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House — Public Works

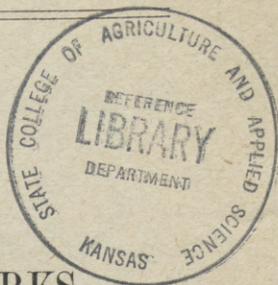
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GOVERNMENT

[No. 84-22]

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HEARING

BEFORE THE

COMMITTEE ON PUBLIC WORKS

HOUSE OF REPRESENTATIVES

EIGHTY-FOURTH CONGRESS

SECOND SESSION

ON

1823 and H. R. 11477

TO AUTHORIZE THE CONSTRUCTION OF CERTAIN WORKS
OF IMPROVEMENT IN THE NIAGARA RIVER FOR
POWER AND OTHER PURPOSES

JUNE 28, 1956

Printed for the use of the Committee on Public Works



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COMMITTEE ON PUBLIC WORKS

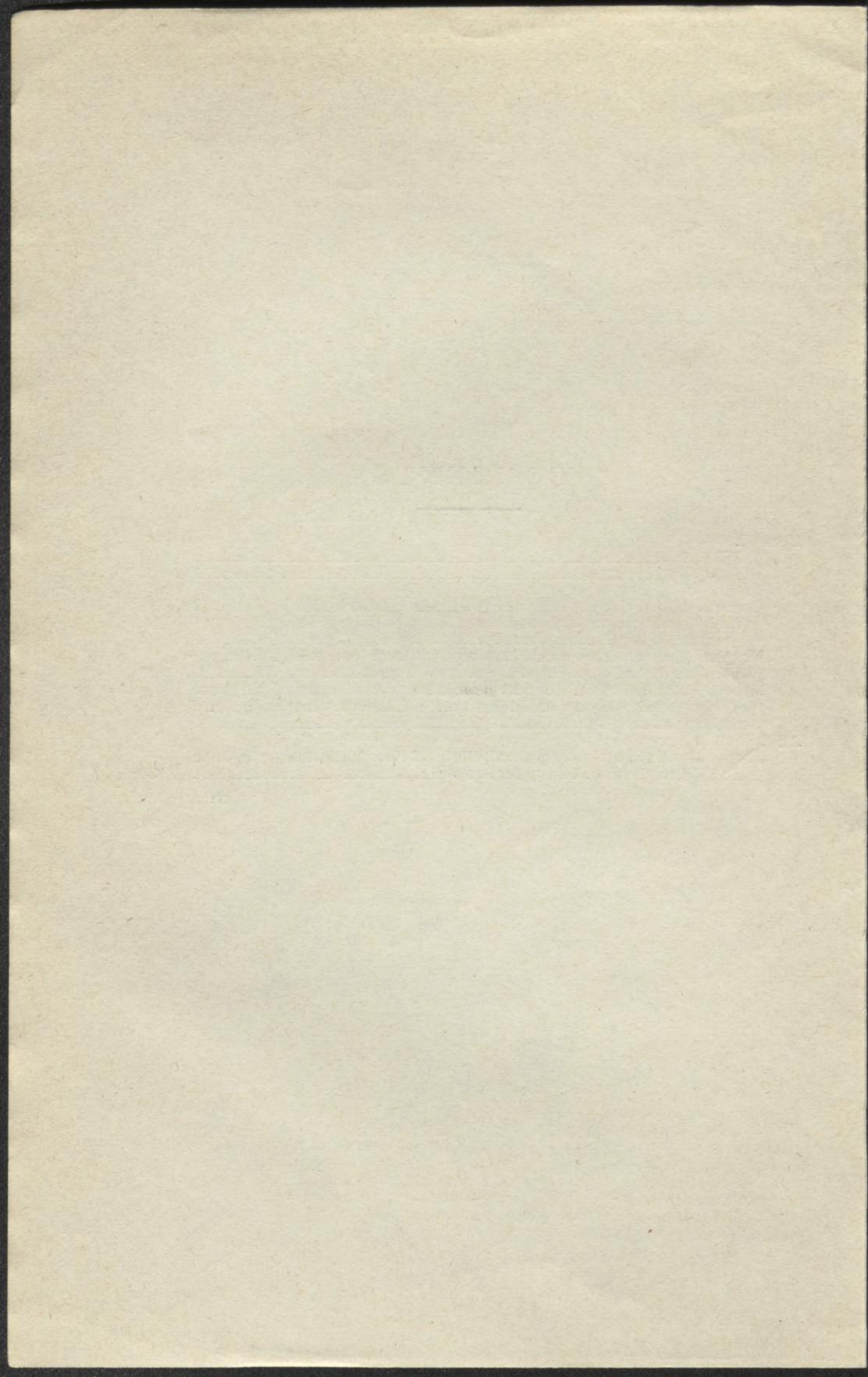
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ROBERT F. MCCONNELL, *Counsel*

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NIAGARA POWER

THURSDAY, JUNE 28, 1956

HOUSE OF REPRESENTATIVES,
COMMITTEE OF PUBLIC WORKS,
Washington, D. C.

The committee met, pursuant to call, at 10:20 a. m., in room 1302, New House Office Building, Hon. John A. Blatnik, presiding.

Mr. BLATNIK. The House Public Works Committee will come to order.

The meeting is called by the chairman for consideration of S. 1823, known as the Lehman bill, sponsored by 16 Senators, and which has already passed the other body; and a companion bill, H. R. 11477, sponsored by the chairman of this committee, Mr. Buckley, of New York. Its purpose is to authorize the construction of certain works of improvement in the Niagara River for power and other purposes. (The bills referred to are as follows:)

[S. 1823, 84th Cong., 2d sess.]

AN ACT To authorize the construction of certain works of improvement in the Niagara River for power and other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That pursuant to the provisions of the reservation of the Senate of the United States in giving its advice and consent to the ratification of the treaty between the United States of America and Canada concerning uses of the waters of the Niagara River signed February 27, 1950, which provides that no project for redevelopment of the United States' share of such waters shall be undertaken until it be specifically authorized by Act of Congress, a project for the redevelopment of the United States share of such waters for power purposes is hereby authorized, in accordance with existing general laws of the United States and this Act. This authorization constitutes compliance with the reservation to said Treaty and is consistent therewith.

SEC. 2. (a) The Federal Power Commission is hereby authorized and directed to issue a license to the New York Power Authority for the construction and operation of the project, upon its application therefor and its acceptance of licensing conditions set forth in this section.

(b) The Federal Power Commission shall include among the licensing conditions, in addition to those deemed necessary and required under the terms of the Federal Power Act, the following:

(1) In contracting for the disposition of project power, the licensee (the New York Power Authority shall (A) give equal preference for the purchase of such power to (i) counties and municipalities, including their agencies or instrumentalities, (ii) departments, agencies, and instrumentalities of New York State, (iii) rural electric cooperatives not organized or administered for profit but primarily for the purpose of supplying electric energy to their members as nearly as possible at cost; and (iv) the defense agencies of the United States, and (B) make flexible arrangements and contracts for the disposition of project power to utility companies organized and administered for profit, with suitable provisions in such contracts for the withdrawal upon reasonable notice and fair terms of enough power to meet the needs of the foregoing classes of preference customers.

(2) The licensee shall, if available on reasonable terms and conditions, acquire by purchase or other agreement, the ownership or use of, or if unable to do so, construct such transmission lines as may be necessary to make the power and energy generated at the project available in wholesale quantities for sale on fair and reasonable terms and conditions to privately owned companies, to the preference customers enumerated in subparagraph (1) (A) of this subsection, and to the neighboring States in accordance with paragraph (3) of this subsection.

(3) The licensee shall make a reasonable portion of the project power available for use within economic transmission distance in neighboring States and shall cooperate with the appropriate agencies in such States to insure compliance with this requirement. In the event of disagreement between the licensee and the power marketing agencies of any of such States, the Federal Power Commission may, after public hearings, determine and fix the applicable portion of power to be made available and the terms applicable thereto: *Provided*, That if any such State shall have designated a bargaining agency for the procurement of such power on behalf of such State, the licensee shall deal only with such agency in that State. With respect to the share of the power so allocated, the arrangements made by the licensee for the sale of power to or in such States shall include observance of the preferences numbered (1) and (iii) in subparagraph (1) (A) of this subsection.

(4) Project power shall be sold and distributed primarily for the benefit of the people as consumers, and particularly for the benefit of domestic and rural consumers, to whom it shall be made available at the lowest rates reasonably possible and in such manner as to encourage the widest possible use.

(5) In the event project power is sold to any purchaser for resale, contracts for such sale shall include adequate provisions for establishing resale rates, to be approved by the licensee, consistent with paragraph (4) of this subsection.

(6) The licensee, in cooperation with the appropriate agency of the State of New York which is concerned with the development of parks in such State, shall construct a scenic drive and park on the American side of the Niagara River, near the Niagara Falls, pursuant to a plan, the general outlines of which shall be approved by the Federal Power Commission; and the cost of such drive and park shall be considered a part of the cost of the power project and part of the licensee's net investment in said project: *Provided*, That the maximum part of the cost of such drive and park to be borne by the power project and to be considered a part of the licensee's net investment shall be \$15,000,000.

(7) The licensee shall pay to the United States and include in its net investment in the project herein authorized the United States' share of the cost of the construction of the remedial works, including engineering and economic investigations, undertaken in accordance with article II of the treaty referred to in the first section of this Act whenever such remedial works are constructed by the United States.

Sec. 3. The license issued under the terms of this Act shall be granted in conformance with the Rules of Practice and Procedure of the Federal Power Commission, but in the event of any conflict, the provisions of this Act shall govern in respect of the project herein authorized.

Sec. 4. This Act may be cited as the "Niagara Redevelopment Act of 1956".

Passed the Senate May 16 (legislative day, May 7), 1956.

Attest:

FELTON M. JOHNSTON, *Secretary*.

[H. R. 11477, 84th Cong., 2d sess.]

A BILL To authorize the construction of certain works of improvement in the Niagara River for power and other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That pursuant to the provisions of the reservation of the Senate of the United States in giving its advice and consent to the ratification of the treaty between the United States of America and Canada concerning uses of the waters of the Niagara River signed February 27, 1950, which provides that no project for redevelopment of the United States share of such waters shall be undertaken until it be specifically authorized by Act of

Congress, a project for the redevelopment of the United States share of such waters for power purposes is hereby authorized, in accordance with existing general laws of the United States and this Act. This authorization constitutes compliance with the reservation to such treaty and is consistent therewith.

Sec. 2. (a) The Federal Power Commission is hereby authorized and directed to issue a license to the New York Power Authority for the construction and operation of the project, upon its application therefor, and its acceptance of licensing conditions set forth in this section.

(b) The Federal Power Commission shall include among the licensing conditions, in addition to those deemed necessary and required under the terms of the Federal Power Act, the following:

(1) In contracting for the disposition of project power, the licensee (the New York Power Authority) shall (A) give equal preference for the purchase of such power to (i) counties and municipalities, including their agencies or instrumentalities, (ii) departments, agencies, and instrumentalities of New York State, (iii) rural electric cooperatives not organized or administered for profit but primarily for the purpose of supplying electric energy to their members as nearly as possible at cost; and (iv) the defense agencies of the United States, and (B) make flexible arrangements and contracts for the disposition of project power to utility companies organized and administered for profit, with suitable provisions in such contracts for the withdrawal upon reasonable notice and fair terms of enough power to meet the needs of the foregoing classes of preference consumers.

(2) The licensee shall, if available on reasonable terms and conditions, acquire by purchase or other agreement, the ownership or use of, or if unable to do so, construct such transmission lines as may be necessary to make the power and energy generated at the project available in wholesale quantities for sale on fair and reasonable terms and conditions to privately owned companies, to the preference customers enumerated in subparagraph (1) (A) of this subsection, and of the neighboring States in accordance with paragraph (3) of this subsection.

(3) The licensee shall make a reasonable portion of the project power available for use within economic transmission distance in neighboring States and shall cooperate with the appropriate agencies in such States to insure compliance with this requirement. In the event of disagreement between the licensee and the power marketing agencies of any such States, the Federal Power Commission may, after public hearings, determine and fix the applicable portion of power to be made available and the terms applicable thereto: *Provided*, That if any such State shall have designated a bargaining agency for the procurement of such power on behalf of such State, the licensee shall deal only with such agency in that State. With respect to the share of the power so allocated, the arrangements made by the licensee for the sale of power to or in such States shall include observance of the preferences numbered (i) and (iii) in subparagraph (1) (A) of this subsection.

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(7) The licensee shall pay to the United States and include in its net investment in the project herein authorized the United States share of the cost of the construction of the remedial works, including engineering and economic investigations, undertaken in accordance with article II of the treaty referred to in the first section of this Act whenever such remedial works are constructed by the United States.

SEC. 3. The license issued under the terms of this Act shall be granted in conformance with the Rules of Practice and Procedure of the Federal Power Commission, but in the event of any conflict, the provisions of this Act shall govern in respect of the project herein authorized.

SEC. 4. This Act may be cited as the "Niagara Redevelopment Act of 1956".

Mr. BLATNIK. The bills before us do not pertain to any Federal project. There is no Federal money involved for any purposes of Federal development of these waters. The question then arises as to why this matter is before the Congress. The answer to that, as a matter of preliminary information, is that by the Treaty of 1950, in which agreements were arrived at between Canada and the United States for the fullest utilization of the Niagara River waters for power purposes, an amendment by unanimous vote was added on in the Senate. That amendment was as follows, and I quote:

That the United States on its part expressly reserves the right to provide by Act of Congress for redevelopment for the public use and benefit of the United States share of the waters of the Niagara River made available by the provisions of the treaty and no project for such redevelopment of the United States share of such waters shall be undertaken until it shall be specifically authorized by act of Congress.

Because of that provision in the Treaty of 1950, adopted unanimously by the Senate, we are compelled before any action can be taken on the Niagara problem to consider the problem and take action here either affirmatively or negatively.

With that introduction, members of the committee, may I first suggest the course which I hope might be satisfactory for us to follow this morning? We can have a brief description of the physical and technical engineering features of the project by the Corps of Engineers. I suggest that because regardless of who will build the project, whether it is Federal, or under the New York State Power Authority, or done privately, essentially the characteristics of the project, its scope and layout, will be the same.

Mr. MCGREGOR. Will the chairman yield for a question?

Mr. DONDERO. Mr. Chairman.

Mr. BLATNIK. Mr. Dondero.

Mr. DONDERO. I want to inquire about this. Then this is not an executive session, but this is a session of the committee for open hearings on the project?

Mr. BLATNIK. For open hearings or, if you may call it that, for a rebriefing, to bring us up to date and current on the situation.

We have these various representatives here to answer any questions that the members of the committee may propose to put to them.

Mr. DONDERO. Let me understand this clearly. If this is an open hearing on this project, then both sides shall have the opportunity to present whatever evidence is necessary so that the committee will have all of the facts to consider before we vote.

Mr. BLATNIK. That is correct.

Mr. GENTRY. May I ask a question, Mr. Chairman?

Mr. BLATNIK. Governor Dempsey.

Mr. DEMPSEY. I have a meeting at 11:30 and I understood we would not vote today, and it would not be an executive session. Is that true?

Mr. BLATNIK. That will be determined by the committee and I hope to raise the point before you leave, Governor.

Mr. DEMPSEY. It is only about an hour from now when I will have to leave.

Mr. BLATNIK. We may be done in an hour.

Mr. DEMPSEY. It depends on how much testimony we have. If you are going to hear only a few people I can leave my proxy for the vote, but I would like to hear all of this testimony.

Mr. BLATNIK. Let us proceed for an hour and see what progress we make.

Mr. MCGREGOR. Mr. Chairman.

Mr. BLATNIK. Yes, Mr. McGregor.

Mr. MCGREGOR. When the committee met in a partial executive session last week, we were told by Chairman Buckley, of New York, chairman of the full Public Works Committee, that we should delay further hearings and give an opportunity to those directly interested parties in New York, because there was a possibility of having a compromise or an agreement reached. Now I have not heard any reports relative to that other than the grapevine rumors this morning that those representing the New York Power Authority and the public power people and the private power group—that those meetings are going on. They are not deadlocked and it is my understanding their counsel are working on recommendations of each group and there is a possibility that the compromise can be worked out.

Mr. FALLON. Will the gentleman yield?

Mr. MCGREGOR. Yes.

Mr. FALLON. I heard it through the grapevine, too. The gentlemen are here representing the New York State Power Authority, and, also, the local power interests, and since they are here they can tell us exactly whether they reached an agreement or how far along the line they are, or what their differences are.

Mr. BLATNIK. That is correct.

Mr. MCGREGOR. I did not know that and I did not have that information. I thought maybe the Chair was going to make a statement so that the other members of the committee might be brought up to date with what is going on.

Mr. GENTRY. Mr. Chairman, when did we have hearings on this matter? One year ago or 2 years ago?

Mr. BLATNIK. One year ago this month, in both the House and the Senate.

Mr. GENTRY. How many members are on the committee now that were not on the committee then?

Mr. BLATNIK. I am sure all with but 1 or 2 changes made in the interim.

Mr. DEMPSEY. A year ago we had it just for 2 days. That was not a real hearing. The real hearing was before that.

Mr. BLATNIK. If the members will dispense with this we will have a refresher by the Corps of Engineers on this, or whatever you wish to do about it.

Mr. DONDERO. I think it should be corrected for the record on the question Mr. Gentry made about there being a change of only two members. There are 16 members of this committee who are new and who did not hear the testimony when this matter was first heard before this committee. They perhaps heard 2 or 3 days of it last June, and 1 of those days was taken up entirely by Mr. Moses, of New York.

Mr. GENTRY. That was a subcommittee that heard it then.

Mr. BLATNIK. It was the subcommittee and, as is done on major projects, the entire committee was invited to be present, and many

of the rest of the members of the committee did attend, and the hearings were available for exactly a year in both the Senate and the House.

Mr. CRAMER. May I inquire, Mr. Chairman?

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. I recall sitting on the subcommittee, but as I recall, no action was ever taken by the subcommittee; is that correct?

Mr. BLATNIK. May I ask counsel? Mr. Cramer says he recalls sitting on the subcommittee, but does not recall any action taken by the subcommittee. On Wednesday, June 8, the Niagara power development hearings of the House Committee on Public Works, it reads as follows:

Mr. BLATNIK. The committee will please come to order. This is a public hearing held by the Subcommittee on Rivers and Harbors, to which is invited the full membership of the House Committee on Public Works.

The hearings were held on the days of June 8, 9, and 10, 1955, and there are 300 pages or more of these hearings.

Mr. CRAMER. And the subcommittee never considered the matter in executive session, or made any report or recommendation to the full committee. Then do I understand this is a continuation of the subcommittee hearings, with the full committee being invited?

Mr. BLATNIK. The chairman called a meeting of the whole committee.

Chairman BUCKLEY. There is no rule that the subcommittee should make a recommendation in order for the full committee to act on a bill. As long as the full committee is present, that is sufficient.

Mr. CRAMER. I appreciate that, Mr. Chairman; but it seems to me most of the bills we have previously handled have been handled on the basis of the subcommittee considering them in executive session and making a report to the full committee, on which the full committee acts. That procedure is being waived in this instance, and I wondered what the justification or the reason therefor was. Is there an emergency situation, or what?

Chairman BUCKLEY. Prior to my becoming chairman, there were very few meetings of the subcommittees when Mr. Whittington was chairman of this committee. It was always a full committee meeting on these matters, and not a subcommittee meeting.

Mr. BLATNIK. If there are no further objections or questions, I would like to proceed with the briefing by the Corps of Engineers.

Maj. Felix R. Garrett, of the Corps of Engineers of the Department of the Army.

**STATEMENT OF FELIX R. GARRETT, MAJOR, CORPS OF ENGINEERS;
ACCOMPANIED BY LEONARD T. CROOK, REPRESENTING THE
RIVERS AND HARBORS BOARD, CORPS OF ENGINEERS, DEPARTMENT
OF THE ARMY**

Major GARRETT. Mr. Chairman, I would like to introduce Mr. Leonard Crook, of our River and Harbor Board staff, who is here to assist me to answer any detailed questions the committee might have with reference to the Corps of Engineers report.

The Corps of Engineers studied the Niagara power development pursuant to a resolution adopted by the Senate Public Works Com-

mittee on June 5, 1951, which charged us to report with a view to determining the most feasible general plans for the utilization of water made available to the United States for power development as a result of the treaty of 1950 between Canada and the United States. This report has been completed and has been forwarded to this committee. It outlines the general features of the development which we consider to be most feasible from an engineering and economic standpoint and, as the chairman already indicated, the detailed testimony has been rendered by the Corps of Engineers at public hearings approximately a year ago on this report. So I am going to confine my remarks this morning to a very brief description of the project which we recommend.

If I may refer to this map I have here, I would first of all like to point out some of the existing developments in the Niagara area.

On the American side we have the Adams plant and the Schoellkopf plant, with a total installed capacity of approximately 445,000 kilowatts. This Schoellkopf plant is the one that has been very seriously damaged as a result of the slide which occurred earlier this month.

On the Canadian side of the river we have several plants listed over on the margin there, starting down at this corner with the Toronto plant, the Rankine plant, the Ontario plant, the Sir Adam Beck plant No. 1 in this vicinity, and Sir Adam Beck No. 2.

The total installed capacity is approximately 1,900,000 kilowatts on the Canadian side. This Sir Adam Beck Plant No. 2 is under construction at the present time by the Canadians and it is to make use of the water made available to the Canadians as a result of this treaty of 1950.

The treaty of 1950 called for the construction of certain remedial works which I would like to describe, as they have a bearing on the overall development. Those remedial works were the excavation of both banks of Horseshoe Falls and the construction of a control structure about 1,500 feet long, to control the flow of the waters over Niagara itself. This control structure will facilitate the use of water for power purposes.

The treaty requires 100,000 second-feet of water be allowed to flow over the falls during the daylight hours when the tourist season is open, and at other times 50,000 second-feet of water be allowed to flow over the falls. That would be at night during the tourist season and during the winter months. Water for power purposes in excess of this amount, with the exception of certain water diverted under a previous agreement in the amount of 5,000 second-feet, is available one-half to the United States and one-half to Canada for power development.

The average annual flow available for power between the two countries is 135,000 second-feet. An existing Federal Power Commission license reserves 20,000 second-feet of the United States share of this water for the Niagara Mohawk Power Co. until 1971.

To utilize the American share of this water most economically, we have proposed a pump storage development consisting of a high head plant up here at Lewiston, which would have an installed capacity of a million and a half kilowatts, which would be connected to an intake gatehouse here, either by an open channel or tunnels or covered conduits, and then a reservoir which will be serviced by combination motor generator and pump turbine units.

Mr. JONES. May I ask a question at that point?

Mr. BLATNIK. Mr. Jones.

Mr. JONES. You said the installed capacity of the Lewiston powerhouse would be a million and a half?

Major GARRETT. Initially. Yes, sir.

Mr. JONES. How much of that is firm power?

Major GARRETT. Well, sir, with the pump storage development and counting these units we have up at this end, we will have a total dependable capacity in this initial installation of 1,700,000 kilowatts.

Mr. JONES. And you will get about a million and a half out of it. I am trying to get you to distinguish between the installed capacity and the actual generating capacity. How much firm power will you have all the time?

Major GARRETT. The total dependable capacity in power of the entire installation will be 1,700,000 kilowatts.

Mr. GEORGE. What scale is that map drawn on?

Major GARRETT. The scale drawn on here looks like approximately 1 foot equals about a mile. This tunnel shown here is approximately $4\frac{1}{2}$ miles in length, to give you some idea of the scale. With this arrangement it is possible that the additional water made available at night can be stored in the reservoir and released through the turbines during the daylight on peak periods.

The plan of development develops approximately 300 feet of head from the intake structures here to the discharge at our Lewiston plant, which is about all of the head that is available to be developed at Niagara. As I have indicated previously, it has a dependable capacity of 1,700,000 kilowatts initially.

The estimated cost of the project with tunnel headraces as recommended by the Chief of Engineers is \$425 million.

I would like to talk for just a moment about the ultimate plan of development as we believe what is done at this site should fully preserve the potentialities not only for the immediate future, but also for somewhat longer-range periods. To begin with, the Federal Power Commission has estimated that $2\frac{1}{2}$ million kilowatts of peaking capacity can be used in this area by 1975. To obtain this additional capacity the development which I have described could be modified in two ways: We could add additional generating units at our high head plant at Lewiston and then, by providing a control structure at Lake Erie at the entrance of the Niagara River itself, or the head of the Niagara River, and adding some excavation in the Niagara River proper, we can obtain a considerable amount of storage. This lake has a storage in the amount of 500,000 acre-feet per inch of height, so by just controlling the lake by a mere matter of 4 inches we can obtain some 2 million acre-feet of storage, which is a very large storage reservoir.

Mr. SMITH. Major, in other words, this great additional capacity would involve the regulation of the waters of Lake Erie to some degree?

Major GARRETT. Yes, sir. That is one way of accomplishing it.

Mr. SMITH. And the use of that additional capacity, as well as the other uses, would suggest a great additional reason for it.

Major GARRETT. That is right, and we feel that the plan of development should provide for the possibility of this additional development.

Mr. SMITH. I think the observation on that point, and the fact that you are using one of the Great Lakes to develop that, to my mind is an argument for this thing, as to why it should be under public control in some form, either State or Federal.

Mr. DEMPSEY. Will the gentleman yield?

Mr. SMITH. Yes.

Mr. DEMPSEY. I notice in the statement of which you have a copy that Mr. Moses says this is water owned by the State of New York. I did not know the State of New York owned Lake Erie.

Mr. SMITH. I have not talked to Mr. Moses.

Mr. DEMPSEY. He is Chairman of the Power Authority of New York. Is it your understanding that the waters of Lake Erie are owned by a State?

Major GARRETT. No, sir. It is not.

Mr. BLATNIK. Major, what is the total cost of the project?

Major GARRETT. \$425 million.

Mr. BLATNIK. And what amount goes to remedial works?

Major GARRETT. Well, the remedial works to be done is not included in this \$425 million. That cost of the remedial works is \$12,800,000, and is to be shared by Canada and the United States.

Mr. DONDERO. When you speak of "remedial works," do you mean compensatory works?

Major GARRETT. Yes, sir. I am talking about the works I described here, with excavation on both sides of the falls, and this control structure, Mr. Dondero.

Mr. MACK. Mr. Chairman.

Mr. BLATNIK. Mr. Mack.

Mr. MACK. The right to use this surplus water will remain with the United States in perpetuity, by which I mean if the United States does not use this extra water in a reasonable period of time, could Canada use it?

Major GARRETT. Yes, sir. That is correct. As a matter of fact, the treaty provides that this excess water will be divided between Canada and the United States, one-half to each, but if Canada goes ahead with its development they have the privilege of using the American share until such time as the Americans build their plant.

Mr. BECKER. But New York is not wiped out?

Major GARRETT. No, sir.

Mr. BECKER. That is what your question was.

Mr. MACK. Yes.

Mr. BECKER. They are not wiped out; but can always reclaim their share of the use of the water at any time in the future, according to the treaty.

Major GARRETT. That is right.

Mr. CRAMER. Mr. Chairman.

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. Does the \$425 million estimate include some ten to fifteen million dollars which was discussed at length by the subcommittee, for scenic improvement?

Major GARRETT. No, sir.

Mr. CRAMER. Park improvement?

Major GARRETT. It does not, sir.

Mr. BECKER. Mr. Chairman, there is one point I would like to clear up.

Mr. BLATNIK. Mr. Becker.

Mr. BECKER. In previous hearings before this committee there was considerable discussion over the question of the open canal or the covered conduit or the tunnel, and its disturbance of property between Niagara and the Lewiston powerhouse. Has that been cleared up?

Major GARRETT. Sir, we have held public hearings in the area in the processing of this report, and as you have indicated there is considerable opposition by the local people to an open canal. Actually the cost of the work, if we were to build an open canal, would be \$370 million, but taking into consideration this very tremendous opposition and realizing that the tunnel improvement is a better plan of development really, the Chief of Engineers has recommended the tunnel headraces.

Mr. BECKER. That is a change, or I will say a definite stand, more so than took place at our last hearing. In other words, at our last hearing, if I recall correctly, and in the hearings previous to that which were held several years ago, it was left open as to what the decision would be.

Major GARRETT. That is correct.

Mr. BECKER. You have now definitely decided on the tunnel proposition?

Major GARRETT. That is the Chief of Engineer's recommendation.

Mr. BECKER. Is there any question there of taking individual properties in the building of that tunnel, or the securing of easements? There was objection to that also, as I remember it.

Major GARRETT. May I defer to Mr. Crook?

Mr. CROOK. The estimated cost provides for property acquisition necessary to build the tunnel.

Mr. BECKER. But you are condemning private property in order to do that.

Mr. CROOK. A very small amount in comparison with the amount which would be required had a tunnel headrace not been provided.

Mr. BECKER. Nevertheless, the issue is still there.

Mr. CROOK. But it is not nearly as much an issue with the tunnel.

Mr. MCGREGOR. Major, it was my understanding at that time, or at least it was my opinion, that we had decided on the covered tunnel. Is that the recommendation now of the Army engineers?

Major GARRETT. Yes, sir. That is the recommendation, and those recommendations were presented to the committee a year ago.

Mr. MCGREGOR. I recall that.

Now one other question, Major: Regardless of who would construct and operate this project, whether it would be a public power agency, the New York Power Authority, or private operators, the Army engineers would have the jurisdiction of the construction program, and they would be responsible to you, and you would be responsible to see that it was constructed according to the specifications called for, regardless of who constructed it. Is that correct?

Major GARRETT. No, sir; that is not correct.

Mr. MCGREGOR. I would like to have that clarified.

Major GARRETT. Sir, if the license is issued by the Federal Power Commission to a non-Federal agency, the only way that the Chief of Engineers will come into the picture is possibly to take a look at the intake structure and the approach channel here to determine its effect

upon navigation. Of course, we do have responsibility and will continue to have responsibility for the remedial works that we think should properly be part of the development, but as far as the plan itself is concerned, we will not have, sir.

Mr. MCGREGOR. The remedial works then will be your authority and you will inspect and control them, regardless of who builds the power development?

Major GARRETT. Yes, sir. That is correct, Mr. McGregor.

Mr. MCGREGOR. Can you advise this committee as to who would be the inspecting officer and have charge of the development should the New York Power Authority construct it, or should the private industry construct it?

Major GARRETT. Sir, as I understand it, there would be no direct supervision, except that as exercised by the Federal Power Commission under a normal licensing procedure.

Mr. MCGREGOR. But someone would be there for inspection relative to the health and safety, and so forth, and someone would be there to require that the specifications be adhered to, but that would not come under the Army engineers?

Major GARRETT. It would not come under the Army engineers, sir.

Mr. MCGREGOR. Thank you very much.

Mr. DONDERO. Mr. Chairman.

Mr. BECKER. I think that there is one very important point here.

Mr. DONDERO. Just a moment.

Mr. BLATNIK. Mr. Dondero.

Mr. DONDERO. Major, you have not pointed out to the committee the physical aspects, so that we know where the falls are located, and where the works are going to be constructed, in order to avoid the falls, or to pass around the falls.

Major GARRETT. That is right, sir.

Mr. DONDERO. I can just barely see the language or lettering on the map where the American Falls and the Horseshoe Falls are. Maybe others can, but will you just point that out?

Major GARRETT. Yes, sir. The Niagara River originates at Lake Erie and flows approximately 36 miles generally in a northern direction after going over the falls into Lake Ontario. At Niagara itself there is approximately 300 feet of drop. Starting up here in the rapids section in the Grass Island pool the water drops over the falls proper, the Horseshoe and American Falls, a distance of 160 feet, and then finally in the rapids section down in that area there is an additional drop of approximately 90 feet, for an overall total of 300 feet.

Mr. DONDERO. Regardless of who constructs this work, the red dot is where Lewiston powerhouse would be located, and where the new installation would be constructed?

Major GARRETT. I believe that is correct.

Mr. DONDERO. And that is far below the present falls, of course.

Major GARRETT. That is right.

Mr. DONDERO. There are two ways to get the water down there. One is by a canal and the other by an open waterway. I should say one would be a tunnel and the other would be an open waterway.

Who owns the property across which either the canal or the tunnel will be built and where the new installation will be constructed?

Mr. CROOK. The Major has asked that I answer that question.

Niagara Mohawk generally owns the property required for development of the head race, the canal alinement as shown here; the reservoir and in the general location of the powerplant. They control all of that property and have for some time.

Mr. DONDERO. Will you state for the record who you might be, so we will know?

Mr. CROOK. I am Leonard Crook, on the staff of the Board of Engineers for Rivers and Harbors, Corps of Engineers.

Mr. DONDERO. In order that we might all understand the difference between your statement and mine, Major, in regard to these works which the Federal Government will construct that would be charged to the project. Will you explain the difference, if there is any difference, between remedial and compensatory, and why it is necessary to install those works?

Major GARRETT. There is really no difference between the two words, "remedial" and "compensatory." It is necessary to install the works to assure or to maintain the scenic beauty of the falls themselves. We accomplish the spreading out of the water over the Horseshoe Falls themselves by excavation on both sides of the falls. The control structure is provided for several purposes, one being to assure the flow over the American Falls, and the other being to furnish a measure of control of the depth of the water in this reach of the river here for navigation and for power development.

Mr. DONDERO. So that navigation comes into this picture?

Major GARRETT. Yes, sir.

Mr. DONDERO. And these compensatory works are really to maintain the level of the river, so that navigation will not be affected either in Lake Erie or in the Niagara River. Is that correct?

Major GARRETT. That is correct.

Mr. DONDERO. I have one thing more, and that is this: I doubt if everybody understands the meaning of the word "reservoir" up there. You take the water out of the Niagara River during the nighttime when there are no tourists there to see the falls.

Major GARRETT. That is right.

Mr. DONDERO. And then you use that water during the daytime and do not take it out of the river during the day.

Major GARRETT. That is correct.

Mr. DONDERO. So that it shall not mar or diminish the beauty of the falls.

Major GARRETT. That is correct. We maintain the flow over the falls as required by the treaty under our plan of development.

Mr. BECKER. Mr. Chairman, I want to get this straight for the record and not depend on our memories, because we do not have time to go through the hearings which have been held in the past on this.

Is it not a fact that this plan you are discussing here of building a tunnel or an open canal or a covered conduit, and including the reservoir for power purposes, and all of the planning and engineering work was prepared and paid for by the private companies, and the Army engineers have more or less sort of followed that plan? If my memory serves me correctly that is the record made some 3 years ago, when we had the hearings. That was their plan for trying to get the license.

Major GARRETT. And as I understand it, they made the first studies that were made of this development and, of course, their studies were of assistance to the Chief of Engineers in preparing his report.

Mr. BECKER. I think the record will generally show that this is the plan they had prepared for preparations to increase the power in that area during past years.

Major GARRETT. The general plan proposed by the New York State Power Authority and Niagara Mohawk is essentially the same as the plan here.

Mr. BLATNIK. The plans of all parties are essentially the same.

Mr. BECKER. I mean the original planning and the millions spent in the preparation for the planning was done by the private power companies in the assumption that they would get the license for the construction of the Lewiston powerplant. That is in the record of the previous hearings.

Mr. BLATNIK. But not all of the planning. The engineering planning was subsequent to a resolution passed by the Senate.

Major GARRETT. That is right.

Mr. BLATNIK. What is the date of that resolution?

Major GARRETT. June 5, 1951.

Mr. BLATNIK. That is right; 5 years ago.

Mr. JONES. I want to ask the major one question at this point, since Mr. Becker raised the question.

Mr. BLATNIK. Yes, Mr. Jones.

Mr. JONES. You are not saying to the committee that you are bringing in a report that was not made by the Corps of Engineers, but was a report submitted to you by the power company and you are transmitting that report?

Major GARRETT. Absolutely not, sir.

Mr. JONES. The report you are testifying on today was an independent inquiry, examination, and study of the physical properties involved in the report?

Major GARRETT. Yes, sir. Pursuant to Senate resolution.

Mr. SMITH. The Chief of Engineers takes full responsibility.

Mr. BECKER. If the gentleman will yield, I did not say report. I said original planning.

Mr. JONES. The plans and the report. The report contains the plans. You could not have a report unless it had plans involved in it.

Mr. BLATNIK. May we have the further statement of the Corps of Engineers?

Mr. DONDERO. I want to ask one more question at that point, inasmuch as Mr. Jones of Alabama raised it. Is it not true, however, that the plans and specifications made by the private power companies of New York are very much the same as the plans proposed by the Army engineers?

Major GARRETT. Sir, the plan of development proposed by everyone is essentially the same.

Mr. DONDERO. Just about the same?

Major GARRETT. Yes, sir.

Mr. BLATNIK. Thank you very much, Major.

Major GARRETT. Mr. Blatnik, I would like to go ahead and give the recommendations of the Chief of Engineers in the report.

Mr. BLATNIK. I am sorry. I asked if there was anything further.

Major GARRETT. I will summarize them very briefly.

First of all, the Chief of Engineers recommends that any action to authorize the construction of this project by a non-Federal agency

should require that the development be consistent with the general plans I have just outlined; and, second, he feels that a Federal Power Commission license should be required, and he believes that the general plan for the intake gatehouse and this approach channel here should be submitted to the Secretary of the Army for approval in the interests of navigation. He believes that the United States should be reimbursed for its share of the cost of the remedial and compensatory works that are presently under construction. Finally he believes that prompt action should be taken to develop this potentiality because it will certainly be of great economic advantage to the area.

That is all I have to present, Mr. Chairman.

Mr. BLATNIK. Thank you.

Mr. MCGREGOR. Could I raise this one question?

Mr. BLATNIK. Mr. McGregor.

Mr. MCGREGOR. Then it is getting back to merely an affirmative answer to the question I raised, that you will have some jurisdiction over this construction because of the possibility of navigation?

Major GARRETT. Only this portion here, sir.

Mr. JONES. As I understood it, the recommendations of the Chief of Engineers will place the Corps of Engineers in a position to do that supervisory work.

Major GARRETT. That is correct.

Mr. MCGREGOR. I tried to clear it up because it was my thought that you would have some authority in this construction program.

Mr. JONES. Not unless you put in the recommendations of the Chief Engineers.

Mr. BLATNIK. We will now have a brief summary of the fiscal and engineering layout. We have both parties here, representatives of the New York Power Authority and representatives of the Niagara Mohawk Power Co., who will be heard next.

First we call on the New York Power Authority representatives, Col. William Chapin, who is general manager of the New York Power Authority, and Mr. Thomas Moore, the chief counsel of the authority.

**STATEMENT OF THOMAS F. MOORE, JR., GENERAL COUNSEL, POWER
AUTHORITY OF THE STATE OF NEW YORK; ACCOMPANIED BY
COL. WILLIAM S. CHAPIN, GENERAL MANAGER**

Mr. MOORE. Colonel Chapin is here. I am Moore.

Mr. BLATNIK. This is Mr. Tom Moore. Will you please take the stand?

Mr. MOORE. We have a statement which I believe has already been submitted to the committee, but I will be glad to read it.

Mr. BLATNIK. Will you please take the chair, Mr. Moore, and make yourself comfortable. If you have a statement, would you wish to summarize that orally and state the position, or restate the position?

Mr. MOORE. I think it might be much better, if I do anything, if I just read it and stand on it.

Mr. BLATNIK. Without objection, the written statement will be inserted in the record.

(The prepared statement is as follows:)

STATEMENT BY ROBERT MOSES, CHAIRMAN OF THE POWER AUTHORITY OF THE STATE OF NEW YORK, ON THE LEHMAN BILL

The accidental destruction of the Schoellkopf plant of the Niagara Mohawk system makes imperative action by this Congress authorizing the construction by the power authority of a new plant at Lewiston. The Schoellkopf plant produced about one-twelfth of all the power generated in the State of New York and was operated pursuant to a license from the Federal Power Commission which expires in 1971.

This is no mere repair matter. There is no practical way of financing and building a new and up-to-date plant at a location where only two-thirds of the potential head can be utilized, thus perpetuating the inefficient use of a big block of Niagara water.

The Niagara Mohawk Co. no longer has any prospect of obtaining, through action of Congress, a license to develop additional power from the water available in New York through the international treaty and the remedial works recently constructed. Even if such a license were granted, the State, which owns this water, would have to challenge it in the courts.

Our present partners on the St. Lawrence and prospective partners on the Niagara frontier, the Hydro-Electric Power Commission of Ontario, known as HEPCO, are allowed under the 1950 treaty to use the New York share of additional Niagara water until we settle our domestic differences as to the agency to develop it. HEPCO can by the use of all its presently available and augmented facilities, including marginal ones, furnish the Niagara Mohawk Co. with approximately the kilowatts lost at the Schoellkopf station, until our new authority Niagara plant is operating, that is for a period of about 3 years. Otherwise, many large industrial establishments employing tens of thousands of workers would shut down.

The only sane, long-range answer in this emergency is legislation by Congress confirming New York's title and giving a clear priority to the State power authority, with the understanding that the New York Authority will immediately and without delay enlarge its construction program to provide on proper terms to Niagara Mohawk, in the interest of the ultimate consumers, the kilowatts lost at the Schoellkopf plant.

It may be said that we had already had in mind financing and installing additional generators and turbines in the proposed new authority plant to provide after 1971 for the power generated at the Schoellkopf plant.

In this way we can realize fully the substantial economies inherent in a single large, modern, safe, protected plant utilizing the full potential fall of the water between Lake Erie and Lake Ontario, and pass these economies on to the various types of consumers.

On June 14, 1956, the power authority sent a telegram to Governor Harriman reading as follows:

"At a special meeting of the authority today, our position is this: As far as the loss of the Schoellkopf plant is concerned, we believe that the only sound method of replacing the power is by additional power units at the proposed authority plant at Lewiston, where there will be 100 feet of additional head. While Ontario Hydro can temporarily supply the power lost to Niagara Mohawk, there is no permanent solution except by Federal Power Commission license to the State power authority to proceed to construct the project. Therefore prompt action by Congress is the only possible hope of early restoration of power at Niagara. As to the Lehman bill, which has passed the Senate and is pending in the House, in spite of possible conflict with our State law and difficulties of financing, the authority believes it can work under it and will, in the event of its passage in its present form, make every effort to do so. We think, however that an amendment to the preference clause adding the words 'within economic transmission distance' would help materially. We further believe that if it is necessary to omit the preference clause in order to pass the bill, this should be done and the Federal Power Commission should then be directed by legislation to consider such preferences at a public hearing. We profoundly believe that the important thing is to get a bill mandating the authority to do this work without delay and to avoid a stalemate which would throw the whole subject back into politics and confusion and create an impasse on our side of the Niagara border."

It should be noted that this authority is constructing the St. Lawrence project in record time. We reduced the construction schedule from 7 to 5 years with initial power available in 4 years. We have marketed half of the St. Lawrence power under New York State law. Our contracts include the United States Air Force, the city of Plattsburgh, the State of Vermont, and the Aluminum Company of America located at the site employing most of the workers in the area and paying a large part of all taxes collected by the village of Massena and St. Lawrence County. Other contracts to use up all of our power are being negotiated and will be let shortly.

Without prompt legislation by Congress we must undertake litigation. Litigation can have no other effect but to extend the period in which the United States share of the water will go to waste or be used by Canada. This may well result in a serious power shortage if Canada withdraws some of the power it is now furnishing Niagara Mohawk on a temporary basis or in the event of other emergencies.

In the last 2 days, because of this emergency, we have taken advantage of the postponement granted by your committee to talk to the Niagara Mohawk Co. about possible amendments to the Lehman bill which might settle the debate, prevent a stalemate and result in constructive action.

The following amendments to the Lehman bill have been discussed during the last 2 days. We are not advocating these amendments, but we believe that if they constitute the only practical means of breaking the deadlock, they should be seriously considered.

(1) The company would waive the rights it has under its Federal Power Commission license which does not expire until 1971. The authority plant would be made large enough to take advantage of the full United States share of the water. The power authority would sell to the company during the full term of its license the power produced by 20,000 cubic feet of water, which is the amount which was made available by the 1909 treaty, and is approximately the amount which Niagara Mohawk now has a right to use until 1971. The company would pay the same rates for this power as comparable companies would pay for power sold to them.

(2) For the present preference provisions of the Lehman bill there should be substituted provisions that in the sale of power the authority would give preference to defense agencies of the United States. As to power sold for use in New York State, it would give preference to the classes of consumers and the agencies which, under the laws of New York, as amended from time to time, are entitled to such preference. As to power sold for use in other States, preference would be given to the classes of consumers and agencies which under the laws of these States are entitled to such preferences.

(3) In view of the fact that the real-property taxes paid on the Schoellkopf plant to the city of Niagara Falls constitute upwards of 15 percent of all the taxes this city annually collects, the authority would use its best offices with the governor and legislature to obtain at the next session emergency State legislation to make payments to this city out of authority funds in lieu of taxes lost by the Schoellkopf plant destruction for a limited period in decreasing amounts annually while new industry can be developed as a result of the additional power available to take the place of the tax base which was lost and while other adjustments can be made by the city of Niagara Falls.

Congress has a unique opportunity to substitute for further futile debate legislation preserving all the rights and equities of the State and of legitimate private investment. We ask you to give us the mandate. We are ready to finance and produce power at Niagara in 3 years. The only alternatives are delay, confusion, hardship, and litigation.

Mr. MOORE. Shall I read it, sir?

Mr. BLATNIK. Whatever you wish; but I would suggest a brief oral summary, and then you will be open to questioning.

Mr. MOORE. I think it would be much better if I read it. This is a statement of the chairman of the authority, which was checked with the other four members of the authority last night.

Mr. BLATNIK. This is the statement by Mr. Moses. We all have a copy, so why do you not read it and we can follow you.

Mr. MCGREGOR. I would like to raise this question, Mr. Chairman: Is it possible for Mr. Moses to be a witness, because some of us want

to check with him the statement he made previously, which some of my people are taking exception to. I would like to get it clarified. Will Mr. Moses be a witness so we might question him?

Mr. BLATNIK. He signed it and these are his statements, and we might refer to it.

Mr. MCGREGOR. The things I am referring to are things which came up in Mr. Moses' previous testimony. Of course, I would have to ask him the questions, and in reading over this statement he has not touched on that. Is it possible for us to make inquiry of Mr. Moses sometime to see whether or not the statements he made when he was previously before this committee are the same as he would make now?

Mr. MOORE. It is not possible for you to talk to him today because he is in New York and not in Washington.

Mr. MCGREGOR. May I inquire further? He knew of the meeting here today; did he not?

Mr. MOORE. He knew of the meeting here today. When the meeting was scheduled for Friday I must say very frankly he did not intend to come to the meeting.

Mr. MCGREGOR. He did not intend to?

Mr. MOORE. But he did not know of the change in the date of the meeting; I am not sure until when.

Mr. MCGREGOR. Is it possible for him to come to the meeting tomorrow, if he knew of the meeting on Friday?

Mr. MOORE. He was not invited to come and he did not intend to come, and when it would be possible for him to come I do not know.

Mr. MCGREGOR. I want to get your statement correct. Mr. Moses was invited to come but did not intend to come?

Mr. MOORE. No, sir. I say, as far as I know he was not invited to come and no suggestion was made that he should come, and he did not intend to come.

Mr. MCGREGOR. Even though he was not invited to come, he is now asking to be allowed to make this statement?

Mr. MOORE. That is correct.

Mr. BLATNIK. Mr. Moore, will you please proceed?

Mr. MOORE. This is the statement of the Power Authority of the State of New York, and it is dated today.

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and St. Lawrence County. Other contracts to use up all of our power are being negotiated and will be let shortly.

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In the last 2 days, because of this emergency, we have taken advantage of the postponement granted by your committee to talk to the Niagara Mohawk Co. about possible amendments to the Lehman bill which might settle the debate, prevent a stalemate, and result in constructive action.

The following amendments to the Lehman bill have been discussed during the last 2 days. We are not advocating these amendments, but we believe that if they constitute the only practical means of breaking the deadlock, they should be seriously considered.

(1) The company would waive the rights it has under its Federal Power Commission license, which does not expire until 1971. The authority plant would be made large enough to take advantage of the full United States share of the water. The power authority would sell to the company during the full term of its license the power produced by 20,000 cubic feet of water, which is the amount which was made available by the 1909 treaty, and is approximately the amount which Niagara Mohawk now has a right to use until 1971. The company would pay the same rates for this power as comparable companies would pay for power sold to them.

(2) For the present preference provisions of the Lehman bill there should be substituted provisions that in the sale of power the authority would give preference to defense agencies of the United States. As to power sold for use in New York State, it would give preference to the classes of consumers and the agencies which under the laws of New York as amended from time to time are entitled to such preference. As to power sold for use in other States, preference would be given to the classes of consumers and agencies which under the laws of these States are entitled to such preferences.

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Mr. BLATNIK. Now, Mr. Moore, you state that these following amendments have been discussed.

You further state that you are not advocating these amendments, but you feel that they constitute the only practical means of breaking the deadlock between the power authority of the State of New York and the Niagara Mohawk power people.

Did they agree to these, or is that your proposal?

Mr. MOORE. No. What happened, sir, was that discussions were carried on at what the Army, I suppose, would call a staff level. There was Colonel Chapin, the general manager of the authority, as far as the power authority is concerned, and who is the boss directly under Chairman Moses, the chief executive officer of the authority. Colonel Chapin and I, as general counsel, had discussions with Mr. Lauman Martin, general counsel and vice president of the Niagara Mohawk Co., and Mr. Harry Slater, associate general counsel of the Niagara Mohawk Co. We had discussions and discussed the propositions which are in this statement. We did not come to any definitive agreement, of course.

As far as Colonel Chapin and I were concerned, we reported back to our Commissioner Moses. We had not gotten to the point of going to the authority with them at all, and the meeting was then moved up. But this statement, which I must stand on, because this is the statement of Mr. Moses, was cleared by the other members of the authority. It means, of course, what it says, and that's about it.

Mr. MCGREGOR. Will the gentleman yield?

Mr. BLATNIK. We will proceed with questioning in order. Are there any questions to my right?

Mr. JONES. I have one.

Mr. BLATNIK. Mr. Jones.

Mr. JONES. Mr. Moore, did you hear the Major?

Mr. MOORE. I could not hear him too well, sir, but I heard a lot of what he said.

Mr. JONES. Then are you familiar with the recommendations of the Chief of Engineers that any action to authorize the construction of this project by a non-Federal agency should require that the development be consistent with the general plans, and that the designated agency should secure a license from the Federal Power Commission and approval by the Secretary of the Army be obtained for the intake gatehouse structure and the approach channels in the interests of determining its effect upon navigation, and that the United States be reimbursed for its share of the cost of the construction of the remedial works in the Niagara River under the treaty? Has the New York authority agreed to those conditions?

Mr. MOORE. Colonel Chapin could answer that much better than I can. I am sure they would. We have no objection to those. As a matter of fact—

Mr. JONES. And the New York Power Authority is in agreement that it will reimburse the Federal Government for the construction of the remedial works?

Mr. MOORE. Yes, sir; and, in fact, suggested it.

Mr. DEMPSEY. Mr. Chairman, will you yield to me for a unanimous-consent request?

Mr. JONES. Yes.

Mr. DEMPSEY. It is necessary for me to leave the committee at this time. I would like to call back in 30 minutes or a little later to determine what you are going to do on the vote, and if I cannot get back I would like at that time formally to designate my proxy.

Mr. BLATNIK. You have heard the request. The Chair is in agreement. Is there any objection?

(No response.)

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

Mr. MCGREGOR. While we are on that subject, I have the proxy of Mr. Scudder who, as you all know, was operated on the night before last, and I would like permission to vote his proxy.

Mr. BLATNIK. Without objection, that will be granted.

Mr. DEMPSEY. Did I get that permission?

Mr. BLATNIK. Yes.

Mr. JONES. I yielded to Mr. Dempsey and I would like to continue now.

Mr. BLATNIK. Mr. Jones.

Mr. JONES. Now the New York Power Authority, or the members of the authority, have agreed on this recommendation that you presented here this morning to this committee, one of those recommendations being, in order that we get some kind of legislation you recommend that the preference provision of the bill be withdrawn or stricken. Is that correct, sir?

Mr. MOORE. I have to stand on what is in the two statements.

Mr. JONES. I am asking you what is in the statement. I am asking you for an interpretation.

Mr. MOORE. On June 14 the authority had a meeting.

Mr. JONES. Yes, sir.

Mr. MOORE. It was a formal meeting with all of the members present and it issued a statement which is here. That statement said this: It talked about the bill and said:

As to the Lehman bill, which has passed the Senate and is pending in the House, in spite of possible conflict with our State law and difficulties of financing, the authority believes it can work under it and will, in the event of its passage in its present form, make every effort to do so. We think, however, that an amendment to the preference clause adding the words "within economic transmission distance" would help materially.

Mr. JONES. At that point I want your opinion, and I want to talk a little bit about the preference-clause recommendations.

The recommendations on the preference clause of the New York Power Authority are not that it dislikes the preference provision, but it only makes this recommendation on the ground that it will help to pass the bill. Is that correct?

Mr. MOORE. That is right. I think it is fair to say that.

Mr. JONES. The New York Power Authority is not going on record as objecting to a preference clause, but the only recommendation they are making is that the preference clause, if it were deleted from the bill, would enhance the possibilities for the passage of the legislation, giving the New York Power Authority the right to do the development work at Niagara Falls. Is that correct?

Mr. MOORE. That is pretty much what the authority said in these two statements, but in the final paragraph it said the important thing is to get the mandate to do this thing without delay, and to avoid a stalemate.

Mr. JONES. The New York Power Authority would have no objection to seeing that the States of Pennsylvania and Connecticut and other States that are within economic transmission distance obtained a block of this power; would it?

Mr. MOORE. No, sir.

Mr. JONES. It would have no objection to municipalities that have their own distribution systems being preference customers and getting power from the New York Power Authority? You have no objection to that?

Mr. MOORE. I certainly prefer to stand on the statement. I think that is what the statement says.

Mr. JONES. You will have no objection for Federal agencies in cases of national emergency, coming in as preferential customers and obtaining blocks of power for defense purposes; would you?

Mr. MOORE. I am sure that is so. I am sure that is so.

Mr. JONES. So that would be a part of the preference act itself, or the preference section. It would preserve to the Federal Government that right; would it not?

Mr. MOORE. That certainly could. It has been in several proposed bills.

Mr. JONES. You do not have any objection to the cooperatives that operate in the States of New York, Pennsylvania, and other States within economic transmission distance being preferential customers and obtaining the power for distribution and use; would you?

Mr. MOORE. Certainly nothing in any action taken by the authority would indicate it.

Mr. JONES. So you have no objection to any of the category of preferential customers obtaining power from the New York Power Authority. Is that correct?

Mr. MOORE. I still repeat that I stand on the statement and there is nothing in the statement that indicates anything to the contrary. As I understand the statement, you are correct, sir.

I want to make it clear that I do not make the policy on these things, and I do not really have a right to state what the policy is. That is all I want to point out.

Mr. MCGREGOR. I wonder if you will explain how you interpret the statement.

Mr. MOORE. That is the best I can do, and I think I am correct.

Mr. JONES. So actually the New York Power Authority would prefer to have the preference clause in it if it would preserve all of those rights to the various preferential designees under the law?

Mr. MOORE. When you say "prefer," I do not think I have authority to speak for the authority. I certainly do not think the authority has any objection to it. Let us put it that way.

Mr. JONES. The only reason you are advocating now to this committee in the statement of Mr. Moses that the preference clause be stricken or deleted from the bill is on the grounds that you want to pass any kind of a bill?

Mr. MOORE. In the first place, we say we are not advocating—we are not advocating striking any preference clause from the bill.

Mr. JONES. In other words, you are like the preacher: You are just making a few scattered remarks here.

Mr. MOORE. You can put it that way if you want to. As my learned counterpart, Mr. Lauman Martin, the counsel for Niagara Mohawk, would say, "I am a messenger boy, but I can read." The statement talks about various proposals that have been discussed and says we are not advocating them, but we believe that if they constitute the only practical means of breaking the deadlock, they should be seriously considered. That is what they are saying. They are not proceeding to tell the committee what to pass, but are asking you to pass some legislation.

Mr. JONES. The statement starts out that they are in agreement with the Lehman bill. Is that correct?

Mr. MOORE. The statement starts out and says the authority is very happy to work under the Lehman bill and believes it can, and will be very happy to do so if it is passed. That is right.

Mr. JONES. But if Congress will knock out the preference clause and make some other changes recommended by the Board, then the fat is in the fire and we get nothing. Is that right?

Mr. MOORE. I do not understand that.

Mr. JONES. The New York Power Authority wants to change what is in the Lehman bill.

Mr. MOORE. The New York Power Authority in the first statement which was arrived at at the authority meeting, did say, it thought the Lehman bill could be better. It said this:

We think, however, that an amendment to the preference clause adding the words "within economic transmission distance" would help materially.

That is the only affirmative recommendation I know of that the authority has made with respect to amending the preference clause.

Mr. BLATNIK. Any further questions?

Mr. JONES. That is all.

Mr. BLATNIK. Mr. Fallon.

Mr. FALLON. Mr. Moore, I understand from the Army engineers this morning this map here was prepared by them and it is identical to the plan prepared by the private power people and also the same as the plan for the New York Power Authority. Is that correct?

Mr. MOORE. I do not know if the map is identical. Any questions about the physical setup I would rather have Colonel Chapin answer, who is much better qualified to do it than I am.

Mr. FALLON. I also understand that most of this property has been acquired by the Niagara Mohawk Power Co. Where is the New York Power Authority going to build the plant if granted a license?

Mr. MOORE. I would much prefer the engineers answer that question, but I am sure the powerplant will be in the same place, no matter who builds it.

Mr. FALLON. How will you acquire the property?

Mr. MOORE. We have four methods under statutes we are using on the St. Lawrence. There are two different condemnation acts we have available in the State. There is a State appropriation act available and a Federal Power Act condemnation procedure available. As far as the Niagara is concerned, we have 2 separate State condemnation acts available, 1 in the Power Authority Act itself and the other in the general condemnation law. The Federal Power Commission procedure is available, and as far as the appropriation procedure is con-

cerned an amendment to the State law I think would be required specifically to apply it to Niagara, but I think it can be done.

Mr. FALLON. Mr. Moore, if you do not find a willing seller in this project, how long would it take you to acquire the land?

Mr. MOORE. On the St. Lawrence we have at least 99 percent of all the land now, and we have not been in business 2 years yet. I assume we would go just as fast here.

Mr. FALLON. How long?

Mr. MOORE. In the St. Lawrence we had it all—we started—we broke ground August 10, 1954, and we had all of the land at the end of 1955.

Mr. FALLON. It took you a year to acquire it on the St. Lawrence?

Mr. MOORE. We could have done it faster. We had much more land on the St. Lawrence because there we were flooding an area 35 miles long.

Mr. FALLON. Did you have any appeals on the St. Lawrence?

Mr. MOORE. We have had 2 claims filed so far in the Court of Claims for money damages and we have 1 equity suit in the Supreme Court in the northern part of New York State, with respect to our right to take some particular pieces of property, and that is all. That is all the litigation we have on land up to this time. We have settled with a substantial number.

Mr. FALLON. Suppose you find not only an unwilling seller, but an obstinate seller? How far could he take you before you acquired the property?

Mr. MOORE. He could not—we could get possession immediately after filing certain papers and going through certain processes before the question of damages comes up at all. We would get possession. If the man refused to move off the property, of course we have to go through court procedure to dispossess him. Normally it would not take very long. I should say 2 months.

Mr. FALLON. Two months?

Mr. MOORE. Yes, sir.

Mr. SMITH. Will the gentleman yield?

Mr. FALLON. Yes.

Mr. SMITH. Mr. Moore, the power company could have the same trouble in acquiring the rest of their needed land. Is that right?

Mr. MOORE. I think the power company would probably have more, because under the law under which power companies operate I believe, and Mr. Martin can tell you better than I can, I am sure, but I believe under those laws the court has to determine the question of necessity, as well as the amount of damages; whereas under the procedures which the power authority uses the authority has the right to determine the necessity and the court determines, if there is no agreement, the amount of damages.

I must say here, I must say one of our statutes is much better than the other and much more expeditious.

Mr. DONDERO. Mr. Chairman.

Mr. BLATNIK. Mr. Dondero.

Mr. DONDERO. Mr. Moore, you have referred to the St. Lawrence seaway power project three times in your discussions, and I think it is fair to ask you whether or not at any time the private power companies made any bid whatever for that power on the seaway?

Mr. MOORE. You mean to build the power development at the seaway?

Mr. DONDERO. Yes.

Mr. MOORE. In 1907 a law was passed by the Legislature of New York and repealed in 1908, and finally in 1913 the court of appeals rescinded it. In 1921 applications were made and applications were made in the late thirties, and Niagara Mohawk actually owns a good part of the land we are taking on the St. Lawrence the same as here. But at any rate, they did for many years make an effort.

Mr. DONDERO. But I mean at the present time, with the development of the seaway, did they make any bid for the power then?

Mr. MOORE. You mean to do the work? Not for the power—

Mr. DONDERO. No; to buy the power and install the powerplants.

Mr. MOORE. To build the project, you mean?

Mr. DONDERO. Certainly, and to buy the power.

Mr. MOORE. They would not buy the power if they built the project. They would produce the power.

Mr. DONDERO. They could ask for a franchise from whatever governmental unit had it, either the Federal Government or the State of New York; but did they?

Mr. MOORE. If I understand your question—

Mr. DONDERO. The question is this, and let me simplify it: Did the power companies ask for a franchise to build the power installations in connection with the St. Lawrence seaway?

Mr. MOORE. They did for many years.

Mr. DONDERO. Did they do it now that the seaway has been adopted?

Mr. MOORE. The seaway—in the first place, the seaway, that is the dog, or the tail wagging the dog in this operation.

Mr. DONDERO. Mr. Moore, you are a lawyer.

Mr. MOORE. That is right, sir. But the United States Seaway Act—

Mr. DONDERO. Just a moment.. You can answer that question yes or no. Did they or did they not?

Mr. MOORE. I cannot, because the United States Seaway Act was not passed until after the Power Authority of the State of New York had a license to develop the St. Lawrence. It came after and not before. That license was granted in 1953.

Mr. DONDERO. To the State of New York.

Mr. MOORE. And at that time there was no application, as I understand it, pending before the Federal Power Commission by any private power company, nor had there been for a few years before that; but for many years beginning at least in 1907 and ending somewhere in the twenties or thirties, I don't know which, private companies, and not necessarily private power companies, but private companies did attempt to get the right to build the St. Lawrence development, which the power authority is building now.

Mr. DONDERO. Then the answer is from you, they did not make any application at the time that the seaway was adopted, because the State of New York proposed to build the installation in conjunction with building of the seaway. Is that correct?

Mr. MOORE. The answer is "Yes," if you take out the word "because." I do not know why they did not, but the fact is that they did not.

Mr. DONDERO. But the real truth about it and the real reason why they did not is because navigation is linked up with power in the seaway.

Mr. MOORE. I do not think so, sir. I do not think that is the reason at all.

Mr. DONDERO. Is it not a matter of fact that the dams connected with the seaway and navigation are also the dams that hold back the water and create the head for the production of power?

Mr. MOORE. That is right, but I do not think that is the reason why they did not latterly apply.

Mr. DONDERO. Can you imagine a private power company bidding to provide navigation from which there is no return to them?

Mr. MOORE. They had applications and made attempts to do it for many years.

Mr. DONDERO. But they did not do it now?

Mr. MOORE. No; until 1950. No.

Mr. DONDERO. I want to ask you one thing. Is the Power Authority of the State of New York insisting on keeping the preference clause in the Lehman bill; or are you not?

Mr. MOORE. I may be what Mr. Jones said, speaking out of both sides of my mouth, or a fellow who makes an occasional statement, but I am not here for the authority to speak on the subject of preference at all.

Mr. SCHERER. Let us get somebody who is able to speak for them.

Mr. MOORE. I am reading the statement. The power authority is perfectly happy to have the preference provisions in the law. There is no question in my opinion at all. The power authority is perfectly happy to build this with the preferences in it and it wants to build it. I think the statement is pretty clear, and the power authority says to Congress, "Please pass the bill and get it over with. Please pass the bill and let us go ahead and build this thing, and get the show on the road." Preference is fine if you want to put preference in there. On the other hand, if you cannot agree among yourselves on the preference business, then the power authority says we think, and all I can do is read it over again, that you ought to consider other alternatives.

Mr. MCGREGOR. But you still will not tell us whether or not they are in accord.

Mr. DONDERO. Mr. Moore, I want to call your attention to a letter Mr. Moses wrote to Senator Martin, of Pennsylvania, on March 29, 1954, just two sentences thereof, which read:

The existing State law governing our authority gives no preference in service to public powerplants.

That is Mr. Moses' own statement.

Under that statement that you have no authority to ask for preference clauses, would you still insist that that clause remain in the Lehman bill, which is before this committee?

Mr. MOORE. Sir, all I personally can say is what I have said, on this thing our State law says a reasonable part of the project power shall be made available to municipalities. We construe that to include co-operatives. We have already sold power to the city of Plattsburg, which has a municipal plant, and we will sell to any rural cooperatives to whom we can deliver within economic transmission distance, and that's it. That's it.

Mr. DONDERO. One or two more questions and I am through. At the present time does the Power Authority of the State of New York have any property of any kind in the area of Niagara Falls and the Niagara River?

Mr. MOORE. The New York Power Authority there does not own any property at all. The State of New York does own considerably property in that area. It has a rather extensive park, although not nearly so nice as on the Canadian side. In fact, it is a terrible mess on our side. The power authority intends to build a beautiful park, as you know, along the parapet of the river.

Mr. DONDERO. I will simplify the question. Has the State Authority of the State of New York any property in that area which is suitable or usable for the production of power?

Mr. MOORE. Yes, sir; it has this property: It has the right and it is a property right—it has a right to the use of the waters of the Niagara River for power purposes.

Mr. DONDERO. But you own no real estate?

Mr. MOORE. That is real estate. It owns the bed of the Niagara River.

Mr. DONDERO. And you have no powerplants and no installations?

Mr. MOORE. No powerplant there, but we will have for the use of the same water on the St. Lawrence in 2 years.

Mr. DONDERO. Just a moment. Can you answer that?

Mr. MOORE. We have no powerplant on the Niagara. The answer is "No."

Mr. DONDERO. And you own no transmission lines in that area?

Mr. MOORE. No, sir; we do not, but we do own the right to use the water and we do own the bed of the river, and claim nobody has the right to take it away from the State of New York.

Mr. DONDERO. We understand New York makes the claim, but outside of that all of the means used for the production of power in the Niagara area are owned and used by the private power companies operating in that area today, and that has been the case for 50 years. Is that correct?

Mr. MOORE. For many years. I think you will find there were manufacturing establishments which owned the powerplants, but they are private companies in one form or another. I think the Niagara Mohawk by merger or otherwise acquired all of the facilities.

Mr. DONDERO. If the State of New York obtains the right to develop this power you must either buy or condemn from the private power companies the property which they now own and use for the same purpose?

Mr. MOORE. No; they are not using it for the same purpose. The power companies acquired a lot of land with the idea of using it for the same purpose but the property the private companies now use for power purposes is different from those that will be used for this development. You can see that—

Mr. DONDERO. Can we dispute that on the map the engineers have drawn that the private power companies do own that at the present time?

Mr. MOORE. There is a distinction. The private power companies own several types of property. They own 2 powerplants, 1 of which has been pretty much destroyed, and they own the tunnels which

bring the water to those 2 powerplants. They also own distribution facilities and transmission lines to take power out of the city. But in addition to that they have acquired some property which I think you will find is the yellow line there, anticipating building this development. In other words, the power companies or their predecessors in interest have gone out and acquired property lying there. Some of it may have buildings on it. I do not know. But they acquired it for the purpose of building this development. They are not using it now for power purposes and it is not being used at all.

Mr. CLARK. May I make an observation, Mr. Chairman?

Mr. DONDERO. Just a moment. Suppose what you are saying is true. You would still have to condemn or buy the property which they own to build a plant at Lewiston. Is that right?

Mr. MOORE. We would have to condemn or buy from private people the land necessary for this project. In some cases it is Niagara Mohawk, and I assume in some cases others.

Mr. DONDERO. When you say "private people" you mean private power companies?

Mr. MOORE. They may be individuals, or farmers, or school teachers, or anything.

Mr. DONDERO. You referred to that yellow line. That is on the Canadian side of the river.

Mr. MOORE. I did not see that map. I was on the other side of it when the major was talking. I know the model and there are 2 yellow dots where the covered conduits were planned, and those 2 yellow dots point out where it is.

Mr. CLARK. Will you yield?

Mr. DONDERO. Yes.

Mr. CLARK. Mr. Chairman, the witness has been talking now for 35 to 40 minutes, and as far as I can see we still have not gotten a direct answer. If this statement from Mr. Moses is so clear, I think the question of the committee can be answered "Yes" or "No."

I would like to ask him one question, and he can answer it by "Yes" or "No."

Mr. SCHERER. He cannot answer "Yes" or "No."

Mr. CLARK. On this dotted line here does the Authority of New York, which you represent, own any of the land right along here?

Mr. MOORE. The answer is "No"; not above the high-water line.

Mr. BECKER. Could I bring up one point?

Mr. MCGREGOR. First I want to make my position clear. It is regrettable that the chairman of the great New York Power Authority has not appeared here as a witness. He has sent you, and I think you are very capable of doing a grand job of not answering some of the questions I would like to have answered.

Mr. MOORE. The chairman has been here.

Mr. MCGREGOR. That is rather blunt, I think.

Mr. MOORE. There is no doubt about it.

Mr. MCGREGOR. So I think we should have Mr. Moses come here and answer some of the questions in his statement and especially clear up some of the statements he made when he was here previously, and he did a very excellent job, but there have been questions raised relative to some of his statements. I hope that the chairman of the com-

mittee will insist on Mr. Moses coming here and clearing up some of these questions.

Maybe you can clear up this one. I do not think it is a policy at all and you will not be getting your neck in a noose. Mr. Moses testified before the committee when he was here before, and I quote:

That the power market, western New York State, will form the principal market area for power from the Niagara development.

Would you be in accord with that statement, or would you suggest he answer it?

MR. MOORE. I do not think there would be much argument about it.

MR. MCGREGOR. Now is the majority of the power market or the big portion of it in the area of the State of New York?

MR. MOORE. I do not know that there is any doubt about it. There are 1 million people right around Buffalo alone.

MR. MCGREGOR. And then there is the figure that somewhere between 90 and 95 percent could be used right in that given area. I believe those are the figures.

MR. MOORE. I am not competent on it. I am sorry.

MR. MCGREGOR. You did say in your statement here, and I will refer you to page 3 of the statement of Mr. Moses:

“* * * in spite of possible conflict with our State law. * * *” So you are admitting there, or Mr. Moses is, that your existing State law does not give you authority to make these priorities, or preferences. Is that correct?

MR. MOORE. I take this position.

MR. MCGREGOR. You can answer that yes or no.

MR. MOORE. Yes or no I am going to answer that as a lawyer.

MR. MCGREGOR. Then I will be here for a good while.

MR. MOORE. We believe that we can sustain—we believe that we can successfully refute any argument that there is a conflict between the State law and the Lehman bill as it stands now. We believe it can be held to be valid, and we believe we can accept a license if the Lehman bill as it stands now is passed. But on the other hand we do recognize that an argument can be made that there is a conflict and that litigation could very well come about, and that litigation would take a long time. We believe we would be successful in the litigation but we believe also the litigation could very well cause considerable delay, and we do not want delay.

We also believe or also fear, or are concerned that the pendency of the litigation would make it difficult for us to borrow the money necessary to finance the project and get it going during the pendency. That is it.

MR. MCGREGOR. Then you recognize the ruling of Hon. Jacob Javits, the attorney general of New York, and Mr. Chairman, I would like to have permission to insert this telegram in the record at this point, but I will read this portion of it:

Elimination of unfair and unworkable absolute municipal preference provisions essential to more nearly align bill with New York's legislative enactments and to remove it from being the object of a struggle of private versus public power, and end the legislative deadlock.

You would be pretty much in accord with that statement?

MR. MOORE. You have not gotten into the law yet. He has something about the law.

Mr. MCGREGOR. All right. Continuing to quote from the telegram of the attorney general of the State of New York he says:

* * * and it could be my duty to challenge in the courts any action purporting to limit or divest the rights of the people of the State in their natural resource.

Mr. MOORE. That is not what he means. What he means there is if a bill were passed giving the private power companies the right to do this, we would challenge it on the ground it was unconstitutional because the State owns the right to use the water and owns the bed of the Niagara.

Mr. MCGREGOR. You are interpreting it wrong and you are only partially right in that.

Mr. MOORE. That is what he means.

Mr. MCGREGOR. Because the reference he makes in his telegram is to preference clauses.

Mr. MOORE. I will be glad to present to the committee a memorandum Mr. Javits prepared.

Mr. MCGREGOR. I ask for permission to insert this telegram in the record.

Mr. BLATNIK. Without objection, the telegram is as follows:

ALBANY, N. Y., June 19, 1956.

HON. J. HARRY MCGREGOR,

House Office Building, Washington, D. C.:

Development of Niagara waterpower legislation pending before you and recognized since the Schoellkopf plant disaster to be imperative urgently requires amendment and enactment to prevent spoliation of New York waterpower resources. Elimination of unfair and unworkable absolute municipal-preference provisions essential to more nearly align bill with New York's legislative enactments and to remove it from being the object of a struggle of private versus public power, and end the legislative deadlock. These provisions would affect only a very minute percentage of the present consumers of power who can be fully protected without unworkable preferences. It is properly a struggle for indispensable electric power produced out of water resources recognized to belong to the people and the public power issue is not truly involved. It involves not only the peoples' welfare and the country's industrial prosperity but elements of the safety and defense of the Nation.

There are in the Niagara Falls industrial area served by the Schoellkopf plant a number of industries vital to the defense of the Nation and which even now are engaged in fulfilling important defense contracts. My office concludes that in the event of a national emergency our heavy chemical industry in the Niagara Falls area could be seriously threatened. Development by the power authority is consistent with the rights of the people of the State in their natural resources, and it could be my duty to challenge in the courts any action purporting to limit or divest the rights of the people of the State in their natural resource. The reservation which the Senate attached to its consent to ratification of the 1950 treaty with Canada, which is the reason for the proposed legislation, affects the State of New York in two ways. (1) So far it has prevented the power authority from developing the waters of the Niagara River and has deprived the State of the use of this natural resource; and (2) it has rendered effective a term of the treaty by which this natural resource of New York is available to Canada free of any charge, and the right of Canada to produce electricity therefrom for sale to consumers in this State cut off from their normal domestic power source due to the Schoellkopf disaster. There has been considerable discussion about the constitutionality of this treaty reservation but it is my considered judgment that a test of this issue would not at this time be conducive to a prompt settlement of the problem in the greatest interest of the people. Prompt settlement of the problem can now be had only by congressional authorization of the development of the Niagara waters by the power authority.

I respectfully urge you to join in reporting out the Lehman-Buckley bill so amended as to strike out the absolute municipal-preference provisions and to

recognize the long-settled policy in the State of New York to make a reasonable share of power developed from public sources available to political subdivisions and to rural cooperatives within the economic market area.

JACOB K. JAVITS,
Attorney General of the State of New York.

Mr. ALGER. Will the gentleman yield?

Mr. MCGREGOR. Yes.

Mr. ALGER. Do you really mean this in the statement:

The Niagara Mohawk Co. no longer has any prospect of obtaining, through action of Congress, a license. * * *

Mr. MOORE. I can explain what Mr. Moses means by that.

Mr. ALGER. Yes or no?

Mr. MOORE. In the authority's opinion the Niagara Mohawk has no chance of getting legislation through the Congress, the House of Representatives and the Senate, which will allow the private companies to build this development. That is the opinion of the authority and opinion of Mr. Moses, and it is certainly my opinion too.

Mr. ALGER. If that is so—and that is as close to an answer as I have gotten—

Mr. MOORE. That is exactly what this means.

Mr. ALGER. If we take that at face value, as you have just said it, why do we have Niagara Mohawk here, or why are we having a hearing before Congress if action of the Congress cannot result in doing this? Why not just give it to the State of New York and not even hold the hearing?

Mr. MOORE. Why do you hold the hearing?

Mr. ALGER. Yes.

Mr. MOORE. You are not very serious about that question; are you?

Mr. MCGREGOR. Let me finish this statement and I will be very glad to yield. Mr. Javits' main argument is on the preference question.

Mr. MOORE. Well, I would—

Mr. MCGREGOR. Let me finish if you will.

Mr. MOORE. That is right. I will be happy to. I am sorry.

Mr. MCGREGOR. And I call attention to your statement that you recognize that you will have difficulties because of the fear of breaking a State law and having lawsuits come in, which will result in the whole program being delayed. I would like to clear up one other statement, and that is on the bill you are recommending, on page 3, line 14, it says:

The licensee shall make a reasonable portion of the project power available for use within economic transmission distance in neighboring States. * * *

Who will determine whether it is an economic transmission distance? Will that mean the power authority of the State of New York?

Mr. MOORE. I think if you read the rest of that paragraph you will see if there is a dispute the Federal Power Commission gets in on the operation; does it not?

Mr. MCGREGOR. You just answer that part and I will bring up the second part you are mentioning. Who would you say then would determine what the economic transmission distance is?

Mr. MOORE. I would say in the first instance the power authority would determine. If another State disagreed with the power authority on that the Federal Power Commission would make the determination. If you read the next paragraph that is what it says.

Mr. MCGREGOR. I will go to that statement and prove you are wrong. You said the Federal Power Commission would determine it. Let me read it. I am reading line 18.

Mr. MOORE. I do not have it.

Mr. MCGREGOR (reading):

In the event of disagreement between the licensee and the power marketing agencies of any of such States, the Federal Power Commission may * * *

You use the word "may." Now if you are going to let the Federal Power Commission determine whether or not the Power Authority of New York is going to give any kilowatt-hours to the State of Ohio, why do you not use the word "shall"? You are leaving the entire dictatorial control in the hands of the State of New York Power Authority.

Mr. MOORE. I think you will find court decisions in similar circumstances which say "may" and "shall" are synonymous.

Mr. MCGREGOR. I do not know, but I have been here for 17 years and we raise the question many times as to whether "may" means "shall."

Mr. MOORE. We think it means "shall" here. That is my opinion.

Mr. BLATNIK. The Chair will suggest that unless the Members have questions immediately pertinent to the testimony taking place I would suggest each member conclude his interrogations and pass it on to the next member.

Mr. MCGREGOR. I have just one more point and it will be short, and I will insert it in the record. On page 4 of your statement you are asking for quick action—

without delay and to avoid a stalemate which would throw the whole subject back into politics and confusion * * *

That is Mr. Moses' statement?

Mr. MOORE. That is right.

Mr. MCGREGOR. You are talking about politics. Let me read you just a little article which appeared in the Washington News of June 20. This statement is made by Mr. Butler who is the Democratic National Committee chairman, and I quote:

Chairman Butler called the Niagara project estimated to cost \$400 million of tremendous importance in the reelection of Senator Herbert Lehman and in the congressional elections in many districts in New York, Pennsylvania, and Ohio.

Then you tell us that politics might get back into this.

Mr. MOORE. I am sure you do not expect me to cast any light on that subject.

Chairman BUCKLEY. Mr. Chairman, I am sorry that politics has been injected into this.

Mr. MCGREGOR. We are too, Mr. Chairman, but your own chairman did this.

Chairman BUCKLEY. I recall when we had the St. Lawrence Seaway up for consideration and we talked about the hydroelectric power development in connection with that project the gentleman from Ohio was opposed to the powerplant and the seaway. But he later voted for it for political reasons.

Mr. MCGREGOR. I want the record to show that I challenge the chairman. I could rise to a point of personal privilege because we operate under the rules of the House, but I will challenge the chairman to show me in any record where I made that statement, and I want the record to show I have challenged him to prove that statement.

Mr. SMITH. I think we have been quibbling with Mr. Moore here. It is obvious from Mr. Moore's statement they want to build it whether you have a preference clause in or out or in the middle. I do not see the purpose of all these questions. Everybody knows they want to build it no matter what you put in in the way of preference clauses, and I doubt as to whether Mr. McGregor or you folks over there are going to pay any attention as to what Mr. Moses recommends anyhow. So why make all of this argument about it.

Chairman BUCKLEY. Will Mr. Smith yield?

Mr. SMITH. Yes.

Chairman BUCKLEY. I suppose Mr. McGregor realizes that the Niagara Mohawk and the Power Authority of New York State have been sitting down for the last week or two, and I am afraid that by the time Mr. McGregor is finished with these questions he will do more harm than good to the company that he is trying to help. They have almost come to an agreement on the amount of power that has been lost by the cave-in of their plant and I think we ought to hear from both sides before we start questioning too much.

Mr. MCGREGOR. I certainly want to concur in at least a portion of the statement made by my distinguished chairman from New York, that I think it is time to hear both of them. From what I hear there might be a possibility of a compromise. So I would suggest we adjourn and let them work out a compromise.

Mr. BLATNIK. The Chair is anxious to proceed as quickly as possible. Are there any further questions on my left?

Mr. WITHROW. I have a question.

Mr. BLATNIK. Mr. Withrow.

Mr. WITHROW. I do not know so much about power, but you say your plan is identical or almost identical to that plan?

Mr. MOORE. Colonel Chapin is the engineer, and they are generally the same. Yes. As I understand it we would not have an open ditch; we would not have a tunnel, but would have what they call cut-and-cover. We dig a ditch and put in sides and put a top on it and cover it up again.

Mr. WITHROW. But as to the powerplant that will be located at Lewiston, what sort of electricity will it generate?

Mr. MOORE. Sixty cycles.

Mr. WITHROW. Sixty cycles? Entirely 60 cycles?

Mr. MOORE. I believe so. Yes, sir.

Mr. WITHROW. What power did the plant at Schoellkopf, involved in the rock slide, generate?

Mr. MOORE. I believe two-thirds of all the powerplant destroyed was 25 cycles, used in the industries there, and a third of it was 60 cycles. Mr. Martin can tell you that much better than I.

Mr. WITHROW. Did the rock slide cut that portion off entirely which was 25 cycles?

Mr. MOORE. That is my understanding but I am certainly not as competent as many other people here to discuss that.

Mr. WITHROW. I cannot understand how the construction of this powerplant at Lewiston which generates 60-cycle power would relieve the demand that has emanated from the area of the plant at Schoellkopf.

Mr. MOORE. I can answer that. It just converts 60 into 25 cycles, which is precisely what the Aluminum Company of America has to do on the St. Lawrence.

Mr. WITHROW. Then in theory it eventually will not all be 60 cycles?

Mr. MOORE. I think that is right but the Aluminum Co. has the same problem on the St. Lawrence.

Mr. WITHROW. Is that the Aluminum Co. that moved from the Niagara?

Mr. MOORE. No. It is the same company, but they have been on the Niagara since 1903 and they are still there.

Mr. WITHROW. That is all.

Chairman BUCKLEY. The reason why I called this meeting was to see if it is possible for the Niagara Mohawk Co. and the New York Power Authority to come to some agreement, and let the members hear them and see if we can arrive at something constructive, and not get into a fight which will accomplish nothing.

Mr. MOORE. Mr. Chairman, I think you understand no suggestion was made as far as the authority knows that Mr. Moses or any other members of the authority would be wanted to testify. All that was wanted was some people to answer some technical questions as we understood it. The engineers are here and available for that, and all I was doing was reading the statement. That is my point.

Mr. WRIGHT. I would like to ask Mr. Moore a couple of questions.

Mr. BLATNIK. Mr. Wright.

Mr. WRIGHT. You said a moment ago that you in company with Colonel Chapin and others have participated in exploratory discussions.

Mr. MOORE. That is right.

Mr. WRIGHT. With representatives of the private power company?

Mr. MOORE. That is right. Strictly on what we could call a staff level.

Mr. WRIGHT. In those discussions were any of these three alternatives which Mr. Moses is now suggesting, mentioned?

Mr. MOORE. Yes, sir. We discussed all three of them.

Mr. WRIGHT. Do you feel from those discussions you are somewhere near an accord on the major points covered in these three suggestions?

Mr. MOORE. All I can say on that is that Colonel Chapin and I had discussions with Mr. Martin and with Mr. Slater, and Colonel Chapin and I reported back to the chairman, and we did not finish anything, and did not go to the full authority, but we were discussing it. As the statement points out, these discussions were carried on as an alternative to the Congress taking action without any suggestions being made by anybody. If Congress wants to do that it is certainly all right with the authority, but if the Congress reached a stalemate we were talking about alternative suggestions.

Mr. WRIGHT. You made a fine point a moment ago when you said you were not advocating these things.

Mr. MOORE. That is right. It is not a fine point. No, sir.

Mr. WRIGHT. In other words, you did suggest them to the committee as worthy of our serious consideration?

Mr. MOORE. That is what the statement says. Provided that the committee cannot, without any suggestion from anybody, go ahead and pass legislation to get it over with.

Mr. WRIGHT. And you would offer no objection to these?

Mr. MOORE. Personally?

Mr. WRIGHT. Speaking as a representative for the authority.

Mr. MOORE. Obviously, I cannot talk for the authority. It was called together by telephone and partly in person last night, and approved this statement, but these alternatives were discussed by the authority, but strictly on a staff level. Remember, the meeting was pushed up a day. Had we had another day we might have gone further.

Mr. WRIGHT. Mr. Moses assumes responsibility for the statement he makes?

Mr. MOORE. Yes. Mr. Moses assumes responsibility. As a matter of fact, in addition to that this statement was cleared by Governor Poletti; by Mr. Case, another member; and by Mr. Wilson, another member; and Colonel Chapin talked to Mr. Burton on the phone and discussed it with him, so all of the members have either read it or have it read to them.

Mr. WRIGHT. Do you not think the thing for us to do would be to concentrate on these points in issue and to see whether there is some possibility of resolving the differences that have heretofore existed?

Mr. MOORE. I do not know how to go about that, but I think it is up to the committee. I do not have any suggestion on that at all.

Mr. BLATNIK. Are you through?

Mr. HULL. Will you yield?

Mr. WRIGHT. I can't yield because Mr. Buckley yielded to me.

Mr. HULL. I want permission of the committee to give my proxy to Mr. Jones. I am called to Missouri this afternoon and I cannot be here.

Mr. BLATNIK. Without objection, that will be agreeable. Mr. Gentry?

Mr. GENTRY. Mr. Moore, how long have these private power companies been producing power and selling it in this general area of New York State?

Mr. MOORE. The first power produced with water power was mechanical power. The first electric power was in the eighties, and I do not think it was produced by private utility companies, but by manufacturing outfits, and there were several manufacturing organizations that got grants from the State legislature.

Mr. GENTRY. I did not ask you that question.

Mr. MOORE. I cannot answer it. That is the only way I can answer it. And by merger; and finally the rights of various manufacturing companies were consolidated in a company called the Niagara Falls Power Co., which was a public utility company, but which had a very limited number of customers, at one time only 19, or something like that; but by merger I believe in 1929 the Niagara Falls Power Co. was acquired by Niagara Mohawk.

Mr. GENTRY. I will reask the question: How long have the Niagara Mohawk Power Co. and the Rochester Gas & Electric Co. and these 5 power companies involved been producing power and selling it in this general area? Do they have a long record for the production and sale of power in New York?

Mr. MOORE. In New York State or at Niagara?

Mr. GENTRY. New York State.

Mr. MOORE. I do not know how old all of them are. They certainly have a record of several years.

Mr. GENTRY. How long have you lived in New York?

Mr. MOORE. Forty-seven years, eleven months, and three days.

Mr. GENTRY. Have they been selling electricity in Rochester all the time?

Mr. MOORE. No, sir. Rochester Gas & Electric has nothing to do with this business at all, except they are one of the sponsors of this bill. Rochester Gas were—

Mr. GENTRY. They are 1 of the 5—

Mr. BLATNIK. Mr. Gentry, may I suggest the power people are here and can give you the history of that sort of thing.

Mr. GENTRY. But I want to talk to this witness.

Mr. BLATNIK. Do you not want the information from those people?

Mr. GENTRY. I want it from this witness, if I can get it.

These five companies that have gone ahead and developed this power, do they not have a long record of production and sale of power in New York State?

Mr. MOORE. I think it is long; yes, sir.

Mr. GENTRY. A long time. So far as you know, have they done an efficient job?

Mr. MOORE. My opinion on that is worth absolutely nothing.

Mr. GENTRY. How long has the Power Authority of the State of New York been in the production and sale of power?

Mr. MOORE. It has been on the books since 1931. It has been building a power plant for the last 2 years, or just about 2 years.

Mr. GENTRY. How much power have you produced and sold?

Mr. MOORE. We have not produced any, but we have sold about 300,000 kilowatts of capacity.

Mr. GENTRY. 300,000?

Mr. MOORE. Three hundred-and-some-thousand.

Mr. GENTRY. That is the record up to date?

Mr. MOORE. That is the record up to date. We are building things fast. The people who do the building in this particular outfit have built a lot of other things, I think you know, and have built them very well.

Mr. GENTRY. That is all.

Mr. BLATNIK. Mr. Scherer.

Mr. SCHERER. Does the New York Power Authority pay any taxes to the Federal Government?

Mr. MOORE. It does not, sir.

Mr. SCHERER. If it develops this power will it pay any taxes to the Federal Government?

Mr. MOORE. Under the law as it stands now it will not.

Mr. SCHERER. Will it pay any taxes to the State of New York?

Mr. MOORE. Under the law as it stands now it will not, sir.

Mr. SCHERER. Will it pay any amounts for water usage?

Mr. MOORE. As the law is now it will not, sir.

Mr. SCHERER. Is that not the reason why you can pass economies on to the consumer?

Mr. MOORE. Is that the reason? That is one of the reasons. It is not the only reason.

Mr. SCHERER. It is just about the principal reason.

Mr. MOORE. No. Another reason is that we can borrow money cheaper. There is a big difference in operation there as far as the

consumer is concerned. You take \$400 million. The power companies put in \$10 million and borrow the other \$390 million at 3½ percent, and they will get 6 percent on the \$390 million all through the years.

The power authority will borrow the same money for less than 3 percent, and all the consumers will pay for is what the power authority pays out, which is less than 3 percent. It is a big and tremendous difference there.

Mr. SCHERER. Do you know how much taxes the private companies pay now to the Federal Government and the State of New York?

Mr. MOORE. The private companies?

Mr. SCHERER. All of the power companies. The private power companies that are developing power in that area.

Mr. MOORE. In the State of New York? No, sir. I can give you the real property taxes the Niagara Mohawk pays in the city of Niagara Falls, because we have been checking it lately, but that is all I can tell you.

Mr. SCHERER. Will the Power Authority of the State of New York pay any real-estate taxes to any of the political subdivisions of the State of New York?

Mr. MOORE. At the law stands now, the answer is "No." That was one of the suggestions that was made here, of course, to make some adjustment of that.

Mr. SCHERER. Do you have any idea of the total taxes paid by these utilities each year to the Federal Government, to the State of New York, and to the local subdivisions of government?

Mr. MOORE. I have read it many times in the material they put out, but I do not remember it at the moment.

Mr. SCHERER. That is all.

Mr. BLATNIK. Mr. Cramer.

Mr. CRAMER. I have a couple of short questions.

First, is it not true that the companies now using the water in the State of New York, the private companies, under the Supreme Court decision and otherwise, which determined that the State of New York owns the water, pay a charge to the State of New York? Do they not make a charge to those companies?

Mr. MOORE. Yes, sir. The Supreme Court sustained the charge.

Mr. CRAMER. That is right. I am not challenging the right.

Mr. MOORE. That is right. It is the right to the use of the water and the right to the bed of the river.

Mr. CRAMER. I appreciate all of that.

Why is it that when a policy has been established of selling the water to the private companies in this instance, the authority apparently by its statement refuses to do so?

Mr. MOORE. The authority does not refuse to do anything which the law mandates it to do. The State law does not require the authority to pay anything of that nature.

Mr. CRAMER. Your statement on page 4 states, "Without prompt legislation by Congress we must undertake litigation."

Mr. MOORE. That is different. We maintain that the 1950 treaty's reservation which was attached to it by the Senate is unconstitutional. That is the kind of litigation Mr. Moses is talking about there. In other words, if Congress does not act—which we certainly hope it will—the only possible way of getting this project built would be for

a court determination; for the authority to apply to the Federal Power Commission for a license under the Federal Power Act on the theory that the reservation which takes away the right or purports to take away the right of the Federal Power Commission to grant a license is invalid and unconstitutional because it pertains to a purely and strictly domestic matter. We have an opinion from two very eminent experts on international law to the effect that that reservation is unconstitutional. We do not choose to go through that kind of litigation and hope we will not have to go through that kind of litigation, and hope that the Congress will act; but merely say if the Congress does not act, the only thing we can do is to start that litigation.

Mr. CRAMER. At the bottom of the first page of your statement you say:

Even if such a license were granted, the State, which owns this water, would have to challenge it in the courts.

Mr. MOORE. That is right. That is a different thing.

Mr. CRAMER. That merely implies that they would challenge the right of any power company to use the New York-owned water.

Mr. MOORE. That is right.

Mr. CRAMER. So the commission is taking an entirely different attitude with regard to this company when it has been happy to sell water to other private companies. Is that not correct?

Mr. MOORE. Wait a minute. The State of New York says the power authority shall develop this water. If the Congress should, which we believe it will not do, pass a bill and the President signs it into law providing for private power company development of this water, the State would challenge the constitutionality of that legislation on the ground that the State law, or on the ground that it is invalid—let's put it that way. That is what he is talking about there.

Mr. CRAMER. That is all the State legislature did was include the jurisdiction of the power commission to divert the Niagara water. They did not include that the power commission would construct the Niagara project, did they?

Mr. MOORE. Yes, sir. The statute says precisely that. It says that the State owns the water and creates the power authority which is a public corporation and does not have any kind of Government credit behind it, and operates strictly on borrowed money until it gets revenue. It mandates that public corporation on behalf of the State to perform the development.

Mr. CRAMER. In spite of the fact that the international treaty is involved and obviously approval of the Congress is required?

Mr. MOORE. The only reason the approval of Congress is required is that a reservation to the Senate's consent to the ratification of the 1950 treaty recited that Congress would have to make a decision here. We maintain that the Senate had no right to do that, and it was cutting out the House of Representatives, which should not have been done.

Mr. CRAMER. Under your proposal what happens to the Schoellkopf plant?

Mr. MOORE. Nothing.

Mr. CRAMER. I understand your proposal is, No. 1, the company would waive the right it has under its Federal Power Commission license which does not expire until 1971?

Mr. MOORE. That is right. The Schoellkopf plant would not be rebuilt and the Adams plant, another plant upstream which uses only half of the head or 165 feet but uses some 8,800 feet of water—would be used only until the new plant was available and ready to use all of the water available; and the Adams plant would also be abandoned under that plan.

Mr. CRAMER. Is not the Schoellkopf plant of any value to the private industry?

Mr. MOORE. It is lost. It fell down.

Mr. CRAMER. Is it completely destroyed?

Mr. MOORE. The Niagara Mohawk people can certainly answer that much better than I can.

Mr. CRAMER. Just one more question. I do not want to hold the hearings up any but at the last meeting of the subcommittee in June, at which Mr. Moses appeared, he presented the proposal of the New York Power Authority and on page 127 of the hearings included in that was "Our Niagara Program." No. 9 says, "Construction of Niagara Parkway from Grand Island Bridge to Niagara Reservation" at an estimated cost of \$14 million.

I asked Mr. Moses in as many ways as I could conceive when he was here, after reading the authority of the New York Power Authority under this statute as to whether or not it is clear that the power authority could make that definite commitment under its legislative authority and he said in effect he did not know whether they could or not.

Mr. MOORE. Well, I know. I can answer that question. The statute of the Power Authority Act allows the power authority to accept Federal Power Commission licenses for the St. Lawrence and the Niagara with such conditions as are imposed by the Federal Power Commission. If, Congress says, the Federal Power Commission as a condition of license will require the licensee to build this parkway at a cost not to exceed \$15 million, it is a condition of the license which the power authority has a perfect right to abide by.

Mr. CRAMER. This additional \$14 million which is for admitted park purposes?

Mr. MOORE. Yes, sir, and there is no question that it should be done. It is a great scenic place and here it is just a plain, ordinary mess on our side of the river whereas it is beautiful on the other side.

Mr. CRAMER. I am very much in favor of that.

Mr. MOORE. And besides that he plans to take the earth out of that ditch and move it on to the bank of the river and do it all as one operation. In other words, the parkway will be built out of the earth necessary to be removed for the construction of the covered conduit.

Mr. BLACNIK. We have a quorum call. May I announce there is a 1-hour rule and 6 hours of general debate on the education bill. So we would like to recess until 2 o'clock at which time we will have the private power people testify.

Is Mr. Lauman Martin here?

Mr. MARTIN. I am present.

Mr. BLATNIK. Will you be here at 2 o'clock?

Mr. MARTIN. I will be very happy to return at 2 o'clock.

Mr. BLATNIK. We will recess until 2 o'clock then.

(Whereupon, at 12:05 p. m. the committee recessed until 2 p. m. of the same day.)

AFTERNOON SESSION

Mr. BLATNIK. The Subcommittee on Rivers and Harbors of the Committee on Public Works will please come to order. These are hearings on Niagara power legislation. The first witness for the private corporations will be Mr. Lauman Martin, vice president and general counsel of Niagara Mohawk Power Co. of the State of New York.

STATEMENT OF LAUMAN MARTIN, VICE PRESIDENT AND GENERAL COUNSEL OF NIAGARA MOHAWK POWER CO. OF THE STATE OF NEW YORK

Mr. MARTIN. Mr. Chairman and distinguished members of the committee, on behalf of Niagara Mohawk Power Corp., I appreciate the opportunity tendered to my company to appear here this afternoon in consideration of the Niagara River legislation. I particularly appreciate it because your distinguished chairman of the full committee is a Representative of the State of New York, and I think probably he has some real intimacy with the problems that presently affect my corporation.

Heretofore, representations have been made to your committee on behalf of Niagara Mohawk Power Corp. in support of what I choose to call the private enterprise bill for authorization to redevelop the full potential of the Niagara River for power purposes. We stand firm in our representations heretofore made in support of the measures sponsored by Mr. Dondero and Mr. Miller in the Congress.

However, as all of you probably know, there occurred an event at Niagara Falls on June 7, 1956, which caused us, with the obligation to serve the public, protect our stockholders' investment, and to render service the best way we know how, to take a calm, deliberate, and careful look at the situation as respects legislation for the development of the Niagara River potential. And with your indulgence, I would like briefly to explain to you what has happened before I come specifically to discuss the attitude that we offer for your consideration concerning specific legislation.

On June 7, 1956, at 5:17 p. m., a rock slide started at our Schoellkopf Station, which is marked "B" on that map. In a matter of 10 minutes, two-thirds of that station was completely ruined. The powerhouse had just slid into the river under the impact of that rock slide. The third section, called Station A, is still standing, but of course the generating equipment in that station is badly damaged, and the entire Schoellkopf Station is out of commission at present. We still have, and are operating, our so-called Adams station, which is marked "A" on the map here, for the generation of hydroelectric power through use of water of the Niagara River.

Now, going to the Schoellkopf Station, that station had a capacity of about 360,000 kilowatts of power, which we could turn out 24 hours a day, because of the regular flow of that river which made it possible so to do. That station produced something like 2.8 billion kilowatt hours of electric energy a year. It had been built over the period 1909 to 1924, so that the full station had been in operation something more

than 31 years. It was the largest single hydroelectric installation in the Niagara Mohawk system.

Now, I should explain to you gentlemen that about 290,000 kilowatts of the capacity in that station were 25-cycle capacity, and the remaining 70,000 kilowatts of capacity were 60-cycle capacity. Niagara Mohawk has really two electric systems in its western New York area. It sells something in the order of 600,000 to 650,000 kilowatts of 25-cycle capacity largely to industry, and the remainder is 60-cycle capacity. Since 1944 we have had a prohibition in our rate schedules against the extension of 25-cycle service. You are undoubtedly all aware that the trend in this country and nearly everywhere else, particularly in Canada, right across the river, is to uniform 60-cycle electric service. So that our customers have been on notice that they cannot increase electrical capacity to a 25-cycle basis, and all of the additions have been for 60-cycle use.

Now, we have interconnections with our neighbors in New York State, as well as the Hydroelectric Power Commission of Ontario. That commission formerly had only 25-cycle capacity throughout the entire province, but its recent installations have been 60-cycle.

At the time of the unfortunate catastrophe at Niagara Falls, we happened to be taking approximately 150,000 kilowatts under an interchange operation from the Hydro Commission of Canada, 25-cycle capacity. They promptly increased their delivery to something like 230,000 kilowatts of capacity. At the same time, as soon as we were aware there was trouble at the falls, and this is early afternoon, we started up our 25-cycle machines at the Huntley Station, just outside of Buffalo, to produce 215,000 kilowatts of capacity. We have frequency changers in our system which can change 60-cycle energy into 25-cycle to the tune of 56,000 kilowatts of capacity. We also had available under firm purchase arrangements something better than 60,000 kilowatts of 25-cycle capacity. And finally, we had then and still have in operation the Adams Station which produces about 80,000 kilowatts of capacity.

I want to inform you gentlemen that within 12 hours after that catastrophe at Niagara Falls, we had service fully and completely restored to each and every customer of our company, whether it was 25- or 60-cycle capacity.

While it takes your time, I want to pay tribute here to the remarkable cooperation we got from our fellow utilities in the State of New York, and from the Hydroelectric Power Commission of Ontario, with which we have long interchanged power.

So as of this minute, we are still in business, we are supplying our customers with all of their requirements, and we propose to continue in business and supply their increasing requirements as they make them known to us.

As a part of our regular program, speaking only of Niagara Mohawk alone at the moment, we have under construction at this very minute in Buffalo 2 new 200,000-kilowatt capacity 60-cycle generators which will come in in the fall of 1957 and the fall of 1958, respectively, to meet our planned growth requirements.

Now, going back to the catastrophe—the loss of 365,000 kilowatts of capacity was a very heavy blow. As I say, we are meeting the load. We are arranging and have definite assurances that we can purchase

25-cycle capacity sufficient to meet those requirements, for a minimum period of 3 additional years. So that our customers will continue to get service, and will have a minimum of 3 years within which to convert their operations from 25- to 60-cycle capacity. And we think that we are going to work out that problem with them amicably and fairly and retain the business at Niagara Falls.

Mr. DONDERO. Are your plants in Buffalo steam or water?

Mr. MARTIN. Those plants in Buffalo, Congressman Dondero, are steam, the ones I was referring to. And the three 25-cycle units in that Buffalo plant, aggregating 215,000 kilowatts, producing energy from thermal sources, of course, cost more money than the hydropower which we heretofore have been using extensively. We have got to work out some rate adjustments to continue the service on the basis whereby we can continue strong to render service—but that is our problem and we do not trouble you with it here—other than to point out that since June 7, in addition to the requirement of meeting the growth in our company and in western New York generally, by whomsoever served, we have to pick up the loss of 365,000 kilowatts of capacity, and as I said, 2.8 billion kilowatt-hours a year. That is our problem.

Now, in the light of that problem, and mindful of our obligation to serve all of our customers and to maintain the economic health, balance, and growth in the area that we have been serving for nearly 75 years, we were prompted to take a long and careful look at the legislative picture as it affected the hydro developments on the Niagara River. And out of that, we concluded that some concessions must be made in order promptly to secure the necessary legislation to carry forward the Niagara development, not only to replace our lost capacity, but to provide from that source for the growth in the area.

Now, we have a license from the Federal Power Commission, under the Federal Power Act, for the operation of the Adams and Schoellkopf stations which presently runs to March 2, 1971, and authorizes us to divert for power purposes 20,000 cubic-feet per second in that period and an additional 12,500 cubic-feet per second on a revocable basis. Heretofore all of the legislation which has come before your committee concerning the Niagara River has been predicated on a development which would use the additional water under the 1950 treaty over and above the 20,000 cubic-feet per second to which I refer.

Now, our Schoellkopf plant is two-thirds ruined. There is some possibility that we could salvage station A and replace the generators in that station. But even on an optimistic estimate, it would take about 1 year to restore that station, which has something in excess of 100,000 kilowatts of capacity, to use.

It is obvious to everyone, as I think was pointed out by the engineer officer this morning, that the most efficient utilization of Niagara River water for power purposes is to make the development over what I call the high head, or at Lewiston. Since we cannot use the 20,000 cubic feet per second under license at the moment, by reason of the loss of our station, we concluded that some program ought to be worked out on a fair and equitable basis that would surrender, on fair terms, that water for development at Lewiston along with the additional water made available by the 1950 treaty.

And we are here in good faith to say to you gentlemen today that we are willing to go along with legislation that will accomplish that,

upon the basis (1) that if the power authority, which is the State agency, is duly licensed by legislation of the Congress to secure a license from the Federal Power Commission under the general terms of the Federal Power Act, that we will surrender our license for the 20,000 upon specific legislative assurance that we receive power equal to the power developed at the new development which would come from the 20,000 cubic feet per second which we now have under license, for the entire term of the new license, upon the same terms as would be made available to any other purchaser from the New York Power Authority; (2) we are prepared to go along with the legislative program for the Niagara which will remove the preference clause which is incorporated in the Lehman bill as passed by the Senate, and substitute in lieu thereof a provision as to which I think everyone agrees, that the defense agencies of the United States shall have an absolute first call on such power as may be required; second, that insofar as electric power from a new development is to be distributed in the State of New York, it will be in accordance with the laws of the State of New York insofar as those laws contain any preferences; and third, that if power from any Niagara redevelopment is distributed in States other than New York, it be distributed according to preferences if any in those States. Now, of course, those States must be within economic transmission distance, and I think as a practical matter only Ohio and Pennsylvania reasonably could expect to participate in any portion of the Niagara development power.

We do not oppose and never have opposed the proposition that is in the Lehman bill for the allocation of a portion of this power to States within economic transmission distance, and that does not pose any question.

We have also very seriously urged in all of our representations to the power authority and to anyone that will listen to us, that in fairness and equity, some—

Mr. JONES. May I ask a question at this point, Mr. Chairman. Mr. Martin, the principal objection that you have to the Lehman bill, as I understand it, would be the preference clause as contained in the Lehman bill; is that correct, sir?

Mr. MARTIN. May I say yes—plus. I object to the preference clause in the Lehman bill. And I point out—and it is not by way of objection—but I don't want to be misunderstood. The Lehman bill, which passed the Senate on May 16, or 17, 1956, did not deal with this 20,000 cubic feet per second of water, because it was then under license to an existing plant.

Mr. JONES. I understand. I am talking about the major objection to the reallocation of the 20,000.

Mr. MARTIN. That really isn't an objection. That is an addition by reason of the new circumstances, sir.

Mr. JONES. But that could be worked out between the power company and the New York Power Authority.

Mr. MARTIN. I certainly believe so.

Mr. JONES. So that is not a basic consideration of the bill that we have before us, as far as you are concerned, though. You feel that you could work that out.

Mr. MARTIN. Yes. But I want to be clearly understood, sir, if I may, that legislation affecting power development on the Niagara

River should specifically include what I have requested with respect to the 20,000 cubic feet per second.

Mr. JONES. But going back to the major objection, that is the preference clause; is that correct?

Mr. MARTIN. To the bill itself; yes.

Mr. JONES. All right. Now, how much power would be generated by the combination of the St. Lawrence and all the works anticipated to be done in the Niagara section of the river?

Mr. MARTIN. On the redevelopment?

Mr. JONES. Yes, sir.

Mr. MARTIN. I understand—and Mr. Harold Howell, our chief project engineer has just joined me, and I would like to ask him in case I go astray—that we will have on the full development not less than 1,500,000 kilowatts of capacity if the 20,000 is added.

Mr. JONES. That is at Niagara alone—on the Niagara River.

Mr. MARTIN. Yes, sir; I'm sorry—I didn't hear you correctly.

Mr. JONES. Now, add to that the amount of power to be developed on the St. Lawrence.

Mr. MARTIN. Which I understand to be 700,000 firm at present estimates for the United States side.

Mr. JONES. That will give you a total amount for the New York Power Authority in itself of 2 million kilowatts firm power, is that correct, sir?

Mr. MARTIN. Slightly in excess, sir.

Mr. JONES. Now, how much power have you been producing at Niagara with 20,000 cubic feet per second?

Mr. MARTIN. Approximately 360,000 kilowatts—and that is developed at the Schoellkopf station under heads of approximately 212 to 220 feet.

Mr. JONES. Now, if these works are done and completed by the New York Power Authority, with 2 million kilowatts of capacity, don't you think that the power authority could sell you power without any interference from any preference customers under the bill?

Mr. MARTIN. The way you put your question, I think the answer is "Yes," sir.

Mr. JONES. Then what is wrong with the preference section of the bill, because it only will provide that a very small portion of the power to be generated at these projects be allocated to the preferential customers—as traditionally written into every piece of Federal legislation dealing with the subject.

Mr. MARTIN. My answer, Congressman Jones, is this. The preference clause that is in the Lehman bill is an open-end preference coupled with specific withdrawal provisions, so that there is no assurance to the private-utility companies that they will (1) get a fair share of the output of these projects, and (2) retain it.

Mr. JONES. Well, let's be practical, Mr. Martin.

Mr. MARTIN. I want to see, sir.

Mr. JONES. All right. Now, before this new generating capacity up there, how in the world could the New York Power Authority sell power to anybody but you? You haven't got enough preferential users in there to even use a small percentage of the total amount of power made available. And, of course, the committee presumes that you will enter into a contract with the New York Power Authority..

Mr. MARTIN. I certainly want you to presume so, because we want to get that power, our fair share of it, to distribute to our customers.

Mr. JONES. If that is a fair assumption, that you will get this power, how will the interference of a few preferential customers disturb the orderly operation of the project, or deny to the Mohawk group any bloc of that power?

Mr. MARTIN. In 1956 I don't think there will be any interference, but I am trying to look at this as a long-range picture, and I try honestly to represent to you, sir, that I believe—

Mr. JONES. Well, now—

Mr. MARTIN. May I finish my answer, if you please.

Mr. JONES. Go right ahead.

Mr. MARTIN. I honestly believe that the law in New York, the Power Authority Act, if the power authority is permitted to make the Niagara development, adequately, fairly, and fully covers the subject of preferences.

Mr. JONES. Yes. Now, do you know of any other power company that has entered into a contract for the purchase of Federal power that has been inconvenienced by the fact that they did not get the power? Has the fact that the preference clause was written into the act denied to the private utilities, or violated, any of the contracts that the private utilities had had with any selling agency of the Federal Government?

Mr. MARTIN. I am honestly and completely unfamiliar with that situation, Congressman Jones, because where I work and serve, we have not had Federal developments. And I would like to call to your attention, sir, in elaborating on that statement, that what we are considering here is not a Federal development, as to which the Federal preference clause is traditionally attached, but it is a State development. And I am simply urging that it being a State development, and we having a State law, there is no reason to impose a so-called Federal preference in a situation that is adequately covered. And may I add, sir, that I seriously question—and I am not much of a lawyer, but I seriously question whether or not the insertion of a Federal preference clause in a bill relating to a Niagara development by the New York Authority will not raise a very serious question of litigation and conflict to the statutes. The power authority's statement at least adverts to it. I believe your committee has received a memo from a former Member of this Congress who is now the attorney general of the State of New York who adverted to that very same problem.

I think that the question can be resolved.

Mr. JONES. Do you think there is any legal question as to the right of the Federal Government to insert a preference clause? If your fears and apprehension are about the legality of the question, whether or not the Federal Government has a right to write a preference in, it would have been contested in the TVA Act, the Bonneville Act, the Southeast Power Administration Act, the Flood Control Act of 1944. We have written preference sections into every major piece of legislation, including the REA Act, and no court, mind you, has held that that is an unconstitutional thing.

Mr. BECKER. Would the gentleman yield?

Mr. JONES. Yes.

Mr. BECKER. I think the gentleman has pointed out that this is not to be a federally operated plant, that it is to be a plant where a license is given to the New York State Power Authority to operate under the New York State laws, and that the New York State laws do now adequately protect any preference clauses in the contract. Now, I think the gentleman has pointed that out adequately and well.

Mr. MCGREGOR. Will the gentleman yield? I am sure the gentleman does not want to leave the false impression. The projects that I recall that the gentleman from Alabama referred to were Federal projects entirely, and it was not a State proposition. This is a New York State Authority. The TVA and the rest of them were Federal.

Mr. JONES. Oh, yes. Well, this is the Federal interest we are concerned with, of protecting the right to use falling waters by any State, to see that the properties of the Federal Government are given the widest distribution of use, whether or not it be by private utility—because a private utility has the same responsibility in the operation of its monopoly, which is given to it to operate by franchise, as does every other utility—the generation, distribution, and sale of power is a public business.

Mr. MARTIN. It is a public obligation, sir, and we take it very seriously.

Mr. JONES. And you are doing for the people what they can do for themselves. So there is no question as to whether or not it is a private business or a public business.

Mr. MARTIN. I have tried not to argue that here, Congressman.

Mr. JONES. So the sale and distribution of power—it does not make any difference where it is in this country—is a public business. Every utility man, from Wendell Wilkie to the present time recognizes it as being a public business.

Mr. MARTIN. It is a business connected with the public interest, sir, since *Munn v. Illinois*.

Mr. BECKER. Doesn't the gentleman feel that the State of New York—

Mr. JONES. Let's go back, Mr. Martin. There is going to be sufficient power generated here by the New York Power Authority in the rapids section and at Niagara Falls to produce more power than you have produced in your original plant. It will provide more power for the Mohawk group, for the combine.

Mr. MARTIN. I trust so.

Mr. JONES. Than you could produce at your own plant. You are going to have around 2 million kilovolts. That will be power for you and the preference customers, too. Nobody is going to be left out of the picture.

Mr. MARTIN. That power should be fairly and equitably distributed, so that all of the consumers in the State of New York get their fair share of the benefits from the completion of those projects.

Mr. JONES. I am sure that the State of New York Authority will be just like any other State authority. It will try its level best to take care of its own people. Now, to insure that the State of Pennsylvania and the State of Ohio get their proportionate amount of power, there is only one way to do it, and that is by a preference clause. Do you know of any other way it can be done?

Mr. MARTIN. I don't want to suggest any other way here, but I think that the Lehman bill—and in this respect I do not disagree with it—provides for a fair allocation of power output to those States. And I say with all due respect to you, sir, that it behooves the States of Pennsylvania and Ohio to fairly and equitably see that that power is distributed to their respective customers, just as I think we are doing in the State of New York under the law of New York.

Mr. JONES. How can we, as a committee, insure the State of Pennsylvania and Ohio their proportion or share of this power unless we write a preference section in the bill?

Mr. MARTIN. Well, frankly, I see no necessity for preferences. To me it is a matter of fair allocation to all parties in interest.

Mr. JONES. Why are you so concerned with the preference section in the bill when you are sure of enough power from the power authority with a preference section in the bill?

Mr. MARTIN. I have tried to answer you honestly, sir. I am concerned over the life of the license. This is not a 1956—

Mr. JONES. Your license is until 1971.

Mr. MARTIN. The initial period ends March 2, 1971; yes, sir.

Mr. JONES. Now, how much would it cost you to replace your plant, modernize it and bring it up to date?

Mr. MARTIN. I cannot answer that question, sir, and I do not believe that we would undertake to modernize at that site, because with the plant, or two-thirds gone, it is intelligently economic or efficient to undertake a redevelopment that does not make the best possible use of the power. And that is why I am here, on behalf of Niagara Mohawk Power Corp., in an attempt to suggest what I think is a reasonable method of getting the most efficient development, namely, at what I call the high head or Lewiston or—

Mr. JONES. You have 15 more years outstanding on your license.

Mr. MARTIN. March 2, 1971, is the initial term.

Mr. JONES. Now, would be it economically justifiable or would it be wise and prudent expenditure for your company to go in and invest the amount of money that would be necessary to rehabilitate that plant for a 15-year period?

Mr. MARTIN. I said that in my opinion, and speaking individually—because the engineers might suggest otherwise—I don't think it would be economically efficient or advisable. And that is why I come before this committee with the suggestion in all earnestness to work out a program whereby the high-head development can utilize all of the water, regardless of the present license conditions.

Mr. JONES. Well, you would get a better arrangement with the New York Power Authority than you could by making investments in your existing plant; isn't that correct, sir?

Mr. MARTIN. I don't want to quibble, Congressman Jones, but I am not sure that I absorb the import of the "better arrangement." I want to say again if we can work out this problem and the New York Power Authority is licensed to make the overall development, the 20,000 cubic feet per second which heretofore were used at the Schoellkopf station will certainly produce more power at the higher head station.

Mr. JONES. You get more power, you get cheaper power from the New York Power Authority, than you would by replacing the plant there.

Mr. MARTIN. I would certainly hope so.

Mr. JONES. Therefore, the only thing is the preference clause.

Mr. MARTIN. Directed specifically to the Lehman bill—I agree, sir.

Mr. JONES. Let me ask one thing more. Is your group of utilities a member of the national association that contributes to the advertising of material against the preference section of the laws that have been written by Congress?

Mr. DONDERO. Well, I do not want to appear to be irritated about that question, but I do think that is beginning to hit below the belt.

Mr. JONES. Well, now, Mr. Dondero, you know me well enough that I would not hit below the belt. But the testimony that Mr. Martin has contributed to the committee is to the effect that there is going to be plenty of power to the Mohawk group, the preference-customers group, and so his company will get power without replacing his plant, it will be able to get probably cheaper power, more power—I said probably—

Mr. MARTIN. I was not going to interrupt, but I was going to observe, sir, that the Schoellkopf plant, of course, being rather an old plant and constructed with dollars that seemed to buy more years ago than they do today, gave us an economy from the operation of that plant which I somewhat doubt can be achieved at the Lewiston plant, even by a tax-free agency that can finance its operation at a much less cost than is necessary for us to stay in business. To that extent, I hedge on your statement.

Mr. JONES. Now, let me proceed a little further, because Mr. Dondero has felt that I have gotten off on the wrong foot. And I just want to give my reasons, not only to Mr. Dondero and the committee, but to you, Mr. Martin. Since there is going to be plenty of power available, then that does not raise a serious question with the bill to include the preference clause, because nobody is going to be injured by it, you least of all.

Mr. MARTIN. May I make an observation about plenty of power, in all respect to you, sir?

Mr. JONES. Yes, sir.

Mr. MARTIN. We anticipate, in the State of New York, where Niagara Mohawk serves a good section, that the power needs will at least double by 1965 and 1966, so that when we talk about plenty of power—I am a born optimist—I say that this Niagara redevelopment is going to be gobbled up, the St. Lawrence is going to be gone, and for lack of anything better we will be back at constructing the conventional thermal-fuel-fired units, and probably by that time, we will all be building atomic power units.

Mr. JONES. And of course that description of the situation of need exists all over the entire United States.

Mr. MARTIN. It certainly is not confined to New York.

Mr. JONES. No, sir. It is a universal problem that we are having to deal with. But the point I was trying to bring out, Mr. Dondero, is that everybody could be made happy. Now, the only question as far as the preference clause is concerned is one that has been tried in every public forum—by your organization. And that is the reason I directed the question to you as to whether or not your company had participated in the payment of these advertisements that say that the preference clause should be taken out of the bills, and that the generation, transmission, and distribution of power by the Federal Govern-

ment is one of socialism and that sort of thing. You recall the ads that you see. And at the bottom it has if you want the names of the companies, that they will be supplied to you on request. Does your company engage in—

Mr. MARTIN. I have no hesitation in saying to you, sir, although I do not think it is relevant to the subject matter of this hearing, that we are members of the electric company advertising program which puts out some of those ads. And I also say in utter frankness that a good many of them I have not seen myself.

Mr. JONES. Well, there are a lot of them I have not seen. I have seen a few. And so it is an academic question, before this committee, about the preference clause, rather than one that would cause actual fears and apprehension of including it in the bill; isn't that right, Mr. Martin?

Mr. MARTIN. I do not agree that it is academic, but I think that I have taken enough time of your committee to indicate my approach to the problem and my concern about it as a long-range measure.

Mr. JONES. Would you be opposed to the preference clause written in the REA Act?

Mr. MARTIN. I honestly do not know what the preference clause is in the REA act. I am familiar, however, with the fact that no legislation, to my knowledge, has gone through this Congress which imposed a so-called Federal preference clause—and I am thinking of that flood control 1944 thing or something of that character—that has related to a nonfederally financed project, as this Niagara development will be when, as, and if some legislation along the lines now under consideration by this committee is eventually enacted.

Mr. JONES. Are you opposed to the preference section of the 1944 Flood Control Act?

Mr. MARTIN. I would be, sir, if it affected my operations. That is an honest answer.

Mr. JONES. Yes, sir. And therefore that is the reason why the private utilities are carrying on a war against the preference sections of almost all Federal legislation. Isn't that true?

Mr. MARTIN. I do not undertake to answer for all of the private utilities. I think I have looked you in the eye and said frankly what my position is, and I can do no more.

Mr. JONES. You are a good man.

Mr. BECKER. Mr. Chairman, I might also add I join in that fight also. They are not alone in it. And I think many of us in the House oppose that preference clause.

Mr. BLATNIK. Are you through with your questioning, Mr. Jones?

Mr. JONES. I just want to say there has been no doubt in my mind where you stand, Mr. Becker.

Mr. BECKER. Thank you, Mr. Jones. I always let that be known. And 2 or 3 years ago when the same question was here, the House overwhelmingly voted a bill for private power at Niagara Falls. It came out of this committee almost unanimously. So many of us think the same way as this gentleman here. These people are not alone.

Mr. JONES. To set the record straight, I recall that we considered a bill known as the Atomic Energy Act—I believe it was in 1954—and you supported the preference clause exactly as written in this bill.

Mr. BECKER. I do not know that I did.

Mr. BLATNIK. Mr. Schwengel.

Mr. SCHWENGEL. Mr. Martin, I direct your attention to the testimony this morning, where Mr. Moore said:

The Niagara Mohawk Co. no longer has any prospect of obtaining, through action of Congress, a license to develop additional power from the water available in New York through the international treaty and the remedial works recently constructed.

Do you concur in that statement?

Mr. MARTIN. I do not, sir. I prefaced my opening, if I recall correctly, by indicating to you that I am an all-out advocate of what I call a private-enterprise bill, of the kind that passed the House of Representatives in the 83d Congress by a vote of 262 to 120. But I am what I think might be described as a pragmatic realist. We are in this business in western New York. We are serving a lot of customers. We serve something like a million customers in the Niagara Mohawk system, including the heavily industrialized area in and about Niagara Falls and Buffalo. We have lost 365,000 kilowatts of capacity which produced 2.8 billion kilowatt-hours a year. We believe that under all of the circumstances, in order to render an adequate service and to get forward with the program of truly adequate electric growth, which is bursting in that area, that we have got to come a long way to a sound solution. I have tried to outline to your committee in all sincerity what I believe to be a reasonable solution of that problem. Obviously, it is not what we started out with. I believe that under ordinary circumstances, private enterprise ought to be allowed to do this job; they are financially able, and so forth. But we have larded the record completely with our views heretofore, and I did not think I should take the time of your committee this afternoon to reiterate that, but rather to start with our presentation and say to you that we are trying to be practical and here is a solution of this problem within what I believe are entirely reasonable areas of resolution of the conflict.

Do I make myself clear?

Mr. SCHWENGEL. Yes. Could you tell us and elaborate a little more on why you have now taken this position, and as I understand it you are endorsing, with the proposed amendments, the Lehman bill; is that right? Can you briefly tell us why you have compromised your position? Is it because of this mishap?

Mr. MARTIN. I will try to give you an honest answer, Congressman. We have been here for 6 years seeking authority to make a private-enterprise development of the additional potential of the falls. We got halfway through in 1953. This year, 1956, a so-called State authority development bill has passed the Senate. I am not a politician. I have no political acumen and very little political knowledge whatsoever. But it seems to me, in the light of the existing circumstances—and they are spurred, sir, undoubtedly by the fact that we lost 365,000 kilowatts of capacity—that here is a middle ground, and I would like to point out that the middle ground I suggest is consistent (1) with existing Federal legislation, in that it would simply authorize the Federal Power Commission to issue a license to the State agency, the New York Power Authority, to make this development. That has been on the statute books since 1920. So there is no inconsistency there whatsoever. The licensing function of the Federal Power Commission has never gone to the question of

preferences, so that the elimination of the Federal preference from the so-called Lehman bill is still entirely in agreement with your Federal legislation. The State of New York, whether I agree with it, or not, sir—and I do not agree with the legislation—has authorized an agency to make the Niagara development. We have given to this committee very well-considered opinions of eminent counsel to the effect that that legislation notwithstanding, the Federal Congress could enact a law authorizing private development. But I have got to admit in all frankness that the State statute is on the books, so we are consistent there.

And it seems to me that if we are entitled to the output from the use of the water which we now have under license, we have put together a package that fits in every way, shape, and form all of the legislation that is on the books, and reflects a considered policy of the Federal Government and the State of New York.

Mr. SCHWENGEL. One further question. You are general counsel for the Mohawk Co.; is that correct?

Mr. MARTIN. Niagara Mohawk Power Corp.

Mr. SCHWENGEL. And are you authorized to say that those people you represent—I understand there are five organizations that are in this group.

Mr. MARTIN. Yes, sir.

Mr. SCHWENGEL. Are you in a position to say they all agree with you on this statement?

Mr. MARTIN. I am in a position to say this, sir. I speak with authority for Niagara Mohawk Power Corp., and I emphasize Niagara Mohawk Power Corp., because that is the company that actually owns the properties in question where the catastrophe took place and the transfer that is involved. I believe that I can honestly say to you that our proposal here has received at least sympathetic consideration and understanding from our four brothers who have heretofore appeared before this committee in support of the private enterprise bill. I do not categorically undertake to speak for the other four companies. I am not so authorized.

Mr. SCHWENGEL. What will happen to your company after this license period of 1971 runs out? Will you be out of business?

Mr. MARTIN. I trust not, sir. So far as the license for the Schoellkopf plant is concerned, were it to have remained in usable form, I would assume that we could secure an extension of this license for which there is provision in the Federal Power Act. There is also a provision in that act for the United States, at its election, upon suitable appropriation by the Congress, to purchase, under a fixed-price formula, that plant and to operate it. There is also this additional feat-station, the overall development at the Lewiston was to be accompanied by the creation of a tunnel from station B, the Schoellkopf station, to run down to the Lewiston powerhouse, so as to secure at that point the benefit of the additional fall between Schoellkopf and Lewiston, and have through two jumps, as it were, the same efficiency for the ture—that in all previous proposals, prior to the destruction of that 20,000 cubic feet per second as would be secured if it went all the way down in the first instance.

I point that out, that absent the catastrophe that befell us at the Schoellkopf station, I had every reason to believe that that station

would remain ours in continuing use or, in the alternative, that it would have been purchased by the United States Government on terms to which we agreed when we accepted the license in 1921.

Mr. BLATNIK. Mr. Gentry.

Mr. GENTRY. Mr. Martin, where are the representatives of the other four companies?

Mr. MARTIN. Specifically—I do not know. Some representatives I think are in Washington, others are in New York and Poughkeepsie.

Mr. GENTRY. Are any of them here?

Mr. MARTIN. I think we have one representative from New York State Electric & Gas.

Mr. GENTRY. Can you tell me why they are not here?

Mr. MARTIN. No; I cannot, sir.

Mr. BALDWIN. Will the gentleman yield? As I understand it, the ones here are just here by informal invitation by the committee to answer any questions. I do not think this was advertised as a general hearing.

Mr. GENTRY. Now, Mr. Martin, there have been hearings held on this thing 2 or 3 times, and you know the bill of the House giving this to private enterprise once.

Mr. MARTIN. Yes.

Mr. GENTRY. Now, it is my opinion that this committee would have done the same thing again, had you and your associates maintained your position. And I think that action would have been substantiated by the action of the House of Representatives.

Now, if I get your statement—and I came in after you got started—it seems to me that you have reversed your position completely and the position maintained by the 5 companies jointly during the last 3 or 4 years; am I correct in that?

Mr. MARTIN. Not if you say to me, sir, that we have reversed our position completely. We certainly have come a long way from the position we have honestly advocated before this committee.

Mr. GENTRY. And why?

Mr. MARTIN. For reasons that I tried to explain in my answer, I believe, to Congressman Schwengel.

Mr. GENTRY. All right. Now, was it motivated by the fact that you have lost one of your units there?

Mr. MARTIN. That was a consideration.

Mr. GENTRY. Now, why would that be? If it is a principle of government, a philosophy of government, public versus private enterprise, the government in the operation versus the private enterprise system—why would the loss of those works there make you change your position that you have maintained logically and very, very energetically for several years before this committee, which the committee has sustained you in? Why would that cause a reversal?

Mr. MARTIN. Congressman Gentry, all I can say to you is we are not running from fright, but rather from a desire to secure a reasonably early development in Niagara Falls, so as not only to replace the lost capacity, but to have the additional potential made available there.

Mr. GENTRY. If private enterprise were given the job, could they not make this production available?

Mr. MARTIN. I think we could, sir, in record time. We would be very happy to have the opportunity to do so.

Mr. GENTRY. But you are now willing to compromise on it.

Mr. MARTIN. I have so indicated on behalf of Niagara Mohawk Power Corp. to this committee.

Mr. GENTRY. I want to make one statement to you. If this committee reverses the action it has taken before, which of course would be substantiated by the House, I presume, it is the last stand of private enterprise insofar as electric power is concerned in this country. It will be the last stand in this Congress, because this Congress has been adamant on that. They have taken your side of it. This House has fought for it. And here you are.

I want to ask you one question, about what your surrender means, because I did not hear your earlier presentation, and I ask the indulgence of the committee just a moment.

You are willing for this power to be developed by the public power authority of the State of New York; is that correct?

Mr. MARTIN. You say we are willing?

Mr. GENTRY. Yes; you are willing.

Mr. MARTIN. Under the terms and conditions I suggested to the committee, sir.

Mr. GENTRY. Well, that means they are in the business of selling electric power, does it not?

Mr. MARTIN. That means they are in the business of making a development and selling its output; yes, sir.

Mr. GENTRY. Now, what do you get out of it? You said "under the conditions." Now, what do you want for your sale?

Mr. MARTIN. I mean simply that there will be a purchaser like anybody else that is within the economic range of the—

Mr. GENTRY. Would that not be a complete reversal of the position you people have fought for here during the years I have been a Member of Congress?

Mr. MARTIN. It certainly indicates a marked change; I should not say a reversal, but you are entitled to your own analysis of the situation.

Mr. GENTRY. Well, if I am not correct in saying you have made a complete reversal as a matter of political philosophy as to private enterprise versus the Government in business, then if it is not a complete reversal, what is it?

Mr. MARTIN. I do not think I can give you any other answer than I have.

Mr. GENTRY. I do not think that either, and I just wanted to be sure that is what this thing meant. I want to tell you I am strictly opposed to your position. I think this should be developed by private enterprise.

Now let me ask you this question: It is true that your company and all private power companies in this country pay 25 cents out of every dollar they take in in gross receipts to the governments of States, the districts, and the counties and cities in taxes; is that not true?

Mr. MARTIN. Yes, sir. At least that is true of our company.

Mr. GENTRY. And you pay 5½ percent for the money which you get, about an average of 5½ percent. The Government gets it for less than 3. Now, do you not believe that if we are going to set up oases of public power in all parts of the country and we are still going to

have private power companies, that we should then fix it so nobody should pay taxes through their electric power bills?

Mr. MARTIN. I am fully aware—

Mr. GENTRY. All right. Now let me ask you this question: If the Public Power Authority of the State of New York develops this power and sells it, they will be selling to some of the customers that private power companies now have, will they not?

Mr. SCHERER. I did not hear what you said.

Mr. GENTRY. Would they be selling to some people that are now getting private power; will they not take some customers in the course of time; is that not correct?

Mr. MARTIN. Yes, sir.

Mr. GENTRY. Well, certainly it will follow.

Mr. MARTIN. Yes, sir.

Mr. GENTRY. Those people who are now contributing to the support of this Government, for war defense and all those kind of things, will not then contribute one cent to that effort in the payment of their electric power bills, but the balance of the people of the country will have to pay more in order to take it up?

Mr. MARTIN. That is very true.

Mr. GENTRY. Do you think that is right?

Mr. MARTIN. No, sir.

Mr. GENTRY. Well, then, that is why I do not understand your position today. I am just completely lost when I hear you state your stand. Now, it may be an immediate expedient for you, but just saying to you here—and I will be out of Congress in about 4 or 5 months—that this is the last stand you will have; your position is gone insofar as Congress is concerned when this question is lost here. It is lost with the position that you are taking.

Mr. BLATNIK. Are there any further questions?

Mr. MARTIN. Mr. Chairman—

Mr. BLATNIK. Just a moment. We will recess to answer the roll-call vote on the rule, and then come back to complete the questioning of the witness.

Mr. MARTIN. I should like, sir, to be permitted a few further observations; I do not want to forget them. I can make them at any time.

Mr. BLATNIK. That is for a vote on the rule, and we will come right back. It will take about 20 minutes. We will recess to take a vote on the rule and come right back.

(Whereupon, the subcommittee was recessed from 3:35 to 4:10 p. m.)

Mr. BLATNIK. The House of Representatives Public Works Committee will resume hearings on the Niagara River power development bill. We concluded with the gentleman from Texas, Mr. Gentry, completing his interrogation of Mr. Martin, and Mr. Martin asked if he could not complete the final part of his statement. Will you please proceed?

Mr. MARTIN. I would like, sir, to complete my initial statement. I think I got left by Congressman Jones' question about preferences before I had an opportunity to indicate to the committee while I do not believe it properly a subject for Federal legislation, a very important and necessary element in the resolution of this question along the lines I have suggested is to secure to the city of Niagara Falls,

where the Schoellkopf plant is located, and the taxing agencies in that city, the school, district, county and the like, true, equitable relief by way of payments by the authority, should this development be made by the authority, in lieu of the taxes which Niagara Mohawk now pays on the Schoellkopf plant—

Mr. SCHERER. May I interrupt a minute. Have you made a deal with the New York State Power Authority to that effect, that if you reverse your position as you have here that they would agree to pay the taxes to the local subdivisions of government?

Mr. MARTIN. We have suggested to the authority that we believe tax relief in this particular case is an absolute, necessary element of any so-called compromise solution of this question.

Mr. SCHERER. Will you answer my question: Have you made such an agreement, that you will reverse your position, as Mr. Gentry says you have, if the New York authority will pay amounts in lieu of taxes to local governments?

Mr. MARTIN. We did not agree with the authority to reverse our position as such. We have agreed on the proposal that I am attempting to submit for the consideration of this committee, if one of these elements is the tax-relief payments—

Mr. SCHERER. Well, Mr. Martin, no one has been a greater supporter, as you could gather from the record of the previous proceedings, than I of private power, but I want to associate myself with every remark and every statement made by my colleague Mr. Gentry. I think you gentlemen have made some arrangement with the New York Power Authority that is evidenced by the reversal of your position: it is evidenced by the fact that the other utilities are not represented here, and I think we should have been advised if that is the situation. I can draw no other conclusion than that that has taken place by the testimony that you have given and by the lack of appearance of the other utilities here today. Certainly, using the vernacular, you have pulled the rug out from under those of us who here in the Congress all these years have fought for private power in opposition to public power.

Mr. MARTIN. We have—pardon me, sir.

Mr. SCHERER. I mean what I say.

Mr. MARTIN. We had no intention of pulling the rug out—

Mr. SCHERER. Well, you may not have had any intention, but you certainly have.

Mr. MARTIN. We were impelled, as I said initially, to consider this matter by reason immediately of the so-called Schoellkopf disaster and to review the situation as it stood. We found that there is existing the Federal legislation under the Federal Power Act that gives a preference to State development. Whether we would like it or not, the State of New York has authorized the State agency to make the development. The Senate this year has passed the so-called State development.

I said, initially, given the choice, we are wholeheartedly in favor of a private enterprise development, and given the opportunity, we could go ahead forthwith to make the development as quick as we could secure the necessary finances. We own all of the real estate necessary to make that development.

Mr. SCHERER. Well, do you think your—and I am going to call it capitulation at this point in the consideration of this legislation could now enable us to eliminate the preference clause? Do you think there is any weapon left on the part of those of us who do not want that preference clause in the legislation? Do you think there is any chance now left for us to knock out that preference clause unless you have made an agreement with the opposition to that effect?

Mr. MARTIN. Well, it seems to me that there is a very legitimate ground for not having a preference clause for a nonfederally financed development such as may take place on the Niagara River, and I tried to indicate the utter propriety of no preference clause under those circumstances where the State law, where the project is located, in my opinion adequately covers the problem of the distribution of that power by saying it has got to be fairly and equitably allocated with the primary benefit to the residential and farm consumers in the service area.

Mr. SCHERER. Unless an agreement has been made, do you now feel, witness, that there is any chance of our putting a provision in this bill whereby the New York State Power Commission would pay moneys in lieu of taxes to the local governments of the Niagara area?

Mr. MARTIN. I said, sir, I do not believe that that is a subject for Federal legislation, but we have insisted because we—

Mr. SCHERER. Oh, yes; it would be a subject for Federal legislation.

Mr. MARTIN. I certainly would not object to it under any circumstances, and I have tried to represent here that I believe that relief to the city by reason of the destruction of our plant, on which substantial real-estate taxes have been and are being paid, is a very necessary element of the solution of this whole problem.

Mr. SCHERER. What I am saying is by the position you take at this early stage in these hearings, you certainly take, let's say, the club out of our hands to put such a provision in this bill.

Now, heretofore your representatives have not hesitated to discuss with me the position that the utilities are taking in the matter, but I have had nobody talk to me about anything you had in mind or to give us any information whatsoever as to what you were going to say here today or the position you would take.

Mr. MARTIN. All I can say, sir, is you have my apologies for our ineptness—

Mr. GENTRY. Will the gentleman yield for just one question in that regard?

Mr. SCHERER. Yes.

Mr. GENTRY. You are stating, Mr. Martin, that in your discussions in this thing that you have made suggestions about the absolute need, the necessity for doing something for the local governments?

Mr. MARTIN. Yes, sir; with respect to the destruction of the Schoellkopf—

Mr. GENTRY. Yes, let me make this statement: The cities, the districts and the counties and the States of this country, on their own, owe \$30 billion; that is their debt. The Federal Government owes \$276 billion. Did you put in a plug for the poor old Federal Government, about doing anything regarding their taxes that are going to be lost; did you do that?

Mr. MARTIN. No, sir.

Mr. GENTRY. Did you know that when you pay your taxes each year to the Federal Government the first thing you have got to do is pay 52 percent of the profits of every private power company in the United States of America to the Federal Government in income taxes?

Mr. MARTIN. Yes, sir.

Mr. GENTRY. And that the Power Authority of New York will not pay one dime. But you said nothing about that; you knew you were coming here and were going to talk to the representatives of the Federal Government, did you not?

Mr. MARTIN. Yes, sir; I am fully aware of that.

Mr. GENTRY. But you did not say anything about that?

Mr. MARTIN. No, sir; I did not.

Mr. GENTRY. Let me ask you this. There is no irrigation involved in this project at all, is there?

Mr. MARTIN. I have used this, Congressman Gentry, as purely a poor—

Mr. GENTRY. Just answer: Is there any irrigation involved?

Mr. MARTIN. No, sir.

Mr. GENTRY. Any flood control?

Mr. MARTIN. No, sir.

Mr. GENTRY. Any navigation?

Mr. MARTIN. Not that I know of.

Mr. GENTRY. Is there anything but purely the production or generation of electric power?

Mr. MARTIN. That is all I see in it.

Mr. GENTRY. That is all. Thank you, sir.

Mr. BLATNIK. Mr. Martin, please proceed.

Mr. MCGREGOR. Mr. Chairman—

Mr. BLATNIK. He asked for permission to complete a brief statement, Mr. McGregor. He has been trying to complete his statement.

Mr. MCGREGOR. We have been trying to make inquiry, too, Mr. Chairman.

Mr. BLATNIK. Please proceed.

Mr. MARTIN. I simply wanted to say that the program I have tried—

Mr. DONDERO. A little louder.

Mr. MARTIN. I simply wanted to say that the program I have suggested here appears to me to offer the course for the prompt development of the power potential of the Niagara River in a manner which will be consistent with Federal and State laws and will avoid possible litigation.

Thank you very much, sir.

Mr. BUSH. Mr. Chairman.

Mr. DONDERO. Mr. Chairman.

Mr. JONES. Mr. Chairman.

Mr. BLATNIK. We are reversing the process and that is the same complaint he has given this morning.

Mr. DONDERO. I will yield.

Mr. BLATNIK. Mr. Bush.

Mr. BUSH. Mr. Martin, there must have been something more than what you have stated to this committee that caused you to change your position here as far as operating as a private enterprise and willing to go along with public power. Now, tell us what that is.

Mr. MARTIN. Frankly, sir, I have tried to tell you every consideration that came into the basket in the final decision. I think that possibly one of the most impelling circumstances is the need for immediate resolution of this problem, the replacement of lost capacity, our desire to make that electricity available to the people that we serve.

Mr. BUSH. But when you do that, do you realize that you are putting every other private operation on the spot, that they can come in and ask three States or the Federal Government to do the same thing, and then what has occurred through the years in building up private enterprise on your public utility electric power project is just gone by the wind?

Mr. MARTIN. No; I beg your pardon, sir. We are not asking to have the New York Power Authority make this development as such. We can do it.

Mr. BUSH. You are agreeing to it, though.

Mr. MARTIN. Yes. That is the point I want to make. Now, under our New York law they have been authorized to do it, just as they are building the St. Lawrence project. I personally certainly am not in favor of a State development or a Federal development or anything but a private enterprise development.

Mr. BUSH. You are lending encouragement to it.

Mr. MARTIN. Whatever my statement stands for is what is there; you are quite right.

Mr. BLATNIK. Mr. Baldwin.

Mr. BALDWIN. I do not believe I have any questions, Mr. Chairman.

Mr. BLATNIK. Mr. Dondero.

Mr. DONDERO. I would like to be heard here sometime.

Mr. BLATNIK. All right, Mr. Dondero.

Mr. DONDERO. Mr. Martin, let us, in a minute, survey the situation as we face it today. Under the present situation the State of New York, through its power authority, has been authorized by the State of New York to develop this power at Niagara; is that correct?

Mr. MARTIN. Yes, sir.

Mr. DONDERO. If you seek a license to continue the franchise which you now possess, to what body would you have to appeal or apply to for such a license?

Mr. MARTIN. Absent the treaty reservation, we would appeal to the Federal Power Commission to make this additional development, because that would be the licensing agency under the Federal Power Act.

Mr. JONES. Will you restate your question? I did not hear it, Mr. Dondero.

Mr. DONDERO. To whom would they have to apply for a continuation of their franchise.

Mr. MARTIN. By "franchise" I assume you mean our waterpower development at the falls?

Mr. DONDERO. That is right; and development of additional power.

Mr. MARTIN. Of additional power.

Mr. JONES. And your answer was what, now?

Mr. MARTIN. I said, absent the treaty reservation, the Senate rider attached to the 1950 treaty, we would go direct to the Federal Power Commission which has the authority under the Federal Power Act to grant a license for hydroelectric development, and there is where we would have made our case.

Mr. JONES. And what—

Mr. DONDERO. Just a minute.

Mr. BLATNIK. Just a moment.

Mr. DONDERO. Suppose that the time has arrived where you are compelled to make that application; is there anything in Federal or State law which would compel the Federal Power Commission to yield to a State or other political subdivision in preference to private enterprise?

Mr. MARTIN. As I understand it, Congressman Dondero, the Federal Power Act, since 1920, has stated that where rival applicants propose the same plan of development, a State or an agency of the State or a municipal subdivision automatically gets a preference as against the application of a private utility to make the same development.

Mr. DONDERO. Now, from Mr. Moses' statement, which was read to us this forenoon, here is a short paragraph:

The Niagara Mohawk Co.—
which you represent—

no longer has any prospect of obtaining through action of Congress—

I do not know where they get authority to say that—

license to develop additional power from the water available in New York through the international treaty, and the remedial work recently constructed, even if such a license were granted, the State—

meaning the State of New York—

which owns this water will have to challenge it in the courts.

Are you aware of that statement?

Mr. MARTIN. Very completely and fully aware of it, sir.

Mr. DONDERO. And does that set forth the situation as you see it today?

Mr. MARTIN. It does. That sets forth the situation as I see it and which I tried to say very briefly puts us in a box as respects the existing Federal law, the Federal Power Act, and so forth, the existing State law, whether I like it or not.

Mr. DONDERO. Now, if no license or franchise was granted to you beyond 1971, would that mean that you were out of business in the State of New York?

Mr. MARTIN. Well, it does not mean that we are out of business in the State of New York in the conduct of our general electric business. It does mean that we would no longer have the use of the Schoellkopf plant which is now licensed, assuming it were still in existence or repaired. We would have only the alternative of turning it over to the Federal Government at its election under the formula that is set forth in the Federal Power Act.

Mr. DONDERO. If there is any change in the position that the companies have taken heretofore than what is taken now, you are doing it based upon the situation as it exists today and perhaps did not exist 3 years ago when this matter was before this committee then?

Mr. MARTIN. I believe that is a correct statement, sir.

Mr. DONDERO. Now, do you think that you can come to agreement with the State of New York?

Mr. MARTIN. I believe—

Mr. DONDERO. Can you come to an agreement with the State of New York Power Authority?

Mr. MARTIN. I believe that we can. And the matters at difference—not "difference," but the matters of agreement to be reached are those that I tried to describe in my statement.

Mr. DONDERO. Do you think it can be done within a reasonable length of time?

Mr. MARTIN. I do, sir.

Mr. DONDERO. How long?

Mr. MARTIN. I would assume by Monday or some such time.

Mr. DONDERO. A short period of time?

Mr. MARTIN. I am trying to suggest a short period of time.

Mr. DONDERO. Now, there has been something said here today that the other 3 or 4 companies are not present in this room. I do not know anything about whether they have been invited or not. Is there anything that you can tell this committee as to why they may not be interested in this matter?

Mr. MARTIN. No. I do not know that they are interested in this matter. It is a matter of general interest to the companies serving upstate New York, particularly within economic distance of the project. So far as I know, the only formal notices that were sent came to the Mohawk Niagara Corp. because of the fact that it is the owner of the properties which are particularly and directly related to the subject matter here.

Mr. BALDWIN. Will the gentleman yield?

Mr. DONDERO. Do the other companies who have associated—

Mr. MARTIN. I cannot hear you, sir.

Mr. DONDERO. Do the other companies who have associated themselves together for the purpose of developing this additional power, do they now produce and sell any hydroelectric power from Niagara?

Mr. MARTIN. No, sir. Niagara Mohawk is the only company that has or has had plants on the Niagara River.

Mr. BALDWIN. Will the gentleman yield, Mr. Dondero?

Mr. DONDERO. Just a moment. Is their power developed by steam?

Mr. MARTIN. Partly steam and partly hydro, but located elsewhere within the State, of course.

Mr. DONDERO. That is, the hydro?

Mr. MARTIN. Yes, sir.

Mr. DONDERO. Yes.

Mr. BALDWIN. I was going to say as far as the question of whether the other four companies have been invited or not we certainly should get an answer by asking the staff of this committee whether invitations were sent them.

Mr. BUCKLEY. I can answer that, Mr. Chairman. Mr. Machold is the president of the Mohawk Co., and every time Mr. Machold appeared before this committee on hydroelectric power for the State of New York he represented the four other companies, and the four other companies know exactly what is going on here today.

Mr. BALDWIN. My question was: Was invitation extended to the companies?

Mr. BLATNIK. There was no request for them, either if they were in opposition or—

Mr. GENTRY. Now, their representatives were here before.

Mr. BUCKLEY. They never at any time appeared individually.

Mr. BLATNIK. Let me read from the hearings of last year—

Mr. JONES. This seems to be a moot question as to whether or not the witness has testified he represented the group and the other companies know that the hearing is on.

Mr. BECKER. I raise a point of order, Mr. Chairman.

Mr. BLATNIK. I yield to Mr. Baldwin now.

Mr. BALDWIN. My question has not been answered as to whether the committee has extended an invitation to the other four companies. My question has not yet been answered.

Mr. BLATNIK. No invitation was ever extended to them; there was no reason for them to come and no request received from them.

Mr. BECKER. Point of order.

Mr. BLATNIK. There is a point of order.

Mr. BECKER. My point of order is simply this: that this is an entirely different question than the hearings last year. It is an entirely different bill. Secondly, the gentleman has not yet answered the question correctly—not intentionally so, Mr. Martin—but the Rochester Gas & Electric and other companies are greatly concerned about this legislation because of the preference clause. It is my understanding, sir, that the Rochester Gas & Electric Co. would get out of this plant under the lack of preference clauses 100,000—

Mr. MARTIN. Kilowatts.

Mr. BECKER. Kilowatts from the Niagara power, but with the preference clause in this legislation, they would not get it; is that correct, Mr. Martin?

Mr. MARTIN. Congressman Becker, I cannot tell you what anyone would get with or without the preference clauses. The existence of the preference clauses, I have tried to say fairly and honestly to this committee, gives the private utility companies great concern, and for that reason I made the recommendation that I did with respect to the elimination of the Federal preference clause.

Mr. BECKER. Point of order: This question is not the same question. That is all. I have no intention of delaying this. I would like to get it over with just as fast as possible. It is not the same legislation; that was the point of order I wanted to raise.

Mr. BUCKLEY. And do you think, Mr. Becker, that if the consolidated Edison Co. were to vote for this that they would not have a representative down here?

Mr. SCHERER. I agree they would have someone down here. That is the reason why I say we are just wasting time.

Mr. JONES. Point of order, Mr. Chairman.

Mr. BLATNIK. Mr. McGregor.

Mr. MCGREGOR. Mr. Chairman, I just wanted to call attention to the fact; I think that our distinguished chairman from New York said the other companies were in accord and knew what was being said here or being done here and they were in accord with the general policy; is that correct, Congressman Buckley?

Mr. BUCKLEY. Well, they know what is going on. They are in accord with what is going on. Mr. Machold happens to be president of the Mohawk Co. and he always represented the other four companies.

Mr. MCGREGOR. Well, that was the question I wanted to raise, because this thing to me is taking a very peculiar aroma, if I may be so bold to say about it, and I am just wondering how far, if the deal is being made here, how far this committee or some other committee of Congress should go into it.

Mr. JONES. Mr. Chairman, I would like to file on behalf of the witness a plea of *res inter alios actor*, that is, the plea that is raised among others is no concern of ours. Now, this is a representative of the Mohawk group. He is here to testify now. Why should we presume doubts on his authority to speak for those companies. So therefore I think regular order would insist—

Mr. GENTRY. I do not think this gentleman has ever professed to speak for the other companies.

Mr. MCGREGOR. Certainly I am not referring to the statement of this gentleman; I am giving my opinion on any rule my distinguished friend from Alabama wants to bring up.

Mr. JONES. Any doubt as to his authority can remain in your mind without jeopardizing his right to speak on behalf of the companies.

Mr. BLATNIK. Proceed with the question, Mr. McGregor.

Mr. DONDERO. Mr. Chairman, what language was that you were talking in?

Mr. JONES. I will tell you this, if you were employing me as a lawyer, it would cost you a lot of money to find out.

Mr. MCGREGOR. Here is the thing that I am trying to get at. It was my understanding that this preference clause was very much in controversy, and that was my thought until you started to make the statements that you have that you were running short of time on your lease, and so forth, and the impression was left with me that things seemingly have been settled. But I would like to call your attention that this statement made by your attorney general that if the preference clause were in there—and I am not saying whether it should go out or not; that is what I have been trying to find out today—but if it was left in there, in behalf of the State of New York he would have to take it to the courts. And in the statements made by Mr. Moses when he said: "In spite of the possible conflict with our State law and difficulties in financing." Moses is evidently recognizing that. Well, how are you going to help the situation by following the procedure that you suggest? You leave the preference clause in—

Mr. MARTIN. No.

Mr. MCGREGOR. And you are going to court.

Mr. MARTIN. No, sir. I have been completely misunderstood, Congressman McGregor. My suggestion was the complete elimination of the Federal preference clause from the so-called Lehman bill and the substitution in lieu thereof—

Mr. DONDERO. A little louder.

Mr. MARTIN. Of a very simple statement that preference would be afforded to the defense agencies of the United States. And I think that has been agreed by every advocate of legislation with respect to the Niagara River power. I further suggested that for power to be distributed in the State of New York where the project is located that the disposition be governed by the laws of that State to the extent that there is any preference in those laws.

Now, it so happens that our authority act gives a preference to the benefits of Niagara Power Corp. if the State makes the development to residents and farm consumers as a group.

Mr. MCGREGOR. In the State of New York.

Mr. MARTIN. Yes, sir. And I should have added by whomsoever served. In other words, the preference runs to a class, and whether they buy from a private, public, or what have you, they are the fellows that are taking the cream off the top or the bottom. I further suggested as respects the disposition of Niagara power in other States, if there is an allocation of a portion of that power to other States, that the disposition of that power be governed by the laws of the State in which it is to be distributed.

Mr. MCGREGOR. Now, right there, if I may call your attention to page 3, line 3—and I read because I am interested, because some of my people in Ohio, and I think a number in Pennsylvania feel that Pennsylvania is going to get some of this and Ohio is going to get some of this, although previous testimony bears the statement out that 90 or 95 percent of it will be consumed in New York—but I refer you to page 3, line 14:

The licensee shall make a reasonable portion of the project power available for use within economic transmission distance in neighboring States.

Now, the man, in my opinion—and if I am wrong, I want you to tell me—to make the whole determination whether or not it is economically feasible or sound to transmit the electricity to Ohio would be the Power Authority of New York; is that correct?

Mr. MARTIN. I do not agree, Congressman McGregor. Under the language of the Lehman bill—and I will point out my disagreement with the particular section to which you now refer—the final arbiter of that allocation would be the Federal Power Commission. And if there is any doubt about the word “may,” I certainly think that this portion of the bill should say “shall.” So if there is a disagreement in the initial allocation of blocks of power between the States, that matter should be resolved by an appropriate Federal agency, and I think that the existing agency best equipped to make that allocation would be the Federal Power Commission.

Mr. MCGREGOR. Now, we are getting wires and letters from our constituents to make no changes in the existing law or the existing bill.

Mr. MARTIN. Yes, sir.

Mr. MCGREGOR. And then I read on, bringing out what you say:

In the event of a disagreement between a licensee and a power marketing agency of any such States, the Federal Power Commission may—

Now, the distinguished, very prominent attorney who was in here this morning and was a witness for quite some time tried to tell this committee, or at least the member from Ohio, that there was not any difference between “may” or “shall.” Now, I personally feel there is a tremendous difference between “may” and “shall.” Are you of that same accord?

Mr. MARTIN. Yes, sir. And I have said earlier that if there is any misunderstanding whatsoever, the bill should clearly indicate that the Federal Power Commission shall—not only have the power to, but the obligation to—supervise the fair allocation of blocks of this Niagara power between the States. If Ohio asks for a block of the power and

there is a disagreement on how much should go to Ohio, then it should be the function of the Federal Power Commission to consider the evidence and make a final binding determination.

Mr. MCGREGOR. I appreciate that very much, Mr. Martin, because our people are vitally interested in it.

Now, I would like to raise this question. There comes up "the feasible difference." Now, Mr. Moses when he testified here before, upon direct inquiry, said that "the power market of western New York State will form the principal market area for power from Niagara development."

Then I would like to ask you this question: In your opinion—and maybe I should ask someone else—in your opinion, would Ohio be in a feasible market and could we transport the power from this developing project to Ohio that might be in competition with the price that we have there, recognizing that Ohio produces electricity at probably what might be considered a low ton cost of coal; in your opinion, would they have to use boosters from the area where this development is in order to get into central Ohio?

Mr. MARTIN. Up until the point you said "central Ohio," Congressman, I was about to say I think there is a very reasonable possibility that some portion of this power could be economically transmitted to Ohio in competition with your relatively low thermal-cost-produced electricity.

Mr. MCGREGOR. You would not think that we would lose too much by transmission in order to get electricity?

Mr. MARTIN. To Ohio. Now, I do not want to be evasive or quibble at all. I am trying to be completely honest with you. Just how far into Ohio that economy would go, I cannot very well speculate. But I know geographically that the northeast corner or area of Ohio is well within a 150-mile range of Niagara Falls, N. Y.

Mr. MCGREGOR. But if we get a much longer distance than that we are running up against booster pumps?

Mr. MARTIN. I think anything beyond that you get into the question of transmission losses as against the probable marginal economy of that purchased power with the transmission losses to date against your low-cost coal-produced power in various sections of Ohio.

Understand, I am not an engineering expert. I am trying to give you my best answer.

Mr. MCGREGOR. That would be approximately in a 150-mile area?

Mr. MARTIN. That has been my general approach to that question, sir.

Mr. MCGREGOR. Thank you very much.

Mr. JONES. Mr. Chairman, I have a couple of questions.

Mr. BLATNIK. Mr. Jones.

Mr. JONES. I would like to ask Mr. Martin a question before he leaves. Mr. Martin, with respect to an inquiry made by Mr. Gentry as to the amount of taxes that your group pays for operation of your business, who establishes the rates to be charged by your companies? Who establishes the rates? Do you go before the—

Mr. MARTIN. The rates for the charges we make for electric service—

Mr. JONES. Yes, sir.

Mr. MARTIN. Are completely subject, so far as local distribution is concerned, to the Public Service Commission of the State of New York under our New York public service law.

Mr. JONES. Now, when you file an application before the New York agency for a fixing of a rate, do you include as one of the factors of cost taxes, property and income taxes and franchise taxes, in establishing a rate to the customers?

Mr. MARTIN. We include in our presentation of the cost of service in order to support a proposed rate—

Mr. JONES. Yes, sir.

Mr. MARTIN. All out of the taxes we paid to whatsoever taxing body may be involved, so long as those taxes relate directly to the rendition of electric service.

Mr. JONES. Right. Now, so taxes are an element to be established in the charging of rates to the various categories and classes of users; is that correct, sir?

Mr. MARTIN. Yes, sir.

Mr. JONES. So, actually, as to the companies that you represent, the taxes are paid by the users of electricity and not the company; is that not so?

Mr. MARTIN. I have a somewhat different answer to that statement.

Mr. BECKER. So is everything.

Mr. MARTIN. Congressman Jones, the taxes that our company pays are paid out of the funds on hand which are derived in the main from the revenues we receive from rendering electric service.

Mr. JONES. And so the bill the consumer pays includes the tax factor in establishing that rate?

Mr. SCHERER. When those consumers do not pay it out there, we pay it in Ohio; that is what I am complaining of.

Mr. JONES. The situation is analagous to when you go down to the filling station with your automobile and buy a gallon of gasoline and you pay 6 cents local tax and then 2 cents Federal tax; you would not contend that the fellow who sold you the gasoline is paying the tax, would you?

Mr. MARTIN. In that particular case I think you have a factual difference. Now, I am not too sure of my ground here, so forgive me. But it is my understanding that the gas station fellow does not take in that tax in his gross revenues. He is just a collector. He puts that right aside in a special pile. It does not enter into his direct cost of operation as such.

Mr. JONES. When you submit to the New York Public Service Commission your estimates or ask for a rate to be established, do you identify a portion of cost of operation going into taxes?

Mr. MARTIN. Yes, sir. I thought I answered that before, sir.

Mr. JONES. And that then becomes a charge upon the consumer who purchases electricity from your company?

Mr. MARTIN. The charge the consumer pays us for the service we render—may I finish my answer, sir?

Mr. JONES. Yes, sir.

Mr. MARTIN. The charge which the consumer pays us for the electric service we render is predicated on the cost of our doing business, which includes specifically all of the taxes related to the rendition of the electric business.

Mr. JONES. Just as much so as when you put in the ratemaking proceedings the taxes that you pay on a vehicle operated by the company—that becomes a part of the rate the consumer pays?

Mr. SCHERER. Will you yield a minute, Bob?

Mr. JONES. Just one more question.

Mr. SCHERER. It is right on this point.

Mr. JONES. All right.

Mr. SCHERER. But if the New York Power Authority should develop and sell the power in this area, then the consumers that Mr. Jones talks about would not have to pay those taxes, would they?

Mr. MARTIN. No; because their cost of doing business would not be burdened with those taxes.

Mr. SCHERER. And then the rest of the consumers of electricity throughout the country are going to have to make up that difference and they are going to get cheaper power in the New York area like they get it in the TVA valley, at the expense of the consumers of electricity in other parts of the country. Is that not a fact?

Mr. MARTIN. Any State development that is tax free naturally has that difference in advantage.

Mr. JONES. All right. I am glad that Mr. Scherer brought that point up, because that naturally would have to lead me to another field of inquiry. How much tax amortization have your companies combined received since 1950?

Mr. MARTIN. I do not carry in my head, sir, the total for the five companies, and while I—

Mr. JONES. Approximately.

Mr. MARTIN. While I do not think it is relevant here, I can give you such figures I recall with respect to Niagara Mohawk Power Co.

Mr. JONES. Yes, sir.

Mr. MARTIN. We have received necessity certificates covering approximately \$32 million of utility facilities, and you figure 52 percent of that.

Mr. JONES. Yes, sir.

Mr. MARTIN. Assuming no change in the rate to get the adjustment in our taxes that results from the acceptance of those certificates. Is that a fair answer, sir?

Mr. JONES. Yes, sir. That is exactly what I wanted; because the benefits that you enjoy are being paid for by the people in Alabama, in the TVA area, so that you can enjoy the tax amortization—

Mr. MARTIN. With that I disagree, sir. I think this is a little far from the Niagara River, if you do not mind my observation.

Mr. JONES. I beg your pardon?

Mr. MARTIN. I think this is a little far from the Niagara River.

Mr. JONES. I think the analogy is on all fours because you are enjoying a tax benefit. Now, when you get tax amortization and go before the Federal Power for ratemaking powers, does it take into account the tax you are paying in establishing a rate?

Mr. MARTIN. My company does not go before the Federal Power Commission for ratemaking.

Mr. JONES. Does the State of New York take into account, its public service body take into account tax amortizations you received by virtue of your tax writeoff?

Mr. MARTIN. That is a factor they take into consideration in determining the rates that we can charge to cover the cost of service.

Mr. JONES. So you are saying to the committee that when you get a tax amortization you pass it on to your consumers?

Mr. MARTIN. I did not say that, sir.

Mr. JONES. I thought you said that the Public Service Commission of the State of New York took it into account in establishing a rate.

Mr. MARTIN. I did say that, and I do not want to get into the very, let's say, controversial technique of determining rates. Actually, so far as I know, the New York commission has not specifically dealt with the treatment of, let us call it, tax savings arising from necessity certificates for a New York company in a rate proceeding. And, not being evasive, I have and know of no precedent or decision to which I can point.

Mr. JONES. Now, the final question, Mr. Martin: Would you prefer the bill with a preference clause in it or no bill at all?

Mr. MARTIN. I have tried to suggest to this committee, Congressman Jones, in all seriousness that we desire legislation consistent with the modifications, if you want to call it that, that I have suggested here in order to permit this development. I think that we have made a complete and clear statement of where we stand in the light of all of the existing considerations, physical, legal, threatened litigation, or what have you.

Mr. JONES. Yes. Well, I appreciate that.

Mr. MARTIN. And I stand on the statement I have made, and what you are asking me now is will I give here, there or elsewhere, and my answer is—

Mr. JONES. I just asked you a hypothetical question and the assumption was that you had the choice of two, which would you take, no bill at all or a bill with a preference clause?

Mr. SCHERER. You would take the fifth amendment on that question. [Laughter.]

Mr. MARTIN. I plead it, sir.

Mr. JONES. Well, that is common around here these days.

Mr. MARTIN. I think it is forgivable in this instance.

Mr. DONDERO. Are you through?

Mr. GENTRY. Mr. Chairman.

Mr. JONES. Oh, you do not want to answer the question?

Mr. GENTRY. Will you state that question again, Mr. Jones?

Mr. JONES. Well, would you prefer no bill at all or the bill with a preference clause in it?

Mr. MARTIN. I can only answer your question indirectly by saying I prefer legislation that gives effect to the preference basis that I have outlined in my statement this afternoon, and I do not think it is incumbent upon me to say, if you are about to be shot, what choice do you want.

Mr. JONES. Well, now, this was the choice I was handing to you. You know when you are challenged to a duel, then the person that is challenged has the choice of weapons; and so I was offering you that choice of which weapon you preferred. Thank you. That is all I wanted.

Mr. GENTRY. Mr. Chairman.

Mr. BLATNIK. Mr. Martin, may I ask this question on the same discussion of the reference clause: In asking that you be assured a block of power equivalent to that in which you are operating your 20,000 cubic feet per second, to be assured an equivalent amount, should the New York Power Authority be given license to proceed with their own plans, would that not be a preference for your company?

Mr. MARTIN. No; I do not so consider it, sir. I think that is a fair evaluation of the physical situation which results from the destruction of our Schoellkopf plant or the substantial destruction of the plant which, per se, enables a consideration of the use of all of the water available for power purposes at what we would call the more efficient head.

Mr. BLATNIK. Yes; but this equivalent bloc of power would be assured to you for the remaining life of your license, which is 15 years, and that is more than a reasonable request; but to ask for a 35-year extension beyond that, in my opinion, would certainly be a preferential treatment which you seek to deny to other prospective users of power.

Mr. MARTIN. I tried to point out, Congressman Blatnik, that the initial term of our license for the Schoellkopf plant expires by its terms in 1971, but we have the opportunity for renewal as against the so-called recapture or the election by the Federal Government under the Federal Power Act to buy that plant, which is still in existence, of course. And that is a factor that has entered into the representations that I have made here.

Mr. BLATNIK. Mr. Martin, are you speaking of rate structures and determination of those rates? Since the collapse of your Schoellkopf plant the temporary arrangement under which you are now furnishing power to your customers, primarily industry, have you changed the rates at all, or are they the same; are they higher or lower?

Mr. MARTIN. It so happens, Congressman Blatnik, that in our rate schedules for those 25-cycle industrial customers who are most primarily affected by the loss of the Schoellkopf production, we have a rate specified for what I would call substitute or replacement power to the hydro power that came from that Schoellkopf station. That very obviously is substantially higher than the rate we were charging for the Schoellkopf hydro power, since its source necessarily is from our steam-electric generating plants and other purchase sources. We are working as diligently as we can and, believe me, it is not an easy problem to solve, to come out with a new rate for those customers in lieu of the hydro rate which we can make available to them for a minimum period of 3 years. And I am talking again of this 25-cycle industrial power. So that we can give them a power rate that will let them continue their operations without too much economic dislocation as against the day when new hydroelectric developments will make available the lower cost power, and we are working very hard and earnestly at that.

I personally have been in conference with a number of those customers. They have been sympathetic and helpful, but, of course, you can only pay so much and operate at a profit. So that closes the problem.

But I think I said earlier that we believe we are able to solve it and to provide the capacity, the 25-cycle capacity, that they need at a price that is in, let's call it, the competitive range.

I should point out to you, in elaboration of that answer, Congressman, that some of these industrial customers at Niagara Falls have been purchasing substantial blocs of power which are primarily steam-source power at the rate which we are charging in this interim for the substitute for the lost hydropower.

Mr. BLATNIK. Those customers are industries with whom you have discussed these new stories; some have been threatening to leave because of the increase in the power rates which makes it unprofitable for them to continue to operate; is that it?

Mr. MARTIN. There have been, let us call it, scare stories of that character. I believe that I can honestly assure this committee that the customers with whom I have discussed the problem have taken the matter very realistically. They realize that you cannot produce the silk purse from what is left of the sow's ear overnight, and that they are going to have to absorb something. We are trying to work it out to absorb a little bit and still meet our obligations and still grow at the same time. I do not think there is any panic or anything else like that in Niagara Falls industry. Those people have been with us and very helpful, and I am personally certain, and I am personally responsible in our company for that end of it, that we are going to work it out for that later.

Mr. BLATNIK. Thank you, Mr. Martin. Any questions?

Mr. GENTRY. Yes.

Mr. BLATNIK. Mr. Gentry.

Mr. GENTRY. Mr. Martin, I want to find out if you and I agree basically and fundamentally on this question. We did not a few minutes ago. Do you believe that these new people representing the Public Authority of the State of New York can do the work at Niagara Falls, generate power and administer the company more efficiently?

Mr. MARTIN. I do not, sir.

Mr. GENTRY. You do not believe they can?

Mr. MARTIN. No, sir.

Mr. SCHERER. Mr. Gentry, will you yield?

Mr. GENTRY. Just one second; I will give it to you in just 1 minute.

Do you believe, Mr. Martin, that the Federal Government permitting public power to be generated is the commission of an injustice on the great majority of electric power users in the country, all those using private power?

Mr. MARTIN. It is a discrimination against them.

Mr. GENTRY. Well, is not a discrimination an injustice?

Mr. MARTIN. I think so.

Mr. GENTRY. Yes, sir. Then why are you recommending that we do that?

Mr. MARTIN. Well, I have tried to explain earlier, sir, the sum of all the considerations that led me to appear before this committee.

Mr. GENTRY. Yes. All right. Now, you have been speaking about your 1971, the ending or termination of your permit. Can you imagine by any stretch of the imagination, Mr. Martin, where you would lose any investment that you have there in 1971—could you just imagine any condition which you would lose that if you had something in operation there in 1971—

Mr. MARTIN. No, sir.

Mr. GENTRY (continuing). That you would not get your money for it or would not be allowed to continue 1 of the 2?

Mr. MARTIN. No; I do not.

Mr. GENTRY. It just would not happen, would it?

Mr. MARTIN. No.

Mr. GENTRY. That is what makes it very difficult for me to understand the reversal of our situation here. Now, Mr. Jones asked you a lot of questions about amortization and how you arrive at your rates, and so forth. You arrive at them mainly because of the laws passed by Mr. Jones that makes you pay 52 percent of your profits to the Federal Government and the laws passed by the States and the cities and the counties that make you pay taxes to them. That is the way you arrive at them; is it not?

Mr. MARTIN. That is certainly a very important element.

Mr. GENTRY. Is it identically the same laws that govern every other corporation in the United States?

Mr. MARTIN. Yes.

Mr. GENTRY. All of whom pay 52 percent of profits to the Federal Government and pay taxes, everyone, taxes to the States, to the counties, to the cities, and to the rural districts; is that not correct?

Mr. MARTIN. Yes, sir.

Mr. GENTRY. There is no bug under the chip about that; that is the private-enterprise system of Government that prevails in this country. And the only question here is whether we are going to change it and subvert it and go into a double operation of nothing more or less than electric power without anything else being involved in it, irrigation, navigation, flood control, or anything else; is that not correct?

Mr. MARTIN. That is right.

Mr. GENTRY. That is all. I yielded to Mr. Scherer.

Mr. SCHERER. Go ahead. You covered it.

Mr. DONDERO. Mr. Chairman.

Mr. BLATNIK. Mr. Dondero.

Mr. DONDERO. I want to make this comment. Following Mr. Jones' questioning of you, do you know of any segment of American business or industry that can operate on any different basis than what you have just testified to and that included in your cost or overhead expense, is every item of taxes which you must pay?

Mr. MARTIN. You have to do it to stay in business, sir.

Mr. DONDERO. Why, of course. And if my good friend's philosophy was expanded, who would pay taxes to run the Government of the United States or any other State or country?

Mr. JONES. Now that my name has been mentioned, that is my business. Now, Mr. Martin, let me ask you this question—

Mr. MARTIN. You realize, sir, this is at my expense.

Mr. JONES. Of course I appreciate the fine observation that my good friends, Mr. Dondero and Mr. Gentry, have made about the so-called private-enterprise system to which you and I are wedded.

Mr. GENTRY. I object.

Mr. JONES. Do you know whether or not a law or decision that says that the Standard Oil Company of New Jersey is guaranteed a reasonable return on their investment—

Mr. MARTIN. I do not know of any such law with respect to the Standard Oil Company of New Jersey.

Mr. GENTRY. Will the gentleman yield to me for a second; I have a very pregnant question.

Mr. JONES. Well, let it be born.

Mr. GENTRY. Do you know whether or not the laws of this country permit the private utilities to make any amount of money they can, or are they held within bounds, around 6 percent or less?

Mr. MARTIN. I was about to say, Congressman Gentry, that I—

Mr. DONDERO. A little louder.

Mr. MARTIN. I have personally experienced in the State of New York a defeat in a rate proceeding where I tried to get some more money, and I am the only lawyer that appears for the utility that does not seem to know how to get a higher rate.

Mr. GENTRY. Would you not like to operate like the Standard Oil Co.?

Mr. MARTIN. I would like to make the amount of money that they do.

Mr. JONES. Now, Mr. Martin, you would not want to propose to this committee that the State of New York abolish the right to make a 6-percent guaranty on your investment, would you?

Mr. MARTIN. I would not propose to abolish regulation in the State of New York, but I take issue with you, sir, when you insert the suggestion that we are guaranteed any kind of a return.

Mr. JONES. Well, the Supreme Court and the courts of State jurisdiction have all held in fixing a rate that the utility is entitled to a reasonable return.

Mr. MARTIN. That is entirely different than the way you put the statement earlier, if I understood you.

Mr. JONES. Now, that means that every utility is guaranteed a return on their investment, is that not correct, sir?

Mr. MARTIN. No, sir.

Mr. BECKER. Mr. Chairman.

Mr. JONES. Well, what do you do at a rate hearing, then? You secure and are entitled by law to a reasonable return on your investment.

Mr. MARTIN. The New York law, as I understand it, governing rates for electric companies simply says that a company is entitled to rates permitting a reasonable return on the capital investment; but there are always situations—and we personally experienced it—where considerations other than the right to file a specific rate precluded the charging of such an amount.

Mr. JONES. Oh, I understand that. That is just as much a part of the rate mechanism.

Mr. GENTRY. I can answer the question for the gentleman.

Mr. JONES. As determining any other fact in connection with the rate proposal.

Mr. GENTRY. If the gentleman permits me, I can answer his question. They allow you in this country, all over the country, to make approximately 6 percent. They have made approximately 5 percent in all history. They have not averaged 5 percent in this country; but they could make 6 if they could always get the rates adjusted and keep them up.

Mr. JONES. Of course the utilities are not going to come forward and advocate that they are not giving an adequate return on their investment. That would be heresy, and of course it would be a mistaken idea for the simple reason that this company and every other utility is operating a public business regulated against its franchise from the people, the government of the State, a political subdivision. They are doing what the people themselves could do for themselves; so, therefore, it is a public business requiring scrutiny from the agencies of government to have that responsibility to see to it that it is carried on properly and that the company make a reasonable amount on their operation and investment.

Mr. SCHERER. But it is going to cost the consumers in upper New York a lot more than if brother Moses operates this power facility than if the private utilities do, because brother Moses is a superlative egotist as demonstrated by his testimony here 2 years ago.

Mr. JONES. Mr. Moses, I cannot defend him, because I do not know him personally, but I am quite sure his egotism will not be a rate factor to be considered by the State of New York.

Mr. BUCKLEY. Mr. Chairman.

Mr. BLATNIK. Mr. Buckley.

Mr. BUCKLEY. I would like to say for Mr. Scherer's benefit that Mr. Moses is only 1 of the 5 members of this power commission, and he is a Republican. He ran for Governor of the State of New York on the Republican ticket and was defeated.

Mr. SCHERER. Did he win?

Mr. BUCKLEY. He lost. And today the other members are Republicans and there is only one Democrat. And that is the trouble with the Democrats; they leave Republicans in responsible positions.

Mr. GENTRY. Will the gentleman yield?

Mr. BUCKLEY. Yes.

Mr. GENTRY. I would just like to ask the chairman if anybody else ever does any talking on this point except Mr. Moses when they meet?

Mr. SCHERER. No. And he demonstrated that here last year, and that is the reason he did not come this year to testify, because he lost more support than he gained by his testimony 2 years ago.

Mr. BLATNIK. Well, any more questions? That concludes the interrogation for today. The committee will resume in executive session at 10 a. m. tomorrow morning. The committee is adjourned.

(Whereupon, at 5:10 p. m., the hearing was recessed.)