AUTHORITY OF FPC TO LICENSE AND TAKE OVER HYDROELECTRIC PROJECTS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND POWER

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 12698, H.R. 12699

BILLS TO AMEND PART I OF THE FEDERAL POWER ACT TO CLARIFY THE MANNER IN WHICH THE LICENSING AUTHORITY OF THE COMMISSION AND THE RIGHT OF THE UNITED STATES TO TAKE OVER A PROJECT OR PROJECTS UPON OR AFTER THE EXPIRATION OF ANY LICENSE SHALL BE EXERCISED

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CONTENTS

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TUESDAY, JUNE 11, 1968

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

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

Mr. MACDONALD. The hearing will be in order.

Today the Subcommittee on Communications and Power is beginning hearings on H.R. 12698 by Mr. Staggers and H.R. 12699 which I introduced.

(H.R. 12698 and departmental reports follow:)

[H.R. 12698, 90th Cong., first sess.]

A BILL To amend part I of the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised

Whereas Federal Power Commission licenses for non-Federal hydroelectric projects will expire in increasing numbers; and

Whereas congressional consideration of each project upon the expiration of its license is no more feasible than congressional consideration of each initial license application; and

Whereas the Congress has delegated to the Federal Power Commission responsibility for initial licensing of non-Federal projects, subject to the Commission's duty to recommend to the Congress Federal development in lieu of non-Federal licensing in appropriate cases, and subject to the residual powers of the Congress; and

Whereas the Congress has delegated to the Federal Power Commission the power to issue a new license to the original licensee, or to a new licensee "if the United States does not, at the expiration of the original license, exercise its right to take over, maintain, and operate any project" but has not specified a procedure by which the United States would determine whether to take over a project; and

Whereas the Congress desires that the Federal Power Commission, after considering timely recommendations of other Federal agencies, shall initially identify those projects which would best be relicensed and those which would best be taken over; and

Whereas the Congress desires that all cases in which takeover is recommended by the Federal Power Commission or by another Federal agency be forwarded to it; and

Whereas, in cases where the Federal Power Commission decides in favor of relicensing, the Congress desires to establish a reasonable period of time in which other Federal agencies may present their case for takeover to the Congress before a relicensing order of the Federal Power Commission may become effective; and

Whereas Congress intended in enacting part I of the Federal Power Act that, upon the expiration of these licenses, the United States should have a further opportunity to determine whether the water power resources of the Nation were

being developed, improved, and utilized in a manner best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes, and to determine whether future development, improvement, and utilization of those resources in the public interest would be achieved most effectively by relicensing the project or projects on appropriate terms and conditions or by taking over the project or projects; and

Whereas the following amendments to part I of the Federal Power Act will permit the responsibilities for relicensing or Federal takeover to be exercised more effectively and efficiently and without undue disruption of the Nation's electric energy supply: Now therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Federal Power Act, as amended (16 U.S.C. 800), is amended by adding thereto the following new subsection:

"(c) Whenever, in the judgment of the Commission, the United States should exercise its right upon or after the expiration of any license to take over any project or projects for public purposes, the Commission shall not issue a new license to the original licensee or to a new licensee but shall submit its recommendation to Congress together with such information as it may consider appropriate."

SEC. 2. Section 14 of the Federal Power Act, as amended (16 U.S.C. 807), is amended by inserting "(a)" immediately preceding the first sentence thereof and by adding thereto the following new subsection:

"(b) No earlier than five years before the expiration of any license, the Commission shall entertain applications for a new license and decide them in a relicensing proceeding pursuant to the provisions of section 15. In any relicensing proceeding before the Commission any Federal department or agency may timely recommend, pursuant to such rules as the Commission shall prescribe, that the United States exercise its right to take over any project or projects. Thereafter, the Commission, if it does not itself recommend such action pursuant to the provisions of section 7(c) of this part, shall upon motion of such department or agency stay the effective date of any order issuing a license, except an order issuing an annual license in accordance with the proviso of section 15(a), until expiration of the next full Congress immediately following the Congress during which the Commission issued the order, after which period the stay shall terminate, unless terminated earlier upon motion of the department or agency requesting the stay or by action of Congress. The Commission shall notify the Congress of any stay granted pursuant to this subsection."

SEC. 3. Section 15 of the Federal Power Act, as amended (16 U.S.C. 808), is amended by inserting "(a)" immediately preceding the first sentence thereof and by adding thereto the following new subsections:

"(b) Notwithstanding the provisions of section 6 of this Act regarding the alteration of licenses, the Commission may, at any time after the issuance of any license under section 15(a) except an annual license, by order, after notice and opportunity for hearing, impose upon the licensee such further reasonable requirements as are not inconsistent with the other provisions of this Act."

"(c) In issuing any licenses under this section, except an annual license, the Commission, on its own motion or upon application of any licensee, person, State, municipality, or State commission, after notice to each State commission and licensee affected, and after opportunity for hearing, whenever it finds that in conformity with a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses all or part of any licensed project should no longer be used or adapted for use for power purposes, may license all or part of the project works for nonpower use. Licenses for nonpower use shall be issued on condition that any existing power facilities shall be removed or otherwise disposed of as directed by the Commission. A license for nonpower use shall be issued to a new licensee only on the condition that the new licensee shall, before taking possession of the facilities encompassed thereunder, pay such amount and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof. Any license for nonpower use shall be a temporary license. Whenever, in the judgment of the Commission, a State, municipality, interstate agency, or another Federal agency is authorized and willing to assume regulatory supervision of the lands and facilities included under the nonpower license and does so, the Commission shall

thereupon terminate the license. Consistent with the provisions of the Act of August 15, 1953 (67 Stat. 587), every licensee for nonpower use shall keep such accounts and file such annual and other periodic or special reports concerning the removal, alteration, nonpower use, or other disposition of any project works or parts thereof covered by the nonpower use license as the Commission may by rules and regulations or order prescribe as necessary or appropriate."

SEC. 4. Section 10(d) of the Federal Power Act, as amended (16 U.S.C. 803), is amended by adding at the end thereof the following: "For any licenses issued under section 15 hereof the amortization reserves shall be established and maintained from and after the effective date of the license."

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., January 24, 1968.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on H.R. 12698, a bill "To amend Part I of the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised."

The purpose of this bill is stated in its title.

H.R. 12698 is the same as the draft bill the Chairman of the Federal Power Commission transmitted to the Speaker of the House of Representatives with his letter of August 28, 1967, submitting his recommendations for improving procedures for processing expiring hydroelectric licenses.

The Bureau of the Budget recommends enactment of H.R. 12698, which is consistent with the Administration's objectives.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

FEDERAL POWER COMMISSION,
Washington, D.C., September 18, 1967.

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

DEAR MR. CHAIRMAN: This is to acknowledge your request of August 30, 1967, for comments on H.R. 12698 (Staggers), a bill to amend part I of the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised.

This bill is part of the Commission's legislative program.

Please consider our letter of August 28, 1967, transmitting the bill to the Speaker of the House of Representatives as our report. I enclose three copies of that transmittal letter.

I will be pleased to testify in detail in support of the bill at any time the Committee wishes.

Sincerely,

LEE C. WHITE, *Chairman.*

FEDERAL POWER COMMISSION,
Washington, D.C., August 28, 1967.

Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: We transmit herewith twenty copies of a draft bill to amend Part I of the Federal Power Act. The proposed amendments would provide Congressional guidance to the Commission in the processing of expiring hydroelectric licenses.

Prior to 1920, hydropower licenses were issued by individual Acts of Congress. Then Congress delegated to the Federal Power Commission the responsibility to license individual projects, other than those owned by the Federal Government, or to recommend Federal development to the Congress. The Congress limited the maximum term of any license issued by the Federal Power Commission to fifty years and thereby preserved for the Nation, acting through subsequent Congresses, a full opportunity to reevaluate the best use of each project upon expiration of the license. We now recommend that Congress fix appropriate procedures for the reevaluation of each project in light of contemporary and prospective public needs.

Under our present procedures, the Commission will refer to the Congress each project which is subject to the Federal take-over provisions of section 14 of the Federal Power Act. The draft bill would assign to the Federal Power Commission the primary responsibility for sorting out the licensed projects. It would relieve the Congress of the necessity of reviewing each individual project where Federal ownership was not recommended (although Congress could, of course, act on its own motion in any case) and would direct the Commission to undertake relicensing, for a term not to exceed fifty years, in all cases in which the Commission did not recommend recapture. We believe such legislation would strengthen the ability of the Commission and the Congress to best exercise the responsibilities imposed by sections 14 and 15 of the Act.

THE PRESENT PROCEDURE

Sections 14 and 15 of the Federal Power Act (16 U.S.C. 807, 808) provide for "recapture" by the United States of licensed hydroelectric projects or, in the alternative, for relicensing to the original licensee or to a new licensee. Projects owner by a state or a municipality[1] are exempt from recapture but not from relicensing. (Act of August 15, 1953, 67 Stat. 587, 16 U.S.C. 828b.) The decision to recepture must be made by Congress. If Congress recaptures a project, the licensee must be paid the "net investment of the licensee in the project or projects taken" within the meaning of the Federal Power Act (but in any event not more than the "fair value of the property taken") plus reasonable severance damages, if any, to the remaining electric facilities of the licensee. If Congress does not act before the expiration of the initial license, the Commission may issue a new license, but the Act does not expressly state the appropriate steps to be taken if the Congress has not expressed its intentions as to a given project. If the Congress has expressed its decision and the Commission does not issue a new license, the Act direct the Commission to issue a year-to-year license to the original licensee until the project is recaptured or relicensed. The Commission strongly believes that it should not relicense projects on a long-term basis until the Congress has made known its decision either through enactments concerning specific projects or through general legislation such as we propose today.

Under the present procedure, the recapture and relicensing determinations involve a three-fold process:

1. *Notice, Review and Recommendations to Congress.*—At the outset, the Commission informs the Congress and the public of all projects whose licenses will expire during the succeeding five years through notice given in the Commission's Annual Reports[2] to the Congress and in the Federal Register. This notice provides the following information: License expiration date; licensee's name; project number; type of principal project works licensed; location; and installed capacity. Starting five years before the license expiration date, the Commission undertakes a review of each project. As part of this review, the Commission solicits both the views of the licensee concerning its plans for future development and use of the project and the views on recapture and relicensing of Federal and State agencies which might have an interest in the recapture of the project. On the basis of information received and Commission staff studies, the Commission formulates its recommendations to the Congress and also transmits the views submitted to it by the licensee and by the interested Federal agencies. As the Commission noted in its letter of February 23, 1967 recommending against recapture of Project No. 2221 (the Ozark Beach Project of The Empire District

[1] As used in the Federal Power Act "municipality" means a city, county, irrigation district, drainage district, or other political subbdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, uilizing, or distributing power. (16 U.S.C. 796(7)).

[2] E.g., see FPC 46th Annual Report, 1966, at pp. 68–71. Licenses for 58 projects subject to recapture will expire during the calendar years 1967 through 1972.

Electric Company), this procedure does not give the Commission "the benefit of a relicensing proceeding, involving formal proposals and counter-proposals by the licensee, our staff, intervenors or others who might apply for a new license. New criteria or information uncovered in the course of such a proceeding might warrant further consideration of the recommendation reached" in the initial report. The Commission's procedure adopted in 1964 undertook to report to the Congress two years prior to the license expiration date. The Commission has fallen slightly behind in its time table in the cases of Project No. 2221 and Project No. 619 (the Bucks Creek Project of Pacific Gas and Electric Company).

2. *Recapture Determination.*—After the Congress receives the Commission's recommendations (or at an earlier time if the Congress so decides), the Legislative Branch must decide whether to adopt legislation to recapture a given project. Although there is no presently prescribed procedure, we assume each such matter will be the subject of legislation either on an individual or omnibus basis.

3. *Relicensing.*—In those cases where Congress foregoes its right to recapture a project, relicensing procedures must be undertaken by the Commission. Relicensing would involve public notice to all interested parties, an opportunity for the original licensee and others to seek a license, an opportunity for interested state and Federal agencies to review project performance and capabilities and to recommend changes, an opportunity for such agencies and for members of the public to intervene in formal relicensing proceedings, and opportunities for formal hearings, oral argument, and judicial review of the Commission's relicensing order. Upon relicensing the Commission would not only select which applicant was to receive the license; it would also determine the conditions upon which a new license should be issued and the term of years (not to exceed 50) for which the new license should stand. The existing provisions of the Federal Power Act assign the Commission the same powers to condition new licenses issued under section 15 as it has to condition original licenses issued under section 4.

Under section 7(a) of the Federal Power Act the Commission is instructed to give preference to applications by states and municipalities in issuing licenses to new licensees under section 15. Our General Counsel has advised us that this preference applies only after it has been determined that the original licensee should not receive a new license. In those instances where the original licensee and another applicant seek a new license for the same project, the Commission believes that the new license is to be issued to whichever applicant can best meet the standards of the Act. In those rare cases where the two applicants are equally matched the Commission believes that the new license should be issued to the original licensee so long as he can meet the standards of the Act at least as well as the other applicant.

Section 15 expressly provides that in issuing a new license either to the original licensee or a new licensee the Commission may impose "such terms and conditions as may be authorized or required" under the laws and regulations in existence at the time it issues the new license. If the new license is issued to a new licensee it must be conditioned upon payment to the original licensee of the same recapture price as the United States would have had to pay had Congress decided to recapture.

THE PROBLEM

The fundamental choices upon license termination fall into these categories:

(1) Where the United States has an interest which it will want to express either by recapture or by conditions in the relicense. This interest may arise out of the federal power marketing program, but more probably out of other water use programs, such as irrigation, fish, recreation, pollution control or domestic and industrial use.

(2) Where the United States is not interested and the licensee desires a relicense, but a state or local agency or private party has an interest which it will want to express either by contesting for the new license or by conditions in the relicense. The interest in question may be either essentially in power use or in non-power use.

(3) Where the licensee wants to abandon a project, but the public interest requires that it be maintained in whole or in part for non-power purposes.

(4) Where the United States, the licensee or any other potential licensee is not interested in the continued existence of the project.

The present three-fold procedure seems inadequate to secure the maximum advantages from the opportunities preserved by the Congress in 1920 for the

present and future generations of Americans. This procedure does not facilitate systematic consideration of all the alternatives available and tends to diffuse the attentions of interested parties whereas a more concentrated procedure might be more effective in bringing to bear all the conflicting interests at a single point in time.

THE PROPOSAL

We propose that the Congress enact legislation which would:

a. Accept the standard of section 10(a) of the Federal Power Act favoring that project which "will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes". This statutory standard is understood to call for optimum development and accommodation, where a conflict arises, in terms of resource values including: water quality control; flood control; recreation and aesthetic considerations; fish and wildlife conservation and enhancement; protection of improvements along the reservoir shore line; drinking water and other domestic, municipal and industrial uses; irrigation requirements; optimum power development and coordination with other systems in light of regional power needs; hydraulic coordination with other projects on the stream; and navigation.

b. Direct the FPC, after suitable hearings and upon receiving advice as appropriate from Federal, State and interstate agencies, and from other interested parties, to make the initial determination in all recapture and relicensing cases. The proposal would limit the time within which Federal agencies must provide their advice and recommendations to the FPC, to avoid excessive delays.

c. Direct the FPC to forward to Congress, with its recommendations, all cases in which it has recommended Federal recapture. Where the FPC decides to relicense and other Federal agencies recommend recapture, the proposal would direct the FPC to stay the effect of its relicensing decision for a specified maximcm time to allow those agencies to present their case to the Congress, and would further direct the FPC to notify Congress of all stays granted. We have included as a maximum stay period one full Congress immediately following the Congress during which the Commission issues a relicensing order. Alternative time periods, which the Congress may wish to consider, are a two-year period beginning on the last day of the calendar year in which the Commission issued the relicensing order, or a two-year period running from the date of such order. The latter period conforms to a similar two-year period now found in the further proviso of section 4(e) of the Act which requires the Commission to report to Congress whenever it finds that any Government dam may be advantageously used by the United States for public purposes in addition to navigation.

d. Authorize the FPC where it determines that an exclusively non-power use would best meet the standards of the Act to relicense a project which was initially subject to FPC jurisdiction to a non-power user. The non-power licensee would be required to pay the original licensee the same recapture price as the United States would have had to pay had it taken over the project. FPC would exercise regulatory supervision over the nonpower licensee on a temporary basis, until a state, municipality, interstate or Federal agency assumed this regulatory jurisdiction.

e. Provide explicitly that the amortization reserves called for by section 10(d) of the Act would continue to accumulate without interruption, suspension or revaluation.

f. Authorize FPC, notwithstanding the provision of section 6 of the Act regarding alteration of licenses, to include as a condition to issuance of a new license under section 15, a broad authority to modify the license, consistent with the other provisions of the Act, as may reasonably be required, subject to the safeguards of adequate notice, opportunity for public hearing and judicial review. This added authority would extend the Commission's rulemaking powers to modify license conditions at any time during the license term, now limited under section 10(c) to matters relating to the protection of life, health and property, to matters relating to all license conditions. It is patterned after the broad conditioning

authority of section 10(g) which now authorizes the Commission to include at the beginning of any license term "such other conditions not inconsistent with the provisions of this Act as the Commission may require."

g. Accept the present limitation of section 6 of the Act that the maximum license term is to be 50 years, with Commission discretion to prescribe lesser license terms. The Commission believes that a substantially shorter term may be appropriate where no extensive redevelopment outlay is needed. Moreover, it may prove desirable to relicense a series of related projects for varying terms so that the new licenses will expire simultaneously.

ALTERNATIVE CONSIDERED

We have considered as an alternative, assignment to other Federal agencies of the primary responsibility to recommend recapture to the Congress or to instruct the FPC to relicense subject to broad guidelines. The assignment might be made either to one executive department or to a group of agencies. We believe, however, that the issues upon license expiration involve statutory policy which would best be implemented by a specialized agency with a long tradition of semi-judicial proceedings under authority delegated by the Congress.

We have considered the possibility of spelling out detailed criteria governing the decisions and recommendations of the Commission but we have concluded that the more general standard now set out in section 10(a) comprehends all of the factors which we understand to be relevant and is more suitable to the changing need of resource conservation.

Finally we have considered establishing an additional preference for the original licensee to apply in cases where a rival applicant could slightly better achieve the objectives of the Act. We believe that all other things being equal, continuity in ownership and management is a value in itself which should be recognized and is to be recognized under the present statute. However, when another applicant demonstrates a superior ability to meet the Congressional objectives, in our view no preference should assure the position of the original licensee.

CONCLUSION

We believe that our proposal would serve the public interest and trust that consideration of the proposed measure will assist the Congress in its study of the appropriate disposition of projects licensed under the Federal Power Act after the end of the initial license term.

The Bureau of the Budget advises that enactment of the bill would be consistent with the Administration's objectives.

Respectfully,

LEE C. WHITE, *Chairman.*

A BILL To amend Part I of the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised

Whereas, Federal Power Commission licenses for non-federal hydroelectric projects will expire in increasing numbers; and

Whereas, Congressional consideration of each project upon the expiration of its license is no more feasible than Congressional consideration of each initial license application; and

Whereas, the Congress has delegated to the Federal Power Commission responsibility for initial licensing of non-federal projects, subject to the Commission's duty to recommend to the Congress federal development in lieu of non-federal licensing in appropriate cases, and subject to the residual powers of the Congress; and

Whereas, the Congress has delegated to the Federal Power Commission the power to issue a new license to the original licensee, or to a new licensee "if the United States does not, at the expiration of the original license, exercise its rights to take over, maintain, and operate any project" but has not specified a procedure by which the United States would determine whether to take over a project; and

Whereas, the Congress desires that the Federal Power Commission, after considering timely recommendations of other Federal agencies, shall initially identify those projects which would best be relicensed and those which would best be taken over; and

Whereas, the Congress desires that all cases in which take-over is recommended by the Federal Power Commission or by another Federal agency be forwarded to it; and

Whereas, in cases where the Federal Power Commission decides in favor of relicensing the Congress desires to establish a reasonable period of time in which other Federal agencies may present their case for take-over to the Congress before a relicensing order of the Federal Power Commission may become effective; and

Whereas, Congress intended in enacting Part I of the Federal Power Act that upon the expiration of these licenses, the United States should have a further opportunity to determine whether the water power resources of the Nation were being developed, improved and utilized in a manner best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpowed development, and for other beneficial public uses, including recreational purposes, and to determine whether future development, improvement and utilization of those resources in the public interest would be achieved most effectively by relicensing the project or projects on appropriate terms and conditions or by taking over the project or projects; and

Whereas, the following amendments to Part I of the Federal Power Act will permit the responsibilities for relicensing or Federal take-over to be exercised more effectively and efficiently and without undue disruption of the Nation's electric energy supply; now therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, Section 7 of the Federal Power Act, as amended (16 U.S.C. 800), is amended by adding thereto the following new subsection:

"(c) Whenever, in the judgment of the Commission, the United States should exercise its right upon or after the expiration of any license to take over any project or projects for public purposes, the Commission shall not issue a new license to the original licensee or to a new licensee but shall submit its recommendation to Congress together with such information as it may consider appropriate."

Section 2. Section 14 of the Federal Power Act, as amended (16 U.S.C. 807), is amended by inserting "(a)" immediately preceding the first sentence thereof and by adding thereto the following new subsection:

"(b) No earlier than five years before the expiration of any license, the Commission shall entertain applications for a new license and decide them in a relicensing proceeding pursuant to the provisions of section 15. In any relicensing proceeding before the Commission any federal department or agency may timely recommend, pursuant to such rules as the Commission shall prescribe, that the United States exercise its right to take over any project or projects." Thereafter, the Commission, if it does not itself recommend such action pursuant to the provisions of section 7(c) of this Part, shall upon motion of such department or agency stay the effective date of any order issuing a license, except an order issuing an annual license in accordance with the proviso of section 15(a), until expiration of the next full Congress immediately following the Congress during which the Commission issued the order, after which period the stay shall terminate, unless terminated earlier upon motion of the department or agency requesting the stay or by action of Congress. The Commission shall notify the Congress of any stay granted pursuant to this subsection."

Section 3. Section 15 of the Federal Power Act, as amended (16 U.S.C. 808), is amended by inserting "(a)" immediately preceding the first sentence thereof and by adding thereto the following new subsections:

"(b) Notwithstanding the provisions of section 6 of this Act regarding the alteration of licenses, the Commission may, at any time after the issuance of any license under section 15(a) except an annual license, by order after notice and opportunity for hearing, impose upon the licensee such further reasonable requirements as are not inconsistent with the other provisions of this Act."

"(c) In issuing any licenses under this section, except an annual license, the Commission, on its own motion or upon application of any licensee, person, State, municipality or State commission, after notice to each State commission and licensee affected, and after opportunity for hearing, whenever it finds that in conformity with a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses all or part of any licensed project should

no longer be used or adapted for use for power purposes, may license all or part of the project works for nonpower use. Licenses for nonpower use shall be issued on condition that any existing power facilities shall be removed or otherwise disposed of as directed by the Commission. A license for nonpower use shall be issued to a new licensee only on the condition that the new licensee shall, before taking possession of the facilities encompassed thereunder pay such amount and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof. Any license for nonpower use shall be a temporary license. Whenever, in the judgment of the Commission, a State, municipality, interstate agency or another Federal agency is authorized and willing to assume regulatory supervision of the lands and facilities included under the nonpower license and does so, the Commission shall thereupon terminate the license. Consistent with the provisions of the Act of August 15, 1953, 67 Stat. 587, every licensee for nonpower use shall keep such accounts and file such annual and other periodic or special reports concerning the removal, alteration, nonpower use or other disposition of any project works or parts thereof covered by the nonpower use license as the Commission may by rules and regulations or order prescribe as necessary or appropriate."

Section 4. Section 10(d) of the Federal Power Act, as amended (16 U.S.C. 803), is amended by adding at the end thereof the following: "For any licenses issued under section 15 hereof the amortization reserves shall be established and maintained from and after the effective date of the license."

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., February 27, 1968.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 12698, a bill "To amend part I of the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised."

Section 1 of the proposal would add a new subsection to Section 7 of the Federal Power Act (16 U.S.C. 800) to provide that the Federal Power Commission shall determine whether the United States should exercise its right to take over any project for public purposes and shall submit its recommendation to Congress.

Section 2 would amend Section 14 of the Federal Power Act (16 U.S.C. 807) to authorize the Commission to receive applications for a new license and to decide them in a relicensing proceeding pursuant to Section 15 of the Federal Power Act (16 U.S.C. 808) and to permit any Federal department or agency to recommend that the United States exercise its right to take over any project. If the Commission does not recommend takeover of a project for public purposes, the Commission must, upon motion of any interested Department or agency, stay the effective date of any order issuing a license (not including an annual license) until expiration of the next full Congress. Under this part of the proposal, the Commission would notify Congress of each stay.

Section 3 of the bill would amend Section 15 of the Federal Power Act (16 U.S.C. 808) to authorize the Commission, after notice and opportunity for a hearing, to impose further reasonable requirements upon a licensee. The Commission would be authorized, whenever it finds in conformity with a comprehensive plan for beneficial public uses that all or part of any license project should no longer be used or adapted for power purposes, to license all or part of the project for non-power uses. Licenses issued for non-power uses would be temporary and subject to termination by the Commission whenever a State, municipality, or Federal agency assumed regulatory supervision of lands included under the non-power license.

Section 4 would amend Section 10(d) of the Federal Power Act (16 U.S.C. 803) to provide that amortization reserves be established and maintained from and after the effective date of licenses issued pursuant to Section 15 (16 U.S.C. 808).

H.R. 12698 does not affect the Department of Justice and accordingly the Department defers to the views of the Federal Power Commission concerning the desirability of enacting this legislation.

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

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

DEPARTMENT OF INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., Feb. 23, 1968.

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

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 12698 and H.R. 12699, identical bills "To amend part I of the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised."

We recommend that one of the bills be enacted.

The bill would amend the Federal Power Act:

(1) Section 7 to add a new subsection (c) directing the Federal Power Commission to recommend recapture to Congress whenever in its judgment the United States should take over a project for public purposes.

(2) Section 14 to require the Commission, no earlier than 5 years before a license expires, to entertain and decide applications for a new license pursuant to section 15. If a Federal agency recommends takeover, the Commission is directed to notify Congress and to stay the effective date of a new license until the expiration of the following full Congress.

(3) Section 15 to authorize the Commission (i) to amend a license granted thereunder at any time, and (ii) upon application of any licensee, person, State, municipality or State commission, to issue a license for nonpower use when it finds that a project should no longer be used for power purposes. Such nonpower license is terminable upon an assumption of regulatory supervision by a Federal, State, interstate or municipal agency over lands and facilities included in the nonpower license.

(4) Section 10(d) to require that amortization reserves be established and maintained from the effective date of licenses issued under section 15.

The key feature of the bill is establishment of procedures to determine whether the United States will take over a project after a Federal license expires. Under the bill the Commission, after notice and hearings and consideration of the views of interested agencies, will report to the Congress the projects for which licenses are about to expire and which the Commission has determined should be taken over by the United States.

In cases where a department or agency recommends takeover of a project but the Commission does not itself recommend such action, the Commission will notify the Congress and stay the effective date of a new license until the end of the next full Congress.

We believe the amendments embodied in the bill will materially assist the Commission in streamlining procedures for determining whether relicensing of a project or takeover by the United States would be better adapted to a comprehensive plan of water resource development and improvement in the public interest. In this regard, the provision of issuance of a temporary, exclusively nonpower, license, pending assumption of supervision by a governmental agency, should provide an appropriate vehicle for advancing water pollution control, recreation, conservation of fish and wildlife and preservation or restoration of aesthetic and historic values. The bill also will maintain intact the prerogative of Federal departments and agencies to recommend, in Commission proceedings and, if necessary, to the Congress, takeover of projects by the United States.

Section 4 of the bill provides that, in the case of new licenses under section 15, amortization reserves shall be established and maintained from the date of the new license. A possible question arises as to how section 4 would apply where a new license is issued to the original licensee who is already under an obligation to accumulate amortization reserves. The Federal Power Commission, in paragraph 2 page 7 of the letter of transmittal of August 28 1967 (113 Cong. Rec. 11436 August 29 1967) from Chairman White to Speaker McCormack stated that the proposed amendments "provide explicitly that the

amortization reserves called for by section 10(d) of the Act would continue to accumulate without interruption suspension or revaluation" in the issuance of a new license to the original licensee. The bill does not contain the explicit provision referred to. This Department understands however that the Commission will so construe section 4 as to accomplish the stated intention.

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

Sincerely yours,

KENNETH HOLUM,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., February 26,1968.

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

DEAR MR. CHAIRMAN: This is in response to your letter of August 30, 1967, requesting a report on H.R. 12698, a bill "to amend part I of the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised."

The bill establishes standards and procedures for the recapture or relicensing of hydroelectric projects upon expiration of their license terms in accordance with Sections 14 and 15 of the Federal Power Act, and authorizes the Federal Power Commission to license for nonpower use project works no longer used or adapted for use for power purposes. The provisions of the bill are as described in the letter of August 28, 1967, from Commission Chairman Lee C. White to the Speaker of the House of Representatives transmitting the bill for consideration by the Congress (reproduced in the Congressional Record for August 29, 1967, at pages H11436–8).

This Department concurs in the objective of the legislation to free the Congress of the burden of reviewing all licensed projects as their license terms expire regardless of Federal interest in recapture. The Congress would, even in the absence of a Commission recommendation for recapture, continue, of course, to have the prerogative of directing recapture of any project upon license expiration. The procedure prescribed in the proposed legislation would afford any Federal department or agency the opportunity to recommend recapture. The stay in licensing and notice to Congress thereof which are provided for in such cases would give the Congress full opportunity to exercise that prerogative.

Section 3 of the bill would amend Section 15 of the Federal Power Act by adding a new subsection (c) which authorizes the Commission to take actions including issuances of licenses for nonpower projects. We have no comment to make as to the desirability of giving the Commission authority to license for nonpower purposes. We are, however, vitally concerned insofar as such authority would relate to nonpower features of projects involving National Forest lands. On the basis of discussions of this provision by this Department with the Commission prior to the submission of the draft bill by the Commission's Chairman, we understand that the Commission recognizes that some licenses are for projects involving lands administered by Federal agencies. For example, the National Forests administered by this Department are affected by many licensed projects. We understand that it is the intention of the Commission to consult with this Department with respect to the issuances of any licenses for nonpower purposes affecting lands administered by this Department. In such situations, if this Department can and will be responsible for and administer the lands and facilities which would be included in the nonpower licenses, the license for such use will be issued only with the consent of this Department and subject to such conditions as we deem necessary for the adequate protection and utilization of the lands under our jurisdiction. Arrangements have already been made with the Commission to develop the appropriate procedures to implement this understanding.

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

Sincerely yours,

ORVILLE L. FREEMAN.

95–619—68——2

Mr. MACDONALD. Since 1920 under title I of the Federal Power Act the Federal Power Commission has been licensing hydropower projects for terms not exceeding 50 years. Some of these licenses have already expired and in the next few years many more will also expire.

The Federal Power Act provides that upon the expiration of such a license the United States may (1) take over the project which it covers; or (2) issue a new license to the regional licensee; or (3) issue a license for the project to a new licensee.

If the United States takes over a project or it is licensed to a new licensee, the former licensee must be paid the net investment not exceeding the fair value in the project. However, the act does not presently establish any precise procedure to be followed upon the expiration of these licenses. This is the thrust of the bills and also the main problem involved in these hearings.

A means should be provided which reduces the shortest possible period of time, the uncertainty as to what will ensue upon the expiration of these licenses for hydropower projects so that the consumer is protected against any possible deterioration or loss of service. This is what the bills before the subcommittee are intended to do.

The first witness today is Dr. Durward G. Hall, distinguished Representative from the State of Missouri. It is a great pleasure to welcome you here this morning, Representative Hall.

STATEMENT OF HON. DURWARD G. HALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. HALL. Thank you, Mr. Chairman, and members of the committee and staff. It is a pleasure to be here.

I appreciate your opening statement. I think this is the fabric out of which good legislation is made and compliment you on these hearings.

I certainly want to express to the chairman and the members of the House Committee on Interstate and Foreign Commerce for this opportunity to appear before the committee, and to comment on the provisions of H.R. 12698.

The staff has been most helpful in arranging this time and our scheduling and backgrounding this material.

Mr. Chairman, this bill is of particular interest to me because an electric operating utility, the Empire District Electric Co. of Joplin, Mo., is located in the Seventh Congressional District of Missouri, which I have the privilege of representing, and operates and maintains a hydroelectric project on the White River at Ozark Beach, Mo., which is the first project in the Nation exposed to the question of relicensing and/or takeover by the United States or recapture by the United States.

I have known about this situation for a long time. I can remember as a boy when the impoundment was completed and have more or less grown up on the lake provided therefor. Now there are 11 private and public power impoundments within a radius of 100 miles of my hometown in the Ozark Mountains of southwest Missouri and northern Arkansas and eastern Oklahoma and Kansas.

The Federal Power Commission, acting under present law, and in general following the procedures set forth in its order No. 288, recommended to Congress by letter, dated February 23, 1967, from the Com-

mission's Chairman, that the project (Ozark Beach) not be taken over by the United States.

I find no fault, of course, with this recommendation nor with the order or the law under which the opinion was delivered.

This recommendation was given only after the staff of the Commission had considered carefully the facts for over a year, and had the benefit of the views of other agencies of Government.

To be more specific, Mr. Chairman, Empire applied in late February 1965 for an extension of its present 10-year lease.

If I may interpolate, the 10-year lease was after the 50-year contract has expired. This 10-year lease expires on August 31, 1968.

The extension applied for (in 1965) was only for 10 years, because Emprie considered that such an extension would be appropriate in view of the terms of its 10-year license.

Again interpolating, I think the committee would want to consider maybe an even longer license if we are to go the licensing route rather than renewing contracts where there is satisfactory prior existing operation.

Notice of Empire's application was given to all interested parties, including the Governor of Missouri, the Missouri Public Service Commission, the Missouri Conservation Commission, as well as to other interested Federal agencies.

It is clear that the views sought from State officials and from State and Federal agencies related to the question of takeover as well as to the question of extension of the license, these two questions being necessarily interwined under the circumstances.

By April 1966, the staff of the Federal Power Commission was already preparing two reports for the Commission, one on the question of takeover, and the other on the question of the application for extension of license. When the Federal Power Commission finally recommended against takeover, it pointed out that no Federal agency, neither the Departments of the Army, including the Corps of Engineers, Interior, Agriculture, or Health, Education, and Welfare recommended that the project be taken over.

These facts are given to show that, if there were any substantial reasons why the project should be taken over, they would have been brought to light by the procedure adopted by the Commission, even though by choice of the Federal Power Commission staff, there were no formal proceedings on relicensing in regard to this project—a project probably unimportant because of its small size and potential power development but on the other hand vital because, as I said in my opening paragraph, one of the first to be considered who has outlived its originally 50-year contract.

It is important that these facts be mentioned, Mr. Chairman, because the Chairman of the Federal Power Commission in his abovementioned letter of February 23, 1967, to Congress pointed out there were no formal relicensing proceedings in respect to Ozark Beach—for that reason, the Commission might change its recommendation subsequently.

The implication presumably is that unless there are formal relicensing proceedings, the facts as to the desirability of takeover cannot be determined with certainty. This conclusion does not seem to be warranted. The validity of this conclusion has a direct bearing on H.R.

12698, because this bill requires a proceeding on relicensing in regard to each project before Congress has indicated whether it does or does not want to recapture the project, the license for which is expiring.

Now, Mr. Chairman and members of the committee, I believe the experience of Empire District Electric is a perfect example of why H.R. 12698 should not be adopted in its present or even similar form. Here is a firm which, with the benefit of a so-called informal proceeding, had to wait 2 years for a recommendation even to be forwarded to Congress. The recommendation when it finally came was hedged with contingencies, and even now 3½ years later (after the application was filed), no final Federal Power Commission action has been forthcoming, to the possible detriment of the company's future planning concerning improvements, concerning the real problem of eliminating weeds and algae since a dam immediately above this has made it a cold water lake, concerning investments for the stockholders, or future use of peaking power for which this impoundment is used in time of need, along with flood control, as well as in the public interest.

Would the more formalized proceeding offered in this bill be likely to expedite action and further the public interest, or would it merely lead to greater bureaucratic slowdowns without enhancing the public interest? Whatever the inadequacies of the present law, after study and analysis, I believe the proposed legislation will compound them.

The bill is contrary in principle to the present law, and such a radical departure from the present law is not necessary or in the national interest. Under the present law, until Congress indicates that it is against the United States taking over a project, there are no proceedings for a permanent license. This makes sense to me because if the project is not going to be licensed (on account of takeover by the United States, (there would be no point in having license proceedings.

Also, the present law assumes that Congress is capable of obtaining the facts in regard to a particular project, if it has reason to believe that takeover might be desirable, and under present law Congress would be required to act in regard to a particular project only if it thought that takeover would be desirable, which is assumed to be the unusual case. If Congress does not want a project taken over, it can just do nothing, so the present law does not burden Congress unless Congress wants numerous projects taken over.

Again interpolating, Mr. Chairman, as a member of the House-Senate bipartisan committee for the past 3 years on the reorganization of the Congress and its related agencies, it would become apparent that we are back in a question of the separation of powers here, and governing by executive action on the one hand with the reverse veto in the hands of Congress, or whether there is congressional determination and/or delegation of its powers to one of the Congress' own creations, a commission.

Now, on the other hand, H.R. 12698, the proposed legislation, would encourage takeovers without diminishing the responsibility of Congress to look into each project as the license for it expires; and, in practice, H.R. 12698 would shift from Congress to administrative agencies much of the actual control over the eventual determination of whether or not to take over. I think I know this committee is vitally interested in this problem and prerogative.

The proposed legislation would require an administrative license proceeding whenever a license is near expiration. In such a proceed-

ing, the issue of takeover is likely to be the primary issue, because of the Federal Power Commission or another Federal agency favors takeover, either no license will be granted at the conclusion of the proceedings, or its effectiveness will be stayed for a long period of time.

This is an impossible position and an unreasonable demand to make on a going concern and a good corporation with stockholder responsibility. In the case of Empire District Electric, a first, but a relatively noncontroversial issue, involving a small project has taken 3 years and is still not resolved. The administration bill would not increase the prospects for swift justice and equity, and company planning would continue to be sidetracked.

In substance, under H.R. 12698, there would be a formal administrative determination of the question of takeover, thus putting Congress in the position of an appeals body reviewing the decision of an "expert agency". Put in such a position, Congress probably would be loath to reverse an administrative decision in favor of take-over, and would tend to go along with such a decision.

Furthermore, Congress would not be relieved by the proposed legislation of considering the takeover question for each individual project, because (although it is not clear from the text of H.R. 12698), it is intended that, even if the Federal Power Commission should grant a license after the hearing, Congress could step in and take over. Thus, the responsibility in respect to takeover remains with Congress in the case of each project; and its workload would be substantially reduced only if it rubber-stamps the decisions of the administrative bodies.

As the proposed legislation would require a formal administrative decision in respect to each project, Congress probably would feel obligated to take up each case, even though the only action would be a summary confirmation of the administrative decision. Surely Congress should assume its rightful role instead of a "reverse veto" function which usually results in no role at all.

In short, Mr. Chairman, the proposed legislation would shift much of the real influence over the decision of takeover to administrative bodies and diminish the role of Congress without diminishing its responsibility. This would be an undesirable development, from my point of view. Therefore, it seems that at the very least we should adopt the suggestions for amending the bill and very possibly the committee ought to consider drafting its own bill.

Mr. Chairman, that concludes my formal statement.

I appreciate your forbearance in giving it verbatim with interpolations.

I am available to answer questions but would like to submit for the record an attached statement by Mr. J. T. Jones, President of the Empire District Electric Co. in Joplin, Mo.

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

(The statement is as follows:)

STATEMENT OF J. T. JONES, PRESIDENT, THE EMPIRE DISTRICT ELECTRIC COMPANY

H.R. 12698, which has been introduced in the House, is of considerable concern to The Empire District Electric Company, and we wish to take this opportunity to state our observations following our review of the Bill.

In regard to the fourth "whereas" clause, it would appear that, contrary to that clause, a procedure by which the United States would determine whether to take over a project has, in fact, been established in the Federal Power Commission's Order No. 288.

In regard to the seventh "whereas" clause, since pursuant to Order 288, the Federal Power Commission forwards its recommendations as to takeover to the Congress at least two years before a license expires, other Federal agencies do, in fact, have a reasonable period of time in which to present their case for takeover to the Congress.

Section 1 of the Bill adds a new subsection to Section 7 of the Federal Power Act. It provides that, when the Federal Power Commission decides the United States should exercise its right to take over any project, the Federal Power Commission shall not issue a new license to the original licensee, or to a new licensee, but shall submit its recommendations to the Congress. It appears to us that this provision is, in effect, a statement of what had been implied, if not explicit, in Sections 14 and 15 of the Act.

Section 2 of the proposed Bill adds new sub-sections to Section 14 of the Act. In the first eight lines of new sub-section (b), no earlier than five years before a license expires, the Federal Power Commission would entertain applications for a new license, and decide them in a relicensing proceeding pursuant to Section 15 of the Act; and in such a proceeding, any of the Federal agencies may recommend that the United States exercise its right to take over. It appears that the Federal Power Commission would consider the takover question, and the relicensing question, at the same time, rather than the present two-step procedure. Under this sub-section (b), the licensee would have to present its entire case for a new license before knowing whether the United States would take over the particular project, or whether the Federal Power Commission would recommend takeover. Of course, we realize that the majority of the licensee's case for a new license is presently included in the information sought by the Federal Power Commission under Order No. 288.

Furthermore, this portion of sub-section (b) could be construed to require a mandatory hearing on the takeover question, regardless of whether a Federal agency has requested takeover, which would be contrary to Section 2.16(b) of Order No. 288.

The remainder of proposed sub-section (b) provides that, if the Federal Power Commission does not recommend takeover, it shall, upon the motion of any Federal department or agency, stay the effective date of any order issuing a license (except as to an annual license) until the expiration of the next full Congress immediately following the Congress during which the Federal Power Commission issued the order. After this period, the stay would terminate unless earlier terminated by motion of the department or agency, or by action of the Congress. This would give rise to the situation wherein the Federal Power Commission would not recommend takeover of a project, but one of the Federal agencies would desire same, and could thereby cause any order on a relicensing to be stayed. This deals basically with whether the Federal Power Commission or a Federal agency would be the primary source of recommendations as to takeover to the Congress. Furthermore, these provisions could result in a delay in the effective date of a license. If the Federal Power Commission would grant a license in February of 1969, and one of the agencies would propose a takeover, the license issued could be delayed until December 31, 1972. It appears possible that this delay could continue past the expiration date of the original license. In that event, we presume that some form of annual license would be granted until the Congress acted or failed to act.

Section 3 of the Bill adds two new sub-sections to Section 15 of the Act. Under proposed sub-section (b), the Federal Power Commission may, any time after the issuance of any license under Section 15, except an annual license, by order after notice and opportunity for hearing, impose upon the licensee such "further reasonable requirements" as are not inconsistent with the other provisions of the Act. The Federal Power Commission could exercise this right, regardless of the provisions of Section 6 of the Act (16 U.S.C. Section 799), which provides that licenses can be altered or surrendered only upon the mutual agreement between the licensee and the Federal Power Commission, after thirty days public notice. Since the Federal Power Commission would determine what "further reasonable requirements" are necessary, this provision would, in effect, make any license granted under Section 15 a permit which could be amended and modified at the discretion of the Federal Power Commission. This would cast considerable doubt as to the true value of any license granted under Section 15.

Proposed sub-section (c) provides, in effect, that the Federal Power Commission will hereafter have authority to license non-power projects. This sub-section provides that, in issuing any license under Section 15, except on an annual license, the Federal Power Commission, on its own motion, or upon the application of any licensee, person, state, municipality or state commission, after opportunity for a hearing, whenever it finds that, in conformity with a "comprehensive plan for improving or developing a waterway or waterways for beneficial public uses," all or any part of the licensed project should no longer be used for power purposes, may license all or part of the project for non-power use. Under a license for non-power use, the Federal Power Commission could require the removal of existing power facilities. Such a license would be temporary in nature, and could be terminated by the Federal Power Commission whenever, in its judgment, a state, municipality or Federal agency would be authorized and willing to assume the supervision of the lands and facilities included under the non-power license. This proposal appears to provide another opportunity for takeover by the United States. The Federal Power Commission could decide that a project should be licensed only for non-power purposes, could require the removal of power facilities, and then could cancel a temporary license, if a state or Federal agency would wish to take over the project.

Furthermore, this proposal is incomplete, in that it would be reasonable for the Federal Power Act to provide that, all things being equal, the original licensee of the project should, if it so desires, have the right to have a new license. This would mean that, if the original licensed project, with such conditions as the Federal Power Commission would find in the public interest, is at least as well adapted to comprehensive development as the proposed project of any other applicant, the license should be granted by the Federal Power Commission to the original licensee.

Mr. MACDONALD. Thank you very much, Dr. Hall.

I just would like to point out two things.

We have a witness following you, the General Counsel of the Federal Power Commission, and if some of the points that you raised are not cleared up I am not sure that this committee would be in favor of the bill.

I do think that as one of the people who introduced one of the two bills, it was my intention after the bill was explained to me in detail that this bill would stop the uncertainty and speed up the work of the Federal Power Commission in the field of recapturing.

I can assure you that this committee is well-known downtown, this subcommittee and the full committee, of writing its own bills. We have done that many times in the past and we intend to do the same thing in the future.

We, by no means—and I am sure I am speaking for the entire subcommittee and, if not, they will speak for themselves—just accept a bill by the administration. I do think that we can pursue the matter further with Mr. Richard A. Solomon, who is the next witness, on some of the points that you so clearly raised.

Mr. HALL. Mr. Chairman, I have met Mr. Solomon; I know that he is here, and I hope they will be cleared up.

Let me say that I am well aware that this subcommittee does write its own legislation and I submit that my statement in that regard applied to all of the Congress and was a challenge, not an admonishment.

Mr. MACDONALD. Thank you, Dr. Hall.

Are there any questions of Dr. Hall?

Mr. KORNEGAY. Mr. Chairman, I don't have any questions.

I thank my colleague for coming over and presenting a very fine statement for us on a rather technical subject.

I do have one observation in connection with the way the committee handles its bills and writes its bills. We rewrote one here the other day and got credit for the whole plan of salvation.

Mr. BROTZMAN. Mr. Chairman.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Mr. Chairman, I would like to extend a hearty welcome to our colleague, Dr. Hall.

Perhaps I should ask you some questions later, Doctor. I have to listen to more of the testimony. I generally know the substance of the bill but I have not been over it as carefully perhaps as would be indicated to ask you some pointed questions. You have gone through a very detailed process here.

I want you to know that I will study your statement very carefully. We are appreciative to have you here to give us the benefit of your thinking on this very important subject.

Mr. HALL. I thank the gentleman from Colorado personally and thank the committee as a whole. You have always been very generous and it is always a privilege to appear before the committee.

I would be glad to make myself available, well realizing that I have no expertise and am not an expert witness except by virtue that I have lived with this problem for so long.

As I said repeatedly in the statement, it is a first impoundment on a navigable stream which has been considered for recapture and in lieu thereof has been licensed for one extension and now is up for a second relicensing.

I am really more interested, Mr. Chairman and members of the committee, in helping the committee retain the prerogatives of the Congress while still helping the Power Commission do its duties of execution fairly and establishing whatever guidelines that the distinguished chairman of the subcommittee and, indeed, the chairman of the full committee have told me in conversations from time to time through the years was the eventual intent of Congress.

It is in that spirit that I appear and try to bring what technicality and local know-how that I have for your committee. I would be doing less than my duty if I didn't.

So, after you hear the General Counsel for the Power Commission, if you need me again I will be glad to return at any time.

Mr. BROTZMAN. May I ask one more question, please?

Mr. MACDONALD. Yes.

Mr. BROTZMAN. Dr. Hall, you might have touched on this, but I notice that on page 3 of your statement you say that—

> We should adopt the suggestions for amending the bill and possibly the committee ought to consider drafting its own bill.

Do I understand by that you have submitted proposed amendments?

Mr. HALL. I have not myself. I would not usurp the prerogatives of the committee in that regard but various power organizations have and I think the committee will find them, Mr. Chairman, enclosed in the statement by the president of the empire district that you allowed to be made a part of the record.

Mr. BROTZMAN. Thank you.

Mr. MACDONALD. Are there any further questions?

Thank you very much, Dr. Hall, for appearing.

Mr. HALL. Thank you.

Mr. MACDONALD. Our next witness will be Mr. Richard A. Solomon, General Counsel for the Federal Power Commission.

STATEMENT OF RICHARD A. SOLOMON, GENERAL COUNSEL, FEDERAL POWER COMMISSION

Mr. SOLOMON. May it please the committee, Chairman Macdonald, I am appearing here at the request of our chairman, Mr. Lee White, to read this statement and to answer such questions as I am capable of doing.

He wanted me to say specifically——

Mr. MACDONALD. Excuse me, Mr. Solomon.

I think it would be appropriate at this time to read into the record the letter from the chairman, dated June 10, 1968, and I quote:

> I regret that I will not be available June 11, 1968, to present the Commission's statement on H.R. 12698 and H.R. 12699, the recapture-relicensing legislation which you have been good enough to introduce at our request. The Commission is hearing oral argument *en banc* all day, June 11, on increased rate cases of major natural gas pipelines, and, given all the circumstances, we were unable to reschedule these arguments after the Committee's hearing date was selected.
>
> As we have discussed with Mr. Williamson, the Clerk of your Committee, our General Counsel, Richard A. Solomon, who is fully familiar with the Commission's proposal, will appear on June 11 to present my statement. Should there be any questions which the Committee wishes to address to me, I would be happy either to answer them in writing or to appear on Friday, June 14, or such later date as the committee may prefer.
>
> Sincerely,
>
> LEE C. WHITE, *Chairman.*

Mr. SOLOMON. Thank you, Mr. Chairman.

I have a prepared statement which I will read. In addition, the chairman has prepared a somewhat longer single-spaced statement which is attached to his prepared draft which I think we would like to have put into the record.

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

(The statement is as follows:)

DETAILED STATEMENT OF LEE C. WHITE, CHAIRMAN, FEDERAL POWER COMMISSION

Mr. Chairman, we welcome this opportunity to appear before the Committee in support of these bills, which are designed to establish procedures for determining whether, at the expiration of a hydroelectric license, a project should be recaptured by the United States or relicensed.

BACKGROUND

Almost 48 years ago the Congress, by passage of the Federal Water Power Act of 1920, enacted the first comprehensive statutory scheme governing the hydroelectric development of this Nation's vast and important, water resources, delegating responsibility for that program to the newly created Federal Power Commission. The Commission was authorized to license all non-Federal hydroelectric facilities located either on waterways over which Congress has jurisdiction or on the Nation's public lands and reservations. The Commission, however, was precluded from issuing a license for a term exceeding fifty years. This restriction was to prevent the establishment in perpetuity of a monopoly of a public resource. Moreover it preserved for the Nation the opportunity of re-evaluating the use to which each project site should be put at the end of a reasonable license term.

In section 14 of the Act Congress provided that the "the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project" upon the fulfillment of certain conditions. Alternatively, the Commission may issue a new license to the orig-

inal licensee or may, upon specified conditions, issue a license to a new applicant. The Act does not, however, implement these prerogatives procedurally. These bills are designed to fill this breach. In our view they establish procedures which will permit the responsibilities for relicensing or recapture to be exercised effectively and efficiently without undue disruption of the Nation's supply of electric energy and in a manner designed to further comprehensive development.

HYDROELECTRIC LICENSING BEFORE 1920

Preliminary to our discussing the mechanics of the proposed procedure we would like briefly to review the history behind the 1920 enactment of the Federal Water Act for we view H.R. 12698 and H.R. 12699 as a product of that history.

Passage of the Federal Water Power Act, which is now Part I of the Federal Power Act, marked the end of an extended period of uncertainty and inconsistency and signaled the initiation of a national policy looking toward the comprehensive development of that part of the Nation's water resources under Federal control. The 1920 Act was not the first Congressional response to the need for water power legislation. Indeed it was preceded by two independent series of legislative endeavors—one with respect to the public lands and reservations, the other with navigable waterways.

Development of the power potential of the public domain was the subject of legislative attention beginning in 1896 when the Secretary of the Interior and later the Secretary of Agriculture were authorized to grant easements on public lands for power purposes for terms not exceeding fifty years. These executive department permits were considered to be mere revocable licenses and the rights of the licensee were jeopardized by the possibility that the lands to which the license applied could be patented to others. These contingencies made it difficult to attract the capital necessary for the construction of water power projects.

Developments on navigable waterways required explicit Congressional approval. During the twenty-two years following passage of the first Rivers and Harbors Act in 1884 Congress enacted no less than thirty-four special acts permitting the construction of such developments. These authorizations, unlike most of the permits issued with respect to the public domain, were not for prescribed terms and were unconditional save for a general reservation subjecting them to alteration, amendment or repeal by subsequent Act of Congress. Only fifteen of the thirty-four authorized projects were constructed. In 1906 Congress legislated general conditions to be included, thereafter, in special grants. The conditions related primarily to navigational considerations and notwithstanding the subsequent enactment of twenty authorizations, only four projects were constructed. In 1908 and 1909 President Theodore Roosevelt vetoed specific project authorizations because of their failure to limit the term of the grant, to authorize termination if the work was not timely completed or ever begun, to provide for license fees and to give consideration to comprehensive water resource development. In his message President Roosevelt labeled as "unwise" the then existing practice of "giving away the property of the people in the flowing waters * * * in perpetuity and in advance of the formulation of definite plans as to their use." He recommended substitution of a "definite policy" in place of what he termed "the present haphazared policy of permanently alienating valuable public property * * * "[1] These vetoes led to the enactment in 1910 of amending legislation which limited grants to fifty years, reserved the right to revoke the grant at any time for public uses upon the payment of appropriate compensation and directed that proposals be considered in terms of comprehensive development. The Act failed, however, to provide for the disposition of the properties at the termination of the grant. Although sixteen new or amended grants were authorized by Congress in the following two years, only two projects were constructed. Indeed, no development of any consequence resulted from passage of either the 1906 or 1910 Acts.

Thus, it is fair to say that the situation prior to 1920 was characterized by uncertainty and inconsistency of rights and obligations, and the retarded development of the Nation's hydroelectric resources. Where there was development it was hapazard and often failed to protect nonpower resources. In addition, the Congress, which was not equipped to do more than consider each proposal in virtual isolation, was encumbered with the need to focus on literally hundreds of requests for special legislation. Most disconcerting was the fact that the great majority of projects authorized by Congress never were constructed.

[1] Veto message relating to bill to extend the time for construction of a dam across the Rainey River (H.R. 15444), S. Doc. 438, 60th Congress, 1st Session, page 3.

THE FEDERAL WATER POWER ACT AND EXISTING PROCEDURES

The 1920 Act was a response to these unfortunate circumstances. It represented the first real endeavor to establish a complete scheme of national regulation, one that would give encouragement to comprehensive waterway development in place of the existing piecemeal, restrictive and generally negative approach. It was a major undertaking and heralded a major change of national policy. As then Secretary of Agriculture Houston observed, the bill was to provide "a method by which the water powers of the country, wherever located, can be developed by public or private agencies under conditions which will give the necessary security to the capital invested and at the same time protect and preserve every legitimate public interest * * *"[2]

We view the situation confronting this Congress to be analogous to that which confronted successive Congresses in the early years of this century. There are presently 270 licensed hydroelectric projects which are subject to recapture or relicensing at the expiration of their license terms. In the next five years 67 of these licenses will expire.

Under existing procedures each year the Commission publishes in its annual report and in the Federal Register a table listing the projects subject to recapture in the succeeding five year period. The table which will be included in the Commission's annual report for 1967 is attached as Appendix "A" to this statement. Five years before the expiration of a license pertaining to a project subject to recapture the Commission solicits the views of the licensee concerning its plans for future development and the views on recapture or relicensing of those Federal and State agencies which may have an interest in the project. The Commission has assumed the obligation of forwarding these submissions to the Congress two years before the license expiration date together with a recomendation as to whether or not the project should be recaptured by the United States.[3] On February 23, 1967, October 11, 1967 and March 11, 1968, the Commission forwarded its reports recommending against recapture of the Ozark Beach Project (No. 2221) in Missouri, the Bucks Creek Project (No. 619) in California, and the Mystic Lake Project (No. 2301) in Montana. On January 23, 1968, the Commission submitted its report recommending against recapture of a group of 22 comparatively small projects. If the Congress elects to forego the right to recapture a project a relicensing proceeding will be undertaken by the Commission. During the pendency of the recapture-relicensing question, the Commission is to issue an interim year by year licnse to the original licensee. In the relicensing proceeding all interested persons, including State and local agencies, would be able to compete for the new license, or urge either the inclusion of specific conditions in any new license or the reevaluation of the Commission's recommendation to the Congress against recapture. It is not practicable for the Commission to undertake a detailed investigation of each project in advance of the relicensing proceeding, especially in the case of projects of nominal size or remote location. During the relicensing proceeding, however, it can be expected that facts critical to the recapture question will be disclosed by interested persons located in the vicinity of the project. We believe, therefore, that the present procedural division between the recapture and relicensing determinations will greatly increase the possibility of reevaluation and modification of the Commission's initial recommendation to Congress regardng recapture.

There are at least four situations that may exist at the expiration of a license term: First, where the United States has an interest in the continued operation of the project arising out of Federal power or nonpower programs, which interest could be protected either through recapture or the Commission's conditioning authority. Second, where the licensee seeks a new license and a private party, a State or a local agency either competes for the license or seeks the inclusion of spcified conditions. Third, where the licensee wishes to abandon a project which public interest considerations dictate be maintained for nonpower purposes. Fourth, where there is no interest expressed by anyone in the continued operation of the project for power or nonpower purposes.

The existing procedure cannot adequately respond to these varied situations. It does not guarantee the kind of reevaluation that the limited term license was

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[2] Quoted in H. Rept. No. 61, 66th Congress, 1st Session, p. 5.

[3] Under section 14 of the Federal Power Act the United States is given the right to recapture. Since Congress, when delegating authority in other sections of the Act to agents of the United States, did so explicitly (see sections 1, 2, 4(c), 4(e), 10(e), 11(a), 17(a), 18 and 26), the failure to do so in section 14 would suggest that the authority rests with the United States acting through the Congress.

designed to preserve. Two defects are critical: First, because of the division to which we already have alluded and the fact that Congress must focus on the question of recapture before the Commission conducts a relicensing proceeding, Congress may not have before it all of the facts bearing on the effect of the project under consideration upon other projects in the river basin. This information gap could lead to the type of haphazard planning that preceded passage of the 1920 Act. Comprehensive planning will require analysis of all such projects, including those projects which while subject to relicensing, are not subject to recapture.[4]

Second, if the Commission could not, pending Congressional consideration of each project subject to recapture, relicense a project as to which no Federal agency has expressed an interest in recapture, development could be impeded to the detriment of efficiency and electric reliability. It will be remembered that the pre-1920 era was characterized by the retarded development of the navigable waterways as a consequence of the need for specific Congressional approval of each proposal. In the recapture-relicensing situation we are of course concerned with constructed projects. However, many of these project sites, while developed to the extent required by the license, have not been developed to their physical optimum and even though further development may now be feasible licensees are reluctant to undertake extensive capital improvements before they are assured of receiving a new license.

THE PROPOSED NEW PROCEDURES

In formulating our legislative proposal the Commission focused on whether a procedure could be formulated which would relieve Congress of the burden of reappraising individually each expiring license while at the same time affording thorough and simultaneous consideration of recapture and relicensing under the broad standard of comprehensive development. H.R. 12698 and H.R. 12699 are the Commission's considered response. In our view they would provide procedures which would permit the expeditious development of our hydroelectric resources and would give optimum effectiveness to the purposes underlying the limited term license.

H.R. 12698 and H.R. 12699 would permit concurrent consideration and evaluation to be given the alternatives of recapture and relicensing. They would relieve the Congress of the burden of having to focus on those projects as to which there has been no recommendation in favor of recapture either by this Commission or by another Federal agency thereby permitting more expeditious relicensing and realization of the benefits flowing to the public therefrom.

No earlier than five years before the expiration of license the Commission would entertain applications for a new license and would conduct a relicensing proceeding. These proceedings would be considered initial licensing proceedings within the meaning of the Administrative Procedure Act, rather than license renewal proceedings. Our conclusion that the proceeding should be characterized as one involving "initial licensing" stems from the fact that, as at the time of original licensing, the decisive issue will be one of policy, how can a particular project site best be developed and maintained in futherance of the comprehensive development standard of section 10(a) of the Federal Power Act.

If, during such a proceeding, the Commission concludes that upon or after the expiration of any license, recapture may be appropriate it would be required to submit its recommendation to the Congress and could not issue a new license other than an annual renewal of the expired license.

If, in the judgment of the Commission, recapture would not be appropriate the Commission would be authorized to issue a new license either to the original licensee or to some other applicant. However, should any Federal department or agency, during the pendency of the relicensing proceeding, recommend recapture, then upon motion by such department or agency the Commission would stay the effectiveness of any order issuing a license, except an order issuing an annual license, until the expiration of the next full Congress immediately following the Congress then in session. During the stay period the interested department or agency would have the opportunity to make known to the Congress its desire that the project be recaptured. The Commission would be under an independent obligation to advise the Congress of any stays so granted. Unless

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[4] Projects subject to relicensing but exempt from recapture fall into two categories: those under license to States or municipalities and those as to which recapture has been waived pursuant to section 10(i) of the Federal Power Act which permits such waiver with respect to projects "of not more than 2000 horsepower installed capacity." Prior to September 7, 1962, the Commission's authority to waive recapture was limited to projects the installed capacity of which did not exceed 100 horsepower.

terminated earlier upon motion of the department or agency requesting the stay or by an Act of Congress, the stay would automatically terminate at the expiration of the specified period. At such expiration the new license would become effective. The stay period proposed in the bill would provide a minimum of two and a maximum of almost four years for Congressional consideration of recapture recommendations submitted by Federal agencies other than the Federal Power Commission. The Commission views that period to be a reasonable one although it is by no means the only appropriate period. For example, alternative time periods which the Congress may wish to consider would be a two-year period beginning on the last day of the calendar year in which the Commission issued the relicensing order, or a two-year period running from the date of such order. The latter period conforms to a similar licensing stay provided for in section 4(e) of the Federal Power Act where the Commission has found, and advised the Congress, that a government dam may advantageously be used by the United States for public purposes in addition to navigation.

As we have indicated the Commission considers the standard of section 10(a) of the Federal Power Act to be the critical test in any relicensing proceeding. Accordingly, assuming that it was the Commission's judgment that recapture should not be recommended, a license would be issued to that applicant whose plans are best adapted to the comprehensive development of the waterway. This would embrace not only waterpower development but all beneficial public purposes including resource conservation, water quality control, flood control, fish and wildlife protection, recreation, navigation, hydraulic coordination and, of particular importance for reliability purposes in this day of inter-utility dependence, the coordination of project capacity and output with regional bulk power facilities. Under section 7(a) of the Federal Power Act the Commission is instructed to give preference to license applications of States or municipalities provided the plans offered by such applicants are equally well adapted, or shall within a reasonable time be made equally well adapted, to conserve and utilize the water resources of the region. We have been advised by our General Counsel that in the relicensing proceeding the preference would apply only where the competition is between a State or municipality and a private applicant other than the original licensee.[5] In preparing the draft legislation we rejected the suggestion that the statutory preference should be extended so as to apply to a contest for a new license between an original licensee and a party who, in the case of a contest for an unconstructed project, is entitled to preference. Similarly, we rejected the recommendation that a statutory preference should be established in favor of the original licensee.

The Commission's authority to grant a new license would remain subject to the limitation that it be for a term not exceeding 50 years. As it has in the past the Commission expects to exercise considerable judgment in selecting appropriate terms. For example, it might prove desirable to license contiguous projects in the same river basin so as to provide for simultaneous expiration.

The bill would effect a modest extension of the Commission's conditioning authority. As matters now stand, the Commission has broad authority to condition a license at the time of issuance, including at relicensing. Under section 10(g), for example, the Commission is authorized to include "such other conditions not inconsistent with the provisions of this Act as the Commission may require." The Commission's authority to modify conditions during the license term is, however, limited. In an effort to keep pace with changes in technology and water use which have taken place in recent years and which may be expected to continue at an accelerated rate in the future, the Commission, during the last decade, has increasingly relied on open-ended license conditions as a means of assuring that a licensed project will continue to be operated and maintained in the public interest. Typical open-end conditions relate to water releases, joint use of project reservoirs and properties by the licensee and others, installation capacity and construction, maintenance and operation of facilities for the

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[5] Section 7(a) of the Act provides as follows:

"In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans."

conservation and development of fish and wildlife resources. Examples of open-ended conditions are attached as Appendix "B" to this statement. Of course, open-end conditions can be used satisfactorily only to the extent that changes can be foreseen. Greater flexibility is needed to accommodate inevitable future developments which cannot now be anticipated. Section 15(b) would provide added flexibility by reserving to the Commission the right, at any time after the issuance of a license under section 15(a) except an annual license, to impose upon the licensee such further reasonable requirements as are not inconsistent with any other provisions of the Act, subject to the requirement of notice and opportunity for hearing.

Section 4 of the bill would amend section 10(d) of the Federal Power Act to provide explicitly that in the case of new licenses issued under section 15 amortization reserves are to be maintained from the effective date of the new license. In the case of original licenses that obligation attaches after the first twenty years of operation. Except for time of incidence, there would be no difference in the amortization reserve requirement applicable to new or original licensees. Both would be required to establish and maintain amortization reserves from earned surplus accumulated in excess of a specified reasonable rate of return upon project net investment. Where the original licensee already is under the obligation to maintain the amortization reserves called for by section 10(d) that obligation would not abate with the expiration of the license. Rather the licensee would remain subject to that requirement without interruption, suspension or revaluation during such time as the project is being operated pursuant to an annual license. Whether or not the original licensee was under the obligation to establish and maintain 10(d) amortization reserves prior to the expiration of its original license that obligation would attach, as it would with respect to all section 15 licensees, on the effective date of the new license.

The term net investment is of considerable significance for recapture or relicensing purposes. Under sections 14 and 15 of the Act it is one of the two items for which the original licensee is to be compensated by the United States in the event of recapture or by the new license in the event that the Commission issues a license to someone other than the original licensee.[6] The second item is severance damages, or, to oversimplify, the damage to the remaining property of the original licensee as a result of the taking. There is a further qualification that the net investment component may not exceed the fair value of the property taken.

As an alternative to the net investment and severance damage formula for establishing a recapture price, the United States, a State, or municipality also has an absolute right at any time, including the time of license expiration, to take over, maintain and operate any licensed project through condemnation proceedings upon the payment of just compensation.

Finally, in focusing on relicensing procedures the Commission became convinced that any mechanism that was to be established had to permit the relicensing of a project which the public interest required to be kept in operation but for nonpower purposes. Section 15(c) would provide and would establish a procedure which would permit the retention of a project site for the fulfillment of public needs such as, for example, domestic water supply or recreation purposes. The Commission, on its own motion or upon application of any person including the licensee, would be authorized to license all or any part of project works for nonpower purposes upon finding that such would be in conformity with comprehensive development. The licensee and each affected State Commission would be put on notice as to the pendency of any such motion and an opportunity for hearing would be provided. The nonpower licensee would be required to assume the same financial obligations to the original licensee as would the United States had it exercised its right to recapture. The nonpower license would be temporary in nature continuing only until such time as in the judgment of the Commission a State, municipality, interstate agency or another Federal agency, authorized to do so, were willing to, and did assume regulatory supervision of the lands and facilities included within the nonpower license. This would assure that there would be no gap in regulation.

The Commission recognizes that numerous licenses relate to projects which are located on lands which are administered by another Federal agency. For example, many licensed projects are located within national forests. Any action to

[6] There is now pending before the Commission a rulemaking proceeding designed to formulate procedures for calculating net investment. Docket No. R–297.

issue a license under section 15 for nonpower purposes would take into consideration the functions and programs of the agency administering the lands. Before issuing a nonpower license the Commission intends to consult with such Federal agency and to issue the nonpower license where that agency acquiesces and subject to any reasonable conditions which it may suggest. Procedures will be established to effect, upon issuance of the nonpower license, the simultaneous transfer of supervisory responsibility to that agency.

Mr. Chairman, let me conclude my remarks by stressing that H.R. 12698 and H.R. 12699 accept the logic of the Congressional decision to delegate primary responsibility for the development of this Nation's hydroelectric resources to the Federal Power Commission. We think the procedures contemplated will further the basic objectives underlying the Federal Power Act while preserving fully Congress' option to recapture for the public any project which in its judgment should be the subject of Federal development and operation.

We urge the expeditious enactment of these suggested procedures.

Thank you.

Appendix A

LICENSES FOR PROJECTS WHICH WILL EXPIRE BETWEEN JAN. 1, 1968, AND DEC. 31, 1973, WHICH ARE SUBJECT TO RECAPTURE[1]

License expiration date	Licensee	Project No.	State	County or town	Stream	Installation (kilowatts)	Facilities under license	Period of license (years)
May 17, 1968	Edible Herring Products, Inc	1998	Alaska	On Baranof Island	Big Port Walter Falls Creek.	300	Diversion dam, wood stave pipe, powerhouse.	20
Aug. 31, 1968	The Empire District Electric Co	2221	Missouri	Taney	White River	16,000	Dam and integral powerhouse	10
Sept. 30, 1968	Calvert Corp	[2] 1880	Alaska		Hanley Creek	280	Diversion dam, flume, penstock, powerhouse, transmission line.	25
Dec. 31, 1968	Pacific Gas & Electric Co	619	California	Plumas	Bucks Creek	66,000	4 reservoirs, pipeline, tunnels, penstock, powerhouse.	44¾
Do	Utah Power & Light Co	1740	Wyoming	Lincoln	Pine Creek	350	Diversion dam, conduit, powerhouse, transmission line.	25
Do	Jardine Mining Co	1878	Montana	Park	Bear Creek	880	Diversion dam, ditch, pipeline, powerhouse, transmission line.	25
Dec. 31, 1969	Margaret P. Dawson	1890	California	Mono	Milner Creek	250	Diversion dam, pipeline, powerhouse, transmission line.	25
Do	Intercoastal Packing Co	2026	Alaska	On Kodiak Island	Crater and Ash Creeks.	150	2 diversion dams, ditch, flumes, pipeline powerhouse.	25
Do	The Montana Power Co	2301	Montana	Stillwater	West Rosebud Creek	10,000	Storage dam, tunnel, pipeline, penstock, powerhouse, transmission line.	7¼
Apr. 12, 1970	The Western Colorado Power Co	733	Colorado	Ouray	Uncompahgre River	432	Storage dam, conduit, penstock, powerhouse.	10
June 15, 1970	Southern California Edison Co	372	California	Tulare	Tule River	2,000	2 diversion dams, conduits, regulating reservoir, penstock, powerhouse, transmission line.	28½
June 30, 1970	The Western Colorado Power Co	400	Colorado	La Plata, San Juan, San Miguel, Ouray.	Animas and South Fork, San Miguel Rivers.	11,600	4 dams, 3 reservoirs, 3 conduits, 2 powerhouses, 5 transmission lines.	35
Do	Utah Power & Light Co	472	Idaho	Franklin	Bear River	30,000	Storage dam, steel pipe, penstocks, powerhouse, transmission line.	43½
Do	do	486	Utah	Cache	Logan River	2,000	Diversion dam, wooden flume, 2 penstocks, powerhouse, transmission line.	43½
Do	Idaho Power Co	503	Idaho	Ada and Owyhee	Snake River	10,300	Storage dam and powerhouse	42½
Do	Utah Power & Light Co	597	Utah	Salt Lake	Big Cottonwood Creek.	1,000	Diversion dam, channel, steel pipe, powerhouse, transmission line.	43½
Do	do	665	do	Utah	Santaquin or Summit Creek.	880	Diversion dam, conduit, steel pipe, powerhouse, transmission line.	43½
Do	do	696	do	do	American Fork Creek.	950	Diversion dam, conduit, penstock, powerhouse, transmission line.	43½
Do	do	703	Idaho	Bear Lake	Paris Creek	650	Diversion dam, canal, forebay, penstock, powerhouse, transmission line.	43½

See footnotes at end of table.

	Do	do	713	Utah	Salt Lake	Mill Creek	300	Diversion dam, conduit, penstock, powerhouse, transmission line.	43½2
	Do	do	1744	do	David, Morgan, Weber.	Weber River	2,500	Dam, conduit, powerhouse, 2 transmission lines.	32½
	Do	Wisconsin Michigan Power Co	1759	Wisconsin	Iron	Michigamme and Menominee Rivers.	22,500	3 dams, 3 reservoirs, tunnel, conduits, 3 powerhouses, 2 transmission lines.	32½
	Do	New England Power Co	1885	Vermont, New Hampshire	Windham, Windsor, Vt.; Cheshire, Sullivan, New Hampshire.	Connecticut River	40,800	Dam, canal, powerhouse, 4 transmission lines.	32½
	Do	Pennsylvania Power & Light Co	1881	Pennsylvania	York and Lancaster	Susquehanna River	109,800	Dam and integral powerhouse	32½
	Do	Metropolitan Edison Co	1888	do	Dauphin, Lancaster, York.	do	19,600	2 dams, headrace, powerhouse	32½
	Do	Western Massachusetts Electric Co	1889	Vermont, Massachusetts, New Hampshire.	Windham, Vt.; Franklin, Mass.; Cheshire, N.H.	Connecticut River	55,800	2 dams, canals, 2 powerhouses, transmission line.	32½
	Do	New England Power Co	1892	Vermont, New Hampshire.	Orange, Windsor, Vt.; Cheshire, Grafton, Sullivan, N.H.	do	32,400	Dam, integral powerhouse, 4 transmission lines.	32½
	Do	Public Service Co. of New Hampshire	1893	New Hampshire	Hillsboro, Merrimack	Merrimack River	16,000	Dam, powerhouse, transmission line	32½
	Do	South Carolina Electric & Gas Co	1894	South Carolina	Fairfield	Broad River	14,900	Dam and integral powerhouse	32½
	Do	do	1895	do	Richland	do	10,600	Dam, canal, powerhouse	32½
	Do	Pennsylvania Electric Co	1899	Pennsylvania	Susquehanna	North Branch Susquehanna.	600	Dam and integral powerhouse	32½
	Do	New England Power Co	1904	Massachusetts, Vermont, New Hampshire.	Franklin, Worcester, Mass.; Windham, Vt.; Cheshire, N.H.	Connecticut River	24,400	Dam, integral powerhouse, 2 transmission lines.	32½
	Do	Public Service Co. of New Hampshire	1913	New Hampshire	Merrimack	Merrimack River	1,600	Dam and powerhouse	32½
	Do	Wisconsin Public Service Corp	1957	Wisconsin	Vilas	Wisconsin River	750	Dam and integral powerhouse	32½
	Do	Whiting Plover Paper Co	[3] 1967	do	Portage	do	600	2 dams and part of factory building	32½
June 30, 1970	Wisconsin Public Service Corp		1968	do	Oneida	do	1,440	Dam and 2 integral powerhouses	32½
	Do	do	1989	do	Lincoln	do	840	Dam, headrace, powerhouse	32½
	Do	do	1999	do	Marathon	do	5,400	Dam, integral powerhouse, guard locks, 2 transmission lines.	32½
	Do	International Paper Co	2095	Pennsylvania	York	Susquehanna River	2,500	Headrace, powerhouse, parts of 2 factory buildings.	32½
	Do	Consolidated Water Power Co	2110	Wisconsin	Portage	Wisconsin River	3,800	Dam, integral powerhouse, transmission line.	32½
	Do	St. Regis Paper Co	2161	do	Oneida	do	2,120	Dam, canal, powerhouse	32½
	Do	Consolidated Water Power Co	[2] 2192	do	Wood and Portage	do	3,300	Dam, integral powerhouse, integral grinder building.	32½
Mar. 2, 1971	Henry Ford & Son, Inc.[3]		13	New York	Albany, Saratoga, Rensselaer.	Hudson River	3,280	Powerhouse	50
	Do	Southern California Edison Co	67	California	Fresno	Tributaries of San Joaquin River.	138,500	2 storage reservoirs, diversion dams, conduits, 2 powerhouses, transmission lines.	50
Mar. 3, 1971	do		120	do	Fresno, Kern, Madera, Los Angeles, Tulare.	San Joaquin River	110,000	Diversion dam, tunnel, penstock, powerhouse, transmission lines.	48¾

See footnotes at end of table.

License expiration date	Licensee	Project No.	State	County or town	Stream	Installation (kilowatts)	Facilities under license	Period of license (years)
June 26, 1971	Alabama Power Co	82	Alabama	Coosa and Chilton	Coosa River	72,500	Dam, reservoir, powerhouse	50
Aug. 8, 1971	Northern States Power Co	108	Wisconsin	Sawyer	Chippewa River		Dam and reservoir	50
Sept. 16, 1971	Georgia Power Co	1218	Georgia	Dougherty and Lee	Flint River	5,400	2 dams, 2 reservoirs, powerhouse	38¾
Dec. 31, 1971	Leonard Lundgren	1097	Oregon	Jefferson	Jack Creek	90	Diversion dam, canal, penstock, powerhouse, transmission line.	20
Feb. 22, 1972	Pacific Gas & Electric Co	184	California	Alpine, Amador, and Eldorado.	South Fork, American River.	20,000	4 storage reservoirs, conduit, powerhouse, transmission line.	50
Apr. 14, 1972	do	77	do	Mendocino	Eel and Russian River	8,800	Storage reservoir, diversion dam, forebay, pressure conduit, 2 powerhouses, discharge canal.	50
July 27, 1972	do	175	do	Fresno	North Fork, Kings River.	128,200	Diversion dam, afterbay dam, conduit, powerhouse transmission line.	50
Sept. 26, 1972	Portland General Electric Co	135	Oregon	Clackamas	Clackamas River and Oak Grove River.	51,000	Storage reservoir, diversion dam, forebay reservoir, conduit, powerhouse and transmission line.	50
Oct. 12, 1972	Pennsylvania Electric Co	309	Pennsylvania	Clarion	Clarion River	28,800	Dam and powerhouse	50
Dec. 1, 1972	Pacific Gas & Electric Co	96	California	Madera and Fresno	San Joaquin River	34,100	Dam, conduit, powerhouse, transmission lines.	50
Feb. 6, 1973	Arkansas Power & Light Co	271	Arkansas	Montgomery, Garland, Hot Springs.	Ouachita River	65,300	2 dams, 2 reservoirs, 2 powerhouses	50
Feb. 11, 1973	Pacific Gas & Electric Co	99	California	Humboldt and Trinity.	Canyon Creek	2,700	Diversion dam, conduit, penstocks, powerhouse, transmission line.	50
April 22, 1973	Pacific Gas & Electric Co	187	do	Yuba	North Fork Yuba River.	6,500	Dam, reservoir, penstock, powerhouse, transmission line.	50
April 26, 1973	Southern California Edison Co	344	do	Riverside and San Bernardino.	San Gorgonio River	2,300	2 diversion dams, 2 canals, 2 forbay tanks, 2 penstocks, 2 powerhouses, and transmission line.	50
June 6, 1973	Ford Motor Co	362	Minnesota	Hennepin and Ramsey.	Mississippi River	14,400	Powerhouse	50
June 8, 1973	Alabama Power Co	349	Alabama	Elmore, Tallapoosa and Coosa.	Tallapoosa River	154,200	Dam, reservoir, powerhouse	50
June 30, 1973	Owens-Illinois Glass Co	2180	Wisconsin	Lincoln	Wisconsin River	3,000	Dam, integral powerhouse, transmission line.	35½
July 4, 1973	Utah Power & Light Co	20	Idaho	Bannock and Caribou.	Bear River	14,000	Dam and integral powerhouse, reservoir	50
Aug. 24, 1973	Minnesota Power & Light Co	346	Minnesota	Morrison	Mississippi River	12,000	Dam and integral powerhouse	50
Sept. 18, 1973	Michigan Gas & Electric Co	401	Michigan	St. Joseph	St. Joseph River	1,700	Dam and integral powerhouse	50

See footnotes at end of table.

License expiration date	Licensee	Project No.	State	County or town	Stream	Installation (kilowatts)	Facilities under license	Period of license (years)
Oct. 23, 1973	Pacific Gas & Electric Co	233	California	Shasta	Pit River	292,250	3 dams, 3 powerhouses, 3 reservoirs, penstocks, pressure tunnels, surge tanks, transmission lines.	50
Oct. 26, 1973	Minnesota Power & Light Co	469	Minnesota	St. Louis and Lake	Kawishiwi River	4,000	Dam, reservoir, penstocks, powerhouse, and transmission line.	49⅙

[1] Sec. 14 of the Federal Power Act (16 U.S.C. 807) reserves the right to the United States to recapture the project works upon expiration of each license listed in this table at a price to be determined under that section.

[2] This project produces both mechanical and electrical power. The mechanical power is represented in this figure by an equivalent number of kilowatts of electric power.

[3] License transferred to Niagara Mohawk Power Corp. effective Sept. 15, 1967.

[4] Application for surrender of license filed.

APPENDIX B

The following conditions are extracted from the Commission's standard license form "L–3," as revised September 1, 1966:

"*Article 13.* The United States specifically retains and safeguards the right to use water in such amounts, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

"*Article 14.* On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region, for water supply for the purpose of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation, at least full reimbursement for any damages or expenses which the joint use causes him to incur, for its reservoirs or other project properties or parts thereof for such purposes, any such compensation to be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be concurrently submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters."

* * * * * * *

"*Article 16.* The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

"*Article 17.* Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be presecribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license."

Mr. SOLOMON. I suspect we would also like to have put in the letter of August 28, 1967, to Speaker McCormack, in which we transmitted this bill for introduction.

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

(The document referred to was submitted with the report of the Federal Power Commission and appears on p. 3.)

Mr. SOLOMON. Mr. Chairman, I am pleased to appear here this morning in support of H.R. 12698 and H.R. 12699, identical bills introduced by Chairman Staggers and Macdonald at the unanimous request of the Federal Power Commission.

This legislation was being prepared at the time of our agency hearing before the full committee in March of last year, at which time Chairman Staggers raised the issue as to the proper procedures for keeping the Congress informed of the situation prevailing at the end of a hydroelectric licensee's term. (House Committee on Interstate and Foreign Commerce, Agency Hearings (90th Congress, 1st Session) Serial Number 90–1, pages 773–774.) These bills are designed to establish procedures which would facilitate the determination, which must be made at the expiration of most hydroelectric licenses, whether the project should be recaptured by the Federal Government or relicensed.

In 1920, when Congress delegated to the newly created Federal Power Commission authority to license non-Federal hydroelectric projects, it limited the term of any license to a maximum of 50 years. This limitation was intended to preserve for subsequent Congresses a full opportunity to reevaluate the best use of each project site. At the expiration of each license, except those issued to States or municipalities, the United States enjoys the right to recapture and take over the project. Alternatively, the Commission is authorized to issue a new license to the original licensee or to any other non-Federal applicant, public or private.

Under current practice, the recapture and relicensing determinations involve a threefold process. Five years before a license is to expire, the Commission solicits the views of the licensee concerning its plans for the future development of the site and the views of each Federal and State agency which may have an interest in recapture. Two years before the expiration date, the Commission forwards a report on the project to the Congress which includes a recommendation as to whether or not the project should be recaptured. If I may interpolate, that really means that we try to do it 2 years in advance; we have unfortunately fallen behind on some of those attempts. The Congress is then asked to decide whether it wishes to recapture a project. Where Congress forgoes that right, relicensing procedures must be undertaken by the Commission.

This procedure, in our view, is unsatisfactory. It requires the Commission, in advance of the more detailed factfinding relicensing proceeding, to adopt its position as to recapture even though it may be without relevant factual information which would not be disclosed until a relicensing proceeding. Moreover, existing procedure requires the Congress to focus on each expiring licensed project that is subject to recapture even though no Federal agency has expressed any interest in recapture.

We are now rapidly approaching the day when the licenses of projects subject to recapture will be expiring in large numbers. There are presently 270 licensed hydroelectric projects which are subject to recapture and in the next 5 years 67 of these licenses will expire.

We strongly urge the establishment of a procedure which would guarantee the fullest possible development of all considerations bear-

ing on the desirability of recapture, as opposed to relicensing, before the Commission and the Congress are required to consider the recapture question. We do not believe Congress will wish to be burdened with a requirement that it consider recapture of a project where, after such a proceeding, neither the Commission nor any interested Federal agency recommends recapture. A procedure should be developed which would permit the concentration of Commission staff and outside resources in one proceeding and which would require the Congress to give consideration to recapture only where, as a result of that fact-finding proceeding and upon the basis of the record there established, some Federal interest in recapture has been articulated.

Quite obviously, Congress should not—and could not—be precluded from considering recapture of any project even if all Federal agencies recommend against it; what we are focusing on here, however, is a procedure for handling the large volume of expiring licenses in a reasonable and rational fashion.

These bills, we believe, would establish such procedures. They are procedural bills designed solely to permit the recapture and relicensing determinations to be made efficiently and in harmony with the purpose underlying the limited term license. There has been no attempt to modify the substantive standards which the Commission is required to apply in determining whether or not to recommend recapture and in passing upon relicensing proposals.

Under the procedure we are proposing, the Commission, prior to the expiration of a license, would receive applications for a new license. In the relicensing proceeding on the applications, the Commission would consider the desirability of recapture as one of the central issues. If the Commission were to conclude that in its judgment the United States should exercise its right of recapture, then it would be required to so recommend to the Congress; in that event, the Commission would not issue a new license (other than the automatic annual renewal of the expired license which is required by present law to prevent a hiatus pending ultimate resolution of the recapture question).

If the Commission were to conclude that recapture would not serve the statutory objective of optimum site utilization in the public interest, it would be able to proceed to issue a new license upon appropriate conditions either to the original licensee or to some other applicant. It would, however, be required to stay the effectiveness of its order upon the motion of any Federal department or agency desiring to recommend recapture to the Congress. Unless earlier terminated upon motion of that department or agency, or by an act of Congress, any such stay would automatically terminate at the expiration of the next full Congress immediately following the Congress then in session and the license would become automatically effective. Thus, the bill is drafted in terms of a condition subsequent. The Commission would issue a new license, the effectiveness of which, if so desired by another Federal department or agency, would be stayed for a prescribed period. If the Congress, which would be notified by the Commission of all stays, does not act within that period, the new license would become effective as a matter of law.

In selecting this procedure for recommendation to the Congress, the Commission rejected a suggestion that it seek legislation granting to it the final say on the recapture question. In view of the financial com-

mitments and policy considerations involved, we believe that such a decision is one that the Congress would not wish to delegate, at least as a matter of general law. Similarly, we consider it inappropriate to make a Commission decision against recapture the final word on the matter. We believe the Congress is entitled to the advice of any Federal agency or department that wishes to urge recapture and such agency's or department's channel of communication should not end at the steps of the Federal Power Commission. We think the procedures contemplated by these bills strike a proper accommodation of these basic concepts, and are consistent with the language and intent of the existing act which reserves to the United States the right to take over any nonpublic project with minor exceptions.

In any relicensing proceeding, the existing standards set out in section 10(a) of the Federal Power act would be the critical test. Accordingly, where relicensing is considered appropriate, the new license would be issued to that applicant whose plans are best adapted to the comprehensive development of the waterway which, of course, includes considerations not only of water power development but of all beneficial public purposes, including the promotion of recreation, resource conservation, fish and wildlife protection, and water quality control.

It has been suggested that legislation on the recapture problem may not be necessary since much of what we are proposing could be accomplished by Commission rule. However, while some, but not all, of our recommendations could be effectuated without coming to Congress, we agree with your chairman, Mr. Staggers, that in a matter like this, which pertains directly to Congress powers over the Federal domain, it is most appropriate to afford the Congress the opportunity to consider the procedures which are to be followed.

These bills would effect a modest extension of the Commission's licensing authority, insofar as any new licenses for a licensed project are concerned, by reserving to the Commission the right at anytime after relicensing, to impose upon a section 15(a) licensee—that is, a licensee for a second term—subject to notice and opportunity for hearing, such further requirements as are consistent with the act.

As matters now stand, the Commission enjoys broad conditioning authority at the time of license issuance, including the time of relicensing, but only limited authority during the course of the license term. Accordingly, in order to preserve its ability to ensure that a licensee will continue to respond to the changing demands of the public interest, the Commission has placed increased reliance on open-ended license conditions.

If I may interpolate, if you want to get an example of what I mean by open-ended license conditions, they are set out at the end of appendix B at the end of the long statement here; some of the standard open-ended conditions are listed there.

But these conditions can be used satisfactorily only to the extent that changes can be anticipated. Greater flexibility is needed, particularly in light of the growing public concern for conservation objectives such as esthetics, and would be provided by the proposed section 15(b).

In all candor, we must point out that while the electric power industry generally has strongly supported enactment of our suggested legislation, it has opposed the requested expansion of the Commission's

conditioning authority. And the Senate Committee Print (of April 30, 1968, on S. 2445) does propose to delete that proposal. The articulated concern is that the existence of open-end conditioning authority would prejudice a licensee's ability to attract capital. However, even assuming, arguendo, the relevance of that concern at the time or original licensing when construction has yet to be undertaken, surely it would rarely be relevant in the relicensing context where we are concerned with developed and largely depreciated projects. If the industry's concern is instead related to the fear that unreasonable conditions would be imposed, again it is without basis for the statute would proscribe the imposition of such conditions.

If I may interpolate again, when we issue a license, Mr. Chairman, if there is a condition which somebody believes is unreasonable he can, even though he accepts the license, challenge in the court the reasonableness of that particular condition. Exactly this happened about 3 years ago. We issued a license to, I think, Central Maine Power Co. with a new type of condition. They thought it was unreasonable as then written and they took an appeal to the First Circuit Court of Appeals. The court agreed with them and the Commission took back the case and worked out a different version of the condition which apparently was satisfactory since the company did not then appeal.

All that is intended is that the public not be prejudiced by the Commission's lack of omniscience. We have learned in recent years that the Commission is not always able to anticipate all areas of legitimate public concern. Our early licenses, for example, Mr. Chairman, the ones which are expiring now, say practically nothing about recreation. The newer licenses are issued, of course, in light of 50 years' experience. We now have comprehensive recreational provisions in the licensing scheme. But, 50 years ago when this process started, the potentialities of these great dams and reservoirs for recreation were just not appreciated. Our problem, frankly, is that we can try to look 50 years into the future but nobody can pretend that they can do so with complete success.

Cognizant of this failing unless the Commission is permitted to respond to public needs as they arise it will most certainly be required to grant rather limited term licenses, an eventuality which would be burdensome to all concerned, including, of course, the licensee.

Another issue which has received considerable attention in the Senate hearings relates to the substantive question of the relative rights of the existing licensee and other would-be applicants in a relicensing proceeding before the Commission in the event Congress does not act to recapture a project. The Commission bill does not attempt to deal with this question. As we pointed out in our letter of August 28, 1967, to the speaker, transmitting our draft bill, our general counsel—I guess that's me—has advised us that the existing provisions of section 7(a) of the Federal Power Act, which gives States and municipalities preference in issuing licenses for new projects, is not applicable at the time of relicensing in a contest between the existing licensee and a party seeking to replace it as the licensee. This, we believe, means that in such a contest the new license will go to the party which can best meet the comprehensive development standards of the act, and if the original licensee can meet these standards as well as the new applicant, we believe he should secure the license. We

have not suggested any change in the law to give either the existing licensee or a new applicant a preference in a situation where someone else can better assure comprehensive development.

Finally, in recognition of the fact that it may well be desirable and in the public interest to use existing power sites for nonpower purposes, the Commission on its own motion or upon application by other agencies or parties would be authorized under our bill to license all or any part of project works for nonpower purposes where to do so would satisfy the comprehensive development standard. Under this amendment, a project could be reserved exclusively for domestic water supply, recreation, or the fulfillment of other public needs. The nonpower license would be temporary in nature continuing only until such time as the Commission concludes that it is able to relinquish control over the project to an interested State, municipality, interstate or Federal agency. Where the project would be located on Federal lands, as many of them are, the Commission will consult with the administering agency prior to the issuance of a nonpower license and if the agency indicates its willingness to assume responsibility over the lands and facilities, then supervisory responsibility over the project will be transferred simultaneous with the issuance of the license.

Mr. Chairman, let me conclude by stating that in formulating these suggested procedures the Commission strove to relieve Congress of the burden of reappraising individually each expiring license, while at the same time facilitating the concentration of staff and outside resources on the simultaneous consideration of recapture and relicensing under the broad standard of comprehensive development.

Let me add what I think is important here in light of Congressman Hall's earlier statement.

The relicensing proceeding is something that we and the licensees and other would-be parties are going to have to go through anyway. It is not a matter of having a relicensing proceeding or not having a relicensing proceeding. We are going to have to have a relicensing proceeding of whatever magnitude the facts call for. What we are suggesting is combining that with the preparation of a report to the Congress on the recapture question. In our view, the adoption of what we are proposing would give optimum effectiveness to the purposes underlying the limited term license.

In our more detailed statement, we discuss the pre-1920 situation which was characterized by the need for the Congress to authorize specifically each hydroelectric development on a navigable waterway. It was the unfortunate experience under that piecemeal approach which led Congress to establish an expert body and to delegate licensing authority to it.

It is the view of the Federal Power Commission, as stated in the preamble to H.R. 12698 and H.R. 12699, that congressional consideration of each project upon the expiration of its license is no more feasible than congressional consideration of each initial license application.

In its grant of licensing authority, the Congress already has reposed in the Commission the responsibility either to license or to recommend to the Congress Federal development of a project site. We commend to the Congress the appropriateness of a similar delegation with respect to the recapture-relicensing question.

Thank you.

That concludes the Chairman's statement.

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

One thing, as we all know, this is a fairly technical bill but one thing that makes it a little murky in my mind is the use of the words "recapture," "relicense," and "takeover."

Now, I take it the word "recapture" is a word of art that is very familiar to the people in the Federal Power Commission. In general, I think I know what the word means but I think for the record if you could spell out exactly the difference between the methods used to recapture or takeover it would be very helpful.

Mr. SOLOMON. Mr. Chairman, I appreciate your question because I think there is some confusion. There are essentially two, not three, processes that are involved.

Section 14 of the act provides at the expiration of any of these licenses which are not owned by a State or municipality that Congress has the right to take over the project and have it operated by one of the Federal agencies.

Now, the term "takover" and the term "recapture" have been used, with various sides claiming it is a perjorative word, to mean the same thing. Congress reserved the right to exercise its legislative prerogative to take over a project or, what is the same thing, to recapture a project at the end of its license term.

Mr. MACDONALD. Let me just interject at that point.

Then what you are saying in effect is that to recapture and to take over are exactly the same thing?

Mr. SOLOMON. They are, and some people prefer one word and some people prefer the other; right.

Mr. MACDONALD. Well, I could not tell what you preferred because you used both interchangeably in your statement.

Mr. SOLOMON. I can only say that the statutory word is "takeover" and over a period of 50 years we have fallen into the habit of sometimes using the word "recapture," but we mean the same thing. By either the term "recapture" or "takeover," we are talking about the congressional authority to take over for a specified amount of money these projects at the end of their license term. Now, the statute, Congressman Macdonald, provides that at any time the United States or the States reserve the right of condemnation.

The takeover situation at the end of a license period is not merely condemnation because the costs of takeover are at a lower net investment plus severance damage rate.

Mr. MACDONALD. Who is going to pay that, the United States?

Mr. SOLOMON. The United States.

Mr. MACDONALD. Will the Federal Power Commission set forth how much it will cost in any given takeover?

Mr. SOLOMON. The statute provides that the calculation will be made by the Commission. If it is disputed, it can be challenged in the courts.

As you may know, we have pending a rulemaking proceeding in which we are attempting to define more clearly what, at least we believe, are the standards of net investment.

The act in section 14 provides that the takeover price is net investment, not to exceed fair value, plus severance damages. Net investment is the price for the project where it is taken over.

Mr. MACDONALD. Back in 1920, this was passed?

Mr. SOLOMON. Right, sir.

Mr. MACDONALD. And you said that the bill could look 50 years in advance and be omnipotent in its wisdom and yet the Congress 50 years after the act in 1920 is supposed to do that.

Now, one question which is very basic in my mind is if the Federal Power Commission recommends to the Congress that the Congress act to take over or recapture, why, then, since the people were given this license in the first place, I take it at not cost, just given, no cost to themselves——

Mr. SOLOMON. There is a charge, annual charge, which is related to the costs of administering the act. All licensees do pay an annual charge.

Mr. MACDONALD. That is not a very high charge.

Mr. SOLOMON. Not a very high charge but it can mount up.

Mr. MACDONALD. What is a medium charge, would you say?

Mr. SOLOMON. It depends on the size of the project. My colleague says it is about 15 cents per kilowatt, roughly, very roughly.

Mr. MACDONALD. Fifteen cents per kilowatt?

Mr. SOLOMON. Per year, roughly. It may mount up to as much as several thousand dollars or maybe even more a year for the very large projects. For the very small projects, it is about $5 a year or less.

Mr. MACDONALD. So that amount of money, I am sure the records have been kept by the Federal Power Commission as to what has been charged to any given project?

Mr. SOLOMON. Oh, yes.

Mr. MACDONALD. Therefore, it would be a simple matter just to give back that amount of money; is that correct?

Mr. SOLOMON. Well, it does not play a large role in the net investment calculation but it is not relatively a very large amount of money. I think that is what you are getting at.

Mr. MACDONALD. Right.

Well, now, why should the United States years later pay the people who were just given this right to use the power project? Years later, why should the United States have to pay the power people anything?

Mr. SOLOMON. Well, I think if you look into the history of the 1920 act you will find you have just raised about the most controversial problem.

Mr. MACDONALD. I have had very little preparation about this.

Mr. SOLOMON. I am going to explain it to you.

Mr. MACDONALD. When this bill was discussed with me, this never arose and I have not had time to discuss it with counsel.

Mr. SOLOMON. It took from about 1912 to 1920 to pass the Federal Water Power act and this was the critical issue. If people were going to spend very large amounts of money to build and develop the hydroelectric resources of the country, they needed sufficient assurance that their investment would be returned to them. There were two or three ways of figuring out how this should be done but in essence what Congress eventually decided was to insure that over the 50-year license term a company would get back its investment plus a reasonable return on its investment.

Mr. MACDONALD. But have they not been getting that back as they have been selling the product that came out of this gift by selling the power to the people who were willing to pay for it under a utility rate which is a guaranteed income?

Mr. SOLOMON. That is one view of the net investment calculation. I have to avoid any definitive answer because this exact matter is pending before the Commission.

Mr. MACDONALD. Actually, I put it before my question but I really mean it as a statement because unless you can disprove what I say is exactly what is happening. Somebody gets given a power project; right?

Mr. SOLOMON. Right.

Mr. MACDONALD. The use of land and water for power purposes is given to them by the Federal Government.

Mr. SOLOMON. Right.

Mr. MACDONALD. They then utilize this power to generate the power and sell it; right?

Mr. SOLOMON. Yes; most of the licensees do.

Mr. MACDONALD. Therefore, they sell it at a guaranteed profit beacuse it is regulated as a utility; right?

Mr. SOLOMON. The act provides that if they make more than a fair return that the excess will be deducted from what they are entitled to get. There are disagreements, which are pending before the Commission at this time, as to what the net investment in a project will be at the end of the 50-year license term, and therefore I necessarily have to be careful on what I say about it.

It is clear under the act that the net investment in a project which the United States would have to pay if it takes over the project at the term will be less than if somebody was attempting to rebuild that project 50 years later. These projects are not worthless at the end of a 50-year period. As you know, a dam is good for 75, 100, or more years.

Mr. KORNEGAY. Would the gentleman yield?

Mr. MACDONALD. I yield.

Mr. KORNEGAY. I don't understand exactly what you are saying. Is the value determined by the depreciated value of the installation at the end of the 50 years? You said the net value. Is that the total capital outlay that has been placed into it?

Mr. SOLOMON. Mr. Congressman, that is one theory. There are some people that say that the net investment is the depreciated value of the project at the end of the 50-year period. I think it would be agreed by most people that it is somewhat less than that. How much more less than that——

Mr. KORNEGAY. Less than the depreciated value?

Mr. SOLOMON. It is the depreciated value, probably, less something more. The nature of the "something more" I cannot tell you at this moment because this is what we are considering.

Mr. KORNEGAY. Less something more?

Mr. SOLOMON. Yes.

Mr. MACDONALD. If I could ask a question.

In machinery used in plants and so forth the owners are permitted to depreciate that machinery at a given rate and take it off their taxes. I was wondering what system of depreciation is used by the Federal Power Commission to determine the depreciation of such a project.

Mr. SOLOMON. We have authority under this act to fix and approve the depreciation standards for each project and we do so in accordance with our uniform system of accounts, which applies to all electric utilities.

Mr. MACDONALD. How much is that a year?

Mr. SOLOMON. It varies with the type of equipment. The dam, itself——

Mr. MACDONALD. I am asking for the formula.

Mr. SOLOMON. I will have to submit that to you because it differs for different types of equipment. Some equipment is depreciated well within the 50-year period; other parts of a dam may be depreciated over a 75- or 100-year period.

Mr. MACDONALD. Well, that really was my point, that in some of these takeovers would not the people who have put in the capital for the projects be already repaid by way of depreciation?

Mr. SOLOMON. This is possible. It is possible that the net investment under certain circumstances may be zero.

Mr. MACDONALD. Therefore, the United States would not have to pay those people anything under this bill?

Mr. SOLOMON. For the project there would still be the other phase of the question, the so-called severance damages.

Mr. MACDONALD. Well, we come to that because you repeat about severance. What is the damage done when a gift is revoked after 50 years?

Mr. SOLOMON. Well, the severance damage question, Mr. Congressman, relates to a different problem. You may have parts of a system which are not part of the project but which, if the Government takes it over, become worthless.

Suppose a company has a line not part of the project which they built to get power to or from this project and supposing as a result of the Government's taking over the project and using it in a different manner this line becomes less valuable, this is what the severance damage problem is. It is the damages to the system resulting from the fact that the system no longer owns the project.

Mr. MACDONALD. If they don't own the project and the lines are no longer valuable, during that 50-year period they have been earning money from those lines, have they not?

Mr. SOLOMON. They have been earning money from the project and the associated equipment; yes.

Mr. MACDONALD. Well, therefore, if they have been earning money from these lines, I repeat my question, and they were given this right by the U.S. Government, why should the U.S. Government have to pay them a severance damage?

Mr. SOLOMON. Well, Congress in 1920 felt that if the effect of takeover was to otherwise injure the licensee that he was entitled to damages for this injury.

Mr. MACDONALD. Well, many, many attitudes and political philosophies have changed since 1920 and it would seem to me that what the Congress said in 1920 has changed, we keep hearing in one committee of Congress and another, and yet you are telling us, if I recall you correctly, that what Congress did in 1920 binds this Congress now.

Mr. SOLOMON. It is not a matter of binding Congress. Congress in 1920 reserved its right—it would have had it, anyway—to condemn the property. Congress can always condemn the property——

Mr. MACDONALD. Now you are putting in a fourth word. We have relicense, recapture, takeover, and now you are saying condemn. I

have never heard anything about anything being condemned. Why do you raise that now, Mr. Solomon?

Mr. SOLOMON. The point I am trying to make, Congressman Macdonald, is the reason you have not heard anything about condemnation is because Congress in 1920 wrote into the act this net investment formula which it assumed would allow it to take over a project at less than the condemnation price. The net investment, severance damage formula is intended to give Congress the right to take over a project if it so sees fit at less than the price that it could do merely because it has the sovereign power 50 years later to do whatever it wants.

Its sovereign power to take over projects in the absence of this formula is the sovereign power to condemn, but the formula here is intended to allow Congress to have a greater power than if they merely condemned.

I see that you are not entirely satisfied by some of my responses. Again I must say, not only is this one of the most complicated problems, but it happens to be one in which we have a proceeding and concerning which it would be improper for me to attempt to give you a definitive answer at this time. I do think it is important to make clear that we have not attempted to touch the cost of takeover in this legislation. Whatever the takeover price is, and I think it is agreed that the takeover price is less than the condemnation price—whatever it is, Congress in exercising its authority or not exercising its authority will have to act within the limits of the contract it made with these utilities 50 years ago.

Mr. MACDONALD. All right.

Let me drop that because I think we are both confused enough at this point about that particular subject of impoundment.

Congressman Hall raised a point which I don't know if it is explained in the chairman's statement which I just received this morning, but in your judgment would you say that if this bill as it comes out of the committee is passed that it would be another slowdown in the bureaucratic process and, therefore, that the donees of the power project will suffer further delays, or is this a speedup as I thought it would be?

Mr. SOLOMON. We intended it to be a speedup by telescoping into one commission proceeding two commission proceedings which we would otherwise have to undergo.

For example, on the empire district case, itself, we sent to the Congress on February 23, 1967, our recommendation that this project should not be recaptured. We have not heard from Congress. We have not heard yes or no. However, because, as Congressman Hall said, it appeared to be a relatively uncontroversial project, we have started to proceed with the relicensing proceeding. My understanding is that empire district did file an application for a new license on August of last year. The license is being processed or will be processed as soon as it is completed and we will have to have a new proceeding on the empire district license.

Now, assuming that the Federal agencies continue their view that this project should not be recaptured and assuming that nobody else applies for this license, this may be a relatively simple relicensing proceeding. But here, having spent, as Congressman Hall quite rightly

said, a substantial amount of time on empire district in preparing this letter to this committee, we have to start in all over again.

Now, essentially our bill is based on two assumptions: One, that we are going to have to have a relicensing proceeding, that we are not automatically going to grant new licenses at the end of the 50 years. We are going to look to see how these licenses can be adapted for the next 50 years.

The second assumption of this whole bill is that Congress does want advice from this agency with respect to the projects where there is an issue as to recapture, that it wants a procedure where we can screen out the ones where there is no issue. But where there is an issue, where we believe it should be recaptured or where some other Federal agency wishes to argue that it should be recaptured, Congress wants a procedure under which, in exercising its legislative authority it will have some real information before it and not merely a listing of a project which is going to expire some time in the future which is merely a name and serial number.

Mr. MACDONALD. Obviously, the Congress could not obtain the information any place except from yourself.

I was wondering if there was any set formula to help the Federal Power Commission by guidelines, whether or not to recapture or take back one of these projects.

Mr. SOLOMON. Well, the Commission has submitted four letters to this Congress. The first of these was the empire district letter on February 23, 1967. We submitted a letter recommending against recapture of the Bucks Creek project of Pacific Gas and Electric. We submitted a letter recommending against recapture of the Mystic Lake project of the Montana Power Co. We submitted another letter dealing with some 22, I think, very small projects.

Now, those letters, I think, Mr. Chairman, better than anything else I can say, spell out the type of considerations that we believe are appropriate. I have copies and it might be useful to have them introduced into the record.

Mr. MACDONALD. Well, I think that it would be very helpful to have them introduced into the record. If you could have copies also mailed to the individual members of this subcommittee, that would also be helpful.

Mr. SOLOMON. We would be very pleased to do so.

(The letters referred to follow:)

FEDERAL POWER COMMISSION,
Washington, D.C., February 23, 1967.

Project No. 2221: The Empire District Electric Company.

Hon. HUBERT H. HUMPHREY,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The Federal Power Commission herewith transmits its recommendation against "recapture" of The Empire District Electric Company's Ozark Beach hydroelectric project, with a present installed capacity of 16,000 kilowatts, located on the White River in Taney County, Missouri. The Federal Power Act (Sec. 14, 16 U.S.C. 807) reserves the right in the United States to acquire any non-public project at the expiration of its license term, on the condition that the licensee be paid its net investment, not to exceed the fair value of the property taken, plus reasonable severance damages, if any, as determined by the Commission after notice and opportunity for hearing. Under our rules, this Commission is required to transmit a letter to Congress as to the advisability of recapture of non-public projects subject to Section 14. Em-

pire District's Ozark Beach license will expire on August 31, 1968. Facts now available do not indicate that recapture would be in the public interest.

The Ozark Beach project was constructed by the Ozark Power and Water Company in 1913 pursuant to a War Department permit. Empire District acquired the property in 1927. On October 1, 1956, Empire District filed an application for a license, and in September 1958, a Federal Power Commission license was granted for a period of ten years.

The Section 10(a) standard of the Federal Power Act requires that if a project is to be licensed, it shall "be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes." We have studied the Ozark Beach project in light of this standard and have considered the alternative of Federal ownership in terms of the promotion of resource conservation, water quality control, flood control, fish and wildlife protection, navigation, hydraulic coordination, and—particularly important in the present stage of the electric utility industry's development—the coordination of the capacity and output of this generating project with the bulk power supply facilities in the region. We have also considered the probably economic consequences of recapture to the Federal treasury, the Empire District system, and to potential preference customers of public power. Many of these factors are discussed more fully in the attached Water Resource Appraisal Report for the Upper White River Basin, prepared by the Commission staff.

We have not, however, had the benefit of a relicensing proceeding, involving formal proposals and counter-proposals by the licensee, our staff, intervenors, or others who might apply for a new license. New criteria or information uncovered in the course of such a proceeding might warrant further consideration of the recommendation reached in this report.

Before undertaking our analysis of the Ozark Beach project, we solicited the advice and recommendations of each Federal department or agency which might have an interest in recapture. Comments from the Departments of the Interior, Agriculture, Army, and Health, Education and Welfare—none of which recommended recapture—are attached. The Licensee's report expressing its desire to continue operation of the Ozark Beach project is also attached. In addition, we have received correspondence from state and local agencies advocating the continued operation of the Ozark Beach project by Empire District. Empire District has been furnished copies of the recommendations submitted by the various departments and agencies, and staff's Water Resource Appraisal Report for the Upper White River Basin.

The Ozark Beach project is a part of the intensively developed Upper White River Basin of southwestern Missouri and northwestern Arkansas. The Basin area of approximately 9,870 square miles contains five hydroelectric developments having a combined capacity of 738,000 kilowatts. Four of the developments are federally owned. These four are the Bull Shoals, Table Rock, Beaver, and Norfolk projects operated by the Corps of Engineers. Their power is marketed by the Southwestern Power Administration of the Department of the Interior.

The Ozark Beach reservoir has limited pondage, but it is sufficient to permit operation of the power plant at full capacity during Empire District's peak demand periods. The power output of Ozark Beach, through the Empire system, is coordinated with that of other private, cooperative, municipal, and Federal power systems in the area. Empire District is a member of the five-company Missouri-Kansas Power Pool and is a party to the Missouri Integration Contract. The latter is an agreement between Associated Electric Cooperative, Inc. (a group of six G&T Cooperatives), and three electric utiilty companies whereby the operation of these systems is integrated to provide optimum utilization of hydroelectric power which Associated and the Companies purchase from the Southwestern Power Administration. Most of this purchased power is derived from the four federally-owned projects in the White River Basin. In addition, Empire District participates in the 15-company Southwest Power Pool which has a combined generating capacity of more than 11 million kilowatts.

As originally installed, the Ozark Beach project had a total generating capacity of 9,000 kilowatts. In 1931 the capacity was up-graded to its present 16,000 kilowatt level. in 1955 a protective wall was constructed to protect the project power plant from inundation by backwater from the downstream Bull Shoals dam during flood periods, for which the United States paid Empire District $660,000 toward the construction work.

The Commission staff has inspected the project faciilties. No unsafe structural conditions were found; the hydraulic and electrical equipment appeared well maintained.

Further capacity expansion of the project is possible. Empire District has studied the possibility of installing an additional 24,000 kilowatts of capacity in four bays which are not now in use, bringing the total installed capacity to 40,000 kilowatts, at an estimated additional capital investment of $4,600,000. (By way of comparison, the actual legitimate original cost of the present project is approximaely $2,300,000 and the related reserve for depreciation will be approximately $1,250,000 as of August 1, 1968, the termination date of the license.) Empire District does not plan any expansion at this time, because the project's water supply depends entirely on releases from the upstream Table Rock project, the operation of which has not yet been stabilized, and because the operating head and thus the output capability of Ozark Beach is dependent upon the pool level at Bull Shoals downstream. Uncertainties as to the operation of these two Federal projects and undefined headwater benefit payments which may be associated with a sizeable increase of capacity, complicate a plant expansion decision. In 1980 the generating facilities will be about 50 years old and may need to be replaced if additional new generating units have not been installed. Replacement units could provide 18,000 kilowatts of capacity at an estimated investment of $2,000,000.

Ozark Beach is bracketed by Table Rock upstream, and Bull Shoals downstream. These two, with the recently completed Beaver project located upstream from Table Rock, and the Norfork project located on the North Fork River, which joins the White River downstream from Bull Shoals, have a combined generating capacity of 772,000 kilowatts (with space for an additional 70,000 kilowatts at Norfork). The four Federal reservoirs provide about 3.4 million acre-feet storage capacity for power, more than 4 million acre-feet of flood control storage capacity, and 135,000 acre-feet of storage space for water supply. In contrast, Ozark Beach has a generating capacity of 16,000 kilowatts and useable storage capacity of 13,500 acre-feet. Thus it would contribute little to the Federal operations, even if the plant's capacity were expanded to 40,000 kilowatts. While Ozark Beach constitutes nearly nine percent of the Empire District's system generating capacity, if recaptured it would increase the capacity of the Southwestern Power Administration by less than one percent.

We believe that the Ozark Beach project can be relicensed consistent with the comprehensive development of the Upper White River Basin. The recreational development of the reservoir, although intensive, can be further developed. This reservoir is particularly suited for recreation since its water level remains relatively constant, unlike the reservoir levels at the four Federal projects. Recreational improvement, plus the possible future need to increase generating capacity, can be provided for if a new license is issued. The existing and potential recreational development supports the retention of the project dam and its operation as they presently exist.

Operation of Ozark Beach by a licensee can be made fully compatible with the operation of the neighboring Federal projects. Necessary electrical and hydraulic coordination with the Federal installations and cooperation with Federal authoriies to develop optimum operating plants can be assured through appropriate license conditions. As the Department of the Interior indicates in its attached letter, the interests of the four neighboring Federal projects, as well as of the public generally, can be protected by the inclusion of such conditions.

As previously stated, the United States, upon recapturing a project, is obligated to pay the licensee its net investment, not to exceed the fair value of the property taken, plus severance damages, if any. Net investment and severance damages are to be determined by the Commission after notice and opportunity for hearing. Commission studies are now underway to determine the proper standards for fixing net investment and severance damages, but it is not possible to determine the total cost to the government of recapturing the project.

However, even assuming that recapture of this project could result in some additional income to the Federal treasury in excess of direct expenses, it would appear that any such amounts would be largely offset by corresponding losses in headwater benefit payments and federal income taxes. In addition, state and local governments would lose tax revenues.

Furthermore, recapture may well have adverse economic consequences for the Empire District system area as a whole. Assuming that Empire District would

have to replace energy now generated at Ozark Beach, it could cost the company an additional $85,000 annually.

In conclusion, the preponderance of available facts supports continued operation of the Ozark Beach project by a licensee obtaining such authority from this Commission.

Respectfully,

LEE C. WHITE, *Chairman.*

FEDERAL POWER COMMISSION,
Washington, D.C., October 11, 1967.

Project No. 619: Pacific Gas and Electric Company.

Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: The Federal Power Commission herewith transmits its recommendation concerning "recapture" of Pacific Gas and Electric Company's Bucks Creek hydroelectric project located on Milk Ranch Creek, Bucks Creek, and Grizzly Creek, tributaries of the North Fork Feather River, all in Plumas County in Northern California. The project, which has an installed capacity of 60,000 kilowatts but a present total operating capability of 55,000 kilowatts occupies lands of the United States within the Plumas National Forest. The Federal Power Act (Sec. 14, 16 U.S.C. 807) reserves to the United States the right to acquire any non-public project at the expiration of its license term, on the condition that the licensee be paid its net investment, not to exceed the fair value of the property taken, plus reasonable severance damages, if any, as determined by the Commission after notice and opportunity for hearing. Under our rules, this Commission is required to transmit a letter to Congress as to the advisability of recapture of non-public projects subject to Section 14 of the Federal Power Act. PG & E's Bucks Creek license will expire on December 31, 1968. Facts available at this time do not indicate that recapture would serve the public interest.

The license for the Bucks Creek project was issued to the Feather River Power Company in 1926 for a period ending December 31, 1968. The project was completed in 1928 at which time all of the generation was delivered to Great Western Power Company which company had acquired control of the Feather River Power Company while the Bucks Creek project was being constructed. PG&E acquired Great Western in 1930, and in 1936 both Great Western and Feather River were dissolved and their properties transferred to PG&E. The license was transferred to PG&E on April 7, 1936. A map showing the location of the Bucks Creek project is attached.

The Section 10(a) standard of the Federal Power Act requires that a project to be licensed shall be such as in the judgment of the Commission "will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes". We have studied the Bucks Creek project in light of this standard and have considered the alternative of Federal ownership, in terms of the promotion of resource conservation, water quality control, flood control, fish & wildlife protection, recreation, hydraulic coordination, and the coordination of the capacity and output of this generating project with the bulk power supply facilities in the region in which it is located. Likewise, we have considered the probable economic consequences of recapture to the Federal treasury, the entire PG&E system, and to potential preference customers of public power. The attached *Water Resources Appraisal for Hydroelectric Licensing Feather River Basin California,* prepared by the Commission Staff, discusses more fully some of these factors.

We have not however, had the benefit of the relicensing proceeding involving formal proposals and counter-proposals by either our staff, the licensee, intervenors, or others who might apply for a new license. It is possible, therefore, that new criteria or information disclosed during the course of such a proceeding could justify further consideration of the recommendation reached in this letter.

Before completing our analysis of the Bucks Creek project, we sought the advice and recommendations of each Federal department or agency which might have an interest in recapture. We received comments from the Depart-

ments of the Interior, Agriculture, Army, and Health, Education, and Welfare, copies of which are attached. None recommended recapture of this project. Also attached are the comments of the licensee expressing its desire to continue operation under a new license. Comments were requested from the State of California, but none were received. PG&E has been furnished copies of recommendations submitted by the various departments.

The Bucks Creek project is a water resource development in the Feather River Basin of Northern California. This basin consists of 5,900 square miles covering a portion of the western slope of the Sierra Navada extending from the slopes of Mount Lassen to the confluence of the Feather River with the Sacramento River. The Feather River is fed by west-flowing tributaries from the western slopes of the Sierra Nevada. Its major tributaries are the North Fork, Middle Fork, and South Fork, which join near the City of Oroville, the site of the State of California's Oroville Project now under construction. The Bucks Creek project is located in the North Fork Feather River drainage area. Existing water resource developments in the North Fork Feather River basin consist of the Mountain Meadows, Butt Valley, Bucks Lake, and Lake Almanor, storage reservoirs of the PG&E system, and nine hydroelectric plants. These plants, which have a combined installed capacity of 640,700 kilowatts, are Hamilton Branch, Butt Valley, Caribou Nos. 1 and 2, Bucks Creek, Rock Creek, Cresta, Poe, and Big Bend. PG&E's Belden project, now under construction, will be completed in 1970 and will have a capacity of 117,000 kilowatts. It is located between the Caribou and Rock Creek Plants. The Big Bend plant will soon be inundated by the downstream State of California's Oroville project. All of these plants with the exception of the Big Bend project, already are under an FPC license or a license application has been filed. With the exception of licenses for the Rock Creek and Cresta developments, which expire on September 30, 1982, the licenses covering the other PG&E hydroelectric developments located on the North Fork Feather River expire in the years 2003 and 2004. The State of California acquired the Big Bend plant from PG&E in 1966. The State is now negotiating with private utilities for a long term contract for the sale and distribution of the Oroville generation. Oroville dam is located below the confluence of the North, Middle, and South Forks of the Feather River, downstream from Bucks Creek. There are no Federal hydroelectric projects within this area.

The Bucks Creek project conserves and utilizes the runoff from three minor tributaries of the North Fork Feather River and includes four dams and reservoirs. These reservoirs are Three Lakes on Milk Ranch Creek; Bucks Lake on Bucks Creek; Lower Bucks Lake on Bucks Creek; and Grizzly Forebay on Grizzly Creek. All of these tributaries flow into the North Fork Feather River. The water from the project reservoirs is fed to the powerhouse by a connecting system of conduits, tunnels, stream beds, and penstocks. The powerhouse, located on the left bank of the North Fork Feather River, contains two generating units with a total operating capability of 55,000 kilowatts. The powerhouse operates under a static head of 2,558 feet, the highest in the United States.

Periodic inspections of the project have been made by the Commission staff. The project has been found to be structurally safe and the electrical equipment appears to be well maintained and is in good operational condition at present operating capability. Each generating unit has an installed capacity of 30,000 kilowatts. However, Unit No. 2 has operated at a capacity of only 25,000 kilowatts since the failure and replacement of the shaft in Unit No. 1 during 1953. This failure indicated that Unit No. 2's shaft should be operated at a reduced capacity in order to prevent a future breakdown. Notwithstanding the reduced capacity of Unit No. 2 the project's power capability exceeds the 50,000 kilowatts at which it was licensed. In reports filed by the licensee subsequent to the failure on Unit No. 1 it indicated that its system requirements did not justify making the expenditure that would be associated with the replacement of the shaft and bearings on the No. 2 unit in order to gain the additional 5,000 kilowatts of capacity. However, PG&E now contemplates undertaking the necessary replacement work should it receive a new license for the project. Staff studies indicate that such replacement work would be economically feasible.

Power generation first began at Bucks Creek in 1928. The average annual generation for the 37 years between 1929 and 1965 was about 200 million kilowatthours. The usable storage capacity of the Bucks Creek project is 9.2 percent of the total usable capacity of the North Fork basin above the Oroville project. The Bucks Creek reservoir storage capacity increases the power output of PG&E's Cresta and Poe plants and will be directly effective in augmenting

low flows of the North Fork in the ten mile reach from the powerhouse to the completed Oroville reservoir.

Water stored in PG&E's Bucks Creek and other North Fork reservoirs is used for both irrigation and electrical generation. The irrigation diversions are made below the Oroville project. It is estimated that an average of about 20,000 acre feet of water per year released from the Bucks Creek storage has been available for irrigation purposes. In the future, such use will need to be coordinated with the operation of the Oroville reservoir.

Commission staff studies of the feasibility of providing additional electrical capacity at the Bucks Creek project indicate that installation of additional generating units is not feasible. However, uprating of one of the existing generating units is economically feasible. Several alternatives of providing additional capacity were considered. Principal among these were (1) enlargement of the Bucks Creek power plant, and (2) the development of the 700 feet of unused head between Lower Bucks Lake and Grizzly Forebay. The studies indicate that installation of additional capacity to develop fully the potential head and to increase the project peaking capacity is not economically justified because of the high capital cost and limited amount of additional power output. This would apply to future development by PG&E or any other party including the Federal government. Annual costs would be greater than the value of the output.

Bucks Lake is the focal point of the project for water-oriented recreation in Plumas County, an important segment of the northern Sierra Nevadas of California. It is used intensively during the summer months and provides public usage estimated to range from 50,000 to 160,000 visitor days annually. At present a total of 390 acres are devoted to various types of recreation developments around Bucks Lake and Lower Bucks Lake, nearly 50% of which is PG&E owned. However, these existing facilities are not adequate to provide for estimated future needs, a use of 300,000 or more visitor days per year. To meet this anticipated need, PG&E has submitted a report to the Commission proposing an estimated capital expenditure for additional recreational development of some $860,000 including the dedication of 489 additional acres to recreation for new picnic grounds, summer home sites, camp grounds and general use items such as bridges, roads, shore line clean-up, and signs. The existing and planned recreational development supports the retention of the project.

The Bucks Creek project is being operated in coordination both electrically and hydraulically with the PG&E system and through that system with that of the other systems in the area including the municipals, irrigation districts, the Federal Central Valley Project System, and will be coordinated with the soon to be completed stateowned Oroville project. In addition, PG&E is a participant in the California Power Pool and is participating in the Pacific Northwest-Pacific Southwest Intertie which requires the coordination of the operation of all major electric utilities in the States of Washington, Oregon and California. Thus, through its coordination with the PG&E system, Bucks Creek is part of a highly coordinated local and regional bulk power network.

It should be noted that the prospect of acquiring the Bucks Creek Project should be financially attractive to any operator in the area that can utilize the additional generation. Staff studies indicate that the market value of Bucks Creek approximates $11 million, if measured by the cost of equivalent capacity at a new steam-electric plant privately financed. The depreciated original cost of the Bucks Creek Project is now $6 million. Since in a pending rulemaking proceeding concerned with fixing a formula for obtaining the "net investment" of a project (the recapture price or the price to be paid by a new licensee) it generally is conceded that project net investment does not exceed depreciated original cost, Bucks Creek could be acquired at a "bargain" price. Moreover, it is entirely possible that net investment will be substantially less than depreciated original cost.

Were Bucks Creek to be recaptured, one consequence would be that an additional average annual generation of approximately 200 million kwh would be available for distribution to the preference customers of the federal marketing system, with a corresponding decrease to those customers now receiving this power. One logical preference customer would be the State of California. The output of Bucks Creek could be connected with that of the soon to be completed state-owned Oroville project by the construction of approximately 30 miles of 230 kv transmission line at an estimated cost of $1,200,000. However, the construction of additional transmission lines may not be necessary in order to

make the Bucks Creek power available to the State. Under existing arrangements the State of California sells the power generated at its projects, including the power to be generated by Oroville, to PG&E, which company, for consideration, redelivers power to the State when and where it is required by the State of California's Water Project for municipal water supply and irrigation purposes. If the output of Bucks Creek were to be disposed of under a similar arrangement, it would not be necessary, nor would it be beneficial from an electrical standpoint, to connect that project with Oroville. The situation would be the same if the State of California were to become the licensee of the Bucks Creek project.

Alternatively, the output of Bucks Creek could be incorporated into the federal marketing system so as to be available for distribution to all preference customers and not just the State of California. To accomplish this incorporation it would not be necessary to construct any additional transmission lines. The PG&E transmission line which is connected to the Bucks Creek project in turn is connected with transmission facilities of the federal marketing system at a point near PG&E's Rio Oso substation. Those transmission facilities of PG&E are covered by a separate license which expires on the same date as does the Bucks Creek license. While under the terms of that license it is not subject to recapture, upon the expiration of that license PG&E either will have to obtain a new license from this Commission, if all or part of those transmission facilities constitute primary lines of one or more of its licensed projects, or it will have to obtain a permit from the Department of Agriculture since part of those lines are on Forest Service lands. In any event, either under this Commission's licensing authority or the Department of Agriculture's existing permit practice, PG&E could be required to wheel public power. Thus, if Bucks Creek were recaptured, PG&E could be made to wheel the output of that project to an interconnection with the federal marketing system. The federal marketing system, however, does not have its own distribution system. PG&E, under a wheeling agreement, transmits (for a charge) the generation of the federal system to its preference customers. But that agreement has limited application and might not embrace the power output of Bucks Creek were that project recaptured and incorporated into the Central Valley system (Interchange and Transmission Contract No. 14–06–200–2948A). If Congress were to recapture Bucks Creek it would have to consider the further question of the disposition of the project's generation.

We believe that the Bucks Creek project can be relicensed consistent with the comprehensive development of the Feather River Basin. In so concluding we have considered whether the Section 10(a) standard could better be served by the federal ownership of the Bucks Creek project and based upon our analysis do not find recapture to be warranted. Considering the population growth of California in general and of the Feather River Basin area in particular, not only will the demand for power increase, but, as the enclosed Appraisal report indicates (p. 66), so too will the demand for "better flood control, more dependable irrigation water, vastly more and better outdoor recreation facilities, assured and good quality municipal and industrial water supplies, abatement of pollution at the source, and water quality control to standards appropriate to the various water uses." From our studies to date we have no reason to doubt that all public services which could be made available as a consequence of federal ownership can and will be assured by the inclusion of appropriate conditions in any new license that is issued. If facts disclosed during the course of a licensing proceeding raise any doubts as to the licensee's ability to fulfill these public needs we will, of course, reevaluate our present recommendation against recapture. It is precisely because of the fact that all of the considerations bearing upon recapture may not be disclosed until a relicensing hearing is conducted that the Commission has submitted legislation which is intended to combine the recapture investigation with the relicensing proceeding. See H.R. 12698 and 12699. In a licensing proceeding any public body will be free either to compete for the license of the Bucks Creek project or to urge that our recapture recommendation be reevaluated because of the need for additional preference power or to request the inclusion of any license conditions which are deemed appropriate either to the operation of neighboring public or private systems or to assure that all appropriate services are rendered by the licensee.

As stated earlier in this letter, the licensee, upon recapture, is entitled to receive its net investment not to exceed the fair value, and severance dam-

ages, if any. These sums are to be determined by the Commission after notice and opportunity for a hearing. We pointed out in our prior letter recommending against recapture of The Empire District Electric Company's Ozark Beach Project No. 2221 that Commission studies were underway to determine proper standards for fixing net investment and severance damages. Those studies have not yet been completed and therefore it is not now possible to determine what the total cost would be to the government were this project to be recaptured.

However, here as was the case with the Ozark Beach project, even if it is assumed that recapture could result in some additional income to the Federal treasury in excess of direct expenses, any such amount would be largely offset by the loss of the federal income tax payment attributable to this project. In addition, state and local governments would lose tax revenues.

In conclusion, we believe the facts available support the continued operation of the Bucks Creek project by a licensee obtaining its authority from the Commission.

Respectfully,

LEE C. WHITE, *Chairman.*

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., July 6, 1965.

Hon. JOSEPH C. SWIDLER,
Chairman, Federal Power Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to the Commission's letter dated 10 December 1964 concerning expiration of the license period for Pacific Gas and Electric Company's Bucks Creek Project No. 619 located on Bucks Creek in California. Comments are furnished below in regard to recapture of the project pursuant to the provisions of Section 14 of the Federal Power Act.

The project was constructed by the Pacific Gas and Electric Company for hydroelectric power generation and is integrated with a series of run-of-the-river hydroelectric power plants owned and operated by the licensee. Other than those reservoirs and power plants operated by the licensee, there are no water resources developments on North Fork Feather River. However, the Oroville Reservoir Project, currently under construction by the State of California on the main stem Feather River (downstream from the Bucks Creek Project), will provide 3,500,000 acre-feet of multiple-purpose storage for power, flood control, recreation and water supply.

Comprehensive planning for the Feather River basin has been conducted for many years by Federal, State and local agencies. The California Department of Water Resources Bulletin No. 3, "The California Water Plan," contains a framework plan for ultimate development of the water resources of the state. The Bucks Creek Project is an integral part of that plan.

There is an existing Corps of Engineers navigation project on Feather River, authorized by the River and Harbor Act approved 21 January 1927. The project is one of maintenance and consists of removal of obstructions, and construction of wing dams between the mouth of Feather River at Verona and Marysville. No commercial navigation exists on this waterway at the present time. Relicensing of the Bucks Creek Project would not interfere or be inconsistent with any existing or proposed navigation projects of the Corps of Engineers. Recapture of the project by the Federal Government would not be a requirement for improvement or emhancement of navigation. In the event that the project is relicensed, it is considered that the provisions of the Federal Power Act would protect the interests of navigation and that insertion in the license of special terms or conditions for this purpose would not be necessary.

No flood control storage is provided in the four reservoirs of the Bucks Creek Project. The downstream Oroville Project, when completed, will provide 750,000 acre-feet of storage for flood control and project operation in the interest of flood control, as provided for in the license for Project No. 2100, will be in accordance with rules and regulations prescribed by the Secretary of the Army pursuant to Section 204 of the Flood Control Act of 1958. The Oroville Project together with the downstream levee system will provide a high degree of flood control for the Feather River basin. Relicensing of the Bucks Creek Project would not interfere or be inconsistent with any existing

or proposed flood control works of the Corps of Engineers. If the project should be relicensed, it is recommended that the license include a provision to require that releases from the project reservoirs during flood periods be no greater than natural inflow.

In view of the above considerations, the Bucks Creek Project would not enhance our program in the basin and recapture is not recommended. No objection is made to relicensing the project subject to recommendations contained above.

Sincerely yours,

JACKSON GRAHAM,
Major General, USA,
Director of Civil Works.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., January 18, 1966.

Hon. DAVID S. BLACK,
Acting Chairman, Federal Power Commission,
Washington, D.C.

DEAR MR. BLACK: This is in reply to your letter of December 10, 1964 requesting our comments and recommendations on recapture of the Bucks Creek Project (FPC No. 619) under license to the Pacific Gas and Electric Company. The present license expires December 31, 1968.

This Department does not recommend recapture. However, we believe that any license that may be issued should contain provisions fully protecting our interests. At the time application is made for relicensing we shall furnish our views relative to stipulations and conditions that we believe should be a part of any new license issued.

It is noted that the Pacific Gas and Electric Company has requested an extension in the term of its present license to April 14, 1976. In a letter dated January 7, 1966, we have requested that the Commission give this Department an extension to March 15, 1966 for furnishing our views and recommendations on the proposed amendment.

Sincerely yours,

KENNETH HOLUM,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., October 13, 1965.

Hon. JOSEPH C. SWIDLER,
Chairman, Federal Power Commission,
Washington, D.C.

DEAR MR. SWIDLER: This is in reply to your letter of December 10, 1964, inviting our comments and recommendations on recapture or relicensing of the Bucks Creek Project (FPC No. 619). This project is located on Bucks Creek, in Plumas County, California and affects lands within the Plumas National Forest.

The Forest Service advises us that it has no programs or policy that would be served by the recapture of the project. Recommendations and stipulations concerning the relicensing of the project will be submitted later. We believe this can be accomplished by October 15, 1965.

This Department is also interested in this project on behalf of rural electrification systems financed by the Rural Electrification Administration. A major problem of these systems has been obtaining adequate supplies of low-cost power to meet the constantly growing needs of their consumers. Load growth on these rural systems has been at a higher rate than that of other segments of the electric power industry. They are faced with substantial handicaps arising from the physical and economic characteristics of their service areas which are not normally experienced by investor-owned electric uitilities. They do not have the same access to the technologies of large-scale generation and high-voltage transmission as do the larger investor-owned companies. The bulk of their wholesale power requirements is supplied from external sources both publicly- and privately-owned. Their statutory preference right with respect to Federally-developed power is a significant factor in holding down their power cost which accounts for a substantial portion of their operating expense. This preference right strengthens their bargaining position in negotiating for private power supply.

The Bucks Creek Project is located adjacent to the service area of Plumas-Sierra Rural Electric Cooperative of Portola and within transmission distance of the Truckee Public Utility District of Truckee, both of which are REA-financed. Plumas-Sierra, during the fiscal year ended June 30, 1964, purchased 92% of its wholesale power from the Bureau of Reclamation at a cost of 4.4 mills per KWH. The remaining 8% was purchased from a commercial utility, interconnected with the licensee, at a cost of 13.7 mills per KWH. Truckee is paying approximately 11.7 mills per KWH for its wholesale power delivered by a commercial supplier which is interconnected with the licensee, and is experiencing difficulty in arranging for an adequate supply of low-cost power.

It is noted that the Federal Power Commission's Planning Status Report on the Feather River Basin (1964) refers (at p. 17) to the studies scheduled for this basin. The report states (at p. 20–1) that there is urgent need for an appraisal report to evaluate available schemes for future development and bring into focus an orderly multiple purpose plan for providing optimum beneficial use of the area's water resources which include a substantial hydro-electric power potential.

In all probability the rural electric systems financed by REA will not be interested in seeking a license for and taking over the ownership and operation of this project upon the lapse of the existing license. If the project is recaptured by the United States, it will presumably be redeveloped subject to appropriate Congressional authorization, and operated by the Corps of Engineers, Department of the Army, or the Bureau of Reclamation, Department of the Interior, in coordination with its other multiple-purpose projects, and the power generated thereat will be marketed in accordance with existing laws establishing preference rights in public bodies and cooperatives.

In the event recapture is not recommended, and if a new license is issued to the present licensee, we suggest that the license be granted only for such a term as will allow authorization and completion of the needed appraisal report of the Feather River Basin.

This Department will appreciate the Commission's due consideration of these comments and recommendations.

Sincerely yours,

ORVILLE L. FREEMAN.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
PUBLIC HEALTH SERVICE,
BUREAU OF STATE SERVICES,
Washington, D.C., April 6, 1965.

Hon. JOSEPH C. SWIDLER,
Chairman, Federal Power Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of December 10, 1964, to Secretary Celebrezze, inviting comments on the application for license of the Pacific Gas and Electric Company, the Bucks Creek Project No. 619 located on Bucks Creek, California.

There are no present or projected public health, water supply, or water pollution control problems related to this existing development. Therefore, we have no recommendations concerning either recapture or relicensing of the project.

The opportunity to review the application is appreciated.

Sincerely yours,

KEITH S. KRAUSE,
Chief, Technical Services Branch,
Division of Water Supply and Pollution Control.

FEDERAL POWER COMMISSION,
Washington, D.C., January 23, 1968.

Hon. HUBERT H. HUMPHREY,
President, U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The Federal Power Commission hereby transmits its recommendation concerning "recapture" of 22 projects the licenses of which have already expired or will expire by 1971. Since the 1962 enactment of Section 10(i) of the Federal Power Act (16 USC 803(i)) the Commission has been authorized to waive the right of the United States to recapture any hydroelectric project

the installed capacity of which does not exceed 2,000 horsepower. While each of the projects covered by this report have rated capacities of less than 2,000 horsepower they were licensed prior to the 1962 amendment and therefore are subject to recapture.

The attached table summarizes the revelant descriptive facts for each of the projects. Because of the size and limited effect of the projects, and the remote locations of certain of the projections, the Commission has not conducted a detailed investigation of the operations of each project nor have we been able to scrutinize their effects, either from an electrical or an environmental standpoint, on regional resources. Considerations bearing on these matters will not be disclosed until the Commission conducts a relicensing proceeding at which time interested persons will be put on notice as to the pendency of the application and will be afforded an opportunity to present their views. We recognize that facts disclosed at that time may suggest that continued operation of the project could interfere with development of a more significant energy potential or would have adverse environmental consequences and in that eventuality we would of course reevaluate our present recommendation against recapture. It is precisely because of the fact that all of the considerations bearing upon the recapture determination may not be revealed until a relicensing proceeding is conducted that the Commission has submitted legislation which would combine the recapture investigation with the relicensing proceeding. See S. 2445, H.R. 12698 and H.R. 12699. This is even more likely to be the case where, as is true of the projects covered by this report, the project is nominal in size and remotely located. During such a proceeding any public or private entities will be able to compete for the license, urge recapture, or request the inclusion of license conditions which appropriately should be imposed to assure that the licensee will operate its project consistent with the best utilization of regional resources.

Before preparing our recommendation we sought the advice of the Departments of Health, Education and Welfare, Interior, Agriculture and the Army as well as of the Governors of each state in which a project is located. None recommended recapture of any of the projects. Copies of their responses are attached. The Department of the Army did advise us that two of the projects (Nos. 713 and 1899) could be affected if the Congress should authorize construction of projects currently under study by the Corps of Engineers. We would not, of course, issue more than annual licenses to those projects until the Corps has had an adequate opportunity to complete its studies. There presently is pending before the Commission an application filed by the licensee of Project No. 1899 requesting authorization to surrender its license.

It should be noted that the licenses covering 4 of the 22 projects covered by this report already have expired. Of those Project No. 1521 (Pelican Utility Company), which is located in the Tongass National Forest, is now operating under a special use permit issued by the Forest Service, Department of Agriculture and Projects No. 1946 and 1970 (Mrs. O. B. Day and Harvey F. Stelling, respectively), which are located on public lands, have been inoperative for several years. We have unsuccessfully endeavored to communicate with the licensees of the latter two projects and our investigations indicate that there remains nothing of consequence to recapture. The remaining Project (No. 1746 issued to E. L. Cord) was relicensed as a minor project for a term of twenty-five years. The decision to relicense was predicated on the assumption that the Commission is authorized to amend and thereby extend the license term of a project so long as the total term does not exceed the fifty-year limit prescribed in Section 6 of the Act. (16 USC 799). The license for Project No. 1746 was originally issued in 1941 and now expires in 1991. These four projects are remotely located industrial installations.

In sum, the Commission is of the view that the relicensing procedures offer the best forum for resolving the question of recapture and we therefore intend to initiate administrative procedures with respect to the 18 project licenses inincluded in this report which expire between 1968 and 1971 but in no event will we complete any relicensing proceeding until the Congress has had a full opportunity to take appropriate action either through the enactment of general or special legislation.

Respectively,

LEE C. WHITE, *Chairman.*

LICENSES FOR PROJECTS HAVING INSTALLED CAPACITY OF NOT MORE THAN 2,000 HORSEPOWER, WHICH WILL EXPIRE BETWEEN 1966 AND 1971, INCLUSIVE. PROJECTS ARE SUBJECT TO RECAPTURE

License expiration date	Licensee	Project No.	Name	State	County	Stream	Installation (kilowatts)	Facilities under license	U.S. lands affected	Period of license
July 21, 1966	Pelican Utility Co.	1521	Pelican City	Alaska		Unnamed Creek on north shore of Lisianski Inlet on Chicahgof Island.	500	Diversion dam, flume, tunnel, penstock, powerhouse, transmission line.	Tongass National Forest.	25 years.
Sept. 30, 1966	E. L. Cord	1746		Nevada	Esmeralda	Leidy Creek	200	Diversion dam, conduits, penstocks, powerhouse, transmission lines.	Inyo National Forest.	5 years (No. 2).
Apr. 30, 1967	Harvey F. Stelling	1970		Alaska		Solomon Gulch, a tributary of Port Valdez.	150	Storage dam, diversion dam, flume, penstock, powerhouse, transmission line.	Public	20 years.
Sept. 29, 1967	Mrs. O. B. Day	1946		do		Allison Creek, on south shore of Valdez Arm.	200	Diversion dam, penstock, powerhouse, transmission line.	do	Do.
May 17, 1968	Edible Herring Products, Inc.	1998		do		Big Port Walter Falls Creek, tributary of Big Port Walter on Baranof Island.	300	Diversion dam, wood stave pipe, powerhouse.	Tongass national Forest.	Do. National
Apr. 30, 1968	Calvert Corp	[1] 1880		do		Handley Creek	280	Diversion dam, flume, penstock, powerhouse, transmission line.	Chugach National Forest.	25 years.
Dec. 31, 1968	Utah Power & Light Co.	[1] 1740	Cokeville	Wyoming	Lincoln	Pine Creek, tributary of Bear River.	350	Diversion dam, conduit, powerhouse, transmission line.	Public	Do.
Do	Jardine Mining Co.	[2] 1878		Montana	Park	Bear Creek, tributary of Yellowstone River.	880	Diversion dam, ditch, pipeline, powerhouse, transmission line.	Absaroka National Forest.	Do.

Dec. 31, 1969	Margaret P. Dawson	1890	----------	California	Mono	Milner Creek, tributary of Owens River.	250	Diversion dam, pipeline, powerhouse, transmission line.	Inyo National Forest.	Do.
Do	Intercoastal Packing Co.	2026	----------	Alaska	----------	Crater and Ash Creeks, tributaries of northeast arm of Uganik Bay on Kodiak Island.	150	2 diversion dams, ditch, flumes, pipelines, powerhouse.	Public	Do.
Apr. 12, 1970	The Western Colorado Power Co.	773	Ouray	Colorado	Ouray	Uncompahgre River, tributary of Gunnison River.	432	Storage dam, conduit, penstock, and powerhouse.	Grand Mesa-Uncompahgre National Forest.	10 years (No. 6).
June 30, 1970	Utah Power & Light Co.	597	Stairs	Utah	Salt Lake	Big Cottonwood Creek, tributary of Jordan River.	1000	Diversion dam, channel, steel pipe, powerhouse and transmission line.	Wasatch National Forest.	43 years and 1 month.
Do	do	665	Santaquin	do	Utah	Santaquin or Summit Creek tributary of Utah Lake.	880	Diversion dam, conduit, steel pipe, powerhouse and transmission line.	Uinta National Forest.	Do.
Do	do	696	Upper American Fork.	do	do	American Fork Creek, tributary of Utah Lake.	950	Diversion dam, conduit, penstock, powerhouse and transmission line.	Wasatch National Forest.	Do.
Do	do	703	Paris	Idaho	Bear Lake	Paris Creek, tributary to outlet of Bear Lake.	650	Diversion dam, canal, forebay, penstock, powerhouse, and transmission line.	Cache National Forest.	Do.
Do	do	713	Upper Mill Creek.	Utah	Salt Lake	Mill Creek	300	Diversion dam, conduit, penstock, powerhouse, and transmission line.	Wasatch National Forest.	Do.
Do	Pennsylvania Electric Co.	[1] 1899	Oakland	Pennsylvania	Susquehanna River.	North branch of Susquehanna River.	600	Dam and integral powerhouse.	----------	32 years and 6 months.
Do	Wisconsin Public Service.	1957	Otter Rapids	Wisconsin	Vilas	Wisconsin River	750	do		Do.
Do	Whiting Plover Paper Co.	1967	Lower Paper Mill.	do	Portage	do	600	do		Do.
Do	Wisconsin Public Service Corp.	1968	Hat Rapids	do	Oneida	do	1440	Dam and 2 integral powerhouses.	----------	Do.
Do	Wisconsin Public Service Corp.	1989	Merrill	do	Lincoln	do	840	Dam, canal, and powerhouse.	----------	Do.
Dec. 31, 1971	Lenard Lundgren	1097	----------	Oregon	Jefferson	Jack Creek	90	Diversion dam, canal, penstock, powerhouse, transmission line.	Deschutes National Forest.	20 years.

[1] Application for surrender of license pending before the Commission.

[2] Project inoperable. Dismissal action pending.

FEDERAL POWER COMMISSION,
Washington, D.C., March 11, 1968.

Project No. 2301: The Montana Power Company.

Hon. HUBERT H. HUMPHREY,
President of the Senate, Washington, D.C.

DEAR MR. PRESIDENT: This letter sets forth the views of the Federal Power Commission relative to Federal acquisition of the Mystic Lake hydroelectric project which The Montana Power Company owns and operates under a Federal Power Act license for Project No. 2301.

As required by the provisions of Section 14 of the Federal Power Act (16 U.S.C. 807) The Montana Power Company's (Montana) license to operate and maintain the Mystic Lake project on lands of the United States within the Custer National Forest is conditioned upon the right of the United States to acquire the project, for compensation at the expiration of its license term, that date being December 31, 1969.

Our rules provide for the submission of Commission recommendations to the Congress on all hydroelectric projects which are subject to the provisions of Section 14 of the Federal Power Act.

Our analysis indicates that Federal operation of the Mystic Lake project would not serve the public interest more adequately than the satisfaction thereof under present conditions, nor would it better serve the interest of private parties. For these reasons we do not recommend that the United States exercise its right to recapture Mystic Lake.

Rather, in our view the project should be made the subject of a Commission licensing proceeding under Section 15 of the Power Act for purposes of fixing the terms and conditions of future operation and development of the plant by ay private, state, or municipal party which may seek a Commission license for a further term. In that instance, Commission action would be directed to ensuring that the licensee for the future take into account all new factors and changing conditions. The Commission's licensing standard as set forth in Section 10(a) of the Federal Power Act requires that if a project is to be licensed it shall be such as in the judgment of the Commission "will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes."

In formulating our recommendation, we sought the advice and recommendations of each Federal department and agency which might have an interest. We received comments from the Departments of Interior, Agriculture, Army, Health, Education, and Welfare and the Water Resources Council, copies of which are attached. None recommended recapture of the project. Comments were requested from the State of Montana, but none were received. The present licensee has been furnished copies of the recommendations submitted by the various departments and agencies. The licensee submitted its report on recapture of the project. It expressed a desire to continue operation of the project as a licensee.

In considering possible Federal recapture of the Mystic Lake project, it is helpful to consider a number of factors. Initially, consideration should be given to the possible costs to any agency of the United States of equivalent output from an alternative generating source. Also, it is advantageous to consider physical uses of the plant under both Federal and non-Federal operation. Being an electrical utility resource, whether owned by Federal or non-Federal interests, consideration should be afforded the respective interests of ultimate utility consumers served by the plant. In addition, we believe that recognition should be given to the incidence of recapture on various Federal, state and local tax programs. Also, we have studied Mystic Lake from the standpoint of resource conservation, water quality control, flood control, fish and wildlife protection and recreation. The attached *Evaluation Report—Mystic Lake Development—Project No. 2301—Montana*, prepared by the Commission staff, discusses more fully most of these factors.

We would hasten to point out that in reaching our judgment we did not have the benefit of those factual showings which result from a public hearing. As noted, no Federal department or agency recommended takeover of Mystic Lake. Had the Commission received the benefit of all facts which could be brought out in a licensing proceeding, involving formal proposals and counter-proposals raised by our staff, the licensee, an applicant or applicants, or intervenors, it is

possible that such other information might justify further consideration of the recommendation reached in this letter. A number of factors referred to above touch upon matters which would arise in a proceeding for further licensing of Mystic Lake.

Montana's Mystic Lake Project is located in Stillwater County, Montana, on Mystic Lake and the West Rosebud Creek, a tributary of the Stillwater River which, in turn, flows into the Yellowstone River. The project has an installed nameplate capacity of 10,000 kilowatts and a slightly higher maximum capability of 11,500 kilowatts.

On May 27, 1920, the Acting Secretary of Agriculture issued to Montana, then a New Jersey corporation, a Final Power Permit authorizing the construction and operation of the Mystic Lake project for a term expiring on December 31, 1969. In 1961, Montana of New Jersey and The Montana Power Company of Montana filed a joint application with this Commission for approval of a merger between the two corporations whereby the Montana corporation would be the survivor. The sole purpose of the merger was to change the domicile of the corporation from the State of New Jersey to the State of Montana. We authorized the merger as required by Section 203 of the Federal Power Act (16 U.S.C. 824 (b)). Approximately three months subsequent to the time the application for approval of the merger was filed, The Montana Power Company of New Jersey filed application for a 50-year "fair value" license for the project under Section 23(a) of the Federal Power Act (16 U.S.C. 816). We licensed the project for a term of eight years effective as of December 1, 1961, and expiring on December 31, 1969, pursuant to Section 4(e) of the Federal Power Act (16 U.S.C. 797). These two sections of the Power Act have different project investment ramifications. Montana appealed the license order and the United States Court of Appeals for the Ninth Circuit remanded the cause to the Commission with directions to modify its order and issue the license pursuant to Section 23(a). The Court said:

"Under the circumstances here we are of the opinion that Montana-Montana is entitled to a 'fair value' license under Section 23(a) of the Act. * * *"

The court upheld the Commission order insofar as it specified the period of the license term. See *Montana Power Company* v. *F.P.C.*, 330 F 2nd 781 (1964). Section 23(a) provides, *inter alia:*

"* * * *Provided,* That when application is made for a license under this section for a project or projects already constructed the fair value of said project or projects determined as provided in this section, shall for the purposes of this Part and of said license be deemed to be the amount to be allowed as the net investment of the applicant in such project or projects as of the date of such license, or as of the date of such determination, if license has not been issued. Such fair value shall be determined by the Commission after notice and opportunity for hearing."

The Commission staff is presently engaged in studies for the purpose of determining the "fair value" of the Mystic Lake project as of the effective date of the license.

The Mystic Lake project was constructed between 1920 and 1927 by Montana. It consists of two dams creating a single reservoir. Water is diverted to the powerhouse through an unlined tunnel, a wood stave pipe, a surge tank, and a steel penstock. The plant operates with a gross head of 1,128 feet. An earth dike with a concrete core and a concrete arch dam create a reservoir used primarily for power purposes. The reservoir is approximately 1.75 miles long having a usable storage capacity of some 20,800 acre-feet with a drawdown of 61 feet. The powerhouse is located on the left bank of West Rosebud Creek below the reservoir and contains two generators with name plate ratings of 5,000 kilowatts each.

The license for the Mystic Lake project includes no transmission lines. Physically, Montana's Mystic Lake-Columbus 50 kv line and the Mystic Lake-Red Lodge 50 kv line connect with the project. These are lines belonging to Montana which feed Mystic Lake energy into the over-all Montana System. Each line is operated by Montana under a separate license issued by this Commission. Both licenses expire on the same date as the Mystic Lake project license. No other hydroelectric development is located in the immediate area of Mystic Lake.

The project's maximum capability of 11,500 kilowatts is used for system loads and is interconnected through Montana's transmission systems with other systems in the general service area such as municipals, cooperatives, and the Federal Eastern Division of the Missouri River Basin marketing system. The over-all Montana system is interconnected electrically with all adjacent systems and is a

part of the Western Interconnection covering the eleven Western States which extends from the Canadian border to the Mexican border.

Our staff's studies indicate that the present power service contracts between Montana and the Cooperatives located in the area provide wholesale rates that are lower than those of the Bureau of Reclamation. If the total output of the Mystic Lake project were sold to the Cooperatives at the Bureau's rates, the annual cost would be about $287,000. If the output were sold to the Cooperatives at Montana's rates, the annual cost would be about 6 percent lower. The nearest existing municipally owned utility systems are in Cody and Powell, Wyoming respectively, located approximately 60 airline miles from the project. However, service by existing service lines through wheeling arrangements or by construction of new lines as explained on pages 8 and 9 of this letter, would entail the transfer of power over a distance of approximately 175 miles.

Future use of this project has been investigated both from the standpoint of conventional operation and pumped-storage operation. Due to the preponderance of other hydrogeneration in the region, pumped-storage development does not appear to be economically feasible for some time. That operation could be warranted only by the growth in power loads and a substantial change in the area's energy supply available from steam electric generation.

In studying the future use of Mystic Lake, as a conventional plant, our staff indicates that such continued operation would be feasible for a number of years, possibly for 30 or more. In its report to the Commission, mentioned above, Montana proposed the construction of a reregulating reservoir located downstream from the powerhouse which would enable the plant to assume full peaking operations during the fall and winter months, a method of operation which is not now practicable due to adverse downstream river icing conditions. Our staff studies show that a reregulating reservoir would be feasible and desirable. Therefore, should a future license be issued for this project, the Commission might very well require construction of the reregulating reservoir as a part of the project.

Recreation at Mystic Lake, while important, is not of great significance when compared to other projects located in areas serving a heavier population. This is the case even though Yellowstone National Park, one of the primary tourist attractions in the United States during the summer months, is nearby. The project's remoteness and altitude combine to offer little except to the more rugged vacationer. The nearest road terminates three miles from the reservoir. This reservoir has a surface elevation of 7,673 feet. There are approximately 20 boats on the lake. All boats, fuel and motors must be transported to the lake on the Company's tramway and narrow gauge railroad. All those using the lake must either walk or ride on horseback over the three mile interval between the road's end and the reservoir. The water temperature of the lake is too cold for swimming or water skiing. In the course of any relicensing proceeding by this Commission, we would of course give consideration to conditions to enlarge recreational facilities.

Montana, if Mystic Lake were to be recaptured, would be entitled under the provisions of Section 14 of the Federal Power Act, to receive its "net investment" not to exceed the "fair value", plus "severance damages", if any. These sums are to be determined by the Commission after notice and opportunity for a hearing. As indicated, *supra*, the Court of Appeals held that, under Section 23(a) of the Act, the original cost of the project as of the effective date of the license should be determined on a fair value basis, in accordance with Section 23(a). Therefore, should the project be recaptured, the net investment cost to the Federal Government would be based upon the "fair value" of the project on the effective date of the license, as modified by developments since that date, calculated in accordance with the "net investment" formula prescribed by Sections 3(13) and 10(d).

Furthermore, the Commission is continuing its studies to determine proper standards for fixing "net investment" and "severance damages". These studies have not as yet been completed and, therefore, it is not now possible to state the total cost to the Federal government were this project to be recaptured.

In our previous letter regarding recapture of Pacific Gas and Electric Company's Bucks Creek Project No. 619 dated October 11, 1967, we made a comparison of the market value of the project measured by the cost of equivalent output at a new steam-electric plant, privately financed, and the depreciated original cost of Bucks Creek. There our figures indicated that recapture would be cheaper. Recognizing that net investment is yet to be determined for this project

and that in this case the comparison of such determination may well differ from other projects, a comparison of estimated book cost less accrued depreciation of the Mystic Lake project estimated at $1,159,000 as of December 31, 1969, with such estimated alternative steam costs of $1,970,000, reveals the latter would be approximately $811,000 greater.

We previously mentioned the two 50-kv transmission lines which connect to the Mystic Lake project. Each line is under separate license and each license expires on the same date as the Mystic Lake license. The attached map of these lines shows that one line, Project No. 1148, extends from Mystic Lake to Montana's system at Columbus, while the other line, Project No. 558, extends to Red Lodge. The Red Lodge line continues to Billings where it connects with Montana's system. However, that portion of the line from Red Lodge to Billings is not under license.

Were Mystic Lake to be recaptured, it would presumably incorporate an estimated annual output of 52,500,000 kilowatt-hours in the Bureau of Reclamation's Eastern Division of the Missouri River Basin marketing system. Studies indicate that the aggregate load of the Bureau's preference customers within 100 miles of the project exceed the entire output capability of the Mystic Lake plant. To deliver such output to Bureau preference customers would required the construction of transmission facilities or the use of existing interconnecting facilities of Montana or Pacific Power and Light Company.

Most existing Bureau preference customers within 50 miles of the project could be reached physically through the Mystic Lake-Columbus line and the Mystic Lake-Red Lodge-Billings line. However, to serve the remainder of the preference customers within the overall 100 mile area, or should the Federal government desire to incorporate the entire output of the project into the Bureau's Eastern Division of the Missouri River Basin marketing system, would require extensive construction of transmission facilities from Red Lodge via Billings to the Bureau's system east of Billings. To attain this same end in lieu of construction, the federal government could attempt to enter into negotiated wheeling arrangements with Montana from Red Lodge to Billings and from there to the Bureau's system northwest or east of that city. An alternative would be to enter into negotiated wheeling arrangements with Pacific Power and Light Company from Billings southeast to the Bureau's system, assuming wheeling had been attained from Red Lodge to Billings over Montana's line.

Upon expiration of the respective transmission lines licenses the owner of these lines will, if they are to be maintained, be required to seek new licenses from this Commission. These new licenses could include conditions requiring the licensee to wheel Mystic Lake energy to most of the Bureau's preference customers within 50 miles of the project. From that point on as pointed out above, negotiated wheeling or construction would be necessary. However, should this Commission not relicense these lines, under present regulations of the Department of Agriculture a permit for the use of National Forest lands would have to be obtained. In this case, wheeling of Federal power over facilities occupying government lands could be required as a condition for the issuance of a use permit. Such a permit would cover only those parts of the lines crossing National Forest lands which would not include as much of the lines as would a license. Therefore, negotiated wheeling or construction as outlined above would be necessary.

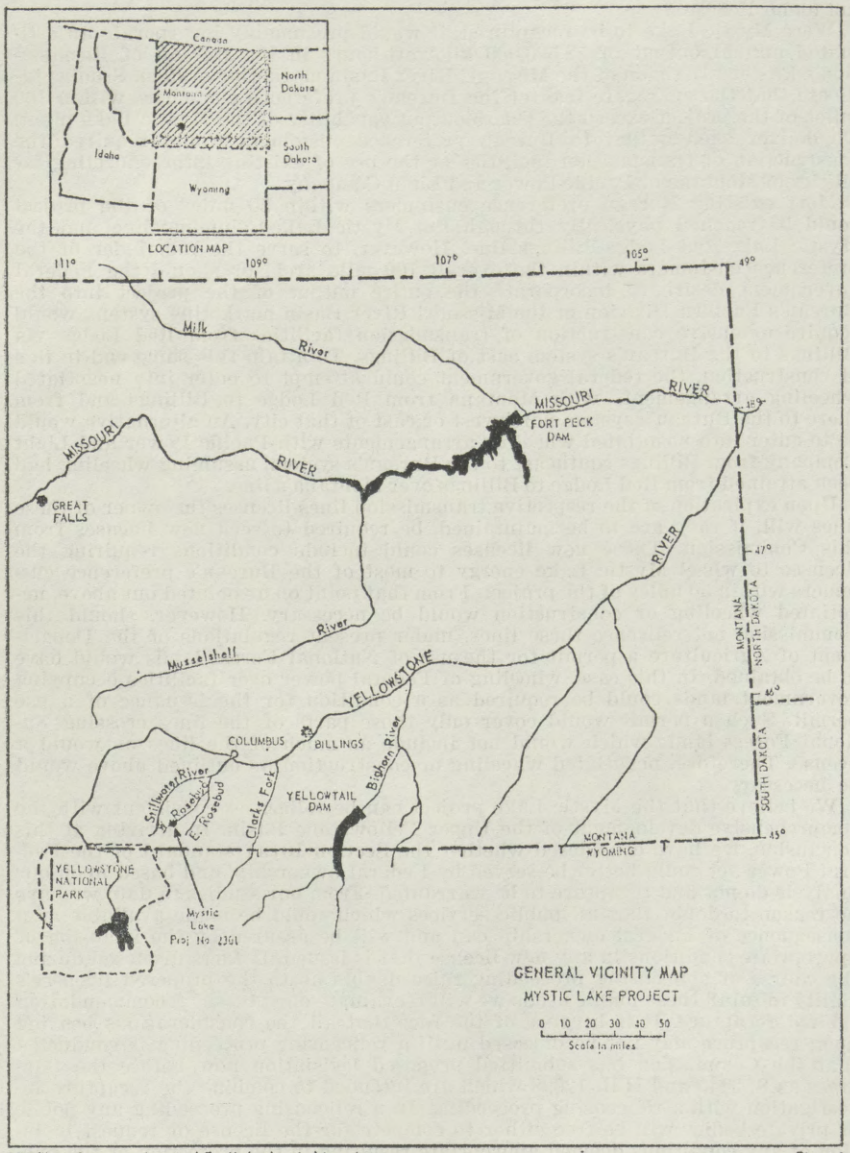
We believe that the Mystic Lake project can be relicenses consistent with the comprehensive development of the Upper Yellowstone Basin. In arriving at this conclusion, we have considered whether the Section 10(a) standard of the Federal Power act could better be served by Federal ownership, and based upon our analysis do not find recapture to be warranted. From our studies to date we have no reason to doubt that all public services which could be made available as a consequence of Federal ownership can and will be assured by the inclusion of appropriate conditions in any new license that is issued. If facts disclosed during the course of a licensing proceeding raise doubts as to the proposed licensee's ability to fulfill these public needs we will reevaluate our present recommendation against recapture. It is because of the fact that all the considerations bearing upon recapture may not be discosed until a relicensing proceeding is conducted that the Commission has submitted proposed legislation now before the Congress as S. 2445 and H.R. 12698 which are intended to combine the recapture investigation with a relicensing proceeding. In a relicensing proceeding any public or private bodies will be free either to compete for the license or request inclusion of any conditions deemed appropriate resulting in the protection of the public interest as a whole.

Recapture and marketing of the power output under existing Federal rate schedules in the region could result in additional revenues to the Federal Treasury in excess of total annual power costs, including allowances for interest, amortization, and marketing expenses. Our studies indicate, however, that the net revenues would be offset by the loss in Federal, state and local taxes that would be paid by a licensee on property and income of the project.

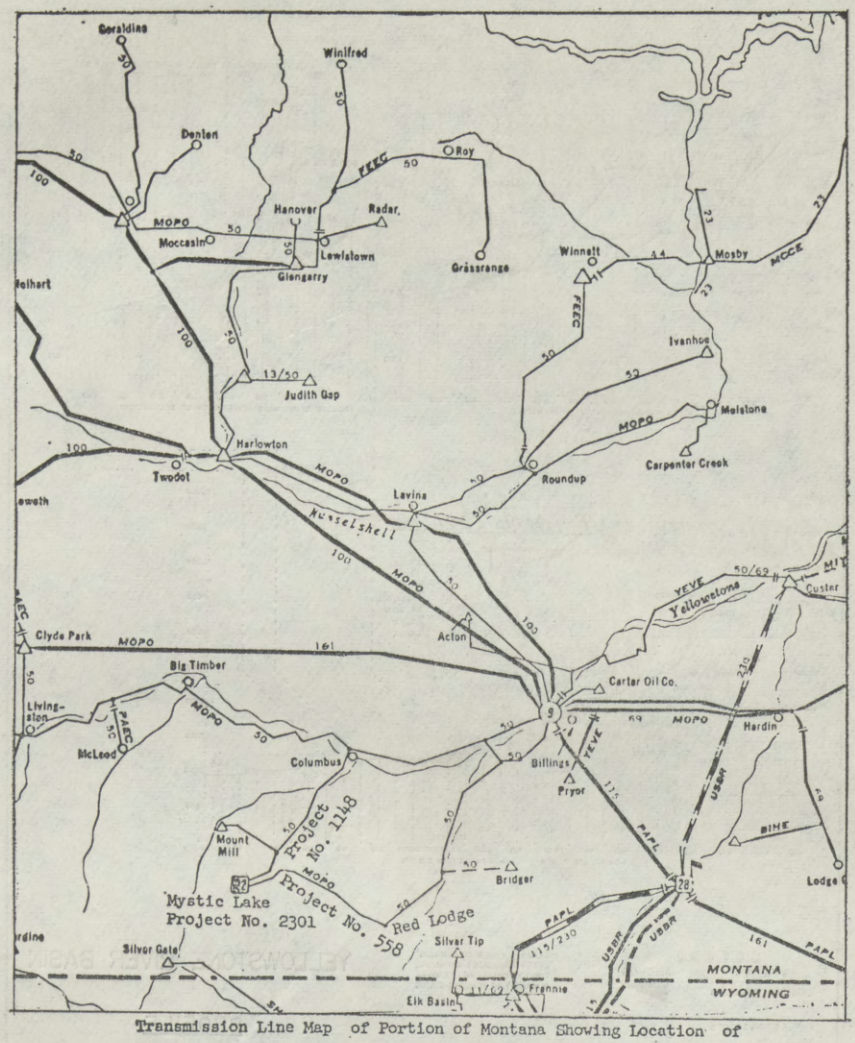
In conclusion, we believe that the public interest will best be served by operation of the Mystic Lake project by the current or a new licensee obtaining its authority from this Commission pursuant to the Federal Power Act.

Respectfully,

LEE C. WHITE, *Chairman.*

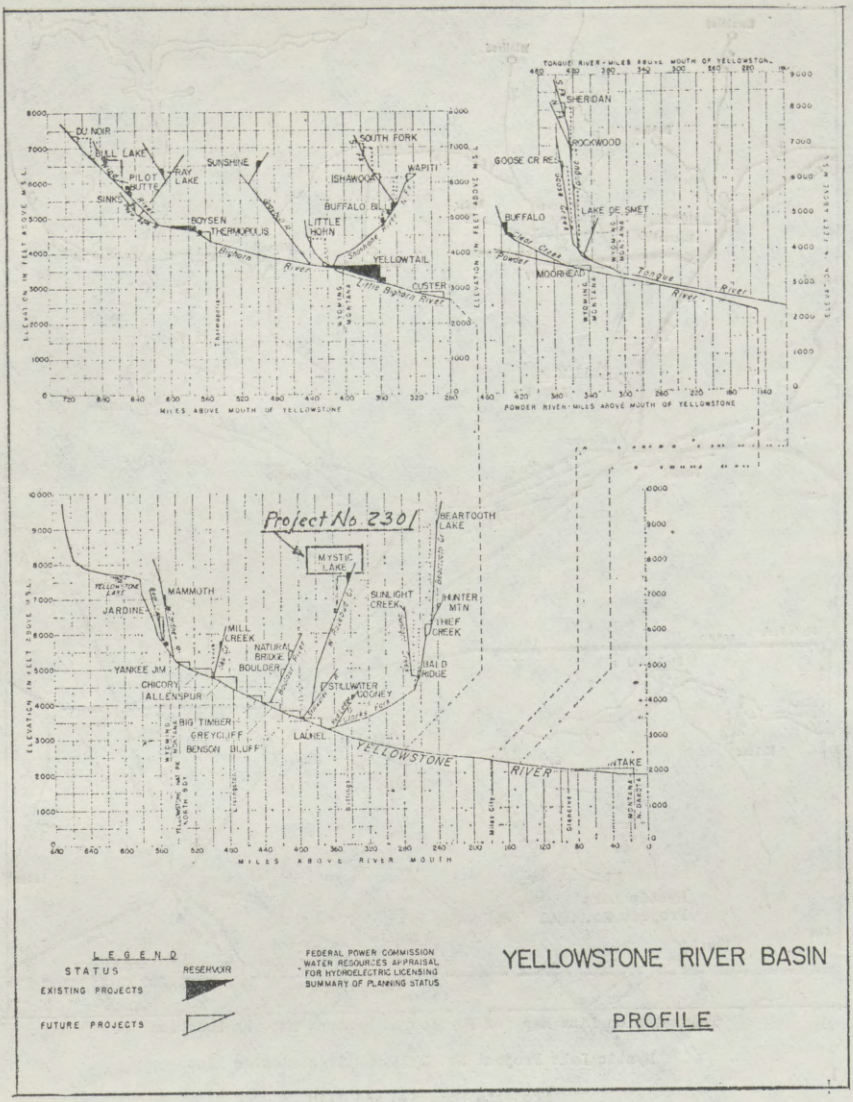


FPC-Water Resources Appraisal For Hydroelectric Licensing — Figure 1



Transmission Line Map of Portion of Montana Showing Location of Mystic Lake Project No. 2301 and Transmission Line Projects Nos. 558 and 1148

95-619—68——5


DU NOIR
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RAY LAKE
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BOYSEN
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SOUTH FORK
ISHAWOOA
WAPITI
BUFFALO BILL
LITTLE HORN
YELLOWTAIL
CUSTER
Bighorn River
Shoshone River
Little Bighorn River
MILES ABOVE MOUTH OF YELLOWSTONE
ELEVATION IN FEET ABOVE M.S.L.
TONGUE RIVER - MILES ABOVE MOUTH OF YELLOWSTONE
SHERIDAN
ROCKWOOD
GOOSE CR RES
BUFFALO
LAKE DE SMET
MOORHEAD
Tongue River
Powder River
POWDER RIVER - MILES ABOVE MOUTH OF YELLOWSTONE
Project No. 2301
MYSTIC LAKE
BEARTOOTH LAKE
YELLOWSTONE LAKE
MAMMOTH
JARDINE
SUNLIGHT CREEK
HUNTER MTN
THIEF CREEK
MILL CREEK
NATURAL BRIDGE
BOULDER
YANKEE JIM
CHICORY
ALLENSPUR
STILLWATER
LUCKEY
BALD BUTTE
BIG TIMBER
GREYCLIFF
BENSON BLUFF
LAUREL
YELLOWSTONE RIVER
INTAKE
MILES ABOVE RIVER MOUTH
LEGEND
STATUS
RESERVOIR
EXISTING PROJECTS
FUTURE PROJECTS
FEDERAL POWER COMMISSION
WATER RESOURCES APPRAISAL
FOR HYDROELECTRIC LICENSING
SUMMARY OF PLANNING STATUS
YELLOWSTONE RIVER BASIN
PROFILE

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., February 7, 1966.

CHAIRMAN, *Federal Power Commission,*
Washington D.C.

DEAR MR. CHAIRMAN: Reference is made to the Commission's letter dated 22 April 1965 inviting comments and recommendations regarding recapturing or relicensing of the Montana Power Company's Mystic Lake Project (No. 2301) located on Mystic Lake and West Rosebud Creek in Montana.

The Mystic Lake Project is located on West Rosebud Creek in Stillwater County, Montana about 15 miles southwest of the town of Roscoe. The lake is formed by a concrete dam and an earth dike and has a usable storage capacity of 20,800 acre-feet at elevation 7,673.0 feet m.s.l. There is no dead storage at elevation 7,612.0 feet m.s.l. The water surface area of the lake at elevation 7,673.0 is about 440 acres. The construction of the dam was completed in 1925. It is located on a creek which is a minor tributary of the Yellowstone River system. The drainage area above the dam is 46.4 square miles. Examination of available monthly reservoir storage records show that the project is operated by the Montana Power Company to produce the desired power by reregulation of the annual water supply; the lake is filled to near capacity by early fall with the power operation patterned to achieve maximum drawdown usually in the subsequent late spring. The reservoir storage is refilled during the major runoff season of mountain snowmelt and summer rain.

The flow occuring in the creek above the dam is relatively small from the standpoint of water resources for comprehensive basin planning. Insofar as the Mystic Lake Propect is concerned, the effects on the water supply are the change in the pattern of flow downstream due to reregulation and the relatively small water loss from reservoir evaporation. The net effect of the existing Mystic Lake Project on the water resources of the Yellowstone River or the Missouri River is negligible. The Federal Government's interests involving Corps of Engineers responsibilities would not be served by recapture and no recommendation for such action is made.

Plans for comprehensive water resource development at this time include no known proposals which would be in conflict with the Mystic Lake Project. No objection is made to relicensing of the project. If a license is issued, insertion of special terms or conditions in the interest of navigation is not considered necessary.

Sincerely yours,

JACKSON GRAHAM,
Major General, USA,
Director of Civil Works.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 23, 1966.

Hon. DAVID S. BLACK,
Acting Chairman, Federal Power Commission,
Washington, D.C.

DEAR MR. BLACK: This is in reply to the letter of April 22, 1965 from Mr. Joseph C. Swidler requesting our comments and recommendations on recapture of the Mystic Lake Project (FPC No. 2301) under license to the Montana Power Company. The present license expires December 31, 1969.

This Department does not recommend recapture. However, we believe that any license that may be issued should contain provisions fully protecting our interests. At the time application is made for relicensing, we desire to furnish our views relative to stipulations and conditions that should be a part of any new license issued.

Sincerely yours,

KENNETH HOLUM,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., March 14, 1966.

HON. LEE C. WHITE,
Chairman, Federal Power Commission,
Washington, D.C.

DEAR MR. WHITE: This is in response to your letter of April 22, 1965, inviting the Secretary to submit comments and recommendations regarding recapture or relicensing of Project No. 2301, Montana Power Company. This project is located on Mystic Lake and West Rosebud Creek in Montana and affects lands of the Custer National Forest in Stillwater County, Montana. The existing license for this project expires on December 31, 1969.

Pursuant to Section 2.6 of the Commission's Regulations, the Chief of the Forest Service has reappraised the effect of the project upon National Forest purposes and objectives and comments as follows:

1. The Forest Service is not interested in operating the project under the recapture provisions. We have no other comments or recommendations regarding recapture or government operation for this project.

2. Provided the Federal government is not interested in recapture, we find that relicensing the project would not conflict with National Forest purposes or objectives.

3. In event the project is redeveloped and relicensed, we note several considerations which should be brought to the attention of the power developer. Mystic Lake is the best single opportunity for water oriented recreation on the Custer National Forest, and this resource should be fully developed for public use. We suggest the following project considerations:

a. Amend Article 21 of Standard Form L–1 dated April 1, 1964 to read:

"Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for and the resulting slash and debris disposed of in accordance with the requirement of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber will be at current stumpage rates, and payment for young growth timber below merchantable size will be at current damage appraisal value. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the licensee, with the provision that timber so sold or disposed of will be cut and removed from the area prior to or without undue interference with clearing operations of the licensee and in coordination with his project construction schedules. Such sale or disposal to others will not relieve the licensee of the responsibility for the clearing and disposing of all slash and debris from project lands."

b. Amend Article 22 of Standard Form L–1 dated April 1, 1964 to read:

"The licensee shall do everything reasonably within its power and shall require its employees, contractors and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license."

c. To the extend possible, a uniform flow of water shall be maintained in West Rosebud River. Minimum flow at the power plant shall be 20 c.f.s.

d. If the present facilities are relicensed without modification, the reservoir pool elevation of 7663.5 shall be maintained during the period from May 15 through September 15 of each year.

e. The project area provides excellent opportunities for public recreational development. A comprehensive plan for recreational development should be an integral part of any license for project redevelopment.

I concur with the Forest Service comments and with the recommended conditions for relicensing the existing project.

Sincerely yours,

ORVILLE L. FREEMAN.

DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, D.C., April 6, 1966.

Hon. LEE C. WHITE
Chairman, Federal Power Commission,
Washington, D.C.

DEAR MR. WHITE: Please refer to Item 3d of Agriculture's March 14, 1966, report to you regarding recapture or relicensing of Project No. 2301, Montana Power Company. This item is corrected to read as follows:

"If the present facilities are relicensed without modification, the reservoir pool elevation of not less than 7663.5 shall be maintained during the period from May 15 through September 15 of each year."

Sincerely yours,

M. M. NELSON, *Deputy Chief.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
PUBLIC HEALTH SERVICE,
BUREAU OF STATE SERVICES,
Washington, D.C., July 29, 1965.

Hon. JOSEPH C. SWIDLER,
Chairman, Federal Power Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of April 23, 1965, to the Secretary inviting comments on the application for the recapture of license for the Montana Power Company, the Mystic Lake Project No. 2301 located on Mystic Lake and West Rosebud Creek, Montana.

This project has not created or intensified any water supply, pollution control, or vector problems, and it is not expected to do so under present operating practice. Therefore, we have no recommendations as to relicensing or recapture.

If recreational developments are undertaken, water and sewage problems may arise. Plans and specifications for any such development should be submitted to the Montana Board of Health for review and approval before construction is started.

The opportunity to review the application is appreciated.

Sincerely yours,

KEITH S. KRAUSE,
Chief, Technical Services Branch,
Division of Water Supply and Pollution Control.

Mr. SOLOMON. Now, having said that, essentially the standard we are applying is the standard of section 10(a) of the act, and 10(a) of the act is about as broad a standard as you can think of. What it says is that:

The project to be licensed "shall be such as in the judgment of the Commission will be best adopted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterway development, and for other beneficial public uses, including recreational purposes."

As I said in my prepared statement, we believe that when the Commission comes to relicensing, assuming the United States has not taken over, the test is who can do this best. And in determining whether the United States should take over, our recommendations are based on exactly the same standard. In other words, are there circumstances in the particular factual situation of the particular project which indicate that comprehensive development for some reason or other can be undertaken better by the United States than by leaving the project either to the original licensee or to some other new licensee?

Mr. MACDONALD. Thank you.

One thing. I think we should change the subject because we were both confused. I changed that back because I was confused, not you, Mr. Solomon.

Mr. SOLOMON. No, Mr. Congressman; I will join you.

Mr. MACDONALD. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Solomon, we appreciate your coming over here to help us out on this thing.

To go back to this question embraced by Mr. Macdonald earlier, where a company gets a 50-year license, generally speaking; does that company not attempt to amortize its investment over the 50-year period in order to get into the consideration of setting the cost or getting a rate set by the Commission?

Mr. SOLOMON. No. Generally speaking the depreciation which is the equivalent amortization for the basic structure of the project is over a longer period. The depreciation of some of the equipment may well be within the 50-year period but a dam just lasts longer than 50 years.

Mr. KORNEGAY. In other words, you determine the rates that they would charge. Of course the capital investment is one of the elements in that formula, is it?

Mr. SOLOMON. That is right. We could, I guess, have required companies to depreciate the dam and other long-term equipment over the 50-year life of the license in anticipation of the possibility of take over at the end of the 50-year period, but we have not done that. We believe that that was artificial depreciation, that these projects actually are going to be around for much longer periods.

The Commission has in fact allowed engineering depreciation of these projects although this does mean, of course, that if a project should be recaptured it is that much less fully depreciated than if we had used an artificial standard.

Mr. KORNEGAY. That gets into what I wanted to find out.

I didn't know exactly how it worked. In any event, this bill which we have under consideration does not change the compensation of the major damages of the recapture?

Mr. SOLOMON. No; it does not touch it at all.

Mr. KORNEGAY. Under the bill, the Congress would still have the authority to recapture or take over?

Mr. SOLOMON. Under the bill, it would be Congress determination as to whether the United States should take over or recapture a project.

Mr. KORNEGAY. And that is the only part that the Congress would play under the new procedure?

If the Commission or any other Federal agency had an interest in the particular project after 50 years and recommended to the Congress that it recapture or take over the project, then the Congress would step in and make the decisions of whether or not it wanted to recapture or take over the project.

Mr. SOLOMON. That is right.

I think it is important, Congressman Kornegay, that there is a time factor here. One of the problems we have with Empire District and these others, is that we don't really know when Congress is finished with its consideration in the matter. We attempted in this bill to take care of this problem. If the Commission does not believe recapture should be undertaken, if it does not recommend recapture, if it relicenses the project——

Mr. KORNEGAY. Then the Congress comes into the picture.

Mr. SOLOMON. Then Congress has to act within a fixed time or relicense would take effect. The period that we set out in our proposal was the end of the Congress after the one in which we make our report.

Mr. KORNEGAY. That would be nearly 4 years.

Mr. SOLOMON. That could be nearly 4 years.

We have made clear in our testimony, the longer part of the testimony——

Mr. KORNEGAY. Is that improvement over the present procedures?

Mr. SOLOMON. We are well aware of the fact that when somebody is proposing to Congress a time limit on Congress action that Congress is the one that is going to have to propose and dispose of that. We recognize if we merely said the end of a congressional term that in particular circumstances we might be making a recommendation toward the end of a particular term, and the term we recommended was to give Congress at least one full term after our recommendation.

Now, it has been suggested that it should be a 2-year flat term, and if this is agreeable to the Congress it certainly is a matter that you people should consider. The term that we proposed merely reflected our view that at least from a recommendation standpoint we would not suggest less than one full term of Congress. However, it could amount to 4 years and some people have thought that is too long.

Mr. KORNEGAY. Now, you told me about a case where the Commission takes the matter up and decides it in the light that it is going to be reissued.

Mr. SOLOMON. Right.

Mr. KORNEGAY. Either to someone else or the project is owned by recapture. Then the Congress has this period of time to come in and reverse the Commission, if it so desires. Is that what you are saying?

Mr. SOLOMON. If a Federal agency disagrees with the Commission and asks that we stay our action.

Mr. KORNEGAY. There is no disagreement?

Mr. SOLOMON. If there is no disagreement about it, the matter would not come to the Congress and the relicensing process would take effect.

Mr. KORNEGAY. Take effect and be final?

Mr. SOLOMON. Yes.

Mr. KORNEGAY. If there is disagreement between the Commission and some agency, the Congress adds an entire term subsequent to the one in which this action takes place and makes some decision?

Mr. SOLOMON. Correct.

Mr. KORNEGAY. Now, what about the case where you recommend recapture or take over? How often does the Congress do this?

Mr. SOLOMON. In that case, the bill does not state and we would have to wait for Congress determination to either tell us "No," they are not going to recapture or "Yes," they are.

Mr. KORNEGAY. Now, which committee of Congress do your recommendations go to? In other words, you are talking about Empire.

Mr. SOLOMON. I understand your question very well.

Of course, we send our letters to the speaker. We recognize that both the Interstate and Foreign Commerce Committee and the Public Works Committee or sometimes the Interior—I don't know even; there are other committees that have interest in these matters.

Mr. KORNEGAY. In other words, without knowledge about this matter, under our rules there is no particular committee which gets your recommendation with reference to the matters we have talked about?

Mr. SOLOMON. I just don't know.

We sent a letter to the Speaker; I am sure he sends it to one of the committees. I just don't know whether he sent it to this committee or one of the other committees.

Mr. BROTZMAN. Would the gentleman yield?

Mr. KORNEGAY. If you have the answer to that question.

Mr. BROTZMAN. No; I don't have the answer. But it looks to me, Mr. Solomon, that if these letters are floating around to the different communities and there is not some particular point in the Congress where this matter is closely watched and superintended, I don't think the bill is going to help very much as far as time and as far as administration of this problem is concerned.

Mr. KORNEGAY. Yes.

Mr. BROTZMAN. As I listen to this problem, which is rather new to me, I think this is one point where it has to be streamlined.

Mr. SOLOMON. I could not agree with you more but the Federal Power Commission is not going to attempt to speak for the Congress on how it wishes these matters to be handled. I agree with you that if it has not already been clarified it should be clarified because we do have four letters over here now but we do not purport to tell you how your internal operation should be conducted.

Mr. MACDONALD. Would the gentleman yield?

Mr. KORNEGAY. Yes.

Mr. MACDONALD. I think it would be very queer—I don't mean to sound parochial—but I think it would sound very queer if these projects that are subject to being taken back or recaptured deal with power then obviously they come before the Interstate and Foreign Commerce Committee and I don't see where you would send the letters anywhere else. If you have any reasons, I would like to hear what they are.

Mr. SOLOMON. Well, the formal letters were sent to the Speaker. I really am not entirely sure of this but I am sure that we have kept Chairman Staggers and yourself aware of all of these letters. The only thing I don't know is whether the original letter which we sent to the Speaker was sent by him to Chairman Staggers or not.

Mr. MACDONALD. Well, you have not testified on this problem before any other committee of the Congress, have you?

Mr. SOLOMON. Only the Senate Commerce. There is no question, Mr. Macdonald, that legislation changing the Federal Power Act comes within the authority of this committee. Now, whether or not determination that the Federal Government should spend money to build a hydroelectric project or to take over a hydroelectric project comes within the ambit of this committee I don't know. I certainly don't dispute what you say.

Mr. KORNEGAY. Well, I think my point, Mr. Chairman, has already been made. Perhaps we should move into our own operation over here and one which Mr. Solomon has indicated is going to increase by many folds in the next few years.

Mr. SOLOMON. It certainly is important.

Mr. KORNEGAY. Either this subcommittee or another subcommittee known as the Recapturing Subcommittee that would go about looking into these licenses with great dispatch.

In view of the fact that I have already used my time, I think I should quit, Mr. Chairman.

Mr. MACDONALD. Mr. Harvey.

Mr. HARVEY. I just had a couple questions.

On page 4 of Mr. Staggers' bill, section 2(b), in the second sentence, it says:

> In any relicensing proceeding before the Commission any Federal department or agency may timely recommend, pursuant to such rules as the Commission shall prescribe, that the United States exercises its right to take over any project or projects.

Now, what is the criterion? Is it section 10 that you were talking about to Mr. Macdonald earlier? Is that the only criterion?

Mr. SOLOMON. Of course, we don't pretend to control why a department of the Federal Government may believe it should take over. We do believe in our evaluation and in our recommendations to you the standard that we should use is whether or not takeover will lead to more comprehensive development than non-takeover.

Our standard, unless this Congress changes it, is to attempt to license as will best lead to comprehensive development. We will evaluate recommendations to take over in the light of whether a showing has been made what to take over will achieve comprehensive development and that a continued license to a non-Federal party could not do.

Mr. HARVEY. When you speak of departments here in the bill, how many departments or agencies are you speaking of?

Mr. SOLOMON. Well, there are four primary departments: The Interior Department, the Agriculture Department, the Corps of Engineers of the Defense Department, and perhaps Health, Education, and Welfare in connection with various water situations, although I think a lot of that authority has now been transferred to Interior.

Mr. HARVEY. Actually, though, the language would be all-inclusive as to many other departments and agencies; would it not?

Mr. SOLOMON. The language is definitely all-inclusive with a very good reason, Mr. Harvey. Our experience has been that over a period of time, the responsibility for various facets of the problems get moved back and forth from department to department. As a practical matter, there are about four or five departments that are interested in this type of matter.

Mr. HARVEY. I will just ask you one other question here. I am not sure I understand this process of takeover from what Mr. Macdonald asked you earlier.

Suppose that it is recommended that the Congress take over. Now, is there a provision set up in the present law for condemnation by jury trial of some sort to determine the amount of the award? How is this determined?

Mr. SOLOMON. Section 14 of the present act specifies the payment to be made on recapture and it specifies that:

"Before taking possession, it"—meaning the United States—"shall pay the net investment of the license in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to the property of the license valuable serviceable and

dependent as above set forth but not taken, as may be caused by the severance therefrom of property, taken, * * *"

In other words, there is a formula specified in the act.

Mr. HARVEY. Is there a jury trial? Is a jury going to determine this or is this something that some Commissioner decides?

Mr. SOLOMON. The Commission would decide, subject to review in the courts. The Commission would not make a final decision here until Congress has acted. It would be as the date of actual recapture.

Mr. HARVEY. I am not sure I understand you. In your testimony earlier you said recapture would be less than condemnation. I don't know if you meant to say that or not but you did say it.

Mr. SOLOMON. Yes; I did say it.

Mr. HARVEY. Would you explain it?

Mr. SOLOMON. The theory of section 14, there is a definition of net investment in this act and there are other provisions of this act which get into the actual problem of calculating net investment. Without trying to complicate matters, the theory is——

Mr. HARVEY. Let me say right here, one of our problems here this morning—at least, I have not read this entire act and don't know the other sections—this is very bothersome and that is why I appreciate your explanation on this point.

Go ahead.

Mr. SOLOMON. The theory of section 14 of the act is that the net investment in a project at the end of the license term would be less in most cases than the condemnation price for taking over that project. Now, how much less is the matter which is in dispute and since there is proceeding before us now, I am not attempting to be definitive.

Mr. HARVEY. You said that is the theory but why should it be? On the theory that Mr. Kornegay was saying that it has been depreciated over the 50 years, is that the reason for it?

Mr. SOLOMON. That is part of the reason for it and the other part of the reason for it is that Congress seems to have said that within certain limits if the company owning the project during that 50-year period has earned more, not only gotten its money back, but earned more than a fair return, those excesses within certain limits should be deducted from the net investment price.

In other words, the 1920 Congress was adopting a compromise between various viewpoints and in part at least they adopted the viewpoint that Congressman Macdonald was expressing, but not all the way.

Mr. HARVEY. Well, I am still not sure I understand, Mr. Chairman, but I will yield.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

Mr. Solomon, how were the licensees selected in the first place?

Mr. SOLOMON. In the first instance, they are selected upon application; we do not go out and look for people to apply. We respond to applications from them. If we have a contest, we try and pick between those who are before us who will do the best job with respect to new licenses; however, there is a preference given to certain State and municipal bodies.

Mr. BROTZMAN. So, an applicant would determine that a certain locus would be a good place or a good point for a hydroelectric power installation; is that correct?

Mr. SOLOMON. That is correct.

Mr. BROTZMAN. And they would then approach the Federal Power Commission asking for—you called it a license. Is it really a license or is it a permit?

Mr. SOLOMON. The statutory language is license. It certainly is a formal document which spells out in metes and bounds where the project is and which has very detailed articles and conditions as to what is allowed and what is not allowed.

Mr. BROTZMAN. All right.

Then on the strength of them having their license from the Federal Power Commission, and assuming their engineering was proper and so forth, then they raise captial to build this particular installation at that point?

Mr. SOLOMON. Right.

Mr. BROTZMAN. I would glean from an answer you gave in response to some prior question that there is a payment—you said negligible of sorts, not a vast amount of money but 15 cents per kilowatt—is that correct?

Mr. SOLOMON. Something like that. There is an annual payment. The annual payment is not payment for the use of the water; it is a payment to take care of the costs of the Federal Power Commission administering part 1 of the act. It is related to that cost.

Mr. BROTZMAN. All right.

Now, my question is, How many such licenses exist today?

Mr. SOLOMON. About 270.

Mr. BROTZMAN. I think, 267.

Mr. SOLOMON. Something like that.

Mr. BROTZMAN. Maybe 270.

Now, was there competition initially between various applicants for these 267 licenses?

Mr. SOLOMON. I think it would be fair to say that in most cases there was not competition but there certainly have been some cases where there has been.

Mr. BROTZMAN. Now, my next question: Is the license a standardized document? By that, I mean, are the terms and conditions that apply to applicant A basically the same as apply to applicant B and each of the other 270?

Mr. SOLOMON. No; for two reasons:

One, while we do have a series of so-called standard articles which are applied to all licenses of that class, in almost every case that I have seen there are additional special articles relating to the particular problems of particular licenses.

Two, there has been a great development over the last 50 years. A license issued in the 1920's, the type of license which is coming up for relicensing or take-over today, just does not get into some of these problems like water quality control and recreation and fish protection which we get into today.

Mr. BROTZMAN. Now, let's assume there is a determination not to recapture or to take over, whichever term you prefer. If there is this determination, then I would assume that the applicant in possession, shall we say, the company who has the license, would then have the first right or, for renewal, what legal rights do they have as far as the renewal is concerned?

Do you understand my question?

Mr. SOLOMON. I do. They have a right to apply. They have an automatic right to automatic renewal until the Commission determines.

As I said in the statement I read for the chairman, in our view we don't believe the preference provisions apply on relicensing; in our view, they would get the license unless somebody can show that they can do a better job.

Mr. BROTZMAN. Do they get the license on the same terms?

Mr. SOLOMON. May I break in?

If we should decide that somebody else rather than the original licensee should get the license for the second license term, that party must pay to the licensee the same amount that the United States would pay if it was taking over.

Mr. BROTZMAN. Net investment plus severance damages?

Mr. SOLOMON. Right.

Mr. BROTZMAN. Now back to original licensee determination, not to recapture and determination to renew, same terms and conditions?

Mr. SOLOMON. Not necessarily.

Again it depends on the particular factual situation but we expect that a lot of the license conditions that we have developed over the 50-year period but which were not in some of these early licenses might be appropriate in a renewal situation.

Mr. BROTZMAN. Is that the state of the law now?

Mr. SOLOMON. Yes.

Mr. BROTZMAN. That you have the power under the existing law relative to inserting different terms and conditions the next time around?

Mr. SOLOMON. Oh, yes.

Mr. BROTZMAN. Is this a negotiation process as a matter of fact? How does it actually work out?

Mr. SOLOMON. It depends on whether there is formal opposition which requires a formal procedure or not. The licensing process, and I am going to have to use as my basis really the initial licensing process because we have had really no experience on relicensing yet—the licensing process involves a presentation of a rather massive amount of material by the proposed licensee on forms that we have got together.

We also send the application to all the interested Federal and State agencies; we get long and comprehensive reports back from them which we send to the licensee looking toward working out the appropriate licensing conditions in that particular case.

Now, where there is a contest, where somebody is saying a license should not be issued or where somebody is saying the license should be issued to me rather than to him, then obviously we may have to go into a more formal proceeding, with record proceedings before examiners, in order to make sure that due process is given to all people.

But, within that limitation, yes; there is a considerable back and forth interplay between the applicant and the Commission.

Mr. BROTZMAN. Time is ticking away.

Mr. BROYHILL. Is it not a fact that on some occasions the licensee may come back in to ask for amendment to his license and to this extent you open the license within its life span?

Mr. SOLOMON. Oh, yes. The licensee has the right to seek an amendment. Our problem is that in the absence of the licecnsee seeking an amendment, our control over the license during the license term is only within the four corners of the license.

Now, we do have some conditions which give us authority during license term to step in and require additional requirements. The Congress, itself, in section 10(c) expressly protected against changes that might be required during the 50-year license term where life, health, or safety is involved. But within that limitation we in effect have a contract in this license which can be reopened only as the contract provides it can be reopened.

Mr. BROYHILL. Thank you, Mr. Brotzmen.

Mr. BROTZMAN. I will conclude here because I know there may be some other questions.

As I see the thrust of this, the object on the part of the Federal Power Commission, and I would imagine that many utilities affected would feel the same way, as evidenced by the initial witness, is one of saving time; is that correct?

Mr. SOLOMON. That is what we are all trying to achieve.

Mr. BROTZMAN. Now, it is your opinion this will save some time, this particular bill?

Mr. SOLOMON. We believe it will; yes.

Mr. BROTZMAN. But I guess if we work on this with that particular goal in mind and protect the equities of the parties and the Government, and so forth, why it would be satisfactory to you, the Federal Power Commission?

Mr. SOLOMON. That is correct. We are trying to conserve our resources and the Congress resources. We are trying to save time but we have no illusions that this is a problem which is not going to create at least for the Commission a considerable burden even under the most efficient method of handling it.

Mr. BROTZMAN. How long have you been with the Commission?

Mr. SOLOMON. I have been with the Commission about 6 years.

Mr. BROTZMAN. I wonder if you have ever seen one of these recapture proceedings on the floor of the House of Representatives? I don't know if any of my colleagues have but I would assume there have been some, have there not?

Mr. SOLOMON. I don't really think so.

Mr. BROTZMAN. Have you had one yet?

Mr. SOLOMON. The reason for this is not so strange. The normal term of license was about 50 years and the 50-year period from the time when this act was passed is 1970. So, there have been some licenses which have expired; they have been very minor licenses, for the most part. The ones that expired have been relicensed prior to the Empire District one. We just didn't bring them to the Congress's attention. Now, maybe we should have but we didn't.

Mr. BROTZMAN. Just one more observation just trying to project this a little bit.

If that came to the floor of the House, it would be in a package form; is that right? It would be a determination of what the net investment plus severance damage would be, so that the Congress would say yes or no?

Mr. SOLOMON. As I understand it, there would be a two-stage congressional handling of the matter. Congress would first pass a law to

recapture a particular project which is the equivalent of the authorization law if you were going to build a new Federal project. Then we give 2 years' notice and during that time we would work to the best of our ability to figure out this recapture price.

At the end of the 2 years' notice, presumably the Government could enter into the project but we might still have a time figuring out the exact price. When this price is determined by the Commission and approved by the courts, then you would have an appropriations problem before Congress.

So, you have, I am afraid, the same dual process that you gentlemen are familiar with where Congress is first authorizing the project and, secondly, authorizing the expenditure therefor.

Mr. BROTZMAN. Thank you, Mr. Chairman.

Mr. MACDONALD. Thank you, Mr. Brotzman.

I just have two rather quick questions.

Don't you think it would be better to have the Commission give to the Congress the amount of the costs that were recaptured in the package?

Mr. SOLOMON. We are attempting to do so within the limits of our ability when we make reports to them.

Mr. MACDONALD. In other words, if a recapture comes to the floor—and I can assure you, Mr. Brotzman, that none has since I have been in the Congress—that the Congress or the appropriate committee who handled this before, and I can think of easier bills to handle, would be furnished by the Federal Power Commission the cost of the recapture; is that correct?

Mr. SOLOMON. Even when we complete our rulemaking, which is an attempt to clarify some of the complications of the existing act, we will not be able to give you a definitive cost if for no other reason than of the cost at the time the Congress votes to take over and the cost when it actually takes over will be different.

But we will be able to give you the magnitude of the problem which is what you really need.

Mr. MACDONALD. I can sense the magnitude of the problem just in one day's hearing and I don't think it is much help to just be given the magnitude of the problem when you have to sell it on the floor if the appropriate committee feels that it should be done without telling Congress because every day you hear, "Well, it is a fine bill but how much is it going to cost.

I can hear any number of Congressmen, which I can give you my mental image, my mind, asking that question the first crack out of the box after you go through trying to explain the bill.

I am saying, why could not that be done or why should it not be done?

Mr. SOLOMON. We will to the extent that we can, and we have to a large extent in the letters we sent up to you. For example, in the Empire District letter, we don't tell you the net investment price because this we don't know. That is why we have this proceeding before us. We do tell you the outer limits of what we think the price is going to be; we tell you the depreciated original cost of this project which can be used in determining the magnitude of the congressional commitment. We will define that as we go along to the extent of our ability.

Mr. MACDONALD. My second question which I meant to ask you before, it is not of any great consequence, but it just hit my imagination.

You say on page 7 of your testimony, "In selecting this procedure"—and I take that to mean this bill—"for recommendation to Congress, the Commission rejected a suggestion that it seek legislation granting it the final say on the recapture."

I was wondering who made the suggestion.

Mr. SOLOMON. I think that the American Public Power Association has suggested that we may even have that authority at the present moment and that we would be the appropriate group as a delegate of Congress to vote for recapture. We don't think so. We think in a matter involving this amount of financial commitment and policy consideration, it is for Congress, not the Federal Power Commission, to have the final say.

Mr. MACDONALD. Would you repeat the name of who made the suggestion?

Mr. SOLOMON. I think it was the American Public Power Association which suggested that we might have the authority under the existing act and should have it.

Mr. MACDONALD. In other words, they feel that they trust the Commission in these matters more than they do the Congress, I take it?

Mr. SOLOMON. I think they would phrase it differently; that they believe that Congress should and would want to delegate it to us.

Mr. MACDONALD. My last question was brought to my attention by counsel so I am not taking credit for it, but it seems to me that on page 4 of the bill, section 3(b), the language is of very wide latitude to give the Commission (reading):

> Notwithstanding the provisions of section 6 of this Act regarding the alteration of licenses, the Commission may, at any time after the issuance of any license under section 15(a) except an annual license, by order, after notice and opportunity for hearing, impose upon the licensee such further reasonable requirements as are not inconsistent with the other provisions of this Act.

Isn't that language very, very broad?

Mr. SOLOMON. Well, it is broad language. It is an attempt to allow us during the license period, even if the licensee, itself, does not seek an amendment, to impose additional requirements if changing circumstances require. We have a crude way of doing it now.

Mr. MACDONALD. Like what?

Mr. BROYHILL. Like what?

Mr. SOLOMON. Well, if you look at appendix B on pages 30 and 31, the last two pages of the testimony, you will see various articles from the standard form articles which are efforts by the Commission in areas where it knows that there may be problems during the course of a license term to specify in the license, itself, that it can reopen these matters at a later time.

You see, Mr. Chairman, at the time of licensing there may be problems which you are aware of but which are not appropriate for final resolution at that time. There may be water control questions where further study is going to have to take place before you know exactly how much water should be released through the particular dam in order to——

Mr. MACDONALD. Don't you have that power now?

Mr. SOLOMON. We have the power now if we can anticipate a particular problem to write conditions into a license which will allow

us to handle it later. The problem is where we don't anticipate a particular problem, and there are unfortunately many instances over the last 50 years of problems which are perfectly obvious to us now but were not obvious to us 50 years ago.

Mr. MACDONALD. I quite agree with you about that. But don't you think that this could be construed as a congressional intent to give you the power to harass some licensees any time you see fit?

Mr. SOLOMON. I certainly don't think it could be construed as an attempt to harass the licensees. Obviously, if we were to impose upon the licensee, after the hearing that this section refers to, a condition which was not directly related to comprehensive development, the licensee could and should get it promptly reversed by the reviewing court.

This was certainly not our intent. Our intent is solely to recognize the fact that 50 years is an awfully long time and, recognizing that, we just cannot think of what is going to be the situation 25 years down the line. We are trying to avoid making us guess at the beginning, by these open-ended conditions, what will be the problems.

Mr. BROTZMAN. Does the licensee have a commensurate opportunity to change a little bit predicated upon some of these new conditions?

Mr. SOLOMON. The licensee always has the authority to seek to change the license; yes, to ask for an amendment and they do frequently; yes.

Any time something becomes obsolete, the licensee may come to us and ask for permission to change it. We have to agree and this frequently happens.

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

I have a letter from the Honorable Kenneth Holum, Assistant Secretary of the Interior, stating that he is unable to appear in person and transmitting his statement. Without objection, the letter and statement will be inserted in the record at this point.

(The informaion referred to follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 13, 1968.

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

DEAR MR. STAGGERS: I regret that, due to prior commitments, I am unable to appear before you personally and testify at the June 11 hearings on H.R. 12698 and identical bill H.R. 12699.

As the enclosed statement indicates, the Department strongly supports the measure, in particular section 2, which provides a sufficiently long moratorium period in which a Federal agency may present a case for recapture to the Congress if the public interest warrants such action, and section 3 which gives the Federal Power Commission broad and continuing authority to condition new licenses issued under section 15(a) of the Act and which also provides for temporary nonpower use licenses pending assumption of supervisory control by a governmental body. The cited provisions of section 3 will be of vital significance in the continuing effort to develop our Nation's water resources in a balanced manner.

Sincerely yours,

KENNETH HOLUM,
Assistant Secretary of the Interior.

STATEMENT OF KENNETH HOLUM, ASSISTANT SECRETARY, WATER AND POWER DEVELOPMENT

Chairman and members of the committee, we are pleased to appear before your Committee in support of H.R. 12698, introduced by Chairman Staggers, and an identical bill, H.R. 12699, introduced by Congressman Macdonald. Our testimony expands upon the position expressed in our favorable report of February 23, 1968. We are strongly in favor of the provisions of the measure, which amends Part I of the Federal Power Act concerning procedures which the Federal Power Commission follows in processing expiring hydroelectric licenses. These provisions (1) offer a marked improvement in workability over existing procedures for making relicensing or recapture decisions; (2) provide sufficient time for presentation of the case for recapture before the Congress where necessary; and (3) authorize FPC to condition broadly licenses issued in relicensing proceedings and to issue temporary, nonpower use, licenses, in the interest of comprehensive water resource development. The bill establishes procedures to determine whether the United States will take over a project when a Federal license expires and clarifies procedures for relicensing upon license expiration. The Commission, after notice and hearings and consideration of the views of interested agencies, would report to the Congress those projects for which licenses are about to expire and those which it has determined should be taken over by the United States.

Where a Federal agency recommends takeover but the FPC does not itself recommend such action, the Commission will so notify the Congress and will stay the effective date of a new license until the end of the next full Congress.

The amendments embodied in the bill will assist the Commission materially in streamlining procedures for determining whether, in the public interest, takeover by the United States or relicensing of a project is better adapted to a comprehensive plan of water resource development and improvement.

The bill, on its face, is strictly of a procedural nature and does not purport to amend the Act with regard to such substantive determinations as justification for Federal takeover; the appropriate basis for compensation in the event of takeover; or the relative priorities and preferences to be followed in relicensing. Should the Committee decide to act upon such substantive issues, either by amending the bill or establishing legislative history which changes existing policies, we would want the opportunity to present further testimony concerning the effect of such determinations on the Federal power marketing program, and such other water use programs as irrigation, fish and wildlife conservation, recreation, pollution control and domestic or industrial use.

We strongly support the provisions of the bill for a moratorium to stay the effect of a new license until the expiration of the following full Congress, in the event the Commission does not intend recapture of a project. These provisions establish a reasonably short but adequate period in which the Federal agency which moves for a stay must act through the administrative processes of the executive branch to prepare and present its case before the Congress. The period provided for in the bill, from 2 to 4 years, is not overly long for a vitally important determination of this type, particularly in light of the exception allowing the Commission to issue temporary licenses pending expiration of the prescribed moratorium period. Also, the Congress may terminate the stay at any time and the Federal agency which requested the stay also may move to terminate it. It should be noted that the Federal Power Commission is an independent agency, not an executive agency, in relation to such proceedings. Unless a sufficient moratorium period is provided, the executive branch will not have an opportunity to discharge its constitutional responsibility to make recommendations to the Congress on these vital issues.

If the bill is enacted, we intend to invoke the moratorium provision only when recapture clearly would be the course of action best adapted in the public interest to a comprehensive plan of water resource development.

We enthusiastically support the provisions, first, for open-ended conditioning of licenses issued pursuant to section 15(a), except for temporary licenses, and, second, for temporary nonpower licenses pending assumption of control of a facility by an appropriate governmental organization. This authority will be of great value in developing each relicensed project fully in a manner best suited to the comprehensive development of a river basin. The Commission will be authorized to assure water resource development on a long-range basis which best serves multiple beneficial purposes, including power generation, navigation,

flood control, irrigation, fish and wildlife enhancement, recreation, pollution control, and preservation of aesthetic and ristoric values. The requirements in the bill for notice and opportunity for hearing and for reasonableness of conditions; and the administrative safeguards built into Commission procedures will serve to prevent arbitrary or capricious tampering with basic terms of the new license. In this manner, the highest possible water resource conservation and use consistent with the licensee's economic interest will be maintained.

Issuance of a temporary, exclusively nonpower use license, pending assumption of supervision by a governmental agency also will provide an appropriate vehicle for advancing the multiple objectives of sound water resource management. For example, in the case of a marginally economic hydropower project on a small stream, a temporary nonpower license might be granted to reserve a project for use as part of a water pollution control, recreation, or fish and wildlife enhancement project.

One technical question arose concerning section 4 which provides that, in the case of new licenses under section 15, amortization reserves shall be established and maintained from the date of the new license. It was not clear, at first, how section 4 would apply where a new license is issued to the original licensee who is already under an obligation to accumulate amortization reserves. The Federal Power Commission, in paragraph 2, page 7, of the letter of transmittal of August 28, 1967 (113 Cong. Rec. 11436, August 29, 1967), from Chairman White to Speaker McCormack, stated that the proposed amendments "provide explicity that the amortization reserves called for by section 10(d) of the Act would continue to accumulate without interruption, suspension or revaluation" in the issuance of a new license to the original licensee. The bill does not contain the explicit provision referred to. We understand, however, that the Commission will so construe section 4 as to accomplish the stated intention.

With this minor question resolved, we are in full support of the bill and believe that the provisions for an adequate moratorium period, open-ended conditioning of licenses and temporary nonpower use licenses will be of particular benefit to continued optimum water resource management.

Mr. MACDONALD. The hearings will be recessed until 10 o'clock tomorrow morning.

(Whereupon, at 12:06 p.m., the subcommittee recessed, to reconvene at 10 a.m., Wednesday, June 12, 1968.)

AUTHORITY OF FPC TO LICENSE AND TAKE OVER HYDROELECTRIC PROJECTS

WEDNESDAY, JUNE 12, 1968

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

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

Mr. MACDONALD. The hearings will come to order.

The first witness today is our colleague from the State of Maine, the Honorable William D. Hathaway. Mr. Hathaway, we will be glad to hear you at this time.

STATEMENT OF HON. WILLIAM D. HATHAWAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mr. HATHAWAY. When Congress enacted the Federal Water Power Act of 1920, it provided that licenses for non-Federal hydroelectric power development would be issued by the Federal Power Commission for a period of no longer than 50 years at which time the "United States" could exercise a right to "recapture" power projects upon the expiration of licenses granted under that act. The provision necessarily meant to protect the public from exploitation by power concerns, by unfair trade practices or by failure of power operators to insure not only the development and transmission of power but the development of the natural resources inherent in power projects for the public protection and enjoyment. The consideration for a fair and equitable distribution of power throughout the country undoubtedly contributed to this provision.

In so providing for this review of power licenses upon expiration, the 66th Congress respected the system of checks and balances which enable this country to strive for a continuity of equilibrium between private interests and public interests. Legislative historians conceded that the Power Act drawn in 1920 was largely a result of the speculative abilities of a Congress charged to effect a law within which the development of power could proceed through the 20th century. No longer must we speculate—nearly 50 years later, the trend in power development is firmly entrenched, largely in an overdose of a private power monopoly motivated more by profit interest than by public interest.

The legislation under discussion at this time, which I joined in introducing, H.R. 16987, delineates the manner by which relicensing of

power facilities shall proceed to insure the review of power operations in the United States by the United States which, if unfavorable, may be recaptured by the United States. It is, as it has often been described, legislation of a "procedural" nature rather than substantive in content—but the procedure by which any substantive policy is carried out may inhibit or enhance the legislative intent of the law.

There has been considerable debate among the parties concerned with this legislation and the parties who will be affected by this legislation as to whether or not the Congress of 1920 meant that the Congress or the Federal Power Commission should serve as the body of the "United States" in determining "recapture" necessity or desirability. There are those who contend that only the Federal Power Commission can afford the expertise for the ultimate decisionmaking on power relicensing. Contrary to this view there seem to me to be two underlying and important public considerations which the FPC, in all its wisdom should or would wish not to solely judge. First, the financial commitment to hydroelectric power development by the taxpayers should guarantee their complete representation in the course of the proceedings for relicensing. Secondly, like our colleagues in 1920, we are facing decisions of long-range public policy, a framework within which the further development of power will transpire. It is significant that the Federal Power Commission concurs in the view that relicensing is not a matter which should be assigned to their sole discretion.

Without the procedures set out in this legislation, relicensing of every hydroelectric project will require individual consideration by the Congress based on the recommendations of the Federal Power Commission. Considering that there are presently 270 licensed hydroelectric projects which are subject to recapture and that 67 of these licenses will expire in the 5 years, review by the Congress could conceivably become an exercise in futility. This legislation provides that the FPC, upon review of a project subject to expire, will make a preliminary decision upon a desirability of recapture by the United States after all Federal agencies, private citizens, and power concern representatives have presented views. Their preliminary decision is further balanced by the prerogative granted any Federal agency to stay the order of relicensing for review of the Congress when it believes recapture more warranted than relicense. Consequently, projects subject to relicensing could be referred for congressional review not only when the FPC, after hearing, determines to advise recapture—but when any Federal agency, after hearing and FPC preliminary decision favoring relicense, desires to present its case to the Congress urging recapture of a facility by the United States. The Congress would act only on those cases referred to as via either of these channels which provide a maximum consideration of public interests in power policy.

The Federal Power Commission in its study of relicensing considerations and procedures, determined that relicensing be subject to conditions which may be set by the FPC when determined necessary to accommodate the public interest. Thus, the new license may provide for the continuation of a project for nonpower purposes. Under this provision, a project could be reserved exclusively for domestic water supply, recreation or the fulfillment of other public needs. The nonpower license would be issued on a temporary basis pending determination of desirable relinquishment of control to an interested State, municipal, interstate, or Federal agency.

To assure that the power resources of the Nation continue operation through the relicensing procedure, annual temporary licenses may be issued until a determination on a "recapture" recommendation be concluded. It is my opinion that the long-range public considerations justify this interruption of long-range planning of power operators subject to the "recapture" question.

The far-reaching implications of power development, water quality control, resource conservation, fish and wildlife protection and all beneficial public purposes are given voice under the procedures outlined in this legislation. Based on my view that the record of the last 40 years with regard to comprehensive power development leaves much to be desired, this legislation may give us the opportunity to reevaluate power policy and to set it back on a course for optimum development of all resources consistent with the great demands being felt for policy which does not inhibit the application of the broadest public interests and concerns.

Mr. MACDONALD. We appreciate your testimony, Mr. Hathaway.

Mr. HATHAWAY. Thank you for the opportunity, Mr. Chairman.

Mr. MACDONALD. The next witnesses I understand would like to sit together as a panel.

Mr. Jack K. Horton, chairman of the Southern California Edison Co., and Mr. Frederick T. Searls, general attorney for the Pacific Gas & Electric Co.

Would you come forward, please?

STATEMENTS OF JACK K. HORTON, CHAIRMAN, SOUTHERN CALIFORNIA EDISON CO.; FREDERICK T. SEARLS, GENERAL ATTORNEY, PACIFIC GAS & ELECTRIC CO.; AND BRUCE RENWICK, SPECIAL COUNSEL, SOUTHERN CALIFORNIA EDISON CO.

Mr. MACDONALD. Please identify the other gentlemen with you.

Mr. HORTON. Mr. Chairman, I am Jack Horton. On my right is Mr. Searls, the general attorney of the Pacific Gas & Electric Co. On my left is Mr. Bruce Renwick, who is special counsel to Southern California Edison Co.

If it is agreeable to the chairman, we would like to proceed with, in effect, two panels this morning. The second group from our industry will follow this first presentation.

It would be my proposal, Mr. Chairman, to summarize briefly the highlights of my prepared statement with the request that the full statement be included in the record, if that is agreeable.

Mr. MACDONALD. Without objection, so ordered.

(The statement is as follows:)

STATEMENT OF JACK K. HORTON, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, SOUTHERN CALIFORNIA EDISON COMPANY

My name is Jack K. Horton. I am the Chairman and Chief Executive Officer of Southern California Edison Company, 601 West Fifth Street, Los Angeles, California.

Let me first express to Representative Staggers, Chairman of the House Interstate and Foreign Commerce Committee, Representative Macdonald and to each member of the House Interstate and Foreign Commerce Committee my appreciation and the appreciation of the investor-owned electric utility industry for the opportunity to appear before your Committee with respect to H.R. 12698 and H.R. 12699.

H.R. 12698 introduced by Representative Staggers and H.R. 12699 introduced by Representative Macdonald would amend Part I of the Federal Power Act and establish procedures for the processing of expiring hydroelectric licenses.

Hearings on S. 2445 were held by the Senate Commerce Committee on February 26 and 27, 1968, at which time witnesses of our industry, including myself, appeared and presented recommendations with respect to S. 2445.

The relicensing of licensed hydroelectric projects which are subject to takeover by the United States has been the subject of study of investor-owned electric utility companies operating licensed hydroelectric projects for many months. Representatives of these companies have had discussions with the Federal Power Commission and members of its staff concerning this matter. In order that your Committee may be apprised as to the many complex and important problems confronting the Congress, Federal Power Commission and existing licensees with respect to the relicensing of FPC hydro projects with expiring licenses, my testimony and that of my colleagues will present what I believe to be the concensus of the views of investor-owned electric utility companies operating licensed hydro projects and their recommendations with respect to H.R. 12698 and H.R. 12699, bills in which we are vitally interested.

The testimony of our industry witnesses will demonstrate the urgent need for the Congress to enact legislation which will clearly set forth its objectives and policies with standards to govern the processing of expiring hydroelectric licenses.

We also believe that the recommendations we have made with respect to S. 2445, and will make as to H.R. 12698 and H.R. 12699, have a sound basis, are fair and reasonable and in the public interest.

The investor-owned electric utility industry in the United States is composed of approximately 300 operating companies as of December 31, 1967. This industry has approximately $70.2 billion invested in electric facilities and an installed capacity of 202.5 million kilowatts. Our combined construction budget in 1967 for electric facilities was $6.1 billion; this budget for 1968 is estimated at $6.5 billion and $6.4 billion for 1970. During the twelve months' period ended December 31, 1967, these 300 investor-owned electric companies produced approximately 80% of all electric energy produced in the United States.

The electric utility industry has a record of great achievements. It is not only one of the largest industries in the United States, but an industry which has made a significant contribution to the growth of our local and national economies and to the high standard of living of the American people. The problem of population growth and the increasing consumption of electricity per capita confronts all electric utilities.

As of December 31, 1967, 275 projects with an aggregate capacity of 29,369,000 kilowatts were operating under FPC licenses and 137 applications for licenses for constructed projects with an aggregate capacity of 1,671,000 kilowatts and 21 applications for licenses for unconstructed projects with an aggregate capacity of 3,837,000 kilowatts were pending before the Commission. The terms of the original licenses issued by the Commission began to expire in 1967 and by the end of 1971, the licenses of 50 hydroelectric projects located in various parts of the United States will expire.

Section 14 of the Federal Power Act provides in substance that the United States shall have the right upon or after the expiration of any license to take over and operate the whole or any part of the licensed project on condition that it pay to the licensee the "net investment" of the licensee in the project so taken plus severance damages.

Section 15 of the Act provides in substance that if the United States does not at the expiration of the original license exercise its right to take over and operate any licensed project, the Commission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new license on the condition that the new licensee shall before taking possession pay the "net investment" of the licensee in the project so taken plus severance damages.

Chairman Lee C. White of the Federal Power Commission in his letters dated August 28, 1967, to Honorable Hubert H. Humphrey, President of the Senate, and to Honorable John W. McCormack, Speaker of the House of Representatives, transmitting copies of a draft bill to amend Part I of the Federal Power Act, which was subsequently introduced in the Senate (by request) by Senator Warren G. Magnuson (D-Wash), Chairman of the Committee on Commerce, as S. 2445, and in the House of Representatives by Representative Harley O. Stag-

gers (D-W.Va), Chairman of the Committee on Interstate and Foreign Commerce, as H.R. 12698, stated as follows:

"The Commission strongly believes that it should not relicense projects on a long-term basis until the Congress has made known its decision either through enactments concerning specific projects or through general legislation such as we propose today."

Unless legislation is enacted, FPC will refer to the Congress each project with an expiring license on a project-by-project basis. This procedure will subject the Congress to the burdensome task of having to consider in detail and resolve the many complex issues of comprehensive development of water resources of 50 expiring licensed projects in the next 3 years. To avoid this cumbersome, inefficient and costly procedure, we urge the Congress to enact legislation which would set forth its objectives and policies with standards to govern the handling of expiring licenses and which would delegate to the Federal Power Commission, which has the expertise, the same authority to consider applications for renewal of existing projects and to issue renewal licenses as it has been exercising since 1920 with respect to applications for licenses for new projects.

The complexity of the issues and the heavy burden facing the Congress were the primary reasons that prompted the Congress in 1920 to delegate certain of its powers over the Nation's waters and public lands to FPC and authorized the Commission, within the standards established by the Federal Power Act, to issue licenses for hydroelectric projects for a period not exceeding 50 years. Today in 1968 the need for similar delegation of authority with respect to projects under expiring licenses is even more compelling than in 1920.

The projects which the Congress would have to study are located in various geographical regions of the United States, have been constructed and represent more than $3 billion of private investment. Licensed projects are for the most part completely integrated with the licensee's other power developments and make an important contribution to the reliability of a licensee's system and economy of service. Hydro capacity also contributes to system voltage control. These projects are in most cases part of a highly coordinated local and regional bulk power network supplying electricity to power systems serving millions of the Nation's electric consumers and to industrial operations that are important to the national and local economies. They are contributing many millions of dollars yearly in tax revenue to various local, state and federal agencies. They are also making substantial contributions to other beneficial purposes, including water supply and quality control, irrigation, conservation of natural resources, soil erosion controls, flood control, navigation, recreation and fish and wildlife protection.

To illustrate the significant adverse effects taking a licensed project away from the original licensee can have on the licensee and its customers, I should like to use my Company as an example.

Southern California Edison Company, herein referred to as "Edison" is a public utility serving more than 7 million people throughout its service area of approximately 65,000 square miles in central and southern California and central Nevada.

Edison's wholly owned electric generating system consists of 36 hydroelectric plants operated under 21 FPC licenses which expire at various times between 1970 and 2009 with an effective operating capacity of 841,900 kilowatts and 13 thermal electric plants (including the San Onofre nuclear electric generating plant, 80% owned by Edison and 20% by San Diego Gas & Electric Company, placed in commercial operation on January 1, 1968). The total effective operating capacities of these plants are approximately 8,750,000 kilowatts, of which approximately 90% is steam electric generation. In addition, the Company has the use of approximately 277,000 kilowatts of effective operating capacity at the Hoover Dam Power Plant owned by the United States.

Edison is also participating with other electric utility systems in two steam electric generating projects now under construction; i.e., the Four Corners Project located in northern New Mexico and the Mohave Project in southern Nevada.

Edison's 21 licensed hydroelectric projects represent an aggregate present net book investment of approximately $170,000,000.

Although steam electric generating capacity approaches 90% of Edison system's resources, our system is designed to rely on hydro back-up to increase dependability of supply. Hydro generation plays a very important role in the Edison electric generation system. It is valuable for spinning reserve because of quick response to load changes and availability for peak load operation enhancing

the economical operation of our large steam base load plants. Hydro capacity also contributes to system voltage control.

One of the world's great hydroelectric developments is "Southern California Edison Company's Big Creek-San Joaquin River Hydroelectric Development," located on the western slope of the Sierra Nevada Mountains east of Fresno, California, popularly called "Big Creek." This project is an outstanding example of American free enterprise and represents a total investment of more than $215 million contributed wholly by private investors. Big Creek consists of 6 major reservoirs, 15 major dams, 10 major tunnels and a series of 8 licensed hydroelectric plants with a combined effective operating capacity of 690,000 kilowatts, operating under 7 Federal Power Commission licenses, representing an aggregate present net book investment of approximately $150 million.

Big Creek is a major source of both energy and capacity for the Edison system. In addition to the capacity and billions of kilowatt-hours it annually supplies, Big Creek provides important contributions to many beneficial public purposes, including water supply, conservation of natural resources, watershed improvement, irrigation, soil erosion controls, flood control, fish and wildlife protection, and recreation. It also furnishes millions of dollars in tax revenues to federal, state and local governments. Property taxes paid to Fresno County California, alone amount to over $2,500,000 annually.

The area of the Sierra Nevada Mountains, within which the Big Creek Development is located, is one of the most highly developed and most heavily used recreational areas in the United States. As the result of cooperation between local, state and federal governmental agencies and private enterprise, reasonable balance between hydroelectric development, irrigation use and recreation has been accomplished. Although it is difficult to separate the recreational facilities provided for the public by the Big Creek Development, Camp Edison—Shaver Lake, which is a part of Project No. 67, deserves special attention. This unique 250-acre camp, located on the shores of Shaver Lake, was built by Edison and is operated by it in close cooperation with the Forest Service. The facilities available at the camp let the camper combine the benefits of carefree electric living with the best outdoor life and fun. "Electric Cooking Centers" are located throughout the camp.

In addition to the natural facilities made available for public use, the licensee has added greatly to educational, recreational and environmental values by providing a tree nursery, a tree plantation, a trout farm and fish hatchery and fire patrol crews. These facilities are provided at the expense of and maintained by Edison. Through its fostering of tree planting and the application of sound forestry practice, Edison operates its forest lands in close cooperation with the state and federal governmental agencies on a sustained yield basis and at the same time assists in the prevention of erosion and in flood control.

Each of the 8 licensed hydroelectric plants (including FPC Projects 67 and 120) in the Big Creek Development is operated as an integral part of a comprehensive development of the Sierra Nevada watershed and of the Edison electric system. The FPC licenses for Projects 67 and 120 are for terms of 50 years which expire in March, 1971. Edison Company in response to the FPC request has submitted its report to the Commission on each project containing requested information and stating that the takeover of Projects 67 and 120, or either of them, which represent a present net investment of approximately $39,600,000 and $17,300,000, respectively, would have the following adverse effects upon Edison Company and its customers, the general public and the comprehensive development of the Upper San Joaquin River watershed:

(1) Disruption in the operations of Edison Company and power supply.

(2) The operational plan of the Big Creek hydroelectric system would have to be drastically modified to compensate for the removal of, or the separation of the projects, or either of them, from the Edison system.

(3) Since each of the 6 major reservoirs (combined capacity of 568,830 acre feet) in the Big Creek complex is operated under agreements with and in cooperation with downstream irrigators and with the Bureau of Reclamation and other governmental agencies to provide domestic water supply, irrigation waters and flood control, the Company's interrelated water rights and irrigation water contracts would present substantial renegotiation problems.

(4) Loss of at least $4,600,000 per year in tax revenue to various local, state and federal agencies if the projects were taken over by the Federal Government or were relicensed to a tax exempt entity.

(5) In addition to the direct tax effects, an indirect and likewise adverse effect upon taxpayers would result from the fact that conservation practices, recreational developments and, in some cases, flood control benefits would of necessity have to be supported by additional taxes, by a direct charge against users, or would have to be curtailed or abandoned.

(6) Edison would be required to provide the energy and capacity lost by takeover from other sources. This would require replacement of project capacity and kilowatt-hour output by other means of generation on the Edison system; and would also require the installation of new electric lines and facilities and the reconstructing and rearranging of portions of Edison's existing interconnected transmission and distribution system. The cost of these new facilities is difficult to estimate with certainty and could total several millions of dollars.

(7) Increased costs resulting from takeover would have to be passed on to customers in the form of higher rates or in the form of less rapid reduction in rates.

(8) From a physical and technical standpoint, Projects 67 and 120 and each of the other licensed projects in the Big Creek Development could not make their maximum contribution to the power resources of California if either, or any of them, were severed from the Edison system.

(9) The operation of any one of the 7 Big Creek licensed projects as a single project is technically and economically impracticable.

The other 14 FPC licensed hydroelectric projects of Edison are similarly integrated into the Edison electric system and provide substantial benefits to the general public and to Edison's customers.

In conclusion, we believe the following is an appropriate formulation of the policies to control relicensing under the Federal Power Act:

"If the original licensee files an application for a new license, unless after notice and a hearing the FPC finds that the project with such modifications and conditions as the Commission may prescribe would not be best adapted to a comprehensive plan for improving or developing the waterway involved, the Federal Power Commission shall issue to the original licensee a new license under the Federal Power Act containing such modifications and conditions as may be authorized or prescribed by the Commission."

We also believe it is in the public interest to assure continued ownership, unless FPC should find that the project, with or without modifications proposed by the licensee or prescribed by FPC, could not continue to fulfill the needs of comprehensive river basin development. Such assurance will conserve the generation and service capabilities of existing systems, maintain public confidence in the electric industry and its securities, encourage the investment of capital in new facilities and permit timely growth, rather than delay, in the orderly development of the Nation's water resources for all public purposes.

Taking a licensed project away from the original licensee can only be justified where the existing licensee is unable or unwilling to carry out whatever modifications are found desirable for comprehensive development, or where takeover is required to achieve a necessary or desirable public use of the water resources which is incompatible with continued power development under license.

The provisions of the present Act, as amended by H.R. 12698 and H.R. 12699 with the amendments and changes therein to be suggested by Mr. Frederick T. Searls, and a declaration by the Congress of its objectives and policies with standards to govern the processing of expiring licenses, and the delegation of authority to FPC to issue renewal licenses, we believe, would be in the public interest, assure the orderly comprehensive development of the Nation's water resources and carry out these policies.

Mr. HORTON. My name is Jack K. Horton. I am chairman and chief executive officer of the Southern California Edison Co., of Los Angeles, Calif.

First of all, Mr. Chairman, I would like to express my appreciation and the appreciation of my colleagues to you and to the committee for the opportunity this morning to appear with respect to H.R. 12698 and H.R. 12699.

The relicensing of licensed hydroelectric projects which are subject to take over by the United States has been the subject of study of investor-owned electric utilities companies operating licensed hydro projects for many months.

My testimony and that of Mr. Searls and my other colleagues this morning will present what I believe to be the consensus of the views of the investor-owned electric utility companies who operated licensed hydro projects and their recommendations with respect to these two bills which, of course, we have a very real and vital interest in.

The investor-owned electric utility industry in the United States is composed of about 300 operating companies as of December 31, 1967. This industry has over $70 billion invested in electric facilities and an installed capacity in excess of 200 million kilowatts.

As of December 31, 1967, 275 projects with an aggregate capacity of over 29 million kilowatts were operating under Federal Power Commission licenses. The terms of the original licenses, as you know, were issued by the Commission and began to expire in 1967 and by the end of 1971 the licenses of 50 hydroelectric projects located in various parts of the United States will expire.

I know that the committee is familiar with the sections 14 and 15 of the Federal Power Act.

Section 14 of the Federal Power Act provides in substance that the United States shall have the right upon or after the expiration of any license to take over and operate the whole or any part of the licensed project on condition that it pay to the licensee the "net investment" of the licensee in the project so taken plus severance damages.

Section 15 of the act provides in substance that if the United States does not at the expiration of the original license exercise its right to take over and operate any licensed project, the Commission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee on the condition that the new licensee shall before taking possession pay the "net investment" of the licensee in the project so taken plus severence damages.

It is our view that unless legislation is enacted the FPC will of necessity refer to the Congress each project with an expiring license on a project-by-project basis.

To avoid this cumbersome, inefficient, and costly procedure, we urge the Congress to enact legislation which would set forth its objectives and policies with standards to govern the handling of expiring licenses and which would delegate to the Federal Power Commission, which has the expertise, the same authority to consider applications for renewal of existing projects and to issue renewal licenses as it has been exercising since 1920 with respect to applications for licenses for new projects.

The projects which the Congress would have to study are located in various geographical regions of the United States, have been constructed and represent more than $3 billion of private investment. Licensed projects are for the most part completely integrated with the licensee's other power developments and make an important contribution to the reliability of a licensee's system and economy of service.

Hydro capacity also contributes to system voltage control. These projects are in most cases part of a highly coordinated local and regional bulk power network supplying electricity to power systems serving millions of the Nation's electric consumers and to industrial operations that are important to the national and local economies.

They are contributing many millions of dollars yearly in tax revenue to various local, State and Federal agencies. They are also making substantial contributions to other beneficial purposes, including water supply and quality control, irrigation, conservation of natural resources, soil erosion controls, flood control, navigation, recreation and fish and wildlife protection.

To illustrate the significant adverse effects taking a licensed project away from the original licensee can have on the licensee and its customers, I should like, with your permission, to use my company as an example.

Our company, incidentally, serves more than 7 million people throughout its service area of about 65,000 square miles in central and southern California.

Edison's wholly owned electric generating system consists of 36 hydroelectric plants operated under 21 Federal Power Commission licenses which expire at various times between 1970 and 2009 with an effective operating capacity of 841,900 kilowatts and 13 thermal electric plants (including the San Onofre nuclear electric generating plant, 80 percent owned by Edison and 20 percent by San Diego Gas and Electric Co., placed in commercial operation on January 1, 1968).

The total effective operating capacities of these plants are approximately 8,570,000 kilowatts, of which approximately 90 percent is steam electric generation.

Edison's 21 licensed hydroelectric projects represent an aggregate present net book investment of approximately $170 million.

Although steam electric generating capacity approaches 90 percent of Edison system's resources, our system is designed to rely on hydro backup to increase dependability of supply. Hydro generation plays a very important role in the Edison electric generation system.

Our Big Creek-San Joaquin River Hydroelectric Development, which is located on the western slope of the Sierra Nevada Mountains east of Fresno, consists of six major reservoirs, 15 major dams, 10 major tunnels and a series of eight licensed hydroelectric plants with a combined effective operating capacity of 690,000 kilowatts, operating under seven Federal Power Commission licenses, representing an aggregate present net book investment of approximately $150 million.

In addition to the capacity and billions of kilowatt-hours it annually supplies, Big Creek provides important contributions to many beneficial public purposes, including water supply, conservation of natural resources, watershed improvement, irrigation, soil erosion controls, flood control, fish and wildlife protection, and recreation.

It also furnishes millions of dollars in tax revenues to Federal, State, and local governments. Property taxes paid to Fresno County, Calif., alone amount to over $2,500,000 annually.

In addition to the natural facilities made available for public use, the licensee has added greatly to educational, recreational and environmental values by providing a tree nursery, a tree plantation, a

trout farm and fish hatchery and fire patrol crews. These facilities are provided at the expense of and maintained by Edison.

Through its fostering of tree planting and the application of sound forestry practice, Edison operates its forest lands in close cooperation with the State and Federal governmental agencies on a sustained yield basis and at the same time assists in the prevention of erosion and in flood control.

Each of the eight licensed hydroelectric plants (including Federal Power Commission Projects 67 and 120)—and, incidentally, Mr. Chairman, we have here this morning and I would like to present to the committee the reports which we have made to the Federal Power Commission on these Projects 67 and 120 which are now pending for consideration.

You will notice, there is a map right in front of the preface section of each which will give you some idea of the interrelationship and the interdependence of the various features of the Big Creek project.

Each of these licensed plants in the Big Creek Development is operated as an integral part of a comprehensive development of the Sierra Nevada watershed and of the Edison electric system. The Federal Power Commission licenses for Projects 67 and 120 are for terms of 50 years which expire in March 1971.

We have heretofore advised the Federal Power Commission in the documents that are before you that the takeover of Projects 67 and 120 or either of them would have the following adverse effects upon the Edison Co. and its customers, the general public and the comprehensive development of the Upper San Joaquin River watershed.

(1) Disruption in the operations of Edison Co. and power supply.

(2) The operational plan of the Big Creek hydroelectric system would have to be drastically modified to compensate for the removal of, or the separation of the projects, or either of them, from the Edison system.

(3) Since each of the six major reservoirs (combined capacity of 568,830 acre-feet) in the Big Creek complex is operated under agreements with and in cooperation with downstream irrigators and with the Bureau of Reclamation and other governmental agencies to provide domestic water supply, irrigation waters, and flood control, the Company's interrelated water rights and irrigation water contracts would present substantial renegotiation problems.

(4) Loss of at least $4,600,000 per year in tax revenue to various local, State and Federal agencies if the projects were taken over by the Federal Government or were relicensed to a tax exempt entity.

(5) In addition to the direct tax effects, an indirect and likewise adverse effect on taxpayers would result from the fact that conservation practices, recreational developments and, in some cases, flood control benefits would of necessity have to be supported by additional taxes, by a direct charge against users, or would have to be curtailed or abandoned.

(6) Edison would be required to provide the energy and capacity lost by takeover from other sources.

(7) Increased costs resulting from takeover would have to be passed on to customers in the form of higher rates or in the form of less rapid reduction in rates.

(8) From a physical and technical standpoint, projects 67 and 120 and each of the other licensed projects in the Big Creek development could not make their maximum contribution to the power resources of California if either, or any of them, were severed from the Edison system.

(9) The operation of any one of the seven Big Creek licensed projects as a single project is technically and economically impracticable.

In conclusion, we believe the following is an appropriate formulation of the policies to control relicensing under the Federal Power Act:

If the original licensee files an application for a new license, unless after notice and a hearing the Federal Power Commission finds that the project with such modifications and conditions as the Commission may prescribe would not be best adapted to a comprehensive plan for improving or developing the waterway involved, the Federal Power Commission shall issue to the original licensee a new license under the Federal Power Act containing such modifications and conditions as may be authorized or prescribed by the Commission.

We also believe it is in the public interest to assure continued ownership, unless the Federal Power Commission should find that the project, with or without modifications proposed by the licensee or prescribed by the Federal Power Commission, could not continue to fulfill the needs of comprehensive river basin development.

Taking a licensed project away from the original licensee can only be justified where the existing licensee is unable or unwilling to carry out whatever modifications are found desirable for comprehensive development or where takeover is required to achieve a necessary or desirable public use of the water resources which is incompatible with continued power development under license.

The provisions of the present act, as amended by H.R. 12698 and H.R. 12699, with the amendments and changes therein to be suggested by Mr. Frederick T. Searls, and a declaration by the Congress of its objectives and policies with standards to govern the processing of expiring licenses, and the delegation of authority to the Federal Power Commission to issue renewal licenses, we believe, would be in the public interest, assure the orderly comprehensive development of the Nation's water resources and carry out these policies.

Thank you very much.

Mr. MACDONALD. Thank you, sir.

As I recall yesterday's testimony by Mr. Solomon, he indicated that he didn't think that the Federal Power Commission should be given the power that you suggest in this last paragraph.

As I recall, he said that there was a suggestion made to the Federal Power Commission that they could give them the ultimate authority but the Federal Power Commission felt that the ultimate authority should remain in the Congress.

Is that your understanding?

Were you here yesterday?

Mr. HORTON. I was not here yesterday, but I have read Mr. White's statement that was given by Mr. Solomon and I think that he was referring to the ultimate question of takeover. Of course, with that we would agree, also.

What I am suggesting, in effect, Mr. Chairman, is, absent the recommendation by the Federal Power Commission to the Congress for a takeover, that the Federal Power Commission be delegated the authority to go right ahead and renew the licenses.

Mr. MACDONALD. I may sound naive to you but it seemed to me that that was the present setup. I could not possibly know anything about your operation if asked to vote on the floor of the Congress whether or not your license should be renewed. It would seem to be the exercise of futility; I just would not know what I was doing.

It would seem to me queer that we should have, and I thought did have, the right to renew licenses.

Mr. HORTON. It is clear that the Federal Power Commission now has that right and has been given that delegation of authority from the Congress for new licenses. We felt that it is not at all clear what the procedure should be with respect to the consideration of the renewal of licenses when they expire. It is for that reason that we are suggesting that this which is in effect the procedural bill before you be approved subject to certain changes which Mr. Searls will suggest that will make it completely clear that the Federal Power Commission would have this right to be described.

I think you are exactly correct that the Congress does not have the time or the expertise that the Federal Power Commission has in this area and I could not agree more with your suggestion that this is the kind of delegation that should now be given and made completely clear.

Mr. MACDONALD. Sir, I am sure your company is doing a fine job and I want to compliment you both on your statement and also the very beautiful reports which I am sure you have made to the Federal Power Commission which we have copies of here.

That being the case, if a licensee is doing a job, why the fear that the Federal Power Commission would not renew the license?

Mr. HORTON. Well, I don't think it is so much a fear at this point in time. It is a feeling on our part that I believe is shared with the Federal Power Commission, itself, that they presently do not have the authority to renew these without submitting each and every one of them that are expiring to the Congress for review.

Mr. MACDONALD. Well, yesterday we were told by a Member of Congress who also submitted a statement for both the power companies in his district that he thought this bill, if adopted, might be a further slowdown in the bureaucratic process of licenses that we have.

Do you agree with that?

Mr. HORTON. No; I do not agree with that. I believe my own view and that of the great majority of the investor-owned companies here is just the opposite.

Mr. MACDONALD. My last question is of very small moment but just struck a chord in my curiosity.

On page 6 which you didn't read but in the written statement, you say:

> In addition, the company has the use of approximately 277,000 kilowatts of effective operating capacity at the Hoover Dam Power Plant owned by the United States.

I was wondering what the arrangement was, how the power came about?

Mr. HORTON. Do you want to answer that, Mr. Renwick? I think you actively participated.

Mr. RENWICK. At the time the Hoover project was constructed, Mr. Wilbur was then the Secretary of the Interior. I think $160 million was the authorization but this authorization for expenditure of money was conditioned on the fact that the Secretary would have to have a firm contract for the purchase of all the energy from the Hoover project before the dam could be constructed.

So, Southern California Edison Co., the Metropolitan Water District, the city of Los Angeles, the cities of Pasadena, Burbank, and Glendale contracted to purchase and pay for this energy. The States of Nevada and Arizona were also given an allotment.

Then the units that were installed in the Hoover power plant are owned by the United States of America and are operated by the city of Los Angeles and by the Edison Co., and by the Metropolitan Water District as operating agents.

As Mr. Horton says in his statement, we have the use of these 277,000 kilowatts of capacity at the Hoover Dam powerhouse. This energy is generated and distributed into our system and we pay the Government for this power as do the other allottees of the Hoover power dam.

Mr. MACDONALD. Right.

Well, this is sort of public-private; is that right?

Mr. HORTON. The distinction, if I may interrupt, Mr. Chairman, as compared to Big Creek, a private company, our own company, has built and constructed all of the facilities that are involved in the hydroelectric project. In the case of Hoover, the Federal Government has for all practical purposes constructed the hydroelectric projects and we in effect have long-term contracts to purchase the energy.

Mr. MACDONALD. I wish I had know this a year ago, maybe starting 4 or 5 years ago, when I handled the so-called Lincoln-Dixon Dam project because you know Democratic Congressmen at that time from Maine and, as I recall it, practically all the private utility companies were opposed to the project.

It seems to me that your situation at Hoover is quite analogous to what could happen at Lincoln-Dixon.

Mr. HORTON. I suppose there could be proposed Federal hydroelectric projects on the Colorado River that were so uneconomic that we would not stand up to the bar and offer to purchase the power. In the case of Hoover, that was not the situation.

Mr. MACDONALD. Are you saying by inference that you think Lincoln-Dixon would fall into the former category?

Mr. HORTON. I am not qualified to say. All I could say is just because we have been able to work out this arrangement at Hoover many years ago does not necessarily mean that we would be able to do the same thing if the Federal Government now came along and proposed another installation on the Colorado River that might be much less economic than was the case at Hoover. There have been such proposals talked about.

Mr. MACDONALD. Thank you, sir.

Mr. Kornegay.

Mr. KORNEGAY. I have no questions.

Mr. MACDONALD. Mr. Harvey.

Mr. HARVEY. I have just one question.

Are there any other hearings in our history comparable to this where we take over something like this that you know of?

Mr. HORTON. Not that I know of, sir.

Mr. HARVEY. In other words, section 14 is unique; it is a different way of paying damages than any other method as far as you know of; is that correct? It is not the same as condemnation.

Mr. HORTON. Well, I think Mr. Searls probably is better qualified to answer that than I am but my section 14 provides for compensation on the basis of net investment plus severance damages. That may or may not result in the same kind of award that you would get at a condemnation proceeding.

Mr. HARVEY. I would be interested in that.

Mr. SEARLS. Well, as Mr. Horton has said, that it is a different situation. The measure of compensation under section 14 is not necessarily that which would obtain in a condemnation proceeding.

I would say that I believe there is one other piece of legislation that does have something in it about a Federal takeover and that I believe was the Transportation Act of 1920 with respect to railroads. Obviously that authority was never exercised; I don't even know the present status of the original legislation.

That is the only other type of takeover I have heard of in Federal legislative history.

Mr. HARVEY. Thank you.

That is all the questions I have.

Mr. MACDONALD. To follow that, was not that put in in 1920 more or less as to have the Federal Government sort of keep its hand on the till here, to mix metaphors, so that once these power sources were given away that if there was abuse—and I would think that there were very few times since the bill has passed as far as I know of—but was not that the rationale of why they have this power to retake?

Mr. SEARLS. Yes; I think that is the major purpose of it so that the United States would be in a position to take another look at the situation at the end of the 50-year period.

Mr. MACDONALD. Well, you find they get along with that?

Mr. SEARLS. Not at all. That is the condition under which we have obtained these licenses and we accept that.

Mr. MACDONALD. Mr. Kornegay.

Mr. KORNEGAY. One question that just occurred to me, Mr. Chairman.

Do any of you gentlemen know of any instance where the Federal Government has gone in and recaptured or taken over after the expiration of the power license?

Mr. HORTON. There have been no such instances.

Mr. MACDONALD. They can be.

Mr. HORTON. The issue is just now arising with this big batch of licenses expiring although there have been some that have been considered.

Mr. KORNEGAY. Prior to this time?

Mr. HORTON. Yes; a few.

Mr. KORNEGAY. I know we had one example yesterday where I believe the license actually expired and it was still operating under the 2-year period but they recommended a renewal, sent a letter over here to the Congress.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

Mr. Horton, my question, first of all, goes to the overall impact of your testimony. I see that you have alluded to the fact that there are approximately 300 so-called investor-owned electric utility companies in the United States.

My question is: Are you testifying in behalf of that entire group or is your testimony limited to your particular company?

Mr. HORTON. The 300 companies, Mr. Brotzman, would cover a large number of companies that do not have any hydroelectric installations at all. My testimony is representative and I am speaking for the major utility companies that do have hydroelectric projects in this country.

It is my testimony and that of Mr. Searls which is complementary to mine. We so testified before the Senate committee that we were representing in our testimony the consensus of those companies that do have hydroelectric projects.

I would say, to give you some dimension of the group, that the major hydro projects in this country are probably confined to a dozen major companies.

Mr. BROTZMAN. Stated conversely, do you know of any companies that have hydroelectric projects, investor utility companies, that are opposed to the basic objectives of the bills that we are considering here this morning?

Mr. HORTON. If you had asked me that question 2 days ago I would say I did not know. But I understand yesterday testimony was presented to your committee by one of the investor-owned companies that does not square with my point of view or my colleagues.

Mr. BROTZMAN. This relates to the initial witness we had yesterday, I presume.

Mr. HORTON. Yes, sir; that is the only dissent I know of any consequence from the views that we are presenting here this morning.

Mr. BROTZMAN. You didn't testify in detail relative to this bill. Is that to be supplied by another member of your panel? In other words, If I understand basically your testimony you are in favor of the purposes of the bill with certain changes. I don't see the specific changes but is there another witness here on your panel who is going to testify specifically on this?

Mr. HORTON. Yes, sir. Mr. Searls will deal with the specific changes that we would suggest in the way of amendments to the bill before you.

Mr. BROTZMAN. Thank you.

I have no further questions.

Mr. MACDONALD. Mr. Rooney.

Mr. ROONEY For what reason do you object to having another agency involve itself on the relicensing?

Mr. HORTON. I am not sure I understand the question.

Mr. ROONEY. I understand that this is an area in which you are very much concerned. Page 4, line 19.

Mr. HORTON. Mr. Searls will deal with that specifically in his testimony.

Mr. ROONEY. No further questions.

Mr. MACDONALD. Thank you very much, sir.

Mr. HORTON. Thank you, sir.

Mr. MACDONALD. Mr. Searls.

Mr. SEARLS. I am Frederick T. Searles, general attorney for Pacific Gas & Electric Co. On behalf of the company I wish to provide some background information and express our views on the bills before the subcommittee today.

We appreciate this opportunity to make a statement.

As Mr. Horton has said, I believe that the views I express represent the consensus of the utilities having hydroelectric projects. In fact, I doubt that the Empire District Electric Co. on whose behalf a statement was submitted yesterday has any different view of the objectives that we think should be accomplished but they do seem to have some different views as to the extent to which this bill would accomplish those objectives.

Prior to the passage of the Federal Water Power Act in 1920, development of the hydroelectric resources of the United States was proceeding at a slow pace. Most of the larger potential developments either affected navigation or required use of Federal lands, or both.

It was virtually impossible for private capital to obtain rights adequate to justify investment in hydroelectric facilities except by special act of Congress. Any rights granted by the executive departments under general statutes were subject to revocation on short notice. In consequence, the first two decades of this century saw numerous demands upon Congress to authorize individual projects.

By 1908, when President Theodore Roosevelt directed particular attention to the problem. Congress had acted upon some 79 projects, many of them more than once. The need for more study of such projects and for establishment of a general policy in this area was already apparent, but many years of congressional investigations, hearings and debates were required before adoption of the Federal Water Power Act in 1920.

This act created a Federal Power Commission and delegated to it authority to issue 50-year licenses for hydroelectric projects which, in the judgment of the Commission, were best adapted to a comprehensive plan for development for navigation, power, and other beneficial public uses.

This act, later amended to become part of the Federal Power Act, was successful in achieving development of the hydroelectric resources of the United States. By the end of 1967, there were 275 projects under license, many of which include two or more generating plants, with a total capacity of more than 29 million kilowatts.

As a particular example, Pacific Gas & Electric Co. owns and operates 66 hydroelectric plants with a capacity of almost two and a half million kilowatts representing an original investment of almost $630 million. Most of this investment was made in projects under Federal Power Commission license, the exceptions relating to certain developments prior to 1920 and to projects which did not, at the time, require a Federal Power Commission license.

After deducting accrued depreciation, the company's present investment in these plants exceeds one-half billion dollars. Nothing in excess of this actual investment is allowed in the company's rate base for these hydroelectric plants by either the California Public Utilities Commission, which regulates its retail rates, or by the Federal Power Commission, which regulates its rates for wholesale to other utility systems.

Pacific Gas & Electric's hydroelectric plants constitute an integral part of the company's electric system and furnish about 30 percent of its capacity requirements. Although there was a time when hydro generation supplied the major part of Pacific Gas & Electric's electic load, today thermal plants are the major source of power and the hydroelectric plants are used primarily for peaking.

This means that generally they are used to supply the peaks of daily and seasonal loads and, except in periods of abundant water or emergencies, are not used during off peak periods.

These hydroelectric plants not only supply peakload requirements economically, but they also contribute substantially to the reliability of power supply. This is due to their ability to respond quickly to changes in load requirements and their ability to start up independently and come to full load on very short notice.

These characteristics are important not only in supporting the Pacific Gas & Electric system, but also in supporting the Pacific Northwest-Southwest interties which will link California to the Pacific Northwest with some 3 million kilowatts of transmission capacity. Such heavy ties require strong support if they are not to endanger the reliability of the interconnected systems.

The bills before this subcommittee are concerned with the future of these hydroelectric plants. As the preamble in each bill recites, Congress intended that license expiration should be the occasion for reexamination of whether the project meets the test that it be best adapted to the comprehensive development of the waterway in the public interest.

Under the present law, in the absence of more explicit provisions, we see this question being considered at three stages as licenses approach and reach their expiration dates.

First, the Federal Power Commission, under rules which it adopted in 1964 calls for a report, to be due 4 years before the expiration date, from the holder of the expiring license and from each of the Federal agencies which may have an interest.

After consideration of these reports, and in some cases oral argument, the Commission makes a recommendation to Congress as to whether the project should be taken over by the Federal Government under section 14 of the Federal Power Act.

The second stage is congressional consideration of the Federal takeover question. The Congress may make its own independent determination on this question and is not bound by the Commission's recommendation.

The third stage is reached if Congress does not direct a takeover and appropriate money for the purpose. One of the problems which the Commission may have to face at this point is how to interpret congressional inaction. If the Commission is satisfied that it will not be contrary to the intent of Congress to proceed, it may consider applications for a new license under section 15 of the act. Such a new license may then be issued to the original licensee or, in appropriate cases, to a new licensee, after the date of expiration of the old license.

The bills would substitute for this time-consuming, multistage procedure with its attendant uncertainties a single proceeding before the Federal Power Commission prior to license expiration, to determine whether the public interest will be best served by relicensing the

project to the original licensee, by Federal takeover, or by licensing the project to a different licensee.

The bills would relieve the Congress from consideration of all projects with expiring licenses except those which in the Commission's judgment should be taken over by the United States.

This parallels the present procedure as to original licenses, where the matter comes before Congress only when the Commission determines, under section 7(b) of the act, that in its judgment the United States should develop the resource. In granting a new license under the procedure proposed by the bills, the Commission would have, of course, the same power which it now has to impose conditions to protect the public interest.

Under these bills, the future of a project could be decided sufficiently in advance of the license expiration to eliminate much of the uncertainty which is inherent in the present procedure. This will permit redevelopment or enlargement of a project to proceed in a timely and orderly fashion.

The bills thus would further the original objectives of the Federal Water Power Act, the development of the Nation's hydroelectric resources consistently with a comprehensive plan in the public interest.

There is, however, a procedural requirement of the bills that is inconsistent with this objective. The automatic stay of proceedings when the Commission does not accept a Federal agency recommendation for takeover is evidently designed to put the matter to Congress for determination.

This proposed procedure is contrary to that followed in the case of an application for an original license where the Commission alone is, under the act, qualified to dispose of competing claims of Federal agencies. There is every reason to consider the Commission equally well qualified to make the same sort of determination in a relicensing case.

We urge, therefore, that the provisions for stay be deleted from the bills as unnecessarily derogating from the powers of the Commission, unnecessarily delaying proceedings on relicensing, and unnecessarily burdening Congress with issues that are within the special competence of the Commission.

Mr. MACDONALD. Excuse me, sir.

Where in the bill is the section?

Mr. SEARLS. The automatic stay?

Mr. MACDONALD. Yes.

Mr. SEARLS. It is page 4.

The bill as introduced specifically provides that an agency of the Federal Government may recommend takeover by the United States in the Commission proceeding. Then it goes on to say that if the Commission does not itself recommend take over, then on motion of the Federal agency the Commission shall stay the effective date of any order issuing a license until expiration of the next full Congress immediately following the Congress during which the Commission issued the order.

Now, as the committee can see, if this came about early in a congressional session, we could have a delay of almost 4 years under the provisions of this bill and it would be an automatic stay by the terms of the bill unless the Federal agencies were willing to recede.

We think this is inconsistent with the whole aim of the bill which is to provide an orderly and expeditious proceeding for settling the fate of these projects.

A second aspect of the bills inconsistent with the public interest in the development of hydroelectric resources is the provision of section 3 which would make licenses issued in a relicensing proceeding subject to subsequent unilateral change by the Commission. This would revive the very difficulty which the Water Power Act was designed to meet. It would discourage proposals to redevelop or enlarge existing licensed projects and would even jeopardize investments needed to maintain operation of existing projects under a new license. This provision is not in the public interest.

Our third comment deals with the silence of the bills upon the right of the original licensee to receive a new license upon the expiration of its old license. The important place of hydroelectric power in the Pacific Gas & Electric system, which is typical of the use of much hydroelectric power by licensees throughout the United States, shows that this is a significant aspect of relicensing.

Separation of a hydroelectric resource from a system into which it has been integrated will have disruptive consequences both from an economic and an operational standpoint.

In many cases, licensed hydropower is an especially economic source of power because the investment in the project has been reduced by depreciation accruals which have been included in the rates charged to the licensee's customers. It would be extremely unfair to turn such a project over to a system supplying a different group of customers, who would then enjoy the economic advantages of the hydroelectric project while the former customers pay for higher cost replacement power.

It is for such reasons, among others that, as Chairman White of the Federal Power Commission has said, it normally will be in the public interest to relicense a project to the original licensee.

We believe that the legislative history shows that under existing law the original licensee has the prior right to a new license if it can still meet the test of best adaption to a plan of comprehensive development in the public interest.

Consistently with this, as the Commission's letter transmitting the draft bill to Congress shows, the priority given by the act to municipalities in a proceeding for award of an original license does not apply against the original licensee in a relicensing proceeding. Under these circumstances, the silence of the bills on relicensing priority should continue this existing law without change.

I would like to submit for the record, it is too long to read, a memorandum on this subject. It is a memorandum and legal opinon which was prepared by the firms of Debevoise, Liberman and Corben of Washington, D.C., and Paine, Lowe, Coffin, Herman and O'Kelly of Spokane, Wash. This memorandum gives the basic background and their able opinion upon this priority issue.

Mr. MACDONALD. Without objection, it is so ordered, to follow the summation of your remarks.

Mr. SEARLS. Thank you, Mr. Chairman.

To sum up, we believe that the basic objective of the bills is sound, but that this objective would be defeated unless the provisions for unilateral amendment of licenses by the Commission and for an auto-

matic stay of proceedings are removed. With these amendments, we believe enactment of either bill would be in the public interest.

(The statement is as follows:)

MEMORANDUM ON PRIORITY AMONG APPLICANTS FOR LICENSES UNDER SECTION 15 OF THE FEDERAL POWER ACT

SUMMARY

This memorandum establishes that an original licensee has a prior right to a new license term over any applicant seeking to acquire the original licensee's project if the original licensee's plans are, or, with such modification and conditions as the Commission may prescribe under Section 10(a) of the Federal Power Act would be, best adapted to a comprehensive plan for improving or developing a waterway in accordance with standards of the Act.

The preference granted to State and municipal applicants applies only to:

(1) The granting of a preliminary permit,

(2) The granting of a license for new projects if no preliminary permit has been issued, and

(3) The relicensing of a project whose license has expired where the original licensee does not apply for renewal or will not or cannot meet the standards of the Act.

THE ACT

The only provisions relating to preference for State and municipal applications for license are contained in Section 7 of the Act. Section 7(a) provides in part:

"Sec. 7. (a) In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; * * *"

Section 15 of the Act which is referred to in Section 7(a) provides:

"Sec. 15. That if the United States does not, at the expiration of the original license, exercise its right to take over, maintain, and operate any project or projects of the licensee, as provided in section 14 hereof, the commission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the original license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof: Provided, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the original licensee, upon reasonable terms, then the commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the original license until the property is taken over or a new license is issued as aforesaid."

It should be noted that throughout section 15 a careful distinction is drawn between "the original licensee" and "a new licensee." The section provides authority for the Commission at the end of an original license period to issue a new license to the original licensee or a license to a new licensee. In addition, it provides that, if "a license to a new licensee, or * * * a new license to the original licensee" is not issued, "an annual license to the then licensee" shall be issued. The distinction between the original licensee and a new licensee is maintained in every clause.

It should be noted further that section 7, while giving preference to State and municipal applications for "preliminary permits" and initial "licenses," does not give such preference in the case of new licens*es*. It would have been a simple matter for Congress to have so provided if it had wished to do so. Section 7 provides preference for State and municipal applications under section 15 only "in issuing licenses to new licens*ees*." When the two sections are read together, it is clear that section 7 provides for preference to State and municipal applications under section 15 only over applications by other potential "new licensees" and not over "the original licensee."

The fact that the Act does not give a State or municipal applicant a preference as against the original licensee in the grant of a new license for an existing project is precisely parallel to the way in which the Act deals with State or municipal applications for a new project where a preliminary permit has been issued to another applicant. In that instance, section 7(a) of the Act makes clear that State or municipal preference is not applicable—the whole purpose of a preliminary permit being, of course, to "maintain priority of application" [1] while the permittee is conducting its investigations and planning. The "priority of application" granted by perliminary permit is controlling as against a State or municipal application.

The "priority of application" concept antedated the enactment of the Act, and has its roots in homestead and mineral claims laws and regulations, as well as in the early power permits granted by Federal agencies. It is that concept which was the basis for the denial of preference to State and municipal applicants as against both preliminary permittees and existing licensees.

LEGISLATIVE HISTORY

A. Priority of Original Licensees

The overriding concern of the conservationists during the early part of the century in connection with resources was comprehensive development for all beneficial public uses. Regulations under the Act of February 15, 1901, "An act relating to rights of way through certain parks, reservations and other public lands", for instance, provided that

"Final power permits will be issued only in case it appears that the proposed development will be in general accord with the most beneficial utilization of the resources involved and consistent with the public interest * * *." [2]

Prior to any statutory preference for particular applications, it was still necessary to decide which of two similar applications should be granted. As might be expected, the only fair and rational basis was the one adopted—priority of application. The regulations of the Department of Interior provided:

"Priority of consideration of applications for final power permits shall be initiated in the order of filing complete applications whether such applications shall be for preliminary permits as prescribed in regulation 10 or for final power permits as prescribed in either regulation 11 or regulation 12 * * *." [3]

In connection with renewal of permits, if they had not been revoked prior to the end of the 50-year term, the regulations provided that, upon notification to the Secretary of the Interior of a desire to renew and a willingness to "comply with all then existing laws and regulations governing the occupancy and use of lands of the United States for power purposes, the existing permit will be considered as an application for such new permit." [4]

In this fashion the initial permittee received priority of consideration for a new permit.

When statutory mandate first changed the rule of priority of application and required a "preference to municipal purposes" for disposal of surplus Federal water power under the Reclamation Laws,[5] the preference was narrowly construed in order to prevent any conflict with the standards of comprehensive development.[6] The conservationists were fearful that some projects proposed by States and municipalities might not make full use of the resources. They were, however, willing to permit some leeway in this regard if the project proposed by the State or municipality served an essential public purpose. The debates on this subject from 1911 through 1917 were reflected in the administration water power bill introduced by Mr. Raker on January 15, 1918 as H.R. 8716. It provided:

"That in issuing licenses, hereunder, the commission may in its discretion give preference to applications for licenses by States and municipalities for developing power for State and municipal purposes, provided the plans for the same are deemed by the commission to be adapted to conserve and utilize in the public interest the navigation and water resources of the region."

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[1] Section 5.

[2] Department of the Interior, Regulations under Act of February 15, 1901 (31 Stat. 790), approved March 1, 1913, Regulation 4.

[3] Id., Regulation 3. Priority on the basis of first use or application or claimstaking has a long history in the water rights field as well as in homesteading, mineral rights, grazing and the like.

[4] Id., Regulation 6.

[5] Townsite Act of April 16 1906, 34 Stat. 116, 43 USC 522, 561 *et seq.*

[6] 30 Ops. Att'y Gen. 197 (1913).

"Municipal purposes" were limited in the bill (section 3) to those "directly pursued by the municipality itself with the primary object of promoting the security, health, good government or general convenience of its inhabitants."

The provision that the preference be discretionary was thought, on the one hand, to be a protection against licensing new developments which did not make full use of the water resources solely because the applicant for license was a State or municipality. On the other hand, the preference section as proposed by the administration would have permitted the licensing of such less than complete developments "for State and municipal purposes," if the Commission deemed it appropriate. Such discretion had been provided in the first Ferris bill for the development of water power on public lands, introduced in 1913 as H.R. 14893, 63rd Congress. The definition of municipal purposes in section 3 of the administration bill was taken directly from the definition in section 7 of the regulations of the Department of Interior, in relation to the use of government lands. In regard to licenses at the end of the original license term, the administration witnesses assumed that the standards of priority would give a first option to the original licensee, provided he could meet the standards of the Act and would comply with then existing regulations.[7]

The preference proposed by the administration bill was thought to be not so much for a particular type of applicant as for particular water uses. This was in line with the recommendations in the final report of the National Waterways Commission, issued March 25, 1912.[8] It also was consistent with the then interpretation of the Townsite Act of April 16, 1906.

This is not to say that there were not those who had advocated an indiscriminate preference for States and municipalities prior to 1918. The "Adamson bill" of 1914, H.R. 16053, 63rd Cong., was amended on the House floor to provide such a mandatory preference.[9] M. O. Leighton reflected the administration position on this amendment in commenting on the bill at the request of Sen. Jones, as follows:

"One may advocate municipal ownership of public utiliteis to the uttermost limit and still wisely oppose this proviso. The municipal use of water power is frequently not the highest and most productive use, * * * the Secretary * * * should not be required to give preference to a municipal corporation when, in his judgment and in that of the Chief of Engineers, such a proceeding would be detrimental to the common good."[10]

Similarly, two years later during a Senate debate on S. 3331, Sen. Shields stated:

"There should be no arbitrary preference in favor of municipalities, for a small town or city desiring to develop a part only of the potential water power of a great stream for its limited uses, could in this way block the complete development of its resources necessary to supply numerous other towns and public utilities with hydroelectricity."[11]

The advocates of public power, however, were unwilling to accept a discretionary preference provision or one limited to municipal purposes as defined in the 1918 administration bill. They were successful in forwarding their position on both points: the preference for State and municipal applicants for original licenses in section 7 was made mandatory, and the definition of municipal purposes in section 3 was expanded to embrace all purposes within the municipal powers of the applicant, without limitation.

The final version of section 7 in this regard, however, also represented a victory for the conservationists. While municipal preference was made mandatory in connection with competing applications for preliminary permits and, in the absence of a preliminary permit, in applications for licenses for new projects, the conservationists were successful in amending the proposed legislation to require comprehensive development of the water resources by municipal applicants. Under section 7 as enacted, the new Commission was given authority to give such a municipal applicant preference only it its plans "are deemed * * * *equally well* adapted * * * to conserve and utilize * * * the water resources." (Emphasis supplied.)

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[7] Hearings before the House Water Power Committee, at 106, 447 (quoted, post, at 11, 12).

[8] S. Doc. No. 469, 62nd Cong., at 61.

[9] 51 Cong. Rec. 13256.

[10] S. Doc. No. 570 on H.R. 16053, 63rd Cong., 2d Sess., at 10–11.

[11] 53 Cong. Rec. 1309.

B. Preference upon expiration of original licenses

The statutory scheme in the early part of the century of special legislation for each non-federal project on a navigable stream included a perpetual grant of the water resources. It was this feature in particular that called down Presidential vetoes and eventually resulted in the enactment of the 1920 Federal Water Power Act.

In President Roosevelt's veto message dated April 13, 1908, of special legislation in connection with the construction of a dam across the Rainy River, the importance of a limited term as aganist a perpetual grant was repeatedly stressed. He and other conservationist leaders looked upon a definite license term as the method of assure that the water resources would be available in the future for their highest public uses. In connection with the disposition of a project at the end of the granted term, the President stated that he would "leav(e) to future generations the power or authority to renew or extend the concession in accordance with the conditions which may prevail at that time." [12] President Taft would have provided "some equitable provision for fixing terms of renewal." [13]

At the 1911 hearings before the National Waterways Commission, Gifford Pinchot, the chief of the Forest Service, stated:

"I am very strongly of the opinion there ought to be a definite line beyond which all the rights of each company terminate. On the other side of that line it may well be that in the great majority of cases it would be the company which had the first franchise that would hold the second franchise."

Chairman Burton asked, "You believe in giving them the preference?", to which Pinchot responded,

"Yes; within limits. They have an important preference in the possession of the plant, and the chances are that the same company would continue. But the termination of the franchise would give the public a very valuable opportunity to readjust the conditions of public service. * * *" [14]

Similarly Rep. Anderson stated in 1914 in connection with the Adamson bill:

"[The Government] does not want to operate these waterpower plants. It wants the right of recapture simply as a protection to the Government in case the grantee does not fairly operate the plant. It wants it merely as a reservation in the interest of the public. Nobody expects that the Government is ever going to have to use the recapture power. We are simply putting it in this bill as an additional precaution, and that is all. It is a means of bringing the grantee to terms acceptable to the Government in the public interest. * * *" [15]

The position of Mr. O. C. Merrill, Chief Engineer of the Department of Agriculture, on this matter was stated in 1914, as follows:

"With respect to the matter of renewal, I believe that provision should be made in any lease granted that the original lessee should have the right to renew except under two conditions, first, when the site is needed *for public purposes*, either by the nation, by a State, or by a municipality; second, when the lessee refuses to accept at the time of renewal the conditions imposed upon all other lessees." [16] (Emphasis supplied.)

All of these statements were in line with the prevailing concepts, pointed out earlier that priority of application and use of the water resources would mandate an opporunity to renew in the original licensee or lessee; that fairness and equity required that the original licensee who had undertaken all the risks of development be permitted to continue to own and operate the project so long as he was, in effect, doing a good job.

In 1918 before the House Water Power Committee, Mr. Merrill stated this administration position as to the possibilities at the end of the license period, as follows:

"The Government will do one of three things. If it is not satisfied with the operations of the existing licensee and does not believe it can get satisfactory operations from the existing licensee for a new period, it can issue a license to somebody else. If it does not it can do one of two things. It can either issue a new license to the existing licensee, or it can take over the property for its own

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[12] Cong. Rec. of April 13, 1908, at 4854.
[13] Special Message to Congress, H. Doc. No. 533, 61st Cong., 2d Sess., at 6.
[14] Hearings before National Waterways Commission, S. Doc. 274, 62nd Cong., 2d Sess., at 156–57.
[15] 51 Cong. Rec., at 13040.
[16] "Hearings before the House Public Lands Committee on H.R. 14893, 63rd Cong., 2d Sess., at 417.

use. It will not take over the property for its own use unless it needs it for its own use." [17]

It is clear that members of both Houses recognized that under section 15 the initial preference would be for the original licensee. On June 28, 1919, Rep. Begg offered an amendment which would reduce the maximum license period from 50 to 20 years. In explaining the reason for the amendment (which was rejected), he stated:

"I wish only to say in behalf of my amendment that according to this bill any licensee may renew his license, as he has a preference in the renewal of the same if he is living up to the conditions and regulations laid down by this commission, and all he has to do is to come before that commission and ask for a renewal and he can get it. I offer this amendment on the ground that I believe it is contrary to the best interests of public policy to license any corporation without any opportunity to come back at them and get an adjustment oftener than every 50 years. I offer it for that reason." [18]

So also in the Senate. On January 7, 1920, Sen. Phipps made some general remarks about the bill, during the course of which he stated:

"Another feature has been the uncertain tenure of property under existing laws, whereby no assurance is offered the investor that the property will not be taken from the company during the customary term or life of a mortgage; that is to say, the ordinary life of a railway or manufacturing company's mortgage. The 50-year term proposed in the present bill, accompanied by reasonable conditions providing for recapture of Government property, offers some encouragement and relief from existing conditions, and it does not seem unreasonable to accord a preference for renewal to the first holder of license and developer of power possibilities, so long as the Government retains the right to take over the property itself at termination of the lease, or earlier through condemnation proceedings, or to give a lease to some other applicant on reasonable terms provided the original lessee declines to accept same." [19]

There is, then, little question that the Congress considered that the original licensee, by reason of his original development and utilization of the resources, had a preference for renewal over the issuance of a license to a new licensee. From the time of the early predecessor bills, a clear distinction had always been drawn between the original licensee or lessee and potential new licensees or lessees. By specifically refusing to give a preference to any other entity, it was assumed that a priority of application reposed in the original licensee.

At the time of the re-enactment of the 1920 Act as Part 1 of the Federal Power Act, there was no change made or proposed that is relevant to the question here considered. In 1956, however, the Commission recommended legislation that would have made explicit the first option of licensees to renewal of licenses for projects which were not taken over by the United States, and the National Association of Railroad and Utilities Commissioners filed a brief supporting the proposed legislation as desirable to clarify section 15.[20] In the following year, 1957, after further study, the Commission did not renew this legislative recommendation, on the explicitly stated ground that the Act, properly construed, already provided licensees a first option to renew their licenses so that additional legislation was not required.[21] As pointed out above, this position is fully supported by the legislative history.

In 1964, the American Public Power Association expressed, in its comments in Docket No. R–250, the point of view that the Act gave States and municipalities a preference as against original licensees on license expiration. It is noteworthy that on February 18, 1965, former Commissioner David S. Black, now Under Secretary of the Department of the Interior, in addressing an American Public Power Association workshop, politely noted:

"* * * the validity of this view—that a municipality enjoys a preference should the Federal Government not exercise recapture rights—is doubtful under the legislative history of the Act."

For the reasons set forth above, we submit that the precise terms and overall structure of the Act, as well as its legislative history, compel the conclusion that

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[17] Hearings before House Water Power Committee, 65th Cong., 2nd Sess., at 106.
[18] 58 Cong. Rec. 2037.
[19] 59 Cong. Rec. 1172.
[20] Hearings before the Subcommittee on Transportation and Communications of the House Committee on Interstate and Foreign Commerce on H.R. 7468, 84th Cong., 1st Sess., at 6.
[21] 1957 Hearings before the House Committee on Interstate and Foreign Commerce on FPC legislative recommendations, 84th Cong., 2nd Sess., at 180.

an exising licensee possesses the "priority of application" which requires the grant of a new license to it as against all applicants to acquire its properties for the new license term, provided, its plans meet the standards of the Act.

DEBEVOISE, LIBERMAN & CORBEN,
Washington, D.C.
PAINE, LOWE, COFFIN, HERMAN & O'KELLY,
Spokane, Wash.

Mr. SEARLS. I would like to add to my prepared remarks a comment that the Pacific Gas & Electric Co. has one of the first licenses to expire. The Ozark Beach license about which you heard yesterday of the Empire District Electric Co. expires, I believe, in September of this year.

The license for our Bucks Creek hydroelectric project expires at the end of this year, December 31, 1968.

In accordance with the Federal Power Commission procedure, we submitted a report on this project in January of 1966. Since the report has photographs, tables and so on, it is not suitable for insertion into the record and I would not consider that appropriate.

I would like to offer this for the committee files and I will ask that our staff see that each member of the committee is supplied with a copy.

Mr. MACDONALD. Thank you.

Mr. SEARLS. I think an examination of that report will be helpful in understanding the complexities of the issues which can be involved in these proceedings.

That concludes my remarks.

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

Actually, it struck me in your two objections to the bill as now written that on the one hand the bill, as you know, was set up by the Federal Power Commission. Even though one bill bears Mr. Staggers' name and the other my name, actually they were drafted by the Federal Power Commission.

Mr. SEARLS. Yes.

Mr. MACDONALD. One section, the automatic stay of proceedings, when the Commission does not accept another Federal agency's recommendations is the dilution, in my judgment, of their power.

Then the other section which you don't approve of, section 3, it seems to me that you think that gives them unnecessary power.

Mr. SEARLS. That is right.

Mr. MACDONALD. So it is sort of striking a balance between the two.

Actually, don't you think an argument could be made—and I am just asking; I am not making the argument—for the stay of proceedings when the Commission disagrees with the recommendations, say, of the Interior Department that this is a good thing in some ways?

Mr. SEARLS. Well, I would comment, first, that when a project is being planned and no project has yet been built and an investor-owned company comes in with an application for a license, Interior or some other public agency may come in and suggest to the Commission, and this has been done, that it would be more appropriate for the Federal Government to build the project. The Commission is required to consider this subject.

The Federal Power Act specifically requires that if the Commission determines that in its judgment the project should be developed by the United States, it shall refer the matter to Congress because, after all, any further action would involve authorizations and appropriations.

But if the Commission disagrees with the Federal agency as to the desirability of Federal development, the Commission may proceed to issue a license to an applicant. This is a power which Congress has delegated to the Commission and which it has exercised and which it seems to us it is equally appropriate to exercise when it is able to look at an existing project, an existing development, with many of the uncertainties removed from the picture.

So, we think that such a stay is really inconsistent with the basic approach of the act.

Mr. MACDONALD. If I could just interrupt at this point, sir, and I am looking for information, isn't it so that the development of the project can disagree with the Federal Power Commission finding and take it to court? So that is a stay of the proceeding as well, is it not, and that is presently the law.

As I remember Mr. Solomon's testimony yesterday, he indicated that in a case I think involving Maine Central Power that they did take the Commission's ruling to court and the First Circuit Court up in Boston agreed with the power company and sent it back to the Federal Power Commission to revise their opinion and their order, which they did.

My point is that I don't see anything so extraordinary in having a stay of the proceeding when there is a genuine dispute.

Mr. SEARLS. Well, my comment on that, Mr. Chairman, would be that we are all familiar enough with the fact that the Commission's actions may be and are taken to court by the dissatisfied party and this does take time, but here you seem to be adding to that time a stay while Congress considers the matter.

Now, Congress may decide that it wants to have this extra opportunity to consider the matter but we do feel it would be a departure from the original approach of the Power Act and that it will give the Congress perhaps more projects to consider than really the situation would warrant. If it believes that the Federal Power Commission has the expertise and the competence to decide these questions, we believe that it should follow the procedure that now applies and would continue to apply for a new application for a new project.

Mr. MACDONALD. Right.

As I indicated earlier, I agree with you up to a point that the Congress would not have the expertise to pass judgment upon takeovers if they don't know anything about the operation of the company. As I indicated, we, of course, know very little about your operation. On the other hand, if there is a genuine dispute, say, between the Interior Department who says that there should be a takeover because of recreation needs or conservation needs and the Federal Power Commission says no, somebody has to decide who is right.

Where there is a legitimate dispute, I don't see any strong objection to this.

Mr. SEARLS. Well, there are two things that I would say to that. I don't know if Congress wants to assume the burden of deciding these interagency controversies. I think there would be a tendency on the part of a Federal agency having made its pitch to the Federal Power Commission and having lost, to protect itself, so to speak, and ask for this automatic stay.

This statute as written would hold things up then for a period which would be more than 2 years in any case and in some cases would be 4 years. This, we think, really ties things up much too long.

Mr. MACDONALD. You now, I take it, gentlemen, support the bill. Would you support it still if these changes were not made?

Mr. SEARLS. I think not, speaking for myself, Mr. Chairman. I think that the question of how long a stay and whether a short stay might be something that we could live with is an open question. If we are going to be faced with open-end licenses subject to unilateral change by the Federal Power Commission, I think it would have a definitely discouraging effect on the enlargement and redevelopment of hydro projects.

Mr. MACDONALD. I know you were not here yesterday but, as a matter of fact, without going into your testimony I asked Mr. Solomon about that very section and he seemed to indicate that there would be no problem. I said something about could the section be used as a harassment for the licensee and he indicated this, of course, would not be the case.

Mr. SEARLS. Well, one would hope that that would not be the case but I think that Congress should be very wary of granting this kind of power to the Commission because, as I say, it really is a odds with the whole situation that the legislation was designed to meet.

It was this uncertainty about the fate of the project that left hydrosites undeveloped long past the time when the technology was available to do that in the second decade of this century.

Now, if the only way that you can continue a license is to have a set of conditions like that, there is bound to be a reluctance to spend money to update or enlarge or redevelop a project. This is the sort of problem that we see and we think that the present authority of the Commission is ample enough.

The Commission does today in issuing licenses reserve some things for future determination upon hearing but in a situation where the licensee generally feels that it has some protection and some limits as to what the Commission can effect and where it can go. It seems to us that what the bill would provide here is a strictly open end license.

Mr. MACDONALD. I repeat, I won't take up more of the committee's time on it, that you will always have recourse to the courts.

Mr. SEARLS. No. That is one of the distinctions that I think is important in regulation generally. Yes; we do have constitutional protection against confiscation of our properties but if we accept a license in which we have agreed that as a condition of the license, the Commission may make changes, then our arguments to a court are going to be very much circumscribed.

Mr. MACDONALD. Thank you.

Mr. Kornegay.

Mr. KORNEGAY. You have perhaps asked the question that I had in mind, Mr. Chairman, and that was whether or not the section that we are talking about, 3(b), would be subject to the Administrative Procedure Act. I am sure it would be included in the license; that would be made a condition of the license.

Mr. SEARLS. No, because it is really not a procedural problem. This is a substantive problem that says the Commission can order changes with no limitation on what they can do. Now, even if they do it after the most careful procedures, this would defeat the purpose of having a license on the basis of which you can invest millions and millions of dollars in facilities to generate power. It really turns the license into a permit.

Mr. KORNEGAY. Is there any similar provision in the present law?

Mr. SEARLS. No; there is not. In fact, the present law is very explicit in saying that a license may be changed only by mutual consent of the licensee and the U.S. Government.

Mr. KORNEGAY. Well, in view of the fact that these licenses are granted for such a long time, that is, 50 years as a suitable period, do you foresee where there could be circumstances that would make it advisable in the public interest to maybe change somewhat the conditions of the license?

You are talking about radical changes; I am talking about updating and bringing into focus—recognizing a change in—conditions that were brought about as a result of the past few times.

Mr. SEARLS. Well, it would be possible to imagine the circumstances where changes might be desirable but, by and large, I think the existing law has worked very well. I think that it is possible to arrive at reasonable conditions with some flexibility. As I say, there is some flexibility in the licenses the Commission issues today and something that we can live with without any damage to the public interest for a period of this time.

Mr. KORNEGAY. That is all.

Mr. MACDONALD. Would you yield for just one observation?

Mr. Searls, don't you think, on page 5, that in spelling out that the Commission today will now impose further reasonable requirements, is that not inconsistent with the other provisions of this act? Does that not alleviate some of your fears?

Mr. SEARLS. Not very much as a practical matter. Certainly, it is possible to imagine things that would be so clearly unreasonable that a court would give us protection against action by the Commission but certainly the courts quite properly give the Commission great latitude in the exercise of discretion which the Congress grants to it and regards its decisions as basically acceptable unless some clear violation of law or jurisdiction can be shown.

I think that the word "reasonable" simply gives too much latitude because there are many different opinions of what is reasonable.

Mr. MACDONALD. Thank you.

Mr. Harvey.

Mr. HARVEY. What authority does the Federal Power Commission have over your rates? Just over wholesale interstate rates at the present time?

Mr. SEARLS. That is right. Its rate jurisdiction is confined to wholesale rates for sales in interstate commerce. This applies to most wholesale sales in the United States.

Mr. HARVEY. And the other jurisdictions are the same; is that correct?

Mr. SEARLS. That is correct.

Mr. HARVEY. My reason for asking that is I am trying to understand basically what your objection to 3(b) is here. Do you feel that you will not be compensated for any changes, by changes in rates? Perhaps you would care to enlarge upon it.

Mr. SEARLS. Well, in the first place, if we are going to invest a lot of money and have it in our rate base, we certainly think that money sould be invested prudently and not subject to having its value improperly eroded.

In the second place, while it is nice to think that in theory we can always increase our rates to cover increased costs and so on, that is not always the case. As a practical matter, it can seriously affect the earnings of the company to have a sizable investment lose a substantial part of its usefulness.

Mr. HARVEY. Is the answer, then, to shorten the period of the license? You don't contemplate any change at all during the license period; is that correct?

Mr. SEARLS. Yes, sir, I do, because any license which the Commission issues today will have conditions which empower it to make changes or alter some of the features of the operation of the project.

Mr. HARVEY. But only bilateral changes that you agree to make?

Mr. SEARLS. No. The Commission does reserve in some of these conditions some authority to make changes and these are conditions which have been found to be acceptable.

Mr. HARVEY. I don't understand this. This is an area with which we are not familiar. I don't understand what those changes are and precisely what the changes are that you object to.

What are the changes that you object to or you fear? Are they esthetic changes in the use of the property or what are we talking about here?

Mr. SEARLS. Let me say we do accept provisions in licenses that give the Commission authority with respect to electrical and hydrological coordination of the project with other projects. We have found conditions with respect to possible joint use but it seems to me that for the Commission to be able to order the licensee to bypass 10 times the amount of water that it originally expected to for the maintenance of fish life or recreation, something like that, could virtually destroy the economics of the project.

This is the sort of thing that we worry about but that is only one example, of course.

We can be concerned about the expenditures that we might have to make for recreation which are entering more and more into the picture as far as these projects are concerned.

Mr. HARVEY. Well, these are reasonable changes that are contemplated in relation to this; is that not correct?

Mr. SEARLS. Well, it depends on what you consider to be reasonable. To destroy the economics of a project may seem reasonable to some people to accomplish the objective, whereas you might have a rather different view.

To say "reasonable" is really not to give us any standard. I am sure that the Federal Power Commission feels that they would not exercise this authority improperly, but what we do not see is the need for a provision which says the Commission may at any time after the issuance of any license under section 15(a), after notice and hearing, impose upon the licensee such further requirements as the Commission can persuade the court are within the exercise of its jurisdiction. That is the most limited reading we can give it.

As I say, the courts give the Commission considerable latitude in these areas and are reluctant to get into technical matters.

Mr. HARVEY. Under existing law, has there been any way that the license would be changed or additional limitations imposed upon you?

Mr. SEARLS. In practice, as we have come along with suggestions for a change in the project—and this occurs with respect to almost every project we have—the Commission has said, "Well, that might be a good idea but now we think maybe you should do some of these other things." We have worked this out on a mutually accommodating basis.

As I say, I don't know of any situation where there has been felt to be a need for a major change in the project.

Mr. HARVEY. What will the period of these new licenses be?

Mr. SEARLS. They should be for 50 years. The statute contemplates, I think, that normally a project license will be issued for 50 years. The Commission has issued licenses for lesser periods.

Mr. HARVEY. I have no further questions.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

We are trying to read amendments to an act that we don't know all of the provisions to. I am going to take this section (b) here just for a moment with you and be sure we are all talking about the same thing. That is section 2(b) I am referring to here. We have had a little discussion on this heretofore.

The first sentence talks about 5 years before the expiration of the license.

The second sentence, "In any relicensing proceeding before the Commission any Federal department or agency"—I guess that means exactly what it says: any agency of the Federal Government would have an opportunity or would have the right to get in the process at that point.

Now, perhaps you have answered this. Practically, what Federal agency or agencies or departments would be interested?

Mr. SEARLS. Well, in our own experience the Federal Power Commission has solicited the recommendations of the Department of the Interior, the Department of Agriculture, the Corps of Engineers, Health, Education, and Welfare. I think that is all.

In other words, we have the Interior Department which is engaged in the power business to a considerable extent, itself.

We have Agriculture which seems to deal with this largely in terms of protecting the cooperatives.

We have the Corps of Engineers which is interested in flood control.

We have Health, Education, and Welfare, which is interested in pollution.

These seem to be the concerns we encounter.

I would suspect those would be the main agencies that would be interested in this problem.

Mr. BROTZMAN. It would be pretty hard to conjure up some other agency of the Government that would be interested in this process. It would be basically those. I think you have testified rather consistently to that.

Mr. SEARLS. Well, I don't have any others in mind but I don't know.

Mr. BROTZMAN. Now, as I read this, if the Commission does not itself recommend such action pursuant to provisions of 7(c) of this part, that is, part of the existing law, 7(c) of these amendments, then there has to be a motion by the interested department or agency to stay. The stay results, or does the Federal Power Commission have discretion in the matter?

Mr. SEARLS. Well, as I read it, it gives the Commission no discretion. It says, "shall upon motion to such department or agency stay."

Mr. BROTZMAN. I read it the same way.

Now, I understand that during this period of time that there would, at the discretion perhaps of the Federal Power Commission, be an annual license issued pursuant to section 15(a) which is in another part of the existing act; right?

Mr. SEARLS. This is not discretionary. The Congress did anticipate in 1920 that when you got to this expiration period you might not have decided what was going to happen to it. So they do provide that an annual license will be issued from year to year until either a relicensing or takeover occurs.

So this is automatic; it is not discretionary; and it is simply to cover the gap so that the licensee will be in a position to continue to operate the project and it won't be wasted while the matter is being deliberated.

Mr. BROTZMAN. The problem your companies have with that is that you can't plan adequately; is that correct? You can't plan because you just have 1 year.

Mr. SEARLS. That is right.

As you go along with these projects, you may find it desirable to replace a piece of equipment, take advantage of some new piece of technology or do various other things, but you are not going to be very interested in putting much money into it if next year the project may belong to somebody else.

Mr. BROTZMAN. All right.

Now, I want to be sure the record is clear in one other regard. I think that you recommend that this provision be stricken relative to the stay. Is that not correct?

Mr. SEARLS. That is correct.

Mr. BROTZMAN. What would the legal effect of striking that be? What would occur?

Mr. SEARLS. Well, in that event, I think the Commission's order would take effect according to its terms. The parties might take such action with respect to rehearing, court review, as they saw fit. Things would take their ordinary course.

Mr. BROTZMAN. In other words, you would have an appealable order issued?

Mr. SEARLS. Yes.

Mr. BROTZMAN. You would have court protection at that point; is that what you are talking about?

Mr. SEARLS. Well, you would have a right to resort to a court; yes. I would suppose that the licensee might not be inclined to attack the order.

If the order granted it a license, the licensee might be willing to accept it and there would be no court proceedings on its part.

Mr. BROTZMAN. You would have a forum where you could go?

If I understand your testimony, it is that you have no forum to proceed in; you are tied up, as you say, for 4 years. You go through the next full Congress after the Congress that has given the notice.

Mr. SEARLS. Of course, I don't think you can be deprived of your right to court review at some stage in this, but what I am saying is that if you put in the time of 4 years here, why, you cannot do very much.

Mr. BROTZMAN. Let's move on.

Let's go to the next section for a second, section 3.

Now, as I read this, and once again I don't have the benefit of the existing law before me and I have not read it: "Nothwithstanding the provisions of section 6 of this act regarding the alteration of licenses."

Now, that is in there for a reason, I think, probably to indicate that the rest of the language there is to grant some authority in addition to something already contained in section 6.

Would you agree with my analysis?

Mr. SEARLS. Very definitely; yes.

Mr. BROTZMAN. All right.

Now, what in capsule form does section 6 provide relative to alteration of licenses?

Mr. SEARLS. Well, it provides, and I read from section 6:

> Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this Act and may be altered or surrendered only upon mutual agreement between the licensee and the Commission after 30 days' public notice.

Mr. BROTZMAN. That seems to apply to revocation and not alteration. I didn't hear the word "alteration" mentioned there.

Mr. SEARLS. No. I am sorry. I have to read the whole sentence. I mentioned revocation; but skipping that, it says——

Mr. BROTZMAN. Just a minute. I can save some time.

Is the word "alteration" mentioned in there?

Mr. SEARLS. Yes.

Mr. BROTZMAN. I didn't hear it.

Mr. SEARLS. Skipping some words, it says:

> * * * licenses may be altered or surrendered only upon mutual agreement of the licensee and the Commission.

Mr. BROTZMAN. Upon mutual agreement?

Mr. SEARLS. Yes.

Mr. BROTZMAN. I see.

Mr. SEARLS. And this has been done frequently.

Mr. BROTZMAN. Thank you very much.

That is all.

Mr. MACDONALD. My last question was more in the light of the statement you skipped in reading the word "alteration" which Mr. Brotzman pointed out.

I point out to you again that, in reading the section that you really don't like, you think it gives the Federal Power Commission too much power.

When you read that section in response to a question put to you, you skipped completely the word "reasonable."

Mr. SEARLS. I certainly did not intend to, sir.

Mr. MACDONALD. That is why I don't blame you perhaps for being cautious and schooled in the law but we have all been to law school and the yardstick of a reasonable man sticks in my mind.

I can't conceive of the Federal Power Commission doing things that you fear would jeopardize your investment. I think that, if you don't mind my saying so, you are protesting something that is, you know, a ghost in a closet. It could happen but I don't think it ever would. I don't really understand why you think it would.

Mr. SEARLS. Well, let me explain.

I recall, instead of saying "reasonable," I said that they could do whatever they wanted if they could persuade a court that it would meet the test of this statute because what I was trying to get over was that the word "reasonable" is not very much of a guide.

Now, we do find it a useful term in some areas of the law, to be sure, but certainly in my experience we have seen the Federal Power Commission propose some things that we have thought are rather highly unreasonable and we have not always been able to talk them out of it.

Mr. MACDONALD. Also, sir, you said "straighten the matter out"; isn't that correct?

Mr. SEARLS. This we often can do.

Mr. MACDONALD. Why do you not do the same thing if this section is left in?

Mr. SEARLS. Well, here we would be in the position not of sitting down to work something out; we would be in a position of being told what to do. This is the difference, and this is a very important difference.

Mr. MACDONALD. Well, yes; I understand that nobody likes to be told what to do but in the interest of updating this entire act I think this is a very minor imperfection but, of course, that will be up to the committee to decide.

We are very happy to have your feelings on the matter.

Mr. SEARLS. I am in this quandary, Mr. Chairman. I can think of some things that the Commission might do or try to do under this section but which I might like to argue in court at some future date were not reasonable and might very well not be reasonable. I am in a difficult position to parade a chamber of horrors without undermining my case as to what is reasonable.

But I do think you will recognize that the term has very different connotations to different people and that when you are making an investment of tens of millions of dollars, why, you are going to look long and hard before you go ahead if you are subject to this kind of thing.

Mr. HARVEY. May I ask one question, Mr. Chairman? I have been trying to think of some comparable situation of this in our Government, if I can.

I ask this question: How does this differ from a change order in a defense contract? There it is recognized that the Government has the paramount right to decide what the end product shall be and what the contractor shall be fairly compensated.

Now, isn't that what we have here, a situation where the Government basically has to decide what the use of this land shall be and so forth and what is of greatest importance but yet in turn fair to the utility?

Mr. SEARLS. Of course, there is nothing in here about compensation. I think if you are going to rent a house, for instance, for your occupancy for a period that is reasonable for that purpose, let's say 5 years or 10 years, you don't want a provision in the lease which says that the landlord can change the lease as he considers to be reasonable.

Now, this is very much the position that this would put us in.

Mr. HARVEY. Well, would a shorter license be a preferable alternative?

Mr. SEARLS. Well, a shorter license tends to do the same thing.

I mean, if the license is going to last only for 2 or 3 years, then it is going to be subject to the change at that time. Again, are we going to put real money into a property under what is virtually a permit? If we are going to put real money into the project, we think we ought to have something like a lease and not a permit.

Mr. HARVEY. That is all.

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

Mr. Jesse Vogtle, representing Walter Bouldin, president of Alabama Power Co.; Mr. Ronald Jones, representing William H. Dunham, president of the Central Maine Power Co.; Mr. Joseph McElwain, vice president of the Montana Power Co.; and Mr. Jack Riley, vice president for public affairs of Carolina Power & Light Co.

STATEMENTS OF JESSE S. VOGTLE, GENERAL COUNSEL, ALABAMA POWER CO.; RONALD D. JONES, ATTORNEY, CENTRAL MAINE POWER CO.; JOSEPH A. McELWAIN, VICE PRESIDENT, THE MONTANA POWER CO.; AND JACK R. RILEY, VICE PRESIDENT FOR PUBLIC AFFAIRS, CAROLINA POWER & LIGHT CO.

Mr. VOGTLE. Mr. Chairman, my name is Jesse S. Vogtle. I am a partner in the law firm of Martin, Balch, Bingham, Hawthorne & Williams, 600 North 18th Street, Birmingham, Ala., general counsel for Alabama Power Co.

On my right is Mr. Ronald Jones, an attorney, who will present a statement on behalf of Mr. William H. Dunham, president of the Central Maine Power Co.

On my immediate left is Mr. Joseph A. McElwain, vice president of the Montana Power Co.

On my far right is Mr. Jack R. Riley, vice president for public affairs, Carolina Power & Light Co.

Each of these gentlemen will file a statement on behalf of his company, the Montana Power Co. and Carolina Power & Light Co.

Mr. Walter Bouldin, president of the Alabama Power Co., is unable to be here today but has requested me to present this statement on his behalf. His statement is of some length and, recognizing time limitations, I ask that the complete statement be incorporated in the record and I will present to you a condensed version of this statement.

Mr. MACDONALD. Without objection, so ordered.

(The statement is as follows:)

STATEMENT OF WALTER BOULDIN, PRESIDENT, ALABAMA POWER CO.

My name is Walter Bouldin. I reside in Birmingham, Alabama, and have been president of Alabama Power Company since 1957.

Alabama Power Company is one of the affiliated companies of the Southern Company group, which is made up of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Services, Inc,. and Southern Electric Generating Company (SEGSO). The Southern Company owns all the common stock of the first five companies named.

Alabama Power Company is engaged in the generation, transmission, and sale of electric power in 56 of the 67 counties of the State of Alabama. Georgia Power Company, likewise, serves substantially all the State of Georgia; Gulf Power Company serves the northwestern portion of Florida; and Mississippi Power Company serves the southeastern portion of the State of Mississippi. Southern Electric Generating Company owns and operates a steam-electric

generating station with an installed capacity of a million kilowatts. The stock of this company is owned in equal shares by Alabama Power Company and Georgia Power Company. Southern Services, Inc., a service company, provides engineering and specialized service at cost for the operating affiliates, SEGCO, and The Southern Company.

Your attention is invited to the map of The Southern Company generating and transmission system attached to my testimony as Exhibit 1. On this map are shown the locations of 29 hydroelectric projects, licensed or in the course of being licensed under the Federal Power Act. This map also indicates the tie lines with neighboring utility systems. Exhibit 2 to my testimony shows for each licensed project the capacity, the plant investment, and the date of the expiration of the license.

At December 31, 1967, the operating companies, included SEGCO, owned and operated 29 hydroelectric generating stations, with an installed nameplate capacity of 1,673,605 kilowatts, and 23 fuel-electric generating stations, with an installed nameplate capacity of 6,499,250 kilowatts, a total installed nameplate capacity as follows:

Company	Hydroelectric stations		Fuel-electric stations	
	Number	Capacity, kilowatts (nameplate)	Number	Capacity, kilowatts (nameplate)
Alabama Power Co	12	[1] 1,243,225	[3] 5⅜	1,656,250
Georgia Power Co	17	[2] 430,380	9	2,596,000
Gulf Power Co			3	610,000
Mississippi Power Co			[3] 4⅜	637,000
SEGCO			1	1,000,000
Total	29	1,673,605	23	6,499,250

[1] This does not include the 59,000-kilowatt increase in capacity at Lay Dam and the 40,000-kilowatt generating plant to be installed at Holt Lock and Dam. Both of these projects have been licensed and are under construction.
[2] This includes the 240-kilowatt plant at Estatoah Dam, which is not licensed by the Federal Power Commission.
[3] Alabama owns 60 percent of 1 station jointly with Mississippi which owns 40 percent thereof.

At December 31, 1967, affiliates of The Southern Company (the Southern System) served 1,894,678 electric customers without taking into account 757,114 customers of the operating affiliates' wholesale customers. The territory served by the group has an area of 120,000 square miles and an estimated population of 7½ million. (1960 Census)

As early as 1912, the founders of this enterprise envisioned an interconnected electric system having geographical bounds not greatly different from the Southern System as it exists today. Before the end of the 1920's, the Alabama, Georgia, Florida and Mississippi companies were affiliated; and thereafter these companies moved steadily toward implementing the concept of major transmission lines throughout their territories and then the full integration and coordination of their systems so that they could be coordinated through a central load coordinating and economic dispatch office. By the early 1930's, the operating affiliates were becoming fully integrated within themselves, and interconnection facilities and integrated operations among the several systems were being constantly expanded to provide a completely interconnected and integrated system.

After extensive proceedings, the Securities and Exchange Commission on August 1, 1947, (26 S.E.C.) rendered a decision authorizing the creation of a new holding company to acquire the Alabama, Georgia, Gulf, and Mississippi companies as a single interconnected and coordinated electric system. The new holding company was named The Southern Company. The following excerpts from the Securities and Exchange Commission opinion are pertinent:

"The evidence shows that the four companies have had a history of common planning, development and operation commencing in the middle nineteen-twenties and that since 1930, the central load dispatching office in Birmingham, Alabama, has closely coordinated the use of the generating capacity and the power interchange among the companies pursuant to contractual arrangements which exist among them."

* * * * * * *

"The record indicates that the large size and the different types of hydroelectric facilities in Alabama and in Georgia require that there be close co-

ordination of such facilities among themselves and with the fuel-electric generating plants to achieve maximum generation from the available water supply. . . .

"According to the record, there are substantial savings in operating costs and fixed charges resulting from coordinated planning and operations. Power supply economies are achieved through sharing of reserve capacity and through joint planning of generating facilities so as to stagger construction and cause facilities to be erected at the sites of cheapest operation irrespective of corporate limits. Further power supply economies result from central load dispatching whereby, by the control of reservoirs, run of river and fuel-electric plants, substantial amounts of water which might otherwise be wasted are conserved and thereby the need for additional generating facilities with accompanying fixed charges is averted or delayed.

". . . The aforementioned coordination and the relatively economical operation of the properties which appear, in part, to be due to common control, and the long history of association and other factors previously referred to, have led us to the conclusion that the Section 2(a) (29)(A) size standards, when viewed on an overall basis, do not bar our approval of the continuance of the proposed combination of properties under Southern. . . ."

The Southern System will in the near future contain 29 licensed hydroelectric generating plants with an aggregate nameplate capacity of 1,772,365 kilowatts. Such capability will amount to about 19 percent of the total thermal and hydroelectric generating capacity on the Southern System. During 1967, electric generation from hydroelectric generating plants on the Southern System amounted to 5.8 billion Kwh. which was almost 12 percent of the 49 billion Kwh total energy supply to the system in that year. These hydro plants are a most substantial and essential component of the generation and transmission resources now being used to provide reliable and economical electric service to consumers in the area served by thhe Southern System affiliates. In many cases, the high-voltage transmission lines connected to licensed hydroelectric projects form an important part of the bulk power supply transmission network of the Southern System.

The hydroelectric plants on the Southern System are located throughout Alabama and Georgia. The nature of rainfall and resultant runoff in the rivers of Alabama and Georgia is such that great variations occur in river flows, varying from periods of high flow during normally wet periods of the year to periods of very low flow during the dry season. Reservoirs constructed by Alabama and Georgia provide a means of retaining waters for use to supplement the natural flow during periods of otherwise low flow. Storage and subsequent controlled release makes optimum use of water that would otherwise run off to the oceans and be wasted during high flow periods. Such storage releases, together with natural flows occurring during dry periods, provide enough water during dry periods for operation of hydroelectric facilities to meet the short-time requirements of consumers in the area. The demand for electric energy on the Southern System is not constant, but varies widely on an hourly, daily, and seasonal basis. The peak-load period of the Southern System, which normally occurs during the hot weather months of June, July, and August, is characterized by a multiplicity of relatively short-time demands which are in excess of the base loaded steam capacity and which vary in undetermined amounts from moment to moment. Because of varying characteristics of the load, the portion of the company's load in excess of the base load would be less efficiently supplied solely from steam-electric generating plants, the inherent characteristics of which make them more suitable for supplying loads of a more constant nature. Hydroelectric plants are eminently better suited for variable operating requirements since they can be kept synchronized with the system and ready to respond instantaneously to changes in load requirements. The reduction in efficiency of hydroelectric units for this type of operation is much less than that of steam-electric units if operated in the same manner. The use of hydroelectric generating units to supply loads of short duration thus permits the use of steam-electric generating units to supply the more constant, or base load, portion of the System's total load. The combined use of hydro and steam-electric generating facilities, as heretofore described, results in a highly desirable and efficient method of operating in meeting total system requirements.[1]

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[1] National Power Survey, a report by the Federal Power Commission, 1964, pp. 117, 171, 172.

On the Southern System the interconnected, integrated and coordinated operation of hydroelectric generating plants results in greater usefulness and efficiency than operation of such plants in smaller systems.[2] This can be attributed to the following:

(A) WIDE GEOGRAPHIC DISPERSION WHILE INTERCONNECTED WITH A STRONG TRANSMISSION SYSTEM [3]

A reference to the map attached as Exhibit 1 will show that the hydroelectric plants in Alabama are located on three rivers, all of which flow to the Gulf of Mexico at Mobile. In Georgia, hydroelectric generating plants are located on the Chattahoochee and Flint Rivers, which drain to the Gulf of Mexico through Apalachicola, Florida, and on the Oconee, Ocmulgee, and Savannah Rivers or their tributaries, which drain to the Atlantic Ocean at or south of Savannah. River basins located over such a wide geographic area offer opportunity to take advantage of diversity of rainfall and resultant runoff which may affect water available for generation at any particular plant or groups of plants in a single river basin. The result is that, while flows in one river in one part of the system may be less than normal, flows in another part of the system on another river may be in excess of normal. Many years of operation as an integrated system have shown the benefits of such diversification of geographic area and rainfall patterns.[4] Such diversification permits use of statistical records and operating procedures which result in greater aggregate capability under adverse flow conditions than that which might be obtained for any one plant or group of plants operating independently.

(B) INTERCONNECTED AND COORDINATED SYSTEM TO SUPPLY AN INTEGRATED LOAD

One of the measures of value of a hydroelectric plant is its ability to deliver a large amount of energy for relatively short periods of time to meet short-time requirements of electric consumers.[5] In a large interconnected system such as the Southern System, large blocks of capacity are needed to supply the requirements of consumers for only a small portion of the time. For example, during 1966, 1,824,000 kilowatts, or 22 percent of the 8,291,000 kilowatts of peak load on the Southern System, lasted 10 percent of the time or less. While the pattern of demand on small systems may not vary greatly from those on large systems, it is evident that the number of kilowatts required to carry a given percentage of the load is much greater in a large system such as the Southern System than would be required in a small system and, therefore, the ability to make use of large amounts of hydroelectric power to meet short-time peak demands is much greater in a system such as the Southern System than in a small system and is thus economically more valuable in the larger system.

(C) SPINNING RESERVES

Spinning reserves are an important factor in a reliable bulk power supply system.[6] The wide geographic dispersion of hydro plants on the Southern System makes them particularly valuable in assuring area reliability. All major hydro units on the Southern System are provided with equipment needed for them to run at continuous speed with the gates closed, taking a small amount of energy from the transmission system for this purpose, so that whenever power is required, gates may be opened, releasing water to pass through turbines to generate power at full capacity in a matter of seconds. Another licensee might elect to shut down the units when not loaded, and this spinning reserve would be lost.

(D) INCREASED MEASURE OF ASSURANCE AGAINST EXTENSIVE BLACKOUTS UNDER EMERGENCY CONDITIONS

In addition to acting as spinning reserves in the manner described above, many of the hydroelectric units on the Southern System are equipped with de-

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[2] National Power Survey, a report by the Federal Power Commission, 1964, p. 171.
[3] Prevention of Power Failures, a report to the Federal Power Commission, June 1967, Vol. II, p. 46.
[4] National Power Survey, 1964, p. 171.
[5] National Power Survey, 1964, pp. 107, 120.
[6] Prevention of Power Failures, a report to the President by the Federal Power Commission, July, 1967, Vol. I, p. 100; Vol. II, p. 21.

vices which automatically cause them to generate the power required up to maximum capability in the event system load exceeds system generation for any reason and causes a resultant decrease in system frequency. In such event, relays and associated devices come into play automatically, release water to pass through turbines to generate power at required capacity in a matter of seconds, thereby providing an increased measure of assurance against extensive blackouts under emergency conditions. This type of operation would not be assured without unified control.

(E) STARTUP OF STEAM ELECTRIC UNITS IN EMERGENCIES

Major electrical disturbances publicized in recent years have emphasized that it may be necessary to provide a means of starting steam-electric generating plants without the use of any electric power from their own generating units.[7] In case the entire Southern System or a portion of it were to lose power, the hydro plants can be placed in operation merely by opening gates releasing water to the turbines, and can then supply large amounts of "cranking" power to steam-electric plants for startup. In order to effect this important function, it is necessary that a hydro plant be connected to a steam plant through a transmission line with adequate capacity. Our dispatchers have prepared procedures using existing personnel and equipment to perform necessary functions to provide a clear path from specific hydroelectric plants to selected steam plants should the need for such cranking power arise. Anyone taking over our hydro projects could not be expected to operate them in this manner, and especially could not be expected to interrupt his own loads in order to provide starting power to the steam plants of the Southern System.

Interrelation of specific hydro projects

Reference to specific projects will point up the additional public benefits which would accrue from a relicensing policy. Onee of these projects is Alabama Power Company's Mitchell Dam project on the Coosa River. That project was built in the early '20's, under license from the Federal Power Commission. This license expires June 27, 1971. Under license for Project No. 2146, issued 1957, Alabama Power Company undertook what is probably the largest investor-owned project ever undertaken in Alabama. That project entailed the building of four new hydroelectric developments on the Coosa River and the redevelopment of a fifth, the Lay Dam development, immediately upstream from Mitchell Dam. These developments under License No. 2146 were designed for a comprehensive development for power and flood control and other public benefits on the entire Coosa River. The navigable pools and canals provided for in that development will, with Federal projects under construction on the Alabama River, form the basis for a navigable channel from Mobile, Alabama, to Rome, Georgia. Construction under this license began in 1957. The four new dams under that license have all been completed, and the redevelopment of Lay Dam will be completed this year. The total cost of these projects will be approximately $195,000,000. This license does not expire until 2007. Mitchell Dam is downstream from four of these dams and is upstream from the two other dams on the Coosa River. It is evident that to obtain the full power potential of the river, the Mitchell Dam project must be coordinated with the other projects on the river, a result which cannot be assured without relicensing to assure common ownership of these developments.

A similar situation exists at Jordan Dam, the project immediately below Mitchell Dam. The Jordan Dam license expires in 1975. A new project—Walter Bouldin Dam—built under License No. 2146, expiring in the year 2007, is fed from the same reservoir as the Jordan Dam project. While there are provisions in License No. 2146 dividing the flow of the stream between these two projects, these provisions cannot assure the development of the full power potential of the river that common control of the projects would insure. In fact, these provisions are an illustration that common ownership would result in a more efficient use of natural resources than would otherwise occur. Under integrated operation in the Southern System, the installation at Jordan Dam can be considered as dependable capacity by assigning to its use only a minimum amount of water during critical periods. The remainder of water available should be, and is, scheduled for use at Walter Bouldin Dam, where increased head results in obtaining 39 percent more electric energy from a given amount of water than can be obtained by passing

[7] Prevention of Power Failures, a report to the President by the Federal Power Commission, July, 1967, Vol. I, pp. 11, 100; Vol. II, p. 134.

the same amount of water through the turbines at Jordan Dam. The result is the most efficient use of this water to provide maximum energy and dependable capacity. It is significant that the license for Project No. 2146 contains a requirement, in event of transfer of Jordan to another licensee, for Alabama Power Company to make available to the lower head Jordan power plant more water than is required under coordinated operation. The use of such increased amount of water at Jordan Dam rather than at Bouldin Dam would constitute a waste of a natural resource, since no more dependable capacity would result but the total energy output from the two plants would be greatly reduced.

Another situation exists on the Tallapoosa River, on which Alabama Power Company has three licensed projects. These projects consist of Martin Dam, a large storage project, and two smaller projects downstream from Martin Dam. The Martin Dam license expires in 1973; the licenses for the lower projects expire in 1993. Again we have the situation where the development of the full power potential requires common ownership.

It seems evident from these facts that the licensed projects are dedicated to the public service as integral parts of an integrated electric system, and it is beyond my imagination to conceive how they could render a higher public service. Conversely, it is also evident that these projects could not be severed from this system without a severe and adverse impact upon the system of which they are an important part with a consequent drastic impairment of the public service which these projects help to render.

Importance of licensed projects to state and local government tax revenues

Another impelling reason for the relicensing of these projects is that relicensing will preserve the tax revenues of the state and local governments.

The licensed hydro projects, including reservoirs, of Alabama Power Company are located in 14 Alabama counties. The taxes paid on these projects are important to the economy of these countries and to the entire State of Alabama.

The state and local property taxes paid on these projects alone totaled about $1,500,000 in 1967. This annual payment will increase to approximately $1,750,000 when construction is completed on all currently licensed projects. Over $25,000,000 of property taxes have been paid to date on these projects.

In 1967, Alabama Power Company paid a hydro generation tax to the state of $1,050,269. Additional generating units recently placed in service and scheduled to go in service this year will cause a significant increase in this annual tax payment. The entire proceeds of this tax have always gone to the state's educational system, and a total of $19,482,359 of hydro generation taxes have been paid to date on these projects.

Alabama Power Company is Alabama's largest taxpayer and is also the largest taxpayer in 9 of the 14 counties in which these projects are located. In 3 counties the property tax payments on these projects alone provide more than 30 percent of the total taxes collected by the tax collectors, and the taxes paid on these projects in the other counties account for a very substantial portion of their tax revenues. In 1967, four of these counties received over one-third of their total property taxes from the company.

A similar tax situation prevails in Georgia, which operates 16 hydroelectric generating projects licensed or in course of being licensed under the Federal Power Act. These projects, including reservoirs, are located in 16 counties and 3 municipalities in Georgia; 3 counties in Alabama; and 1 county in South Carolina. Total ad valorem taxes paid on these properties amounted to more than $950,000 in 1967, of which $883,500 was paid to Georgia counties and municipalities. It will be noted that by far the greater part of these taxes went to these local governments because the State of Georgia, recognizing the tax revenue need of these local governments, has practically relinquished state ad valorem taxes to local governments. The ad valorem taxes paid on these projects since they were built or acquired exceed $17,500,000. As in Alabama, these taxes constitute a highly important part of the tax revenues of such local governments.

Under existing law, if these projects are taken over by the Federal government, these tax payments would be lost to local authorities with serious consequences to them.

Alabama Power Company and Georgia Power Company have for many years been cognizant of the growing public interest in these licensed projects as recreational areas; and both companies are working closely with the Federal Power Commission and state and local agencies to enhance the attractiveness of the projects for public recreation and to extend recreational use of these projects by such means as improved access, boat-launching ramps, the sponsorship of

fishing contests, organization of water-safety programs, and development of sites for family and group recreation. Among the groups for which sites have been made available are individual families, Boy Scouts, Girl Scouts, YMCA, military personnel, and churches.

Renewal of the licenses would insure the continuance of this cooperative effort to bring the public the benefit of the recreational potential of these projects. It is significant that the Governor of Alabama in recommending the relicensing of the Mitchell Dam project to Alabama Power Company, a matter already under consideration by the Federal Power Commission, cites the recreational program as one of the reasons for the relicensing.

Licensed projects should continue to serve the general public

The cost of our licensed hydro projects is being amortized from rates paid by the public generally in our service area. The benefits of such amortization should, therefore, accrue to the general public being served by those projects. If these projects were taken over and the power from them made available to any particular entity or group, the general public would be deprived of the benefits of amortization which they have paid in their rates for electric service.

A decision on the policy of relicensing, or take-over, of licensed projects is certain to have far-reaching consequences of national importance. A decision to follow the policy of take-over would be considered a decision materially adverse to the electric utility industry by the investing public. Public confidence in the future of that industry is essential to public acceptance of the securities issued by that industry and that acceptance is essential to the existence of the industry. A decision adverse to the industry on the question of relicensing would undoubtedly have an adverse effect on the price at which utility securities could be sold, thus increasing the cost of rendering electric service and ultimately increasing the cost to consumers. Establishment of a policy of relicensing would just as surely increase the confidence of the investing public with ultimate benefit to consumers.

ALABAMA POWER CO. HYDROELECTRIC GENERATING PLANTS LICENSED BY THE FEDERAL POWER COMMISSION

License No.	Name	Nameplate capacity (kilowatts)	Investment [1]	Date of license	Expiration date of license
82	Mitchell Dam	72,500	$8,329,105	Jun. 27,1921	Jun. 27,1971
349	Martin Dam	154,200	16,953,540	Jun. 9,1923	Jun. 9,1973
618	Jordan Dam	100,000	9,484,590	Nov. 7,1925	Nov. 7,1975
2146	Weiss Dam	87,750	38,627,934	Aug. 1,1957	Aug. 1,2007
2146	Logan Martin Dam	128,250	47,080,133	do	Do.
2146	H. Neely Henry Dam	72,900	30,845,685	do	Do.
2146	Walter Bouldin Dam	225,000	37,799,032	do	Do.
2146	Lay Dam	177,000	[2] 23,771,784	do	Do.
2165	Lewis Smith Dam	157,500	31,439,270	Sept. 1,1957	Sept. 1,2007
2165	Bankhead powerplant	45,125	[3] 8,940,851	do	Do.
2203	Holt powerplant	40,000	[3 4] 7,384,000	Sept. 1,1965	Sept. 1,2015
2407	Yates Dam	32,000	5,077,657	Apr. 1,1962	Dec. 31,1993
2408	Thurlow Dam	50,000	6,321,449	do [5]	Do.
	Total	1,342,225	272,055,030		

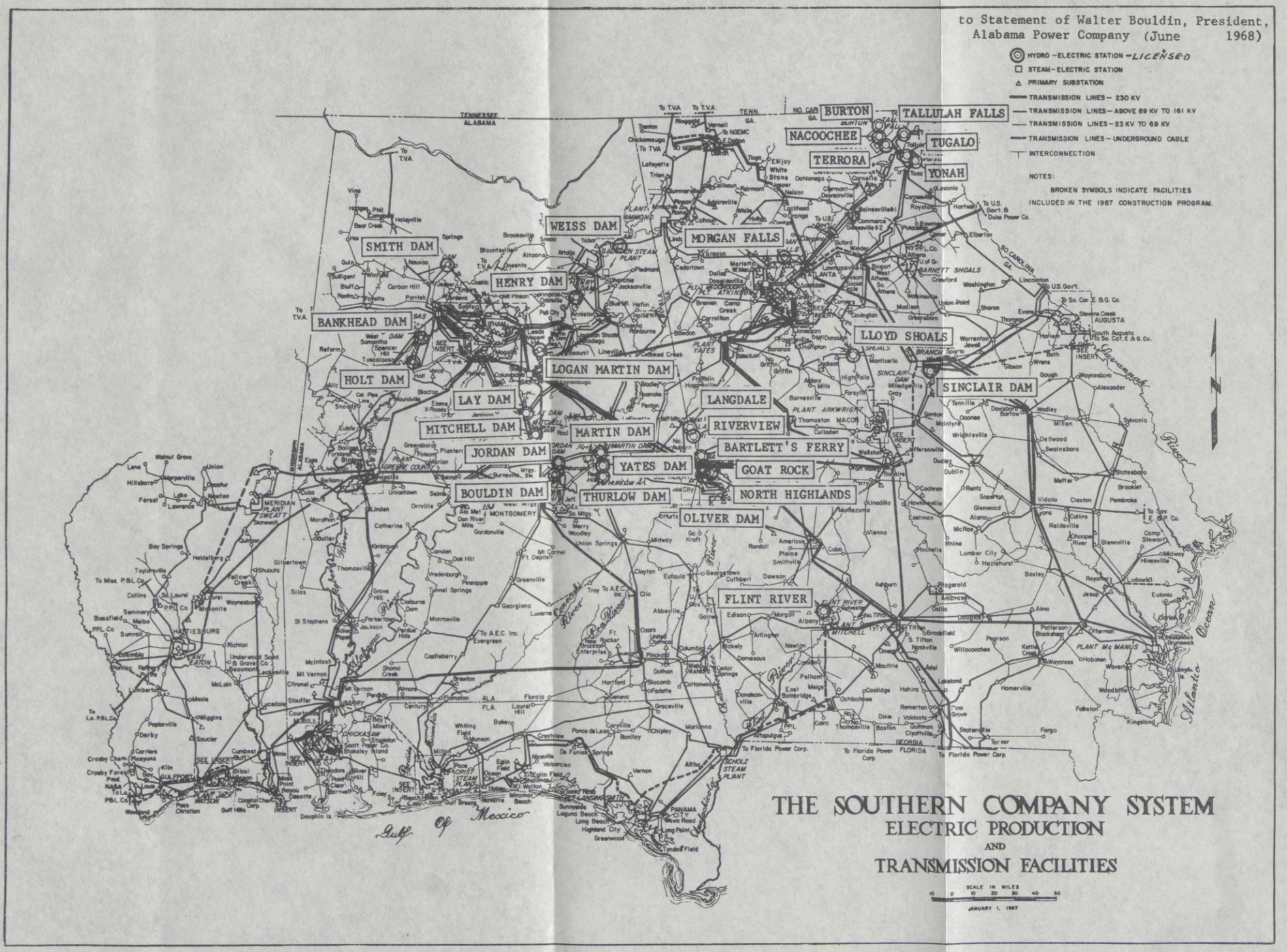
[1] Includes plant as reported on FPC form No. 1, schedule 433, line 19.
[2] Scheduled completion date is May 1968. Investment is as follows:

Original plant	$3,942,328
4 new units	7,890,000
Construction work in progress	9,516,519
Land acquisition	2,422,937
Total	23,771,784

[3] Improvements, structures and equipment for power generation only at U.S. Corps of Engineers dam.
[4] Scheduled service date is March 1968. Amount shown is estimate for construction work in progress.
[5] License issued. Application for rehearsing pending.

EXHIBIT 1

to Statement of Walter Bouldin, President,
Alabama Power Company (June 1968)



THE SOUTHERN COMPANY SYSTEM
ELECTRIC PRODUCTION AND TRANSMISSION FACILITIES

95-619 O - 68 (Face p. 116)

GEORGIA POWER CO. HYDROELECTRIC GENERATING PLANTS LICENSED BY THE FEDERAL POWER COMMISSION

License No.	Name	Nameplate capacity (kilowatts)	Date of Investment [1]	Date of license	Expiration date of license
485	Bartlett's Ferry	65,000	$11,195,788	Dec. 15, 1924	Dec. 15, 1974
1218	Flint River	5,400	[2] 2,064,008	Jan. 1, 1933	Sept. 16, 1971
1951	Sinclair Dam	45,000	14,028,046	Sept. 1, 1947	Sept. 1, 1997
2177	Goat Rock	[3] 26,000	3,652,674	Jan. 1, 1955	Jan. 1, 2005
2177	Oliver Dam	[3] 60,000	14,122,285	do	Do.
2177	North Highlands	[3] 29,600	7,374,047	do	Do.
2237	Morgan Falls	16,800	1,987,140	Mar. 1, 1959	Mar. 1, 2009
2336	Lloyd Shoals	14,400	2,344,106	May 1, 1965	Dec. 31, 1993
2341	Langdale	1,040	[2] 382,814	Mar. 1, 1959	Do.
2350	Riverview	480	[2] 186,234	do	Do.
2354	Burton	6,120	[3] 3,219,193	Jan. 1, 1956 [4]	Do.
2354	Nacoochee	4,800	[2] 1,297,990	do [4]	Do.
2354	Terrora	16,000	4,250,784	do	Do.
2354	Tallulah Falls	72,000	4,924,949	do	Do.
2354	Tugalo	45,000	5,873,017	do	Do.
2354	Yonah	22,500	4,124,153	do	Do.
	Total	430,140	81,027,231		

[1] Includes plant as reported on FPC form No. 1, schedule 433, line 19, except as noted in footnote 2.
[2] Classified as small plants and reported on FPC form No. 1, schedule 434.
[3] Licensed as the Middle Chattahoochee development.
[4] License No. 2354 granted for North Georgia development but not yet accepted by Georgia Power Co.

Mr. VOGTLE. Mr. Bouldin's statement points out first that Alabama Power Co. is engaged in the generation, transmission, and sale of electric power in 56 of the 57 counties of the State of Alabama and is one of the affiliated companies of the Southern Co. group described on page 1 of the complete statement.

The map attached as exhibit 1 to this statement shows the location of 29 hydroelectric projects that are currently licensed or in the course of being licensed to operating affiliates of the Southern Co. group.

The total generating capacity of the Southern Co. group at December 31, 1967, including hydroelectric and fuel-electric generating stations, was 6,499,250 kilowatts. Of this total capacity, hydro-installed nameplate capacity was 1,673,605 kilowatts.

Exhibit 2 attached to the complete statement shows for each licensed project the date, plant investment, and date of expiration of the license. The hydroelectric plants of Alabama Power Co. are shown on sheet 1 of exhibit 2 and the hydroelectric plants licensed to Georgia Power Co. are shown on sheet 2 of that exhibit.

The Southern Co. group at the end of 1967 served approximately 1,894,000 customers without taking into account approximately 750,000 customers of the affiliates' wholesale customers. The territory served is about 120,000 square miles, with an estimated population of 7,500,000.

All of the 29 licensed hydroelectric generating plants available in the near future to the Southern System will have an aggregate nameplate capacity of 1,772,365 kilowatts. Such capability will amount to about 19 percent of the total thermal and hydroelectric generating capacity on the Southern System.

During 1967, electric generation from hydroelectric generating plants on the Southern System amounted to 5.8 billion kilowatt-hours, which was almost 12 percent of the 49 billion kilowatt-hours total energy supply to the system in that year. These hydro plants are a most substantial and essential component of the generation and transmission resources now being used to provide reliable and economical electric service to consumers in the area served by the Southern System affiliates.

In many cases, the high-voltage transmission lines connected to licensed hydroelectric projects form an important part of the bulk power supply transmission network of the Southern System.

The hydroelectric plants of the Southern System are located throughout Alabama and Georgia. The nature of rainfall and resultant runoff in the rivers of Alabama and Georgia is such that variations occur in river flows, varying from periods of high flow during normally wet periods of the year to periods of very low flow during the dry season.

Reservoirs constructed by Alabama Power Co. and Georgia Power Co. provide a means of retaining waters for use to supplement the natural flow during periods of otherwise low flow. Storage and subsequent controlled release make optimum use of water that would otherwise run off to the oceans and be wasted during high-flow periods.

Such storage releases, together with natural flows occurring during dry periods, provide enough water during dry periods for operation of hydroelectric facilities to meet the short-time requirements of consumers in the area.

The demand for electric energy on the Southern System is not constant but varies widely on an hourly, daily, and seasonal basis.

The peakload period of the Southern System, which normally occurs during the hot weather months of June, July, and August, is characterized by a multiplicity of relatively short-time demands which are in excess of the baseloaded steam capacity and which vary in undetermined amounts from moment to moment.

Because of varying characteristics of the load, the portion of the company's load in excess of the baseload would be less efficiently supplied solely from steam-electric generating plants, the inherent characteristics of which make them more suitable for supplying loads of a more constant nature.

Hydroelectric plants are eminently better suited for variable operating requirements since they can be kept synchronized with the system and ready to respond instantaneously to changes in load requirements. The reduction in efficiency of hydroelectric units for this type of operation is much less than that of steam-electric units if operated in the same manner.

The use of hydroelectric generating units to supply loads of short duration thus permits the use of steam-electric generating units to supply the more constant or baseload portion of the system's total load. The combined use of hydro and steam-electric generating facilities, as heretofore described, results in a highly desirable and efficient method of operating in meeting total system requirements.

Commencing on page 6 of the complete statement, Mr. Bouldin describes some of the reasons why the hydroelectric projects are so much more valuable in a large system such as the Southern Co. System than they would be if separated and operated in smaller systems.

The Southern Co. System, with its numerous hydro projects, is able to take advantage of the diversity of rainfall over a very wide geographical area. The system load is large enough that the Southern Co. System can take full advantage of this hydroelectric generating capacity to make it available for the main purpose for which it is used; that is, the carrying of a load in excess of that which is being carried by the steamplants.

These hydroplants further provide spinning reserves, that is, reserves turning on the system but not generating any power, but ready instantaneously to pick up load in the event some failure of another project occurs or some condition occurs on the system causing a possibility of loss of load. These spinning reserves available in the hydroelectric plants are highly important in preserving the reliability of the system.

These hydroplants further provide spinning reserves; that is, recan respond almost instantaneously to a critical situation and will, by taking care of local situations, or systemwide situations, contribute to prevention of a collapse of the system and an extensive blackout. If a blackout of any size did occur on the Southern Co. System, these hydroelectric projects would provide a very essential function.

In the studies of the recent blackouts, of which you are aware, it has been pointed out that one of the great needs in the event of a blackout is some kind of power to crank up steam-generating units. On the Southern System, these hydroelectric plants can be placed in operation merely by opening gates releasing the water to the turbines and can then supply large amounts of cranking power for startup of steam-electric plants.

This is made possible through connection of these hydroplants with the steamplants through transmission lines having adequate capacity.

System dispatchers have prepared procedures using existing personnel and equipment to perform necessary functions to provide a clear path from specific hydroelectric plants to selected steamplants should the need for such cranking power arise.

Anyone taking over these hydro projects could not be expected to operate them in this manner and especially could not be expected to interrupt its own loads in order to provide starting power to the steamplants of the Southern System.

Mr. Bouldin illustrates how important it is to relicense these projects whose licenses are expiring in order that they may be coordinated with projects which have been licensed and which won't expire for many, many years.

The year 2007 is the expiration date of the latest of Alabama Power Co.'s licenses on the Coosa River. This is Project 2146, involving construction of four new hydroplants and redevelopment of a fifth. There are, however, two licensed projects—Projects 82 and 618—located on the same river in proximity to these new plants. The licenses for these two plants expire in 1971 and 1975, respectively. Obviously these older projects should be relicensed to Alabama Power Co. so that all of those projects on the same river may be utilized in coordination.

These hydroelectric projects are important to State and local tax revenues. Loss of these taxes would cause problems in our State and local finances.

If the licenses for these hydroelectric projects are renewed, Alabama Power Co. will continue to cooperate in the use of these projects in State and local recreation programs. In recommending the relicensing of Project 82 to Alabama Power Co., the Governor of Alabama has mentioned these recreational programs as one of the reasons for the relicensing.

Mr. Bouldin concludes that a decision on the policy of relicensing, or takeover, of licensed projects is certain to have far-reaching consequences of national importance. A decision to follow the policy of takeover would be considered a decision materially adverse to the electric utility industry by the investing public.

Public confidence in the future of that industry is essential to public acceptance of the securities issued by that industry and that acceptance is essential to the existence of the industry. A decision adverse to the industry on the question of relicensing would undoubtedly have an adverse effect on the price at which utility securities could be sold, thus increasing the cost of rendering electric service and ultimately increasing the cost to consumers. Establishment of a policy of relicensing would just as surely increase the confidence of the investing public with ultimate benefit to consumers.

That concludes my summary of Mr. Bouldin's statement.

Mr. Bouldin has asked me to express his appreciation for this opportunity to appear in his behalf. I am authorized to state that Mr. Bouldin does concur with the statements and positions of Mr. Horton and Mr. Searls previously presented to you today.

Mr. MACDONALD. Thank you.

You have a fellow statesman here who would like to say a few words.

Mr. KORNEGAY. Yes. An old friend of mine from North Carolina, Jack Riley, is here. I welcome him to the subcommittee. He is one of North Carolina's finest; vice president in charge of public relations of the Carolina Power & Light Co.

Jack, it is nice to have you with us.

Mr. RILEY. Thank you, Congressman.

Mr. MACDONALD. With that, I should point out to Mr. Jones that some months of the year I am a customer of the Central Maine Power Co. It is nice to see you.

Any other questions?

Mr. KORNEGAY. I am not a customer of Mr. Riley's company.

Mr. MACDONALD. Mr. Harvey.

Mr. HARVEY. No questions, Mr. Chairman.

Mr. MACDONALD. Gentlemen, as you know, the House is in session. We have three more to go. I was wondering if by asking two rather broad questions I could get the general sentiment of the utility companies.

The testimony given so far and which we explored perhaps too long with the gentlemen from the Pacific Gas & Electric Co. and the Southern California Edison Co.—are utility companies in general agreement that those sections are as unacceptable as those two gentlemen seem to indicate to the utility companies all over the country?

Mr. MCELWAIN. I am with the Montana Power Co. I think I can say basically this is correct.

I would just like to add two comments that might clarify some of the thinking of the industry with respect to this matter.

With respect to the matter of staying, I think one of our problems is this: Under present law, as you know, we go through a licensing procedure. Interior, and any other agency can intervene in that proceeding if they have something that bothers them. Many times they do.

My company has been a participant in a licensing proceeding which has been before the Federal Power Commission for 13 years, in which the Interior Department intervened, appealed to the courts, which they have the right to do just as anybody else, and the courts sustained their position and sent the matter back to the Federal Power Commission for further proceeding.

Mr. HARVEY. You mean this licensing procedure has been going on for 13 years?

Mr. MCELWAIN. I mean this licensing procedure has been going on for 13 years, and we are right where we started 13 years ago.

So, this is one of the problems involved.

Now, what we are doing here in this legislation is adding another 4 years on to these agencies' opportunity to take their case to the Congress and then if they lose in the Congress they still under the act have the opportunity to go to the courts.

We think the orderly procedure in this matter should be that these agencies when they have an adverse opinion against them by the Federal Power Commission in their expertise should take their case to the courts and depend upon that and not have this additional right they don't have under original licensing to take their case to the Congress.

It is as simple as that with respect to the staying.

Now, with respect to section 3(b), I believe, Mr. Harvey, that yesterday—and I was here yesterday and listened to Mr. Solomon testify—one of the questions he answered, you asked if it was a permit and he said no; these licenses are essentially contracts and they are contracts that give obligations and have obligations between the parties on both sides.

Now, the only thing, as a lawyer when you are representing a client and he is going into a contract, you ought to know what your obligations under that contract are before you commit yourself. After you commit yourself and allow one of the parties to then come in and say he can open up this contract and make some change without your consent is the thing that bothers me about the section 3(b) situation.

This is precisely why section 6 was put into the law in the first place.

We see no valid reason why you should change a contractual obligation into a permit situation where one of the parties can unilaterally change the terms of a contract. It is as simple as that, in our judgment, and we have 88 percent of our generating capacity under license to the Federal Power Commission.

So, we are constantly working with these people on license changes. We have one license that has got as many as 15 amendments to it.

Mr. MACDONALD. Could I interrupt, sir?

While this might be a little unusual to have one body, as you say, be able to open up a contract, also the contract for 50 years is a little unusual, too, isn't it?

Mr. McElwain. The contracts are of varying terms. I think the contract of 50 years is not particularly unusual. We have a contract with a company that extends as long as there is mining in the area which has gone over 60 years now and probably will last another 50 years. I don't think the necessary term is unduly long.

I do think this. This has worked very well in the past on the basis of once you have had an opportunity to see what you are getting into.

May I say this? On relicensing, the Federal Power Commission has full opportunity to review what was licensed for the first 50 years and they can make what changes they want and impose conditions on the licensee. At that time he has the opportunity to either accept or reject the new licensing but he ought to know at that time what his obligations are.

Mr. Macdonald. Right, sir.

Mr. Jones. I believe on behalf of Central Maine Power Co. that company joins and endorses the statements that have been made so far.

I have a prepared statement of William H. Dunham, president of Central Maine Power Co., that I could present to the committee with the request that it be incorporated in the record as if read.

Mr. Macdonald. Without objection, so ordered.

(The statement is as follows:)

Statement by William H. Dunham, President of Central Maine Power Co.

My name is William H. Dunham. I am the President of Central Maine Power Company, 9 Green Street, Augusta, Maine. I wish to express to this Committee my appreciation for the opportunity to present my comments on the proposed amendments to the Federal Power Act.

Central Maine Power Company generates, transmits and distributes power in the southern and western areas of the State of Maine where two-thirds of the population resides. At the present time, hydroelectric projects subject to FPC licensing provide about 40% of the Company's generating capacity, making it the second largest owner of hydro facilities in New England. My Company also has three steam plants, three small internal combustion plants in isolated areas, and, in recent years, has participated with other New England utilities in the development of jointly owned atomic power plants. Central Maine's hydroelectric projects are located in Maine primarily on the Kennebec, Androscoggin and Saco Rivers. The Company also has the majority interests in upstream storage reservoirs on the Kennebec and Androscoggin Rivers.

I am here to support legislation that will enable the Federal Power Commission to process applications for relicensing as project licenses expire, and to issue new licenses to the project owners for continued operation. The Commission's belief that, under the terms of the Federal Power Act as it now exists, the Commission is not free to relicense projects, leaves it only with the choice of issuing annual licenses or denying any extensions of a license. Legislative action affirming the Commission's power to relicense projects appears necessary to eliminate the potential confusion and hiatus that will otherwise occur as licenses expire.

The need for prompt determination on relicensing becomes greater as utility systems find it necessary to plan further and further in advance to meet future loads. The alternative of license extensions on a year-to-year basis offers little protection when replacement power would take up to six years to become available. Full Commission authority to relicense projects is necessary to enable utility systems to continue to plan in an orderly manner for efficient and reliable service to their customers.

EXISTING HYDRO PROJECTS ARE BASIC IN THE DEVELOPMENT OF NEW ENGLAND

The New England area in which Central Maine and its neighboring utilities operate was a pioneer in the use of riverways for power and other purposes. Many of Maine's hydroelectric projects are located at sites that were initially

developed in the nineteenth century to provide mechanical power to the emerging industries of the region. For all of these years, these developments have supplied power to aid the economy of Maine. The Maine rivers have also been extensively used for the transportation of logs from the upstream forests to downstream mills. The development and use of the rivers, and the upstream storage reservoirs, have been designed to facilitate these operations. For example, many of Central Maine's dams have facilities for passing logs downstream. Finally, Maine's numerous lakes and waterways, including many of the artificial lakes created by power and storage dams, provide excellent recreation potential, not only for the residents of the State, but also for visitors from the densely populated areas to the south.

Central Maine has joined with industrial and other owners in regulating the flow of the Kennebec and Androscoggin Rivers to provide flood control, power, transportation and other benefits. These owners have joined together to develop and maintain extensive headwater storage reservoirs so that the run-off from the water sheds can be conserved and spread evenly over the year. These developments are now, because of changing concepts of the Federal Power Commission's jurisdiction, being brought under license. As the licenses for the power and storage developments expire, the Commission will need clear and definite authority to relicense the projects so that there will be no interruption in the coordinated control and use of the river flows.

Central Maine integrates its hydroelectric and thermal generating operations. Hydro power is now used for meeting peak loads, spinning reserve and base load operations. Some of the base load hydro projects reregulate the flows from the larger peaking projects to meet river control requirements. As additional conventional steam and atomic plants are added, the hydroelectric plants will be relied on even more for peaking. Thermal plants are generally most economic when operated at full capacity around the clock. When they are used in combination with hydro plants, which meet system peaks, maximum benefits are obtained. On the Central Maine system, as in most systems with adequate reservoir capacity, one of the most important roles of hydro power is to provide a quick source of reserve power to meet emergencies. This adds greatly to the reliability of the system.

COMMENTS ON DETAILS OF THE BILL

I agree with the objection to the novel proposal that would permit the Commission to modify at any time licenses issued after a relicensing proceeding. This is directly contrary to the policy set forth in Section 6 of the Act, which has long been recognized to provide desirable certainty to a licensee. For example, in *Rumford Falls Power Company* v. *F.P.C.* (355 F. 2d 683, 1st Cir. 1966), the reviewing court refused to approve a license condition that attempted to reserve rights to modify the license in ways which could have been detrimental to the licensee. The certainty provided by present law not only enables a licensee to finance the development or redevelopment of a project, but it also enables a utility system to plan its future developments to provide the best combination of generation for maximum reliability at the least cost.

The Federal Power Commission's letter transmitting the proposal that is now H.R. 12698 contained a suggestion that, in relicensing hydro projects, the Commission may provide short license terms, especially where there has been little redevelopment necessary. I believe that Congress should make it clear that second licenses should run for a reasonably long term, again to provide the necessary certainty.

Because utilities have the obligation to provide for continuing load growth, it is essential that they have the assurance as to what plant capacity will be available to meet future loads. This is becoming even more critical as the lead times lengthen for bringing in additional generation. Every effort should be made to preserve and enhance the certainty now provided licensees by the Act.

I also join in opposition to the proposal in H.R. 12698 that would enable any Federal agency to obtain a stay of a relicensing order for a period of up to four years. To allow Federal agencies, for the most part having special interests of their own, to override a determination by the Federal Power Commission that continuing operation under a license is most in the public interest, would ignore the expertise and experience of that Commission. All Federal agencies have an opportunity to participate before the Federal Power Commission, and their proposals should receive full consideration there. There is no need to give them a second chance to delay or defeat relicensing. The Commission's powers to relicense projects should not be qualified.

95-619—68——9

I appreciate very much the opportunity to appear before this Committee, and strongly urge that the Commission be given prompt assurance that it has the power to relicense hydroelectric projects as current licenses expire.

Mr. JONES. I would also like to note that Mr. Dunham's statement has also been endorsed in principle by five other New England utilities: Bangor Hydroelectric Co., Public Service Co. of New Hampshire, New England Power Co., Central Vermont Public Service Corp., and Northeast Utilities.

Finally, if I may, Mr. Chairman, I would like to identify myself.

I am Ronald D. Jones, a member of the law firm of LeBoeuf, Lamb, Leiby & MacRae, 1 Chase Manhattan Plaza, New York, N.Y.

Like you, I find myself a summertime payer of bills to Central Maine Power Co. but not all year around.

I am, incidentally, a resident of Ossining, N.Y. My Congressman is Congressman Ottinger, who is a member of your committee.

Mr. RILEY. Mr. Chairman, let me say I am Jack Riley of Carolina Power & Light Co.

I appreciate the introduction by Mr. Kornegay. Mr. Kornegay's power supplier happens to be represented in the room here today.

I was here simply to submit for the record, if I may, a statement by the president of our company, who agrees in principle with the witnesses that have preceded us and it would not merit your coming back to hear anything that I might add.

I would like to stress the point that Mr. McElwain just made, which seems to be bothering the committee, and that is that in the process of relicensing the Federal Power Commission will have the benefit of 50 years or whatever term experience in which to amend or rework a license and also its own projections into the foreseeable future; it is not automatically accepting the terms of the original license.

Mr. MACDONALD. Without objection, the statement submitted by Mr. Riley will be received into this part of the record.

Mr. RILEY. Thank you.

(The statement is as follows:)

STATEMENT OF SHEARON HARRIS, PRESIDENT, CAROLINA POWER & LIGHT CO.

My name is Shearon Harris. I am President of Carolina Power & Light Company, whose address is 336 Fayetteville Street, Raleigh, North Carolina 27602, and am submitting this statement on its behalf.

Carolina Power & Light Company is a public service corporation which is engaged in the generation, transmission, and distribution of electricity in an area of approximately 30,000 square miles, including a substantial portion of the Coastal Plain in North Carolina, the lower Piedmont section in North Carolina and in South Carolina, and an area in western North Carolina in and around the City of Asheville. It now serves more than 516,000 electric customers.

The Company's facilities in Asheville and vicinity are connected with the Company's system in the other areas served by the Company through the facilities of Appalachian Power Company and of Duke Power Company so that power may be transferred from or to the Asheville area through interconnections with such companies. In addition to interconnections with Appalachian and Duke, there are interconnections with the facilities of Tennessee Valley Authority, Virginia Electric and Power Company, South Carolina Electric & Gas Company, and Yadkin, Inc.

As of December 31, 1967, the total electric generating capacity of the Company was 2,257,645 kilowatts. That capacity includes 100,000 kilowatts at the Company's Walters Hydroelectric Generating Plant, 86,000 kilowatts at its Tillery Hydroelectric Generating Plant, and 25,000 kilowatts at its Blewett Falls Hydroelectric Generating Plant, all of which are licensed projects under the Federal Power Act. The license for the Walters Hydroelectric Generating Plant was issued in 1926 for a term of 50 years. A single 50-year license was issued

for the other two plants by the Federal Power Commission in the year 1958. These three hydroelectric generating plants are essential generating resources for the Company's integrated system, so H.R. 12698 and H.R. 12699 are of vital interest to us.

We agree with other representatives of the electric utility industry who have submitted statements to the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce that further legislation setting forth objectives and procedures to be followed upon the expiration of licenses issued under the Federal Power Act is desirable, but that H.R. 12698 and H.R. 12699 contain certain objectionable provisions.

Specifically, and for reasons stated by other industry representatives, we respectfully suggest that the third and fourth sentences of Section 2(b) (authorizing a stay of the re-licensing procedure while Federal agencies present their case for take-over to Congress), to which the sixth and seventh "Whereas" clauses of the Bill are related, and Section 3(b) (authorizing unilateral changes in provisions of the license by the Commission "at any time after the issuance of any license") should be deleted.

The "stay" provisions of Section 2(b) would produce unnecessary delays in the take-over or relicensing procedure, with resulting uncertainties for existing licenses.

Section 3(b) would permit the Commission to alter licenses issued under Section 15 by imposing "further reasonable requirements" at any time, despite the existing provision of Section 6 that licenses "may be altered or surrendered only upon mutual agreement between the licensee and the Commission." This proposal is not procedural. It would affect the rights of all Section 15 licensees by unreasonably subjecting them to the possible imposition of requirements which, although considered "reasonable" by the Commission, might produce intolerable burdens for the licensees.

Mr. McElwain. I am Joseph A. McElwain, vice president of the Montana Power Co.

I would like to submit my entire statement for the record and I can make myself available for the committee tomorrow.

If there are any additional questions with respect to these two particular principals or any other, I should be happy to be here.

Mr. Macdonald. Without objection, your statement will be inserted in the record at this point.

(The statement is as follows:)

Statement of Joseph A. McElwain, Vice President, Montana Power Co.

My name is Joseph A. McElwain. I am Vice President and Counsel for The Montana Power Company.

The Montana Power Company operates in the western two-thirds of Montana serving both electricity and gas in most of our service area.

Our Company's service area embraces some 96,000 square miles, which is the largest area served by any utility company in the United States. A total of 578,000 people, or 82% of Montana's 700,000 population, reside in our service area. Our population density is approximately six persons per square mile. This compares with a population density on the system of Consolidated Edison Company serving New York City of over 24,700 persons per square mile.

We have 520,000 kilowatts of hydroelectric generation on our system, which is 88% of our total present generating capability. We operate 4,686 miles of high-voltage transmission lines and 9,773 miles of distribution lines to serve our 167,000 electric customers. Late this year, we will add 180,000 kilowatts of steam generation to our system when the new Billings steam plant goes into operation. All of our hydroelectric generating projects are, or will be, subject to Federal Power Commission licenses issued under Part I of the Federal Power Act.

We have one hydro plant license which expires next year. This license was issued to us in 1962 for a period of seven years. This plant has a capacity of 11,500 kilowatts.

The next license to expire covers our Thompson Falls plant with a capability of 40,000 kilowatts. The license for a 37-year period was issued in 1938 to expire in 1975.

Our 180,000 kilowatt Kerr plant was licensed in 1931 for a 50-year period.

However, at its expiration date of 1980, we will have had only 41 years of operation under the license.

A license for our nine Missouri River plants, having a total capacity of 284,000 kilowatts, will expire in 1998.

On June 3, 1968, the FPC issued an order licensing the 3040 KW Milltown Project. The license is effective as of May 1, 1965, and will expire December 31, 1993, which makes the term of the license 28-years.

As you can see, The Montana Power Company has a vital interest in the subject matter of H.R. 12698 and H.R. 12699, which are intended to better define the relicensing procedure of the Federal Power Act.

NEED FOR LEGISLATION

I appear here today to urge the Congress to enact this legislation, subject to some amendments or policy statements, to establish a policy and procedure for relicensing. There are many compelling reasons why clarifying legislation is necessary on this matter. Permit me to discuss a few of the more pertinent items.

We must plan years ahead in order to assure an adequate power supply to live up to the responsibility to provide our customers with a reliable and continuous source of electricity at reasonable rates. Because we have such a major percentage of our system generating capability under FPC hydroelectric licenses, it is imperative to us that there be some well-defined relicensing procedure and policy so we may be assured to the extent possible that we can provide our customers with a dependable supply of electricity.

I. We believe that the Federal Power Act contemplates that the original licensee should have a project relicensed to him at the end of the original license term and that the term of the new license should be long enough so that the power supply from the project may be relied upon in the long-range planning of the licensee. We realize, of course, that such licensee must, upon relicensing, meet the standards of comprehensive developments provided in the Act.

There are several very sound and persuasive reasons why the Federal Power Act contemplates relicensing to the original licensee, as has been pointed out on several occasions over the years by the Federal Power Commission:

(1) These projects, for the most part, are an integral part of the licensee's total system and cannot be divorced from the respective system operations without serious impairment thereto.

(2) Depreciation and similar costs charged against the licensed project were borne by the customers of the original licensee. These customers are entitled to the future benefits of depreciated generating costs. The detriment to be suffered by these customers should be taken into consideration upon takeover of the project by the government or licensing it to another power supplier.

(3) The Commission should not recommend takeover or authorize licensing of the project when it merely results in transferring this source of power from the original licensee's customers to another group of power consumers.

(4) As now licensed, these projects provide large tax contributions to local and state governments. If takeover is exercised by federal authorities, serious financial problems would be caused for these governmental entities.

In Montana, for instance, all school districts and city and county governments are almost totally dependent on the receipts from property taxation. The Montana Power Company is the largest single taxpayer in the state. In the several counties where our licensed projects are located, the taxable value of these facilities usually constitute a major portion of the tax base.

I have attached hereto a table with a breakdown of tax benefits in the counties where our licensed projects are located. You will notice that in one county, our project represents almost 24% of the total taxable valuation of the entire county. Furthermore, substantial additional tax payments are made to our state government through electrical energy license taxes and corporation license taxes due to the operation of these licensed projects by Montana Power.

(5) Unless the project is needed to perform a governmental function not being provided by the present owner under the license, there appears to be no reason for takeover by the United States. If the federal government takes over the project, there will be no greater development of the natural resources. Moreover, the licensee is contributing to the support of government by taxes levied on the project and, at the same time, aiding the comprehensive development of the waterway by operating the project pursuant to the terms of the federal license.

(6) The Federal Power Act requires payment of severance damages to orig-

inal licensees for the serious disruption caused to their electric systems by government takeover. This appears to be a wasteful expenditure of federal funds when the takeover will not produce any greater development of our natural resources, and the substantial payments for severance damages will add greatly to the costs of power produced by the project.

II. In relicensing hydroelectric projects, the Federal Power Commission should follow the procedure of the Federal Power Act for the issuance of original licenses.

Federal agencies should be required to present any pertinent evidence bearing on takeover of a project to the Federal Power Commission.

The relicensing of a project by the Federal Power Commission should be final except to the extent appeals to the courts are provided for in the Federal Power Act. The Federal Power Commission is the federal agency with expertise in this field in which it has been exercising its jurisdiction for nearly fifty years.

Congress should be called on to consider the takeover of a project only in the event the Federal Power Commission recommends takeover rather than relicensing.

Section 2 of H.R. 12698 and 12699, providing for a stay of the relicensing procedure for up to four years while federal agencies present their case for takeover to Congress, should be deleted. To allow such a delay in the relicensing procedure would negate the very purpose of this legislation, which is to give definition and stability to the relicensing procedure provided by the Federal Power Act.

III. A licensee must have some assurance when he accepts a license that he knows what his obligations, liabilities and rights will be under the terms of the license. He should have the opportunity to reject the offered license if he does not agree to some of the terms. Under the Federal Power Act, once a license is accepted, the licensee is protected from unilateral action by either the Commission or Congress in changing the terms of such issued and accepted license. Section 6 of the Federal Power Act requires that the Commission and the licensee agree on any changes in the license terms, and Section 28 exempts any existing licenses from subsequent changes in the law.

These two provisions are highly essential and afford basic protection to a licensee in making large investments based upon the license and who should, therefore, have the assurance of knowing the full extent of his obligations and rights. To do otherwise would stifle development because no one will commit to a large capital investment without adequate economic assurance as to cost obligations.

One of the provisions of Section 3 of H.R. 12698 and H.R. 12699 would repeal the Section 6 protection from unilateral changes in the license terms by the Commission so far as the relicensing procedures are concerned. We urge that such a repeal is repugnant to achieving comprehensive development in relicensing. Under relicensing, large sums of money will have to be invested in many cases on redevelopment of the project. Such investments should have the same protection now provided by Section 6 of the Act. To do otherwise will discourage and thwart comprehensive development.

We therefore urge that paragraph (b) of Section 3 of the legislation be deleted.

Thank you for the opportunity to present our views on this vital and necessary legislation.

STATE AND COUNTY TAXATION OF MONTANA POWER HYDROELECTIRC FACILITIES FOR THE YEAR 1967

	Taxable value	Total taxable value of county	Percent	MPCo. tax	Total taxes in county	Percent
Kerr (includes transmission lines), Lake County	$3,752,220	$15,745,634	23.83	$530,078	$2,821,604	18.79
Hebgen Reservoir, Gallatin County	278,393	26,487,251	1.05	39,284	4,573,886	.86
Madison Plant, Madison County	321,186	8,437,655	3.81	41,114	1,205,623	3.41
Holter & Hauser, Lewis and Clark County	1,760,685	31,966,392	5.51	250,921	6,401,182	3.92
Black Eagle-Ryan-Cochrane-Rainbow-Morony, Cascade County	4,064,428	72,105,501	5.64	678,852	13,627,987	4.98
Thompson Falls, Sanders County	815,359	13,701,713	5.95	97,070	1,810,215	5.36
Milltown, Missoula County	89,070	47,147,264	.19	13,262	10,223,446	.12
Flint Creek, Deer Lodge and Granite Counties	43,731	19,374,196	.226	6,106	3,161,837	.19
Total	11,125,072	234,965,606	4.74	1,656,687	43,825,780	3.78

Mr. MACDONALD. I would just like to ask this: Is it the consensus of the witnesses, as it seems to be to me, and I just want to see if I am correct, that the bills that we are considering are needed and would be helpful to the utility companies except for the two points that have been raised and gone back and forth, and back and forth, and back and forth? Is that about correct?

Mr. JONES. Mr. Chairman, I believe one of the very important things from our view is that this is the position of the Federal Power Commission, and as long as the Federal Power Commission takes this position it does not feel that it is free to relicense projects or even to process the project applications through to relicense.

I believe the position of the utility companies is that the Federal Power Commission should be given assurance that it can proceed to process these applications and to issue new licenses.

Mr. VOGTLE. This would be the position of Alabama Power and Mississippi Power, stressing relicensing.

Mr. MCELWAIN. That is the position of the Montana Power Co.

In the Senate committee print, there is an amendment which would give the Congress 2 years in which to act on a recommendation for Federal takeover. If it didn't act in that time, then the Federal Power Commission would be free to license and we endorse that.

Mr. MACDONALD. Right.

I understand your position about the relicensing but I have not had a direct answer to my other question which is: Is it the concensus of the utility companies that the points that were under discussion by the gentlemen from California in this committee their position represents all utilities' positions; is that correct?

Mr. RILEY. Mr. Chairman, I would like to go on the record in answering your question in the affirmative. I think your bill has a fine objective and with these two changes would be highly acceptable.

Mr. MACDONALD. Thank you all very much.

Mr. VOGTLE. It was my intention to answer in the affirmative, too.

Mr. HORTON. Will the record be kept open in case we would like to file a supplementary statement?

Mr. MACDONALD. We are going on tomorrow morning again.

Mr. HORTON. I was thinking perhaps that some issues may arise from the testimony of other witnesses that we would like to file a brief letter with the committee.

Would that be permissible?

Mr. MACDONALD. The hearing record will remain open for 5 days.

Mr. HORTON. Thank you.

Mr. KORNEGAY. Mr. Chairman, may I make a statement?

I was not neglecting my own supplier; I don't want to be misunderstood. There is a very fine boy here from North Carolina. He is assistant general counsel for the Duke Power Co., Mr. John Hicks.

Mr. MACDONALD. Thank you.

Thank you, gentlemen.

The hearing is adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 12:15 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Thursday, June 13, 1968.)

AUTHORITY OF FPC TO LICENSE AND TAKE OVER HYDROELECTRIC PROJECTS

THURSDAY, JUNE 13, 1968

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

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

Mr. MACDONALD. The subcommittee will be in order.

The first witness this morning is Mr. Northcutt Ely, general counsel for the American Public Power Association.

STATEMENT OF NORTHCUTT ELY, GENERAL COUNSEL, AMERICAN PUBLIC POWER ASSOCIATION

Mr. ELY. Thank you, Mr. Chairman.

My name is Northcutt Ely. I am a partner in the law firm of Ely and Duncan, general counsel for the American Public Power Association, a national trade organization representing more than 1,400 local publicly owned electric utilities, mainly municipal systems in 46 States, Puerto Rico, and the Virgin Islands.

Since its inception in 1940, the American Public Power Association has supported the orderly, comprehensive development of America's rivers for all purposes—hydroelectric power, flood control, irrigation, recreation, navigation and water supply—as a wise investment in future national growth and prosperity.

H.R. 12698, which this committee is considering today, proposes to clarify and provide congressional guidance to the Federal Power Commission "in the processing of expiring hydroelectric licenses."

Congress, by enactment of part I of the Federal Power Act, delegated to the Federal Power Commission the responsibility of issuing licenses to private and public entities wishing to utilize the Nation's streams and rivers. These licenses are for a maximum term of 50 years.

Upon license expiration, recapture for Federal operation or the issuance of a new license is provided for under the act.

In 1953, part I of the act was amended to execpt projects owned by a State or municipality from recapture, but not from relicensing. (Act of August 15, 1953 (67 Stat. 587).)

On May 9 of this year, the membership of American Public Power Association approved the following resolution on recapture and relicensing of hydroelectric projects:

Whereas there exist numerous hydroelectric projects licensed by the Federal Power Commission under the Federal Power Act, the licenses of which are nearing expiration, and

Whereas to avoid the exploitation and monopolization of the nation's water resources, Congress provides in the Federal Power Act for the recapture of such projects by the United States upon the expiration of the licenses granted under that Act, or for the relicensing thereof, if recapture does not occur, and

Whereas Section 7(a) of the Federal Power Act affords preference to applications of states and municipalities for preliminary permits, licenses and new licenses issued under Section 15 of the Act, if such applications are "equally well adapted to conserve and utilize in the public interest the water resources of the region", and

Whereas S. 2445 and H.R. 12698 of the 90th Congress attempt to clarify the manner in which the United States may recapture or relicense hydroelectric projects upon license expiration: Now therefore be it

Resolved, That the American Public Power Association supports legislation which would clarify procedures relating to the recapture and relicensing of hydroelectric projects licensed under the Federal Power Act, if such legislation provides that: (1) the Federal Power Commission is the proper agency to recommend and effectuate recapture, (2) the provisions of Section 7(a) of the Federal Power Act giving licensing preference to public bodies for projects whose licenses have expired is preserved, and (3) that new terms and conditions may be set upon relicensing by the Federal Power Commission to protect the public interest and encourage comprehensive development of water resources when a license is granted to a prior licensee of a project.

NEW CONDITIONS NEEDED FOR RELICENSING

The American Public Power Association believes that any proposed legislation considered by the committee should insure that the Federal Power Commission has adequate authority to set new terms and conditions for new licenses.

Section 10(a) of the Federal Power Act provides that all licenses issued by the Federal Power Commission "shall be . . . best adapted to a comprehensive plan . . . for the improvement and utilization of waterpower development . . . and for other beneficial public uses, including recreational purposes." New licenses issued for projects whose licenses have expired are encompassed by section 10(a), a fact recognized in the preamble of H.R. 12698.

New licensing proceedings will give the Federal Power Commission the opportunity to see that our Nation's water resources are utilized in the best possible manner during a subsequent licensing period.

Of particular interest to American Public Power Association members are new provisions for enlarging generating facilities, wheeling terms, releases of water for the benefit of downstream projects, and the utilization of excess capacity in project lines.

However, it does not seem reasonable to authorize the Federal Power Commission to alter the terms and conditions of a license at any time after issuance of a new license, as section 3(b) of H.R. 12698 would permit. License applicants are entitled to some degree of assurance as to the character of their license.

The Commission should apply the broad standards of section 10(a) of the Federal Power Act during action on an application for a new license, including consideration of the provisions I have mentioned, and incorporate in the new license conditions which will properly protect the public interest and guide the conduct of the licensee during the life of the license.

PREFERENCE TO PUBLIC AGENCIES

The legislation before this committee was drafted by the Federal Power Commission, and transmitted to the Congress by its Chairman last fall. With respect to the operation of the preference provisions of the Federal Power Act, the letter of transmittal states:

> Under section 7(a) of the Federal Power Act the Commission is instructed to give preference to applications by States and municipalities in issuing licenses to new licensees under section 15. Our General Counsel has advised us that this preference applies only after it has been determined that the original licensee should not receive a new license.

We disagree entirely with this interpretation. H.R. 12698 does not alter the preference provisions of the Federal Power Act, but we are concerned lest the Commission's views on the operation of those provisions be adopted by this committee by its silence on the subject.

The legislative history of the Federal Power Act makes it amply clear that the preference language of section 7(a) applies most definitely to the issuance of new licenses under section 15.

I have annexed a copy of our interpretation of the operation of these sections, with respect to the preference afforded public agencies, and I ask that this be incorporated in my statement and made a part of the record. In the interest of time, I shall only briefly summarize the conclusions we have reached.

The precise question we considered was: Whether the Federal Power Commission must honor the preference afforded public agencies by section 7(a) of the Federal Power Act in the issuance of new licenses under section 15, where the competing projects proposed by a non-preference applicant and by a public agency are or may be made equally well adapted to develop, conserve, and utilize, in the public interest, the water resources of the region.

In our opinion, the question must be answered in the affirmative.

Sections 14 and 15 of the act are the principal sections concerned with the right of the Government to take over or "recapture" an existing project upon the expiration of the license issued for that project.

Section 14 concerns itself with the right of the United States to recapture an existing project. It is only when the United States does not exercise its rights under section 14 that section 15 becomes operative.

Under section 15, the Commission is authorized to issue a new license either to the original licensee or to a new licensee. It also provides for the issuance of an annual license to the existing licensee under certain conditions.

Section 7(a) of the act contains the preference language under which the Commission is directed to prefer the license application of a public agency provided that its plans are equally well adapted, or can, within a reasonable time, be made equally well adapted to those of a competing applicant for the same project.

In considering the application of the preference provisions of section 7(a) to the issuance of new licenses under section 15, the legislative history of the act is revealing.

The intent to prefer public agencies under some type of Federal licensing scheme was embodied in almost every bill, involving water

power legislation from 1914 to the passage of the Federal Water Power Act in 1920.

When the Wilson administration bill was received in 1918, and considered by the House Water Power Committee, the question of preference to public agencies was made discretionary with the Commission. The language was made mandatory on a floor amendment and henceforth was to remain in every subsequent version.

The preference provisions approved by the 65th Congress were strengthened by the 66th, when preference was afforded to a public agency whose plans were not as well adapted as a competing nonpublic applicant to comprehensive development of a waterway, provided that the public agency's plan could be made equally well adapted within a reasonable time.

Section 7 contained no reference to new licenses issued under section 15 when it was considered by the Senate Committee on Commerce in 1919, but the committee amended the public preference language to read as follows:

> That in issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing license to new licensees under section 15 hereof the Commission shall give preference to applications therefor by States and municipalities * * *

A conference approved the Senate amendments to section 7, and the bill was signed by President Wilson on June 10, 1920.

It seems quite clear that Congress at every turn of the way consistently adopted language which strengthened, rather than diluted, the application of the public preference, even in the face of formidable opposition expressed by the supporters of investor-owned utility interests.

By the same token, the legislative history reveals no support for the proposition that preference provisions of section 7(a) do not apply to licensing proceedings where competing applications are offered by the original licensee and a public agency.

Sections 14 and 15 of the act were certainly among the most controversial sections, but the chief items of concern were primarily the right of the Government to recapture, and the length of term of licenses to be issued, both for the original project and for new licenses, as well.

Mr. O. C. Merrill, Chief Engineer of the Forest Service in the Department of Agriculture, and a principal architect of the act, testified before the House Committee on Public Lands in 1914:

> With respect to the matter of renewal, I believe that provision should be made in any lease granted that the original lessee should have the right to renew except under two conditions, first when the site is needed for public purposes, either by the nation, by a State, or by a municipality * * *

Later bills replaced a leasing system with a licensing procedure. As late as 1920 there was opposition expressed to the preference to municipalities, and Senator Phipps suggested an amendment which would have precluded the operation of the preference clause to new licenses on the theory that those taking the initial risk should have the benefit of a new license later. His amendment was rejected.

Under section 15 of the act, the Commission is authorized to issue a new license to the original licensee or a new license to a new licensee.

In either event, there would be a new license and a new licensee authorized to act under the terms and conditions of that new license.

The act draws no distinction between the original license, issued for a project subsequently to be built, and a new license to operate and maintain a presently existing project, insofar as the applicability of the preference language is concerned.

Quite obviously, upon the expiration of the fixed term of the original license, a new license must be issued. An entirely new licensing procedure must be undertaken by the Commission upon the expiration of the old license, in the event of competing applications.

There is no automatic renewal or relicensing; such terms do not appear in the Act in any section involving the Commission's licensing authority. Contrast this with section 5 of the Boulder Canyon Project Act (45 Stat. 1060, 43 U.S.C. 617d(c)) which does provide for renewal of leases and contracts.

It is a matter of obscure semantics to urge, simply because section 7(a) refers to a "new licensee" and section 15 distinguishes between the "original license" and a "new license," that the framers of the act intended to make the preference purportedly given to the public agencies totally inoperative if the original licensee should apply for a new license. Representative Lee observed that the contrary effect was intended.

When the House was considering the conference report on the Federal Water Power act (H.R. 3184), he said:

> This same method of evaluation [for rate making purposes] will be employed in determining the prices to be paid for the property at the end of the license period if it is taken over by the United States, or if any State or municipality exercises its preference right to acquire the properties for public use. (49 Congressional Record, p. 6528).

It would have been a relatively simple task for the authors to have excepted from the preference provisions of section 7(a) situations wherein the original licensee desired to apply for a new license to operate and maintain his existing project. No such intent on the part of the authors of the legislation can be inferred from the language of the act or from its legislative history. The demonstrated successful efforts to strengthen the public agency preference provisions make it quite clear that the contrary effect was intended.

Mr. Chairman, a letter annexed to my statement, dated March 24, 1967, goes into more detail on the legislative history.

Mr. MACDONALD. Right. It will be included in the record at this point.

(The document is as follows:)

ELY AND DUNCAN,
COUNSELLORS AT LAW,
Washington, D.C., March 24, 1967.

Mr. ALEX RADIN,
American Public Power Association,
Washington, D.C.

DEAR ALEX: The American Power Association has requested our interpretation of sections 7(a) and 15 of the Federal Power Act as they relate to the issuance of new licenses, upon the expiration of licenses previously issued on existing projects by the Federal Power Commission.

The precise question is: whether the Federal Power Commission must honor the preference afforded public agencies by section 7(a) of the Federal Power

Act[1] in the issuance of new licenses under section 15,[2] where the competing projects proposed by a non-preference applicant and by a public agency are or may be made equally well adapted to develop, conserve and utilize in the public interest, the water resources of the region.

In our opinion the question must be answered in the affirmative.

I. THE PROVISIONS OF THE ACT

Sections 14 and 15 of the Federal Power Act[3] are the principal sections of the Act concerned with the right of the government to take over or "recapture" an existing project upon the expiration of the license issued for that project.

Section 14 concerns itself with the right of the United States to take over, maintain and operate any licensed project or projects upon expiration of the license, upon the express condition that the existing licensee be compensated for his net investment including severance damages. We are not concerned here with the right of the United States to "recapture" an existing project. It is only when the United States does not exercise this right that the language of section 15 becomes operative.

Failing the exercise of its right to recapture under section 14 by the United States, the Commission is authorized under section 15 to issue a new license, under such terms and conditions as may be authorized or required under the existing laws and regulations, to the original licensee or to a new licensee, provided that if a license is issued to a licensee other than the holder of the original license, compensation must be paid to the original licensee in the same amount as would be required of the United States if it had elected to take over or "recapture."

It should be noted that section 15 also provides for the issuance of an annual license to the existing licensee if, at the expiration of the original license, the United States has not exercised its right or the Commission has not issued a license to a new licensee or a new license to the original licensee. Such a license is issued on a year to year basis until the property is taken over or a new license is issued.

Section 7(a) of the Act contains the language affording preference to applications of States and municipalities for preliminary permits, licenses, and new licenses issued under section 15, provided that the public agency's plans for a project are equally well adapted, or can, within a reasonable time, be made equally well adapted to those of a competing applicant for the same project. Presumably, however, the project for which a new license is to be issued will be the then existing project, substantially unchanged.

II. THE LEGISLATIVE HISTORY

A. The legislative history of the Federal Power Act reveals a progressive strengthening of the provisions for preference to public agencies.

The intent to prefer public agencies under some type of federal licensing scheme was embodied in most of the bills involving water power legislation from 1914 to the passage of the Federal Water Power Act in 1920.[4]

Congress received the Wilson administration bill in 1918, largely in the format now present in the Act, creating a Federal Power Commission to consist of three Secretaries (Interior, Agriculture, War) who had administered water power permits under prior legislation.

The House Water Power Committee considered the administration draft, and after amending it, reported it out leaving the matter of granting preference to public agencies discretionary with the Commission.[5] The bill was amended on

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[1] Section 7(a) provides: "In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission, be made equally well adapted to conserve and utilize in the public interest the water resources of the region. . . ." (41 Stat. 1067, 16 U.S.C. § 800).

[2] 41 Stat. 1072, 16 U.S.C. § 808.

[3] 41 Stat. 1063, 16 U.S.C. 791 *et seq.*

[4] The Federal Water Power Act, now Part I of the Federal Power Act was enacted as the Act of June 10, 1920, 41 Stat. 1063, in the 66th Congress. It was preceded by bills in the 63rd, 64th, and 65th Congresses, some of which passed both Houses but failed of approval of conference reports. The Act acquired its present format in the 65th Congress, in 1918. Background of this legislative effort is found in H. Rep. No. 715, 65th Cong., 2d Sess. 13–15 (1918).

[5] H. Rep. No. 715, 65th Cong., 2d Sess. 5 (1918).

the House floor to make the preference language mandatory. The author of the amendment, Representative Doremus, explained that it: [6]

". . . makes it mandatory for the Commission to grant a license to the State or municipality, if the plans submitted by it are, in the judgment of the Commission, as good as those submitted by the private applicant."

In the Senate, very much the same desire to insure that any preference would be mandatory was expressed. See, *e.g.*, the colloquy between Senators Borah and Walsh: [7]

"Mr. Borah. . . . I do not expect at this time to have a bill which will contain nothing but provisions with reference to public ownership, but I do want a bill, when the public ownership question is presented which shall compel those executing the measure to give them the preference, and that is all I hope for. When the people of a community decide they want public ownership I want that to be final.

"Mr. Walsh. The Senator and I are at one on that point."

The mandate for public agency preference remained in the bill through the duration of the 65th Congress, and was embodied in section 7(a) of the Administration bill introduced in the 66th Congress, H.R. 3184. The bill was favorably reported by the House Committee on Water Power,[8] and when it came before the House, Representative Sinnott moved to amend the language of section 7 to further strengthen the preference. The language he proposed would preserve the preference even if the public agency's project was less well adapted to comprehensive development of the waterway than the competing project of a non-public license applicant, provided that the public agency's plan could be made equally well adapted within a reasonable time to be fixed by the Commission. The Sinnott amendment was adopted [9] and the bill passed on July 1, 1919, and was sent to the Senate.[10]

The Senate Committee on Commerce reported out H.R. 3184 without hearings, which amended the public preference language of section 7, without explanation, to read as follows: [11]

"that in issuing preliminary permits hereunder or licenses where no preliminary permit has been issued *and in issuing licenses to new licensees under section 15 hereof* the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted or shall *within a reasonable time to be fixed by the Commission* be made equally well adapted, to conserve and utilize in the public interest the navigation and water resources of the region."

The Senate approved the Committee amendment without debate, and [12] the bill passed the Senate on January 15, 1920.[13] The bill then went to conference to resolve the remaining Senate and House differences. A conference report was submitted on April 30, 1920, in which the conference approved the Senate amendments to section 7.[14] Following approval by both the House and the Senate, the bill was signed into law by President Wilson on June 10, 1920.[15]

B. *The legislative history reveals no support for the proposition that preference provisions of section 7(a) do not apply to licensing proceedings where competing applications are offered by the original licensee and a public agency.*

Sections 14 and 15 of the Act were among the most controversial sections of the legislation throughout its consideration by several Congresses. Chief items of concern were the provisions affording the Government the right to recapture, and the length of the licenses to be issued, both for the original project and for new licenses upon the expiration of the original project license.

When hearings were held in 1914 on Representative Ferris' bill, H.R. 14893 providing for the development of water power on the public lands under a leasing system to be administered by the Secretary of the Interior, Mr. O. C. Merrill, Chief Engineer of the Forest Service in the Department of Agriculture and a principal architect of the Federal Power Act testified as to procedure upon the expiration of the original lease: [16]

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[6] 56 Cong. Rec. 9804 (1918).
[7] 56 Cong. Rec. 10484 (1918).
[8] H. Rep. No. 61, 66th Cong., 1st Sess. (1919).
[9] 58 Cong. Rec. 2038 (1919).
[10] *Id.* at 2262.
[11] S. Rep. No. 180 66th Cong., 1st Sess. 13 (1919) (Additions underscored).
[12] 59 Cong. Rec. 1105 (1920).
[13] *Id.* at 1574.
[14] H. Rep. No. 910, 66th Cong., 2d Sess. 3, 8 (1920).
[15] 41 Stat. 1063.
[16] Hearings on H.R. 14893 Before the House Committee on Public Lands, 63rd Cong., 2d Sess. 414 (1914).

"With respect to the matter of renewal, I believe that provision should be made in any lease granted that the original lessee should have the right to renew except under two conditions, first, when the site is needed for public purposes, either by the nation, by a State, or by a municipality; second, when the lessee refuses to accept at the time of renewal the conditions imposed upon all other lessees."

In later bills which replaced the leasing system with provisions for issuance of licenses, the procedures to be followed upon expiration of the existing license were incorporated in sections 14 and 15, as previously discussed. Section 7(a) was amended to extend the public agency preference to the issuance of "licenses to new licensees under section 15."

Senator Phipps objected strongly to what he termed the "undue preference to municipalities in the matter of securing preliminary permits and licenses."[17] He suggested that an amendment of the bill (H.R. 3184) to preclude exercise of the preference right under section 7(a) would be proper in order to protect those people who take the initial risk, particularly with respect to later development of the secondary power possibilities of a stream. Although he made no direct reference to relicensing upon expiration of an existing license, the import of his suggestion as to the "initial risk" could clearly be extended to the issuance of a new license to the existing licensee.

The amendment offered by Senator Phipps received strong opposition, and was subsequently rejected.[18]

Under section 15 of the Act, the Commission is authorized to issue a *new* license to the original licensee or a *new* license to a new licensee. In either event there would be a new license and a new licensee authorized to act under the terms and conditions of that new licensee. The Act draws no distinction between the original license, issued for a project subsequently to be built, and a new license to operate and maintain a presently existing project, insofar as the applicability of the preference language is concerned. Quite obviously upon the expiration of the fixed term of the original license, a *new* license must be issued. An entirely new licensing procedure must be undertaken by the Commission upon the expiration of the old license, in the event of competing applications. There is no automatic renewal or relicensing; such terms do not appear in the Act in any section involving the Commission's licensing authority. Contrast this with section 5 of the Boulder Canyon Project Act (45 Stat. 1060, 43 U.S.C. § 617d(c)) which does provide for renewal of leases and contracts.

It is a matter of obscure semantics to urge, simply because section 7(a) refers to a "new licensee" and section 15 distinguishes between the "original licensee" and a "new licensee," that the framers of the Act intended to make the preference purportedly given to public agencies totally inoperative if the original licensee should apply for a new license.

It would have been a relatively simple task for the authors to have excepted from the preference provisions of section 7(a) situations wherein the original licensee desired to apply for a new license to operate and maintain his existing project. No such intent on the part of the authors of the legislation can be inferred from the language of the Act or from its legislative history. The demonstrated successful efforts to strengthen the public agency preference provisions make it quite clear that the contrary effect was intended.

With kind regards.

Faithfully yours,

(S) Northcutt Ely
NORTHCUTT ELY.

Mr. MACDONALD. Thank you very much, Mr. Ely. You have given us a good report and educational background of the act.

Mr. ELY. Thank you, Mr. Chairman.

Mr. MACDONALD. Frankly, you seemed to know a very good deal about it.

I just have a few questions.

I was not in Congress in 1953; I came in the next year; but you say, "In 1953, part I of the act was amended to exempt projects owned by a State or municipality from recapture, but not from relicensing."

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[17] 59 Cong. Rec. 1172–73 (1920).
[18] *Id.* at 1533.

This historical background is well-evidenced.

I wish you would give me the benefit of why this happened.

Mr. ELY. There had been some doubt, Mr. Chairman, as to whether, if the license were issued to a public agency initially, that license was subject to recapture by the United States in like manner as though the licensee were a nonpublic agency.

The effect of the amendment or the intended effect is to exempt from Federal recapture a license held by public agencies.

Mr. MACDONALD. How do you define public agency?

Mr. ELY. It is defined in the terms of the Federal Power Act as the State or municipality, municipal corporation, et cetera. This is defined, as I recall, in section 3(7) of the act.

Mr. MACDONALD. 3(7)?

Mr. ELY. The definitions appear in section 3(7), and here municipality means "city, county, irrigation district, drainage district or other political subdivision or agency of a State competent under the laws thereof to carry on the business of transmitting, utilizing or distributing power."

Mr. MACDONALD. I won't belabor the point with you but I don't quite understand what draining district is, frankly.

Mr. ELY. Section 7(a) which is the preference provision uses the expression that "the Commission shall give preference to the applications therefor by States and municipalities", et cetera.

Mr. MACDONALD. The other question I was going to ask you deals with the same matter that other witnesses have brought up concerning section 3(b) about which there seems to be a lot of contention in the industry.

You also seem to say that this section should be deleted from the bill even though in general, I take it, you approve of the bill.

Mr. ELY. Yes, Mr. Chairman. We have two real criticisms.

One, we agree that section 3(b) should be deleted.

Second, we object to the attempt to make negative legislative history, in a way, by correspondence from the Commission addressed to the committees which deals with their interpretations of sections 14 and 15 in the bill, itself, which does not purport to amend or enact new legislation.

We would not wish to have the Commission's interpretation of the section somehow carried forward as gloss added to the meaning of these sections without specific legislation by your committee, simply by your acceptance of the Commission's views.

Mr. MACDONALD. As I recall your testimony, you said that we would be going along with it by our silence. I am not sure that is correct, as a matter of fact, but certainly this will be discussed within the subcommittee and I am sure within the full committee.

In your objection to section 3(b), by asking the questions concerning this I am by no means wedded to the language but I am troubled as I was yesterday in sort of going over the same ground.

But it seems to me that the utilities in general are protesting just out of an abundance of caution. I think the words that show the good intent of the Federal Power Commission are contained in line 6 of that section in which they say that they will not impose upon the licensee any requirements that were not consistent with other provisions of the act and would be reasonable.

Do you see that on line 6 of the bill?

Mr. ELY. Yes; I do, Mr. Chairman.

Mr. MACDONALD. I don't see why that does not really answer most of the inquiries that the industry seems to have.

Mr. ELY. First, I say that I share your general viewpoint. I take it for granted that the grass roots of this language insofar as the Federal Power Commission is concerned, does indeed provide that they intend to act reasonably and consistently with other provisions of the act.

But this statute, this bill, if it became law, becomes operative for the indefinite future.

Now, what might have been a reasonable requirement or asserted to be one at the time that the applicant had the opportunity either to accepted or reject the tendered license, is quite a different matter after he has made the investment and is operating, to then have superimposed upon him by second guess a new requirement that the then administrator considers reasonable in the light of his knowledge perhaps 20 years after the event.

Mr. MACDONALD. That is my entire point, that since these leases or whatever word you want to use—somebody yesterday used the word "contract" which I don't think is exactly correct—but 50 years is a long time and many things might come up.

Just look back at the difference from 1920 to 1970, the growth of power and the source of power. I would think this is very reasonable that that section is in there, in the event that things did change that the Government would be estopped from being able to have the license changed in some reasonable manner to fit the new circumstances.

Now, I have not talked to the Department about that but that is just my feeling. That seems quite fair to me.

Mr. ELY. Certainly an argument can be made in support of what you just said, and particularly if those then administering the act are of a judicial temperment.

Mr. MACDONALD. You would have to assume that they will be.

Mr. ELY. Well, this is perhaps sometimes a dangerous assumption, Mr. Chairman.

I don't like to give to any administrator the power to second-guess the reliance on the predecessor's judgment upon which a large investment has been made, and this language is just too broad.

Would this, for example, permit the Federal Power Commission to say that hereafter the dispatching of loads from this particular project shall be vested in the authority of a Federal administrator?

Would it entitle the Federal Power Commission to say that hereafter you shall integrate this plant with a transmission system of our determination and you shall adjust your equipment to do this?

Mr. MACDONALD. If they were that dictatorial or unjudicious, whatever the word is, you certainly have recourse to the courts.

Mr. ELY. From experience, I would say recourse to the courts means an attempt to upset a determination made by the Commission in the exercise of its expertise which is the very meaning of the determination of reasonable requirements. These are matters of expertise, not of law.

Mr. MACDONALD. But on the other hand, if I could just interrupt at that point, the argument is not made by yourself but by other wit-

nesses that these matters should be left to the Federal Power Commission and they ought to keep Congress out of it because the Federal Power Commission was so reasonable and did have expertise in the field.

So, on the one hand, they argue under certain circumstances the Congress should not pass or recapture, et cetera, but on the other they are saying, well, the Federal Power Commission would be reasonable about this and have expertise in the matter. Congress does not have, and I would have to agree with them.

Then they argue, as you have, some vague fear that the Federal Power Commission would lose their expertise, would lose their judicial nature and turn into an ogre that is going to harass the licensee.

The two positions don't seem very consistent to me.

Mr. ELY. Addressing myself first to your initial question of why recourse to the courts is not an adequate remedy if the Commission's action is unreasonable, the fact is that the courts, including the U.S. Supreme Court, have laid down the very solid law that they will not, and indeed some have said they cannot, interfere to overturn a determination by the Federal Power Commission in the exercise of its expertise in a technical matter or any factual determination.

Mr. MACDONALD. I don't know about the Supreme Court but I do know of a case in Maine in which the Federal Power Commission's regulation was overturned by the First District.

Mr. ELY. It may be overturned if it is in violation of the statute, but it may not be overturned if within the general scope of the statute the Court say this is an exercise of their expertise. Even though we might not agree with it, we have no power to overturn it. I bear scars to prove it, Mr. Chairman.

The attempt to get a court to interfere with the Federal Power Commission's determination of what is a reasonable requirement is assuming that the statute has delegated to the Commission, as this bill would, a power to determine what is a reasonable requirement.

I say such a recourse to the court is futile unless the courts change a vast body of precedents.

Now, to address myself to your other point, why should anyone fear the Commission initially somehow would be metaphorized into an ogre. It won't. That is not the point. The point is that the requirements which are laid down in the original license are those upon which you finance. You go to the bankers with a 50-year license in hand and you negotiate a long-term bond indenture. The borrower remains obligated on those, to use the bond houses' expression, come hell or high water; it does not make any difference.

In fact, in many of these issues where force majeure, or God or the public enemy destroys your public powerplant you are still obligated on those bonds; you cannot go back and renegotiate the terms.

Now, if the Federal Power Commission does have authority ex post facto to superimpose any requirements in the future which adversely affect your project, those that have been included in the original license would have been exposed to the view of the bond buyer and you might or might not have been able to get your financing.

But after you have made your investment and the borrower is set in cement, he is helpless; he cannot accept or reject the license; he has got the property and he has consented, if this bill becomes law, that new requirements may be superimposed on the original bill.

95-619—68——10

Now, people are always going to differ as to what reasonable requirements mean. To myself, speaking from the public power corner, a requirement imposed upon the licensee might seem quite reasonable if in general it made power more readily accessible to public agencies who might not otherwise get access to it.

From the viewpoint of a private power company, the licensee, this might seem to be a very unreasonable requirement, indeed.

The Commission, I am prepared to concede, Mr. Chairman, should have some degree of flexibility in dealing with the changing conditions over the years. I don't say that you have to operate or should have to operate for 50 years in the shackles of the situation that existed at the time the license was issued; but the difficulty is, I think, the general notion of somehow investing power in the Commission to impose further reasonable requirements.

Even if you insert the word and underscore "reasonable," there have to be opportunities for changes by mutual agreement between the Commission and the licensee, and I admit this is a dilemma. I don't want to contend that the wisdom of 1968 should be the fixed wisdom for the year 2010; not at all; but I do shudder at the statutory delegation for 50 years in the Commission, for the Commission to, in effect, command this license unilaterally. It is not an easy problem to resolve.

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

Just by way of an aside, you showed that my words are not just said quite legally. The next time Lincoln-Dixie comes up, I am going to call on your services as a public servant to better present our case on the floor.

Mr. ELY. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Van Deerlin.

Mr. VAN DEERLIN. I can only say, Mr. Chairman, we will be very well advised to call on Mr. Ely's services. Smarter men than I have been listening to him for a long time in southern California and therefore I listen, too.

Mr. ELY. I could not ask for praise from a higher source.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

Mr. Ely, I welcome you to the committee. Unfortunately, I didn't get to hear all of your testimony but I assure you that I will read it very carefully.

Just a followup question and I don't think there is an easy answer.

You pose the dilemma here, I think, in your last response to the chairman's questions that you believe that there should be some degree of flexibility afforded to this Commission, also which I can understand.

I, also, am somewhat familiar with the law in this general area. I think that short of arbitrary capricious action that is virtually tantamount to fraud—a court will not overturn a determination made by a regulatory agency in exercising their valid authority.

Is there any in-between ground here? You have thought about this problem for some time and I wonder if there is any language that might accomplish these two seemingly salutary objectives.

Mr. ELY. Well, Mr. Brotzman, I wish I could give you a useful answer. I have none.

For a long time, going on 50 years, the Commission has been able to operate apparently satisfactorily under the existing law that does not give it this ex post facto authority and I am not aware of specific situations in which the existence of legislation of the type proposed here would have been necessary to enable it to cure a given situation.

I would reach the conclusion, don't grant the Commission this new authority this time in the absence of very clear and explicit examples of why the public interest has been poorly served in the past by the absence of this type of authority to make ex post facto or impose ex post facto requirements.

If there are specific cases they can bring to your attention, then perhaps it is possible to fashion language to meet that kind of problem, but this language simply throws the baby out with the bath water. You would not know when you got a license which carefully thrashed out requirements whether this was the final judgment or not.

The procedure, as you well recognize, on an application for a license, especially if it is contested, is that it is quite elaborate and out of it comes a very sharp difference of opinion on the conditions to go into the license. These are argued out, maybe amended several times before they finally appear in the order. That order of the Commission is subject to review under the statute by a court of appeals; the document that goes to the court of appeals is the license with all its conditions written in which may run up to 50 or 60 or 70 numbered conditions.

There the court, you are quite correct, will not review the expertise of the Commission in deciding that this condition or that should have been in that license. They will only review errors of law.

Then, presumably, you have the final adjudication. Now, this means nothing, really, if thereafter at any time the Commission on notice and opportunity for hearing has authority to impose further requirements in the license, drastically different from the earlier ones on which a major party relied; they may be new ones—it says further, which means initial, so that I don't know how you would ever be at rest as to just the risk you take and the terms you have.

Mr. BROTZMAN. I am aware that under the existing law there is a provision relative to alteration, et cetera, to be accomplished by mutual agreement of the parties; namely, the Federal Government and the hydroelectric company.

As a matter of practice, is there a great deal of renegotiation that goes on over a period of 50 years? I would assume there is quite a bit but I wondered how it has worked out as a practical matter.

Mr. ELY. I am really not competent to give you a very useful answer. I know of some instances in which this has happened. As to how general it is, I am just not informed.

Mr. BROTZMAN. I see.

Thank you very much.

Mr. MACDONALD. Mr. Harvey?

Mr. HARVEY. No questions, Mr. Chairman.

Mr. MACDONALD. I just have one thought

Inasmuch as there is the dilemma of inflexibility for 50 years for this new power granted to the Federal Power Commission, do you think it would serve any useful purpose not to have the contracts for 50 years?

Mr. ELY. You mean whether this should be for a shorter term?

Mr. MACDONALD. Yes.

I use the word "contract" incorrectly; the license.

Mr. ELY. Well, the license is truly a contract; it is the grant under which the licensee takes possession and occupies public lands or navigable streams and in return for which he makes promises that are enforcible. It is a contract in every sense of the word.

No; I think the duration of the license at 50 years is a long-established, well-thought-out issue, and it would be a mistake to attempt to modify it now. Long-term security of tenure is essential to adequate financing and low-cost financing in the viewpoint of the public agencies and I would not shorten the time.

I think the true answer to meeting changing conditions is negotiation between the Commission and the licensee. Surely, if the conditions have changed to the point where the terms of the original license are inequitable, these negotiations will come about. There are instances, I am very sure, where the licensee will need it and should have an opportunity to negotiate, and vice versa.

But I would shrink equally from any language that gave the licensee the power to unilaterally modify the bargain to his advantage because of changing conditions.

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

Mr. ELY. Thank you, Mr. Chairman.

Mr. MACDONALD. The next witness is Mr. Charles A. Robinson, Jr., staff counsel and staff engineer, representing the National Rural Electric Cooperative Association.

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

Mr. ROBINSON. Mr. Chairman, my name is Charles A. Robinson, Jr. I am the staff counsel and staff engineer for the National Rural Electric Cooperative Association, the national service organization of REA-financed rural electric systems. Nearly 1,000 of these systems—or approximately 90 perecnt of all REA electric borrowers—hold voluntary membership in the National Rural Electric Cooperative Association.

I am accompanied at the witness table by Mr. Gary Tabak, who performed a substantial portion of the research involved in our statement.

We appreciate this opportunity to present the views of our member rural electric systems on H.R. 12699, and the other identical House bills, which would amend the Federal Power Act to clarify the means of recapture or relicensing of non-Federal hydroelectric projects.

At our 1968 annual meeting, the membership unanimously adopted the following resolution with respect to Senate bill S. 2445—similar to the House bills now under consideration:

Whereas 50-year licenses granted by the Federal Power Commission for non-Federal hydroelectric developments, under the Federal Water Power Act of 1920, as amended, will expire beginning in 1970; and

Whereas the Federal Water Power Act provides for recapture by the United States of such projects upon the expiration of such licenses, for licensing to a new licensee or for relicensing to the same licensee; and

Whereas S. 2445 has been recently introduced providing for congressional approval before any individual project can be recaptured by the Government; and

Whereas the procedure to be followed under S. 2445 would require the Congress to authorize the project and appropriate money for the recapture of the project in two separate steps: Now, therefore, be it

Resolved, That S. 2445 be amended to provide congressional authorization and appropriation for recapture to be accomplished through one congressional action; and be it further

Resolved, That we interpret section 7 of the Federal Water Power Act to give a preference to public bodies not only when a project received its initial license but also under a relicensing procedure.

We strongly support early enactment of that portion of section 3 of H.R. 12699 which would add to the Federal Power Act a new section 15(b). The new language, to which we refer, appears beginning line 1 of page 5 of H.R. 12699.

In effect, it provides that in the event the United States does not, at the expiration of any original project license, exercise its recapture rights, the Commission, in issuing a new license to either the original licensee or a new licensee, may specify not only conditions appropriate at the time of issuance, but may, in addition, impose additional conditions on the holder of the new license at any time during the license period as may be required to serve the public interest.

This provision wisely recognizes, in our opinion, that during the substantial number of years over which the new license will be effective, changing economic and social circumstances, as well as unforeseen departures from normal rainfall, streamflow, and other environmental parameters, may require temporary or permanent changes in project operation in order to assure optimum use of the resource involved.

It seems to us, also, that the language of this proposed new section 15(b) would, at least to some extent, avoid a proliferation of contested cases involving recapture.

It is probable that many rural electric systems, and perhaps some of the smaller municipally owned electric systems, may not command the financial resources with which to justify their own applications for a license on a major project for which the original license has expired. Thus, it might be anticipated that recapture by the United States would be the most likely objective of the small system which seeks for itself a portion of the potential benefit available from an expiring license.

However, the recapture provision of the act, as presently interpreted by the Federal Power Commission and as proposed by H.R. 12699, will be burdensome and time consuming even under the more favorable procedure which we will advocate later in this statement. Therefore, it appears that very few projects will, in fact, be recaptured.

As a result, rural electric system participants in relicensing proceedings will, in terms of realistic possibilities, frequently be seeking neither recapture nor licenses of their own, but, instead, will be looking toward relicensing of the project to someone else under special conditions.

Such conditions might include delivery to the rural electric cooperative by the new licensee of a block of wholesale energy at a specified cost; the use of the licensee's transmission system for wheeling wholesale energy to the cooperative from other sources; or an arrangement whereby the licensee would pass on to the intervening rural system a portion of the economic benefit available from the water resource involved.

Therefore, we feel that section 3 of the bill, which adds a new section 15(b) to the Federal Power Act, is of extreme importance to small electric systems which desire to participate in benefits available from hydroelectric developments, the total cost of which is beyond their financial capability.

In addition, it will permit existing licensees to avoid extended recapture and relicensing proceedings by agreeing to share the benefits of the projects for which they seek a new license. Moreover, in terms of overall public interest, this section will allow the Federal Power Commission to arbitrate relicensing and recapture controversies and to retain the continuing jurisdiction over each license necessary to enforce its decision.

I might say, Mr. Chairman, that the Senate committee, which I understand ordered this bill reported the day before yesterday, deleted this provision from its version of the proposed legislation.

Mr. MACDONALD. Which portion, section 3(b)?

Mr. ROBINSON. Yes, sir. I understand the Senate has deleted this.

This portion of the legislation has been criticized as an ex post facto arrangement. However, I would point out that it is no more than the continuing rate jurisdiction which the Commission has and the authority by which the Commission maintains continuing surveillance over the rates and the conditions of service for wholesale transmission in interstate commerce and wholesale sales in interstate commerce.

As to sections 1 and 2 of H.R. 12699, we respectfully disagree with the recommendations of the Federal Power Commission as to implementation of the recapture provisions of the act. H.R. 12699 assumes that the Commission has no authority to decide recapture under the present law, and imposes on the proponent of recapture in each individual case the almost impossible procedural burden of (1) successfully persuading the Federal Power Commission that recapture is justified and should be recommended to Congress; (2) persuading the Congress to enact special legislation authorizing recapture of each individual project involved on a case-by-case basis; and (3) persuading Congress that funds necessary to compensate the original licensee should be appropriated. This type of procedural burden suggested by H.R. 12699 will be virtually insurmountable.

By contrast, it is our position that the language of the act, as now written, and as originally intended by Congress, is a delegation to the Federal Power Commission of the legislative authority necessary to exercise the recapture power reserved by the United States.

Thus, as we view it, the Commission already has authority to issue by administrative process whatever regulations are necessary to guide it in deciding recapture cases. Its decision in each such case, of course, would be subject to control by Congress through the appropriation process, because at least some funds will be required to compensate the original licensee in each case.

This interpretation of the Federal Power Act seems highly logical in view of its purpose of relieving Congress from the burden of case-by-case decisions on matters largely beyond its technical competence.

I suggest, Mr. Chairman, no disrespect for the capabilities and abilities of Members of Congress but this is a technical matter.

It does not, however, destroy congressional control over policy, which is retained via the appropriation process.

If, however, additional legislation is required to effectuate project recapture, it should, in our opinion, take the form of a general grant of authority to the Federal Power Commission sufficient to enable the Commission to decide recapture cases by administrative procedure as they arise, subject to only the appropriation power of Congress.

There is, we believe, no policy justification for requiring Congress, itself, to decide each case separately by the legislative process, which is completely unsuited to resolving technical administrative controversies. This is the type of authority which Congress has historically and repeatedly delegated to administrative agencies in a great variety of regulatory areas.

In effect, sections 1 and 2 of H.R. 12699 contain no new laws, do not modify any existing law and add nothing whatsoever to that which the Commission can already do under the Federal Power Act as now written. The submission of H.R. 12699 by the Commission is, therefore, no more than a request for legislative guidance which could probably be supplied as well by a report of this committee as by enactment of sections 1 and 2 of H.R. 12699.

The legislation takes an unrealistically limited view of the recapture and relicensing power granted the Commission under the act as it now stands, an interpretation which we believe was not intended by Congress when it passed the act in 1935.

In addition to the provisions of H.R. 12699, itself, we respectfully direct attention to the letter of August 28, 1967, with which Federal Power Commission Chairman Lee C. White transmitted the proposed bill to Congress. On pages 4 and 5 of that letter, Chairman White refers to the licensing preference afforded to States and their political subdivisions under sections 7(a) and 15 of the Federal Power Act as presently in force.

He states that in any section 15 relicensing procedure, the preference for States and their political subdivisions will not be applied by the Federal Power Commission until it is first determined that the original licensee should not receive a new license, and, that all matters being equal, the original licensee should receive the new license so long as he can meet the standards of the act as well as the other applicant.

Chairman White added, however, in his statement on recapture before the Senate Commerce Committee, that—

> We (Federal Power Commission) rejected the recommendation that a statutory preference should be established in favor of the original licensee.

This position, in effect granting a position to the licensee, runs wholly contrary to the clear intent of section 7(a) which reads, in part:

> In issuing licenses to new licensees under Section 15 hereof the Commission shall give preference to applications therefor by states and municipalities, provided the plans for the same are deemed by the Commission equally well adapted.

It seems to me the key words are "new licensees."

It is our contention that the words "new licensees" in the above language apply to all applicants for a new license, including the holder of the original license. To hold otherwise grants to the original licensee a preference not contemplated by the act.

We suggest that the committee report of H.R. 12699 make clear that the application of this preference shall apply to relicensing procedures in the same manner as it does to original licensing procedures, that is, the preference for municipalities and public bodies.

I might add, also, Mr. Chairman, that this was a major area of controversy during the consideration of this legislation by the Senate Committee on Commerce. It is my understanding now that that committee has reported the legislation. It has not specifically amended the legislation to grant a preference to existing licensees but the report of the committee as drafted and as I understand it will appear in final form will, in effect, say that it is the position of the committee that such a preference should be granted.

In other words, as I understand it, the Senate committee is going to say that unless the new applicant can show that it will better develop the stream than the existing licensee is willing to do, then the original licensee should get the new license.

Now, if you take this position, Mr. Chairman, it means that in all cases the existing licensee is going to be locked in on that side in perpetuity because the burden is going to be on any outside party to prove that he can build a better mousetrap, so to speak, than the existing fellow who has been sitting on the site for 50 years.

This is a very difficult burden to carry and it means that the person or corporation who originally received the license is going to be locked in as long as it desires to hold that license. This, it seems to us, violates at least the intent of the original act which says that licenses shall be granted for a maximum period of 50 years.

It was apparently the intent of Congress to reopen the situation at the end of the 50-year period and to give other people a chance to enjoy the use of this resource. If the preference for existing licensees is allowed to prevail either in the proposed legislation, itself, or in the committee reports, this, it seems, will vitiate the 50-year license period contained in the act.

We also respectfully call attention to the fact that the Federal Power Act is the only major Federal statute in the area of electric power which grants preferential rights to States and their subdivisions without also granting the same rights to rural electric cooperatives.

All Federal power marketing statutes include both public bodies and cooperatives in the same class of wholesale customers entitled to a priority on hydroelectric power generated at Federal dams.

It would, we believe, be appropriate at this time to amend section 7(a) of the Federal Power Act to add "rural electric cooperatives financed by loans from the Rural Electrification Administration" to those entities entitled to licensing preference under that section.

Cooperatives, like the municipals already granted such preference, are nonprofit in operation and are consumer owned. They should, we believe, be entitled to the same rights under section 7(a).

In summary, we respectfully ask that sections 1 and 2 of H.R. 12699 be amended to constitute a legislative declaration that the Federal

Power Commission already has authority under the act as now written to recapture licensed projects by administrative procedure, subject only to the appropriation of funds with which to compensate prior licensees.

As an alternative—and if that not be the present law—we suggest that sections 1 and 2 be amended to constitute a general grant to the Commission of whatever additional authority may be required to so permit recapture by the Federal Power Commission administrative process, subject only to the appropriation of necessary compensation for the prior licensee.

We further respectfully request that section 3 of H.R. 12699 be enacted as soon as possible so that the Commission will have the authority necessary to adequately protect the public interest in relicensing existing projects for which the original licenses have expired.

Finally, we ask that section 7(a) of the Federal Power Act be amended to include "rural electric cooperatives financed by loans from the Rural Electrification Administration" with the publicly owned electric systems which already enjoy preferential licensing rights under section 7(a); and that the committee report on H.R. 12699 indicate to the Federal Power Commission that such preference rights apply to the relicensing procedures under section 15 of the act in precisely the same manner as they apply to original licensing procedures.

Mr. Chairman, we are deeply grateful for your time this morning and we thank you. We know that the members of the committee are extremely busy and we apologize for taking so much time.

Mr. MACDONALD. Not a bit.

I think we agree with most of your testimony, as a matter of fact.

But the one thing that I have a question in mind concerning your testimony, Why should not the present licensee be given preference? If I understand the situation, which I think I do, say a present licensee has invested x millions of dollars to develop a project and has lived in accordance with the act; his money is already there as concrete proof that he can perform and has been performing. Why say to him, well, we are going to take your license away and give it to somebody else because you have had it for 50 years; now it is somebody else's turn?

Mr. ROBINSON. Well, Mr. Chairman, it seems to me that if that approach is accepted, then you grant to the original licensee a sort of squatter's rights. Now, of course, I recognize he is not a squatter in the true sense in legal terms, but the act as originally written contemplated a 50-year maximum license period, after which the matter would be reopened and other persons and other corporations afforded a reasonable opportunity to participate in the benefits available from this public resource.

When the original license was accepted and a project constructed, this person or this corporation knew that he was accepting it under existing law and that his rights might well be terminated at the end of the license period.

It seems to us that there is no justification for allowing an original licensee to hold that site in perpetuity to the exclusion of all other applicants; especially in view of the fact that it is something which was really put there by the Diety, so to speak, the basic resource, and that is a resource which——

Mr. MACDONALD. Yes. I am not now talking about the access to the water; I am talking about a situation where as the people from California put out in their brochure that they have built all these facilities, dams, and that sort of thing, they would have to be indemnified in the usual course of operation or ordinary law.

Where would all this money be coming from except from the U.S. Government? It woud mean also a recapture?

Mr. ROBINSON. No.

Mr. MACDONALD. It would not?

Mr. ROBINSON. Mr. Chairman, first of all, the original licensee has amortized or depreciated, whichever method of bookkeeping he uses; he now owns it at the end of the license period free and clear. If a license is granted to a new licensee, it is my understanding of the act as now written that that new licensee would have to compensate the original licensee for whatever unamortized portion of his investment remained in there. There would be no taking without compensation; the man would have to be compensated.

Mr. MACDONALD. Yes; and you are saying the compensation would come not from the U.S. Government but from the new licensees.

Mr. ROBINSON. If it were a new licensing. Now, if it were a recapture case and the Government took over——

Mr. MACDONALD. I understand that. I am talking about the relicensing. You say the new licensee would have it.

Mr. ROBINSON. That is my understanding.

Mr. MACDONALD. Where does your understanding come from? Is that part of the act?

Mr. ROBINSON. I don't have a copy of the act with me; but I believe it is pretty clearly stated in the act.

Mr. MACDONALD. I take your word for it.

Mr. ROBINSON. Mr. Ardery, a very distinguished member of the Kentucky bar, just placed in front of me a copy of section 15 which says: "Provided that in the event the United States does not exercise the right to take over or does not issue a license to a new licensee"—no; that is not it.

Here it is. Section 15:

> That if the United States does not, at the expiration of the original license, exercise its right to take over, maintain and operate any project or projects of the licensee, as provided in section 14 hereof, the Commission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the original license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof.

That is the recapture provision.

Mr. MACDONALD. Thank you.

Mr. Harvey.

Mr. HARVEY. In your statement, you state on page 5 that:

> By contrast, it is our position that the language of the Act, as now written, and as originally intended by Congress, is a delegation to the Federal Power Commission of the legislative authority necessary to exercise the recapture power reserved by the United States.

What you are saying is that the Federal Power Commission has that power right now and that this legislation is not necessary?

Mr. ROBINSON. Congressman Harvey, I think that is an arguable position. I don't think you can prove it by any precise legislative history or any case law certainly.

Mr. HARVEY. As you understand, is there any case law that would indicate that?

Mr. ROBINSON. Not to my knowledge, Mr. Harvey. However, let me read to you the recapture provision of the act.

Mr. HARVEY. That is section 14?

Mr. ROBINSON. Yes, sir.

> Upon not less than two years' notice in writing from the Commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in Section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the licensee then valuable and serviceable in the development, transmission, or distribution of power and which is then dependent for its usefulness upon the continuance of the license, together with any lock or locks or other aids to navigation constructed at the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken—

Et cetera.

Now, it seems to me that considering the fact that the entire act is a broad delegation of authority over water power development to the Federal Power Commission and that this specific portion of the act seems to very clearly reserve to the United States a complete power to take over and operate at the expiration of the license period, it is logically arguable that the United States has the power per se from this language to take over and operate and that the implied delegation of this power is in the Federal Power Commission.

Now, I will concede that this is not a conclusive case by any means but it certainly seems to me very much in conformance with the intent of Congress in enacting the original statute, especially if you consider the fact that the Commission is going to have to come to Congress anyway and say, we have decided that this project will recapture; we want some money to get the job done.

Now, if the Congress is then in a position to say no, you are not going to have any money to recapture this, the Commission then would have to reverse itself and grant a new license.

The way the proposed legislature is written, you are going to have to come to Congress each separate time a project comes up and if the Commission decides to recapture it is going to have to be done on a separate bill in each case for authority and then a second separate process through Congress for an appropriation which is virtually an impossible task to accomplish because these projects are usually local in nature and there is going to be extreme difficulty to gather your forces and to generate the necessary sentiment in the Congress for recapture.

Mr. HARVEY. I think I understand what your arguments are.

Let me ask you this question and then I will quit.

Is there anything in the legislative history of this act that you know of that would lend support to your interpretation?

Mr. ROBINSON. Well, I have not come across anything, Congressman Harvey, but I certainly will be very happy to again check that out.

Mr. HARVEY. I would be interested if there is.

I have no further questions.

Mr. MACDONALD. Excuse me, Mr. Brotzman.

On the point raised by Mr. Harvey about the Federal Power Commission, it is my information after a meeting of the best minds down there that they didn't have this authority. It seems strange that some of the wisdom in the Federal Power Commission can argue that they have it when the Federal Power Commission, themselves, say they don't have it.

Mr. HARVEY. If I might comment on that, all it takes is for two lawyers to get together in order to have a disagreement. That is just what you have here.

Mr. ROBINSON. Mr. Harvey, I appreciate your getting me off the hook on that one, sir.

Mr. MACDONALD. I was thinking of another way to get off the hook is to get yourself appointed to the Federal Power Commission.

Mr. Brotzman.

Mr. BROTZMAN. Mr. Chairman, I think that the last colloquy here gets to the point.

I have been led to believe, I guess all of us had, principally by Mr. Solomon's testimony, that we have badly needed to clarify the point legislatively that now is arguable.

I was under the impression that we were being asked to set down procedures statutorily that would perhaps remove some of the argument so that we could proceed with a degree of efficiency and dispatch when all of these come up.

As I returned to your testimony, I read the resolution of your 1968 annual meeting and I thought you were going to come out foursquare for something like what we are trying to do here as represented by the chairman's bill.

Now, as I understand it, there is really very little about this bill that you think is either required or that you would recommend that we adopt.

Mr. ROBINSON. Congressman Brotzman——

Mr. BROTZMAN. I am not trying to put words in your mouth; I am a lawyer, too. This is the way I kind of synthesize your testimony.

Mr. ROBINSON. As far as the relicensing problem is involved, I feel very strongly that the Commission has the present authority to proceed with relicensing by administrative process. If there is any question about that, it is very clearly set forth in the act.

Now, as to recapture, I think that is a horse of a different color. I think that you can argue that the Commission already has the authority. It is equally arguable that the Commission does not have the authority.

In lieu of any clear-cut decisions on the case, if I were the Chairman of the Commission, I would also come to Congress and say this is a very questionable area; we need new legislation.

We support that legislation. However, we would much rather see legislation which says to the Commission, this is blanket authority now for you to go ahead and recapture projects by administrative

process on the following criteria and, of course, in the same way that you say to the Commission, you may now license projects under certain criteria.

What the Commission is asking for, however, is a congressional approbation of a process by which each individual project would have to go through the Congress twice; it would have to go through for authority to recapture and it would have to go through the appropriations process which just means to me that no projects are going to be recaptured because that is a fantastic burden.

In the meantime, the existing licensee does not know where he stands, either. So, it seems to me that if the Commission does not now have the authority, then let's give them the authority, but let's give them general authority to proceed by administrative process as we have in the field of licensing.

The Congress will still have the opportunity to review each project during appropriation procedure but will be spared the necessity of going through the same thing twice and the Commission will be able to get on with its business.

Mr. BROTZMAN. Stop right there, please.

I could be mistaken about this but I asked this question, I think the first day of hearings trying to figure out what the legislative procedures would be. I think we are going to be forced to go through an authorization process coupled with an appropriation, in any event, aren't we? It would seem to me under the Rules of the House of Representatives that we are probably bound to that sort of a procedure.

My point is, as I say, I would defer to advice on this, but I think we are going to be held to these two legislative processes, in any event.

Mr. ROBINSON. You are saying basically that before you can appropriate any money you must have an authorization to appropriate that money.

Mr. BROTZMAN. This is my understanding of the process.

Mr. Chairman.

Mr. MACDONALD. Your understanding is eminently correct. It just has to work that way.

Mr. ROBINSON. You do not believe that such authorization could be contained in any basic legislation delegating recapture provision, delegated to the Federal Power Commission?

Mr. BROTZMAN. That is just my idea.

Well, I have no further questions.

Mr. MACDONALD. I might add that I agree with you, that relicensing and recapture, of course, are two different colors and, as I said to some witness earlier, that they get thrown around as if they were about the same thing and there is a world of difference in them, in my mind.

I think the point that you make about relicensing, you might have a point.

Mr. ROBINSON. Mr. Chairman, assuming that what the members of the committee presently agree upon is the law and that no general authorization for recapture can be delegated to the Federal Power Commission, it seems to me that in practical terms the problem of recapture becomes almost moot because I think it is going to be virtually impossible to recapture any project in the United States on that basis. So, the relicensing procedure, to use the double superlative, then becomes an extremely important consideration.

Mr. MACDONALD. I repeat the fact that the Federal Power Commission, themselves, suddenly don't have that power.

Mr. ROBINSON. Yes, sir.

Mr. MACDONALD. So, if they say they don't have the power, they are not going to exercise some power they say they don't have, so your argument becomes moot.

Mr. ROBINSON. Unless it were constitutionally deletable to them. But assuming that is impossible, then it seems to me that the relicensing procedure is of supreme importance because most of the decisions are going to revolve about the relicensing procedure and in that event, Mr. Chairman, just as strongly as we can we urge you to be very careful in putting in a preference even in the act, itself, or in the committee report which would have the effect of locking in the original licensee in perpetuity.

Mr. MACDONALD. We understand your testimony and we thank you very much for being here today.

Mr. ROBINSON. We appreciate your time.

Mr. MACDONALD. The next and last witness is Mr. Philip P. Ardery, and he is wearing two hats this morning, I take it. He is attorney for the Kentucky State Association of Rural Electric Cooperatives and also representing the Pennsylvania Association of Municipal Utilities.

STATEMENT OF PHILIP P. ARDERY, ATTORNEY FOR KENTUCKY STATE ASSOCIATION OF RURAL ELECTRIC COOPERATIVES, PENNSYLVANIA ASSOCIATION OF MUNICIPAL UTILITIES, AND ASSOCIATION OF MUNICIPAL UTILITIES OF MASSACHUSETTS

Mr. ARDERY. Mr. Chairman.

I will add to that, Mr. Chairman, that I have been asked also to represent the Association of Municipal Utilities of Massachusetts, as well.

Mr. MACDONALD. Very happy to hear that.

Mr. ARDERY. Thank you, sir.

Mr. Chairman, members of the committee, my name is Philip P. Ardery. I am an attorney, of Louisville, Ky.

I represent consumer utilities in a number of States, and today I am appearing at the request of the Associations of Municipal Utilities of the States of Pennsylvania and Massachusetts, and the Kentucky Association of Rural Electric Cooperatives.

These organizations thank you gentlemen for giving me the opportunity to appear and make a statement.

I would particularly like to address myself to some of the statements which have already gone into the record of the committee hearings, both House and Senate. In particular, I would like to comment on statements made by Chairman White of the Federal Power Commission which I think may be susceptible of some misunderstanding.

First, I note the Chairman in his statement says these bills "are procedural bills designed solely to permit the recapture and relicensing determinations to be made efficiently and in harmony with the purpose underlying the limited-term license." There has been no attempt, he says, "to modify the substantive standard which the Commission is required to apply in determining whether or not to recommend recapture and in passing upon relicensing proposals."

The people I represent would agree that in almost their entirety the bills themselves are procedural rather than substantive. However, we believe there is a serious substantive change in one or two matters as a consequence of the hearings on the bills.

The first of these matters relates to the question of the applicability of section 7(a) of the Federal Power Act to the relicensing provisions of section 15. Chairman White in his statement recognizes and characterizes the relative rights of all applicants upon relicensing to be "substantive." But, by his testimony and the comments regarding the opinion of his staff counsel, Mr. Solomon, Chairman White appears to be seeking to create legislative history on one side of a seriously contested issue.

The side he takes would in effect give rights in perpetuity to all existing license holders so long as they wish to retain their licenses.

I can assure you that I and many other attorneys read the present legislative history of the act quite differently from Messrs. White and Solomon. I believe Mr. Northcutt Ely has made or will make a more detailed statement of what we believe to be the proper reading of legislative history on this point—up until new legislative history began to be generated as a consequence of the bills we are here to discuss.

But if the committees of the House and Senate incorporate the White-Solomon interpretation with apparent approval, I firmly believe a public body will never obtain the rights derivative from any presently licensed projects. This, of course, would not mean a mere neutral attitude such as Chairman White's statements would imply. This, in practical effect, would mean a reversal of preference. It would mean as a matter of realism that the true holders of preference from now on would be the existing licensees.

Here I would like to pose to you the question: If these bills are purely procedural, as the Chairman says, why were they presented at all?

Section 309 of the Federal Power Act gives the Commission broad powers to make rules and regulations to govern its own procedures. The United States Court of Appeals, District of Columbia Circuit, in the case of *Niagara Mohawk Power Corporation* v. *Federal Power Commission*, decided May 18, 1967, interpreted the Commission's powers under section 309, commenting:

> The Act is not to be given a tight reading wherein every act of the Commission is justified only if referrable to express statutory authorization. On the contrary, the Act is one that entrusts a broad subject-matter to administration by the Commission, subject to Congressional oversight, in the light of new and evolving problems and doctrines.
>
> In support of this conclusion we note first the familiar provision, contained in this Act as Section 309, authorizing the Commission "to perform any and all acts, and to prescribe * * * such orders * * * as it may find necessary or appropriate to carry out the provisions of (the Act)."
>
> While such "necessary and appropriate" provisions do not have the same majesty and breadth in statutes as in a constitution, there is no dearth of decisions making clear that they are not restricted to procedural minutiae, and that they authorize an agency to use means of regulation not spelled out in detail, provided the agency's action conforms with the purposes and policies of Congress and does not contravene any terms of the Act.

The consumer utilities here contend there was a clearly evident strong intent in the enactment of part I of the Federal Power Act to give preference to public bodies in the disposal of the Nation's natural

resources of hydroelectric power derived from the country's navigable streams.

We say the legislative history—up to now—clearly demonstrates that there was no intent to grant perpetual franchise to those so fortunate as to be able to exploit those resources for private benefit during the first 50 years of the act.

We urge upon this committee, therefore, and upon the Congress that you do not grant such perpetual franchise by the language of a committee report.

In addition to the interest effort being made to effect substantive change in the law through use of committee reports on the matter of preference on relicensing, there is another and totally inconsistent position taken by the Commission on these bills.

The Chairman stated to this committee, according to the transcript of his remarks which I received, that in any licensing proceeding, "the existing standards set out in section 10(a) of the Federal Power Act would be the critical test." In other words, the original licensing procedure would apply on relicensing—except that no preference would be granted to public bodies such as is required under original licensing.

What, then, is the consequence of this? We think the consequence can be quite serious. Because, as we read sections 4 and 5 of the Administrative Procedure Act, and as a matter of procedure, upon relicensing the existing license holder can be judged upon the history of his operation of the project. If the existing licensee did a miserable job, that history of stewardship would be taken into account in considering the propriety of renewing the license.

But if, as the Chairman says, the Commission is to follow the procedures of section 10(a), there can be no consideration given to the quality of operation of the project by the original licensee. In original licensing, there has been no history of operation.

Thus, we feel the Commission, by its statements to this committee has put itself in the curious position of saying relicensing goes one way to protect the existing licensee from the possible consequences of his misconduct, and yet in the exact opposite direction to protect the existing licensee against the possibility that his license may be lost to a preference customer.

What, then, is our recommended position? It seems to us there are several courses Congress might follow.

The first would be, if there is any genuine doubt about the applicability of preference to relicense, to face the matter squarely like previous Congresses have and say preference does apply. The same principle in giving the public "first go" at its own resources applies on relicensing just as upon licensing. The same motive that impelled Congress to write in preference in the first place should move Congress 50 years later to retain it.

If that first choice should not be the wish of Congress, then it seems to us the second choice would be to say to the Federal Power Commission: Congress has already laid upon your shoulders the responsibility to adminster the Act, and by section 309 provided you with the means of deciding your own procedure. Don't come to us with matters you say are purely procedural and ask us to write your procedures for you. Then kill the bill. If there are, as a consequence

of this, conflicting interpretations of procedures followed, they are for the courts.

If neither of the first two courses should be followed, then it seems to us Congress should face directly the consequences of the apparent course of present action. That consequence is the granting of rights in perpetuity to present licensees. Congress should say:

"We believe the present licensees should have preference over other applicants."

If Congress does feel the existing holders should in all cases continue, it should not permit such an important principle in the law to come as a consequence of implantation into the committee reports of background items such as will produce the same effect.

We urge you gentlemen to see these issues clearly. We are confident if you do you will take a stand one way or the other in a completely responsible manner.

We are further confident you will protect the interests of all the people first in the stewardship of this important element of the nation's natural resources.

Thank you, Mr. Chairman.

Mr. MACDONALD. Thank you, Mr. Ardery, very much, for your fine statement.

I have a question which I perhaps should have addressed to Mr. Robinson but I didn't actually think of it in time because I was under the misconception that the present license would be paid by the U.S. Government. After I thought about it for a while, say the new licensee pays indemnity, if that is the word, to the old licensee. But what happens, as a concrete example, to the stockholders?

You name any utility and it has been purchased and a number of people rely on this for their income, make the case about the widows and the orphans rely on this income, what happens to them?

Mr. ARDERY. Mr. Chairman, I think the answer to that is very simple. The depreciation of these facilities is established in the accounts which are made a part of the regulation of the Federal Power Commission. They have all been depreciated out, at least I think most of them have been depreciated out.

Now, if they are not depreciated out, as I understand this, if it is a recapture by the Federal Government, the Federal Government has to pay——

Mr. MACDONALD. I guess I did not make myself clear or you don't understand my question.

My question is, say I own, which I do not, 1,000 shares in Consolidated Edison which is a Boston utility and I have left that to my widow. Somebody comes along, the Federal Power Commission or the Congress, and says, well, the license that they had is no longer to be held and it is going over to the Jones Co. What happens to the people who own shares in Con Ed?

Mr. ARDERY. I think it would be the same thing if Con Ed had sold that property to another utility. I don't think there would be any change in the books at all as to the assets owned by Con Ed.

Mr. MACDONALD. In other words, the shareholders of Con Ed would then become shareholders in the Jones Co.?

Mr. ARDERY. No.

I am suggesting, suppose Con Ed had a hydro project which is not subject, we will say, to a Federal Power Commission license, yet owns

this project, and it sells the project to a neighboring utility. It is being compensated for it; it does not run Con Ed out of business. Selling one of its physical assets, part of its facilities, does not alter, to my mind, the position of the shareholder. The value being paid for this is paid into Con Ed; the shareholder is not affected, as I see it, at all.

Mr. MACDONALD. You said it a little differently than I did.

Mr. ARDERY. If Con Ed sold a generating station to a neighboring utility, would you think if you were a stockholder of Con Ed, sir, that this would affect you if it sold it for fair value?

Mr. MACDONALD. No, but what if they sold the whole thing? I mean, if the whole thing is taken away from them?

Mr. ARDERY. I am suggesting to you, sir, that as far as I know the companies that have these licenses, if they are investor companies, are not totally dependent upon these hydro facilities.

I don't know of a single case where an electric utility would be put out of business as a consequence of recapture or relicensing of a hydro project to some other entity.

Mr. MACDONALD. A gentleman testified, I think his name was Jones, yesterday, for the Maine Central Power, and he didn't read his testimony but I happened to read it because it interested me in that part of the country. He was talking about the hydroelectric power that they got from two rivers up there. I think that is their main source of supply. I may be wrong but I think so.

If his company's main source of supply was given to another licensee, what would happen to the shareholders in Maine Central? Once again, which I am not one.

Mr. ARDERY. Well, sir, if they had licensing facilities that were worth $10 million and they were turned over to another licensee and they were paid $10 million for them, it seems to me that it would not affect the stockholders.

Mr. MACDONALD. They get paid off at one time; there is no continuing return on the investment; right?

Mr. ARDERY. Of course, the utility that lost the facility could invest this money immediately in additional facilities.

Mr. MACDONALD. Yes, but what if they invested it in something that turned out not to be a very good investment?

Mr. ARDERY. Mr. Chairman, I do think——

Mr. MACDONALD. You are not before the SEC and I don't own any stock in anything so I don't understand the stock market very well, but it just struck me that neither of you gentlemen in your fine testimony covered it.

It is not just the facilities; it is the people that own shares of stock. It seems to me they would be being deprived of something that they had.

Mr. ARDERY. I am personally acquainted with the situation with one utility now that is selling a rather substantial portion of its facilities to another utility. I cannot see that that affects the stockholders of the selling utility.

Mr. BROTZMAN. Would you yield for just one question?

Mr. MACDONALD. Yes.

Mr. BROTZMAN. Suppose a Federal agency took over the recapture, you know, one of the Federal agencies? Obviously, they would not continue to have the same equity relationship on the part of shareholders; they would have to pay them off; would that not be correct?

Mr. ARDERY. No, sir; I don't believe so.

The Federal Government has to pay the net investment. There may be some cases where the utility is quite small and is totally dependent upon one of these licensed projects; I don't know of any. In any case that I know of, it would be simply like the utility that I have mentioned to you that sold a portion of its facilities to another utility.

Mr. MACDONALD. Mr. Van Deerlin.

Mr. VAN DEERLIN. No questions.

Mr. MACDONALD. I appreciate your position very much and I think you have stated it, as did Mr. Robinson, very clearly.

Since Mr. Robinson seemed to know what happened in the other body which I don't know, I was wondering how they handled it?

Mr. ARDERY. I don't have that information.

Mr. MACDONALD. Mr. Robinson?

Mr. ROBINSON. The question on priority to existing licensees?

Mr. MACDONALD. Yes.

Mr. ROBINSON. I have here, Mr. Chairman, a draft of the committee report which was proposed for adoption over there and it is my understanding that the committee this week adopted language substantially similar to what was in this draft report:

> If the original licensee files an application for a new license, unless the Commission finds that the project has such modifications and conditions that it may prescribe would not be vested up to a comprehensive plan for improving or developing the waterway involved, the Commission should issue to the original licensee a new license containing such modifications and conditions as it may find appropriate or necessary.

It continues:

> Continuity of ownership and management is desirable to service resulting from the severance of a project from an integrated system. The upsetting of existing tax patterns which are a substantial source of revenue to many communities, dislocation of jobs and other possible adversities resulting in granting of the license to a different licensee can only be justified when the existing licensee is unable or unwilling to carry out whatever modifications are found to be necessary for comprehensive development of the waterway or to meet the standards of the act.

That is proposed committee report language and this was not included in the bill although there was, I understand, an effort to include this type of language in the bill.

There will, however, also, I understand, be a minority view printed in the report of the committee in the Senate in an effort to try and counteract the effect on the Commission of the language which I have just read.

Mr. MACDONALD. Thank you very much.

The final witness has been heard, and the hearings are adjourned.

(The following material was submitted for the record:)

STATEMENT BY OAKLEY JORDAN, PRESIDENT OF COLORADO RIVER BASIN CONSUMERS POWER, INC.

Mr. Chairman and Gentlemen of the Committee: My name is Oakley Jordan. I am President of Colorado River Basin Consumers Power, Inc., of Salt Lake City, Utah.

The Colorado River Basin Consumers Power, Inc., an association of municipally structured and REA financed co-operatives with members in the states of Utah, Nevada, Arizona, New Mexico, Colorado and Wyoming, are interested in the orderly development and judicious use of water projects in the area it represents

and in the nation as a whole. We firmly believe that the United States should exercise its rights in recapturing hydro projects at the end of the licensing period. We, also, believe that clarification should be made to establish the procedure to be followed in this recapture of a project by the United States. We would suggest that all interested parties should have the privilege of filing for a license on such projects without prejudice in favor of prior licensee.

The continually increasing demands on water require the utmost diligence in making commitments for any long term purpose. We urge you to establish all possible safeguards to assure that water so committed will be put to uses most beneficial to the public in general.

We, therefore, respectfully request your committee to provide the guidelines by which the best possible utilization of the nations limited water resources can be realized.

STATEMENT ON BEHALF OF GORDON M. FREEMAN, PRESIDENT, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO–CLC

Mr. Chairman and Members of the Committee, on behalf of the International Brotherhood of Electrical Workers, I submit this statement in support of H.R. 12698 and H.R. 12699 which will amend Part I of the Federal Power Act to clarify the manner in which licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised.

The International Brotherhood of Electrical Workers represents a total of nearly 900,000 members. Of these, 220,000 are directly employed in the generation, transmission and distribution of electrical energy. We represent, through collective bargaining agreements the employees of 75% of all the investor-owned private utilities throughout the United States. In addition we have agreements covering wages, hours and conditions of employment with Bonneville Power Administration through the Columbia River Trades Council; also with Tennessee Valley Trades and Labor Council; the Southwestern Power Administration and many Public Utility Districts. We also have labor agreements covering employees of over 265 Rural Electrification Cooperatives as well as the Bureau of Reclamation and many Municipalities throughout the United States.

Our primary interest in H. R. 12698 and H. R. 12699 is to assure the continuity of employment opportunities for the thousands of IBEW members employed in the hydro projects throughout the country. The investor-owned Utilities have invested hundreds of millions of dollars in the existing facilities. Most of the hydro locations are in remote sections of our states and as a result the personnel necessary to operate and maintain thee hydro projects, must necessarily, live in the immediate vicinity. This requirement in turn makes it virtually impossible for these workers to find other employment except that they move their families long distances and undergo retraining in order to continue their employment with the licensee of the hydro project.

We believe that inasmuch as the Congress extended the original license question to the Federal Power Commission that the F.P.C. should maintain authority to determine the question of relicensing.

We do not particularly support the proposed wording to Sec. 2, Section 14 (b) "No earlier than five years before expiration of any license, the Commission shall entertain applications for a new license and decide them in relicensing proceeding pursuant to the provision of Section 15, * * *". We believe the current provision as stated in Section 14 of the Act that two years is sufficient notice prior to the expiration of an existing license.

The IBEW feels any take-over by the Federal Government must inevitably result in some disruption in the operations of the licensee. Such disruption and the severance damages which must be paid on take-over are wasteful to the national economy and, wherever possible consistent with other relevant considerations, should be avoided. The take-over of a licensed hydro project which is an integral part of the system would require replacement of the project capacity and kilowatt hour output by other means of generation. The relocation and disruption to the personnel involved would not be in the best interests of our membership.

Further, the take-over of an existing licensed hydro project from the investor-owned utility would have a direct derogatory effect on the tax structure of the county and state in which the facility were located, this loss of tax revenue would have to be absorbed by the remaining business and private citizens in the area.

The IBEW would encourage and support language in the Federal Power Act, as amended, which would specifically provide preference for the reissuance of a license to the original licensee.

On behalf of the members of our Organization, I wish to express my appreciation for your consideration.

STATEMENT OF R. F. GILKESON, PRESIDENT OF PHILADELPHIA ELECTRIC CO.

Philadelphia Electric Company (Philadelphia Electric) is deeply interested in House Bills 12698 and 12699 (the Bills) which would amend Part I of the Federal Power Act so as "to clarify the manner in which the licensing authority of the [Federal Power] Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised." Philadelphia Electric is interested in this legislation because it owns and operates the Muddy Run pumped storage hydroelectric project (FPC Project No. 2355) which has a nominal capacity of 800,000 kw and, through its subsidiaries, also owns and operates the Conowingo Project plant (FPC Project No. 405) which has a nominal capacity of 500,000 kw.

The Company is in general agreement with the purposes of the Bills and it is believed that with the revision hereinafter described, enactment of the Bills would be in the public interest.

Philadelphia Electric is an investor owned electric utility serving approximately four million people in southeastern Pennsylvania and northeastern Maryland. Its electric service territory aproximates 2,225 square miles and its investment in electric plant was $1.48 billion at the end of 1967. It owns and operates 10 thermal electric generating stations with a total capacity of 3,317,000 kilowatts and is a joint owner with others of thermal generating plants with a capacity of 1,800,000 kw. Its two hydroelectric plants have a total capacity of approximately 1.3 million kw.

Philadelphia Electric is a member of the oldest and one of the most important power pools in the United States, the Pennsylvania-New Jersey-Maryland Interconnection (PJM). This power pool by membership or association is comprised of 12 electric operating companies which operate in Pennsylvania, New Jersey, Maryland, Delaware and the District of Columbia. It serves approximately 20,000,000 people; has a total generating capacity of about 23,000,000 kilowatts and is interconnected throughout by high voltage transmission lines. It is also interconnected by high voltage transmission lines with all of the adjacent electric reliability coordination areas. Both the hydroelectric and thermal generating plants of the power pool are operated as a unit so as to achieve the most reliable and most economical power supply feasible. The twelve operating companies have recently formed a planning organization under the Mid-Atlantic Area Coordination agreement (MAAC) in order to assure the highest degree of electrical reliability. The hydroelectric facilities of the system, which can be started instantly, make a significant contribution to voltage control and service reliability. The plans of each member are mutually dependent on the plans of all other members and the rates of all the members are regulated by state agencies. All of the members are also subject to regulation by the Federal Power Commission.

The function of hydroelectric developments in the Philadelphia Electric system and in other similar systems has changed greatly in the last 40 or 50 years. Thus in 1928 Conowingo supplied about 40% of the total energy generated by Philadelphia Electric, whereas in recent years it has supplied less than 10%. Conowingo and Muddy Run are operated as a unit; Muddy Run using the pond created by the Conowingo Dam as the source of water during its own storage cycle. In order to make their greatest contribution to the electric energy economy of the area, these hydro plants have been integrated into the Company's large hermal generating system. This is necessary because the plants do not have adequate water to function as base load plants, but must function as "peaking plants", which is to say, during the hours each day when the system experiences its peak demands. This is a tremendously important function and a most economical one, for otherwise other types of peaking plants, with their very high operating costs, would have to be constructed and maintained ready for use at all times even though operated only a few hours each day. Thus the only genuine contribution which can be made by such plants as Conowingo and Muddy Run is their use as peaking plants in large integrated thermal electric generating systems. This, to reiterate, is an extremely important function.

The license for the Conowingo Project expires in 1976. If this plant is taken out of the Philadelphia Electric system, a great economic loss will occur and it is possible that the reliability of the power supply throughout the MAAC Area will likewise be affected because of Conowingo's contribution to voltage control and service reliability.

In addition to its contribution as a necessary component of a predominately thermal system, Philadelphia Electric has insured that the entire Conowingo Project is operated in accordance with principles and policies of the Federal Power Act. Among other things, the Company has provided extensive recreational facilities at Conowingo and is constructing a comprehensive recerational development at Muddy Run. It has cooperated fully with State agencies with respect to all matters relating to waterways. Under agreement with the licensees, the Conowingo reservoir is used as a source of water for municipal purposes by the City of Baltimore, Maryland, and licensees have agreed to permit the reservoir to be similarly used by Chester Water Authority.

Accordingly it is vitally important not only to Philadelphia Electric and its associated companies in the described power pool, but particularly to the large number of consumers in its populous service area, to know at the soonest possible date whether or not the Conowingo Project will continue to function as it does today. Similar situations undoubtedly exist in many parts of the country.

At the present time a good deal of uncertainty, confusion and delay exists under Federal Power Commission procedures involved in determining whether a new license will be issued to the original licensee or whether other action will be taken at the end of the license period. The Bills propose to clarify this situation by providing five years in advance for notice of expiration of a license, and giving the Federal Power Commission authority to renew a license under certain conditions. The aims of the Bills are in the direction of more orderly administration while at the same time protecting the interest of the Federal government. Moreover, the Bills would delegate to the Federal Power Commission, an expert body, authority to determine the importance of licensed hydroelectric projects to the economy of the particular region and broader authority to act in accordance with its knowledge of important and often technical facts.

The Federal Power Commission, through its licensing and constant review, is well equipped to ascertain and evaluate the technical facts which would naturally be involved in considering whether a project, such as Conowingo, should be relicensed to the then licensee or whether it would be in the public interest for the project to be taken over by the Federal government. Giving the Federal Power Commission wider discretion with respect to these important and often highly technical matters would appear to be in the public interest. We therefore support the Bills with the addition of the clarifying passage set forth below.

Because many of the projects licensed by the Federal Power Commission are woven into the fabric of systems such as PJM and MAAC in such a way as to take the greatest advantage of the special characteristics of hydroelectric generation, we suggest that there be a reasonable limitation on the time for Congressional consideration of any recommendation for the taking over of a project and that when the Congress fails to take over a project any original licensee who has financed, developed and operated the project in accordance with sound principles of public interest be authorized to continue the operation. We feel that the following language added after the first paragraph of Section 2 of the Bills would provide such clarification:

"If no recommendation is made for the taking over of a project by the United States, or if the Federal Power Commission or any Federal department or agency recommends such taking over and Congress does not provide therefor by the end of its next full session, the project shall be relicensed to the original licensee if the Commission finds:

(1) That the licensee is operating the project in accordance with the provisions and policy of the Federal Power Act,

(2) That the rates of the licensee are regulated by appropriate governmental authority,

(3) That the project is reasonably consistent for plans for the comprehensive development of the particular waterway, or the licensee agrees to make such modification as will achieve such consistency,

(4) That severance of the project will cause consequential detriment to the licensee and its customers.

With the foregoing modification I believe that enactment of either H.R. 12698 or H.R. 12699 is clearly in the public interest."

INTERMOUNTAIN CONSUMER POWER ASSOCIATION,
June 10, 1968.

SUBCOMMITTEE ON COMMUNICATIONS AND POWER,
House of Representatives,
Washington, D.C.

GENTLEMEN: Intermountain Consumer Power Association members, having a vital and long term interest in water development and hydro-electric projects in our area, do most strongly urge the House Subcommittee on Communications and Power to refuse automatic re-licensing of hydro projects.

The Federal Power Act clearly states that all such projects are to be reconsidered at the expiration of the licensing period. Considering that these licenses were issued for a period of 50 years, Intermountain Consumers feels that the costs incurred by the licensees have long since been amortized. The water needs of this area are varied and many and we request that the United States recapture these projects and allow public entities to file for license of these if they so desire.

We suggest the stipulation be made in any re-issuance of license that the licensee must operate the project consistent with the best use of regional resources.

Very truly yours,

WAYNE H. JOHNSON,
Executive Director.

STATEMENT OF VIRGINIA ELECTRIC & POWER CO.

Virginia Electric and Power Company respectfully requests the Committee's consideration of these comments upon H.R. 12698, a bill proposed by the Federal Power Commission as an amendment of Part I of the Federal Power Act to deal with now approaching expirations of hydroelectric licenses.

To identify our Company we mention that we provide the electric requirements of the public in the greater part of Virginia and parts of West Virginia and North Carolina. Our peak load in 1967 was 3,499,000 kilowatts and we supply nearly 1,000,000 customers. Our experience with licensing under the Federal Power Act stems largely from our construction and operation of major hydroelectric developments on the Roanoke River in Virginia and North Carolina under license from the Commission.

1. OUR COMMENDATION OF THE PURPOSE AND DESIGN OF THE BILL

First, in our Company's view the Commission's proposal performs a highly valuable public service in devising sound machinery and standards for decision by the United States, when hydroelectric licenses expire, whether to take over the licensed projects for federal ownership and operation or to relicense them. Such machinery and standards are now indispensable as outstanding licenses are now beginning to expire and in a few years they will be expiring at a substantial rate.

We commend the proposal in recognition that one of the basic purposes of Congress in passage of the Act was to relieve Congress of the burden of studying each individual project to decide between licensing and federal construction, and, as recited in the Commission's bill, "congressional consideration of each project upon the expiration of its license is no more feasible than congressional consideration of each initial license application. . . ."

We also commend the Commission's proposal in recognition that the present Act expresses no standards upon which the Congress will make the decision between take-over or relicense or which shall guide the Commission in any recommendations it makes to the Congress on that issue. The Commission's proposal supplies these standards for Commission recommendation, and supplies them as essentially those which the Commission has developed with the approval of the Congress and the courts in discharge of the Commission's duty to decide whether to grant an initial license or to recommend federal development.

2. THE PROPOSED POWER TO CHANGE RELICENSES AFTER ISSUANCE

The Commission's bill proposes one substantive change in present law which goes quite beyond the basic purpose of the bill to provide the machinery and establish the standards to decide in each case whether there shall be federal take-over or relicense. The proposed change is, we are convinced, subject to serious objections and at the same time is altogether unnecessary.

Under Section 15 of the present Act, if the United States does not take over at license expiration, the Commission may relicense. The Commission's bill proposes in its Section 3(b) that *after* such a relicense, issued and accepted, the Commission may impose upon the licensee new and undefined burdens, unknown to the licensee at the time the relicense is accepted.

This has nothing to do with the basic purpose of the bill to help the Commission and the Congress make an intelligent decision between take-over and relicense, unless we assume that at the time of license expiration the Commission and the Congress are unable to make up their minds between take-over and relicense. But a new power to change the rules after relicense is not needed to guard against a premature, improvident decision because already, under the present Section 15, the contingency that neither take-over nor relicense has been decided upon at expiration is taken care of by the provision that, in such case, the original license shall merely be continued from year to year on an annual basis. Certainly it cannot be supposed that the Commission and the Congress could never make up their minds between take-over and relicense. The choice will be made and it will then be a choice between federal take-over and a new license to be issued upon requirements and conditions then found appropriate by the Commission and for such term, long or short, as the Commission finds to be in the public interest. The Commission is already empowered by the present Section 15 to write new conditions and requirements in a relicense or new license. This section provides that such may issue "upon such terms and conditions as may be authorized or required under the then existing laws and regulations. . . ." Even if Commission consideration requires several annual relicenses upon the original terms, there is no reason the Commission cannot decide the requirements for a relicense at its beginning, and it can make the relicense as short as it finds desirable.

Nor can it be supposed that the Commission must have this new power to change the rules after relicense in order to prevent a licensee from defeating imposition of new requirements at the beginning of the relicense by a technique of repeated rejection of the proffered relicenses, hoping to compel perpetual automatic annual licensing under present law. The licensee may not do this in resistance to any lawful relicense conditions. If that is attempted, continued operation of the project is unlawful under the present Section 23(b) and can be enjoined under the present Sections 26 and 315 as well as punished under Sections 315 and 316. For this very reason it is possible that amendment of Section 15 as proposed by the bill may lead a licensee to discontinue operation and abandon a project rather than accept any relicense with its commitment to undefined future burdens.

It is true that the future burdens are described in the bill disarmingly. The proposal is that at any time after relicense the Commission may "impose upon the licensee such further reasonable requirements as are not inconsistent with the other provisions of this Act." Although it may be soothing to a licensee to be told he signs only a reasonable blank check, nevertheless he has no way of knowing what others will consider reasonable. And it is unjust, altogether unnecessary and unjustifiable that he should be required to sign such a blank check.

The present Act already empowers the Commission both under original licenses and relicenses to make new rules during the term of any license in one specified area, but there the justification is self-evident. Section 10(c) provides that a licensee "shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property." No one objects to continuing authority to redetermine safety requirements; the industry did not, and neither did we, when the Commission proposed and adopted its present Regulations, Part 12, for "Inspection of Project Works with Respect to Safety of Structures", made applicable to projects already licensed, including ours. Order No. 315, December 27, 1965, 34 F.P.C. 1551. Beyond such clearly necessary authority however, we believe there is every reason the Commission should determine license obligations before a licensee is expected to assume them and there is no reason that the Commission should not do so.

The proposal that the Commission should have power to change a relicense during its term is a departure from the protection which outside the specific authority as to safety requirements is given by the present Section 6 against midterm changes of initial licenses. The Commission's proposal to treat a relicense differently may stem from the view that need for assurance of stable license terms to invite the investment necessary to bring about the original de-

velopment is not necessary for relicense after development. But new investment during the term of the original license and new investment for redevelopment upon license expiration may either or both be thoroughly desirable for full development of resources. Both are discouraged if the law of relicense is now changed so that none will be available except an unstable license subject to unknown future burdens.

The Commission itself recognized in transmitting the bill that the length of term of relicense might appropriately depend upon the amount of redevelopment outlay which may be then needed. The prospect of future burdens of unknown nature or degree can discourage new investments just as harmfully as a short term of relicense. Indeed we respectfully submit that, rather than through a continuing right to change the relicense after it is issued, the proper approach for the Commission's safeguard for needs of the future is through balancing the term of relicense, along with such new license requirements as the Commission finds appropriate, against desirable new investment and other public benefits and burdens resulting from continued operation and maintenance of the project under license. The Commission already has full authority to exercise its discretion to promote and protect the public interest in this way.

3. SUGGESTIONS TO CLARIFY THE PROPOSED PROCEDURE

Our comment here deals only with mechanics of the proposed bill with suggestions which we believe will enhance effectuation of the purposes of the bill.

There is an apparent conflict between the proposed amendment of Section 7 of the Act and the present Section 15. It probably is not intended, but the wording may have unintended results. The provision, the first Section of the bill, is:

"Whenever, in the judgment of the Commission, the United States should [take over a project at license expiration], the Commission shall not issue a new license to the original licensee or to a new licensee but shall submit its recommendation to Congress. . . ."

We are confident that this proposal is not intended to prevent the Commission's compliance with the direction in Section 15 to issue an annual license from year to year on the original terms until take-over or issuance of a new license, but literally the proposed wording can be read as precluding such annual relicensing. The draftsman may have deemed the words "a new license" in the above as different from the words "an annual license" in Section 15 and thus to avoid conflict. However, none of these are defined terms and so there does exist the needless hazard that the unqualified prohibition of licenses by this Section 7(c) may be read as prohibiting yearly licenses under Section 15. That reading would either force the Congress to a precipitous decision or automatically turn the licensee into a trespasser merely for lack of congressional action at license expiration.

Another hazard in the wording of Section 7(c) is that it may possibly be read to mean that once the Commission recommends take-over its licensing authority is never thereafter restored even though Congress does not accept the recommendation. Of course Congress can at that time reauthorize Commission action, but this would require a new Act of Congress for each such project. Surely with passage of time, and no take-over action, projects should not be left in limbo and the Commission without power.

That the problem of interpretation here is serious enough to warrant clarification is emphasized by the strenuous contention made by the Secretary of the Interior in *U.S.* v. *Federal Power Commission*, 191 F. 2d 796, 806 (4th Cir., 1951), that where, under Section 7(b), the Commission has once reported to Congress that in the Commission's judgment a project should be federally developed, the Commission thereupon forever loses its licensing power. While the Circuit Court disagreed in view of Congressional inaction, the question was not resolved by the Supreme Court which held merely that the Commission's report did not in fact recommend federal development in preference to a license. *Chapman* v. *U.S.*, 345 U.S. 153, 173 (1953).

We submit that both above problems of interpretation should be clarified and that this may readily be done by adding to the proposed Section 7(c):

"*Provided*, that if the United States does not so take over within—years from such recommendation the Commission may thereafter issue a license as provided in Section 14 of this Act and until such project is taken over or licensed the Commission shall annually relicense such project as provided in Section 15 of this Act."

4. THE NEED FOR ADEQUATE NOTICE OF TAKEOVER

We believe it to be a matter of very serious concern that there should be adequate notice of take-over in order to safeguard in full the reliability and economy of power supply affected by the take-over. The present Section 14 provides two years notice as a minimum. We realize it will be fully within the province of the Commission upon recommendation of take-over to include findings as to the period of notice that would be appropriate to protect power supply, and Congress can agree. We submit, however, that it would be desirable that the procedure for take-over include express congressional recognition and sanction that the notice of take-over should be for such period as the Commission deems appropriate for safeguarding power supply.

For a small project relatively unimportant to the area load, the notice could be shorter than two years. If, however, the project is large and its capacity is to be withdrawn from the system within which it is integrated it must be replaced with no interruption. Replacement with large modern fossil fueled generation requires approximately five years and replacement with nuclear fueled generation requires even longer. From its National Power Survey the Commission is thoroughly familiar with the vital importance of timely advance scheduling of new capacity.

5. REPORTS TO CONGRESS

The Commission's constructive proposal in Section 2(b) of the bill that, by addition of a Section 14(b) to the Act, recommendation as to take-over shall be considered by the Commission simultaneously with its consideration of applications for a relicense or new license will bring about preparation of one record for the choice between the alternatives. The procedure includes provisions under which if a government agency recommends take-over but the Commission does not so recommend the Commission will stay any license and notify Congress of the stay so that Congress may consider the choice. The bill does not provide that the Commission shall also make its recommendations to Congress and transmit to Congress the record made before the Commission. These needs, however, we believe will be adequately met by the Commission's performance of its general statutory functions and in accordance with its Regulations adopted pursuant thereto providing specifically for proceedings upon license expiration. These include in Section 2.6(b) a provision that after such proceedings "the Commission will forward to Congress . . . its recommendation . . . as to whether the project [should be taken over] accompanied by all submissions to the Commission by federal agencies and the licensee plus such other material of record as in its judgment might be useful to Congress."

Our Company will greatly appreciate the Committee's consideration of these comments upon H.R. 12698.

Respectfully,

JOHN M. MCGURN, *President.*

CHAMBERSBURG, PA., *June 11, 1968.*

HOUSE SUBCOMMITTEE ON COMMUNICATIONS AND POWER,
House Office Building, Washington, D.C.

GENTLEMEN: We understand that the House Subcommittee on Communications and Power will hold hearings during the next several days on the subject of recapture and relicensing of hydro-electric projects.

We have followed the course of this matter with much interest, particularly in view of the Senate Commerce Committee's activity and various actions on the part of the Federal Power Commission.

We trust that in its deliberations the Subcommittee on Communications and Power will recognize the vital importance of retaining, and strengthening as needed, the language of the Federal Power Act assigning to publicly owned entities a clear-cut preference in the issuance of new licenses for hydro-electric generating stations when the original licenses expire.

We should recall that the language of the original Federal Power Act reflected a conviction of Theodore Roosevelt that the waters of this nation belong to the citizens thereof and that no privately owned or financed body should ever be given a permanent grasp upon them. As these licenses expire after 50 years of enjoyment by the privately owned power companies of the rights granted

thereby, the next round of licensing must clearly be made available to representatives of the people, working through municipal, cooperative, or other public power groups.

We request that our comments be made a part of the record of this hearing.

Very truly yours,

J. G. CREE, *Manager of Utilities.*

NEW YORK, N.Y., *June 14, 1968.*

HON. TORBERT H. MACDONALD,
Subcommittee on Communications and Power, House Committee on Interstate and Foregin Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN MACDONALD: This letter is presented to your Committee, with the request that it be included in the record of the hearings on H.R. 12698 and H.R. 12699, which were conducted by your Committee on the 11th and 12th of *June.*

This letter is presented on behalf of a number of industrial corporations, and wholly-owned subsidiaries of industrial corporations, that own hydro-electric projects licensed by the Federal Power Commission. These include Great Northern Paper Company, St. Regis Paper Company, two subsidiaries of Aluminum Company of America, Tapoco, Inc., and Yadkin, Inc., and a subsidiary of Deering Milliken, Inc., Lockhart Power Company. These major industrial organizations require substantial amounts of power for their operations, and utilize in their own manufacturing processes all or most of the power generated at their licensed projects.

For entities such as these, the Federal Power Commission's proposed bill, H.R. 12698 (and the identical H.R. 12699), raises questions different from those that would confront public utilities.

Because of the questions raised about the Federal Power Commission's authority to relicense hydro-electric generating plants after licenses expire, legislation carrying out the general purposes of H.R. 12698 and 12699 may be useful. There are however specific objections to provisions in the current draft of these bills.

In addition to these objections, Congress, in acting on the legislation, should make it clearer that the Commission, when determining whether to relicense or recommend takeover by the Federal government, is to weigh heavily the many reasons for relicensing the original licensee.

REASONS FOR RELICENSING HYDRO PROJECTS FOR INDUSTRIAL PURPOSES

The record of these hearings contains many statements by public utility licensees setting forth reasons for relicensing the original licensee. Many of these reasons, which are not reiterated in this statement, are also valid for industrial licensees. In addition to these, other reasons call for the relicensing of hydro-projects owned by industrial corporations.

(1) The importance of the industry as an employer and taxpayer and the possible transfer to a new area if it is deprived of its economic source of power.

The availability of hydro-power has in the past been a determining factor in locating major industrial plants. If this power supply were taken away, economic forces might require the industry to abandon its plant and move to a new area. Such an economic reorientation would have serious effects on local employment and tax revenues.

Several paper companies, for example, own and operate mills located in the Northeastern United States utilizing wood from northern forests. Very often these mills are the largest, and sometimes, the only significant employer in the villages or towns where they are situated. Electric power from hydro-electric projects that have been built by these companies is essential to the economic operation of these mills. Were these companies deprived of an economic source of electric power by failure to obtain a relicense, they would be faced with a difficult decision. If their electric power had to be obtained from different sources, at higher costs, the operation of these mills could become uneconomic. The companies would have to balance the increased cost of electricity against the cost of operating in areas where economic conditions were more favorable.

(2) The coordination of the operation of the hydro facility with the operation of the industrial plant.

In many cases, water for manufacturing processes and water for the generation of electricity are diverted from a stream through the same facilities, which may be parts of licensed projects. Some of the projects owned by paper companies generate mechanical power, used to operate large machines, as well as electric power. Project reservoirs are used in some cases for transporting logs used in downstream mills. Project reservoirs and other lands owned by the licensees provide outdoor recreation. If the power facilities were taken away from the industrial corporations, serious problems could arise in coordinating the use of the waters, water flows, and generating equipment.

(3) Uncertainty about relicensing would affect investment in non-hydro industrial facilities.

All owners of hydro-projects having licenses soon to expire will be extremely hesitant to commit capital to the projects unless they have reasonable indications that they will be relicensed without the openended conditions the Commission so eagerly seeks. Industrial licensees have an added concern. Faced with the possible loss of their hydro facilities, industrial licensees may not be able to justify additional investment in their non-hydro manufacturing facilities for years prior to the expiration of their licenses. The Federal Power Commission has acknowledged the desirability of industrial development by project owners. The Commission has lengthened the license terms in recognition of substantial investments in non-project industrial facilities by the project owner. See *Kennebec River Pulp & Paper Company, Inc.*, 35 F.P.C. 707 (1966). This policy should not be thwarted by creating uncertainty about the possibility of getting relicensed.

(4) The investment of the industry in the development of the stream and of the area.

The industrial hydro-project owners have made substantial capital investments in the licensed projects. If a project were turned over to a new licensee or to the government at a price substantially less than current value, another group would be obtaining a great bargain to the detriment of the original developers of the stream and the area.

DETAILED OBJECTIONS TO H.R. 12698 AND H.R. 12699

Turning to the specific provisions of the bill, the industrial licensees oppose Section 2, which provides that if any federal agency decides that a project that has been relicensed by the Commission should be taken over by the government, the Commission will stay its relicensing order for up to a four-year period. Another agency, with no particular expertise in the field, could thus overrule the Commission, and incidentally, tie up relicensing proceedings for a long and economically damaging period.

The proper time for other agencies to present their views is in the relicensing proceedings, as the draft bill provides. The Federal Power Commission should weigh the recommendations of these other agencies just as it presently weighs them in granting original licenses. If the Federal Power Commission recommends that the project should be relicensed, that conclusion should be final, subject only to judicial review. The Congress, acting upon the F.P.C.'s recommendation, would then have to decide whether to recapture only those plants which the F.P.C. recommends it should recapture.

The proposed new Section 15(b) of the Federal Power Act, which would grant the Commission the right unilaterally to amend any relicense at any time, is in direct contravention to the basic policy of the Act. Section 6 of the Act provides that licenses may be amended only by mutual agreement. Section 28 of the Act, which would not be amended, provides that Congress cannot affect the rights of any existing licensee by amending the Act. It would be strange indeed to have Congress confer upon the Commission the power to interfere with a licensee's right when Congress has expressly given up that power itself.

The current Act is designed to provide reasonable certainty to the licensee, to encourage investment to develop rivers and streams by those who were and are willing to assume the economic risks and burdens of FPC license regulation. In addition to the project investment, industrial developers have made substantial investments in non-project mills and facilities that are dependent on project operations. The Federal Power Commission should not have the power to destroy these investments.

It is no solution to say that the danger of such an event is not imminent and that giving the power to the Commission would have no present impact. The existence of this unilateral power in the Commission could make it extremely

difficult to obtain further financing for any of these projects. The rights of licensees to certainty as to the terms of their licenses have been zealously guarded by the courts. In fact, as recently as in *Rumford Falls Power Company* v *F.P.C.*, (355 F.2d 683, 1st Cir. 1966), when the Commission attempted to postpone for future determination whether the licensee would be hurt by the imposition of a condition reserving rights to the Commission, the Court commented: "Rarely have we seen a more specious contention. If the Commission * * * reserves something which * * * was not reserved, the fact, as here appears, that it is not presently threatening or seeking to exercise rights thereunder, does not mean that petitioner is not presently affected" (p. 688).

The proposed Section 15(c) of the Act, contained in H. R. 12698 and H. R. 12699, which provides for licenses for non-power uses, poses another threat to industrial project owners. This section also would represent a fundamental change in policy. The Federal Power Commission was created to license hydropower projects, but by this new section it would now be empowered to license projects or parts thereof for exclusively non-power uses. Under existing law, the Commission may issue a license only when it finds that the project will be "best adapted to a *comprehensive* plan for improving or developing" the waterway. It seems unlikely that any truly *comprehensive* development of a waterway could be limited to a single use of that resource such as recreation. Of course, some streams should be preserved in their natural, wild state but the Commission has full power to preserve such rivers and has dealt satisfactorily with them in the past. In *Namekagon Power Co.*, 12 F.P.C. 203, for instance, it refused to issue a license on the grounds that the river was best used as a preserve for fish, wildlife, and recreation. Furthermore, it is unlikely that any plant coming up for relicensing could be located on such a river, particularly since the Commission, when it issued the original license, had to find that that plant was "best adapted to a comprehensive plan for" the waterway.

It is submitted, therefore, that proposed new Sections 15 (b) and (c) be deleted. Section 14 should be amended to provide that the Commission must seek the views of other federal agencies on relicensing, but that its decision to relicense will be final.

Respectfully yours,

LeBoeuf, Lamb, Leiby & MacRae.

Statement of Pacific Power & Light Company

Pacific Power & Light Company provides electric utility service to 434,000 customers in parts of the States of Oregon, Washington, Idaho, Montana, Wyoming and California. It owns and operates 37 hydroelectric plants with a nameplate capacity of 867,787 kilowatts. Twenty of the Company's hydroelectric plants are presently under Federal Power Commission license. These licenses expire at varying periods beginning in 1974. The Company has applied, or is in the process of applying, for licenses for the remaining plants under the *Taum Sauk* doctrine.

Pacific's system load, except for its system in Wyoming, is carried almost entirely by hydroelectric generation. In 1967, 41.6 percent of the Company's total load, excluding Wyoming, was supplied from hydro generation from the Company's own plants. The remainder was supplied through purchases from licensed hydroelectric plants of others in the Mid-Columbia and from the Federal Government. Load increases will be met after 1975 by very large thermal plants which, to be economic, must be provided with low cost peaking capacity, a substantial portion of which is expected to be provided from the Company's hydroelectric plants.

We have reviewed the testimony of Mr. Jack K. Horton presented to your Committee, and endorse the position which he has taken. It is evident that there is need for a reasonable, simple and effective procedure for deciding issues on relicensing. It is furthermore evident that a general policy of recapture would be seriously adverse to the best interests of the customers of this Company. It would be necessary to replace a substantial portion of any hydro energy lost through recapture with higher cost thermal energy, and the Company would also lose the low cost hydro peaking capacity required, in turn, to make the thermal energy resource economic. We have also reviewed testimony presented before your Committee by Mr. Frederick T. Searls, and endorse the viewpoint presented by him.

SAFE HARBOR WATER POWER CORP.,
New York, N.Y., June 19, 1968.

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

DEAR REPRESENTATIVE MACDONALD: Safe Harbor Water Power Corporation (Safe Harbor) appreciates the opportunity afforded by your Committee to present its views concerning the proposed legislation embodied in H.R. 12698 and H.R. 12699.

Safe Harbor owns and operates the Safe Harbor hydroelectric development which is located on the Susquehanna River in Pennsylvania about 18 miles north of the Pennsylvania-Maryland State line. This development presently contains seven main generating units with a capacity of 230,000 kw. Project plans provide for an ultimate capacity of about 300,000 kw. with nine generating units.

The Safe Harbor hydroelectric development was constructed and is being operated under the provisions of a Limited Power Permit issued by the Department of Forests and Waters (Water and Power Resources Board) of the Commonwealth of Pennsylvania and Project License Number 1025 issued by the Federal Power Commission under the Federal Water Power Act of 1920. The license expires on April 22, 1980.

Fifty percent of Safe Harbor's voting stock and all of its nonvoting stock (the latter being one-third of Safe Harbor's entire capital stock) are owned by Baltimore Gas and Electric Company (BG&E). The remaining fifty percent of Safe Harbor's voting stock is owned by Pennsylvania Power & Light Company (PP&L). BG&E and PP&L are entitled to two-thirds and one-third, respectively, of the capacity and energy from the Safe Harbor hydroelectric development.

BG&E furnishes electricity in an area of approximately 2,300 square miles in mid-Maryland, including Baltimore City, and at the end of 1967 it was serving more than 647,000 electric customers. The total population of the territory it serves with electricity is estimated at about 2,000,000. The Company's 1967 peak load (attained on August 3) was 1,927,000 kw., and the summer capability of the Company's system, including its entitlement to Safe Harbor capacity at the end of 1967, was approximately 2,150,000 kw.

PP&L is an electric public utility operating in a 10,000 square mile territory in Central-Eastern Pennsylvania. It had almost 800,000 electric customers and a generating capability of 2,353,000 kw. at the end of 1967, with a peak demand during that year of 2,202,000 kw.

The Safe Harbor hydroelectric development is integrated with the systems of BG&E and PP&L, both of which are part of the Pennsylvania-New Jersey-Maryland Interconnection (PJM) which is the world's largest integrated power pool with the interconnected companies serving close to 20 million people.

The hydroelectric projects which are an important part of PJM, including the Safe Harbor hydroelectric development, are generally operated to produce energy during the hours of greatest need on the interconnected system and provide valuable peaking capability. The hydro generators also supply quick start up in case of emergency, and spinning reserve, and contribute to the stability of the integrated systems.

Safe Harbor provides an economical source of power and energy to the owning companies whose customers derive the advantages of these low costs.

With regard to H.R. 12698 and H.R. 12699 Safe Harbor agrees that there is need for Congress to set forth clearly its objectives by enacting legislation to govern the processing of expiring hydroelectric licenses. We agree that the question of whether or not the United States should take over a project upon expiration of a license is not one that Congress should make on each project as the license expires. In our opinion the decision should be made, in the first instance, by the Federal Power Commission which has the expertise and capability to render such decisions.

The opinion of the Chairman of the Federal Power Commission, the Honorable Lee C. White, as well as that of its General Counsel, as expressed in their statements to your committee, is that the preference of states and municipalities under Section 7 (a) of the Federal Power Act. in the case of an initial licensing of a project will not apply upon the expiration of an existing license if recapture is not exercised and the holder of the expiring license applies for a new license. Safe Harbor believes it generally will be in the public interest

for the original licensee to continue ownership of the project provided its plans are equally well adapted to the comprehensive development of the waterway. We believe it will be advantageous for Congress to make it abundantly clear in H.R. 12698 and H.R. 12699 that no preference exists if the holder of an expiring license applies for a new license.

The main objective of H.R. 12698 and H.R. 12699 are to create standards and guidelines to govern the process of relicensing so that it may be done promptly and expeditiously. Under the 6th and 7th "whereas" clauses and Section 2 (b) of H.R. 12698 and H.R. 12699, any agency of the United States Government can block the issuance of a new license for up to a period of four years. These provisions tend to defeat the purpose of this act. We do not believe these provisions are in the public interest as such agencies have other remedies available.

Safe Harbor suggests that the Congress delete Section 3 (b) from H.R. 12698 and H.R. 12699 which would, in effect, give the Federal Power Commission authority to require the licensee to do almost anything it decided it wanted the licensee to do regardless of the cost or effect on the licensee.

In H.R. 12698 and H.R. 12699 it is proposed to add the following sentence to Section 10 (d) of the Federal Power Act: "For any licenses issued under Section 15 hereof the amortization reserves shall be established and maintained from and after the effective date of the license." It seems unfair that a license for a new project does not require the establishment of the amortization reserve until 20 years after the beginning of project operation while this provision would require such reserve from and after the effective date of the re-license. This is particularly unfair where a substantial investment is to be made in the project at the time of relicensing and may tend to discourage substantial added investments to further develop projects in periods of high money costs, such as the present.

Safe Harbor believes that Congress should establish the mechanism for the relicensing of hydroelectric projects on the expiration of an existing license. We believe that the question can best be disposed of initially by the FPC. We would therefore endorse bills like H.R. 12698 and H.R. 12699 but suggest the changes set forth above.

Yours very truly,

HAROLD D. BEEBE.

SANTA CLARA, CALIF., *June 18, 1968.*

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

DEAR CONGRESSMAN MACDONALD: The City of Santa Clara, California, did not find out about your subcommittee's hearings on H.R. 12698 until June 17, 1968. This is unfortunate because the City had representatives in Washington on June 12, 13 and 14, and would have been pleased to have had the opportunity to appear as a witness before your subcommittee.

It is, of course, imortant that the Congress hear the views of all interested parties and we request, therefore, that our written statement be added to the record.

The present license agreemnts on many hydroelectric projects are now or soon will be near expiration.

In the past, the benefits of these licenses have not accrued to the benefit of small municipal and cooperative utilities. This situation can be rectified if legislation crates the atmosphere which will relate to the public interest, and allow new terms and conditions to encourage comprehensive development of water resources when a prior licensee is granted a new license, or other parties are allowed to obtain a new lecnse for the site.

The present Section 7(a) of the Federal Power Act which affords the applications of States and municipalities preference for new licenses should be retained, especially when these applications are equally well adapted to conserve and utilize in the public interest the water resources of the region.

Very truly yours,

D. R. VON RAESFELD,
City Manager.

STATEMENT OF FRANK M. WARREN, PRESIDENT OF PORTLAND GENERAL ELECTRIC CO.

My name is Frank M. Warren. I am President of Portland General Electric Company, whose address is 621 S. W. Alder Street, Portland, Oregon 97205.

Portland General Electric Company is an Oregon corporation operating as a public utility in the State of Oregon and is licensee under the Federal Power Act of several licenses, some of which will expire within the relative near future.

Portland General Electric Company supports the passage of HR 12698 and HR 12699 with changes which will (1) eliminate the delays which may result from the sixth and seventh "Whereas" in Section 2(b), and (2) eliminate the right on the part of the Federal Power Commission to make unlimited changes in license provisions as contemplated in Section 3(b) of the proposed Act.

Portland General Electric Company adopts the written statement of Frederick T. Searls on behalf of the Pacific Gas & Electric Co. and the written statement of proposed policy by Jack K. Horton on behalf of Southern California Edison Company, and the reasons for the reissuance of licenses to original licensees suggested in the written statement of Walter Bouldin on behalf of Alabama Power Company, submitted to this Committee at its hearing on the proposed legislation June 12, 1968.

STATEMENT OF ARTHUR M. WILLIAMS, JR., PRESIDENT OF SOUTH CAROLINA ELECTRIC & GAS CO.

I appreciate the opportunity of being allowed to make a statement in regard to the take-over of hydroelectric projects on expiration of existing licenses. I refer specifically to the proposal to amend Part I of the Federal Power Act to establish new procedures for the processing of expiring hydroelectric licenses.

The proposed changes would create serious problems in three principal areas, viz., the likelihood that additional and lengthy delays in relicensing procedures would be encountered; the Federal Power Commission would be given broad powers to impose added conditions to a licensee at any time during its term; and, the absence of any priority to a licensee to continue the operation of a vital part of its electric program on which total system planning has been predicated and long-term financing secured.

Under present procedures, the Federal Power Commission is assigned the task of soliciting and correlating opinions as to take-over from all interested government departments and agencies and the licensee. Based on comprehensive studies by its Staff of all such proposals, the Commission then makes its recommendation to Congress as to whether the national interest would best be served through continued operation of the project by the licensee or through take-over by the United States. While this procedure does not place authority for the ultimate decision in the Commission, it does provide for an orderly manner in which the most qualified and experienced agency of federal government can assimilate all proposals into a single recommendation to be made to the Congress.

The amendment would allow any federal department or agency to recommend that the federal government take over a project even if the Federal Power Commission should not agree. The effect of this amendment would be to place a tremendous burden on Congress to review and inter-relate the various recommendations (including possible divergent opinions of the Federal Power Commission and other government agencies) requiring an enormous staff and considerable time to perform a function which has traditionally been the responsibility of the Commission. This could create intolerable delay in the effective date of a new license (as much as 4 years) during which period a licensee would be unable to project plans for future development or obtain proper financing on the project facilities.

The amendment would further require a mandatory hearing of an evidentiary nature prior to any decision by the Commission, which hearing would be a relicensing proceeding. This, as the Commission itself stated in 1964 in its Order Number 288, "would not be appropriate, and would tend to delay [Commission] reports to Congress unduly." Since the Commission is given authority to issue new licenses, and has the experience of regulating licensees over the years, it should be the primary agency to make a recommendation to Congress based upon the factual information and expert analysis it most uniquely has available.

In any instance where neither the Commission nor any interested federal agency recommends take-over, I agree with the statement of Chairman White that Congress should not be burdened with a requirement that it consider take-over. In those cases, the Commission should have the authority to grant a new license in the same manner as it would grant an original license.

Where legislation is introduced to "clarify the manner in which the right of the United States to take over a project upon expiration of any license shall

be exercised", the Congress should provide, in the public interest, for assurance of continued ownership unless the project licensee is incapable or unwilling to take such measures as are prescribed to fulfill the needs for comprehensive river basin development. It is possible through systematic take-over or preference relicensing to seriously damage the integrated investor-owned power systems. Where a licensed project has been operated for years as an integral segment of a system, and where the project's potential has been reasonably developed within economic bounds, the Congress should indicate in the Act that relicensing preference should be given to the original licensee.

Section 3(b) of the amendment would grant the Commission rulemaking powers to modify license conditions at any time during the term of a new license. I earnestly recommend that this section be deleted. This amendment would constitute a drastic change in existing law and would raise serious questions as to the value of the license. A firm license is necessary for economical and practical engineering and construction, as well as for financing.

The orderly comprehensive development of the nation's water resources must be a matter of concern to Congress and to the private segment of the electric industry as well. An effort to improve and clarify the procedure whereby this objective can be obtained is desirable. I urge the Congress, however, to use considered caution in the declaration of its objectives and policies and to adopt such standards and guidelines as will continue public confidence in the electric industry and protect the interest of the ultimate consumer.

STATEMENT OF W. C. TALLMAN, PRESIDENT OF PUBLIC SERVICE CO. OF NEW HAMPSHIRE

We are submitting this statement regarding House Bills 12698 and 12699 (hereinafter together referred to as "the bill") because of our serious concern with the problem which the bill is intended to meet. Public Service Company of New Hampshire now has under Federal Power Commission license five hydroelectric plants having a total installed capacity of 41,950 KW; licenses for two others having a total installed capacity of 11,400 KW have been applied for. These seven plants are now and will continue to be an important part of the Company's generating system. Since licenses for three of them expire within the next seven years (two in 1970 and one in 1975), the bill is of direct and immediate concern to this Company.

In your deliberations on the bill, we respectfully urge the members of the Committee to consider the position of this Company as stated below.

First, we support the basic principle contained in the bill; namely, that the Federal Power Commission rather than Congress should have the time-consuming burden of developing facts and making initial determinations relative to recapture or relicensing of hydro plants. Passage of the bill will enable the Commission to process applications for relicensing in an orderly manner and, if it finds that the existing standards of the Federal Power Act would be met, to issue new licenses to the present owners for continued operation.

Second, we strongly object to Section 2(b) of the proposed Act, which would give any federal department or agency the power to delay for a period of up to four years the effectiveness of a Commission order granting a new license. This provision would prevent the legislation from achieving its intended results; namely, relieving Congress of an unnecessary burden and expediting relicensing.

Third, we object to the provision of Section 3(b) of the proposed Act, which would permit the Federal Power Commission, at any time after relicensing, to impose further conditions on the licensee. This would make it impossible for a licensee to know in advance the extent of his obligations under the license and would almost certainly have a discouraging effect on proposed redevelopments. The Commission already has sufficiently broad powers to prescribe license conditions and these powers are being exercised.

Fourth, we believe that it should be Congressional policy, to be followed by the Federal Power Commission in relicensing proceedings, that if the original licensee applies for a new license, such a license should be granted unless the Commission finds that the project would not meet the standards of the Federal Power Act. It now takes more than sixty months to construct a generating station, and recapture or licensing to another licensee could have significant adverse effects on the original licensee unless and until he can obtain replacement power.

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In making this statement as brief as possible, we would like the Committee to know that in general we support the statements made before the Committee by other representatives of the investor-owned electric utility industry.

We appreciate the opportunity of submitting our comments for the record and for consideration by the Committee.

STATEMENT OF E. M. NAUGHTON, PRESIDENT OF UTAH POWER & LIGHT CO.

My name is E. M. Naughton. I am president and general manager of the Utah Power & Light Company. I appreciate the opportunity to comment regarding H.R. 12698 and H.R. 12699.

The Utah Power & Light Company and its subsidiary, The Western Colorado Power Company, own and operate 13 hydroelectric projects under license from the Federal Power Commission. These projects vary in size from 300 kilowatts to 30,000 kilowatts. They are scattered throughout the systems of the Company and its subsidiary and form an integral and very useful part of the total production capacity of each. We are predominately a steam generating system and these plants in total magnitude do not constitute a major portion of the capacity of the Utah Company's system. They do constitute a great number of important and necessary links in the chain of the production and transmission system—the loss of which would be difficult to replace, both economically and electrically.

I am sure this situation is typical of many electric utility systems which have been developed over many years with a substantial number of hydroelectric plants located throughout their systems. Because such hydro plants form such an integral part of a whole system, meticulous care should be given to any consideration involving recapture or relicensing to any entity other than the original licensee. The simple reason for this is, of course, that any damage done to the electric utility holding the original license for the plant results in direct damage to the general public served by that utility. We believe that some clarification of the administrative procedure may be beneficial to the relicensing problem.

With specific reference to the proposals embodied in H.R. 12698 and related bills, I believe there are three points which should be raised and given careful consideration by the Congress. First, no action should be taken by the Federal Power Commission to recapture or license a project to anyone other than the original licensee without the affirmative recommendation of the state utility commission having jurisdiction. The Federal Power Commission should make an early request of such state utility commission and receive its recommendations at the same time it receives the licensee's proposal regarding the expiring license. The original licensee should have priority for the issuance of a new license. Under present law, we believe that the original licensee should be granted a renewed license if the proposal for the development and operation of the project meets the standards of the Commission set forth under the Act. This should not be changed.

The second major area in the proposed legislation to which we have objection is the proposed Section 3(b) which, in effect, gives the Federal Power Commission authority to continually change the requirements of the licensee throughout the period of the license regardless of the effect upon the licensee and the public served. State utilities commissions and the electric utilities which they regulate must maintain service rates on the basis of long-range physical and economic planning. If major licensed projects are subject to continually changing costs and other conditions, it would introduce an uncertainty which, we believe, would be both unnecessary and undesirable.

The third problem with the proposed legislation involves the same type of uncertainty. Under the provisions of the proposed law, any agency of the United States could forestall the issuance of a new license for up to four years or two sessions of the Congress. This would be in direct conflict with the stated objectives of the Bill which are to clarify present procedure and provide prompt action under the licensing procedures. At the present, any interested party has the opportunity to offer its views and recommendations which should, and we feel do, receive the careful consideration of the Federal Power Commission. To encourage Federal agencies to intervene and automatically delay the Commission's decision, as this Bill proposes, would add to the uncertainty involved in relicensing and create controversy where none now exists.

Careful analysis of the wording of the whereases and the sections of the Bill, H.R. 12698, and related bills, tends to indicate an intent toward recapture

and a definite invitation to public agencies to compete for relicensing at the expiration of the existing license. We do not believe this to be good public policy since an upheaval of a long-standing economic condition would result. Power production facility ownership would be shifted from one agency to another, generally located in different service areas. The existing tax base would be altered or totally eliminated from a tax district—thus creating an imbalance among public agencies and taxpayers, all of which would work to the detriment of taxpayers and ratepayers generally. For these reasons, we believe that the present law, if amended at all, should only be amended to clarify the position that Congress shall take in its review of any recommendation of the Federal Power Commission for recapture or for relicensing to a new licensee.

PENNSYLVANIA POWER & LIGHT CO.,
Allentown, Pa., June 11, 1968.

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

DEAR CONGRESSMAN MACDONALD: Pennsylvania Power & Light Company (PP&L) welcomes this opportunity to submit a statement regarding H.R. 12698, and related bills, for consideration by the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce.

PP&L is an electric public utility operating in a 10,000 square mile territory in central-eastern Pennsylvania. It has almost 800,000 customers, over 6,000 employees and about 90,000 shareholders. The PP&L system had a generating capability of 2,353,000 kw at the end of 1967 and a peak demand during that year of 2,202,000 kw. This large system is operated in turn as part of the Pennsylvania-New Jersey-Maryland Interconnection (PJM).

PJM is one of the world's largest fully integrated power pools, with the companies which are interconnected serving close to 20 million people. As of the end of 1967, the systems in PJM had a generating capability of about 22,000,000 kw, 92% being thermal capacity. The licensed projects which are part of PJM are generally operated to produce energy during the hours of greatest need on the interconnected system.

PP&L has an interest in three of those projects, representing 220,000 kw of its generating capability. PP&L is licensee for Holtwood (Project No. 1881) and Wallenpaupack (Project No. 487) and owner of one-third of outstanding capital stock, representing one-half of the voting shares, of Safe Harbor Water Power Corporation, licensee for Safe Harbor (Project No. 1025). The licenses for these projects expire in 1970, 1976 and 1980, respectively.

PP&L favors enactment of a Bill like H.R. 12698, with the minor changes discussed below. In our view, the question whether or not the United States should take over a project upon expiration of a license is not one that Congress should make on a project-by-project basis. We agree that that decision should be left, in the first instance, to the expertise of the Federal Power Commission.

We also agree with the testimony of FPC Chairman Lee C. White before the Senate Committee on Commerce at the hearing held on an identical Bill on February 26, 1968, to the effect that the Bill should not include any statutory preferences.[1] As was pointed out to that Committee by Mr. Alan P. O'Kelly at that hearing, under existing law the licensee has preference over all other applicants for a new license except an applicant who will develop the project in a manner better adapted to a comprehensive plan for the development of the stream involved.[2] This is as it should be. It is only in the area of decision making with respect to takeover of the project that the Act is not sufficiently specific.

The Bill does, however, create two unfair differences between a license for a new project and a re-license which involves substantial reconstruction of a project whose license has expired. That the Bill creates these same differences between a license for a new project and a re-license for a project which already represents full development of its reach of a river may be justified, but, where a re-license involves substantial reconstruction, we can find no valid reason for

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[1] Hearings Before the Committee on Commerce, United States Senate, 90th Cong., 2d Sess., (1968), at 14.
[2] Id., at 49–56.

any difference. Both would require major new investment and both would have been found by the FPC to be best adapted to a comprehensive plan for development of a stream.

It seems basically unfair that a license for a new project is a contract, fully protected from the insertion of additional requirements by Section 6 of the Act, while the subsection (b) which the Bill would add to Section 15 of the Act would empower the FPC to insert, at any time, additional requirements in a re-license involving substantial reconstruction.

It seems similarly unfair that a license for a new project does not require the establishment and maintenance of the amortization reserves until 20 years after the beginning of project operation while the sentence which the Bill would add to Section 10(d) of the Act would require establishment and maintenance of such reserves from and after the effective date of the re-license, even before the substantial reconstruction has been completed.

We therefore urge an amendment to the Bill which would exempt from the application of the subsection (b), which the Bill would add to Section 15 of the Act, re-licenses involving substantial reconstruction of projects whose licenses had expired. Similarly, we believe that Section 4 of the Bill should be amended so that the sentence which it would add to Section 10(d) of the Act would not apply to the investment made in a substantial reconstruction of a project under a re-license.

In summary, we believe that Congress should establish a method for determining whether or not the United States should take over a project upon the expiration of a license. We believe that the question can best be disposed of initially by the FPC. We would therefore endorse a Bill like H.R. 12698 which incorporated the suggestions set forth above.

Sincerely,

JACK K. BUSBY.

STATEMENT OF JOHN G. QUALE, PRESIDENT, WISCONSIN MICHIGAN POWER CO.

My name is John G. Quale. I am President of Wisconsin Michigan Power Company which furnishes electric service to some 73,000 customers in an area in the east-central and northern portions of Wisconsin and in the Upper Peninsula of Michigan. The principal office of the Company is at 231 West Michigan Street, Milwaukee, Wisconsin and the operating headquarters is at 807 South Oneida Street, Appleton, Wisconsin.

The Company has 16 hydroelectric plants with a total installed capacity of 91,000 kilowatts, and 14 of these plants are under license and the remaining 2 are in the process of being considered for licenses. At the present time these 16 plants constitute the total generating capacity of the Company. (There is under construction a two-unit nuclear plant of 908,000 kilowatt capacity owned equally by the Company and its parent, Wisconsin Electric Power Company scheduled for completion in 1971). Under normal water conditions the capacity of these plants is 75,000 kilowatts. Three of these hydroelectric plants together with the Michigamme Reservoir involve one project license (Project No. 1759) which will expire on June 30, 1970. The installed generating capacity of Project No. 1759 is 22,944 kilowatts. This project is at three separate locations on the Michigamme and the Menominee Rivers in Wisconsin and Upper Michigan.

Wisconsin Michigan Power Company over the years has endeavored to conduct its operations in co-operation with the interests of other river users and riparian owners. The public interest in the waters has consistently been recognized in stream regulation and planning. The Company has effectively co-operated with and, in turn, has enjoyed the assistance of Michigan, Wisconsin and federal agencies responsible for beneficial conservation practices.

Wisconsin Michigan supports the proposition that legislation by the Congress is most appropriate at this time in order to provide guidelines to the Federal Power Commission in connection with the relicensing of hydroelectric projects whose license terms will expire in the near future.

The Company supports an approach that will give adequate preference to the existing licensee of each project in question, provided such licensee is not unable or unwilling to continue to operate the project in the public interest. The reasons for this position are demonstrated clearly in the case of Wisconsin Michigan. At present, the Company's own generating capability is comprised completely of the aforementioned hydroelectric plants. The Company buys virtually all power required in excess of such capability from its parent corporation, Wisconsin

Electric Power Company. The hydroelectric plants are fully integrated into the electric system of the Company and its parent and make a valuable contribution to the reliability of the entire system, which serves a population of over 2,000,000. The ability of these plants to add or drop load quickly substantially strengthens system operations during unexpected fluctuations in load. In the event of a power interruption, this hydroelectric capacity can be used to start up large thermal generating plants.

Loss by the Company of any of its hydroelectric plants would require the Company to construct replacement generation facilities and would also require the installation of new transmission lines and related facilities. Such a loss would result inevitably in increased cost of service to the Company's many customers.

Pursuant to existing Federal Power Commission procedure, in September, 1966 the Company submitted to the FPC its report in regard to Project No. 1759 in which it urged that the project not be recaptured but be relicensed to the Company. In addition to its vital importance to the Company's electric operations and the adverse effect upon customers and stockholders if the project were not relicensed to the Company, it was pointed out that the local communities involved would suffer substantial losses in tax revenues. Local property taxes alone would amount to about $125,000 and over 10% of the tax revenues of Dickinson and Iron Counties in Michigan.

In short, the Company believes that legislation on this subject is appropriate, but further believes that such legislation would not be consistent with the public interest unless adequate recognition is given to the interests of existing licensees of the hydroelectric projects in question. It seems clear that private investment in power facilities on navigable waters would be greatly discouraged by any approach which does not emphasize preference to the existing licensee who is and has been operating his project consistently with the public interest.

There are two provisions of the bill which Wisconsin Michigan believes should be amended, namely:

1. Section 2(b) contemplates a substantial delay of up to four years in the issuance of a new license, merely upon application by any agency of the United States. This is in addition to the five-year period presently contemplated by the bill for relicensing. This, I believe, would be an intolerable delay and would seriously impede proper utility planning of power supply.

2. Section 3(b) of the bill would vest in the FPC virtually unlimited authority through the "open end" concept to rewrite licenses long after their issuance and after substantial investments have been made in reliance upon the terms and conditions of the license.

These provisions are not desirable and should be amended accordingly.

I have had the opportunity of reading the statements of Messrs. Jack K. Horton, Alan P. O'Kelly, Walter Bouldin and William H. Dunham. Wisconsin Michigan concurs in the views stated by these witnesses.

On behalf of Wisconsin Michigan Power Company I appreciate the opportunity of presenting to the Senate Committee on Commerce our views on this important legislation.

AMERICAN ELECTRIC POWER SERVICE CORP.,
New York, N.Y., June 11, 1968.

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

DEAR MR. MACDONALD: This letter is submitted, on behalf of the seven operating public utilities which comprise the American Electric Power System,* to state our views on the questions raised by H.R. 12698.

In sum, it is our position that:

1. The Congress should be relieved of the almost impossible burden of dealing with each license expiration on a case-by-case basis and FPC should be authorized, under standards prescribed by the Congress, to deal with each project whose license term has expired;

2. Comprehensive development of the nation's water resources, to the fullest extent practicable, should be assured; and

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*Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Company, Kingsport Power Company, Michigan Gas and Electric Company, Ohio Power Company and Wheeling Electric Company.

3. The disruption, waste and inequities which are inherent in the takeover of licensed projects should be minimized to the fullest extent.

We believe these three objectives can best be achieved by delegating authority to the Federal Power Commission to pass upon applications for new licenses under procedures similar to those under which FPC now deals with applications for licenses for new projects; and by authorizing FPC to issue a new license to the existing licensee whenever the existing licensee is willing to take such action as FPC finds to be necessary and appropriate for comprehensive development and to protect the public interest.

Since we understand that these are the general principles underlying, and the objectives sought to be achieved by, H.R. 12698, we support this bill and, with two modifications, urge its favorable consideration by your Committee. The first of our suggested modifications would be to eliminate the provision which could have the effect of delaying, for as much as four years, the effectiveness of decisions reached by FPC after a full hearing. The second would eliminate the provision authorizing unilateral alteration of licenses by FPC during the entire term of the license.

The American Electric Power System has or soon will have under license from the Federal Power Commission eleven projects with an aggregate installed capacity of 652,219 kw, representing a net book investment of approximately $86 million. In addition, an application for a proposed $140 million combination hydroelectric and pumped storage project with an installed capacity of 980,000 kw is presently pending before the Commission. Studies are presently underway which contemplate the possibility of doubling the capacity and cost of this project.

The eleven existing hydro projects, which are either under license or for which license applications are pending, are fully integrated into the AEP System's seven-state power network and provide the System with a valuable source of peaking and pumped storage capacity which complements, and thereby renders more economical, the operations of the System's large, highly efficient base load steam plants. Also, due to their quick start-up characteristics, because they provide the Sytsem with a ready source of spinning reserves and because they contribute to System voltage regulation, these eleven hydro projects have the effect of significantly enhancing the overall reliability of System power supply.

By way of illustrating the kind of problems which would be created by the takeover of a licensed hydroelectric project, we think it may be helpful to describe in somewhat more detail the role which one project—the Smith Mountain Combination Hydroelectric and Pumped Storage Project (FPC Project No. 2210 licensed to Appalachian Power Company)—plays in our System. This Project, located on the Roanoke River in Virginia, has an installed capacity of 472,250 kw and consists of an upper and a lower dam creating two adjacent reservoirs in the River. Power is generated at the upper dam during periods of peak demand on the System. During off-peak periods—that is, during the night and early morning hours and on weekends—the System's highly efficient steam capacity which would otherwise be idle is utilized to pump water from the lower reservoir back into the upper reservoir so that it will be available for generation during subsequent peak periods. Thus, Smith Mountain's pumped-storage operations have the beneficial effect of increasing the load factor of the System's base load steam capacity.

In terms of reliability, the Project's pumping operations afford significant advantages in addition to the aforementioned quick start-up, spinning reserve and voltage regulation characteristics which are inherent in conventional hydro projects. For example if, during the pumping phase, a major emergency were to occur on the AEP System (or on a neighboring system with which AEP is interconnected), not only could the hydro capacity at the upper dam be brought into play almost immediately, but the steam capacity then being used for pumping purposes could be diverted practically instantaneously to help the System ride out the disturbance. From this it can be seen that the pumping operations at Smith Mountain, in effect, afford a double protection against a System outage. Also, the Smith Mountain Project, because of its great flexibility of operation, contributes substantially to the flexibility of operation of steam plants as well, by giving the System power dispatcher a ready-to-use means for the modification, from hour-to-hour, of the System demand to be supplied by steam generation.

All of these advantages were, of course, consciously considered and evaluated in planning the Smith Mountain Project as an integral part of the AEP System; and the subsequent development of AEP's generation and transmission network

has proceeded with the knowledge that these advantages were present in the System. If upon license expiration the Smith Mountain Project were to be lost to the System, not only would it be necessary to supply 472,250 kw of peaking capacity from some presumably less economical source, but the void created would have a profound adverse effect upon the entire AEP System through decreased reliability, decreased operational flexibility and a lower load factor on base loaded steam capacity.

As stated at the beginning of this letter, we believe that the solution of the hydro project license expiration problem should achieve three basic objectives:

1. A workable procedure should be provided which would relieve the Congress of the almost impossible burden of handling each license expiration on a case-by-case basis; the obvious answer in our opinion is to delegate the necessary authority to the Federal Power Commission to deal with each such project under procedures similar to those followed by FPC in dealing with applications for licenses for new projects;

2. Comprehensive development of the nation's water resources, to the fullest extent practicable, should be assured; and

3. The disruption, waste and inequities which are inherent in the takeover of licensed projects should be minimized to the fullest possible extent.

We will discuss each of these in detail:

1. *Delegation of authority to the Federal Power Commission.*—The Commission is of the view that, under existing law, the determination whether or not hydro projects whose licenses have expired should be taken over by the Federal government must be made by the Congress on a project-by-project basis. It is obvious that this approach will result in a legislative nightmare.

The fact is that the impracticality of Congressional authorization of new projects case-by-case, which was followed prior to 1920, was one of the principal reasons for the enactment of the Federal Water Power Act. Congress then resolved the comparable problem by creating the Federal Power Commission and authorizing it to decide on the licensing of new projects under policies and standards prescribed by the Congress. Thus, under §10(a) of the Federal Power Act, FPC is authorized to license new projects which, in its view, are "best adapted to a comprehensive plan for improving or developing a waterway . . .", while under §7(b) of the Act the Commission, whenever it deems it appropriate, is authorized to recommend that a proposed project be developed by the United States rather than by the applicant.

Over the years, FPC has developed considerable expertise in this area—an expertise which, we submit, involves essentially the same considerations and is, therefore, equally applicable to relicensing and to initial licensing proceedings. We, therefore, believe that legislation along the lines contained in H.R. 12698 should be enacted which will delegate to the Federal Power Commission the same authority with respect to license expirations as it has been exercising for almost five decades with respect to applications for new licenses. Such legislation, which would authorize FPC to relicense projects under standards prescribed by the Congress, is essential if a return to the burdensome and unworkable procedure followed prior to 1920 is to be avoided.

2. *Assurance of comprehensive development.*—Under the existing provisions of the Federal Power Act, the Commission has the authority to condition the issuance of a license for a new project upon such terms and conditions as it finds to be desirable for comprehensive development and in the public interest. With the enactment of H.R. 12698, it is our understanding that FPC would have the authority—within the standards and provisions already contained in the Act—to determine what project modifications are necessary for comprehensive development and to issue a new license to the existing licensee where such licensee agrees to carry out such modifications.

Whenever the existing licensee is willing to carry out all modifications which the Commission finds to be necessary and appropriate for comprehensive development, issuance of a license to the existing licensee will obviously assure comprehensive development.

We believe that existing licensees will accept such conditions and carry out such modifications in all but a very small number of cases. In the exceptional case where the existing licensee will not do so, the Commission could issue a license to a new licensee who is willing to accept the Commission's requirements for comprehensive development or, if no such new licensee exists, then the Commission would present its recommendations to the Congress.

It seems to us that such a policy would clearly ensure the most comprehensive development of the Nation's water resources to the fullest extent practicable,

while at the same time minimizing the disruptions inherent in takeover and reducing to a minimum the burden on Congress.

3. *The disruption, waste and inequities which are inherent in the takeover of licensed projects should be minimized to the fullest extent possible.*—

(*a*) Disruption of Power Supply: As in the case of the AEP projects referred to above, licensed hydro projects throughout the utility industry are generally fully integrated with the licensees' utility systems. Also, the projects of industrial licensees are generally fully integrated with the production facilities of the licensee which in many cases are constructed with specific reference to, and in reliance upon, the power to be generated at the licensed project. Federal takeover of such licensed projects would have material adverse repercussions on the power supply of the affected utility or industry—in terms of rates or economics (if the project is an efficient and low cost power producer) and in terms of reliability (in the loss of a facility which normally could be especially useful for spinning reserve, to meet peak loads, for system voltage regulation and for quick start-up purposes).

(*b*) Disruption to Local Communities: A project owned by a taxpaying licensee may frequently represent the major source of taxes in the surrounding community or communities. Where such a project is taken over by the Federal government or is relicensed to a tax-exempt entity, there would be very substantial disruption in the community or communities which have been largely dependent on the tax payments of the original licensee. The result in a great many instances may be a drastic curtailment in such essential local public services as education, sanitation and police and fire protection.

(*c*) Adverse Effect on Consumers of the Existing Licensee: Generally speaking, a project which has reached the expiration of its license term is likely to have accrued substantial depreciation reserves. Where such a project is taken over by the Federal government or is relicensed to another licensee, the net result is likely to be that the consumers of the original licensee—who have paid in the depreciation accruals—will be deprived of the benefits associated with the continued receipt of power from a project which has been so depreciated.

(*d*) Waste of Resources: Takeover of a project or its relicensing to a new licensee will almost inevitably render useless some facilities and require the construction of other facilities. This will inevitably result in a waste of national resources. One measure of this waste will be the severance damages which § 14 of the Federal Power Act requires to be paid upon takeover. Although to date there has been no judicial determination of the meaning of the statutory term "severance damages", the amounts involved could prove to be very substantial.

Since takeover will result in disruption of power supply, shrinkage of local tax base, inequities to the consumers of electricity, and waste of national resources, it can be justified only where the existing licensee is unable or unwilling to carry out whatever project modifications are deemed necessary by the Commission to achieve comprehensive development. It is our understanding that H.R. 12698 is intended to incorporate this philosophy and, therefore, would minimize the dislocations inherent in takeover.

Suggested Modifications of H.R. 12698

Since we believe that it is logical and sensible that FPC's authority over relicensing should be substantially similar to its authority with respect to initial license applications, we recommend deletion from the bill of the following two specific provisions:

1. *Four Year Delay in Effectiveness of FPC Order.*—The seventh "Whereas" clause and the last two sentences of § 2 of the bill would make it possible even in cases where FPC, after a full hearing, decides in favor of relicensing, to stay the relicensing by as much as four years. We respectfully submit that such a provision is entirely unwarranted and might result in a reimposition on Congress of a large portion of the project-by-project burden which H.R. 12698 is expressly designed to avoid. All those urging Federal takeover, including any other federal agencies, will have adequate opportunity to present their views to the Commission in a relicensing proceeding, just as they now have with respect to initial license proceedings. No justification exists for conferring upon them greater rights in the one case than in the other.

2. *Unilateral Alteration of Licenses by FPC.*—Section 3 of H.R. 12698 states that the provisions of a license issued in a relicensing proceeding may, *at any time during its term*, be unilaterally altered by the Commission. To confer upon the granting agency the unilateral right to amend the authorization granted

would bring about a fundamental change in the nature of that authorization—it would reduce its status from that of a license, which is in the nature of a contract, to that of a permit.

We suggest that there is no need for such a far reaching provision and that it should be deleted from the bill. In relicensing a project, the Commission will have the power to condition the issuance of the license upon such terms and conditions as it deems desirable in the interests of comprehensive development. We submit that this, together with the right (preserved by § 14 of the Act) of public agencies to condemn a project during its license term, affords sufficient protection of the public interest. The existing licensee, or if he declines, a new licensee must accept such terms and conditions in order to obtain the license. Acceptance of such terms and conditions will, in many cases, entail expensive redevelopment of the project. As was the case during the early part of this century, investors will be reluctant to embark upon such expensive undertakings unless they are granted specified rights in the project for a fixed term of years.

CONCLUSION

H.R. 12698, if enacted with the modifications suggested above, would provide a practicable answer to the existing procedural nightmare which appears to require the Congress to pass upon each project on a case-by-case basis. It would delegate to the Commission, within statutorily prescribed standards, the authority to issue renewal licenses just as the Congress in 1920 delegated to the Commission the authority to license new projects. It would authorize the Commission to grant a new license to the existing licensee whenever such existing licensee were willing and able to take whatever action the Commission found to be necessary and appropriate for comprehensive development. There would be left for individual Congressional consideration only the very small number of projects in which the existing licensee or a new applicant was unable or unwilling to make the modifications required by the Commission in the interests of comprehensive development.

In all but the few exceptional cases (which would have to be handled on a case-by-case basis), H.R. 12698 would (i) ensure comprehensive development (since, by hypothesis, the existing licensee would have agreed to take whatever steps the Commission found to be necessary for such purposes); (ii) avoid disruption in power supply; (iii) avoid the disruption of local communities caused by a sudden shrinkage of their tax base; (iv) avoid the waste of resources associated with takeover—and the payment of severance damages; and (v) give existing customers the benefits of the lower rate base associated with a substantially depreciated project for which such consumers had supplied the depreciation accruals.

I should like to emphasize in closing that H.R. 12698 with the deletions suggested above would in no way modify or impair the existing right "of the United States or any Sate or municipality to take over . . . any project . . . at any time by condemnation proceedings . . ." (Federal Power Act, §14). This provision fully protects the right of government to take over any such project in the future, for any reason or reasons which may not be foreseen, but which is then found to require government takeover in order to further the public interest.

For their convenient reference, I am sending a copy of this statement to each of the other members of the Subcommittee.

Respectfully submitted,

HERBERT B. COHN,
Executive Vice President, Administration and Corporate Services.

STATEMENT OF DR. SPENCER M. SMITH, JR., SECRETARY OF THE CITIZENS COMMITTEE ON NATURAL RESOURCES

Mr. Chairman, Members of the Committee, I am Dr. Spencer M. Smith, Jr., Secretary of the Citizens Committee on Natural Resources, a national conservation organization with offices in Washington, D.C.

The Citizens Committee on Natural Resources is a legislative action group whose gifts and bequests are not tax deductible by the donor and is registered under the provisions of the Lobbying Act with the Congress. Members of our Board of Directors serve as individuals and act in their individual capacities.

The policy of the Citizens Committee on Natural Resources is established by the Board of Directors at their Annual Meeting. The Executive Committee meets from time to time, especially if interpretation is needed of the decisions of the Board relative to a particular measure. Those serving as members of our Board of Directors are distinguished professionals in the various disciplines of the conservation of our natural resources. Many are executive officers of scientific, educational, and non-profit organizations in the field of conservation.

We appear today, Mr. Chairman, in support of H.R. 12698 and H.R. 12699, which would amend Part I of the Federal Power Act, which relates to the procedures involved when hydroelectric licenses expire. The basic question is whether the Federal Government should re-capture a project upon the expiration of a hydro-electric license, or whether re-licensing should be effected. The Federal Power Commission was created in 1920 to license non-Federal hydroelectric projects for a period not to exceed fifty years.

We are pleased that these bills clarify and better establish the processes by which the decision to re-capture or to re-license is determined. We do not have any significant expertise in addition to the information the Committee already possesses in defining the role of the Commission, or the Congress, and the further establishment of appropriate procedures for arriving at a conclusion. We support Chairman White's recommendations that in the decision to re-license, the determination of which plans are best adapted to the comprehensive development of the waterway would include in that criteria for comprehensive development all beneficial public purposes. Such public purposes would include further the serious consideration of recreation, conservation, fish and wildlife protection, and water quality control. All of these criteria are of substantive importance for any project under active consideration for re-licensing.

It would be impertinent to suggest that those appearing before the Committee regarding these measures were concerned only with the consideration of their own economic posture. While we do not so claim, we are aware that many witnesses do not have the primary concern for other public benefits which this Committee has recognized over a period of years and which could be compared to the consumer's concern when the Federal Government acts to protect the consumer interest or the broad public interest, often by restricting the prerogative of directly involved economic enterprises. It would appear that Section 3 (B) of H.R. 12698 and H.R. 12699 may well fall within this type of context. The bill would increase or extend the Commission's licensing power, which would permit the Commission at any time after the issuance of any license under Section 15 (A) of the Federal Power Act, to impose upon the licensee such further reasonable requirements as are not inconsistent with the other provisions of the Act.

We are quick to discern that this particular section of the proposed legislation would be hard-pressed to find a champion among the prospective licensees. Their position is completely understandable and is comparable to allowing one of the parties to a contract to re-negotiate it at his option but not at a time certain. The reasons given are direct and understood by all, such as the difficulty of planning, the fluctuation of a variety of economic indices with which the licensee must cope, and perhaps tantamount to these concerns is the feeling of uncertainty that would be evident if the Commission possessed this authority.

While one can understand the concern of the licensee and his need for a considerable degree of certainty in his operation, it must be subordinated, in our judgment, to the necessity of serving the broad public interest. It is impossible for the Federal Power Commission at the time the license is granted to be omniscent for a period of fifty years. The events of the last two decades should make this intuitively obvious. The problems of water availability, water quality, diminution of recreation areas, population increases and concentration, and technological changes represent changes of such rapidity and magnitude that not even the most pretentious clairvoyant could have grasped in any reasonable perspective forty years ago. Technological changes especially have accelerated in the recent past and continue at an even more rapid rate. The difficulty of digesting this engineering and scientific largesse is apparent and it would appear mandatory that the public interest should receive consideration and possible re-evaluation from time to time.

These bills are quite specific as to any additional requirements being imposed upon the licensee in meeting the tests of reasonableness. Public hearings would have to take place and it seems inconceivable that the Commission would not have as one of the criteria for that evaluation the economic impact on the area, as well as the licensee himself. Also, public hearings would allow for opportunity of the various interests to be represented prior to the Commission mak-

ing a decision. Also, it would be inconceivable to us if the Commission did not consider such action with the greatest of care and make every human effort to conduct the maximum amount of analysis and research even prior to the preliminary finding.

We feel, Mr. Chairman, that the events of the past have proven conclusively that had the Commission had this power some of our most egregious problems relative to water pollution, recreation, and appropriate conservation measures could have been handled at a much earlier date, resulting in an advantage to everyone concerned. We do not think that the passage of these measures will cause any wide spread disinterest in the application of re-application for licenses nor do we feel the burden of such uncertainty to be so great that we should refuse to place in the hands of the Commission the means by which the broad public interest can be served in a complex, fast changing world.

We hope that the Committee will find it convenient to approve H.R. 12698 and H.R. 12699 at an early date and retain the provision recommended in Section 3(B).

BALTIMORE GAS & ELECTRIC CO.,
Baltimore, Md., June 14, 1968.

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

DEAR REPRESENTATIVE MACDONALD: Baltimore Gas and Electric Company appreciates the opportunity afforded it by the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce to make a statement on the proposed legislation embodied in H.R. 12698 and H.R. 12699. Baltimore Gas and Electric Company supplies electricity, gas and steam in an area of approximately 2,300 square miles in central Maryland. Electricity is furnished by the Company throughout the entire area to a population of more than 2 million persons. Included in the territory served are Baltimore City, Annapolis, Towson, Westminster, Laurel, Bel Air, Havre de Grace, Aberdeen, and more than 40 other communities. The Baltimore Metropolitan Area is the 12th largest in the United States and has an increasing population growth rate, with kilowatt-hour sales over the last 50 years having on the average doubled approximately every ten years. At the end of 1967, Baltimore Gas and Electric Company was serving more than 647,000 electric customers. The Company's 1967 peak load (attained on August 3) was 1,927,000 kw., and the summer capability of the Company's system, including its entitlement to Safe Harbor capacity (see next paragraph), at the end of 1967 was approximately 2,150,000 kw. The Company's system is operating in turn as a part of the Pennsylvania-New Jersey-Maryland Interconnection (PJM). PJM is one of the world's largest power pools, and the companies which are interconnected serve approximately 20 million people.

Although Baltimore Gas and Electric Company is not itself a licensee under the Federal Power Act, it is nevertheless vitally interested in, and will be greatly affected by, the relicensing of the Safe Harbor Water Power Corporation hydroelectric plant located on the Susquehanna River between York and Lancaster Counties in the State of Pennsylvania. Baltimore Gas and Electric Company owns two-thirds of the outstanding capital stock representing one-half of the voting shares of the Safe Harbor Company (the remaining one-third of such stock being owned by Pennsylvania Power & Light Company of Allentown, Pennsylvania) and by virtue of such stock ownership is entitled to 152,000 kw of capacity and the associated energy from the Safe Harbor hydroelectric generating plant. This represents a significant part of our Company's total requirements. In addition to being an economical source of power and energy to Baltimore Gas and Electric Company, the Safe Harbor hydroelectric generating plant is an important factor in the bulk power transmission system of the PJM interconnection. A major tie between the Baltimore system and PJM is through the Safe Harbor station bus and the Manor substation located adjacent to the hydroelectric generating plant. The Safe Harbor Water Power Corporation Project was licensed for a 50-year period on April 22, 1930, as Project No. 1025, and its license will expire April 22, 1980.

With respect to H.R. 12698 and H.R. 12699, Baltimore Gas and Electric Company feels that there is a need for the Congress to enact legislation which will

clearly set forth its objective with standards and guidelines to govern the processing of expiring hydroelectric licenses.

We firmly believe that it is in the public interest to assure continued ownership in the original license. In the recent hearings before the Senate Committee on Commerce, the Chairman and the General Counsel of the Federal Power Commission expressed opinions that under existing law the preference of states and municipalities under Section 7(a) of the Federal Act will not apply upon the expiration of an existing license where recapture is not exercised and where the holder of the expiring license applies for a new license. Despite those opinions, we feel that it would be in the public interest for Congress to take this opportunity (by amending H.R. 21698 and H.R. 2699) to make it clear that such preference does not exist where the holder of the license applies for a new license.

This Company suggests also that the 6th and 7th whereas clauses together with Section 2(b) of H.R. 12698 and H.R. 12699 are undesirable since these portions of these bills nullify the legislation's objectives of handling relicensing promptly and expeditiously. Under these provisions, any agency of the United States Government can automatically block the issuance of a new license for up to a period of four years. In view of all the other remedies that such agencies presently have, we do not feel that these provisions are in the public interest. Baltimore Gas and Electric Company also suggests that the Congress eliminate Section 3(b) from H.R. 12698 and H.R. 2699 which authorizes unilateral alteration of licenses by the Federal Power Commission during the entire term of the license.

In view of the fact that a license for a new project does not require the establishment and maintenance of amortization reserves until 20 years after the beginning of project operation, it seems unfair to require establishment and maintenance of such reserves from and after the effective date of any relicensing, and, accordingly, we suggest that Section 4 of H.R. 12698 and H.R. 12699 be deleted.

Very truly yours,

T. W. TRICE,
Vice-President, Electric Operations.

STATEMENT OF WILLIAM M. LEWIS, JR.

Mr. Chairman, members of the committee, thank you very much for permitting me to enter this statement in the record. Prior commitments prevented my testifying during the hearings last week.

I am a consulting electrical engineer from Portsmouth, Ohio. For the past twelve years I have been practicing under the firm name of W. M. Lewis & Associates, and previous to that I had a variety of experience in engineering, largely associated with electric utilities. The firm of Lewis & Associates does engineering work for all segments of the electric power industry. This includes work for investor-owned electric companies, municipal electric systems, rural electric cooperatives, gas companies engaged in total energy systems and industrial facilities. We hold no allegiance to any one of these groups, but offer engineering services on an equal basis. As power engineers we want to see the entire industry grow and prosper.

I am gravely concerned not about the present language of H.R. 12698 and H.R. 12699, but the effect of a Committee report if it should be similar to the Senate Subcommittee's report in S. 2445, which is the Senate version of these two bills. The Senate Subcommittee's report directs itself to the matter of preference on relicensing an existing hydroelectric project.

It is important that this Committee examine very carefully the issues lurking in the dark corners of what is purported to be a "procedural" bill. Lee C. White, Chairman of the Federal Power Commission, stated before this Committee that these bills "are procedural bills designed solely to permit the recapture and relicensing determinations to be made efficiently and in harmony with the purpose underlying the limited term license." "There has been no attempt," he says, "to modify the substantive standards which the Commission is required to apply in determining whether or not to recommend recapture and in passing upon relicensing proposals."

I am not an attorney but it seems to me that Section 309 of the Federal Power Act is quite clear when it says:

"The Commission shall have power to perform any and all acts, and to pre-

scribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act."

To me this means the Commission has broad powers to make rules and regulations to govern its own procedures. This interpretation has been affirmed by the courts as has been cited previously in testimony given before this Committee.

In Chairman White's letter of August 28, 1967, to Honorable John W. McCormack, Speaker of the House, he said:

Under section 7(a) of the Federal Power Act the Commission is instructed to give preference to applications by states and municipalities in issuing licenses to new licensees under section 15. Our General Counsel has advised us that this preference applies only after it has been determined that the original licensee should not receive a new license. In those instances where the original licensee and another applicant seek a new license for the same project, the Commission believes that the new license is to be issued to whichever applicant can best meet the standards of the Act. In those rare cases where the two applicants are equally matched the Commission believes that the new license should be issued to the original licensee so long as he can meet the standards of the Act at least as well as the other applicant.

At this point an important question comes to my mind—If H.R. 12698 and H.R. 12699 are purely procedural as Chairman White says, then in view of Section 309 of the Federal Power Act, why are they presented at all? If procedural, then the matter of preference is not germane and should not be raised in a committee report as the Senate Subcommittee has done. On the contrary, if preference is to be an issue, then this Committee and the Congress should meet the matter squarely, as their predecessors have done, and make it positively clear by the wording of the bill that either (1) "preference" applies when projects are relicensed just the same as it does upon original licensing, or (2) the present licensee should have preference over any and all applicants whenever the project comes up for relicensing.

If this Committee decides that the Congress laid upon the shoulders of the Commission the responsibility to administer the Act, as I believe Section 309 provides, H.R. 12698 and H.R. 12699 are moot and the bill should be killed.

I urge this Committee to carefully study the preference provision now contained in the Federal Power Act and recognize what it has meant to the people of these United States in the years past. In my opinion if this Committee does not make absolutely clear that the preference provisions for public agencies are applicable on reissuance of existing licenses when they expire, then it is granting a license in perpetuity to the present holders of these licenses. The water resources of this country belong to the people. The original intent of Congress, expressed in the Federal Power Act, was, among other things, (1) to re-evaluate the use of these resources every fifty years, and (2) to give public agencies preference to their use. If such preference does not apply to relicensing of a project at the end of fifty years, then the private power companies will have a perpetual license and the people will have forever lost access to the direct benefits derived from their own resources.

Those who advocate complete control by investor-owned utilities of our nation's power supply, and who oppose the present pluralistic form of ownership, advance the argument that continuation of ownership of hydroelectric projects is necessary to avoid any possible interruption of generation in an integrated power system. There is no need for interruption—and there will never be a need for interruption—if these present projects are licensed to a public power system. The people operating and managing public power systems are not novices at integrated power system operation and there is absolutely no reason to believe that the continuity of generation emanating from these projects would be lost. I believe that granting a license to a public body upon expiration of the present license may be the vehicle necessary for public power systems to gain access to the benefits of integrated power system operation denied them in the past.

Private power spokesmen argue that the provisions of Section 14 of the Federal Power Act enable a state or municipality to take over any licensed project by condemnation proceedings and that this gives them all the priority they need. In providing consulting engineering services to public power systems, I have learned that condemnation proceedings can be contested in the courts to the effect that the side having the greatest financial resources and influence is the winner and the rights of condemnation sometimes are lost. This is why it is so important that this Committee and the Congress take a firm position on the matter of "preference." So far as I know, the rights of imminent domain, as provided for in Section 14, have never been successfully employed.

I am confident that this Committee and the Congress have the interests of the people first and foremost in their minds and deeds, and will carefully weigh the future consequences that could result if this "procedural" bill passes and the position taken by Chairman White and his General Counsel is sustained.

Respectfully submitted.

STATEMENT OF EDWIN I. HATCH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, GEORGIA POWER CO., ATLANTA, GA.

My name is Edwin I. Hatch. I am President and Chief Executive Officer of Georgia Power Company. I appreciate the opportunity to submit this statement on the bills before your Committee, H.R. 12698 and H.R. 12699.

Georgia Power Company is an operating subsidiary of The Southern Company and generates and distributes electric energy through 97.7 percent of Georgia. We serve about 57,000 of the State's 59,000 square miles, supplying electric power at retail in 645 towns and communities and at wholesale to 39 REA cooperatives and 50 municipalities having their own distribution systems.

We submit that it is in the public interest to relicense the hydroelectric plants of The Southern Company and our Company as the licenses for these plants expire. As part of the electric system, the hydroelectric plants supply energy and peaking power, strengthen the reliability of the whole system and its components, furnish spinning reserve, and provide emergency start-up power for other generation. They bring important tax revenues to the State and local governments. We also subscribe to the views of those witnesses whom you have heard from, the investor-owned electric utility industry. We are submitting this statement to concur in such remarks and to present our views as to certain elements of these bills.

Before going into these details, however, it seems well to provide you with a few additional pertinent facts about our Company and its situation relative to its directly served customers and the Federal preference customers.

We own 16 hydroelectric projects that are either under license or in the process of being licensed as constructed projects under applications made to the Commission and to which this bill would presumably apply. The original cost of these projects aggregates more than $81,000,000. In addition, we have made application to the Federal Power Commission to construct two more hydroelectric projects, and have been granted a preliminary permit on a possible project.

The total capacity of all our generating plants, including the thermal plants, is presently 3,290,180 kilowatts. We directly supply about 900,000 customers. This is about 64 percent of the consumers in Georgia. The electric cooperatives supply about 23 percent of Georgia consumers and the wholesale towns operating their own distribution systems, about 13 percent. These Federal preference customers obtain about 21 percent of their power from the Federal Government and about 79 percent from us. We wheel the Federal power to them under contract with the Southeastern Power Administration of the Department of the Interior and supply the remainder of their needs with our own power. This is done in accordance with contracts that we have with each of them. I do not know of any that are dissatisfied with their contracts, which are under the regulation of the Federal Power Commission. We expect to furnish any requirements these preference customers may have in the future over and above that which the Federal Government furnishes them. Our rates to residential customers are 22 percent below the national average and those to commercial, industrial and wholesale customers correspondingly low. From all this, it can readily be seen that there is no requirement or need for the Federal Government to take over any of our plants in order to furnish the preference customers economical power.

We support the general principles embodied in the bills which would allow improvements in procedures presently being used by the Federal Power Commission. If it is assumed that the Commission is correct in its view that, under present law it must refer each relicening case to Congress, it is desirable that this bill be enacted. However, we object to two specific provisions of the bills and wish to comment on two other aspects of the matter.

We join in the objections that have been raised to the sixth and seventh "Whereas" and to that part of Section 2(b) that would require the Commission to stay a relicensing order up to four years if any Federal Agency recommended that, regardless of the Commission's finding in the matter, the United States exercise its rights to take over a project. We think this is somewhat inconsis-

tent with the provisions of Section 7(b) of the Federal Power Act, which only requires the Commission to refer such a matter to Congress when in its own judgment the original development of the water resources should be undertaken by the United States. We realize that these are not exactly parallel cases. However, it has been the policy of Congress as set forth in the Act to allow the Commission to form this type of judgment, and by virtue of its experience it is in an ideal position to do so. Adoption of the provision that provides for staying the effective dates of orders issuing licenses could result in lengthy delays in large numbers of relicensing procedures. As the Federal agencies have the power to intervene in proceedings before the Commission and to take appeals to Commission decisions, it would seem that no further authority need be accorded them.

We also object to the provisions of Section 3(b) of the bills that would allow the Commission, after issuance of a license, to impose upon the licensee further "reasonable" requirements not in the license. This in our opinion would mean that actually the licensee had no license at all but instead was permitted to continue operating the project at the pleasure of the Commission. A license necessarily places on a licensee many obligations, which may include substantial redevelopment of its project. A licensee should at least be relatively secure in the terms of its license.

In this connection, Mr. Charles A. Robinson, Jr., testifying before the Senate Commerce Committee for the National Rural Electric Cooperative Association on February 27, 1968, stated that he felt Section 3 of the bills would be of extreme importance to small electric systems in that it would allow them to participate in benefits available from the hydroelectric developments of other licensees, presumably the original licensees. Such benefits might include delivery of a bulk of wholesale energy at a specified cost, the use of the licensees' transmission system for wheeling energy or an arrangement whereby the licensee would pass on to the small system a portion of the economic benefit derived from the project. We are compelled to not let such a statement go unanswered because it is obvious that Section 3 of the bills, and the Federal Act that it amends, are not susceptible of such an interpretation.

The Commission letter forwarding the draft bill to Congress said the Commission believed that in relicensing projects a license term substantially shorter than 50 years might be appropriate when no extensive redevelopment outlay was needed. It seems probable that for many years electric utilities will have the obligation of providing electric service under greatly increasing load conditions. At least seven years of lead time are presently required for providing new generations. Transmission lines as well as generating plants are involved. While the Committee may not wish to insert in legislation any provision concerning the length of licenses, we would hope that this matter could be commented on in the Committee report and we would suggest that all licenses should run for at least a reasonably long term, preferably limited to less than 50 years only when circumstances make this desirable.

STATEMENT OF IDAHO POWER CO.

I am Albert Carlsen, President of Idaho Power Company, 1220 Idaho Street, Boise, Idaho, and make this statement of Idaho Power Company's position with respect to HR 12698 and HR 12699 and related bills now pending before the House Subcommittee on Communications and Power of the Committee on Interstate Commerce and Foreign Commerce.

HR 12698 involves amendments to Part I of the Federal Power Act and specifically to those parts relating to relicensing of hydroelectric projects. Idaho Power Company has a very continuing and vital interest in any matter relating to amendment of hydroelectric licenses, since the Company is the present holder of eight Federal Power Commission licenses for hydro projects, and presently has on file with the Commission applications for three more hydro projects. In addition, the Company has under license a number of transmission lines. The all persuasive interest of Idaho Power Company is better shown by pointing out the fact that the Company, along with one other company, is a 100% hydro system relying for its own generation entirely upon water power. Of the Company's total name plate generating capacity of 1,289,345 kilowatts, 1,183,465 kilowatts are now licensed and 74,380 kilowatts are the subjects of pending license applications. This results in 97,56% of the Company's entire generation being subject

to relicensing. One of these projects—Swan Falls FPC License No 503—will expire in 1970 and, therefore, the relicensing problem insofar as Idaho Power Company is concerned is no longer an academic question, but instead is an actual pressing problem.

Based upon our Company's experience and probems relating to its initial plant for which the original license is terminating, the Company supports the basic premise that amendments relating to licensing procedures are necessary and we believe that the elimination of the time and motion consuming process of Congressional action in all cases where Congress has not expressed a desire to act is a forward step and one which should expedite the relicensing procedure. The Company does have strong doubts about the wisdom of the provision which allows any agency of the Government in effect to nullify for up to four years the recommendations of the Commission with respect to the granting of a relicense. It would appear that the expertise of the Commission in weighing all pertinent factors shoud govern over the possible self-serving desires of any particular Governmental agency. Any agency would have the full opportunity to express to the Commission its views on relicensing and it certainly seems that the orderly and legal procedure would best be served by the Commission's making the decision without any possibility of harassing and time consuming delays.

The proposed Section 3(b) in HR 12698 relative to the right of the Commission to impose additional requirements upon the license at any time appears completely unnecessary. With such a provision, what could a company say to an investor with respect to his reliance on the terms and conditions set forth in the license, since with this provision there is no commitment nor assurance as to what additional burdens or requirements may be imposed? The only limitation is the word "reasonable" and what may be perfectly reasonable to one person may be completely unreasonable to another. This provision would result in an effective elimination of the "license" and instead provide merely a "permit" with all of its limitations. We would seriously doubt that any company under that type of situation would feel free to make the substantially expenditures in rebuilding that may be necessary under relicensing, if it felt that benefits therefrom could be eliminated in the future. For example, the Company in connection with its Swan Falls relicensing, contemplates substanial changes and improvements. However, it would appear that in spending the substantial sums of money necessary for such improvements, more than a "permit" type of license would be required.

As a practical matter, the Company's existing licenses have been amended or changed with Company's consent a number of times and it would seem that the existing procedure has been satisfactory. For this reason we do not believe there is any practical need for a provision such as proposed in Section 3(b).

We respectfully submit that passage of HR 12698 with appropriate amendments eliminating the potential four year delay, together with the deletion of of Section 3(b), would materially assist in the continued use and development of the Nation's hydro resources.

ALBERT CARLSEN, *President.*

WASHINGTON WATER POWER CO.,
Spokane, Wash., June 13, 1968.

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

DEAR MR. CHAIRMAN: The Washington Water Power Company operates an electric system in Eastern Washington, Northern Idaho and the extreme western part of Montana. The Company owns and operates hydro-electric plants with a capability of 830,600 kilowatts and purchases on a long-term basis a portion of the output of additional hydro-electric plants in Central Washington owned and operated by public utility districts. All of the power which it generates and sells is furnished by hydro-electric projects. It is, therefore, vitally interested in H.R. 12698 and H.R. 12699.

Since the Washington Water Power Company is entirely dependent upon the output of hydro-electric projects, the present uncertainty with respect to the procedures for relicensing creates problems for the Company, for its employees and for its customers. The legislation proposed in H.R. 12698 and H.R. 12699 prepared by the Federal Power Commission is fundamentally an improvement in the mechanism of relicensing hydro-electric projects on the expiration of an

existing license. We, therefore, approve and support the general purposes of this legislation.

On the other hand, we oppose the provision permitting agencies of the United States to automatically block the issuance of new licenses as provided in Section 2(b), and we oppose Section 3(b) of the proposed Act which would allow the Federal Power Commission to change a license after it has been issued.

There is one other aspect of this general subject matter that does concern us, and that is the claim by some public power agencies and associations that, on relicensing, they have the right to a preference and that this right includes the right to take over a project upon payment of the then net investment of the former licensee. Since public agencies have the power of condemnation, they can take over any project upon paying a fair price for it. It is shocking to us that some of them claim the right to take over a project and pay in modern depreciated dollars for a project that was originally paid for in dollars of fifty years ago. They would be able to pick and choose and take the projects that turn out well and leave the original licensees with the more expensive or less economical projects. They would claim for their customers the advantage of the depreciation paid for by the customers of the original licensee. We do not see how any fair-minded person could support this claim.

We have always felt that the law in the light of the legislative history of the Federal Power Act is quite clear that public power preference applies only on the original licensing and that in fact, so long as the original licensee is willing and able to do whatever is necessary to provide comprehensive development of the river basin, i.e., in effect is doing a good job, he is entitled to a renewal of his licensee. If the Committee feels that this presently is the law, then we have no suggestions for any changes in the bill in this regard. However, if the Committee should feel that this is not the law presently, then we urge that the bill be amended to make it clear that the original licensee does have this right. Any other answer to this problem could only result in chaos in the electric utility field and in an inequitable re-distribution of property from one group of investors and users to another group.

We thank you for this opportunity to present our views and we support the views presented to the Committee at the hearing by Mr. Jack K. Horton and Mr. Frederick P. Searls.

Very truly yours,

G. M. BRUNZELL, *President.*

WISCONSIN PUBLIC SERVICE CORP.,
Milwaukee, Wis., June 12, 1968.

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

DEAR MR. MACDONALD: Wisconsin Public Service Corporation is a public utility serving a population of over 600,000 in a 10,000 square mile area in northeastern Wisconsin and an adjacent portion of Menominee County in Michigan. For the record, we would like to submit a statement on Bills H.R. 12698 and 12699, Relicensing of Hydro Projects. These bills are a major concern to us inasmuch as our hydro plants play an important part in our integrated electric system.

To provide the electricity needed by our 197,000 customers, we have the following generating facilities:

	Number of plants	Capacity (kilowatts)
Steam electric generating plants	3	537,500
Hydroplants	15	62,676
Diesel plants	2	7,000
One-third interest in Wisconsin River Power Co		11,667
Total		618,843

In 1967, our hydro plants accounted for 10% of the total amount of electricity generated. In addition to helping meet capacity requirements, these plants are valuable in other ways, namely:

1. They are useful for peaking capability.

2. They can carry the load in scattered areas in the event of major storm trouble or other disasters.

3. They are available for start-up power for our two largest steam plants in the event of a disaster.

Failure to have the plants relicensed would cause a serious disruption in our highly coordinated system. Not only would it be costly to replace the lost generating capacity but also many expensive changes would have to be made in our transmission lines and substations. Needless to say, these costs would have to be passed on to our customers, either in the form of higher rates or in a slow-down of our downward rate trend.

It is for these reasons that we are concerned over some of the changes proposed in these bills, which, if approved, would create needless delays in relicensing projects and in uncertainties after the projects are relicensed.

In Section 2 of the proposed bills which would create a new subsection (b) under Section 14 of the Federal Power Act, federal departments could recommend a take-over of a project even if the Federal Power Commission should not agree. Other agencies now have the power to intervene in proceedings before the Federal Power Commission and have legal recourse to the courts if they want to appeal a decision by the Commission. It is our belief that Congress should receive recommendations from only one source. A lengthy delay in the procedure of relicensing is inevitable if any other course is followed.

Section 3 of the proposed bills provides for a new subsection (b) under Section 15 of the Federal Power Act, which is opposed by us because it would, in effect, make licenses issued by the Federal Power Commission amount to only permits that could be altered at any time by the Commission. This amounts to a substantial change in the law and places the license of a hydro plant in jeopardy from the date of issue until the termination date. This subsection is not needed because the present law provides adequate protection for everyone concerned by stipulating that licenses may be altered or surrendered only by mutual agreement between the licensee and the Federal Power Commission after a thirty-day public notice.

We believe the public interest should be protected when a licensee desires a relicense, and we are not opposed to a reasonable time for due processing. We are in opposition to these parts of the above bills as stated which will contribute nothing to the public interest but will result only in delays and uncertainties in the relicensing procedure.

Yours very truly,

P. D. ZIEMER, *Vice President.*

DUKE POWER CO.,
Charlotte, N.C., June 10, 1968.

In re H.R. 12698, H.R. 12699, procedure upon expiration of hydroelectric project licenses issued pursuant to part I of the Federal Power Act.

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

DEAR MR. CHAIRMAN: Duke Power Company appreciates the oportunity to submit the following statement for the record in connection with the June 11, 1968, Subcommittee hearings on the above-entitled bills.

Duke Power Company is an investor-owned electric utility serving over 877,000 customers in the central and western portions of North Carolina and South Carolina. Its generating plants have a capacity of over 5,000,000 kilowatts. It is a licensee under Part I of the Federal Power Act, holding licenses from the Federal Power Commission for 800,000 kilowatts of hydroelectric capacity on the Catawba-Wateree River and 750,000 kilowatts on upper tributaries of the Savannah River.

While our Company favors the basic purpose of H.R. 12698 and H.R. 12699, we feel that the bills as introduced need certain revisions in order to assure continued development and redevelopment of hydroelectric projects in keeping with the purpose and intent of Part I of the Federal Power Act.

1. We feel it extremely important, and in keeping with the legislative history of Part I of the Federal Power Act that a statement of policy along the following lines be incorporated into this legislation:

"If the original licensee files an application for a new license, unless after notice and a hearing the Federal Power Commission finds that the project with

such modifications and conditions as the Commission may prescribe would not be best adapted to a comprehensive plan for improving or developing the waterway involved, the Federal Power Commission shall issue to the original licensee a new license under the Federal Power Act containing such modifications and conditions as may be authorized or prescribed by the Commission."

2. We feel that the proposed new Subsection (c) to Section 7 of the Federal Power Act should be amended to provide for notice to the original licensee and opportunity for hearing before the Federal Power Commission makes a determination that the United States should take over a project.

3. We feel that the proposed new Section 14(b) of the Federal Power Act, as embodied in Section 2 of H.R. 12698 and H.R. 12699, should be revised by deleting the requirement that the Federal Power Commission shall stay the effective date of an order issuing a license upon motion of any Federal department or agency. This provision would defeat the purpose of orderly procedures for relicensing without undue delay.

4. We feel that the proposed new Section 15(b), as embodied in Section 3 of H.R. 12698 and H.R. 12699, should be deleted in its entirety. This section would give the Federal Power Commission the authority to impose entirely new conditions upon a licensee at any time during the term of the license. It is a complete departure from the concept embodied in Part I of the Federal Power Act, that a license, once accepted, becomes a contract between the Government and the licensee. It would in effect repeal the following provisions of Section 6 of the present Federal Power Act:

"Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this Act, and may be altered or surrendered only upon mutual agreement between the licensee and the Commission after thirty days public notice."

If licenses issued under Section 15 were to be subject to change at the will of one party, without the concurrence of the other, we anticipate that the same difficulties with financing and development of hydroelectric resources as were experienced under the original Federal Water Power Act would again recur with respect to redevelopment of projects previously licensed. It was to eliminate such uncertainty as to license terms that Part I of the Federal Power Act was enacted in 1920. Only after its enactment, with assurances to the licensee as set forth in Section 6, quoted above, was private capital attracted in significant amounts to hydroelectric projects under Federal license. It is submitted that no good reason has been advanced for repealing this basic provision of Part I of the Federal Power Act.

In summary, Duke Power Company favors the enactment of H.R. 12698 and H.R. 12699, if revised as suggested above.

With thanks for this opportunity to present our views on this very important legislation.

Very truly yours,

CARL HORN, JR.,
Vice President, Finance, and General Counsel.

STATEMENT OF A. H. HERBERT, PRESIDENT, MINNESOTA POWER & LIGHT CO.

Minnesota Power & Light Company, a licensee under provisions of the FPC is most interested in this proposed legislation being considered by your committee. Procedure that would expedite and clarify the recommendations by the FPC regarding take over of licensed projects is favored. The Federal Power Commission proposal to make its recommendation on relicensing only after a full hearing and after having received full reports of all interested agencies has merit. Of doubtful merit is the proposal that other government agencies submit separate reports directly to Congress on the desirability of take over. Certainly each agency is entitled to present its position but unless FPC acts as the agency through which all such recommendations are channeled to Congress, mass confusion may very likely result. All information should be collected by one agency, preferably FPC and be available for review at one source. All reports from, or positions of other agencies should be filed and submitted to FPC prior to a date set by it.

If Congress decides against take over the present licensee should obtain a relicense. Circumstances could arise that would preclude an existing licensee from carrying out as satisfactorily as a new applicant the plan best adapted to

comprehensive waterway development. This is hard to envision but in that case, and only in the case where the existing licensee cannot perform approximately on a par with a new applicant should a new licensee be considered. In connection with the discussion of extending preference provisions of Section 7A of the existing Act to relicensing Chairman White's position that it has no place in this legislation is sound. All customers of existing licensees are just as much preference citizens and taxpayers as the customers of municipal or other governmental power operations. The present statutory language of Section 15 adequately states the priority right of existing licensees. If the Commission wishes to further clarify the position that socalled preference groups have no priority in a relicensing matter, such position would be sound.

For emphasis only and not to be repetitious or redundant, our company advises the committee that it agrees with the testimony of Messrs. Bouldin, Horton and O'Kelly that the bill, as it exists, contains provisions which are harmful to the investor owned electric utility industry and to the country as a whole. One of the most objectionable features is the provision (Section 3) permitting the FPC to alter the terms of a license at any time after issuance to impose reasonable requirements that are not inconsistent with the other provisions of the Act. A document with such a provision would not constitute a license but would be a mere sufferance permit.

Chairman White was asked if such a provision would retard investment. He replied that it would not because the investment would already have been made. The Chairman's response clearly reflects the unfavorable position in which any licensee would be placed. The licensee would be bound by any changes having previously tied itself to the project not only by investment but by the provisions of the Act that preclude abandonment without the consent of the Commission. No licensee should be placed in such an intolerable position.

Unforeseen problems may arise it is true. However, over the last 50 years of license history they do not seem to have caused FPC any great difficulty. If such problems do arise, a provision for periodic reviews to update license conditions to conform to the circumstances then prevailing could be determined by good faith negotiations on mutually acceptable terms. While it would seem eminently fair that both parties have the right to initiate such negotiations the industry would probably be willing o have such initiation available only to the Commission. Under existing law both parties must accept the terms for the entire period up to 50 years regardless of what may transpire. Economic evaluations must be made now for the next 50 years which can result in undue hardship on the customers of a utility. Nevertheless, such determinations are based upon then known firm conditions. If the ground rules are to be changed unilaterally at various times the risks and the burden to the utility and its customers are severely increased.

Of great concern is that the Commission's only expressed reason for desiring this change seems to be the recent emphasis on aesthetics. While recognizing this phenomenon, it is questioned how far it is to be encouraged. Aesthetic concentration could result in beautiful forests, fish filled lakes and faultless physical panorama that would be fatal to previously developed sound economics which have produced a tax base of unestimatable value to school, roads, police protection and other needful worthy civic ventures. Enjoyment of the aesthetic wonders will be severely limited if the expense of undergrounding, beautility and recreation rise to make the cost of electricity prohibitive. Electricity is a vital element in the nation's productive capacity and the capacity of families to enjoy low cost labor saving devices. Such cost increases can only result in fewer jobs and lower tax revenues. Appropriate moderation and cooperation between government and industry will preclude such dire consequences. To insure this result it is deemed necessary to the public interest to speak out against the granting of this relatively unrestricted license modification power to this and unkonwn future Commissions.

It is submitted that this legislation is only needed to clarify procedures for handling take over problems arising from license expirations but if this bill is to be enacted the weaknesses cited should be corrected.

NEW ENGLAND POWER CO.,
Boston, Mass., June 21, 1968.

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

DEAR REPRESENTATIVE MACDONALD: New England Power Company supports the basic purpose and concept of H.R. 12698 and H.R. 12699.

A very substantial number of licenses for hydro-electric projects, in all parts of the country, will expire in the next few years. It is vital to orderly planning that the future of these important projects be settled promptly. Only in this way can the interests of consumers in an abundant and reliable supply of electric energy be fully met; and only in this way can the broader public interest in the continued development of our water resources be assured.

In enacting the Federal Water Power Act in 1920 Congress wisely reserved a right to re-examine licensed hydro-electric projects at the expiration of an initial license. Congress was then launching a new scheme for the development of the nation's hydro-electric resources and provision for a moment of future reappraisal was a prudent precaution.

In the intervening years the Federal Power Commission has carried out the broad directives embodied in the Federal Water Power Act, and the nation's hydro-electric potential has been successfully developed within the framework of a comprehensive development of the nation's water resources. In the course of its administration of the Act the Commission has become fully cognizant of the details of individual licensed projects, including their electrical and hydraulic characteristics, their inter-relation with other developments on the same waterway, and their contribution to the overall development of the region. With this background the Federal Power Commission is pre-eminently qualified to act as the agent of Congress in deciding the question reserved in 1920: whether a hydro-electric project should be taken over by the United States at the expiration of the initial license, or re-licensed for a further term.

This is the principal purpose of H.R. 12698 and H.R. 12699. We believe that the Federal Power Commission is fully qualified to make the necessary decisions at the expiration of initial licenses, just as the Commission is qualified to determine at the outset whether new developments should be carried out by the United States or by a licensee.

We suggest further that other Federal departments and agencies can be assured that their views as to the possible benefits of Federal ownership of an individual project will be fully considered in the national interest by the Federal Power Commission. We therefore urge that the bill be modified so as to make the Commission's decision controlling, and not subject to an automatic and indefinite stay upon the motion of other Federal departments and agencies.

We recognize that under some circumstances a project originally licensed for private development would best serve future needs under Federal ownership. We are confident that such situations are the exception rather than the rule, and that this decision can wisely be committed to the Federal Power Commission. Absent overriding considerations of national importance, we believe that a hydro-electric project which serves as an integral part of an integrated power supply system can best serve the needs of the future by continuing under present ownership, subject to the continuing surveillance of the Federal Power Commission. This we understand to be the original intent of Congress in 1920 and the accepted reading of the Act.

We suggest, however, that the proposed new section 15(b) of the Act (set out in section 3 of both bills) is unnecessary and should be eliminated. The Federal Power Commission has broad powers under existing provisions of the Act to prescribe the terms and conditions of all licenses. The proposed new section 15(b) implies that a special grant of power is necessary for this purpose with respect to renewal licenses, and thus tends to cast doubt on the Commission's authority to prescribe the terms and conditions of licenses for new projects. Deleting this section from the bill would avoid this anomalous result.

Yours very truly,

F. C. ALLEN, *Vice President.*

SOUTHERN CALIFORNIA EDISON CO.,
Los Angeles, Calif., June 17, 1968.

Re H.R. 12698 and H.R. 12699.

Hon. TORBERT H. MACDONALD,
Chairman, Subcommittee on Communications and Power, House of Representatives of the United States, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In order that your Committee may be fully apprised as to the position of Southern California Edison Company with respect to certain provisions of H.R. 12698 and H.R. 12699, we request that this letter be filed and made a part of the record of the hearings on these bills.

(1) SEC. 2(B)—DELAY IN EFFECTIVENESS OF FPC ORDER

The seventh "Whereas" clause and the last two sentences of Sec. 2(b) of each of these bills would enable any department or agency of the United States to stay the relicensing of a hydroelectric project for up to four years (two sessions of Congress). This provision is not in the public interest and negates the objectives of H.R. 12698 and H.R. 12699 to establish procedures for the processing of expiring hydroelectric licenses and thus relieve the Congress of the burdensome task of reviewing each project with an expiring license on a project-by-project basis.

Federal departments and agencies will continue to have adequate opportunity to present their views to the Federal Power Commission in a relicensing proceeding, just as they now have and have had since 1920 with respect to initial license proceedings. None of their existing rights will be modified or impaired.

However, if your Committee is of the opinion it is in the public interest and there is justification for giving the Federal departments and agencies greater rights in the relicensing of hydroelectric projects than in initial licensing proceedings, I would submit for your consideration that the following language "until expiration of the next full Congress immediately following the Congress during which the Commission issued the order" appearing in lines 19–21, page 4, of H.R. 12698 and lines 16–18, page 4 of H.R. 12699, be deleted and that there be inserted in lieu thereof the words "*for two years after the issuance of such order.*"

(2) SEC. 3(B)—UNLIMITED ALTERATION OF LICENSES BY FPC

This proposed section states that the provisions of a license issued in a relicensing proceeding may, *at any time during its term*, be unilaterally altered by the Commission. This is not a procedural provision. On the contrary, it is a substantive change of the existing law.

To grant FPC such authority would be a complete departure from the concept embodied in Part I of the Federal Power Act, that a license, once accepted, becomes a contract between the United States and the licensee. The new license issued by the FPC would not be a contract—it would in effect be a permit subject to alteration by unilateral action by FPC.

If a licensee were to accept a license under these conditions, it would in effect be giving the FPC a blank check and would subject the licensee to the possible imposition of conditions which, although considered "reasonable" by the FPC might create serious and far-reaching problems for the licensee. The licensee in effect would be accepting unlimited liability. To delegate to the FPC the authority to impose conditions without the mutual agreement of the licensee and FPC is unjust and an improper delegation of power.

A condition considered reasonable by the FPC may not be reasonable to the licensee. The conditions which FPC would have the authority to impose by unilateral action would involve matters of expertise and not matters of law. It is established law that the courts will not review questions which involve matters of expertise and not matters of law. The right of recourse to the appellate courts by the licensee is not an adequate remedy.

There is no need or sound basis for granting the FPC such broad authority. Licenses have been granted under the present law since 1920. There is no evidence that the public interest has not been well served. The present law has proven itself to be flexible to meet the changing needs. Moreover, the Commission in the relicensing proceeding will have the power to issue new licenses upon such terms and conditions as it deems necessary and desirable to meet

the standards of Section 10(a) of the Federal Power Act with respect to comprehensive river basin development.

The construction, development and redevelopment of hydroelectric projects require the expenditure of large amounts of money.

It is therefore necessary that licensees have firm licenses in order to maintain public confidence in the electric industry and its securities and to encourage the investment of private capital in hydroelectric projects and permit timely growth, rather than delay, in the orderly development of the Nation's water resources for all public purposes.

(3) RIGHT OF ORIGINAL LICENSEE TO RECEIVE A NEW LICENSE UPON EXPIRATION OF ITS OLD LICENSE

It is our opinion that the legislative history shows that under existing law the original licensee has the prior right to a new license if it can still meet the standards of Section 10(a) of the Federal Power Act. Consistent with this is the letter of Mr. Lee C. White, Chairman of the Federal Power Commission, dated August 28, 1967, transmitting the draft bills to Congress, which states in part as follows:

"Under section 7(a) of the Federal Power Act the Commission is instructed to give preference to applications by states and municipalities in issuing licenses to new licensees under section 15. Our General Counsel has advised us that this preference applies only after it has been determined that the original licensee should not receive a new license. In those instances where the original licensee and another applicant seek a new license for the same project, the Commission believes that the new license is to be issued to whichever applicant can best meet the standards of the Act. In those rare cases where the two applicants are equally matched the Commission believes that the new license should be issued to the original licensee so long as he can meet the standards of the Act at least as well as the other applicant."

Under Section 14 of the Federal Power Act the United States, any State and any municipality have the right of eminent domain to condemn and takeover any hydroelectric project during the license term upon the payment of just compensation. The provisions of H.R. 12698 and of H.R. 12699 do not modify or take away this right of the United States or any state or municipality to takeover any project in the future should they choose to do so.

For their convenient reference, I am sending a copy of this letter to each of the other members of your Committee.

Respectfully submitted.

BRUCE RENWICK, *Special Counsel.*

STATEMENT ON H.R. 12698

C. A. Erdahl, Director of Public Utilities City of Tacoma, Wash.
John M. Nelson, Superintendent, Seattle City Light, Seattle, Wash.
Byron Price, Manager, Eugene Water & Electric Board, Eugene, Oreg.
Fred W. Lieberg, Manager, Douglas County P.U.D., Wenatchee, Wash.
Kirby Billingsley, Manager, Chelan County P.U.D., Wenatchee, Wash.
R. W. Gillette, Manager, Grant County P.U.D., Ephrata, Wash.
Owen W. Hurd, Managing Director, Washington Public Power Supply System, Kennewick, Wash.
Alan H. Jones, General Manager, McMinnville City Water & Light, McMinnville, Oreg.
Thomas E. Black, Manager, Benton County P.U.D., Kennewick, Wash.

This statement is in supplement to the telephonic request to the Subcommittee Chairman June 10, 1968, requesting additional time for the submission of statements of position regarding H.R. 12698. It is our understanding that the Committee hearings were completed June 13, 1968 but the transcript has been held open for this purpose.

The background information relating to each utility joining in this statement is attached by separate letter of transmittal and incorporated by this reference as an integral part of this statement for the record.

The American Public Power Association at its annual meeting in May, 1968, approved the following resolution on recapture and relicensing of hydroelectric projects:

Whereas there exist numerous hydroelectric projects licensed by the Federal Power Commission under the Federal Power Act, the licenses of which are nearing expiration; and

Whereas to avoid the exploitation and monopolization of the nation's water resources, Congress provided in the Federal Power Act for the recapture of such projects by the United States upon the expiration of the licenses granted under that Act, or for the relicensing thereof, if recapture does not occur; and

Whereas Section 7(a) of the Federal Power Act affords preference to applications of states and municipalities for preliminary permits, licenses and new licenses issued under Section 15 of the Act, if such applications are equally well adapted to conserve and utilize in the public interest the water resources of the region; and

Whereas S. 2445 and H.R. 12698 of the 90th Congress attempt to clarify the manner in which the United States may recapture or relicense hydroelectric projects upon license expiration: now, therefore, be it

Resolved, That the American Public Power Association supports legislation which would clarify procedures relating to the recapture and relicensing of hydroelectric projects licensed under the Federal Power Act, if such legislation provides that: (1) the Federal Power Commission is the proper agency to recommend and effectuate recapture, (2) the provisions of Section 7(a) of the Federal Power Act giving licensing preference to public bodies for projects whose licenses have expired is preserved, and (3) that new terms and conditions may be set upon relicensing by the Federal Power Commission to protect the public interest and encourage comprehensive development of water resources when a license is granted to a prior licensee of a project."

The recapture procedures proposed under H.R. 12698 appear to be inconsistent with the intent of Congress, in enacting the Federal Power Act, to delegate to the Federal Power Commission the responsibility for the recapture of projects and reserving congressional review by the appropriation procedures. The proposed procedure would place an unnecessary burden on Congress and is not in accord with the present language of the Federal Power Act.

The relicensing procedures proposed under H.R. 12698, although recognizing that the Federal Power Commission has present authority to set new terms and conditions for new licenses, extends in Sec. 3(b) unnecessary broad authority to alter the terms and conditions "at any time" after issuance of a new license. The possibility of the exercise of such power would seriously prejudice the licensee in planning and implementing long term financing, marketing and management matters for which project stability during the license period is essential and in the best public interest.

Previous testimony indicates some discussion of the matter of preference in licensing given to states and municipalities under Sec. 7(a) of the Federal Power Act. No reference to this matter is made in the proposed H.R. 12698. If there is any need for clarification of this preference at this time, in the proposed or related legislation, the licensing preference to such public bodies for projects whose licenses have expired should be preserved.

We trust that these matters will be appropriately clarified in H.R. 12698, or in any substitute or related legislation that may be considered by this committee.

CITY OF TACOMA,
Tacoma, Wash., June 13, 1968.

Hon. TORBERT H. MACDONALD,
Chairman, Subcommittee on Communications and Power, House of Representatives, House Office Building, Washington, D.C.

DEAR SIR: This letter attaches a statement and five (5) copies for the record in the Subcommittee Hearing on proposed legislation H.R. 12698 held Tuesday-Thursday, June 11–13, 1968 at Washington, D.C. This letter contains background information concerning this Utility's interest in the proposed legislation.

The City of Tacoma, located in Pierce County, Washington, is a municipal corporation of the State of Washington and is the third largest city in the State with a population of 163,961. Pierce County, Washington, has a population of 361,146. The Department of Public Utilities is managed by a Public Utility Board and has jurisdiction over three utilities of the City, the electric generating plant and system and electric power and light transmission and distribution system, operated by the Light Division of the Department, and the water supply and Municipal Belt Line Railway operated by the Water and Belt Line Divisions respectively.

The electric system serves the area inside the City including the industrial tideflats, approximately 48 square miles, without competition, and in addition serves directly a large part of the surrounding suburban areas and indirectly serves additional portions of the greater metropolitan area through 12 cooperatives, mutuals and municipal systems. The entire area served directly or indirectly comprises approximately 650 square miles.

The Light Division, under licenses from the Federal Power Commission, operates at present a total of five hydroelectric generating facilities; two facilities, the Alder Plant and LaGrande Plant, located on the Nisqually River which flows down the western slope of the Cascade Mountains; two facilities, Cushman Plants No. 1 and 2, located on the Skokomish River which flows down the eastern slope of the Olympic Mountains; and the Mayfield Development, which is a part of the Cowlitz Power Development Project, on the Cowlitz River which flows down the western slope of the Cascade Mountains. The Mossyrock Development, also a part of the Cowlitz Project, will be completed in 1968. The Light Division also operates two standby steam electric generating facilities located within the City limits. The combined total output of these plants is approximately 718,000 KW.

Transmission and distribution of the power is made through facilities owned by the City or in coordination with other Northwest Utilities including the Bonneville Power Administration.

The City is involved in a substantial number of complicated power purchase contracts and arrangements in order to adequately provide for the needs of the consumer public it serves now and in the future. These include a requirements contract with BPA under which in 1967 the City purchased 1,396,967,000 KWH of prime power at a cost of $3,025,600.00.

Energy received from the Grant County Public Utility under a long-term contract by which the City receives 8% of the Priest Rapids Project on the Columbia River, amounted to 328,245,000 KWH at a cost of $858,252.00 including cost of transmission (wheeling) paid to BPA in 1967.

In 1963 Tacoma, along with 75 other participants, entered into a long-term agreement with Washington Public Power Supply and BPA to share 2.119% in receiving the output of the generating station at Richland, Washington. Steam for the station is supplied by the nuclear New Production Reactor built by the United States Atomic Energy Commission as part of its Hanford Development.

In 1964 the City, in cooperation with other Northwest Utilities, became a member of the Columbia Storage Power Exchange (CSPE), a non-profit corporation which financed the construction of several dams on the Columbia River and its tributaries in Canada for the purpose of regulating the flow of that river and assuring more efficient operation of the various Columbia River Hydroelectric Projects in the United States. The power contracts for the security of the bonds provide for the City to annually take 12½%, estimated at 172,125 KW of 1,377,000 KW in 1974 of Canada's 50% share of the additional power to be generated. The City has completed negotiations to assign its share to 33 utilities in the Southwest where steam generation is predominant, and to the State of California for pumping purposes, with recapture provisions for future City needs.

Since assignment of power to the Southwest is dependent on completion of the proposed extra high voltage transmission lines between the Northwest and Southwest, the City has arranged backup agreements with BPA, Puget Sound Power & Light Company and others to provide further reassignment if necessary.

The City signed, along with fifteen other public, private and Federal agencies in the area, a Pacific Northwest Coordination Agreement in 1964. This will make available surplus energy or capacity to the other participants to guarantee ability to carry predetermined amounts of firm load.

The City along with other Northwest utilities on December 1, 1967, executed a letter of intent with the Pacific Power & Light Company and Washington Water Power Company to join in the construction of a steam-electric generating plant at a site near Centralia, Washington. The plans call for the construction of a generating unit of 650-megawatt name plate with net capability of 700 megawatts with provisions for a second unit. Arrangements have been made under which it is expected that the first unit will become commercially operative about September 1, 1971.

The City is also a member of the Northwest Power Pool and has an interchange agreement with Seattle City Light and BPA designed to assure meeting its utility obligations to the ever-increasing consumer public it serves.

It is, therefore, in the best long-range public interest for the City and all the various Federally-licensed utilities with which it shares utility responsibility to have assurance that the many and diverse licensed projects, mutual contractual arrangements and pooling operations will be properly regulated as provided in the Federal Power Act to provide stability of planning, operations and financing so necessary in these matters.

The City, therefore, joins in and supports the statement made by the American Public Power Association on behalf of the APPA member generating utilities in the Pacific Northwest, and urges the Subcommittee to seriously consider the bill in the light of the suggestions offered, and requests the right to give further oral presentation or to be heard at any further hearing to the extent that the Subcommittee may deem appropriate or desirable.

Respectfully submitted.

C. A. ERDAHL,
Director of Utilities.

CITY OF SEATTLE,
Seattle, Wash., June 10, 1968.

Hon. TORBERT MACDONALD,
Chairman, Subcommittee on Communications and Power, House of Representatives, House Office Building, Washington, D.C.

DEAR REPRESENTATIVE MACDONALD: This letter will confirm our participation in the joint statement by certain publicly owned Pacific Northwest utilities on H.R. 12698.

The City of Seattle, Department of Lighting has a current peak load of approximately 1,300,000 kw., most of which is supplied from four major hydroelectric projects which it owns and operates under license from the Federal Power Commission. It thus is vitally interested in the proposed amendments to the Federal Power Act.

Consistent with our participation in the above statement, we fully support the statements made on behalf of the American Public Power Association in such connection.

In addition to the above statements, we must express serious concern with respect to the proposed addition of a Section 15C to the Federal Power Act which apparently contemplates the exclusive licensing for non-power purposes of previously licensed power projects either on the motion of the FPC or on application therefor.

Adoption and application of such procedure would raise very difficult questions, especially with respect to publicly-owned projects which are already devoted to multiple public purposes including those of a non-power nature, but as to which an additional non-power use would be completely incompatible.

Respectfully submitted.

JOHN M. NELSON,
Superintendent of Lighting.

EUGENE WATER & ELECTRIC BOARD,
Eugene, Oreg., June 10, 1968.

Hon. TORBERT MACDONALD,
Chairman, Subcommittee on Communications and Power, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN: Attached is a copy of a joint statement, together with copies of this letter, containing the Eugene Water & Electric Board's comments on legislation proposed by HR 12698. It is requested that these comments be incorporated in the record of the Subcommittee on Communications & Power Hearings on HR 12698, held in Washington, D.C. on June 11, 12 and 13, 1968. It is the intent of this letter to indicate the Eugene Water & Electric Board's position in the electric utilities industry and its interest in HR 12698.

The City of Eugene, Oregon, a municipal corporation of the State of Oregon, acts by and through its Eugene Water & Electric Board, to supply the water and electric requirements of the City of Eugene and its associated metropolitan area. The electric system of the Board serves 38,781 customers. In providing this service, the Board, acting on behalf of the City of Eugene, owns and operates three hydroelectric projects on the McKenzie River and a steam electric generating plant and has entered into agreements with other utilities and entitles to meet the electric requirements of its customers.

The Board purchases electric power from the Bonneville Power Administration, a share of the output of the Priest Rapids and Wanapum Developments of Grant County P.U.D., a portion of the output of the Hanford Nuclear Power Development, and as a member of the Columbia Storage Power Exchange, a share of the downstream power benefits provided by the three Canadian dams. The Board is a member of the Northwest Power Pool, a signatory to the Pacific Northwest Coordination Agreement and a member of the Western Systems Coordinating Council.

The foregoing recitation is made to indicate the Board's active participation in the electric power industry in the Pacific Northwest, and hence, its interest in any legislation which would directly or indirectly effect such participation. The Board is particularly concerned with the following three points mentioned in the joint statement, relative to HR 12698 as now written:

(1) The added burden imposed upon Congress.

(2) The right of the Commission to "at any time . . . impose upon the licensee such future requirements as are not inconsistent with the other provisions of this Act."

(3) The possible need for an expression in HR 12698 of the preference of public agencies for licenses under the Federal Power Act.

The Board respectfully requests that HR 12698 be reconsidered on the basis of the above comments and those contained in the attached joint statement.

Very truly yours,

BYRON PRICE, *General Manager.*

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY,
Wenatchee, Wash., June 12, 1968.

Hon. TORBERT MACDONALD,
Chairman, Communications and Power Subcommittee, House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is attached to and is in support of a statement for the record in the Committee Hearing on HR. 12698 held June 11–13, 1968, at Washington, D.C. It is intended to be informative as to the interest of this public utility district in the proposed legislation.

Public Utility District No. 1 of Chelan County, Washington, is a municipal corporation of the State of Washington, and since 1948 has owned and operated an electric distribution system serving substantially all of the 50,000 inhabitants of Chelan County, Washington. The District is managed by a board of three elected Commissioners.

The District also owns and operates three Federally licensed hydroelectric power projects with a combined peaking capability of 1,117,000 kilowatts as follows:

(1) The Chelan Hydro-Electric generating plant, (F.P.C. Project 637–Washington), located on the Chelan River at the foot of Lake Chelan in Chelan County, Washington, and having a peak capability of 53,000 kilowatts. The existing license for this Phoject will expire May 8, 1976;

(2) The Rock Island Generating Plant, (F.P.C. Project 943), located on the Columbia River in Chelan and Douglas Counties, Washington, and having a peak capability of 815,,000 kilowatts. The existing license for this Project will expire January 21, 1980; and

(3) The Rocky Reach Power Project. (F.P.C. Project 2145), located on the Columbia River in Chelan and Douglas Counties, Washington, and having a peak capability of 815,000 kilowatts. The existing license for this Project will expire July 12, 2006. The District is planning the early installation of four (4) additional generating units in this Project to increase the peak capability of the plant to 1,221,000 kilowatts. The estimated cost of the additional units is $40,000,000.

A portion of the electric energy output of the three licensed projects is used by the District to serve the people of Chelan County and the remainder is sold under long term contracts to electric utility companies in the states of Washington and Oregon.

Each of the licensed projects was financed with the proceeds of revenue bonds, that is to say, bonds which are payable solely from the revenues received from the sale of the energy produced by the respective project. The total revenue bonds issued to finance the three projects aggregated the sum of $367,275,000.

The District participated with other Northwest Utilities in the formation of the Columbia Storage Power Exchange (CSPE) a non-profit corporation, which

financed the construction of three dams on the Columbia River and its tributaries in Canada pursuant to the Treaty between United States and Canada. The District contracted to purchase one percent of Canada's share of the additional power to be generated as a result of the construction of said dams and has completed an assignment of its said percentage to electric utilities in the State of California.

The District is a party, together with other utilities and agencies in the Northwest, to a long term Pacific Northwest Coordination Agreement under which surplus power and energy is made available to the various participants to enable them to carry their firm loads.

The District is also a member of the Northwest Power Pool which assists in the coordination of the power resources of the Northwest.

The District's ownership and operation of the three Federally licensed power projects, its long term power sales contracts and the contracts which it has entered into in order to coordinate its power resources with other power resources in the area, imposes upon it a vital public utility responsibility and it is most necessary that it have assurance that the terms and conditions of licenses for its projects not be subject to change after the licenses are issued.

The proposed Section 3(b) in the Bill could result in changes in a license which would substantially reduce the electric output of the project or require the expenditure of large sums of moneys for purposes other than the production of power, either of which could make the project uneconomical. The ability of a public utility district or other municipality to finance the construction of a project by means of revenue bonds or to enter into stable long term power contracts would be seriously impaired, if not made impossible.

Accordingly, the District joins in and supports the statements made on behalf of the APPA, member generating utilities in the Pacific Northwest and requests the privilege of presenting further written or oral testimony at such further hearing or hearings as the Committee deems appropriate.

Respectfully submitted.

KIRBY BILLINGSLEY, *Manager.*

PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY,
East Wenatchee, Wash., June 10, 1968.

HON. TORBERT MACDONALD,
Chairman, Subcommittee on Commerce and Power,
House of Representatives,
Washington, D.C.

DEAR MR. MACDONALD: Public Utility District No. 1 of Douglas County, Washington, is a municipal corporation of the State of Washington with its principal office located at 1151 North Main Street, East Wenatchee, Douglas County, Washington. The District is operated by a three-member Commission elected by the residents of Douglas County. The Distribution System, operated by the District, sells and distributes approximately 226,000,000 kilowatt hours of electrical energy annually to approximately 6,000 customers located throughout Douglas County. In 1962, the Federal Power Commission issued its License No. 2149 to the District for the construction of the Wells Hydroelectric Project on the Columbia River. This project will have peaking capability of 820,000 kilowatts and for which construction costs the District has obligated itself to repay approximately $202,000,000.00 in revenue bonds.

Thirty percent of the output from the Wells Hydroelectric Project has been reserved by the District and 8 percent of the output has been reserved to Public Utility District No. 1 of Okanogan County, Washington, for future electrical needs of the two last mentioned Public Utility Districts. The electrical energy developed by the Wells Hydroelectric Project, subject to the aforementioned reservations, has been sold under long-term contracts to electric utility companies in the Pacific Northwest.

The Public Utility District of Douglas County is a party to a long-term Pacific Northwest Coordination Agreement, under which surplus power and energy is made available to the various participants to enable them to carry their firm loads.

The District also participated in the formation of the Columbia Storage Power Exchange (CSPE) which financed the construction of three dams on the Columbia River and its tributaries in Canada pursuant to the Treaty between the United States and Canada.

Public Utility District No. 1 of Douglas County is also a member of the Northwest Power Pool which assists in the coordination of the power resources of the Northwest.

A careful examination of your H.R. 12698 causes us considerable concern. We are fearful that such legislation, in its present form, could permit the Federal Power Commission to qualify the License in such a manner as to substantially reduce the output of a project or require changes or additions therein which could make the project uneconomical. Any such changes of a substantial nature solely at the discretion of the Federal Power Commission could seriously affect the financing and construction or refinancing and future development of such a project as Wells.

The District has, with its general counsel, Richard G. Jeffers, carefully reviewed the statements made on behalf of the American Public Power Association, and Mr. C. W. Erdahl, Director of Public Utilities, City of Tacoma, Washington, and concurs in these statements. Accordingly, Public Utility District No. 1 of Douglas County, Washington, joins in and supports the position taken by the APPA, The City of Tacoma, and other member generating utilities in the Pacific Northwest in opposing H.R. 12698 in its present form.

Respectfully submitted.

FRED W. LIEBERG, *Manager.*

PUBLIC UTILITY DISTRICT OF GRANT COUNTY,
Ephrata, Wash., June 11, 1968.

HON. TORBERT MACDONALD,
Chairman, Subcommittee on Communicatoins and Power, House of Representatives, Washington, D.C.

DEAR SIR: This letter contains background information relating to this utility's interest in the proposed legislation, HR 12698, and to the statement in which this District has joined other publicly owned utilities in the Northwest.

Public Utility District No. 2 of Grant County, Washington, is a municipal corporation of the State of Washington, with its headquarters office in Ephrata. The District is managed by a five-member board of commissioners, each of whom is an elected official and resident of the County.

The District's electric system serves the entire area of Grant County with the exception of the Town of Grand Coulee, which operates a municipal system, and approximately 50 farm customers who are served by a Rural Electric Cooperative.

The District, under license from the Federal Power Commission, has constructed, owns and operates the Priest Rapids Development, with a combined total name plate rating of 1,619,750 kw. The District financed the construction of each development by the sale of revenue bonds based on the future needs of the District and long-term power sales contracts. It, therefore, has continuing obligations in management of sales contracts and repayment of debt. Transmission of the power from the Project is through the facilities owned by the District, other Northwest utilities and the Bonneville Power Administration.

The District is a member of the Northwest Power Pool and numerous other organizations associated with the generation, transmission and distribution of electric energy.

In supporting the joint statement on HR 12698, the District also wishes to emphasize that language in this legislation should in no way abrogate the preference rights of publicly owned utilities in the consideration of future power developments. This District also joins in and supports the statement made on behalf of the American Public Power Association, of which the District is a member.

Respectfully submitted,

R. W. GILLETTE, *Manager.*

WASHINGTON PUBLIC POWER SUPPLY SYSTEM,
Kennewick, Wash., June 10, 1968.

HON. TORBERT MACDONALD,
Chairman, Subcommittee on Communications and Power, House of Representatives, House Office Building, Washington, D.C.

DEAR MR. MACDONALD: The Washington Public Power Supply System supports the position of the American Public Power Association, as well as other Northwest utilities, as set forth in the joint statement concerning H.R. 12698.

The Supply System is a municipal corporation of the State of Washington composed of seventeen operating Public Utility Districts and one municipality. The System serves as a generating agency which sells power to members as well as to 58 other utilities throughout the Pacific Northwest. It does not own or operate power distribution systems.

The Washington Public Power Supply System is the owner and operator of the Packwood Lake Hydroelectric Project, FPC Project No. 2244, in eastern Lewis County, Washington. Power generated at the project is marketed to eleven member Public Utility Districts through arrangements with the Bonneville Power Administration.

The Supply System also operates the Hanford Nuclear Generating Plant at the Atomic Energy Commission's Hanford Project. The generating plant is presently the world's largest nuclear powered generating station, capable of producing 860,000 KW. The power generated at the Hanford generating plant is purchased by seventy-six utilities in the Pacific Northwest, both publicly and privately owned, and is marketed through arrangements with the Bonneville Power Administration.

The Washington Public Power Supply System is presently an applicant for the issuance of a license to construct the High Mountain Sheep Project on the Snake River in Oregon and Idaho, FPC Project Nos. 2243/2273. This application has been filed jointly with Pacific Northwest Power Co., and is now pending before the Federal Power Commission.

The Washington Public Power Supply System affirms its support of the position of the American Public Power Association, as well as the resolution adopted by the Association at its National Convention in Seattle, Washington in May, 1968. Favorable consideration of the inclusion of recommended provisions in this bill by the Committee is urged as a means of protecting the public interest and assuring a continued low cost power supply to the power consumers of the Pacific Northwest.

Very truly yours,

OWEN W. HURD,
Managing Director.

CITY OF MCMINNVILLE, OREG., *June 10, 1968.*

HON. TORBERT MACDONALD,
Chairman, Subcommittee on Communications and Power, House of Representatives, Washington, D.C.

DEAR SIR: This letter provides background information on House of Representative Bill No. 12698.

The City of McMinnville, located in Yamhill County, Oregon, is a municipal corporation of the State of Oregon and is the oldest municipally-owned utility on the West Coast, organized in 1889. We serve both inside our corporate city as well as our immediately surrounding market area. We have approximately 5,000 meters in service, serving a population of approximately 11,000 to 12,000. The utility is governed by a Water and Light Commission, which has utility responsibility for the area.

While we are a small utility, we have an interest in the Columbia River projects of the Grant County PUD, namely Priest Rapids and Wanapum projects, and as such have appropriate contracts with Grant County PUD. We are also a customer of the Bonneville Power Administration.

We have cooperated with others in the region by participation in the Canadian Storage Power Exchange Agreement as well as the Hanford arrangement with Washington Public Power Supply system and the Bonneville Power Administration.

We feel that in the long-range public interest will best be served, if the integrity of the Federal Power Act is maintained. The City Water and Light Department, therefore, joins in and supports the statement made by the American Public Power Association and urges the Sub-Committee of Communications and Power to seriously consider the bill in the light of the suggestions offered.

Sincerely yours,

ALAN H. JONES,
General Manager, Water and Light Department.

BENTON COUNTY, PUBLIC UTILITY DISTRICT NO. 1,
Kennewick, Wash., June 10, 1968.

HON. TORBERT MACDONALD,
Chairman, Subcommittee on Communications and Power, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN: This letter contains background information relating to this utility's interest in the proposed Legislation S. 2445, and to the statement in which this District has joined other publicly owned utilities in the Northwest.

Public Utility District #1 of Benton County, Washington is a municipal corporation of the State of Washington with the headquarter offices in Kennewick, Washington. The District's policy is established by a three member Board of Commissioners, each of whom is an elected official residing in the County.

The District's electric system service area includes, the entire area of Benton County with the exception of the town of Richland and certain loads in the A.E.C. Hanford reservation. Electric service is rendered to 12,800 consumers throughout the County including several large privately owned irrigation projects.

In 1964, this utility, in cooperation with the other Northwest utilities became a member of the Columbia Storage Power Exchange (CSPE), a non-profit corporation which financed the construction of several dams on the Columbia River and its tributaries in Canada for the purpose of regulating the flow of that river and assuring more efficient operation of the various Columbia River hydroelectric projects in the United States.

This utility is also a member of the Washington Public Power Supply System, who jointly with other public utilities in the State of Washington have secured a license to construct and operate the Packwood Hydroelectric Project in Lewis County, Washington.

This District is also anticipating entering into power exchange agreements with other utilities owning hydroelectric generating facilities for a future source of power supply.

The District also has contractual arrangements through W.P.P.S.S. on the Hanford Steam Plant with contractual exchange agreements with other utilities for the disposition of the District's portion of this generation.

It is, therefore, in the best long range public interest for the District and all the various federally licensed utilities with which it shares utility responsibility to have assurance that the many and diverse licensed projects, mutual contractual arrangements and pooling operations will be properly regulated as provided in the Federal Power Act to provide stability of planning, operations and financing so necessary in these matters.

The Public Utility District No. 1 of Benton County, Washington, therefore, joins in and supports a statement made by representatives of the A.P.P.A., and urge the Committee to preserve the public agency preference provision of the Federal Power Act in any recapture provision enacted.

Respectfully, submitted.

THOS. E. BLACK, *Manager.*

(Whereupon, at 11:56 a.m., the subcommittee adjourned.)

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