas. A large number of Mid-West's cooperative members have a consumer density of less than two per mile and several of them serve areas in which there resides less than one family per mile of line. For such small, municipal systems and low consumer-density cooperatives even to stay in business, it is necessary that they be in a position to purchase electric power and energy at low wholesale rates. As a direct result of FPC jurisdiction, a number of municipalities have obtained lower wholesale rates. While this has happened as the result of formal proceedings in a few instances, in most cases the reduction in rates has been brought about by informal action on the part of the FPC Staff. It is significant that during the past fiscal year, rate reductions of more than $6,500,000.00 were accepted for filing by the Commission. Most of the reductions were effected by the FPC Staff holding informal conferences with the companies and customers involved. Wholesale cost of power represents by far the largest element in the operating expense of both municipal and cooperative electric customers.

Municipalities and cooperatives also have been successful in getting power companies to serve them which refused to do so before Commission or Staff intervention. Likewise, restrictive provisions have been deleted from wholesale power contracts.

We would like to explain our position as to why we feel FPC should have jurisdiction over profit-making public utilities and should not have jurisdiction over non-profit cooperatives which are owned and controlled by their members who receive service.

Numerous courts have explained in detail not only the legal principles which preclude the regulation of non-profit cooperatives which serve members, but also explain why such regulation is neither necessary nor desirable in the public interest. Two of the leading cases are: *Inland Empire Rural Electrification, Inc.* v. *Department of Public Service of Washington, et al.*, 92 P. 2d 258 (Wash., 1939) and *GarKane Power Co.* v. *Public Service Commission*, 100 P. 2d 571 (Utah, 1940).

The legal principle is summarized in the *Inland* case in these words:

"But, more important than that is the controlling factor that it (the cooperative) has not dedicated or devoted its facilities to public use, nor has it held itself out as serving or ready to serve the general public, or any part of it."

That the public policy reasons which require regulation of profitmaking utilities serving the public are not applicable in the case of cooperatives is succinctly explained in the *GarKane* case in this language:

"But the Public Service Commission points out that membership in GarKane is easy to obtain and that actually the Corporation solicits membership and has apparently accepted this for all who paid their fee and agreed to pay the monthly minimum. This does not affect the relationship of the Corporation with its members nor does it change the character of the service to be rendered. The distinction between a public service corporation and a cooperative is a qualitative one. In a cooperative the principle of mutuality of ownership among all users is substituted for the conflicting interests that dominate the owner vendor-non owner vendee relationship. *In a cooperative all sell to each. The owner is the seller and buyer.*"

* * * * * * *

"In its argument the Commission contends as a matter of policy it would be bad to allow cooperatives such as GarKane to escape supervision and regulation on the theory, largely, that they must be protected from themselves or the

members be protected from management. *On the contrary it appears that there is no need for regulation of true cooperatives.* The theory of public utility regulation is based on a regulation that most public utilities are monopolistic; that their services are necessary or convenient to the residents of the area, and that because of the conflicting interests between the utility and its customers or consumers there is likely to arise situations where rates are so high as to deny service to many, or so low as to deny a fair return on its investment to the utility and its stockholders which in turn would tend to result in adequate service. Therefore, regulation is desirable to harmonize and balance these interests. * * * [Again referring to cooperatives] *There is no conflict of consumer and producer interests—they are one and the same.* If rates are too high the surplus collected is returned to the consumers pro rata. If rates are too low the consumers must accept curtailed service or provide financial contribution to the Corporation. If service is not satisfactory the consumer members have it in their power to elect other directors and demand certain changes. Resort to equity, as in the case of all mutuals, may be had if one group of members seek to overreach the others. *The function of the Commission in approving rates, capital structure, etc., is unneeded by GarKane, its members, or the communities which it will serve.*" (Italic supplied.)

The enactment of H.R. 5348 is not necessary to insure that FPC not attempt to exercise jurisdiction over cooperatives because FCP has itself held in the *Dairyland* case after a formal hearing that it had not been given such jurisdiction by Congress.

In case of profit-making utilities, regulation is essential if the public interest is to be protected because, by its very nature, the business is a monopolistic one. The customer who requires electric service has no alternative source, unless it happens to be a very large industrial customer which might possibly go to self-generation. Absent regulation, the customer must pay the price demanded by the seller. In other commercial transactions under our capitalistic system, if a potential customer is not satisfied with the price quoted by the seller, he will shop around and buy from someone else. The competition of the marketplace regulates the price charged and keeps it reasonable. It is the absence of this competition which requires regulation to resolve the conflicting interest of the seller who wishes to make a profit and of the customer who wishes to pay only a fair price for the electricity he consumes. Stating this fact is in no sense intended as a criticism of the electric utility industry, but is merely pointing out an inescapable situation which results from its necessarily monopolistic characteristic. This fact does mean that there must be effective regulation if the public interest is to be protected.

The legislative history of the Federal Power Act and the exhaustive studies leading up thereto, made by the Federal Trade Commission and the House Commerce Committee in the 1930's, establish conclusively that regulation of wholesale rates to be effective must take place at the national level. State regulation had failed miserably to prevent the abuses which developed during the 1920's and 1930's. If state regulation were ineffective then, one need not be a student of the regulatory processes to realize how much more ineffective it necessarily must be today, with the gigantic pooling-arrangements and intertie-arrangements which are so widely in effect now. The technology of the modern electric generating and transmission industry is such that as a physical fact it simply cannot recognize state lines. An attempt at the local level, to regulate this truly national activity, with a goodly part of the industry interconnected today and with the great probability that almost the entire industry in the nation will be interconnected within the next decade, simply cannot work. It is for this reason that Mid-West so strongly opposes the emasculation of Federal regulation by H.R. 5348.

It has been the experience of Mid-West's members that State regulation not only fails to achieve power cost reductions in wholesale contracts, but is also most ineffective in bringing about low level rates for ultimate consumers. This is due often to the small staffs and low operating budgets of the State Commissions. It should also be noted that of our States, neither Minnesota nor South Dakota has a State Commission exercising jurisdiction over electric utilities. Insofar as companies tied into interstate pools, it is simply impossible for the State Commission effectively to regulate the rate of such companies.

FPC's "Statistics Of Electric Utilities In The United States, 1965—Privately Owned" reveals these shocking figures in respect of 192 electric utilities, selected at random:

Only 27 companies or 14% of the total had a rate of return of less than 6%.
39 companies or 20.3% had a rate of return of more than 6%, but less than 7%.
70 companies or 36.5% had a rate of return of more than 7%, but less than 8%.
34 companies or 17.7% had a rate of return of more than 8%, but less than 9%.
17 companies or 8.8% had a rate of return of more than 9%, but less than 9.99%.
5 companies or 2.6% had a rate of return of more than 10%.

A 6% return on investment is widely accepted as representing a fair and reasonable one. Almost all of the companies in our region have rates of return in excess of that figure. Many are much higher. Heading the list is the Montana Power Company, which in 1965 earned a rate of return of 11.4%. Also high on the list were Iowa Southern Public Service Company with 9.3%, Iowa-Illinois Gas and Electric Company with 9.1%, Iowa Electric Light and Power Company with 8.2%, Cheyenne Light, Fuel and Power Company also with 8.2%, Kansas Power and Light Company with 8.2%, and Northern States Power Company with 7.9%.

It also must be kept in mind that virtually half of the State Commissions permit a public utility to use the so-called "fair value" of its property to establish its rate base; whereas, since the *Hope Natural Gas-United States Supreme Court* case, the Federal Power Commission uses the reasonable investment method of determining the rate base. The so-called "fair value" theory permits the utility to earn a rate of return on a considerably larger rate base, including amounts far in excess of the actual investment of the companies' facilities used for service.

Likewise, many State Commissions permit companies to include in expenses for rate-making purposes taxes which will never be paid. This results from the liberalized depreciation provided for in Section 167 of the Internal Revenue Code of 1954. Since the Alabama-Tennessee case, the Federal Power Commission requires companies to flow through the tax savings under Section 167 to the customers. The amounts paid by the customers will be substantially greater if the companies are permitted to retain such tax savings.

In connection with the Federal regulation of electric utilities, it should be pointed out that no evidence has been presented of the electric utilities suffering any harm from such regulation. On the contrary the financial status of the electric utility companies of the country has improved sharply during the recent years, since the FPC has activated its electric regulatory activities. Scarcely a month goes by that a different Wall Street financial analyst does not come out with an article recommending electric utility common stocks to the investing public. Most fortunately, electricity represents a commodity, the use of which by consumers increases greatly as a result of a reduction in rates.

For this reason, it is usually true that the company with the lowest level of rates winds up with the best profits. Mid-West, of course, agrees that electric utilities are entitled to a fair return, and that such return must be sufficient to insure that the utility can obtain the necessary additional capital to continue to install expanding facilities to take care of the rapidly growing requirements of consumers. A most casual study of the financial market reveals that the return which the FPC will permit, as indicated in the cases it has decided recently, is fully ample to enable the electric utilities to attract the required capital.

An example of the abuses which FPC regulation will prevent is the earning of a rate based on fictitious costs. Many companies have included in costs for rate-making purposes taxes which will never be paid. This results from the liberalized depreciation provided for in § 167 of the Internal Revenue Code of 1954. These companies collect from customers monies to pay taxes, which the utility never pays. This practice, of course, cannot be justified. This is an example of the stakes involved in the consideration of H.R. 5348.

The passing on to the ultimate consumer of the vast benefits resulting from the economies of scale in the generation of electricity and from the large pooling-arrangements which are now being effected in the industry is another cogent reason for urging the defeat of H.R. 5348. The economy of the nation will suffer greatly if the savings which will be effected from such worthwhile technological advantages are not shared by the users of electricity. Effective regulation becomes of vital importance in view of the enormity of such savings and the immense complexities of the arrangements which must be entered into to achieve such savings.

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

Before you go, I should like to comment that we have a very valued member of this subcommittee from your State. I am sure he would like to address some questions to you.

Mr. BROTZMAN. I just wish to welcome you back here, Mr. Wise. As a matter of fact, since you had your hearing at 8:30 this morning, you are escaping some snow in Colorado.

May I ask just one question. We have heard a wide variety of estimates of how many companies would be exempt. I notice you made some comment on that on page 2. You say you do not know how many would be exempt, but it is clear that three in our area would be. Who are they?

Mr. WISE. The three companies which we believe may be affected by H.R. 5348 are: The Central Kansas Power Co. (Kansas); Cheyenne Light Fuel & Power Co. (Wyoming); Northwestern Public Service Co. (South Dakota).

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

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

Mr. WISE. Thank you, Mr. Chairman.

Mr. MACDONALD. The next witness is Mr. Mac H. Cunningham, executive vice president of the Florida Municipal Utilities Association, of Lakeland, Fla.

STATEMENT OF MAC H. CUNNINGHAM, EXECUTIVE VICE PRESIDENT, FLORIDA MUNICIPAL UTILITIES ASSOCIATION

Mr. CUNNINGHAM. Mr. Chairman, are you running short on time?

Mr. MACDONALD. The House will be meeting in about 5 minutes.

Mr. CUNNINGHAM. I am Mac Cunningham, executive vice president of the Florida Municipal Utilities Association. I have distributed my prepared statement. If I may be permitted, I will omit that, and make about a 1-minute comment in closing.

Mr. MACDONALD. Without objection, the statement will be included in the record, and we shall be very happy to hear your comments.

(Mr. Cunningham's prepared statement follows:)

STATEMENT OF MAC H. CUNNINGHAM, EXECUTIVE VICE PRESIDENT, FLORIDA MUNICIPAL UTILITIES ASSOCIATION

Mr. Chairman, my name is Mac H. Cunningham. I am Executive Vice President of the Florida Municipal Utilities Association. FMUA represents 34 Florida cities which own and operate electrical power systems. It includes cities which generate all their power needs, and cities which purchase wholesale power to meet their system requirements.

Florida cities owning and operating a municipal electric utility are:

Alachua
Bartow
Blounstown
Bushnell
Chattahoochee
Clewiston
Fort Meade
Fort Pierce
Gainesville
Green Cove Springs
Havana
Homestead
Jacksonville
Jacksonville Beach
Key West
Kissimmee
Lake Helen
Lakeland
Lake Worth
Leesburg
Moore Haven
Mount Dora
Newberry
New Smyrna Beach
Ocala
Orlando
Quincy
Saint Cloud
Sebring
Starke
Tallahassee
Vero Beach
Wauchula
Williston

These municipal electric systems serve over one million people, close to 25% of the Florida population.

Our Association opposes H.R. 5348 and similar bills to amend the Federal Power Act and reduce the Commission's authority over the relations between investor-owned and municipally-owned systems in Florida. The Association believes that it needs the protection and assistance of the Commission, and its large and expert staff, in order to assure fair wholesale dealings, large scale transmission developments, and promotion of regional pooling and coordination in which all sectors of the industry can participate: investor, municipal, and cooperatively-owned. The Florida Public Service Commission does not have the staff to handle these complex problems, and indeed no state commission's staff can be expected to do this. The interconnected systems are national, and the solutions must follow national patterns. It makes practical sense, to develop on the federal level one strong technical staff to specialize in wholesale problems nationwide, rather than to turn these problems over to the staffs of 50 different state authorities, no one of which can assign specialized talent to the job.

In Florida, many of the municipal utilities have received realistic benefits from FPC jurisdiction, and, if anything, they would like to see FPC jurisdiction and authority strengthened.

In March, 1966, as a result of a Commission Staff investigation, Florida Power Corporation's wholesale rates were reduced by approximately $510,000 or 10.24% for sales to 12 municipal utilities: Alachua, Bartow, Bushnell, Chattahoochee, Fort Meade, Lake Helen, Leesburg, Mount Dora, Newberry, Ocala, Quincy, Williston. This rate change also cleaned up some undesirable features in the schedules which otherwise would produce future rate increases: an over-compensating fuel adjustment clause, a monthly price adjustment tied to the rapidly rising construction industry price index, and a tax adjustment clause. By contrast, the Florida Commission allows the Company to retain a price adjustment clause in its retail rates.

Ten of these municipalities were not satisfied that the reductions were sufficient, and have a pending complaint seeking a further approximately $530,000 reduction which would put them on a parity with the rates charged by Florida Power to the REA Cooperatives. They are also seeking relief from the artificial contract restrictions on interconnections and resales among the municipals and also with the REA Co-ops.

There is also serious concern because Florida Power Corporation is trying to buy up some of these systems, at the same time it is charging them rates substantially higher than it charges to REA Co-ops that are competing with the same cities.

FPC has the staff to do this job. The Florida Public Service Commission's staff is limited. Thus, for example, in its recent statewide *retail* rate investigations, the staff introduced no evidence, leaving that to intervenors like Pinellas County and the City of Miami, and then, the Commission hired an outside firm of auditors, operating behind closed doors, to review the testimony and make recommendations to the Commission. In other words, it does not even have sufficient staff to review a record and make recommendations.

It is important to note that the Florida Public Service Commission does not have jurisdiction over wholesale sales from private companies to municipalities even in *intrastate* commerce, and without FPC jurisdiction for such sales in *interstate* commerce, municipalities would be left without a regulatory forum. Moreover, our members are seriously concerned by the possibility of having the regulatory responsibility for protecting their interests placed under the Florida Commission whose regulatory philosophy, as stated during the hearings last year on S. 218, before the Senate Commerce Committee, by the Commission Chairman, Edwin L. Mason is, as follows:

"* * * the best regulation is little or no regulation."

In 1966, the City of Clewiston took action before FPC seeking a direct connection with Florida Power & Light Company in order to eliminate the high cost of purchasing wholesale power through two "middlemen." Again, the FPC staff took an active part, made a thorough field investigation, and was prepared to go to hearing. As a result, it became possible to settle this matter whereby existing supply arrangements were modified, and Clewiston received a rate reduction of some $14,000 a year, an approximately 40% reduction in power supply costs. Absent FPC jurisdiction, and expert staff field work, Clewiston could not have obtained this relief.

Testimony presented by Clewiston before the FPC indicates that Florida Power & Light Company has a policy against selling wholesale power to any municipal utilities, and, indeed, the testimony indicates a desire to use this as a means of pressuring these municipal utilities to sell out to the Company. The settlement in the Clewiston case avoided an FPC decision which we believe would have upset this policy. The FPC's National Power Survey encourages small isolated municipal generating systems to interconnect with large investor-owned systems for purchase and interchange of power on a basis more economical than adding small generating units. It is essential, in the public interest, the FP&L's boycott be broken, and we believe that only FPC has the resources to accomplish this and to impose fair and reasonable terms. Mr. Robert H. Fite, President of Florida Power and Light Company, in a statement of June 8, 1967 submitted to the Senate Commerce Committee emphasized that only one per cent of the company's revenues is derived from wholesale contracts, and that these are only with REA Co-ops. The reason for this low percentage is simply because FP&L refuses to sell wholesale power to municipal utilities within reach of its lines; otherwise there would be a much larger percentage of wholesale sales. This policy has forced the municipal utilities to rely upon isolated generating systems, and thus both the municipals and FP&L have been deprived of the advantages of energy exchange, pooling and coordination.

FP&L's policy is dramatically explained in the testimony of witnesses before FPC in the FP&L jurisdictional case. One of the principle and substantial economic reasons why FPC jurisdiction is needed is to overcome this refusal to do business with these municipals. In this regard the municipals expect treatment comparable to that FP&L affords to the cooperative distributors.

With respect to the claim of Florida Power & Light that its activities are intrastate in nature, I believe the decision by the Federal Power Commission that FP&L is operating in interstate commerce as part of a multi-state electric network demonstrates the need for effective FPC regulation over large interconnected systems. With your permission, Mr. Chairman, I would like to offer a copy of that decision (FPC Opinion No. 517, March 20, 1967) as attachment A, for insertion in the record.

There is an immediate problem in the City of Homestead which operates the only municipal electric utility in Dade County, the headquarters of FP&L, and which generates its own requirements. It needs an interconnection, purchase and exchange arrangement as an alternative to adding small generating units, along the lines set forth in the FPC's tentative opinion in the *Crisp County* case (*Crisp County Power Commission v. Georgia Power Company*, FPC Docket No. E–7210, Tentative Opinion No. 508), and also in the briefs of the FPC staff in the case of *Gainesville v. Florida Power Corporation* (FPC Docket No. E–7257). Homestead must look to FPC to provide a fair interconnection and exchange arrangement, which will help FP&L and not burden it, while providing a sound economic basis for Homestead's electric operations.

Again, only FPC has the staff to deal with so complex a problem. There is now pending before FPC the City of Gainesville's application for interconnection and exchange arrangements with Florida Power Corporation. Twelve days of hearings have been held, and the FPC staff has participated vigorously throughout. They have made an extensive study, not only of Gainesville and Florida Power Corporation systems, but of the whole Florida Pool and its out-of-state interconnections. They have presented three expert witnesses whose prepared direct testimony runs to 119 pages, plus 43 exhibits. It is no criticism of the Florida Commission to point out that it is simply not equipped to cope with so complicated a matter, while the FPC is building up a background for handling these cases based upon national experience.

As loads grow rapidly in Florida, regional generating and transmission facilities need continual expansion, and FPC is the agency to assure that this is done right. At the same time, the municipal utilities need to be able to obtain fair and reasonable wholesale arrangements, and our Association believes that a strong FPC is necessary to accomplish this purpose.

Mr. Chairman, our Association urges this Committee to reject H.R. 5348 and similar bills, and, instead, give serious consideration to bills which would strengthen, not destroy, the jurisdiction of the Federal Power Commission.

Thank you.

[ATTACHMENT A]

UNITED STATES OF AMERICA, FEDERAL POWER COMMISSION

OPINION NO. 517

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge, and John A. Carver, Jr.

Florida Power & Light Company—Docket No. E–7210

OPINION AND ORDER DETERMINING JURISDICTION

(Issued March 20, 1967)

WHITE, Chairman:

This is a proceeding to determine whether the Florida Power & Light Company (FPL) is a public utility within the meaning of Section 201 of the Federal Power Act, and whether it should be required to maintain its accounts in accordance with the Commission's Uniform System of Accounts for Public Utilities and Licensees.

The Commission instituted the investigation in this docket on February 26, 1965. The Florida Public Service Commission (Florida Commission) filed notice of intervention dated March 17, 1965, and thereafter the City of Clewiston, Florida (Clewiston), was granted limited intervention.[1] Hearings were held on October 4, 5, 7, 8, and 12, 1965, and again on November 3, 1965. On July 12, 1966, the Presiding Examiner, Seymour Wenner, issued an initial decision in which he found that FPL owns and operates facilities, among others, for the transmission of electric energy transmitted from points of generation in the States of Georgia and Florida to points of consumption outside the state in which it is generated, and therefore is a public utility under Section 201 of the Act, subject to the Commission's jurisdiction. He further held that FPL must file original cost statements as provided in the Commission's Uniform System of Accounts Prescribed for Public Utiilties and Licensees Subject to the Provisions of the Federal Power Act, and that it must comply with all other requirements of the Commission's Regulations under such Act.

The proceeding is before the Commission on the examiner's decision, exceptions filed by FPL and the Florida Commision, and staff's opposition to these exceptions. FPL and the Florida Commission contend that there is no substantial evidence in the record to support the examiner's finding that FPL transmits electric energy in interstate commerce, and they urge that the Commission, in the exercise of its discretion, should in any event decline jurisdiction over FPL. Oral argument was held before the Commission on November 28, 1966.

For the reasons set forth below we find that FPL's and the Florida Commission's exceptions are not persuasive and do not warrant our reversal of the examiner's decision. It is our opinion that the basic findings of fact and the conclusions of law in the examiner's comprehensive initial decision are fully supported by the evidence of record, and that these findings and conclusions, as supplemented by our discussion herein, should be approved. We agree with the examiner that FPL owns and operates facilities for the transmission of electric energy in interstate commerce, that these facilities do not fall within the local distribution exemption provisions of Section 201(b) of the Federal Power Act, and that FPL must file original cost statements and comply with all other requirements of the Commission's Regulations under such Act.

Inasmuch as the examiner's decision sets forth in detail the factual background of this proceeding and the legal principles applicable thereto, we shall not recite the factual details in full, but shall refer essentially to those raised by FPL and the Florida Commission in their exceptions.

The record shows that FPL is engaged in the generation, transmission, distribution, and sale at wholesale and at retail of electric energy in the State of Florida. It is the largest electric utility in the state, with a net dependable generating capacity of 2.8 million kw, and it supplies service to about 931,400

[1] On September 7, 1965, Clewiston filed a complaint in Docket No. E–7243, requesting that the Commission order FPL, pursuant to Section 202(b) of the Act, to connect its facilities with those of Clewiston and render direct wholesale service at reasonable rates. After the hearings, Clewiston negotiated a rate settlement with its power suppliers (U.S. Sugar Corporation and Glades Electric Cooperative, Inc.), and moved for the dismissal of its application in Docket No. E–7243. The motion was granted on July 6, 1966.

customers in more than 500 cities, rural communities and adjacent areas. As of December 1964,[2] it operated ten steam-electric generating plants interconnected by a transmission grid of 2,500 miles, of which 1,400 miles operate at high voltage, 115 kv or above. On the basis of national standing, FPL is one of the most important electric utilities in the United States. In 1965 its rank was ninth nationally in revenues, fourteenth in investment in gross electric utility plant, and sixteenth in kilowatt hour sales.

FPL is directly interconnected with four other Florida electric systems, as follows: Florida Power Corporation (Corp), Tampa Electric Company (Tampa), Orlando Utilities Commission (Orlando), and the City of Jacksonville (Jacksonville). FPL, Corp, and Tampa form the Florida Operating Committee (Florida Pool) with Jacksonville and Orlando as associate members. The Florida Pool meet several times a year to consider mutual problems relating to the interconnected operation of the systems, including the coordination of spinning reserves, the arrangement of compatible plant maintenance schedules, and the coordination of plans for the construction of transmission lines and the staggered construction of generating units. The spinning reserves of the Florida Pool equal the generating capacity of the largest single unit of the five-member systems, and by voluntary agreement of the members, are shared proportionally. According to FPL's reports in its FPC Form No. 12 for 1964, its required reserve capacity for that year was 404,000 kw, of which amount it supplied 172,000 kw. The balance of 232,000 kw was reported as being available from the other members of the Florida Pool.

FPL exchanges a substantial amount of electric energy with the other members of the Florida Pool. During 1964 FPL transferred a total of 189,422,000 kwh to the four other Pool members, and received in return a total of 199,059,000 kwh, itemized as follows:

Kwh transferred from FPL to—	
Corp	107,642,000
Tampa	43,081,000
Jacksonville	17,268,000
Orlando	21,431,000
Kwh transferred to FPL from—	
Corp	61,598,000
Tampa	59,404,000
Jacksonville	18,181,000
Orlando	59,876,000

The electric energy interchanged by FPL in 1964 totaled three percent of its net generation of 12 billion kwh.

Corp, which is interconnected with Tampa and Orlando as well as with FPL, is also interconnected with power companies outside of the State of Florida. Thus, it is directly interconnected with Georgia Power Company (Georgia), a subsidiary of The Southern Company (Southern). Southern is a holding company whose other subsidiaries are Gulf Power Company (Gulf) which operates in northwestern Florida, Alabama Power Company (Alabama), and Mississippi Power Company (Mississippi). Corp is also directly interconnected with Gulf, and Gulf is interconnected with Georgia and Alabama. Corp has an agreement with the subsidiaries of Southern whereby Corp makes 100,000 kw available to these subsidiaries during the summer, and in return, the subsidiaries make 100,000 kw available to Corp during the winter. During 1964 Southern delivered 167,476,000 kwh to Corp, and Corp delivered 157,324,000 kwh to Southern. Of these totals, approximately 97,000,000 kwh represented deliveries from Georgia to Corp, and 82,000,000 kwh represented deliveries from Corp to Georgia. In addition, 3.9 million kwh were wheeled for the Southwestern Power Administration over Southern's lines across the Georgia-Florida state line to Corp. Georgia is also interconnected with Duke Power Company, Tennessee Valley Authority, and Southeastern Power Administration. These systems operate in states beyond Georgia.

FPL and the other members of the Florida Pool are also members of a multistate electric network, the Southeast Region of the Interconnected Systems Group (ISG) which covers the southeastern and central portions of the United States. FPL's membership in the ISG provides acceptable frequency control and also automatic assistance during emergencies in the event of any generation

[2] Unless otherwise noted, the figures stated are approximate and are for the calendar year 1964.

outage of less than 100 mw on its system. In this connection it may be noted that 12 of FPL's 24 generating units generate 75 mw or less. An outage of any of these units would lead to almost instantaneous assistance to FPL. FPL, in turn, operates in synchronism with the 140 members of ISG and is ready to assist them in case of emergency. Thus, FPL contributed 8 mw to ISG to assist a midwestern utility which had sustained a 580-mw generator loss.

The testimony and evidence of record support the examiner's findings that the electric power on all the interconnected systems in which FPL, Corp, and Georgia participate is supplied as alternating current at a frequency of 60 cycles; that the frequency of each system is in synchronism with that of all the others in the interconnection; that there is a tie-line bias with frequency control on the interconnected systems which permits a free flow of power and energy throughout the networks in which FPL, Corp, and Georgia participate; that all 140 members of the ISG operate in paralled and are interlocked electromagnetically; and that FPL can receive from or contribute to ISG up to 100 mw. The record further supports the examiner's findings that FLP normally has no control over the actual transfers of electric power and energy with any particular electric system with which it is interconnected; that since electric energy can be delivered virtually instantaneously when needed on a system at a speed of 186,000 miles per second, such energy can be and is transmitted to FPL when needed from out-of-state generators, and in turn can be and is transmitted from FPL to help meet out-of-state demands; and finally, that there is a cause and effect relationship in electric energy occurring throughout every generator and point on the FPL, Corp, Georgia, and Southern systems which constitutes interstate transmission of electric energy by, to, and from FPL.

In its exceptions FPL argues that there is no substantial record support for the examiner's finding that it is engaged in the transmission of electric energy in interstate commerce. We find no merit in this argument. The examiner concluded that the operation of FPL in electromagnetic untiy with the suppliers in and outside of Florida in and of itself demonstrated that it owned and operated facilities for the interstate transmission of electric energy. This finding is also supported by the evidence produced by staff at the hearing which convincingly establishes that electric energy is transmitted in interstate commerce to and from FPL's lines. The nature of staff's showing is fully consistent with, and satisfies the tests which we have established in numerous opinions issued in the last two years to support a finding that wholesale sales are in interstate commerce. See *Indiana & Michigan Electric Company*, Opinion No. 458, 33 FPC 739, *affirmed Indiana & Michigan Electric Company* v. *Federal Power Commission*, 365 F.2d 180 (CA7), *certeriorari denied* 385 U.S. 972; *Arkansas Power & Light Company*, Opinion No. 473, 34 FPC 747 (1965), *affirmed Arkansas Power & Light Company* v. *Federal Power Commission*, 368 F.2d 376 (CA8); *Public Service Company of Indiana, Inc.*, Opinion No. 483, —— FPC —— (1965), *affirmed* in *Public Service Company of Indiana, Inc.* v. *Federal Power Commission*, —— F.2d —— (CA7, January 13, 1967); the *Cincinnati Gas & Electric Company*, Opinion No. 485, —— FPC —— (1966). Certainly it is reasonable to rely on the methodology used in the above cases to demonstrate that particular sales are in interstate commerce to establish in this proceeding that FPL itself is engaged in the interstate transmission of electric energy and is thus a "public utility" within the meaning of the Act.

Thus through the application of the same techniques here that it had utilized in those other cases staff demonstrated by its record exhibits the flow of energy from Georgia across the Georgia-Florida state line through Corp's system and into FPL's transmission lines, as well as a reverse flow from FPL's lines through Corp's system to Georgia. See Staff's Exhibit Nos. 18, 19, 32, and 33.[3] For example, Staff's Exhibit No. 18, at page 6, graphically demonstrates that on September 28, 1964, at 7:00 o'clock p.m., there was a flow of 51,000 kw of interstate power from Georgia to Corp and an instantaneous flow of 50,000 kw of commingled interstate and intrastate power from Corp to FPL. We are not persuaded by FPL's exceptions that the examiner committed error in basing his findings on such staff exhibits rather than on FPL's own system studies which FPL contends show

[3] Staff's Exhibit No. 18 shows the flow of energy from Georgia through Corp's system and into FPL transmission lines via the Jasper-Fort-White-Turner-Sanford interconnections on designated hours of 22 days out of a 4-month period in 1964. Staff Exhibit No. 19 indicates the presence of such flows during hours earlier than 7:00 a.m. on 20 of the 22 days listed in Exhibit No. 18. Staff Exhibit No. 32 further shows that energy transmitted from FPL's Sanford Plant flowed during 3 days of the same 4-month period over Corp lines into the Georgia Power System via the Turner-Fort-White-Jasper interconnections.

that no Georgia energy can enter the FPL lines and that no FPL energy can flow as far north as Georgia.

As ably explained by the examiner, the power flow studies prepared by staff all rest on the concept that there is a commingling of energy from different sources at a bus with the result that the energy which flows away from such bus is so fully commingled as to consist of energy which has entered such bus both from interstate and intrastate sources. Staff recognizes that energy flows to and from a bus as three-phase alternating current, and staff treats a bus as a point, or a tank, or a reservoir where all the energy supplied to the bus is commingled. The studies prepared by FPL, on the other hand, treat the bus as having physical dimensions, and replace each three-phase alternating current bus structure by a single conductor bus. FPL uses the point-to-point tracing principles of direct current circuits with static power sources and with steady state power flows. This steady state method treats the power flow through the bus as constant in value and direction, on the basis that balanced three-phase power under steady state conditions is constant in value and direction from instant to instant. Although FPL's method may lend itself to a theoretical showing of energy flow which may demonstrate that energy will flow from a certain source to a certain load,[4] this method does not fully or accurately reflect the actual operation of a bus, and it does not show the physical reality of a three-phase electric power system as satisfactorily as does staff's concept. Certainly, FPL's method is of no value in demonstrating a negative, namely, that energy will not flow through a bus to a certain specific transmission line. Yet, FPL's reliance on this method in this proceeding seeks to prove just such a negative.

The examiner correctly found that staff's commingled method reflected the physical reality of the bus better than did FPL's steady state or systems studies method. The essential soundness of the commingled method has long been recognized and approved. See *Pennsylvania Water & Power Co.* v. *Federal Power Commission*, 343 U.S. 414 (1952); *Wisconsin-Michigan Power Co.* v. *Federal Power Commission*, 197 F. 2d 472 (CA7, 1952), *cert. denied*, 345 U.S. 934 (1953). Our adoption of the examiner's holding on this point certainly is consistent with our repeated approval of the commingled method in recent jurisdictional proceedings where we have found a need for precise methods in analyzing power flows on highly complex systems involving a multiplicity of interconnections. See our opinions in *Indiana & Michigan* and *Arkansas*, cited at page 6, *supra*.[5]

Consideration has been given to FPL's assertion that because of the unique peninsular nature of its service area it planned its system to be self-sufficient, and that it possesses sufficient generating capacity of its own to meet its loads without any dependence upon the spinning reserves or emergency power of other Florida or out-of-state systems. We do not find this assertion persuasive. The fact that FPL could operate as a self-sufficient utility is not controlling because FPL simply does not operate its system in that manner. The record in this proceeding makes it plain that FPL receives substantial benefits from its participation in the Florida Pool in the coordination of spinning reserves, the arrangement of plant maintenance schedules, and the assurance of reliability of frequency control and from both the Florida Pool and ISG in the form of automatic assistance in the case of emergencies. As we stated in our opinion in *Indiana & Michigan Electric Company, supra*, it is the system's actual mode of operation, not how the system could operate that is important. Moreover, the particular operating pattern actually used by FPL is consistent with sound operating practices and with the principles enunciated in the Commission's National Power Survey issued in December 1964 in which all segments of the electric power industry participated fully and cooperatively.

We have also considered FPL's contention that it receives virtually no benefits from its membership in ISG with respect to emergency assistance because of its assertion that the Florida peninsula would be electrically isolated from the states to the north in the event of an outage of approximately 100 mw or greater. This contention minimizes the fact that ISG aid to FPL is available as emer-

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[4] The steady state method was used to establish the fact of such a flow in *City of Colton, California* v. *Southern California Edison Company*, Opinion No. 346, 26 FPC 223, 234 (1961), *affirmed sub nom Federal Power Commission* v. *Southern California Edison Company*, 376 U.S. 205 (1964), reversing 310 F. 2d 784 (CA9). FPL's reliance on staff's use of the steady state method in *Colton*, however, is misplaced. As the Commission pointed out in its opinion in that case, the result reached by staff's technique would have been the same had staff there treated the bus as a point under the commingling concept.

[5] In view of the above showing of substantial flows of interstate energy to and from FPL's system, it is clear that FPL owns facilities which do not come within the purview of the exemptions to the Commission's jurisdiction set forth in Section 201(b) of the Act.

gency assistance in the case of any outage of less than 100 mw. As we pointed out above, 12 of FPL's 24 generating units generate 75 mw or less. The emergency outage of any one of these units would automatically bring ISG aid to FPL in the event that FPL's own reserves and the reserves of the other members of the Florida Pool were not instantaneously available. It appears that this is at least one of the contingencies which an emergency assistance agreement contemplates.

FPL urges that the Commission should decline to exercise jurisdiction in this proceeding, stating that any transmission of interstate energy which may have been accomplished is *de minimis*, and that the exercise of Commission jurisdiction would subject FPL to most burdensome additional costs without serving the public interest.

Assuming, *arguendo*, that we have discretion, this is not a case where the Commission should decline to exercise its jurisdiction. The Commission has already determined that jurisdiction does not depend upon a finding of any particular volume or proportion of interstate energy flowing in a system and this position has been upheld in the courts. *Connecticut Light and Power Company* v. *Federal Power Commission*, 324 U.S. 515, 535–536 (1945); *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U.S. 61 (1942); *Public Service Company of Indiana* v. *Federal Power Commission*, —F. 2d— (CA7, January 13, 1967). Similarly, we do not believe that, where there are other benefits accruing to a company under the interconnected operating arrangements, the amount of energy flowing interstate should be decisive on the question of whether we ought to decline to exercise jurisdiction. Here the role played by FPL in the Florida Pool, in aiding Corp to interchange energy with Georgia and the other subsidiaries of Southern, and in the ISG is of greater significance than the actual volume of energy exchanged by it would ordinarily indicate. And this volume of energy, although constituting but a small percentage of FPL's total generating capacity,[6] is nevertheless not insubstantial.

In considering FPL's request that we decline jurisdiction here, the Commission cannot ignore the fact that information recently filed by FPL in its FPC Form No. 12 for 1965 shows that FPL's interchange of energy with other members of the Florida Pool was 300 percent greater in number of kilowatt hours in 1965 than in 1964. Nor can we ignore the record showing that the members of the Florida Pool, in considering their generating and transmission needs for 1970, have studied plans which contemplate stronger interconnections with the utilities in the Southern Company, to the extent of anticipating the capability of transfer of as much as 350,000 kw to 400,000 kw with Southern. FPL's role in these future plans for growth and interconnection obviously is a vital and significant one. As the largest electric utility in the State of Florida, and as one of the major electric utilities in the United States, FPL's importance in insuring the increased reliability of interconnected power systems in Florida and in adjoining states is self-evident. We do not believe that the public interest will be served by any Commission ruling which would tend to inhibit FPL from a sound and efficient expansion of its participation in the Florida Pool and ISG interconnections. Yet FPL's request that we decline jurisdiction here because its past interstate transmission activities have allegedly been small, could, if granted, very well inhibit it from participating in future interconnection programs, and could conceivably cause it to restrict its present interconnection arrangements to its own detriment and to the detriment of other Pool members. Plainly, the public interest will not be served by this result.

The suggestion by counsel for FPL during the oral argument that we should wait to consider assuming jurisdiction until there is an actual complaint by a wholesale customer, either existing or potential, misconceives the broad statutory design which Congress had in mind in enacting Parts II and III of the Federal Power Act. Congress sought not only to give this Commission exclusive jurisdiction over wholesale sales in interstate commerce, but, in addition, to supplement local regulations at the federal level in such areas as accounting, interlocking directorates, mergers and consolidations, and the promotion of interconnection and coordination of the nation's facilities for the generation, transmission and

[6] We do not find satisfactory record support for FPL's claim that the interstate energy which flows into its system is no more than 1/7000 of one percent of the total energy delivered to FPL's customers. FPL apparently arrived at this figure by assuming that the power flowing across the state line from Georgia could be traced to the Sanford-Turner interconnection between Corp and FPL. In so doing FPL ignored the effect of commingling of energy from different sources, and also ignored the fact that Georgia power may flow into its system over three other high voltage tie-lines.

sale of electric energy. None of these latter objectives depend upon the extent of wholesale sales or the percentage of interstate transmission in any particular case. The independent importance of these regulatory activities was spelled out in detail by the Commission, in light of the Act's legislative history, almost 20 years ago in the *Connecticut Light and Power* case, *supra*. FPL has presented no argument which would now persuade us to a contrary conclusion.

We agree with the examiner that FPL will not be subjected to any unduly burdensome costs by our requirement that it keep its accounts in accordance with the Commission's Uniform System of Accounts for Public Utilities. Although FPL asserts that it will incur more than $500,000 additional annual costs if it must comply with the Commission's accounting requirements, its contention is unsupported on the record before us. With respect to reporting, FPL presently files this Commission's principal report forms, FPC Form No. 1, Annual Report, and FPC Form No. 12, Power System Statement, as required under Section 311, among other sections, of the Power Act. Nor should any substantial expense result from FPL's compliance with the Commission's accounting requirements. FPL presently keeps its plant accounts on an original cost basis and maintains its books of account in accordance with the NARUC (National Association of Railroad and Utilities Commissioners) system of accounts which are similar to those of the Commission's Uniform System of Accounts.

FPL's further assertion that it will incur an estimated 4 to 6 million dollar expense to complete an initial plant inventory required by the Commission's Uniform System of Accounts is based upon indefinite and conjectural evidence, and plainly reveals a definite misunderstanding of what is required of it under the Commission's regulations. Thus, FPL's estimate of these costs erroneously includes the sum of approximately $3,200,000 for an aerial map survey of its system, when the Commission's requirements do not require such an aerial survey. Also, it appears that FPL's cost predictions are based upon costs incurred by other electric utilities in compiling their plant inventories for the Commission's regulatory purposes in prior years. The studies made by these other companies are not comparable because their plant accounts were not kept pursuant to a uniform system of accounts at that time. On the other hand, FPL has been keeping its plant accounts on an original cost basis at least since 1951, and was required to make a complete reclassification of its plant accounts on an original costs basis by the Securities & Exchange Commission as of January 1, 1942. FPL's witness at the hearing admitted that to his knowledge FPL had not contacted any members of this Commission's accounting staff to obtain information concerning the requirements of complying with the Commission's Uniform System of Accounts, and also conceded a lack of knowledge as to whether or not FPL's reclassification studies accepted by the Securities & Exchange Commission in 1942 and the years thereafter would be accepted by the Commission. In this connection, it may be added that FPL apparently gave no weight to the fact that the Commission's auditing procedures are designed to avoid any unnecessary overlapping or duplication of state commission audits, and that joint federal and state audits are encouraged. In light of the foregoing circumstances, we find that the examiner correctly concluded that it would not be burdensome for FPL to conform to the Commission's accounting requirements.

To the extent that FPL seeks exemption from the Commission's accounting requirements because its transmission of energy is predominantly intrastate, we deem it appropriate to restate our language in *The Connecticut Light and Power Company*, 6 FPC 104, 108 (1947), as follows:

"The legislative history of the Act shows, furthermore, that it was anticipated in Congress that the federal accounting requirements would apply to utilities predominantly engaged in local business subject to State regulation. Thus, Representative Cole, explaining the bill in the House on behalf of the House Committee, said (79 Cong. Rec., Part 9, p. 10384):

" 'A uniform system of accounting is established, and because of the demand therefor and the admission on the part of most everyone that such is advisable, the provisions therefor will very likely be required of companies now subject to State regulation because of a small fraction of their business being under the Federal Commission. We have thought this advisable because it is most necessary to have uniformity in accounting as well as depreciation instead of 48 different methods. This provision will be followed, in my judgment, by the adoption by the State Commission of such uniform method as the Federal Power Commission will prescribe.' "

Significantly, Congress rejected efforts to amend the Act to exempt utilities regulated by a state commission, and the legislative debates at that time showed

that the proponents of the Act regarded it essential that the Commission possess the power to get accounting information under a unified accounting system, regardless of the fact that a reporting utility might also be subject to state regulation. In light of this background, we do not find that the public interest will be served by exempting FPL from compliance with the Commission's accounting requirements.

The Commission further finds—

(1) Florida Power & Light Company (FPL) is a corporation organized and existing pursuant to the laws of the State of Florida;

(2) FPL owns and operates facilities, among others, for the transmission of electric energy transmitted from points of generation in the States of Georgia and Florida to points of consumption outside the State in which it is generated, which facilities are in addition to, and do not include, facilities used for the generation of electric energy, faciilties used in local distribution or only for the transmission of electric energy in intrastate commerce or facilities for the transmission of electric energy consumed wholly by the transmitter;

(3) FPL is, therefore, a public utility within the meaning of that term as used in Section 201 of the Federal Power Act and subject to the jurisdiction of the Commission;

(4) FPL, as a public utility under the Florida Power Act, should be ordered, *inter alia*, to file with the Federal Power Commission original cost statements in the manner provided in Section 120.3 of the Commission's Regulations under the Federal Power Act and Electric Plant Instruction No. 1 of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licenses Subject to the Provisions of the Federal Power Act; and

(5) The exceptions of FPL and of the Florida Commission to the examiner's initial decision should be denied.

The Commission orders—

(A) Within 60 days after the issuance of this order, FPL shall file with the Federal Power Commission original cost statements in the manner provided in Section 120.3 of the Commission's Regulations under the Federal Power Act and Electric Plant Instruction No. 1 of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, and shall comply with all requirements of the Commission's Regulations under such Act;

(B) The decision of the presiding examiner, as supplemented above, is adopted as the decision of the Commission; and

(C) The exceptions to the examiner's decision are denied.

By the Commission. Commissioner Carver, joined by Commissioner O'Connor, dissenting, filed a separate statement appended hereto.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

FLORIDA POWER & LIGHT COMPANY—DOCKET NO. E–7120

(Issued March 20, 1967)

CARVER, Commissioner joined by O'CONNOR, Commissioner, dissenting:

By eschewing the opportunity to let this case turn on the exercise of a discretion in the Commission not to take jurisdiction, and electing to have it turn on the "commingling" test of jurisdiction, the Commission has made it necessary for me to dissent.

This dissent does not stem from sympathy for the Florida Power & Light Company, 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.

Nor is my dissent based upon a belief that the Commission has misread or misinterpreted the thrust of certain recent judicial pronouncements on the "commingling" theory. The cases cited are distinguishable on the facts, but the thrust is in the direction the Commission has taken.

The vice I find in the Commission's decision, which prevents me from joining in its statement, is that its adoption of the commingling theory as a test for jurisdiction *per se*, interprets the Federal Power Act to have a reach beyond that which I find in the statute.

The Federal Power Act is today found to grant to the Commission jurisdiction over *any* company which generates electric energy in the form of alternating three-phase 60-cycle current, if that company is interconnected and electromagnetically synchronized with any other generating source producing electric energy in the same form in another State.

More than 90% of the Nation's electric generating capacity is interconnected in this fashion. The only major exception is the electric generation of Texas, which is interconnected within Texas but not with out-of-Texas systems. Such a test for jurisdiction writes out of the statute the intrastate and industrial exceptions to coverage under the Act, and in doing so objectionally usurps a prerogative of the Congress.

From its outset, the case was tried on the narrow issue of jurisdiction—a so-called "straight status case." Florida Power & Light Company has an interconnection with Florida Power Corporation, at a point 180 miles from the Georgia state line. The decision turns on the theory that at this interconnection, any "flow" of energy from Florida Power Corporation to Florida Power and Light Company may not be assumed to be Florida-generated energy from Florida Power Corporation's generating system, but rather to be interstate in origin by reason of the interconnection by the Florida Power Corporation with out-of-Florida generating sources. The Florida Power Corporation system is said to be "permeated" or commingled with out-of-Florida energy.

The facts of interconnection are uncontroverted. Aided by the engineering testimony of Staff witnesses Jessel and Jacobsen, the Staff's case for the ultimate jurisdictional fact of electric energy in Florida Power & Light Company's system being transmitted in interstate commerce is this "permeation" or "commingling". The examiner neatly summarized:

"The cause and effect relationship in electric energy occurring throughout every generator and point on the Georgia, Corp and Florida systems constitutes interstate transmission of electric energy by, to, and from Florida. It is the electromagnetic unity of response of Florida, Corp, Georgia and other interconnecting systems that constitutes the interstate transmission of electric energy by Florida." (Ex. Dec. Mimeo., p. 11.)

In undertaking to temper the impact of the examiner's forthrightness (a forthrightness conforming to the theory upon which Staff's case was submitted), the Commission turns to Exhibit 18 as supporting a Commission finding (as opposed to an Examiner's finding) that interstate energy reached the system of Florida Power & Light Company. But that exhibit (or any exhibit) shows no more than that "commingled" energy reached the Florida Power & Light Company system. This assumes the fact in issue, and thus begs either the question of jurisdiction or the question of substantiality or both. No staff exhibit purports to depart from the assumptions made to support the "commingling" theory.

The examiner fairly recognized that "commingling" is only a theory. But he found that the theory of commingling was sound and proved, and that its proof obviated tracing.

If commingling obviates tracing, then the reach of the Commission's jurisdiction is plenary. Furthermore, it has become plenary in 1967, while the act was passed in 1935 and has not been changed by Congress (in respects material here) since.

The Supreme Court in *Connecticut Light and Power Co.* v. *FPC*, 324 U.S. 515, at 515, credited the Congress with determining that "federal jurisdiction was to follow the flow of electric energy." (at 529)

But is federal jurisdiction to follow the changes in the theories which are devised by company or Commission engineers to describe a still-mysterious phenomenon? For myself, I cannot accept the premise that the "commingling" theory can change the law as radically as to eliminate two explicit exceptions to our jurisdiction.

Turning to the cases cited by the majority, most of these cases involved jurisdiction over wholesale sales, not jurisdiction *per se*. The two "straight status" cases in the Supreme Court reports—*Connecticut Light and Power Company* v. *FPC*, 324 U.S. 515 (1945), and *Jersey Central Power & Light Co.* v. *FPC*, 319 U.S. 61 (1942)—do not support the approach used here, and the Commission's opinion today is directly contrary to the latter's statement (at 319 U.S. 72) that "mere connection determines nothing." Today's decision has connection determine everything.

The cases cited in the Commission's opinion, although sales cases not solely status cases, carry the process of interpreting legislative language *almost* as far as the Commission goes today. The final step may be a short one, but short or not, it is legislative.

The discussion which asserts that the commingling or electromagnetic synchronism test for jurisdiction under section 201 of the Federal Power Act supports the public interest in the expansion and extension of interconnection arrangements for greater service reliability is not persuasive. I fully agree that interconnections serve the objective of reliability, and that reliability is strongly in the public interest. But with the present near universality of interconnections, it would seem that the Commission's opinion would as likely lead to present connections being broken as to new connections being established or existing connections strengthened.

Congress may have intended that the provision of section 201(b) which states that the Commission "shall not have jurisdiction * * * over facilities used * * * only for the transmission of electric enegry in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter" was to have a diminishing effect with the passage of time; but I do not think that Congress can be said to have intended this diminution to proceed to the vanishing point. It reaches that point for all practical purposes when the Commission adopts the commingling test for determining interstate flows after virtually the entire electric generating capacity of the United States is interconnected under electromagnetically synchronous conditions.

My doubts that the statute should be so read are reinforced when the diminished meaning of section 202 following the application of the commingling test is considered.

The stated purpose of section 202 was to assure an abundant supply of economical energy by *voluntary* interconnection of facilities. If jurisdiction inexorably follows interconnection, the nonjurisdictional utilities cannot retain any aspect of their independence once they agree to interconnect. Impregnation is indivisible. Such a reading of section 202 is hardly conformable to its general spirit, and is inconsistent with the legislative history, of this part of the Act.[1]

Another consideration, not related to the scope of the statute, suggests itself. The Commission's adoption of the commingling theory conceivably could deny to a small utility remote from its supplier's generation the opportunity to object to wheeling charges on a mileage or rolled-in cost basis, as opposed to cheaper charges based on a displacement theory. The far-reaching commingling theory adopted today could prove embarrassing to the Commission, which presumably would not want to have one rule for establishing jurisdiction, and another for regulating under it.

I do not wish to be misunderstood. From the standpoint of it being the largest electric utility in Florida, on the basis of its being nationally ninth in revenues, fourteenth in plant investment, and sixteenth in energy sales, and from the standpoint of the upward trend in its energy transactions with interconnected companies, Florida Power & Light Company probably ought to be under Federal Power Commission regulation.

But our adjudicative responsibilities do not turn upon what the law ought to be, but upon what it is. Counsel for the company candidly admitted that the law as it is quite possibly would apply to one of his company's wholesale sales. Such a result might be equally offensive to my reading of the statute, but it would have the merit of resting squarely upon decided cases. We elected to plow new ground with a straight jurisdictional approach, and absent square authority, I find the result to constitute too great a stretching of our charter. I would reverse the examiner, and let a jurisdictional finding wait for a sale case.

JOHN A. CARVER, JR., *Commissioner.*

Mr. CUNNINGHAM. First, we are against the bill. The reason for it, primarily, is that we have had help from the FPC in Florida. Ten of our members purchase all their wholesale power requirements from

[1] Senate Report No. 621 on S. 2796, 74th Cong., 1st Sess., at p. 49, May 13, 1935; and, House Report No. 1318 on S. 2796, 74th Cong., 1st Sess., at p. 27, June 24, 1935.

the Florida Power Corp. and, upon investigation, these members were paying a much higher wholesale rate than the rural electric cooperatives served by the same company. After about a year of supposedly friendly negotiations with the company to get lower wholesale rates to no avail, then we had to go to the FPC. As my testimony outlines, we did get quite a rate reduction, and also a substantial cash rebate.

I would like to quote from my testimony. The question might come up as to why we prefer wholesale regulation by the Federal Power Commission rather than the Florida Public Service Commission. You notice on page 3 at the top the quotation from the Florida Public Service Commission chairman, Edwin L. Mason, when he testified on S. 218 last year, that "the best regulation is little or no regulation."

That is a quick synopsis, and I appreciate the time given to me.

Mr. MACDONALD. We appreciate having you here.

What is your relationship to Florida Power & Light?

Mr. CUNNINGHAM. We are on very friendly terms, associationwide. We have a difference in interest, of course.

Mr. MACDONALD. Do you generate your own power?

Mr. CUNNINGHAM. Our association as such does not generate power. Generation is done by the individual members. As Florida Power & Light testimony bears out, they sell no municipal wholesale power. However, I think probably what triggered this was a deal similar to this, the *Clewiston* case that came up last year, which was a case in which one of our members was paying an exorbitant wholesale rate. It was coming through a second party, you might say. Again, we tried to negotiate locally, but we had to go to the FPC finally to get a reduction.

Mr. MACDONALD. The FPC gave a reduction in rate of 40 percent, as I understand it.

Mr. CUNNINGHAM. I do not remember that it was the FPC, but I will say it resulted in a reduction of the rates; yes, sir.

Mr. MACDONALD. That is what I was going to ask, if it was the FPC. I am not quite sure how it could have come about if it was not the FPC.

Mr. CUNNINGHAM. I think you are right there, because all other efforts failed before the FPC was brought into the picture.

Mr. MACDONALD. Thank you.

Are there questions?

(No response.)

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

Mr. CUNNINGHAM. Thank you, gentlemen.

Mr. MACDONALD. The next witness scheduled is Mr. Charles A. Robinson, Jr., staff counsel and staff engineer of the National Rural Electric Cooperative Association, Washington, D.C.

STATEMENT OF CHARLES A. ROBINSON, JR., STAFF COUNSEL AND STAFF ENGINEER, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION; ACCOMPANIED BY GARY TABAK, ASSISTANT STAFF ENGINEER

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

My name is Charles Robinson. I am the staff engineer and staff counsel of the National Rural Electric Cooperative Association, which is the national trade association of the consumer-owned rural electric

systems which are financed through 35-year loans by the Rural Electrification Administration of the Department of Agriculture. More than 94 percent of all these systems are members of our association.

Mr. Chairman, with your permission I would like to be accompanied at the witness table by Mr. Gary Tabak, who is our assistant staff engineer.

I ask that my statement in full be made a part of the record at this point, and that I be permitted to read portions of it in an effort to save time.

Mr. MACDONALD. Without objection, it is so ordered.

(Mr. Robinson's prepared statement follows:)

STATEMENT OF CHARLES A. ROBINSON, JR., STAFF COUNSEL AND STAFF ENGINEER, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

This statement is presented on behalf of and pursuant to policy adopted by the membership of the National Rural Electric Cooperative Association; the national service organization of consumer-owned electric systems financed through 35-year loans from the Rural Electrification Administration of the U.S. Department of Agriculture. More than 94 per cent of all REA-financed electric type borrowers hold membership in NRECA which is entirely voluntary.

RURAL ELECTRIC SYSTEMS ARE MAJOR WHOLESALE PURCHASERS OF ELECTRICITY

Rural electric systems are among the largest, if not the largest, class of wholesale purchasers of electricity in the United States. It is as such consumers that they view H.R. 5348. Of the 50 billion kwh total energy input to REA-financed systems in F.Y. 1966, only 20 per cent came from REA-financed generation. Eighty per cent was purchased at wholesale: 34 per cent or 17 billion kwh from investor-owned companies at a cost of $128.5 million. Probably all such wholesale purchases by rural electric systems from investor-owned companies are subject to FPC regulation as the law now stands. As the buyers of wholesale electricity costing $128.5 million per year, the NRECA membership is deeply concerned with the influence which H.R. 5348 would exert on the pattern of electric utility regulation in the United States.

For many rural electric systems, the wholesale rate and other regulatory authority vested in the Federal Power Commission constitutes a major element of protection against unfair wholesale power contracts. Particularly in cases involving cooperatives far removed from sources of low cost Federal power, or where system membership is too small or territory too sparse to render feasible their own generation and transmission facilities—where they are wholly dependent upon power companies for wholesale power supply—is FPC protection particularly valuable to us.

In the belief that legislation such as H.R. 5348 would seriously impair the regulatory authority of FPC, the NRECA membership, at its 1967 Annual Meeting in San Francisco, adopted the following resolution, on February 23, 1967, without a dissenting vote:

"Whereas, there has been introduced in Congress legislation to exempt from FPC jurisdiction investor-owned electric companies operating in interstate commerce;

"*Now, therefore be it resolved*, That we reiterate our position that investor-owned electric companies operating in interstate commerce should remain subject to FPC regulation."

We, therefore, respectfully present this statement in opposition to H.R. 5348 based upon the reasons hereinafter set forth.

H.R. 5348 Grants A Broad Exemption of National Scope.—Under the Federal Power Act, as now written and interpreted by the courts, any investor-owned electric system which transmits or sells electricity for resale while connected to an interstate network, either directly or indirectly through another system, is jurisdictional except for carefully defined emergency situations. H.R. 5348, as we read it, would exempt from FPC jurisdiction all such companies, the facilities of which are now or subsequently become located in one state, are not directly connected to the facilities of any other company which has facilities in another state and are not used to transmit or receive electricty "under contract with a public utility or other entity in another state."

Thus, any company which could arrange its facilities to lie within a single state, and could arrange for its power exchange with companies in other states to flow through a "state line" or "buffer" company, would be exempt from FPC regulation; regardless of its size, the number of customers signed, the extent of its wholesale sales, or the magnitude of the flow of interstate power over its system; provided there were no interstate contract involved.

The breadth of the exemption granted arises from the words "under contract with a public utility or other entity in another state" (lines 16–17, page 2 of H.R. 5348) Thus, a company could be exempt no matter how much power it purchased or sold in interstate commerce so long as it had no contract relationship with a company operating facilities in another state.

There is not available to us any estimate, based on adequate research, of the number of companies which by H.R. 5348 would be exempt from FPC control. Nor is there any estimate available as to how many companies could reorganize their corporate structure, exchange transmission and generation facilities, and renegotiate interstate wholesale purchases and sales to come within the exemption provided, and thereby avoid FPC jurisdiction. The number of such companies, however, we think, might be very substantial.

We recognize that this legislation is designed to effect a particular result in Florida. The results which would flow from H.R. 5348 are, however, national in scope.

The national significant of the proposed legislation (H.R. 5348) is evident from the testimony of Mr. P. H. Robinson, President of Houston Lighting and Power Company of Texas in his statement before the Senate Committee on Commerce in support of legislation which, although not exactly parallel, (S. 1365) is designed to achieve a similar objective. In substance, Mr. Robinson asserted that S. 1365 is favored by his company because it would permit the "Texas Interconnected System", which now operates on an isolated basis in Texas, to interconnect across state lines without incurring FPC jurisdiction.

Thus, the proponents of this type of legislation are contending for a revision of the Federal Power Act which would exempt a large group of power companies from FPC regulation even though substantial flows of interstate power were directly traceable to their systems. This may not be the intent of the legislation, but will, nonetheless, be the result. In the light of modern power system operation, it is our strong opinion that such a result is undesirable.

The Need is For Greater Power System Coordination Rather Than For Less.—In his message to the Congress of February 16, 1967, on consumer interests, President Lyndon B. Johnson said, in part,

"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.

". . . we shall recommend legislation to strengthen the coordination among the electric power utilities. This coordination will promote the growth of an electric power supply system to provide an even higher quality of electric service to the American consumer."

These words of President Johnson, spoken in 1967, are strikingly parallel to the language contained in *Senate Report 621, 74th Congress, 1st Session* which, written in 1935, expressed the view of the same problem held at that time by the Senate Committee on Commerce. In reporting *The Federal Power Act of 1935*, that committee wrote:

"In recent years the growth of giant holding companies has been paralleled by the rapid growth of the electric business along lines that transcend state boundaries * * * local operating units have been tied together into vast interstate networks. As a result, the proportion of electric energy that crosses state lines has steadily increased * * *.

"The necessity for Federal leadership * * * has been clearly revealed."

When the Senate Committee wrote those words some 32 years ago, the largest generating unit had a capability of 208,000 kw., and there were very few units above 100,000 kw. Maximum transmission line voltage was 208,000. In 1967, we are using single units with a capacity of over one million kilowatts and anticipating units of 2,000,000 kw. In 1967 we are using bulk power supply transmission line voltages of 500,000 and constructing facilities to operate at 750,000 volts. Over 90 per cent of all electric systems in the country are in some way inter-

connected. Thus, the philosophy of "Federal leadership" enunciated by this Committee in 1935 is proportionately more correct and more applicable in 1967.

A one-million kilowatt generator can provide power for a city of one million people on the average. And, while the economics of the industry dictate the use of generating units and transmission lines of ever increasing size, the loss of even one such unit or line creates a major emergency. The November, 1965 blackout of the northeastern states, and the June 5, 1967, blackout of the eastern seaboard states, demonstrated very clearly that the size of generating units in service has outstripped the availability of the interstate bulk power transmission lines which are required to supply the emergency power needed to avert or minimize the effect of major component losses.

Recognizing the need for improved area-wide and nation-wide EHV interconnection, the President and the FPC have recently recommended enactment of H.R. 10727, entitled the Electric Power Reliability Act of 1967, which is pending before the full Committee. This legislation would, we believe, assure a higher order of service reliability, improved economy in the construction and operation of power systems, and a pattern of bulk power, flow and distribution unimpeded by the artificial barriers of state lines. It would, therefore, make possible abundant electricity to the ultimate consumer at minimum cost. NRECA has endorsed this legislation (H.R. 10727) in principle, and, in so doing, has accepted the prospect of FPC control over REA-financed G–T systems in those instances where they constitute a component of any major interstate pool.

Under H.R. 5348, however, it is our opinion that some companies would restrict heavy interstate transmission line construction. This would tend to weaken rather than strengthen regional system reliability and might deny to the consumers of such systems the economic benefit of low cost generation potentially available in neighboring states. Thus both system reliability and cost would be adversely affected.

The Federal Power Commission now has authority, upon complaint, to order the interconnection of interstate transmission facilities under certain conditions where it deems such to be in the public interest. H.R. 5348 would withdraw that power as to all utility systems which it exempts. No state would possess the constitutional power to order such interstate connections as we understand the law.

State Commissions are Without Constitutional and Practical Power to Regulate Bulk Power Supply.—Prior to 1935, the Supreme Court of the United States held in a line of cases, culminating in *Rhode Island P.UC.* v. *Attleboro Steam and Electric Co.*, 273 U.S. 83, 47 SCT 294, that a state has no constitutional power to regulate the rate at which electricity generated within its borders is sold wholesale at the state line for resale in adjacent state, that the receiving state is also without wholesale regulatory power and that the exclusive power to prescribe such interstate wholesale regulation lies with Congress.

To fill the "Attleboro Gap", Congress delegated its interstate regulatory power to the FPC under the Federal Power Act of 1935. It chose to not adopt the other available alternative of conveying such power to the several states. Thus, for constitutional reasons as well as practical reasons, interstate regulation is a matter primarily for the United States rather than for the several states.

FPC Chairman, Lee White, in his extremely well prepared and expertly presented statement on S. 1365, pointed out to the Senate Committee that ten states have no commissions with even the color of authority under state law to regulate wholesale rates. According to FPC, Florida is one such state; the commission of which has no wholesale regulatory authority. It is our contention, moreover, that none of the state commissions could, in the light of the *Attleboro* rule, sustain such power in a contested case. Therefore, if such authority is withdrawn from FPC under H.R. 5348, the "Attleboro Gap" is reopened as to wholesale sales by many companies. No wholesale regulation would be constitutionally lawful, because the states are without such power.

Even assuming, for argument, that the several states do have power to regulate wholesale sales, we seriously question the results likely to be achieved in terms of uniformity and in terms of protecting the public.

As stated in the Senate Committee Report (S. Rept. 621, 74th Congress, 1st Session) at Page 17 (Federal Power Act of 1935):

"[The] features of this interstate utility business are . . . immune from state control either legally or practically."

Assuming H.R. 5348 to be enacted, and amended to be a constitutional delegation to the states of Federal power, however, the states would then be legally empowered to regulate wholesale transactions, securities dealings, accounting and other matters now in the hands of FPC. In that event, regulation now conducted under one integrated Federal Statute would be subject to 49 separate state constitutions, 49 separate state statutes, 49 separate sets of case law, 49 separate legislatures, 49 separate governors, and the always overriding limitations of due process under the Federal Constitution—how great is a state's jurisdiction over persons, corporations and properties without its borders? What will prevent the location of major utility plant investments in states with "realistic" or "favorable" regulatory "climates" and the allocation to such investments of the bulk of return on investment? How will the state with less "realistic" regulation control what its companies pay for wholesale power? It will not have legal power to control the return on extra-territorial investment in generation. These are the practical problems with which the 74th Congress wrestled in deciding for wholesale regulation at the Federal level.

Companies Complaint on FPC Accounting Requirements.—One of the principal arguments against FPC jurisdiction raised by some of the proponents of H.R. 5348 is, we are advised, the high cost of complying with the FPC Uniform System of Accounts. We understand that the Commission has on more than one occasion invited company accountants to set down with FPC accountants to resolve this problem. Thus far, the companies involved have declined such invitations, I am told.

We respectfully point out that even a state commission would find it difficult to properly fix rates for power constituted of a mixture generated in various states using a variety of rate base valuation procedures. This is the enigma which the Uniform System of Accounts is designed to avoid. The accounting system used by many state commissions was established by the National Association of Railroad and Utility Commissioners (N.A.R.U.C.). The NARUC system and the FPC system are closely similar, resulting from joint studies by Federal and state agencies, and interpretations of both systems are coordinated.

It may be that some states use accounting systems which vary widely from the NARUC and the FPC system. If such be the case, the public interest might be best served by conforming the accounting system of that particular state rather than by exempting from FPC's Uniform Systems of Accounts the utility companies operating in that state.

CONCLUSION

H.R. 5348 would release from FPC jurisdiction many large electric utility systems regardless of the magnitude of their interstate sales and purchases, the number and size of their wholesale sales, participation by them in interstate pools, and control of their capital by interstate holding companies. It would simultaneously tend to discourage the type of nationally coordinated bulk power supply system upon which consumers are entitled to depend for reliable service at minimum cost. It would fragment wholesale rate, accounting and interconnection jurisdiction among 49 separate state agencies which are probably without constitutional and practical power to exercise such jurisdiction. It would, therefore, leave many small wholesale purchasers without adequate regulatory protection.

We, therefore, believe that passage of H.R. 5348 is not in the public interest and urgently request that it not be reported.

Mr. ROBINSON. During the fiscal year 1966, the rural electric systems throughout the country purchased over 17 billion kilowatt-hours of wholesale energy from investor-owned utility companies throughout the Nation, which constituted some 34 percent of all the energy input into the systems. Under the law as it is now written and interpreted by the Supreme Court, it is our opinion that all of these wholesale purchases by rural electric systems are subject to FPC regulation.

The NRECA membership is deeply concerned with any amendments to the act, such as H.R. 5348, which would exempt from jurisdiction many of these companies. Particularly in cases where our systems are located far from sources of low-cost energy which many purchase from Federal dams, or under circumstances where they are unable to

economically generate their own power, is the protection of the Commission valuable to us.

Therefore, our membership at its 1967 meeting at San Francisco, voted without any dissent whatsoever to oppose legislation of this type.

Under the Federal Power Act as now written and interpreted by the courts, any investor-owned electric system which transmits or sells electric energy for resale while connected to an interstate network, either directly or indirectly through another system, is jurisdictional except for carefully defined emergency situations. H.R. 5348, as we read it, would exempt from FPC jurisdiction all companies the facilities of which are now or subsequently become located in one State, are not directly connected to the facilities of any other company which has facilities in another State, and are not used to transmit or receive electricity "under contract with a public utility in another State."

Therefore, as has already been pointed out by previous witnesses, many of the companies could reorganize their corporate structures to take advantage of the exemption granted by this legislation. Thus, as a limit on that reorganization, each State might only have one company in it which would be subject to Commission jurisdiction, and all of the other companies in that State could be exempted. In other words, a major portion of the investor-owned segment of the industry could be exempted under this type of legislation.

In his message to the Congress February 16, 1967, on consumer interests, President Johnson said, in part:

> 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.
>
> * * * We shall recommend legislation to strengthen coordination among the electric power utilities. This coordination will promote the growth of an electric power system to provide an even higher quality of electric service to the American consumer.

These words of President Johnson, spoken in 1967, are strikingly parallel to the language contained in Senate Report 621, 74th Congress, first session, which, written in 1935, expressed the view of the same problem held at that time by the Senate Committee on Commerce. This was the Senate committee report recommending adoption of the Federal Power Act of 1935. That committee wrote:

> In recent years the growth of giant holding companies has been paralleled by the rapid growth of the electric business along lines that transcend State boundaries * * *. Local operating units have been tied together into vast interstate networks. As a result, the proportion of electric energy that crosses State lines has steadily increased * * *.
>
> The necessity for Federal leadership * * * has been clearly revealed.

When the Senate committee wrote those words some 32 years ago, the largest generating unit had a capability of 208,000 kilowatts, and there were very few units above 100,000 kilowatts. Maximum transmission line voltages were 208,000.

In 1967, we are using single units with a capacity of over 1 million kilowatts, and anticipating units of 2 million kilowatts. In 1967 we are using bulk power supply transmission line voltages of 500,000, and constructing facilities to operate at 750,000 volts. Over 90 percent of all electric systems in the country are in some way interconnected.

Thus, the philosophy of "Federal leadership" enunciated by the Senate committee in 1935 is proportionately more correct and more applicable in 1967.

Recognizing the need for improved areawide and nationwide EHV interconnection, the President and the Federal Power Commission have recently recommended enactment of H.R. 10727, entitled "The Electric Power Reliability Act of 1967," which is pending before the full committee. This legislation would, we believe, assure a higher order of service reliability, improved economy in the construction and operation of power systems, and a pattern of bulk power, flow, and distribution unimpeded by the artificial barriers of State lines. It would, therefore, make possible abundant electricity to the ultimate consumer at minimum cost.

NRECA has endorsed this legislation, H.R. 10727, in principle and, in so doing, has accepted the prospect of FPC control over REA-financed G and T systems in those instances where they constitute a component of any major interstate pool.

Thus, Mr. Chairman, our people have taken the position that in terms of service reliability, the REA-financed G and T systems should be subject to FPC jurisdiction under the Reliability Act as it has been introduced in both Houses of Congerss. We believe that is consistent with the public interest, and we are supporting that bill.

Under H.R. 5348, however, it is our opinion that some companies would restrict heavy interstate transmission line construction. This would tend to weaken rather than strengthen regional system reliability, and might deny to the consumers of such systems the economic benefit of low-cost generation potentially available in neighboring States. Thus, both system reliability and cost would be adversely affected.

Mr. Chairman, we believe that the State commissions are without constitutional and practical power to regulate bulk power supply. We believe this based on the decisions of the Supreme Court prior to 1935 in a long line of cases culminating in *Rhode Island PUC* v. *Attleboro Steam and Electric Company*. In that line of cases the Supreme Court held that neither the State of origin nor the State of use has the constitutional authority to regulate the rate at which energy flowing in interstate commerce is sold at wholesale, and that only the Congress possesses such regulatory powers.

To fill this "Attleboro Gap," Congress delegated its interstate regulatory power to the Federal Power Commission under the Federal Power Act of 1935.

I point out, Mr. Chairman, that at that time the Congress could have delegated this power to the several States, but chose instead to delegate it to a Federal regulatory commission, the FPC.

FPC Chairman Lee White, in his well-prepared and expertly presented statement on S. 1365 on the Senate side, pointed out to the committee that 10 States have no commissions with even the color of authority under State law to regulate wholesale rates. According to the FPC, Florida is one such State the commsision of which has no wholesale regulatory authority.

It is our contention, moreover, Mr. Chairman, that none of the State commissions could, in the light of the *Attleboro* rule, sustain wholesale regulatory authority in any contested case. Therefore, if such authority is withdrawn from the Federal Power Commission under H.R.

5348, the "Attleboro Gap" is reopened as to wholesale sales by many companies. No wholesale regulation would be constitutionally lawful because the States are without constitutional power to enforce such regulations.

However, even assuming, for argument, that the several States do have power to regulate wholesale sales, we seriously question the results likely to be achieved in terms of uniformity and in terms of protecting the public.

Assuming that H.R. 5348 were enacted——

Mr. MACDONALD. Sir, I do not mean to interrupt you, but we are illegal on two counts, as I said yesterday. The House is in session, and we have a quorum call. It is against every rule of the House to take testimony during a call of the House.

Your statement has been submitted. Would you care to come back when we resume? It is up in the air as to when because of our schedule. Your fine statement is in the record. I do not apologize, because I am just following the rules of the House. I am sorry it happens to be that way, but members of the committee have to be on the floor. We have the poverty bill up, and there is a lack of a quorum right now.

If you do not mind, I will adjourn the hearing, subject to the call of the Chair.

Mr. ROBINSON. Mr. Chairman, we understand your problem perfectly. We want to do everything in our power to cooperate with the chairman and with the committee and with the Congress. We would, however, appreciate the opportunity to come back at a later time before action is taken on the bill. I have some particular rebuttal testimony concerning the accounting problems and the handling of deferred taxes which I would like to put into the record.

Mr. MACDONALD. Is that included in your statement?

Mr. ROBINSON. No, sir.

Mr. MACDONALD. I can assure you that when the hearings are resumed, you will be notified and you will be the first witness.

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

Mr. MACDONALD. With that, the hearings are adjourned, subject to the call of the Chair.

(The following material was submitted for the record:)

STATEMENT OF THE FLORIDA PUBLIC SERVICE COMMISSION

Mr. Chairman and members of the committee, the members of the Florida Public Service Commission, William T. Mayo, Chairman; Jerry W. Carter, Commissioner; and Edwin L. Mason, Commissioner; through the Commission's General Counsel, Lewis W. Petteway, submit this statement on behalf of said Commission for the information and use of the Sub-Committee on Communications and Power of the Committee on Interstate and Foreign Commerce of the United States House of Representatives in its consideration of H.R. 5348, presently pending before said Sub-Committee.

H.R. 5348 was introduced in the House by one of Florida's distinguished Congressmen, Honorable Paul G. Rogers. The bill seeks to clarify the Federal Power Commission's jurisdiction, and preserve the right of the individual states to regulate public utility matters of purely local concern. This proposed legislation affects two Florida public utilities, Tampa Electric Company and Florida Power and Light Company. Neither of these utilities has any direct connections with any

out-of-state utility company. Both operate entirely within the State of Florida, and neither company sells or buys energy from out-of-state. Both companies are intrastate in character and operate within the jurisdiction of the Florida Public Service Commission.

The wholesale business of these two Florida electric utilities is de minimis. Florida Power and Light Company sells electric energy at wholesale to only seven (7) rural electric cooperatives, all of which operate entirely within the State of Florida. The company's revenue from this source is infinitesimal, or about 1% of its total operating revenues. Its wholesale rates to REA's are considered fair and reasonable by the co-ops. The company has no wholesale municipal customers. Tampa Electric Company serves no REA customers. In fact, this utility has only one wholesale customer—the City of Bartow—which retails the electric energy purchased from Tampa Electric Company to industrial firms located on city-owned property at the old Bartow airport. Tampa Electric Company's revenue from this source is about ½ of 1% of its total operating revenue. The Florida Public Service Commission has never received or heard of any complaint concerning the wholesale rates of these two Florida electric utilities. No public sentiment has been communicated to this Commission calling for Federal regulation of any part of the operations of these two utilities.

Since the Federal Power Act was enacted in 1935, it has been understood generally that it was intended to supplement and not interfere with or take the place of permissible state regulation of purely local utility matters. Recent decisions of a majority membership of the Federal Power Commission indicate that this previously accepted understanding of the Congressional intent no longer may be taken for granted. Thus, the enactment of H.R. 5348 is urgently needed to preserve, in the first place, the rights of individual states to continue to regulate those public utility matters within their borders of purely local concern; and in the second place, to preserve the rights of the individual states to regulate such matters when their respective Legislatures determine that regulation is necessary in the public interest.

In Florida, at the present time, there is no State regulation of wholesale electric rates. These are matters, however, which are peculiarly subject to State regulation when the electric energy is generated, transmitted, and distributed entirely within one State to customers which, likewise, operate completely within the same State. When the Florida Legislature considers that the regulation of wholesale electric rates is required by the public interest, it will, without doubt, provide for such regulation. If and when such regulation may be vested in the Florida Public Service Commission, as it logically would be if enacted into law, this Commission would exercise over such rates the same fair, reasonable, and realistic supervision that it presently exerts over the retail rates of electric utilities now under its jurisdiction.

The Florida Public Service Commission has been consistently alert to see that the rates of public utilities under its jurisdiction are fair and reasonable. Since it acquired jurisdiction over electric utilities in 1951, it has never authorized an increase in the rates of Florida Power and Light Company, but has reduced the company's rates many times. Rate reductions required of Tampa Electric Company have been considerably in excess of increases granted to said utility. This Commission's record for rate reductions is well known. At the same time, it is recognized as an exemplar of fair and realistic regulation.

Indicative of this Commission's efforts in the public interest are the following rate reductions and rate increases during the period 1957–1967, inclusive:

	Reductions [1]	Increases [1]
Florida Power & Light Co.:		
1957	$4,725,000	This company has never been granted an increase in its rates.
1959	2,864,000	
1960	200,000	
1961	6,250,000	
1964	10,000,000	
1965	3,750,000	
1966	9,467,900	
1967	7,073,000	
Total	44,329,900	
Gulf Power Co.:		
1956	165,126	Do.
1957	257,501	
1964	424,548	
1965	677,974	
Total	1,525,149	
Tampa Electric Co.:		
1963	1,732,500	1958, $1,600,000; 1961, $1,585,000.
1965	1,331,000	
1967	2,608,992	
Total	5,672,492	
Florida Power Corp.:		
1962	1,600,000	There has been no increase in base rates during the past 10 years, however, change in fuel adjustment in 1961 resulted in increased revenues of $1,118,000.
1964	513,000	
1965	2,418,638	
1967	726,000	
Total	5,257,638	
General Telephone Co.:		
1963	88,000	1958, $1,620,495; 1962, $4,635,853.
1965	364,214	
1966	265,800	
Total	718,014	
Southern Bell Telephone & Telegraph Co.:		
1960	2,000,000	1961, $1,600,000.
1963	932,300	
1965	1,192,000	
1966	1,681,820	
1966	3,741,885	
Total	9,548,005	

[1] Total reductions, $67.051,198; total increases, $11,041,348; net reductions, $56,009,850.

During the past five years no major public utility in Florida has received any increase in rates. However, rate reductions for the past five years have totaled $51,988,679.

The Florida Public Service Commission stands firmly on this record of affirmative achievement in the public interest. The members of this Commission are selected in state-wide elections, the same as United State Senators and State Governors. Each Commissioner in Florida is directly responsible to the people of this State, and answerable at the polls every four years for this record of regulation.

We respectfully submit that there is no public need for Federal regulation of wholesale electric rates within the State of Florida; and that when and if such a public need does arise, the Legislature of the State of Florida should be free to legislate appropriately concerning this matter of purely local concern.

We urge the members of the Commerce Committee to act favorably on H.R. 5348.

Respectfully submitted.

FLORIDA PUBLIC SERVICE COMMISSION,
WILLIAM T. MAYO, *Chairman*,
JERRY W. CARTER, *Commissioner*,
EDWIN L. MASON, *Commissioner*.

As and constituting the Florida Public Service Commission.

By LEWIS W. PETTEWAY,
General Counsel.

STATEMENT OF BEN T. WIGGINS, VICE CHAIRMAN, GEORGIA PUBLIC SERVICE COMMISSION

Mr. Chairman and members of the committee, my name is Ben T. Wiggins. I am Vice Chairman of the Georgia Public Service Commission.

The members of the Georgia Public Service Commission appreciate the opportunity you have given me as their spokesman to make their views know on HR 5348, which proposes an amendment to the Federal Power Act with respect to the jurisdiction of the Federal Power Commission.

We support the enactment of HR 5348.

As I view this Bill, it would allow state commissions to regulate the kind of essentially local matters which they have, in fact, been effectively regulating for the last fifty years or more; and it is a clarification of what the Congress intended when Part II of the Federal Power Act was enacted in 1935.

HR 5348 would permit the FPC to devote its efforts in the electric business, as in the natural gas business, to transactions in which more than one state is concerned, which neither state can constitutionally regulate, and to sales or exchanges between members of an interstate power pool. Subsequent sales or exchanges of electricity for resale within a state would have built in as a cost the rates approved by the FPC for the original interstate sale, thus protecting local purchasers from excessive charges for out-of-state energy.

Under its present interpretations, the FPC would have jurisdiction to regulate all sales for resale if an electric utility has any out-of-state energy in its system. This includes sales to cooperatives, municipalities, shopping centers, apartment houses, office buildings, and even trailer courts which resell electricity.

We believe that the personnel and funds of the FPC can be better utilized in concentrating upon national problems, rather than thinly deploying them in matters of purely local concern which can be far more effectively, satisfactorily and economically regulated at the local level.

Furthermore, the enactment of H.R. 5348 would bring the Federal Power Act partially into line with the Natural Gas Act as clarified by the Hinshaw Amendment.

The key statutory words of the Natural Gas Act and the Federal Power Act were almost identical prior to the passage of the Hinshaw Amendment (15 U.S.C. 717(c) (1954)) except that Section 201(a) of the Federal Power Act declares that "Federal regulation (is) to extend only to those matters which are not subject to regulation by the States." The legislative history of the two Acts shows the same congressional intent not to impinge on areas open to the exercise of State powers.

In the *East Ohio Gas Company* Case, the Supreme Court sustained FPC's extension of its jurisdiction to operation of a natural gas company wholly within a single state. Part of the gas sold by it for resale had moved in interstate commerce. The 83d Congress, in passing the Hinshaw Amendment, exempted from FPC jurisdiction transportation of natural gas and its sale for resale in interstate commerce if all the gas received within or at the boundary of a state is consumed within such state. The Amendment states these matters to be "* * * primarily of local concern and subject to regulation by the several States."

The United States Code Congressional Administrative News (83d Cong., 2d sess., 1954, vol. 2, p. 2102) vigorously stated the views of the Congress on FPC enlargement of its jurisdiction: "* * * 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 difficulty giving rise to the need for this bill is that under certain interpretations of the Federal Power Commission (in the *East Ohio* case) the Commission has undertaken regulation of some activities * * * 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."

Although the Hinshaw Amendment has been in force for more than twelve years, thhe FPC has not been deprived of its appropriate jurisdiction to regulate interstate transmission of gas and sales for resale where the interests of more than one state are involved. No regulatory gap or uncertainty with respect to its jurisdiction has appeared by reason of the Hinshaw Amendment. H.R. 5348

would have the same salutary effect. As in the Hinshaw Amendment, the only deprivation of FPC jurisdiction resulting from its passage would be in an area in which Congress had never intended it to act.

An exact parallel to the situation prompting the Hinshaw Amendment may be found in the action of the FPC in *City of Colton* v. *Southern California Edison Company*. There in 1961, for the first time, the FPC declared it had jurisdiction over a sale of energy by an electric company operating solely within the State of California, to a California city for resale to its inhabitants. In its integrated system Edison had less than 6 percent of out-of-state energy which it bought from Hoover Dam pursuant to a contract with the United States. The terms of the contract were regulated by the Secretary of the Interior. No state other than California had any interest in this original sale and transmission. Since all of Edison's energy was consumed within the same state, no other state had any interest in any subsequent sales.

The California Public Utilities Commission for many years prior to the enactment of the Federal Power Act and for 26 years thereafter regulated all of Edison's sales, both for resale and for direct consumption, fixing low rates which gave the resale customers as a class the benefits of cost averaging among all the classes and of the load diversities on Edison's total system. This the California Commission could do as it regulated both resale and retail rates.

STATEMENT OF WALTER HARRISON, MANAGER, GEORGIA ELECTRIC MEMBERSHIP CORP.

My name is Walter Harrison, and I am manager of the Georgia Electric Membership Corporation, Millen, Georgia, which is the statewide association of the 41 rural electric systems serving 401,397 rural consumer members over 71,000 miles of line in Georgia. It is also my privilege to represent the Georgia rural electrics on the board of directors of the National Rural Electric Co-op Association. NRECA is the trade and service organization of 980 rural electric systems operating in 46 states.

Mr. Chairman, the rural electric systems in Georgia and in the nation as a whole are progressive, consumer-owned and operated electric utilities. As such, they are very much interested in utilizing modern concepts and techniques in order to provide the most reliable and adequate electric service to their consumer-members at the lowest possible cost.

We oppose H.R. 5348 because we feel it is regressive rather than progressive legislation in the electric utility field.

Its provisions would tempt, if not downright encourage, commercial electric utilities to plan their interconnections and pooling arrangements with an eye toward evading FPC regulation rather than with the aim of utilizing the most economical and reliable mode of operation.

Too much of this negative or regressive type of planning is already going on in the electric utility business today, and the electric consumer suffers because of it. He suffers because electric rates are higher and blackouts are more prevalent when utility planning is done on any basis other than the utilization of the most economic and most reliable method available to the utility.

Back in 1964, the Federal Power Commission published its landmark study, the *National Power Survey*. This extensive and comprehensive study, which was conducted by the FPC staff in cooperation with advisory committees drawn from all segments of the electric power industry, stressed the fact that the manner in which the Nation's 3,617 separate power systems plan and build for the future is of national concern. The Survey points out that all generation and transmission facilities, whether owned by private, cooperative, Federal or other public agencies, should be planned and built as part of large coordinated power networks to achieve the lowest cost of bulk power supply.

As the Survey so accurately observes: "Planning to coordinate the investments in new facilities and the operation of all of the power systems over broad areas of the country is a must if we are to achieve the objective set forth in the Federal Power Act of 'an abundant supply of electric energy throughout the United States with the greatest possible economy'. The Nation can afford no less."

The Survey proposes effective utility regulation as protection to the 3,190 small electric systems, which include most of the rural electric cooperatives, in their wholesale power dealings with the 427 large utilities. The Federal Power

Commission is the only regulatory commission in the United States which can effectively regulate wholesale power rates. If commercial power companies are permitted to escape FPC jurisdiction via the provisions of H.R. 5348, who will protect the rights of the 3,190 small electric systems, many of which are consumer owned?

The *National Power Survey* looks forward. H.R. 5348 is looking backward.

Mr. Chairman and members of the Subcommittee, the rural electric systems of Georgia urge you to reject H.R. 5348 in the interest of a modern and dynamic electric utility industry. We do not permit horse and buggies to travel on our modern interstate highway system. Nor should we permit electric utilities to operate in an antiquated, inefficient manner because they can escape regulation by so doing.

Thank you.

STATEMENT OF ROBERT V. CLARK, MANAGER, EASTERN MAINE ELECTRIC COOPERATIVE, INC., CALAIS, MAINE

Mr. Chairman, on behalf of the rural electric cooperative systems in Maine and their more than 7,500 member-consumers I wish to record our opposition to H.R. 5348, which would diminish Federal Power Commission regulatory authority over the electric power industry.

In 1965, during the 89th Congress, the Maine rural electric cooperatives opposed similar legislation. At that time we pointed out that the Maine rural electric cooperative systems have been handicapped in their efforts to secure low-cost electric power because of the domination of the electric power industry in the state by investor owned electric utilities which control about 99 percent of the electric power business. As a result the wholesale electric power rates paid by rural electrics in Maine are at the highest level in the Nation.

I stated then that, "Maine has had a feudal system insofar as electric power is concerned. Each of the three major utilities in Maine have pretty well decided what is best for their area. Historically, they have not interconnected substantially so that the State as a whole could get the benefits from large, efficient units at the earliest time possible."

In fact from 1909 to 1955, Maine had on its statute books, the Fernald law, which prohibited the export from the state of any electricity generated by water power within the state. Senator Muskie, who was then Governor of Maine, recommended repeal of this law and stated in his message to the legislature in 1955, ". . . there is some reason to believe that the law hampered maximum development of our hydroelectric power in a period when a large surplus of developed power would have attracted new industries. There is no sound reason to continue this isolationist doctrine which prevents the integration of power needs and resources with those of our natural economic partners—the neighboring New England States and Canada."

We believe that enactment of H.R. 5348 would be a step backward that could lead only to higher rather than lower wholesale power costs. We are concerned that it could result in a return to restrictive and limiting controls of the type that the state of Maine and our electric member-consumers labored under until the Fernald law was repealed in 1955.

The rural electric cooperatives are not seeking the exemption from Federal Power Commission jurisdiction which H.R. 5348 would provide. The concern which we once had regarding this matter has been resolved. The FPC has concluded that existing law does not give it authority over the rural electric cooperatives.

Instead we are in favor of the constructive approach incorporated in legislation to resolve the problems of reliability and adequacy of power planning and power transmission. In testifying before the Senate Appropriations Committee at hearings on the 1968 Independent Offices Appropriations, FPC Chairman White stated that:

"On the question of jurisdiction over the co-ops, in the new bill that we proposed on reliability, it would make no distinction between privately owned and cooperatively owned companies. We would, therefore, if that bill were enacted, have jurisdiction over the co-ops insofar as the reliability for service was concerned. We still do not believe we have jurisdiction over the co-ops in terms of their accounting and rates."

The rural electric cooperatives as borrowers from the Rural Electrification Administration are subject to a large measure of regulation and supervision by

REA. We believe that the present statutory and administrative controls over rural electric cooperatives are reasonable and equitable.

The exemption of investor-owned electric utilities from FPC jurisdiction which would be possible under H.R. 5348 would, we believe, eventually result in conditions and situations leading to higher wholesale power costs for the rural electric cooperative system. We urge this committee to table H.R. 5348 and all similar bills.

STATEMENT OF SAILEY ENNIS, MANAGER, WASHINGTON ELECTRIC CO-OP, INC., EAST MONTPELIER, VT.

Mr. Chairman and members of the committee, my name is Sailey Ennis. I am manager of the Washington Electric Co-op, Inc., which has its headquarters in East Montpelier, Vermont. Washington Electric Co-op serves 3,444 consumers in rural areas of Vermont, with a distribution system which includes 911 miles of line.

Our rural electric systems, and the other two consumer-owned systems in Vermont, are quite small in relation to the principal electric power company in our state. All of the rural electric cooperatives in our part of the nation are small compared to the electric power companies, and we are limited both by our smallness and by our contracts with REA in what we can do in obtaining wholesale power and in providing service.

In our own case, we are fortunate in being able to purchase energy at an average wholesale rate of 8.2 mills per kilowatt-hour from the St. Lawrence and Niagara Project. This is public power and is wheeled in across the state line by Vermont Electric Power Company. We pay 17.6 mills per kwh, or more than double the cost of St. Lawrence and Niagara power, for a smaller amount of supplemental energy which we purchase at wholesale from the Green Mountain Power Corporation.

You can see how important the transmission of wholesale power across state lines is to the rural families and businesses we serve.

Now let me relate our power supply situation to the proposal in H.R. 5348 which you have before you today.

It appears to me that this proposed legislation would set up the machinery for investor-owned utilities in the United States to facilitate the eventual circumvention of jurisdiction by the Federal Power Commission. The companies could do this by divesting themselves through trading or selling out-of-state holdings, and then forming separate transmission companies to wheel power across state lines.

In our state, the Vermont Electric Power Company, or Velco, is an example of such a new transmission company set up to buy and sell wholesale power. The Central Vermont Public Service Company, largest electric power company in the state, owns 86½ percent of Velco and two other electric companies own the rest of it. Velco is a tightly held monopoly transportation comanpy, with no public issuance of stock.

For Washington Electric Co-op, this wheeling arrangement poses no insurmountable problem, because roughly a third of the public power brought in from the St. Lawrence and Niagara Project is allocated to the Public Service Board of Vermont, a State authority. We buy our share of this imported power from the State Board, and there is a wheeling cost of 3 mills per kwh that we pay. This goes to Velco, the power transportation company.

But if the imported power were sold to an electric company wholly within the State of Vermont, and we had to then purchase our own supply from that instate company, the wholesale rate—under H.R. 5348—could be set without any protection for us by Federal Power Commission regulation. Now obviously we can't predict that this would be the case, but small systems like our own have very little leeway in how we can get our power supply. We can have almost no influence on the rate we must pay if we do not have generation facilities of our own or access to public power. Small systems which depend on out-of-state power wheeled or marketed by investor-owned electric companies want and need the protection afforded by the FPC.

It seems to me that the demand for electric power today and in the years ahead of us is going to require more pooling and interconnections across state lines than ever before. Any legislation that would encourage even a slight retreat to wholly intrastate operations is a step backwards.

On behalf of the consumer-owners who are members of the Washington Electric Co-op, I ask the Committee members to not report favorably on H.R.

5348, and I thank the Committee members for permitting us to submit this statement on behalf of continuing FPC regulation on a basis which would not encourage power suppliers to slip out from under its jurisdiction.

STATEMENT OF Q. W. WELLINGTON, PRESIDENT, CENTRAL ILLINOIS LIGHT CO., PEORIA, ILL.

Most of the electric utilities throughout the country are interconnected in various degrees. The FPC encouraged utilities to interconnect on a voluntary basis and no one thought that such interconnections were going to lead to plenary FPC jurisdiction. When these voluntary interconnections were being made the FPC did not indicate any jurisdiction unless the company was directly connected with an out-of-state utility, and then only to the limited extent of such out-of-state energy being directly traceable. However, the FPC having now obtained an elaborate voluntary interconnection of the electric utilities, has begun to extend its jurisdiction over the entire electric utility industry on the theory that once interconnected the entire electric system grid is impregnated with out-of-state energy. During the past two years this jurisdiction has grown; first, over the integrated subsidiary utilities of the holding company (*Indiana-Michigan Electric Co.*, FPC Opinion 458, aff'd 365 Fed. 2d 180 (1966)) which company is an integral part of the American Electric Power System operating as an integrated unit in five states); second, the individual non-integrated utility but which was directly interconnected across state borders in an interstate electric pool (*Public Service Company of Indiana*, FPC Opinion No. 483, aff'd 7th CCA January 13, 1967); and now third, the individual utility which is neither directly interconnected across state lines nor a member of an interstate power pool but part of a state pool (*Florida Power & Company*, FPC Opinion 517 issued March 20, 1967).

In the case of Central Illinois Light Company, we are not interconnected across state lines nor a member of any power pool, state or interstate. However, we do have interconnections with Commonwealth Edison Company and Illinois Power Company, both of whom are interconnected with out-of-state utilities operating in parallel. CILCO's interconnections are for temporary and emergency service, both for its own protection as well as helping others in case of need. Occasionally CILCO may purchase firm power from Commonwealth Edison or Illinois Power for limited periods while deferring the installation of a new generating unit. CILCO is the smallest of the major Illinois electric utilities ranking behind Commonwealth Edison, Union Electric, Illinois Power and Central Illinois Public Service, and is ranked 80th nationally. Although the Federal Power Commission has not formally exerted jurisdiction over CILCO, we have been directed to file our wholesale rates and to adhere to FPC accounting and other regulations, including permission to acquire or sell any utility property in excess of $50,000. CILCO has been and is still under the jurisdiction of the Illinois Commerce Commission and files its rates, including wholesale rates, with that Commission as well as keeping its books, acquisitions and other matters in accordance with that Commission's uniform system of accounts and formal approvals.

The Florida Power & Light decision of the FPC was 3 to 2, with Commissioners Carver and O'Connor dissenting. As Commissioner Carver states:

"The vice I find in the Commission's decision, which prevents me from joining in its statement, is that its adoption of the commingling theory as a test for jurisdiction *per se*, interprets the Federal Power Act to have a reach beyond that which I find in the statute.

"The Federal Power Act is today found to grant to the Commission jurisdiction over *any* company which generates electric energy in the form of alternating three-phase 60-cycle current, if that company is interconnected and electromagnetically synchronized with any other generating source producing electric energy in the same form in another State.

* * * * * * *

"If commingling obviates tracing, then the reach of the Commission's jurisdiction is plenary. Furthermore, it has become plenary in 1967, while the act was passed in 1935 and has not been changed by Congress (in respects material here) since.

"The Supreme Court in *Connecticut Light and Power Co.* v. *FPC*, 324 U.S. 515, at 515, credited the Congress with determining that 'federal jurisdiction was to follow the flow of electric energy.' (at 529)

"But is federal jurisdiction to follow the changes in the theories which are devised by company or Commission engineers to describe a still-mysterious phenomenon? For myself, I cannot accept the premise that the 'commingling' theory can change the law as radically as to eliminate two explicit exceptions to our jurisdiction."

This continuing extension of jurisdiction by the FPC will certainly be "plenary" unless Congress comes to the rescue of the small utility companies. The expense of dual regulation is certainly not worth the benefits the people in Illinois will receive through FPC regulation of CILCO. It is rather ironical for the FPC to be so concerned about a utility's wholesale rates to municipalities and cooperatives, while municipality and cooperative rates to their customers are not controlled by either the FPC or the state agency.

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. Chairman, my name is Andrew J. Biemiller. I am Director of the AFL-CIO Department of Legislation. I am also Chairman of the AFL–CIO Staff Committee on Atomic Energy and Natural Resources.

I appreciate this opportunity to express the strong opposition of organized labor to H.R. 5348 and five other identical bills which would amend the Federal Power Act and exempt certain electric utilities from regulation by the Federal Power Commission.

These bills would amend Sec. 201(f) of the Federal Power Act to remove from jurisdiction of the Federal Power Commission all cooperatives and non-profit organizations financed by the Rural Electrification Administration and those privately owned electric utilities which operate under one of three conditions:

1. Those which have their facilities physically located in a single state.
2. Those which do not receive or transmit power directly from or to another state.
3. Those which do not receive or transmit power under contract with a utility in another state.

Although these conditions for exemption are less far-reaching than those set forth in previous legislative attempts along this line before the Congress in 1964 and 1965, we oppose H.R. 5348 and companion bills for the same reasons. The Federal Power Commission, the Bureau of the Budget, and a wide range of consumer's organizations are likewise opposing this legislation.

With its 14 million members of affiliated unions, who, with their families number some 50 million Americans, the AFL–CIO represents the nation's largest single group of consumers. It is in defense of the consumer interest of union members and their families, and in defense of the general consumer public that we present this statement.

We are opposing H.R. 5348 and similar bills for the following reasons:

1. The bills are primarily intended to afford relief for the Florida Power and Light Company. This utility is making a court test of Opinion No. 517 of the Federal Power Commission to the effect that the company is a public utility under definition of the Federal Power Act and therefore subject to Commission regulation.

The Commission has postponed the effect of its opinion because of the court test, but obviously Florida Power and Light and other utilities regard H.R. 5348 as an opportunity to escape FPC regulation. Even the two FPC members of the Commission who were in dissent to Order No. 517 have urged no action on this legislation pending the outcome of the court test.

2. Thirty-two years ago the Congress met the immediate need for federal regulation of electric utilities in passing what are now Parts II and III of the Federal Power Act. Even then the Congress found that these utilities were forming large interstate networks, with increasing amounts of electric energy crossing state lines. This clearly called for federal regulation, since much of such interstate transactions fell outside legal or practical state control.

In 1964, the National Power Survey of the Federal Power Commission stated that ". . . today 97 percent of the industry's generating capacity is to a greater or lesser degree inter-connected in five large networks." This process has increased since 1965. The major power failures of the past few years along the East Coast and in other areas point out the need for greater coordination and strengthening of power systems, such as is contemplated in the proposed Electric Power Reli-

ability Act of 1967. It is even more vital, therefore, to have effective federal regulation of electric power transactions and electric utilities now than it was more than three decades ago when the Wheeler-Rayburn Act was enacted into law.

3. Chairman Lee C. White of the Federal Power Commission pointed out the basic wrong-way approach taken by these bills in his testimony earlier this year on similar legislation before the Senate. He said:

"I believe that the most regrettable aspect of the exemption criteria . . . is that it would create incentives for some electric utilities to do the wrong thing; To fragmentize instead of to integrate; to build generators whose construction could be avoided through unified planning with neighboring systems; to build short, low-voltage transmission lines instead of heavy interstate connections; to rely mainly upon load-shedding if major equipment outages occur; in short, to consider avoidance of FPC jurisdiction as a primary consideration to the detriment of improved reliability and lower power costs to consumers is to negate the very purposes of the Federal Power Act."

While this is part of the picture, it is our belief that Florida Power and Light Company and other private utilities seeking to escape proper regulation want to go further. They want to participate fully and profitably in the benefits obtained from modern power pooling and interchanges but they want this participation without regulation by the federal government.

4. The FPC's National Power Survey forecast that by 1980 average electric costs over the nation could be reduced by 27%, or $11 billion a year, if the economics of scale embodied in giant power technology were fully achieved by the nation's electric power industry. Much of this saving could be passed on to consumers in the form of lower rates if both federal and state regulation are effective.

But state regulation alone is generally ineffective. A recently published study on state utility commissions published by the Senate Committee on Government Operations reveals large variations among state utility regulatory bodies as to jurisdiction over electric utilities.

For example, seven states do not regulate wholesale rates of private electric utilities, and two states do not regulate retail electric rates charged by private power companies. Of the 29 state commissions responding to the question regarding the level of the prescribed rate of return, the average for these commissions was 6.14% in contrast to the actual level of 7.39% for the 192 Class A utilities according to data compiled by the FPC for the year 1965.

Results of the Senate committee study also reveal that 29 state commissions stated that their staffs were inadequate to carry out their regulatory responsibilities and 37 states responded that their salary scales were inadequate.

The Federal Power Commission does not regulate retail electric rates. Nevertheless its regulation of wholesale rates of public utilities under the Federal Power Act sets standards for state commissions which do regulate rates to the ultimate retail consumer. On a number of occasions since 1961, the FPC has vigorously undertaken wholesale rate proceedings and other proceedings which have helped small publicly owned utilities which otherwise would be completely at the mercy of the large privately owned electric utilities which are their major source of bulk power supply. In some instances private electric utilities have been forced to serve municipally owned utilities under the clear authority provided by the Colton decision of the U.S. Supreme Court in 1963. It is obvious that H.R. 5438 and companion bills are designed to undermine this service to consumers and small publicly owned utilities. In the interests of both consumers and publicly owned utilities, this legislation should be rejected by this Subcommittee. Otherwise, it will be possible for the giant private power utilities increasingly to undermine and nullify the Commission's regulatory powers in the future.

5. As the AFL–CIO has pointed out many times, stronger federal and state regulation is necessary to protect the interest of the electric consumer, but regulation alone cannot do the job. The American consumer still needs the federal and public power yardstick. We still need the sharpening effect of competition for the consumer that we get from the federal yardstick and from pluralistic ownership of this nation's power systems. Such mixed ownership will give protection to the public and the consumer against the evils of unchecked monopoly.

H.R. 5348 will accomplish none of these aims. It would erode sound regulation. It would make it more difficult to achieve reasonable power rates to the consumer. It would provide a major roadblock to the achievement of a modern, efficient, reliable and non-discriminatory mixed ownership national power supply system.

Mr. Chairman, I appreciate this opportunity to present the views of the AFL–CIO in opposition to H.R. 5348 and related bills. We urge you to reject this legislation. Thank you.

CITY OF OCALA,
Ocala, Fla., October 31, 1967.

Hon. TORBERT MACDONALD,
Chairman, Subcommittee on Communications and Power, House Committee on Interstate and Foreign Commerce, Washington, D.C.

DEAR MR. CHAIRMAN: I regret that other business commitments prevent my personal appearance and submission of testimony at the hearings on H.R. 5348 to be held November 1 and 2, 1967.

The City Council of the City of Ocala, Florida, unanimously adopted a resolution opposing S. 1365 introduced by Senators Spessard Holland and George Smathers and identical to H.R. 5348. I had the privilege of appearing before the Senate Commerce Committee hearings on June 27, 1967, in opposition to S. 1365.

Ocala is a community of approximately 25,000 people within its corporate limits. The City owns its electric distribution system, purchasing power at wholesale rates from Florida Power Corporation. The distribution lines of the City extend outside the limits to an area serving approximately 10,000 additional inhabitants. The sale of electricity adds to the general revenue funds of the City over One Million Dollars annually in profits, thus greatly reducing the millage upon real property required to finance local government. It is because of this support that our electric distribution gives to the economy of our city that we are interested in the immediate and probable effects of H.R. 5348.

Several years ago we received notice through a copy of a letter written by the Federal Power Commission to Florida Power Corporation that the F.P.C. staff felt a reduction should be made by Florida Power Corporation in its wholesale electric rates to municipalities. This was brought about in part by the reduction of federal income taxes against corporations. As a result of the preliminary notice, Florida Power Corporation filed a revised rate schedule which eliminated the commodity index clauses of its contracts with municipalities and conformed fuel adjustment clauses to acceptable standards of the Federal Power Commission. The effect of this reduction was ultimately passed on to the consumer through revised rates enacted by the City of Ocala.

Florida Power Corporation, unlike Florida Power & Light Company, has approximately twelve municipalities to which sales of electricity are made at wholesale rates. These sales constitute less than 10% of the revenue of the company. Following the filing of its revised rates with the Federal Power Commission, ten of the municipalities joined together in a complaint to protest the revised rates; we were not satisfied with the reductions that had been made by Florida Power Corporation. That case is still pending before the Commission, but as a result of fine efforts on the part of the Federal Power Commission staff to effect an equitable settlement, a negotiated rate reduction of some $225,000 per year has been agreed upon among the cities. Nevertheless, one aspect of the case is of particular interest and bears upon the legislation before this committee.

Ocala—like other municipalities served by Florida Power Corporation—extends its lines outside of its municipal boundaries. Within the past year we entered into a territorial agreement with Florida Power Corporation whereby customers in a designated area would be served by one utility or the other. The elimination of the unnecessary competition and duplication of facilities has proved economical to both parties. However, to the north of Ocala we compete with Clay Electric Cooperative and to the south with Sumter Electric Cooperative, both of whom purchase power at wholesale rates from Florida Power Corporation. They respect no territorial agreement except the corporate limits of the City. Our municipal rates are competitive with both of these companies as well as those charged by Florida Power Corporation outside of the territory for residential and commercial customers.

It was our contention that municipal wholesale rates charged by Florida Power Corporation should be more equal to those charged by the company to rural electric cooperatives. We recognize recent rulings of the Federal Power Commission that have not granted municipalities equal status with cooperatives, but we look forward to the time when our distribution system can receive the same low wholesale rates so that we can provide cheaper power to our customers.

The City of Ocala has no complaint with the objectives of Florida Power & Light Company to sever the jurisdiction of the Federal Power Commission

except the effect upon regulation of the Florida Pool. The City of Ocala is affected indirectly by such jurisdiction. Our first concern is the effect this legislation will have upon our future relations with Florida Power Corporation and the development of a stable source of power in Florida.

The City of Ocala has currently under study the economic feasibility of self-generation. We realize that essential to this self-generation would be interconnections and power pools with neighboring utility companies first with Florida Power Corporation and ultimately with the Florida Pool. Long range projections of power supplies and the needs of this growing state indicate that systems can no longer be isolated, but require intrastate as well as interstate connections to provide back-up sources of electricity. Our attention has recently been directed to the exciting possibilities of the Yankee-Dixie project which would provide electric power at a rate far less than is now available in Florida.

The enactment of H.R. 5348 or similar legislation is regarded by its sponsors as having no effect upon Florida Power Corporation because of its interstate connections. We would submit to this committee that this legislation could become the vehicle by which Florida Power Corporation would sever its interstate connections to avoid jurisdiction of the Federal Power Commission. We would then find ourselves solely subject to jurisdiction of the Public Service Commission of Florida. This is a fate which the municipalities owning their distribution systems wish to avoid for reasons which I will enumerate.

The enactment of H.R. 5348 or similar proposals must presuppose that state agencies are competent and capable of meeting and solving the problems over which the Federal Power Commission has previously had jurisdiction. It is contended by the supporters of this bill that the cost of such jurisdiction to the Power Company will be prohibitive. Mr. Robert Fite, President of Florida Power & Light Company, has stated that these costs might run from Four to Six Million Dollars to their company alone. While I have no way of refuting this estimate, I am not aware of such a burden being placed upon Florida Power Corporation. They too are subjected to regulation by the Public Service Commission of Florida and must meet both the standards of practice of that commission and those of the Federal Power Commission. Neither am I aware of any claim by Florida Power Corporation that the data, records and methods of accounting required by the Federal Power Commission places any undue burden upon the company. It has been my limited experience that when studies or surveys are required, the cost is justified by the information revealed and the future planning that can be developed from such studies.

Mr. Chairman, I share with the sponsors of this bill the philosophy that the federal government should not extend its bureaucratic hand to exterminate state power and responsibility; but I fear that if this legislation is enacted, the state commissions, particularly the Florida commission, cannot fulfill the functions performed by the Federal Power Commission. The Public Service Commission of Florida does not possess jurisdiction over wholesale rates in intrastate commerce; they have no power to enforce interconnections between municipal utility systems and private power companies; and they do not exercise any jurisdiction over municipal systems to establish rates, territory, quantity or quality of service. If, as I have stated, the trend in this country continues as it must to giant power pools transcending state boundaries, such state commissions will become entangled in conflicts of jurisdiction, divergent standards, regulations and rules.

The members of the Public Service Commission of Florida are dedicated, hard-working servants of the people. Their effectiveness to cope with the multitude of problems under their jurisdiction is limited by staff and their budget. Their efforts have resulted in many millions of dollars being saved by the consumer purchasing retail power from private companies. But the accomplishments of that commission in the area of retail rates does not necessarily imply that they could perform the jurisdictional functions presently under the Federal Power Commission. Our experience with the Federal Power Commission's jurisdiction thus far has been most rewarding, and we feel as a municipality the Commission will treat both the municipality and the private power company on a fair and equitable basis.

The problems of municipalities transcend state lines. Ocala is no different from Albany, Georgia, or Buffalo, New York, in its urban growth and development. We recognize that cheap available electricity is essential to our growth, just as are good roads, adequate housing, and low taxation of property.

Aside from the transmission of electricity within the territorial boundaries of a state which admittedly is the primary function and source of revenue of an

electric power company, there is little which is intrastate about the activites of the company. Stock in the private utility companies of Florida is owned nationwide by people living in every state: fuel for the production of power is mined in West Virginia and transported to the generating plants, or piped from the oil fields of Louisiana and Texas. The equipment, towers, electric distribution wires, transformers, generator motors, motor vehicles, all essential to the maintenance and operation of the companies, are purchased in other states and pass through interstate commerce daily to supply their needs. The financial centers of America, outside of the State of Florida, have provided the capital with which the companies have been able to expand. Their sources of labor come from many states and are trained in institutions of higher learning throughout the United States. I am well aware that such an argument might be made for any industry or business, but power companies by their very nature are monopolistic. The Public Service Commission guarantees to them an income and rate of return; they are protected by the government to an extent that few other business concerns can enjoy.

The energy requirements of the City of Ocala are an insignificant part of the economy of Florida Power Corporation. In the industry we are a small minnow in a big pond. We have neither the weight, influence, nor resources that the big power companies of Florida can muster to shape the future and destiny of state legislation or administrative regulation.

I am advised that H.R. 5348 and similar legislation introduced this year was motivated in part by the ruling of the Federal Power Commission that Florida Power & Light Company is subject to its jurisdiction. I have no knowledge of the facts which resulted in this conclusion, but it would seem to me that if, as the company contends, its activities are wholly intrastate and were never intended to be subject to F.P.C. jurisdiction, the matter should be resolved by the courts and not by congressional act.

I would respectfully urge the Subcommittee to reject H.R. 5348 and all similar bills.

I sincerely request that you include this letter in the record of hearings on H.R. 5348.

Sincerely yours,

WALLACE E. STURGIS, Jr.,
Attorney for the City of Ocala.

CITY OF AUSTIN,
Austin, Tex., November 1, 1967.

Hon. TORBERT H. MACDONALD,
Chairman, Subcommittee on Communications and Power, Interstate and Foreign Commerce Committee, House Office Building, Washington, D.C.

SIR: The City of Austin a municipal electric utility in Austin, Texas would like to go on record in favor of House Bill 5348 (introduced by Rep. Rogers and Rep. Dante Fascell) and is filing with the House Interstate and Foreign Commerce Committee a copy of this letter indicating the position of the City of Austin Electric Utility.

The Austin Electric System, a municipally owned system, serves the area of a ten mile radius around the City of Austin, consisting of about 415 sq. miles and 83,000 customers. The electric power and energy is supplied by two steam electric plants which has a capacity of 500,000 kilowatts. The 69 KV transmission grid loop network system serving the customers has three interconnections with the Lower Colorado River Authority system for emergency standby service. These interconnections provides strong ties with the other members of the Texas Interconnected Systems.

The Texas Interconnected System has been in operation for over a quarter of a century and has proven very satisfactory. The history of operation of this system clearly points out that investor owned, municipals, state and REA cooperative systems can and have worked in complete harmony to give the customer the best reliable service and at low electric rates. Also this combination of electric utilities interconnected provides adequate "backup" capacity for emergencies and greater service reliability.

The imposition of additional excess new regulations upon our system is unnecessary and will be detrimental to our quality of service, and we urge your favorable consideration of House Bill 5348.

Yours very truly,

CITY OF AUSTIN, TEX.,
D. C. KINNEY, *Director, Electric Utility.*

W. M. LEWIS & ASSOCIATES,
Portsmouth, Ohio, November 9, 1967.

Re H.R. 5348.

Hon. CLARENCE J. BROWN, Jr.
House of Representatives,
Longworth House Office Building,
Washington, D.C.

DEAR CONGRESSMAN BROWN: I am gravely concerned as to the impact on our nation's electric power system if H.R. 5348 becomes law. I have requested an opportunity to testify in opposition to this bill before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce; however, I was advised that the Subcommittee did not have sufficient time available at its hearings last week and has adjourned until a later date.

I am a consulting electrical engineer and not a lawyer, but years of experience have taught me the schemes and devices that can be used to escape utility regulation. I can see where the wording of H.R. 5348 would not only exempt intrastate electric utilities from effective regulation but also utilities with connections to other utilities in adjacent states.

Not long ago my firm was retained by the City of Jackson, Ohio, to assist them in obtaining a more equitable arrangement for their wholesale power requirements. Jackson is a municipal distributor of electricity to approximately 3,500 consumers. All of its wholesale power requirements are purchased from The Columbus and Southern Ohio Electric Company.

Columbus and Southern is an investor-owned electric utility with all of its facilities located within the State of Ohio. It is not, to my knowledge, directly connected to a utility in another state. Columbus and Southern sells power at wholesale to three other municipal systems and five rural electric cooperatives. In 1966 the cooperatives paid an average rate of 7.8 mills per kilowatt-hour and the municipal systems paid an average of 12.3 mills per kilowatt-hour. Jackson paid an average of 11.5 mills.

By the terms of its contract with Jackson, Columbus and Southern serves all of the loads having demands in excess of 50 kilowatts located within the city. Since 1964 Jackson has argued with Columbus and Southern that the City was entitled to a lower wholesale rate, commensurate with that offered the cooperatives, and that the City should be allowed to serve any load, regardless of size, located within its service area. Columbus and Southern refused concessions on either point.

Jackson took its problem to the Public Utilities Commission of Ohio and was informed that this Commission had no authority to investigate or act on such a complaint.

Last year Jackson instituted informal proceedings against Columbus and Southern before the Federal Power Commission. FPC staff requested Columbus and Southern to produce certain information from which the staff made a cost of service study. Aside from the discrimination issue, the cost of service study clearly showed that Jackson was entitled to a lower wholesale rate. FPC staff further informed Columbus and Southern of recent Commission decisions which held that load limitations imposed by the power supplier are illegal. Columbus and Southern still refused to change its position. Jackson hired special legal counsel (Mr. Robert J. White of Steer, Strauss, White & Tobias in Cincinnati) and started preparing a formal complaint to FPC.

It is sufficient to say that this action resulted in a package offer from Columbus and Southern containing a reduced rate and removal of the load limitation provisions. In all probability, should H.R. 5348 become law, Columbus and Southern would be exempted from FPC jurisdiction. This being the case the obvious question arises—Where does the City of Jackson go for relief?

I would like an opportunity to testify before the Subcommittee and any assistance you might give me in scheduling my appearance will be greatly appreciated.

Very truly yours,

WILLIAM M. LEWIS, Jr.

(Whereupon, at 12:15 p.m., the subcommittee adjourned, subject to the call of the Chair.)

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