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# AMENDMENT TO FEDERAL POWER ACT (ANTITRUST REVIEW)

GOVERNMENT

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## HEARING

BEFORE THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

ON

S. 683

A BILL TO FACILITATE THE PROVISION OF ADEQUATE,  
ECONOMICAL, AND DEPENDABLE ELECTRIC SERVICE FOR  
THE PRESENT AND FUTURE NEEDS OF THE PUBLIC AND  
THE PROPER AND TIMELY INSTALLATION AND USE OF  
THE PRODUCTS OF ADVANCING TECHNOLOGY IN THE  
GENERATION OR TRANSMISSION OF ELECTRIC ENERGY

FEBRUARY 13, 1967

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AMENDMENT TO FEDERAL POWER ACT  
(ANTITRUST REVIEW)

HEARING  
COMMITTEE ON COMMERCE  
UNITED STATES SENATE

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## AMENDMENT TO FEDERAL POWER ACT (Antitrust Review)

MONDAY, FEBRUARY 13, 1967

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
FEDERAL OFFICE BUILDING,  
*Vancouver, Wash.*

The committee met at 9 a.m., in room 102, Federal Office Building, the Honorable Warren G. Magnuson presiding.

Senator MAGNUSON. The committee will come to order. First of all, I welcome you to this hearing.

### OPENING STATEMENT BY THE CHAIRMAN

The chairman of the committee has a short statement to read prior to calling the first witness. We are starting a little early this morning so that we will be able to hear everyone.

Today's hearing is on S. 683, which, as you know, is a bill to give the Federal Power Commission the authority for antitrust review of contracts for interconnection, pooling, or coordination of power systems. If, after a public hearing, the Commission approves the contract, the parties would be exempt from certain provisions of the antitrust laws.

It is important to note that the contracts under question here are pooling contracts and not merger arrangements. Even if the contracts are approved, the companies will maintain their separate and independent identity. This is the third hearing that we have had on this particular bill. We had hearings in July in Washington, D.C., in 1966, and among the witnesses there, as many of you will recall, were the Federal Power Commission, the Department of Interior, and the Department of Justice, the three major agencies who are involved in this proposed legislation.

The Federal Power Commission has sent me a letter which we will make part of the record and which I will read:

Thank you for the invitation to send an observer to the Committee hearings in Vancouver on S. 683. I have designated Dr. Haskell Wald, the Commission's Chief Economist and Chief of the Office of Economics to attend this important hearing on February 13 and report back to the Commission.

That is from Lee White. Dr. Wald is an observer only, but due to the interest of the Federal Power Commission, he wants to be here as their representative, and then make a report to see whether or not there should be any change in their position on the bill from last July. Dr. Wald, I am sure you know most everybody and you are most welcome here.

Staff member assigned to this hearing: Michael Pertachuk

Now, I have some feeling about the bill and there are others who could be classed either as proponents and opponents, but I find that there are a great number of people in between. There have been many amendments suggested, but the basic objectives of the bill do not seem to have too much opposition. In the July hearing there were a lot of amendments suggested by people who testified, but I do think the basic issue in the hearings is the consumer's interest. I hope none of us forget that. The cheapest electricity today is produced by the largest possible generating plants; the so-called economies of scale endorsed by the 1964 industrywide national power survey. Large plants, we all know, are very expensive to build and the resulting contracts and marketing arrangements involve the cooperation of many, many companies. To the extent that an antitrust standard as opposed to the larger public interest and benefit standard puts such plants and agreements in doubt, I think all of us would agree that the consumer might suffer. Giving recognition, too, to new technology and economies of scale argument, this bill proposes a broader standard than the strict, historical antitrust standard. Problems of cooperation for marketing exist for companies involved in the northwest-southwest intertie.

The sponsors of the bill, which are many, public and private Northwest generating utilities have stated, and I quote: "That the continuing voluntary efforts to secure practical pooling agreements are inhibited by the possibility of prosecution or litigation under a strict application of the antitrust laws." These hearings in Vancouver will give the committee the benefit of onsite testimony from those who are involved in the intertie, and in the new proposals. This is also very important in the construction of the steam and nuclear generating plants which will insure long-term low-cost electricity for Northwest homes and industry.

Bills such as this, of course, are controversial and it is imperative that the committee and the Congress have the benefit of a great number of views. The antitrust laws have a long and honorable history, but with changing technology and with an industry that will double every 10 years, on the average, however, the question to be considered is whether the consumer is better protected by the application of the traditional antitrust standard or by the application of a new standard to meet these changing conditions.

And so we will proceed on that basis, and I am sure that all of you will add a great deal to—not only the record, but to the informal discussions on this bill.

At this time I would like to place in the record a copy of the bill, a report by the Federal Power Commission and my introductory remarks from the Congressional Record.

(The material referred to follows:)

[S. 683, 90th Cong. first sess.]

A BILL To facilitate the provision of adequate, economical, and dependable electric service for the present and future needs of the public and the proper and timely installation and use of the products of advancing technology in the generation or transmission of electric energy

*Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled,* That in section 202 of the Federal Power Act, add a new subsection 202(g) to read as set forth below:

"(g) To encourage voluntary interconnection and coordination in the interests of economy and dependability, the Commission, in addition to such authority as it may otherwise have over such contracts under sections 202 and 205-207 of the

Act, shall, upon the motion of any party thereto or any interested entity or person and may upon its own motion, review any contract, and any amended contract, hereafter submitted to the Commission for filing pursuant to subsection 205(c) of this part which contract provides, or is one of several contracts which provide, for the sale or exchange of electric energy or the interconnection, pooling, or coordination of power systems or for the joint use of facilities for the generation or transmission of electric energy. After notice and opportunity for hearing, the Commission shall grant an order of approval of any such contract which it finds will not unduly restrain competition when considered in relation to the purposes of the Act; if it finds the contrary, it shall disapprove such contract and further performance thereof by a public utility shall be unlawful.

If the Commission grants an order of approval of any such contract, any public utility or other entity (including all persons and entities referred to in subsection 201(f) of this Act) which is a party thereto, and its officers, directors, agents, and employees shall be exempt and relieved from the operation of all Federal, State, and municipal antitrust laws in the negotiation and execution of such contract and in the performance thereof, as approved by the Commission. The authority conferred on the Commission by this subsection shall be exclusive and plenary, and all orders entered hereunder shall be final and conclusive as to all persons (including all persons and entities referred to in subsection 201(f) of this Act), subject only to review as provided in section 313 of this Act.

The Commission shall have authority to enforce the provisions of this subsection 202(g) by the imposition of any or all sanctions provided for in part III of this Act.

#### FEDERAL POWER COMMISSION REPORT ON S. 683, 90TH CONGRESS

S. 683 would give to the Federal Power Commission the authority to exempt from all antitrust laws contracts submitted for filing with the Commission which provide for the sale or exchange of electricity, the interconnection, pooling or coordination of power systems, or for the joint use of facilities for the generation or transmission of electricity.

S. 683 is identical to S. 3136, 89th Congress, on which this Commission reported and testified last year. See hearings before the Committee on Commerce, United States Senate, 89th Congress, 2d Session on S. 3136, July 12 and 13, 1966, Ser. No. 89-71, p. 2. The bill seeks to encourage coordinated action by independently-owned electric utility systems without sacrifice of their separate ownership by extending antitrust immunity in cases of joint action approved by the Commission as not unduly restraining competition. It would not, however, provide immunity for Commission approved transactions by public utilities arising under Section 203 of the Act involving the acquisition by public utilities of facilities, the stock of other utilities, or the merger or consolidation of a public utility's facilities with those of any other person.

Congress in subsection 202(a) of the Federal Power Act has charged this Commission with the responsibility, among others, of encouraging the voluntary interconnection and coordination of power systems to assure an abundant supply of electric energy. S. 3136, 89th Congress, was directed toward this goal. The specific amendments to S. 3136 which the Commission proposed last year were designed to guarantee that all segments of the electric power industry would be able to participate in pooling and coordination arrangements.

To accomplish the purposes of subsection 202(a) the Commission also during the last Congress submitted to Congress two bills which would have assigned the Commission jurisdiction over the construction of extra-high-voltage (EHV) transmission lines, introduced as S. 2139 and S. 2140. These similarly were directed toward meeting problems of interconnection and coordination.

This year the Commission's proposed Electric Power Reliability Act, S. 1934, 90th Congress, substantially encompasses provisions of both S. 3136 and the EHV proposals in the context of a more comprehensive approach to meet the goals of subsection 202(a) and deals with the problems that led to the introduction of S. 683. The enactment of S. 1934 would therefore supersede both the Commission's proposals of last year as well as S. 683.

The Commission believes that the broader approach in S. 1934 is the appropriate method to accomplish the goals of subsection 202(a) of the Federal Power Act and should be given priority in any Congressional consideration.

FEDERAL POWER COMMISSION,  
LEE C. WHITE, *Chairman*.

INTERCONNECTION AND POOLING AGREEMENTS BETWEEN ELECTRIC POWER UTILITIES

Mr. MAGNUSON. Mr. President, I introduce, for appropriate referral, a measure dealing with interconnections and pooling agreements between electric power utilities.

I introduced an identical bill last year. I wish to repeat some of the things that I said then.

The Pacific Northwest generating utilities have indicated that their continuing voluntary efforts to secure practical pooling agreements are inhibited by the possibility of prosecution or litigation under a strict application of the antitrust laws. Pooling agreements are usually longterm arrangements on which power supply will depend. Such agreements often involve large commitments of capital. The possibility of an antitrust action arising after the conclusion of a pooling agreement is one threat to the type of pools envisaged in the National Power Survey and demanded in order to reduce the likelihood of another failure.

These utilities admit, however, that to date no antitrust actions have arisen, but as pools become prevalent and larger, the threat becomes more ominous. The Legal Advisory Committee of the National Power Survey, composed of lawyers representing the investor-owned, local public agency, cooperative, and Federal segments of the industry, said: "Existing laws or the lack thereof do constitute legal impediments to the full realization of the benefits of pooling and coordination and may affect the form which a particular pooling transaction will take."

The utilities in the Northwest have requested that I introduce legislation so that this problem can be debated openly. I have studied their suggestion and I believe that it represents a highly satisfactory way to open the debate.

Accordingly, I offer for congressional consideration, a bill to authorize the Federal Power Commission to be the sole agency to approve or reject pooling agreements and police the competitive practices of utilities signing pooling and interconnection arrangements. It would enable the Commission to decide whether or not contracts filed with it unduly restrain competition. This can be accomplished without affecting the substantive rules of competition that should apply without extending the regulatory jurisdiction of the Federal Power Commission. FPC action, of course, would be subject to judicial review.

The bill empowers the FPC to review, in a hearing, the terms of the contract. It is intended to provide a mechanism whereby an expert agency of the Government can maintain surveillance in the public interest over the industry in this specialized field. It will provide a method by which utilities intending to make long-term power and management commitments through pooling arrangements can receive assurances in appropriate cases that such commitments will be free from subsequent antitrust attack. Relief from the danger of the possibility of antitrust litigation will improve implementation of the congressional directive to the Federal Power Commission to encourage voluntary interconnection and coordination.

Section 202(a) of the Federal Power Act states:

"It shall be the duty of the Commission to promote and encourage . . . interconnection and coordination . . ."

The bill would amend that section. The bill is intended to make the implementation of such arrangements legally more secure.

Hearings may be demanded by anyone interested in the contract or in its effects including its competitive effects. The Department of Justice could request such a review, for example. The hearing provides a forum where all views can be expressed and considered.

The bill would allow parties to seek approval of new contracts, contracts already in existence; or existing contracts that are amended. Such an amendment might have an impact on competition. A pooling contract solely between nonjurisdictional organizations—like public agencies or utilities not in interstate commerce, would not come under the bill. No extension of FPC jurisdiction is intended or involved.

The bill would exempt from the antitrust laws all persons and organizations participating in the contract, whether or not they are within the jurisdiction of the FPC for other purposes. The Commission could require conditions, which the parties could accept, before approving the contracts. If these conditions were not accepted, the Commission could prevent performance of disapproved contracts, thereby giving the FPC some powers to enforce the antitrust policy of the United States.

This is not a merger bill. Its intent is to facilitate and encourage independent entities to secure the best and most economical service for all consumers no matter whether the organization which serves them is large, small, public, private or Federal. Pooling agreements can benefit small companies since they can share the advantages of large generation units and high voltage transmission lines.

On July 12 and 13, 1966, the Committee on Commerce held hearings on the bill. Those hearings brought forth a variety of opinions. Unanimity was not possible at that time; hence no final action was taken on the bill.

During those hearings, some opposition was heard. A considerable portion of the opposition, however, was directed at particular language and not directed at the concept embodied in the bill.

For this reason, it is appropriate that the bill be reintroduced. This will give supporters a chance to clarify misunderstandings that may have arisen and it will give others the opportunity to reach a consensus and offer appropriate amendments.

The proponents of the bill asked that it be reintroduced. The proponents are an impressive group of generating utilities, both public and private. I ask unanimous consent that their letter be made a part of the RECORD so as to identify these important companies.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the letter will be printed in the RECORD.

The bill (S. 683) to facilitate the provision of adequate, economical, and dependable electric service for the present and future needs of the public and the proper and timely installation and use of the products of advancing technology in the generation or transmission of electric energy, introduced by Mr. MAGNUSON, by request, was received, read twice by its title, and referred to the Committee on Commerce.

The letter presented by Mr. MAGNUSON is as follows:

"Hon. WARREN G. MAGNUSON,  
"Chairman, Senate Commerce Committee,  
"Old Senate Office Building,  
"Washington, D.C.

"MY DEAR MR. CHAIRMAN: On March 25, 1966, at the request of a group of Pacific Northwest generating utilities you introduced a bill (S. 3136—89th Congress) relating to pooling and other cooperative arrangements among utilities. A committee hearing was had on the bill, but no further action was possible before adjournment of the 89th Congress.

"The same group of utilities will appreciate it very much if you will reintroduce the same bill in this Congress; so that it may, if deemed to be in the public interest, be enacted at the earliest possible time.

"This letter has been approved by representatives of the following utilities:

"Eugene (Oregon) Water & Electric Board City of Seattle, Washington,  
Department of Lighting

"City of Tacoma, Washington, Department of Public Utilities

"Public Utility District No. 1 of Chelan County, Washington

"Public Utility District No. 1 of Cowlitz County, Washington

"Public Utility District No. 1 of Douglas County, Washington

"Public Utility District No. 2 of Grant County, Washington

"Public Utility District No. 1 of Pend Oreille County, Washington

"Pacific Power & Light Company

"Portland General Electric Company

"Puget Sound Power & Light Company

"The Montana Power Company

"The Washington Water Power Company

"Very truly yours,

"CORPORATE SERVICES,  
"By GORDON C. CULP,  
"Attorney."

Senator MAGNUSON. Now our first witness today will be Dave Black, the Administrator of the Bonneville Power Administration.

David, we will be glad to hear from you.

**STATEMENT OF DAVID S. BLACK, ADMINISTRATOR, BONNEVILLE  
POWER ADMINISTRATION**

Mr. BLACK. Mr. Chairman, this last summer when the Senate Commerce Committee held hearings on S. 3136, which you have indicated is identical with the bill now before the committee, I was a member of the Federal Power Commission and I voted with my four colleagues in support of that legislation, and Chairman White as you will recall—

Senator MAGNUSON. I want to interrupt for the record there. As I recall, the chairman, Mr. White, testified that this was the unanimous opinion of the Power Commission at that time.

Mr. BLACK. That is essentially correct.

Senator MAGNUSON. At that time.

Mr. BLACK. Yes, sir.

Senator MAGNUSON. All right.

Mr. BLACK. As Administrator of the Bonneville Power Administration now—very little time subsequent to my membership on the Commission—I have a different responsibility, operating responsibility for a large and enormously complex electric system with equally complex arrangements and relations with utilities throughout the Northwest, as a matter of fact up and down the Pacific coast. So I have, I think, a new appreciation of the importance of this type of legislation. I do welcome the opportunity to comment on S. 683.

The bill offers a solution to problems of the electric power industry which are constantly increasing in importance. These problems are national in scope, but they are particularly important in the Pacific Northwest.

The purpose of the bill is to encourage voluntary interconnections and joint use of electrical generating and transmission facilities. The bill authorizes approval by the Federal Power Commission of agreements between utilities which provide for (1) the sale or exchange of electric energy; or (2) the interconnection, pooling or coordination of power systems; or (3) the joint use of facilities for the generation or transmission of electrical energy, upon a finding that the agreement "will not unduly restrain competition when considered in relation to the purposes of the Federal Power Act." The approval will exempt the agreement and the parties thereto from all Federal, State, and municipal antitrust laws.

Technological advances in recent years have been coming at such a rapid pace as virtually to revolutionize the industry. No longer can a single utility operate as an isolated unit and provide its customers with reliable service at the lowest possible cost. Groups of electrical systems must join together in the planning and operation of their facilities, in the same manner as though they were under a single ownership, if they are to achieve maximum reliability of service and lowest cost.

The same situation exists with respect to transmission facilities. New transmission lines operating at voltages of 500,000 volts or more have a substantially lower cost per unit of electricity than do lower voltage lines. For example, a 500-kilovolt line will transmit four times as much power as a 230-kilovolt line, but it will cost only twice as much. Coordinated planning and operation are essential if power consumers are to reap the benefits of modern technology.

Technical advances, however, are not limited to planning and operation. They extend to construction of generating plants too. New large plants with generating units of 1 million kilowatts or more are now feasible. They have substantially lower costs per unit of electricity than do smaller plants. No utility can afford to "go it alone" and build a small, higher unit cost plant and hope to attract industry and other customers, as against another area served by one of the new large plants. Economics dictate that all utility systems must have access to new large high-capacity generating and transmission facilities.

These technological advances, combined with the necessity of doubling and perhaps tripling the Nation's existing generating capacity by 1980, create the problem to which S. 683 is directed.

The electric power industry is a pluralistic one today. There are about 185 major investor-owned utilities which account for approximately 75 percent of the Nation's generation and retail sales. In addition there are approximately 3,000 municipal, cooperative, and small investor-owned utilities, most of which secure their energy at wholesale from Federal generating plants, from generating and transmission cooperatives, and from the major private utilities.

As I have already pointed out, all of these utilities and particularly the smaller ones, must be able to acquire the lower cost energy which today's technology makes possible. How is this to be accomplished? One method is by merger. The smaller utilities theroretically can join together to form a giant utility to independently take advantage of these economies of size. It is much more likely that the small utilities will be merged into the major ones and that the latter themselves will merge into fewer and larger utilities. This trend is already underway. The number of investor-owned utilities has been declining in recent years. In fact, the president of one of the Nation's largest systems has predicted that in 50 years or less there will remain only 12 or 15 integrated systems throughout the entire United States.

An alternative method is to retain our present pluralistic system. This can be possible only if the smaller systems can have access to the low-cost energy from the large generating and transmission facilities. There must be a coordinated effort—joint action in the planning, construction, and operation of these facilities. Joint ownership or its equivalent in the form of long-term power sales contracts will be required. Arrangements to achieve these results may well involve serious questions under the antitrust laws. S. 683 is designed to provide a means for resolving these questions.

The mere statement of the two methods of utilizing today's technology—merger or the retention of our present pluralistic utility structure—provides the answer as to which is more desirable. No argument is needed to support the conclusion that the concentration of the entire country's electric power supply into 12 or 15 "super" utilities would not be in the national interest. S. 683 seeks to retain the independence of our small systems, private, cooperative, and public—a result which I believe to be preferable.

In last year's hearings on S. 3136, 89th Congress, which is identical with S. 683, my predecessor discussed at length some of the practical problems which Bonneville Power Administration has encountered and in the solution of which legislation such as the bill you are now considering would be helpful. For that reason I will only list them and not review them in detail:

### 1. Territorial divisions.

One utility is reluctant to transmit or wheel power over its lines to another utility if the latter will utilize that power to serve customers and territory then being served by the wheeling utility. The latter is willing to do so if the two can agree on a division of territory. Neither will serve customers in the other's territory. These agreements raise serious antitrust questions which have not been litigated definitively. Some courts hold such agreements to be void *per se*. Others have sustained them if they are reasonable.

### 2. The division of the California market in connection with the Pacific Northwest-Pacific Southwest intertie.

To avoid construction of multiple small capacity transmission lines by each Pacific Northwest utility desiring to sell its surplus energy in California or the monopolization of the California market by one Pacific Northwest utility which would construct a high-capacity line and sell all of its surplus energy to the exclusion of other Pacific Northwest utilities having surplus energy, we in effect divide the market in California between all the generating utilities in the Pacific Northwest. Each sells energy in roughly the proportion that each is spilling water. Such a division of a market poses serious antitrust questions, although in this instance, as a practical matter, there probably is no problem because of the implied congressional approval of the arrangement, to which I will refer in a moment.

### 3. Allocation of supplies and establishment of a price in the disposition of Canada's share of power under the Canadian Treaty.

To help Canada to finance its treaty dams, 41 Northwest utilities purchased Canada's share of the treaty power for a period of 30 years. This will build up to a maximum of more than 1,300,000 kilowatts at one point in the 30-year term. The Pacific Northwest utilities could not use such a large quantity of power for the first 5 or 10 years and had to find a market for it in California over the new intertie lines. Such a market made it possible for them to raise the more than \$315 million required for the financing for the Canadian treaty without creating an unmanageable power surplus in the Pacific Northwest. Bonneville joined with them and offered the power to California as a single block and at a single price. California purchasers could not deal with individual Northwest utilities and bargain for a price advantage because of the distress sale of power not needed in the early years. On the other hand, the price was attractive to California purchasers, and they wanted more than the amount of power which was available. The supply thus had to be divided up among the California purchasers in an equitable manner. This block offering by 41 Pacific Northwest utilities, the establishment of a single price, and the division of the supply among the California purchasers also raise extremely serious antitrust problems. Here, too, no practical problem is anticipated because Congress, at least impliedly, approved the arrangement.

### 4. "Back-up" arrangements in the sale of Canadian power.

Canada insisted on selling its share of the treaty power to a single purchaser. A corporation was formed for that purpose and the 41 Pacific Northwest utilities purchased fractional shares of the power from the latter. To make the bonds of the purchasing corporation salable, each of the 41 purchasing utilities had to agree that if one of them defaulted, the remainder would purchase the defaulter's share. Another utility, not a part of this joint arrangement, might claim

this is a preferential purchasing arrangement and violates the antitrust laws. It would assert that it should be able to buy the share of power the defaulting utility has put on the market. Here again is a serious antitrust question—one which could be extremely important in the Pacific Northwest in the near future.

The Pacific Northwest is nearing the end of its feasible hydroelectric sites. It will have to look to thermal generating plants to meet its increasing loads. Our present forecasts show a need for 13 million kilowatts of thermal generating capacity by 1985. The region will have to have a thermal plant of 1 million kilowatts or more each year beginning in 1974 or 1975. This load growth fits in almost ideally with the million kilowatt generating units which are possible under today's technology. But no single utility in the Pacific Northwest can afford to construct a plant of that size to meet just its own needs. The obvious answer is to construct plants to meet the region's needs and not those of just one utility.

Joint action—in planning, ownership, financing, construction, and operation of the thermal plants—is required. And here the region encounters antitrust questions, examples of which I have outlined.

The Department of Justice has not objected to any of the intertie contracts which have been presented to it, and nearly all of those contracts have been negotiated and submitted to that Department. The case we made before the Justice Department for these contracts not violating the antitrust laws was that we had disclosed the substance of all these arrangements to the Congress at the time the Bonneville marketing area bill was passed, at the time the appropriations were made for the intertie, and at the time the Canadian treaty was ratified. The Congress, at least impliedly, had approved these arrangements. This ratification probably was sufficient to remove antitrust problems which might otherwise have been raised.

But what will happen in other areas of the country where there is no Federal power marketing agency, or the next time in the Pacific Northwest where there may be no congressional review?

These new facilities are expensive—their cost is literally in the hundreds of millions of dollars. A million kilowatt nuclear plant, including its initial fuel charge, costs more than \$150 million. The Pacific Northwest-Pacific Southwest intertie will cost over \$700 million. The utilities participating in ventures such as these are entitled to some forum where the validity of their arrangements can be determined in advance of making these enormous investments. It is not reasonable to expect them to expend such sums and be subject to the risk of a subsequent charge that the entire arrangement is a violation of the law. These utilities, public and investor-owned, should not have to rely on an argument that Congress impliedly consented to the procedure or on the opinion of their counsel or of the Department of Justice that their agreements will probably not be invalid under the antitrust laws. Fairness requires that the participating utilities have more than a declaration of probable legality before they commit such vast amounts of capital.

There is another factor involved—one which in my opinion was virtually overlooked in last year's hearings. The latter focused almost entirely on the enforcement of the antitrust laws by the Department of Justice. A suggestion was made that the utilities could obtain an advance determination under the business review procedure of that

Department. But approval under that procedure does not bind the future actions of the Department of Justice. And even if it did, this approval would not bar any civil proceedings by another utility or other person who felt aggrieved because of the pooling or joint ownership arrangement. The court decisions made clear that private litigation under the antitrust laws is far more active than litigation instituted by the Department of Justice. The latter's business review procedure affords no protection whatever against private antitrust suits. For these reasons approval by the Federal Power Commission under S. 683 would provide far greater certainty than would approval by the Department of Justice under its business review procedure. I believe that the utilities should have some method of obtaining that certainty in advance.

Let me add that this is not a public versus private power issue. The problem occurs where only public agencies are involved and where only investor-owned utilities are involved, just as frequently, if not more so, than where both public and investor-owned utilities are participating. Last year's hearings show that the bill had both support and opposition from each of the public and private segments of the industry.

S. 683 appears to have been carefully drafted so as not to extend the regulatory jurisdiction of the Federal Power Commission. No utility not now subject to FPC jurisdiction would become subject thereto because of this bill. However, persons and utilities who are not subject to the Commission's jurisdiction but who are parties to a contract approved by the Commission under S. 683, would have the antitrust exemption flowing from that approval.

The Department of the Interior recommended last year that the bill be amended to provide that the Federal Power Commission shall not approve any contract submitted to it pursuant to the bill if it finds that any utility has been excluded from the contract and that (a) participation of that utility in the contract would be economically feasible, or (b) exclusion from that contract would put that utility at a substantial competitive disadvantage.

In summary, the economic advantages of the new large generating units and transmission lines will make their use inevitable. The issue is whether that use will be achieved by merger of existing utilities into a dozen or so superutilities or whether it can be accomplished without destroying the present pluralistic structure of the industry. Legislation such as S. 683 offers a way to reach the latter alternative.

Senator MAGNUSON. Thank you, Mr. Black.

The Department of Justice last year opposed the bill on several grounds. One of them was that the case for enactment was not proved. This was a general statement in opposition.

Since leaving the Federal Power Commission, have you changed your mind, now that you are in your new capacity as Bonneville Administrator?

Mr. BLACK. Mr. Chairman, I can't cite any specific events which have occurred since that time. However, since becoming Bonneville Administrator I have become much more acutely aware of the enormous complexities of arrangements which are developing between the utilities up and down the coast, and I think it is clear that the electric utility industry in the Northwest must feel free to use its imagination in developing absolutely the best kind of agreement among its members as we move into this era of steam generation.

If they have inhibiting laws, antitrust laws which will restrict them, I don't believe that we can achieve the best possible arrangement.

Senator MAGNUSON. It seems to me that the Department of Justice in their first contention started with a wrong premise. Here you are not dealing with two people getting together in a great competitive arena where there are thousands of other competitors around.

It is a thing set apart from the usual type of antitrust situation and the expertise to handle these matters lies with the Federal Power Commission with their experience and their jurisdictional activities. The second objection they had was that the company can ask Justice for its position prior to signing contracts and I think you covered that very well in your statement. The trouble with that is that you might deal with Mr. Turner and his group one year and the next year it is Mr. X and his group.

Mr. BLACK. The point you are making is the fact that a decision under the business review procedure does not bind private litigants under the antitrust laws, even if it should be considered in subsequent administrations.

Senator MAGNUSON. And, as I think every witness will point out, this is a big, big business and involves hundreds of millions of dollars. The sensitivity of investors and of the credit line and bonds to legal questions is quite acute, these people may not like to just rely upon the fact that the group meeting now at the Department of Justice, that that particular group at that time says "Well, it looks all right to me."

Mr. BLACK. Absolutely correct.

As you are well aware, the electric power industry of necessity is far and away the largest in our economy in terms of investment, and these are the kinds of investments—larger and larger investments that the industry is going to have to commit in the coming years.

Senator MAGNUSON. The Department of Justice also said the extent of the immunity is unclear. Do you agree with that?

Mr. BLACK. I would disagree with that, Mr. Chairman. I think that the immunity is very clear. As I understand it it would be a total immunity.

Senator MAGNUSON. Yes. Well, I would think that since this involves long-term financing, it might have to be.

You mention we ought to have a thermal plant; by that you mean plant capacity, of 1 million kilowatts or more by 1974?

Mr. BLACK. Yes, sir. We need thermal capacity of about a million kilowatts or more beginning in 1974 or 1975. Single plants will provide about that capacity as well as maximum economics of scale.

Senator MAGNUSON. But the million needed, the million-plus kilowatts needed every year after that can't be realized unless you have marketing agreements and cooperation and pooling, isn't that correct?

Mr. BLACK. Yes, sir.

Senator MAGNUSON. The point we are talking about is the overall general capacity needs to increase at least a million a year?

Mr. BLACK. Yes, and as I tried to point out in my statement no single utility can possibly do that alone.

Senator MAGNUSON. And while they might make it one year, they couldn't do it year after year after year and meet the need, could they?

Mr. BLACK. I doubt that they could even do it for one year.

Senator MAGNUSON. So that we are talking about a situation where there must be some legal guidelines as to how these people can get together to supply that million kilowatts.

Mr. BLACK. Absolutely.

Senator MAGNUSON. And those guidelines should be of a sufficiently permanent nature so they can get financing for the construction, is that right?

Mr. BLACK. I would certainly believe so.

Senator MAGNUSON. For the benefit of the consumer, in the long run.

Now all of us have heard and talked about the possibility of a shortage of power in the Pacific Northwest. I think that sometimes the average person doesn't quite understand it all. They know there might be a shortage unless these things occur, but some say 1974 and some say 1975 and some say about 1971. Let's suppose that no new plants or no new generating capacities were built in the future. When would we be in a position where we would be short of power, what year?

Mr. BLACK. Well, we have right now committed all the power we can to new industries on the basis of presently assured resources.

Senator MAGNUSON. Well, there are some construction plans that are going ahead, but supposing everything stopped right where we are, when would we be in real trouble?

Mr. BLACK. By 1975.

Senator MAGNUSON. By 1975?

Mr. BLACK. Yes, sir.

Senator MAGNUSON. Some of them are shaking their heads here, but we all agree that we need—

Mr. BLACK. [Interrupting.] You mean if we have nothing, those facilities that are under construction now would not be completed?

Senator MAGNUSON. No; I mean the ones that we know will be completed.

Mr. BLACK. Oh, if the ones that are now under construction are completed on schedule, I believe the figure is 1974 or 1975—if everything stopped now, of course next winter we would be in deep trouble.

Senator MAGNUSON. We need guidelines so that we can proceed as efficiently and as fast as possible, we have got to begin to do this and we have got to do it within the next 6 or 7 years, would that be a fair statement?

Mr. BLACK. Yes, sir; the leadtime for constructing a large nuclear plant from the time of awarding the architect-engineer contract is now about 7 years; for coal-fired plants, the leadtime is somewhat shorter, 4 to 5 years, I believe.

Senator MAGNUSON. Now this is nothing personal, this next question, I am trying to be an objective observer. But if we get into a lot of endless arguments about why we are going to do this and how we are going to do it and everything else, and delay sets in for a year or two before we all come into agreement, we are going to find ourselves short of power. It takes 5 or 6 years to build these plants. Is that a fair statement?

Mr. BLACK. Oh, yes; I think disputes, the uncertainties of the kind to which you refer, would absolutely cripple the efforts that the utilities must exert in order to get these plants on the line at the time they are needed.

Senator MAGNUSON. Well, as far as the public is concerned, the users and consumers, we are to understand from you people that know this business that we can't afford to wait, we have got to get going, is that correct?

Mr. BLACK. Absolutely.

Senator MAGNUSON. On our power generating capacity?

Mr. BLACK. Yes, sir.

Senator MAGNUSON. Mr. Luce and Mr. Holum testified for the Department of the Interior in July. Have you any indication—the Department is not here today, have you any indication that they have changed their mind any from the previous testimony in July?

Mr. BLACK. No; I have no such indication. I have discussed this testimony with officials of the Department of the Interior and their position remains about the same.

Senator MAGNUSON. And now you are in the Department of the Interior. Mr. Holum did recommend provisions for safeguards so smaller companies would not be excluded from the pooling contracts. Have you any statement to make on that?

Mr. BLACK. Well, I would think that the——

Senator MAGNUSON. As I recall, he enumerated some possible instances where this might happen.

Mr. BLACK. I think that as a practical matter, under the total public interest standards which the Federal Power Commission necessarily would consider in passing upon these agreements, the exclusion of the smaller utilities would be what they would be looking for. I think probably that that would be pretty well protected against. I have not discussed that particular item personally with Mr. Holum, but he wanted that especially spelled out.

I think that the problem of exclusion of the smaller utilities would necessarily be considered by the Commission under this bill.

Senator MAGNUSON. Well, he suggests, and I quote from him on page 46 of the last hearing:

This could be achieved by amending the bill to provide that the Federal Power Commission shall not approve any contract submitted to it pursuant to the Act if it finds that the utility has been excluded from the contract and that (a) participation of that utility in the contract would be economically feasible or that (b) exclusion from the contract would put that utility at a substantial competitive disadvantage.

Mr. BLACK. These are the things that the Federal Power Commission would do anyway.

Senator MAGNUSON. And under the bill as I understand, with the present language, they could do that and not only could they consider that, but they have the direct mandate and responsibility to consider it.

Mr. BLACK. I think that is correct.

Senator MAGNUSON. Yes; so that could be taken care of and if it is not, it could be spelled out to be as clear as possible. I have no reason to believe that any Federal Power Commission wouldn't do it at the time of the hearing anyway.

Second, he suggests an amendment to exclude contracts and programs of the Federal agencies from Federal Power Commission review.

Can you enlarge what he meant exactly by that?

Mr. BLACK. I don't believe the Federal agencies are subject to the antitrust problems in any event.

Senator MAGNUSON. Well, I made that point, I said I didn't think they were now.

Mr. BLACK. I think it is a jurisdictional problem that Mr. Holum wanted to make clear, that Federal agencies were not by means of this legislation to be made subject to Federal Power Commission jurisdiction. It is a certification matter.

Senator MAGNUSON. I understand that objection they have. It is pretty hard to get them across the street there isn't it?

The Securities and Exchange Commission suggested in the July hearings, Mr. Cohen, the Chairman, recommended an amendment so that the Federal Power Commission action would not relieve contracts from compliance with the Public Utility Holding Company Act. Have you any comment on that?

Mr. BLACK. I don't believe I have any particular comment to make on that. I think that this is kind of a fringe problem between those two agencies, it has been for some time, and I don't believe that the public utility holding company jurisdictional problems should be resolved in this bill. I think that is all there is to it.

Senator MAGNUSON. I have informally discussed this with Mr. Cohen, and I think that he is in that same frame of mind as you have mentioned here.

Mr. BLACK. This is not to say that I don't think it should be resolved soon, but this isn't the proper forum for it.

Senator MAGNUSON. But I think the Securities and Exchange Commission would have a deep interest in proper language in the bill because again you get back to the huge financing problem you have to meet these needs.

Thank you very much.

Mr. BLACK. Thank you.

Senator MAGNUSON. All right, Mr. Robert Timm of the Washington Utilities and Transportation Commission. Bob, we will be glad to hear from you.

I see Francis Pearson is here too, is he not?

Mr. TIMM. If I get in trouble, can I get him to help out up here?

Senator MAGNUSON. Why don't you get him to come up here and sit with you?

Mr. PEARSON. No, thanks, I am doing very well back here thank you.

Senator MAGNUSON. Can you hear all right?

Mr. PEARSON. Just fine.

Senator MAGNUSON. All right, Mr. Timm, we will be glad to hear from you.

**STATEMENT BY ROBERT D. TIMM, CHAIRMAN, WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, OLYMPIA, WASH.**

Mr. TIMM. Thank you, Senator. I will confine my testimony to two areas: (1) The concern of our State that an adequate supply of electrical energy be available to accommodate the dynamic growth, and (2) that we in the Washington Utilities and Transportation Commission believe the proposed legislation would accomplish this goal.

Senator MAGNUSON. I might say, Mr. Timm, that when you speak of dynamic growth in some places, it is moving so fast that it is hard to keep track of. I did get some late projections, and they estimate that in the next 10 years our growth might be as high as 140 percent as compared to the national average projection of 37 percent, so you can see what the problems are that we have got in front of us.

Mr. TIMM. Well, if I could, I would have thought of a better word for it.

The Washington Utilities and Transportation Commission, established under title 80 of the Revised Code of Washington, is responsible for regulating in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of utility companies, including companies and persons owning, operating, or managing any electric plant for hire within this State. The electrical companies under our jurisdiction are required, among other things, to provide electric service at rates which are just, fair, reasonable and sufficient under rules and regulations which are just and reasonable and are required to construct and maintain such facilities in connection with the manufacture and distribution of electricity as will be efficient and safe to its employees and the public.

It is a fact well known to all regulatory commissions as well as to the electrical industry generally that modern technology has, through the development of very large generating stations and large, very high voltage transmission lines, substantially increased the efficiency of the manufacture and transmission of electric power and energy. Under State law, the companies under our jurisdiction are required to take advantage of such improvements in the art of supplying electricity and it is our duty to see that they do so.

The demand for electrical power and energy in the Northwest at a reasonable cost is growing at a phenomenal rate. The companies under our jurisdiction, as well as publicly owned utilities which are not under our jurisdiction, are working diligently to keep up with this increased demand for power in an orderly, efficient, and economical way. It is expected that in a few short years the Northwest area as a whole will require in the neighborhood of a million kilowatts of additional installed capacity per year to meet this growing load. The development of hydroelectric power has very nearly come to an end in the Northwest and we are moving into an era when thermal electric plants are being planned and will be built. It is of course possible for each utility to take care of its own needs by constructing relatively small and inefficient generating plants which are operated independently. However, the area as a whole and the Nation as a whole will benefit substantially if large centrally located generating stations can be built. These plants must be coordinated with existing plants in the Northwest and adjoining areas. It is the policy of this commission, acting under State law, that such coordination and pooling arrangements be encouraged to the maximum extent.

We do not suggest, of course, that these arrangements be made without any control or without any regulation of any kind. However, we do feel that it is essential that the regulation of these arrangements be on a before-the-fact basis as is provided in S. 683, and not on an after-the-fact basis as is done under the antitrust laws. It is also our position that the Federal policy with respect to these interconnections and coordination transactions should be a unified single

policy that is enunciated with sufficient clarity that the State, this Commission and the companies which it regulates can accommodate themselves to the Federal policies within the sphere of Federal control. It is imperative, therefore, that there be a single agency of the Federal Government exercising jurisdiction within the power and authority of the Federal Government to regulate the activities of interstate power pools. It would also seem only logical and reasonable that this jurisdiction should be vested in the Federal Power Commission since it has the staff and the expertise to understand the problems of the industry and to regulate the industry in the public interest. Duplication of experts in this field within the Federal Government would seem to be an obvious waste of money and manpower.

We are aware that the Federal Power Commission has made suggestions for changes in language in the bill; and we do not feel it is within our sphere to comment on the language used in the bill. We would assume that any statute passed by the Congress which granted immunity from antitrust prosecution would give the Federal Power Commission ample authority to establish rules and regulations and policies covering in all details the antitrust aspects of any coordination or pooling arrangement and that it would give the Federal Power Commission ample authority to enforce these rules, regulations, and policies. However, we do not understand that any of the proponents of S. 683 would have any different position than we are stating. These language problems should therefore be reasonably susceptible to early resolution.

We strongly support the purposes behind S. 683 and would urge your committee to expedite the passage of this or a similar bill at an early date.

Senator MAGNUSON. Well, as I get from the statement, Mr. Timm, and I know you are speaking for your colleagues on the commission, you have an awareness and a growing concern that there be as sufficiently coordinated guidelines as possible so we can meet this growth. And if that requires an amendment to the antitrust laws, not for mergers as you point out, but for pooling arrangements, the Washington State Utilities & Transportation Commission people would be heartily in favor?

Mr. TIMM. Very much so.

Senator MAGNUSON. Now the power commission, when they testified in July suggested—they supported the objectives of the bill, but they suggested that the FPC be allowed to decide which cases it would consider for review. Now that is somewhat consistent with all utilities' procedures, isn't it?

Mr. TIMM. I think so, yes.

Senator MAGNUSON. There is nothing new in that, and I suppose that they should have the opportunity to determine which is important and which isn't important and things of that kind. You have your own rules the same way, don't you?

Mr. TIMM. Yes, that is right.

Senator MAGNUSON. And, the FPC wanted power to grant a conditional order of immunity. Now that is a little bit vague, what they mean by that. Does the Washington State Utilities Commission ever grant a conditional order?

Mr. TIMM. I am not aware that we ever do, no. We operate very much like the Federal Power Commission; we put out proposed orders

and the Commission has the final say, but when they finally do, it is no longer conditional, and therefore the utilities can act from that point on.

Senator MAGNUSON. And the FPC wanted the power to reconsider an order of immunity previously issued. I guess that can be done. What you are suggesting, whatever we do, it should be done within the framework of the existence of State commissions that have responsibilities also in this matter, and that there should be a correlation of rules so you can work together with the Federal Power Commission.

Mr. TIMM. I agree.

Senator MAGNUSON. Thank you very much.

All right, Mr. Hill of the Oregon Public Utilities Commission. Glad to have you here Mr. Hill.

### STATEMENT OF JONEL C. HILL, PUBLIC UTILITIES COMMISSIONER OF OREGON

Mr. HILL. Thank you, Senator.

May I begin by saying that we are delighted that you have come to the Northwest to hold this hearing on S. 683 and as Public Utilities Commissioner of Oregon, I am authorized to represent the people of Oregon generally in proceedings of this kind and I appear in support of S. 683.

Oregonians are very much interested in dependable electric service at low cost. Such service requires a large expenditure of funds in generation, transmission, and distribution facilities. Oregon has 36 electric utilities distributing electric energy. Only seven of the 36 are also generating utilities. No single electric system in Oregon has the necessary markets, generating reserves, and transmission capacity required to support the huge new generating stations which must be built to produce power at the lowest possible cost per kilowatt-hour.

This situation presents for Oregon electric distributors the choices of either building smaller, less efficient plants, or coordinating their efforts, or merging. Of these choices, the one which clearly is in the public interest, in my judgment, is coordination. Unfortunately, present restrictions in antitrust laws appear to raise questions as to whether such coordination can be achieved without violating certain antitrust statutes. The present antitrust laws, therefore, tend to encourage either less efficient utility operation or electric utility mergers. In my view as a regulator, neither alternative is in the public interest.

S. 683 seeks to solve the problem by establishing procedures under which the Federal Power Commission can review certain power pooling and coordination contracts and agreements. If FPC finds them to be in the public interest, the contracts and agreements are afforded protection from pursuit under the antitrust laws.

There is no present method by which any regulating agency can balance the public interest of coordinated utility operation against possible technical violation of the antitrust laws. S. 683 would provide the means to strike a balance. FPC presently has authority under sections 205 and 206 of the act to reject contracts filed before it which produce unreasonably restrictive competitive practices. But FPC does not have authority to confer antitrust immunity on utility arrangements considered by it to be in the public interest. FPC should have such authority, to round out its regulatory capability.

Authority to immunize certain arrangements from antitrust prosecution has previously been granted by the Congress to the Civil Aeronautics Board, the Federal Maritime Commission, and the Interstate Commerce Commission. We believe it necessary and proper that similar authority regarding electric utility operations be granted to FPC.

As you well know, the people of Oregon have long been the beneficiaries of coordinated utility operation. The Northwest power pool is probably the best present example of the marvelous public benefit achieved by utility system coordination. As our utility system grows larger, and as we turn to 1,000 megawatt nuclear stations for our base load power supply, coordinated operations become more than a benefit, they become a necessity.

S. 683 offers a reasonable solution to the problem. Enactment will be to the benefit of consumers of electric power.

I appreciate the opportunity to appear on behalf of the people of Oregon, and hope your committee will act favorably on the bill.

Senator MAGNUSON. Thank you, Mr. Hill, for your testimony.

I am glad you pointed out that there is nothing particularly new in this proposal. It has been done before to other agencies, which hasn't been pointed out too much. There are a great number of people who think that this is something new, but there is ample precedent for this. I don't see how the Maritime could operate without it, particularly with conference rates and things of that kind where they must stick together. When you mention the Civil Aeronautics Board, it brings to mind that we are phasing more and more into rates that involve international carriers. Since Canada is also involved directly in this matter of the intertie, there is even more reason for proceeding along these lines. I am glad you brought that up.

Thank you very much. I have no questions. We are glad to hear the Oregon viewpoint on this matter.

Mr. HILL. If I may add one point—

Senator MAGNUSON. Surely.

Mr. HILL. I think the test on line 12 of page 2 of the bill is a very reasonable test, and we have had some experience in findings of that nature, and they are not difficult to make.

Senator MAGNUSON. I think, as long as you mention that, we will put that in the record:

The Commission shall grant an order of approval of any such contract which it finds will not unduly restrain competition when considered in relation to the purposes of the Act; if it finds the contrary, it shall disapprove such contract and further performance thereof by a public utility shall be unlawful.

You say that is the way you operate?

Mr. HILL. We don't have exactly that test. We have tests that are very close to it and in a great number of things, and they are not at all difficult to work with.

Senator MAGNUSON. If this bill should pass, do you see any administrative conflicts with your procedures in Oregon with the Federal Government and Federal Power Commission? In other words you and Mr. Timm feel this would fit into normal procedures that your two States now practice; is that correct?

Mr. HILL. Yes, sir; we might find that on occasion we would appear in regard to one of these, but there is no conflict.

Senator MAGNUSON. Thank you very much.

All right. Mr. Ralph Wickberg is here on behalf of the Idaho Public Utilities Commission.

### STATEMENT OF RALPH H. WICKBERG, IDAHO PUBLIC UTILITIES COMMISSION

Mr. WICKBERG. Thank you, Mr. Chairman. I am sorry I was late. I got involved in some legislative proceedings last week and——

Senator MAGNUSON. It is that time of year around here, isn't it?

Mr. WICKBERG. Yes, sir.

Senator MAGNUSON. The Senate is on vacation until tomorrow, so I am not in on it.

All right; we are glad to hear from you, Ralph, and I am glad you could come over.

Mr. WICKBERG. Mr. Chairman and gentlemen, my name is Ralph Wickberg, president of the Idaho Public Utilities Commission. It is the opinion of this commission that the philosophy underlying Senate bill 683 is a necessary outgrowth of the present practices of public utilities in the United States. Rapid technological changes have made commonplace an interchange of high voltage power transmission lines between the generating plants of the various utilities operating what are now regional power pools. These utilities now have the technology to transmit power at high voltage. With such technology available to utilities, and especially the pooling arrangements that are now in operation, the interchange of large quantities of energy between regional pools will become more prevalent. These arrangements between public utilities by necessity must be formalized by contracts. It is the function of the Federal Power Commission to insure that these contracts are in the public interest in that they foster greater utilization of existing and proposed hydro or steam generation facilities. The Federal Power Commission, when considering whether or not these contracts are in the public interest, must consider whether the lessening of the competition is overcome by this greater utilization of generating facilities.

The interchange of power between utilities in regional pools has been effective over many years. With authority vested in the Federal Power Commission to determine if these agreements are in the public interest for the sale or exchange of electrical energy or interconnection, pooling or coordination of power systems or the joint use of facilities for the generation and transmission of electrical energy, the need for such contracts to meet the tests of antitrust laws in a separate proceeding is not required.

While this commission supports the principle of Senate bill 683 in achieving greater efficiency of generating facilities, transmission lines, and use of surplus power, it is also our contention that the States should have the right to appear and voice their approval or disapproval of a proposed contract and urge that consideration also be given to State and municipal problems by the Federal Power Commission in arriving at a decision.

I wish to thank you for the opportunity to appear before this committee.

Senator MAGNUSON. On your last point, all of us, I think, would assume that the Power Commission in hearing any case involving this matter would encourage and invite the States involved in the matter

to appear and state their position. Do you think we should put something in the bill directing the Power Commission to confer with the States in this matter, or what do you suggest?

Mr. WICKBERG. Well, we weren't too sure. We took a quick look at the sections of this bill amended, 683, and we didn't know whether or not the States had a right to appear in this type of proceeding as it is outlined in other sections of the act, and as I understand the Federal Power Act in most sections—the States only have to give notice of intervention and this is what we were referring to only. I don't know, I just raised the point because—

Senator MAGNUSON. I don't know either.

(Brief discussion off the record.)

Mr. WICKBERG. Mr. Chairman, may I add one comment? This has nothing to do with this.

Senator MAGNUSON. Yes; go right ahead.

Mr. WICKBERG. I have heard some testimony in connection with the hearings last year but in Idaho, speaking only for Idaho between 1953 and 1963, the electric plant in service increased 126 percent and the population gained 18 percent, so it would be just about 7-to-1 increase in energy as far as the electric plant in service is concerned and this happened at the same time a new gas business came in entirely, so I just wanted to say that these things are becoming so important, and the growth that you already mentioned is so fast, that something should be done in our opinion.

Senator MAGNUSON. Well, I think we all agree in this room that time is somewhat of the essence here that some guidelines should be set up so we know where we are going and how we can proceed. But I am sure I speak for all members of the committee when I say that there should not be any denial of opportunity or the right of the State involved in these matters, not only to come in and contribute to the hearing, but to be sure that they are all invited. Thank you for your testimony.

Now Mr. Davis who, as you all know, is president of Puget Sound Power & Light. We are glad to hear from you.

Mr. DAVIS. First of all, may I express my thanks and that of my colleagues for arranging to hold these hearings out in the Northwest where some of us, who are very interested in this legislation, can find it quite convenient to attend in person. We appreciate it very much.

One other preliminary comment. Mr. Culp, as you know, who has been working for a large group of the industry, is making a statement in support of this bill a little later, and I actually refer to Mr. Culp's statement, a copy of which I have, so I will defer to Mr. Culp's comments about his statement later.

Senator MAGNUSON. That's fine.

#### STATEMENT BY RALPH M. DAVIS, PRESIDENT, PUGET SOUND POWER & LIGHT CO.

Mr. DAVIS. My name is Ralph M. Davis. I am president of Puget Sound Power & Light Co., an investor-owned electric utility serving approximately 285,000 customers primarily within the western part of the State of Washington with a peakload of 1,150,000 kilowatts. My company endorses S. 683 and concurs fully in Mr. Culp's earlier statement.

I thought it might be helpful to the committee if I illustrated the region's need for S. 683 by use of a specific example of an actual operating situation which my company and other Northwest utilities currently face.

At the present time, through its own hydroelectric plants and long-term interests in public agency plants on the Columbia River, Puget has available for disposal a great deal of secondary hydro energy. Secondary energy is essentially that energy which is produced seasonally from hydroplants during periods of high riverflow. The quantity of secondary also may fluctuate from year to year. Puget is the largest single purchaser of the total output of the five non-Federal dams on the main stem of the Columbia River; therefore, its interest in the market for secondary energy is substantial. For example, assuming average water conditions in the water year 1970-71, Puget's secondary energy production for that year would be approximately 2,277,600,000 kilowatt-hours. Yet our secondary energy production is only 10 percent of the total available in the Northwest.

Although the Canadian treaty storage projects will reduce the amount of secondary energy somewhat, still very large quantities of Northwest secondary will remain and a great deal of this secondary will not be usable in the Northwest for some time in the future. Completion of the Pacific Northwest-Southwest intertie will open up a large market for the sale of secondary energy in the Pacific Southwest for use as steam displacement. We are interested in disposing of our energy in the Southwest, as are all the other utilities in the Northwest with surplus secondary, including the Bonneville Power Administration. But we are all required to face certain economic facts of life.

At times, in periods of high river flow, the supply of secondary in the Northwest will exceed the market in the Southwest. At other times, transmission capacity available to move Northwest energy to the Southwest may be limited. The potential Southwest purchasers face similar problems because their demands for secondary energy will at times exceed the available supply by reason of low river flows in the Northwest or shortages of transmission capacity to move this energy. Thus, in order for the market to be equitably shared by the various producers of secondary, the Northwest utilities must enter into agreements allocating the available Southwest market. Similarly, the Southwest purchasers must enter into agreements with each other, dividing the supply of available Northwest secondary. Also, of course, a price must be fixed for the commodity.

So there you have the three elements to a casebook violation of the antitrust laws: allocation of supply, division of markets, and fixing of price. Yet, absent the ability to enter into marketing agreements such as these, a very substantial amount of secondary available to my company will be wasted. There simply is no other practical way to market it. No argument is needed to demonstrate that this result would be contrary to the public interest. There would be not only an adverse affect upon our ratepayers, but the California consumers would be deprived of the benefits of a cheaper power source as well. We, therefore, strongly urge the enactment of S. 683.

The secondary energy marketing problem is just one of several very good reasons for the enactment of S. 683. I have read Mr. Black's testimony, and I think he has summarized very well the major points

in support of this bill. We fully endorse all of his reasoning. We also endorse the statement of Mr. Culp.

In closing, I would like to comment on the fine record of the utility industry of the Northwest in working together on problems of regional concern. Notwithstanding a long history of emotionalism surrounding the public versus private power controversy here, which is now, hopefully, mostly behind us, the operating utilities in both sectors have moved ahead with the creation of workable cooperative arrangements which might well be a model for other parts of the country. We can cite many examples; the long history of the Northwest Power Pool; the Canadian treaty for development of the Columbia; the Pacific Northwest Coordination Agreement; the Hanford Project; the Pacific Northwest-Southwest intertie program; the development of the non-Federal dams on the Columbia, to name just a few. Most of these programs have been very successful. Even closer coordination and cooperation will be needed now as we move toward larger generating plants and higher voltage interties. The need for cooperation will be just as great in the political field—such as our joint support of this bill—as in the technical and economic fields. I am hopeful and confident that there will in the future be increasing occasion for the public and private sectors to work together to meet common goals.

Thank you very much, Senator, for this opportunity to make these remarks in support of S. 683.

Senator MAGNUSON. Thank you Mr. Davis. On the first page of your testimony you are suggesting, if I read the figures correctly, that in 1970 to 1971, we would have approximately 200 million of secondary energy kilowatts?

Mr. DAVIS. It is 2,277,600,000, I think, Senator.

Senator MAGNUSON. Excuse me—oh, you have 2,277,000,000?

Mr. DAVIS. Yes, at that time our share of the secondary production would be roughly 10 percent so the secondary production for the whole area would be 22 plus billion kilowatt-hours in that year. These of course are estimates based on average water conditions.

Senator MAGNUSON. And this is the amount of energy that we are talking about that we are going to have to deal with in the pool; is that correct?

Mr. DAVIS. This is a lot of energy, and we have to do something with it otherwise a substantial part of it is going to be wasted.

Senator MAGNUSON. Well, it is a lot of energy.

Mr. DAVIS. But secondary is something that is very difficult to market because you must be able to match the available supply as it may vary from time to time with the available market, as it may vary.

Senator MAGNUSON. How would the construction of thermal plants affect the amount of secondary energy? I am talking about in the future now, when we add capacity, how would that affect the secondary; would it make it go up or down?

Mr. DAVIS. It would gradually reduce it. As we move into the use of thermal plants in the Northwest, a great deal of the secondary which is currently surplus to the area will become useful for steam displacement. The hydroplants will gradually be used for reserve and peaking with thermal plants carrying the baseload.

Senator MAGNUSON. In other words as we build thermal plants, the hydroplants will phase into more of the peaking as we move along; is that correct?

Mr. DAVIS. That is exactly correct.

Senator MAGNUSON. Would we arrive at a time ultimately where the hydro generation would be all peaking?

Mr. DAVIS. Well, it will be a long ways away.

Senator MAGNUSON. But gradually more and more peaking; is that correct?

Mr. DAVIS. There will be more use of hydro for peaking than at the present time. Nuclear plants are not economically suited to peaking and intermittent use. When you put a reactor on the line you should use it for baseload.

Senator MAGNUSON. Well, is steam the same?

Mr. DAVIS. Some fossil fueled steamplants can be designed to be economically used for peaking purposes. Not so, for the nuclear plant; it is pretty much impractical to use a nuclear plant unless you baseload it.

Senator MAGNUSON. What do you do now, what does Puget do now with its secondary energy?

Mr. DAVIS. We sell as much as we can, but it is a now-and-then situation when you don't have a really large combination marketing arrangement, you simply sell it to anybody who happens to be energy-short at some particular time and it is now and then short-term type of thing, we have sold a substantial amount of secondary this year.

Senator MAGNUSON. And your situation is typical, isn't it?

Mr. DAVIS. Yes.

Senator MAGNUSON. There has been a lot of talk about the contracts to effect the coordination we are talking about. What is generally the life of those contracts? I mean are they long term, short term, in between or what?

Mr. DAVIS. I can't give you a year. As long a term as you can arrange within the projections that the sellers and the purchasers can rely on at the time you execute them. Now if you are talking about secondary, it has been very difficult—well, it has been impossible to work out long-term arrangements for the marketing of secondary for the reasons I have just discussed and of course this is one of the strong needs in the area, we do have to have combination marketing arrangements so we can dispose of secondary surpluses for long periods of time under a contractual arrangement.

Senator MAGNUSON. Of course you wouldn't suggest that it be so long that everything is tied up permanently, that is not to the advantage of the consumer at all.

Mr. DAVIS. No, no. The arrangement for the sale really is only when it is surplus to our own needs.

Senator MAGNUSON. Well it should be of sufficient length, I would think, to insure stability of marketing, stability of service to the consumer.

Mr. DAVIS. Well, that is of course most important. Also the length of time to amortize investments in transmission facilities may be a factor.

Senator MAGNUSON. So there are a lot of factors involved here that finally add up to what the terms of the contract should be?

Mr. DAVIS. Yes, you couldn't finance, for example, that portion of the transmission facility which would be allocated to the marketing of secondary without a firm marketing arrangement for selling it.

Senator MAGNUSON. And you suggest by your statement of course that in order to do this you have to have clear guidelines as to how you can operate?

Mr. DAVIS. Yes.

Senator MAGNUSON. And any time the guidelines are not clear, you jeopardize your ability to finance, make the contracts, or to have stability of marketing?

Mr. DAVIS. Jeopardize, and even that may be a mild term, you may destroy your ability to do it.

Senator MAGNUSON. We have stressed all the time, all of us, that we are not talking about and never intended to suggest immunity from mergers. Do you agree with that?

Mr. DAVIS. Oh, I—yes, that was not included.

Senator MAGNUSON. It is merely the immunity from practical pooling operations?

Mr. DAVIS. The contractual arrangements, yes, involved in pooling intertie arrangements and marketing of energy.

Senator MAGNUSON. I hope that will be clear because I think that does away with a lot of issues that might arise on a bill of this type.

Well, thank you very much Mr. Davis, and as long as everybody is going to be referring to Gordon Culp, I guess we had better have him come up next.

Mr. CULP. Thank you Mr. Chairman.

#### STATEMENT BY GORDON CULP, GENERATING UTILITIES IN THE PACIFIC NORTHWEST

I am speaking on behalf of a number of generating utilities which are listed in my prepared statement. You will notice this is the same group of generating utilities for which I spoke and which supported the bill and asked that it be introduced last year.

In addition to Mr. Davis, who has already spoken, there are some other people representing these utilities who are on the witness list and wish to make some additional comments.

Senator MAGNUSON. All right.

Let me ask this question: Since the July hearings has there been any additions or subtractions from the group that you represent?

Mr. CULP. No, Mr. Chairman, there haven't. We just went back and asked the same people if they were willing to request it be introduced again and they said "Yes," and we proceeded accordingly.

Senator MAGNUSON. Insofar as you know, the general feeling about the legislation hasn't changed much?

Mr. CULP. That is correct as far as I know.

Senator MAGNUSON. With the exception of some amendments and technicalities that we discussed?

Mr. CULP. Yes.

Senator MAGNUSON. Please proceed.

Mr. CULP. The national power policy encourages maximum cooperation among utilities in order to secure the economies of modern, large-scale facilities and obtain the reliability afforded through mutual assistance. This policy is enunciated in the Federal Power Act and has recently been explained in the "National Power Survey" which was prepared by the Federal Power Commission with the cooperation of all segments of the industry.

Senator MAGNUSON. I think that the national power survey has been mentioned many times. Would you for the record state when it was completed.

Mr. CULP. It was 1964, Mr. Chairman, December 15.

Senator MAGNUSON. Of course the Federal Power Commission should and I think they do, intend to keep it up to date. That is correct, isn't it Doctor?

Dr. WALD. Yes, it is correct.

Mr. CULP. The generating utilities for whom I speak support the national policy of cooperation, realize its values, and have instituted many cooperative programs which confer, we believe, large and lasting public benefits. Rapid scientific advances now make it technically possible to engage in further and more productive cooperative arrangements. It is our desire and we consider it our duty to negotiate and enter into such arrangements.

A strict application of the antitrust laws, as they have been interpreted by the courts primarily for the guidance of unregulated industries, might preclude some of the very kinds of cooperation that the public interest now demands. And there is no machinery presently available to secure a lasting determination as to whether or not an agreement for cooperative action, though it may collide with pure and strict antitrust principles, will nevertheless be in the overall public interest. Utilities must have a way to establish before the fact and with reasonable certainty whether or not an arrangement for cooperative action—typically a pooling agreement—is consistent with the balanced public interest and will be valid if later challenged under the antitrust laws.

We believe that S. 683 provides a workable method for testing such agreements by the relevant requirements of national policy and, in proper cases, granting the necessary assurances of validity.

There is a special reason why such advance, dependable assurances must be made available to the electric industry. In many cases pooling and coordination arrangements will determine the time and nature of large capital expenditures and control long-term planning for power supply; and leadtimes to secure large, alternative sources of power range from 5 to 10 years. If a group of power suppliers were to rely on such an arrangement and it were later ruled to be invalid—

Senator MAGNUSON (interrupting). Now when you mention alternative, you are talking about thermal?

Mr. CULP. Conventional thermal, nuclear thermal, or hydroelectric, depending on circumstances.

Senator MAGNUSON. All right.

Mr. CULP. If a group of power suppliers were to rely on such an arrangement and it were later ruled to be invalid under the antitrust laws, the results to the participating utilities and the public to which they are responsible could be disastrous. Therefore, absent dependable advance assurances of validity, responsible executives and careful lawyers may be forced to recommend legally safer, though technologically inferior, plans for power production and management.

This bill does not extend the regulatory jurisdiction of the FPC to any party which is not already subject to such jurisdiction, nor does it require those within FPC jurisdiction to file any agreements in addition to the ones already required to be filed. Neither does it

expand the requirements of the antitrust laws as they presently apply to utilities.

Senator MAGNUSON. Excuse me a minute. Where are you reading?

Mr. CULP. I am summarizing the written statement.

Senator MAGNUSON. Oh, all right, and you want your statement in the record in full?

Mr. CULP. Yes.

Senator MAGNUSON. Without objection, that will be done.

Mr. CULP. It does not impose obligations with regard to competition on any party which is not already subject to such obligations under the antitrust laws. What it does is constitute the Federal Power Commission the sole and responsible U.S. agency to consider, apply and police both the national power policy and the antitrust policy as they relate to the contracts described in the bill; and it authorizes and requires the Commission to reach a balanced decision after weighing all factors bearing on either field of public policy.

The electric power industry has some special characteristics which should be taken into account when considering the proper application of national policy. Utilities usually operate under the law as monopolies in areas defined in greater or lesser detail by various exercises of public authority. Electricity is a product needed and used by virtually every person in the country. The electric utility industry is the largest capital requirements industry in the country. Yet the industry is characterized by its pluralism. There are about 3,600 independent entities of all kinds providing electric service throughout the United States, but only a very few of the privately owned corporations in the utility industry, for instance, rank among the really large corporations of the country. Generally speaking, this huge industry providing a homogenous product is composed of relatively small, independent organizations. Also, utilities are required to be prepared to serve all of their customers' demands at the time the demands occur. They cannot, like an ordinary industrial organization, wait until a market demand exists and then decide when, how, and whether to participate in serving the market.

All of these characteristics are important in the dilemma which creates a present need for S. 683. The most reliable and economic electric service can now be provided through the use of facilities which are too big and too expensive to be attainable by any but the few very largest individual utilities. But all utilities must secure some kind of dependable power supply and must plan and finance it many years ahead of the demand. The utility size and financial strength necessary to acquire the best modern facilities can be marshaled either through mergers or cooperative efforts. If it is to be done through cooperative efforts of smaller utilities, they must be enabled to depend on their interutility agreements with substantially the same confidence that they would have in a plant that they owned by themselves. If, as now, there is no way to get a decision commanding such confidence, they still have to prepare to meet demands, but they may be forced to alternatives which are neither as economical nor physically reliable.

This bill does not affect the laws relating to mergers, or relating in any way to the nature of utility ownerships. It is intended to make the advantages of cooperative large-scale installations and emergency assistance available to all consumers whether the utility serving them be large or small, public, private, or Federal.

For these reasons, the organizations for which I speak support S. 683. We urge that action be taken on the bill as soon as possible.

Senator MAGNUSON. Now there have been many suggestions made by people that when you put together these interutility agreements, they may shut out smaller utilities and place them in a bad comparative basis. Do you think that that is covered in the bill, so that this would not occur or do you think we ought to add some language to that?

Mr. CULP. Well, we have thought Mr. Chairman that that problem is covered in the bill as it is. Specifically we acknowledge that the Federal Power Commission has the power to impose conditions on the granting of an order; and knowing, as I am sure everyone here in the room does know, that the Federal Power Commission is very, very sensitive to the question of possible freezeouts, we have assumed that that would be one of the major competitive matters that the Commission would decide in all cases. They certainly would have the power and the authority under the bill as written to be able to condition their order to make sure that an unnecessary freezeout would not and could not occur. There may be a problem, however, with regard to an attempt to write specific standards as to whether one or another utility would be permitted into a pool. I think it is this: all of these coordinating and pooling arrangements pose immensely complex technical problems.

We have felt that the safest way to make sure that the public interest would be protected would be to have general standards applied by an expert body which can apply that expertise to each case before it. We think there may be some problem in trying to pick out and define a specific standard of competition, thereby perhaps weakening other standards that, in the public interest, ought to be applied. Again, I think it is amply clear that the Federal Power Commission does now address itself to the question of discrimination against small utilities in large pools. We assume that they would continue to do so; and we think that their ability to make sure that small utilities would not be unduly discriminated against is recognized in the bill as written. I doubt if there would be any objection to putting something in the bill which makes the conditioning power somewhat more explicit if the Congress thought that would be helpful.

Senator MAGNUSON. There was testimony from the cooperatives and the National Rural Electric Cooperative representatives, and their protest was that the need was not shown and that the bill does not provide for a continuous review of contracts. Would you care to comment on that?

Mr. CULP. Yes.

Senator MAGNUSON. Now, we are assuming these contracts are long-term contracts or of the nature of a long-term contract.

Mr. CULP. That is right, Mr. Chairman, and most of the cases we are talking about would involve long-term contracts.

At this point I must say, and I am sure you understand, Mr. Chairman, that the written statement I have supplied here has been specifically approved by the people for whom I am speaking.

Senator MAGNUSON. Yes.

Mr. CULP. And in answering questions I will do the best I can to reflect what has been discussed with them in general terms, but I wouldn't want the record to indicate their specific approval of my answers.

Senator MAGNUSON. Well, we can ask some of the other witnesses the same thing. I would like to get some ideas on this because they were quite strong in their opposition and I think we ought to clear it up if we can.

Mr. CULP. Right. Now, it seems reasonable to me that the Federal Power Commission must have the right of continuing surveillance over these questions in order to be able to accommodate the public interest if, in the future and after a contract has been approved, there is a change in some material, competitive circumstance that requires such accommodation. Also, if the contract, as once approved, is used for some purpose that wasn't anticipated or described at the beginning, I don't think that anyone could object to corrections through continuing surveillance by the Commission. However, I am sure that neither the Commission nor any of the witnesses that made statements on this subject would want language under which a contract could once be approved and then, at some later time, the Commission could, merely by changing their minds, invalidate actions that have been taken in good faith in reliance on the previous order. In short, continuing surveillance should not, under any circumstances, result in invalidating actions that were once approved; however the Commission should be able to add supplemental provisions to meet changing circumstances and conditions.

Senator MAGNUSON. Well, the FPC suggested that the order of immunity previously issued should be subject to reconsideration. That would in effect provide some continuing review, wouldn't it?

Mr. CULP. That is correct; and I think that the FPC in that amendment is talking in terms of adding to and supplementing an order previously issued in order to accommodate changing circumstances.

Senator MAGNUSON. Well, suppose they approved of a contract and then as time went on there was a different set of circumstances, or the contract wasn't being carried out in the way they approved of it. They surely ought to have the right to review the matter and make changes or reconsider the matter, wouldn't you say so?

Mr. CULP. Yes.

Senator MAGNUSON. And I think if that is not clear in the bill, we ought to have an amendment to that effect.

The cooperatives also said an untested standard is used. This is a little vague to me. I hope the experts agree on what the standards are.

Mr. CULP. I think, Mr. Chairman, that you really won't get too much difference of opinion on that question.

Senator MAGNUSON. That will be unusual, but then I hope it is true. [General laughter.]

Mr. CULP. First of all, it is not an untested standard; these exact words are taken from section 5(1) of the Interstate Commerce Act and have been a part of that act since 1920. The standards that are applied in other regulatory bodies that have authority to grant immunity from the antitrust laws—such as those in the Aviation Act and the Shipping Act—are not substantially different in their approach. And it has been testified to here today that the State Commissions use a similar standard.

Senator MAGNUSON. That is what the three State commissioners testified.

Mr. CULP. A considerable body of law has been worked out under the Aviation Act and the Interstate Commerce Act, for instance, under

standards as close as you can get to this one. It is as administrable as any standard that could be put in here, in my opinion.

Senator MAGNUSON. Then the fourth objection was that they feared rural cooperatives might be excluded from the contract. How could that come about?

Mr. CULP. Well, Mr. Chairman, I don't think that it will come about. Certainly rural cooperatives as such would not be excluded from contracts by the Federal Power Commission. I don't think rural cooperatives or any other organization would be allowed by the Federal Power Commission to be excluded unless it was in the public interest to do so. Now, I can conceive of a situation where it would not be in the public interest, in any fair view of it, to allow someone into a pool. Consider a reliability question: It may be that until a utility does something about its system that makes it stronger and more reliable, the Commission might not want to hang the fortunes of a large area on it. But as far as someone being excluded just because they are small or someone doesn't want them in, as I mentioned before, I think this is a matter to which the FPC is already, and would continue to be, most sensitive. This bill would give those organizations a good and immediate forum.

Senator MAGNUSON. Well, suppose there was an area contract, and there was a rural cooperative in the area or on the fringes. Would they necessarily be a part of the proceedings, wouldn't they have to be a part of the proceedings?

Mr. CULP. Yes, I think so. They should be and under the bill they have every opportunity to be. As a matter of fact, if they didn't come in, I suspect the Federal Power Commission would, on its own motion, raise the questions that apply to them. We feel that the procedure set out in the bill actually gives a better, faster, cheaper way for these competitive questions to be handled in each case where they are material. Certainly no one who has asked this bill be introduced intends it to be used or usable to freeze proper parties out of power pools. Our whole point is to make it possible for bigger, better, stronger power pools to be formed to the ultimate advantage of consumers. That is what we are trying to accomplish.

Senator MAGNUSON. It seems to me that there may be some cases where they could use the procedures of the bill for their own benefit because it would be better for the cooperatives themselves to have the pooling arrangements. Well, I just want to continue to bring that out, because I hope that there would be no freezing out of any group, particularly cooperatives, who are usually smaller groups, competing with bigger power and public utility units.

Now there has been a great deal of testimony, too, from people opposing the bill and they always use the term "the need for the bill has not been shown." Now sometimes they seem to be referring only to their own area, where maybe the need didn't seem to exist today, but have you any comments to make about that?

Mr. CULP. Yes, Mr. Chairman, I do. There has been some good testimony here today which gets right to that question. One of the main needs for the bill relates to a subject which you raised, Mr. Chairman—the question about Northwest entry into the steam era. In our written testimony today and also last year we used the example of secondary energy sales contracts in connection with the interties to show a need for this bill. We think that is a very good example, but

it is only an example. The important thing is that most usable pooling arrangements will require that prices be established. It is true that the prices so established can be lower than those prices would be if there wasn't a pool, but nonetheless they must be established to make the pool work sensibly. Now when that element exists—establishment of prices—a very serious legal problem arises under a strict application of the antitrust laws. And that element will permeate most or all of the agreements which we anticipate. A good example is posed by a large thermal facility such as the ones on the horizon here in the Northwest. This problem is new to us; we are just now, but right now, having to enter the era of thermal generation.

Now we have already had testimony here today concerning the leadtimes that are involved and the necessity for general cooperation in order to make it work. The important thing is that with these huge units, the nature of the necessary cooperation must become both wider and deeper. It must involve wider geographic areas to make these big units usable in the best way; and it must be deeper, meaning that more and more details of how the system will use this facility must be agreed upon contractually. As you expand the size and the depth of these cooperative agreements, you raise a larger and larger danger of a conflict with the antitrust laws. So far we are taking the position in the Northwest that large thermal plants can and should be used through cooperation among smaller utilities that can't do the job individually. That being the case, this conflict with a strict application of the antitrust laws is one of the major inhibitions that must be removed in order for us to meet the time schedule Mr. Black, Mr. Davis, and others have described here on the stand.

Senator MAGNUSON. Many pools have been formed in recent years. Doesn't that indicate that the industry could go right on ahead and continue to do this without a bill?

Mr. CULP. I don't think it does so indicate, Mr. Chairman. Let me start off by saying this: Certainly we all recognize that there have been many pools formed, we have formed many of them right here in the Northwest and many others have been formed elsewhere in the country. But there are pools and there are pools. The public benefits do not flow from the fact that a group of people get together and form an association which can properly be called a pool. They flow from the details of what that pool can do, the security of the arrangements, and the ease with which they can operate the systems and therefore get the most out of the invested dollar. Certainly all of these pools that have been formed are a step in the right direction, but an important question is how big a step. Put the other way, the most important question is not what has been done in forming pools but what has not been done. With the coming of large steam plants we will need a type of cooperation that has not yet been put into effect in the Pacific Northwest. This is a major type of cooperation where protection from the strict application of the antitrust laws is required. Maybe one more example on a question of reliability will emphasize my point. In the last 2 or 3 years there have been several sizable electric failures in different areas. In many of those instances a "pool" was involved. Without implying criticism of anyone, I think you could say that millions of people would have been safer and more comfortable if those pools had been better and stronger. Our question is, How do you get the pool that gives the maximum public benefit? I don't

think that a listing of pools that have previously been set up is the answer to our question at all.

Senator MAGNUSON. Now you also dwelled upon the fact that the Justice Department said that you don't need this kind of legislation because the utilities could use their so-called business review procedure group to say "Go ahead and we won't prosecute, or we will take no action in this case." Would that satisfy the parties in the pool?

Mr. CULP. No, Mr. Chairman; it wouldn't. A decision not to prosecute doesn't bind anyone.

Senator MAGNUSON. That is right.

Mr. CULP. And it doesn't bind even the Attorney General. I am not suggesting that the Department of Justice would loosely mislead people into taking actions and then shoot them down later for no reason. I don't think anybody believes that. However there is a much more important reason that the business review procedure is not satisfactory, and that gets down to the question of private litigation.

Senator MAGNUSON. In the first place, they can't grant any immunity—preimmunity to a proposal that would in any way affect the legal rights of the third party.

Mr. CULP. None whatever.

Senator MAGNUSON. No matter what they do.

Mr. CULP. That is right.

Senator MAGNUSON. Now supposing you came to them with a proposal and they thought that this would be good for the consumer, be good for everybody as a practical matter, and be good for the distribution of energy in a particular area, but technically there was a violation of the antitrust law that they couldn't do anything about it. They would have to come to Congress to change that, wouldn't they?

Mr. CULP. I am not sure I understand what you mean.

Senator MAGNUSON. Well, supposing everything looked all right and it just looked like a good thing to do, but technically there was a violation of the antitrust laws—

Mr. CULP. Yes.

Senator MAGNUSON (continuing). Then they could not give their approval unless Congress changed the law, could they?

Mr. CULP. Correct.

Senator MAGNUSON. Whereas under the bill, the Federal Power Commission could take all these factors into consideration and do it by administrative action, rather than by congressional action, thereby saving time?

Mr. CULP. That is right, Mr. Chairman; and that is a very articulate description of the balancing standard that you previously asked about.

Senator MAGNUSON. Well that may be, I may be an expert on balancing standards, I don't know.

Mr. CULP. That is exactly what it is and what it does. The electric utility industry in this situation is guided by two statutory schemes, the Federal Power Act and the national power policy under it, and the antitrust laws and the general rules of a competitive society which they represent. The purpose of this bill is to establish the machinery whereby the overall public interest can be found by balancing the important provisions of the one policy against the important provisions of the other policy and arriving at the single ultimate answer, everything considered: whether or not a contract is in the public

interest? That is the balancing standard that is used in all of these cases.

Senator MAGNUSON. Well, I can conceive of this, it has happened where the public interest would be served, but there was a technical violation and their hands would be tied. If you know Congress like I know it, they're not about to amend bills for a particular situation. This just doesn't happen, whereas the Federal Power Commission could take everything into consideration, leading up to a conclusion that it is in the public interest, and therefore approve the matter.

Mr. CULP. That is correct.

Senator MAGNUSON. This is the difference, isn't it?

Mr. CULP. Yes.

Senator MAGNUSON. That poses a great controversy with a lot of people.

Mr. CULP. Yes; it requires great expertise on the part of the body that makes the decision. That is the reason in cases similar to this that the decisionmaking authority has been given to the regulatory commission that has this expertise—the Interstate Commerce Commission, the Civil Aeronautics Board—

Senator MAGNUSON. Well, there are some schools of thought and some students of this antitrust problem who suggest that any regulated industry should not be able to violate the antitrust laws unless somebody didn't do their job down below. The basis of all antitrust laws in the beginning was unregulated mergers and things of that kind. This was the beginning of the old Sherman antitrust fight, it was the unregulated, but it can happen to regulated industries unless there is a dereliction down the line.

Mr. CULP. That is correct.

Senator MAGNUSON. Here is the Wall Street Journal that last year said:

Government-inspired antitrust actions have edged off in recent years, only 40 last year, down from 92 in 1962, however more and more companies are invoking the Federal Sherman and Clayton antitrust laws to push their own private battles against an ever-widening list of adversaries including competitors, suppliers, would-be owners, unions, and industry associations.

Insofar as the power industry is concerned, what is your opinion as to how the bill would affect this situation?

Mr. CULP. Well, Mr. Chairman I think that it would be very hard to see how this bill could affect the incidence of antitrust cases brought against pools of electric utilities by the Department of Justice because they haven't brought any in the past.

Senator MAGNUSON. That is right.

Mr. CULP. Private litigants have, but they haven't.

Senator MAGNUSON. That is one of the reasons why a lot of people can arrive at the conclusion that the need for this hasn't been proven.

Mr. CULP. I think that the views of the Antitrust Division as to competitive matters would, under this bill, probably more often be included in the consideration of the propriety of these pools than it is now. Justice will get notice of all proceedings under this bill; they will participate; and I would assume that they will make recommendations to the Federal Power Commission in cases where they would not by any stretch of the imagination bring a Federal antitrust case in order or prevent it. It is an easier forum for their views as well as anyone else's.

Senator MAGNUSON. The bill anticipates that the Federal Power Commission's decision in any given case in this field would be final; is that still your interpretation?

Mr. CULP. Yes, that is correct, Mr. Chairman. There has been some discussion here about continuing jurisdiction which we have covered previously—the matter of conditional approval to start with—which may modify that answer somewhat, but essentially the order must be final in order to do the job correctly.

Senator MAGNUSON. If the Power Commission decision should violate a constitutional right, that never is final, you always can appeal that.

Mr. CULP. That is true, and these orders are judicially reviewable like any administrative order.

Senator MAGNUSON. Thank you, Mr. Culp.

(The prepared statement of Mr. Culp follows:)

PREPARED STATEMENT ON BEHALF OF GENERATING UTILITIES IN THE PACIFIC NORTHWEST

Mr. Chairman and members of the committee, I speak in support of S. 683 on behalf of the following Pacific Northwest generating utilities: Eugene (Oregon) Water and Electric Board, City of Seattle, Washington, Department of Lighting, City of Tacoma, Washington, Department of Public Utilities, Public Utility District No. 1 of Chelan County, Washington, Public Utility District No. 1 of Cowlitz County, Washington, Public Utility District No. 1 of Douglas County, Washington, Public Utility District No. 2 of Grant County, Washington, Public Utility District No. 1 of Pend Oreille County, Washington, Pacific Power and Light Company, Puget Sound Power and Light Company, Portland General Electric Company, The Montana Power Company, The Washington Water Power Company. Representatives of these organizations are present in the hearing room and available to respond to any questions the Committee may have. Some are also on the witness list for additional oral remarks.

The national power policy encourages maximum cooperation among utilities in order to secure the economies of modern, large-scale facilities and obtain the reliability afforded through mutual assistance. This policy is enunciated in the Federal Power Act and has recently been explained in the National Power Survey which was prepared by the Federal Power Commission with the cooperation of all segments of the industry.

The generating utilities for whom I speak support the national policy of cooperation, realize its values, and have instituted many cooperative programs which confer, we believe, large and lasting public benefits. Rapid scientific advances now make it technically possible to engage in further and more productive cooperative arrangements. It is our desire and we consider it our duty to negotiate and enter into such arrangements.

We believe that modern technology will result in maximum benefit if a present legal impediment can be properly removed. The legal impediment is as follows: A strict application of the anti-trust laws, as they have been interpreted by the courts primarily for the guidance of unregulated industries, might preclude some of the very kinds of cooperation that the public interest now demands. And there is no machinery presently available to secure a lasting determination as to whether or not an agreement for cooperative action, though it may collide with pure and strict anti-trust principles, will nevertheless be in the overall public interest. Utilities must have a way to establish before the fact and with reasonable certainty whether or not an arrangement for cooperative action—typically a pooling agreement—is consistent with the balanced public interest and will be valid if later challenged under the anti-trust laws.

We believe that S. 683 provides a workable method for testing such agreements by the relevant requirements of national policy and, in proper cases, granting the necessary assurances of validity.

There is a special reason why such advance, dependable assurances must be made available to the electric industry. In many cases pooling and coordination arrangements will determine the time and nature of large capital expenditures and control long-term planning for power supply; and lead times to secure large,

alternative sources of power range from five to ten years. If a group of power suppliers were to rely on such an arrangement and it were later ruled to be invalid under the anti-trust laws, the results to the participating utilities and the public to which they are responsible could be disastrous. Therefore, absent dependable advance assurances of validity, responsible executives and careful lawyers may be forced to recommend legally safer, though technologically inferior, plans for power production and management.

S. 683 is needed urgently because cooperative arrangements of various kinds and complexity are in planning stages right now in various parts of the country. For example, the extra high voltage interties between the Pacific Northwest and the Pacific Southwest are now being built through cooperative arrangements and large capital expenditures by the United States Government, and public agencies and private power companies. When completed the interties will represent a total investment of about \$700,000,000.

One of the main values of the intertie lines is to permit the use in the Southwest of large quantities of summertime energy which is now wasted for lack of Northwest markets, thus allowing the broadest public benefit from public and private investment in generating facilities. To accomplish this purpose, power organizations in both geographic areas must have access on an equitable basis to transmission capacity for the sale and exchange of such secondary energy. In order to create a usefully predictable supply of such energy and a proper market for its use, the energy must be marshalled from all available sources, and all available markets must be taken into consideration. The supply, demand and transmission capacity will never come out even. Therefore, to have an equitable and workable arrangement, the parties will be required to agree on allocation of supply among those requiring energy, allocation of market among those having surplus energy and allocation of transmission capacity to serve the needs of all; and prices will have to be established for the energy and the transmission services. All of these elements involve consideration which historically have been the subject of anti-trust concern. S. 683 is needed now to supply a method by which all of the equities and benefits of such an agreement as well as all of its anti-competitive aspects can be considered together in order to find a dependable answer to the single ultimate question: Is the agreement as a whole consistent with the overall public interest?

The bill would authorize the Federal Power Commission to review each contract now required to be filed under Section 205(c) of the Federal Power Act, and to weigh its effect in view of anti-trust policy together with its contribution to the national power policy. If, after this balancing process, the Commission finds that the contract does not unduly restrain competition, it will be approved, and all parties executing and performing the contract as approved will be relieved from the operation of the anti-trust laws. If the Commission finds that it does unduly restrain competition, it will be disapproved and further performance under it will be unlawful. The term "unduly restrain competition" is taken from Section 5(1) of the Interstate Commerce Act and has been a part of that act since 1920.

All interested parties and agencies, including the Federal Power Commission, the Department of Justice and other federal and state governmental agencies and authorities, as well as non-governmental parties, will be entitled to cause a hearing to be held and to participate in it. An order of approval will carry an exemption for all contracting parties and their representatives, whether or not they are within the jurisdiction of the Commission for purposes of regulating rates and other practices; and the order will exempt them from state and municipal, as well as federal, anti-trust laws. The order will be final, subject only to court review in the manner presently provided for other orders of the Federal Power Commission.

It is to be expected that the Commission will, in some cases, conclude that a contract will unduly restrain competition unless changed in some respect. The parties would then have the alternative of agreeing to such changes or abandoning the contract as submitted and working toward a different arrangement that will be acceptable.

It is necessary, and is provided by S. 683, that the conclusions reached by the Commission, unless disapproved by the courts on review under Section 313, be conclusive and binding though later challenged by any person or authority in any court or other forum. Unless the contract as once approved and its performance remain exempt from invalidation under the anti-trust laws, the reliability necessary to permit and encourage valuable pooling agreements will be lost.

This bill does not extend the regulatory jurisdiction of the F.P.C. to any party which is not already subject to such jurisdiction, nor does it require those within

F.P.C. jurisdiction to file any agreements in addition to the ones already required to be filed. Neither does it expand the requirements of the anti-trust laws as they presently apply to utilities. It does not impose obligations with regard to competition on any party which is not already subject to such obligations under the anti-trust laws. What it *does* constitute the Federal Power Commission the sole and responsible United States agency to consider, apply and police both the national power policy and the anti-trust policy as they relate to the contracts described in the bill; and it authorizes and requires the Commission to reach a balanced decision after weighing all factors bearing on either field of public policy.

Neither the proposed new subsection 202(g) nor any action taken under it could affect the legality or illegality of any arrangement other than a contract which is filed under Section 205(c) (and is therefore open to public scrutiny) and the negotiations leading up to such contract.

It should be noted that the other provisions of the Federal Power Act are unaffected by an order under the proposed new subsection 202(g). For example, the rates charged for energy or services under an approved pooling agreement remain subject to review and revision under the other provisions of the Act, and the powers of the Commission to compel interconnections under subsection 202(b) remain intact.

The electric power industry has some special characteristics which should be taken into account when considering the proper application of national policy. Utilities usually operate under the law as monopolies in areas defined in greater or lesser detail by various exercises of public authority. Electricity is a product needed and used by virtually every person in the country. The electric utility industry is the largest capital requirements industry in the country. Yet the industry is characterized by its pluralism. There are about 3,600 independent entities of all kinds providing electric service throughout the United States, but only a very few of the privately owned corporations in the utility industry, for instance, rank among the really large corporations of the country. Generally speaking, this huge industry providing a homogenous product is composed of relatively small, independent organizations. Also, utilities are required to be prepared to serve all of their customers' demands at the time the demands occur. They cannot, like an ordinary industrial organization, wait until a market demand exists and then decide when, how and whether to participate in serving the market.

All of these characteristics are important in the dilemma which creates a present need for S. 683. The most reliable and economic electric service can now be provided through the use of facilities which are too big and too expensive to be attainable by any but the few very largest individual utilities. But all utilities must secure some kind of dependable power supply and must plan and finance it many years ahead of the demand. The utility size and financial strength necessary to acquire the best modern facilities can be marshalled either through mergers or cooperative efforts. If it is to be done through cooperative efforts of smaller utilities, they must be enabled to depend on their interutility agreements with substantially the same confidence that they would have in a plant that they owned by themselves. If, as now, there is no way to get a decision commanding such confidence, they still have to prepare to meet demands, but they may be forced to alternatives which are neither as economical nor physically reliable.

This bill does not affect the laws relating to mergers, or relating in any way to the nature of utility ownerships. It is intended to make the advantages of cooperative large-scale installations and emergency assistance available to all consumers, whether the utility serving them be large or small public, private or federal.

For these reasons, the organizations for which I speak support S. 683. We urge that action be taken on the bill as soon as possible.

Senator MAGNUSON. All right, I think we will take a 5 or 10 minute recess for the reporter to stretch his hands a little bit.

(Brief recess at 11:35 a.m.)

Senator MAGNUSON. All right, the committee will be in order.

The next witness is Howard Elmore, who is assistant manager of the Chelan PUD. Howard, we are glad to hear from you.

STATEMENT OF HOWARD ELMORE, PUBLIC UTILITY DISTRICT  
NO. 1, CHELAN COUNTY

Mr. ELMORE. Thank you, Mr. Chairman, I am Howard Elmore, assistant manager and I am also power manager, for Chelan Public Utility District. I am an electric engineer by profession.

First of all, I would like to express appreciation of our utility for your making the effort to hold this hearing out in this area.

Senator MAGNUSON. Well, I want to say right here that one of the main reasons for holding this hearing is that it is almost 8 months since the last hearing, and we wanted to find out if there are any new views or new viewpoints.

OK, Howard.

Mr. ELMORE. I am speaking in support of S. 683 on behalf of our public utility district, and our utility, as one of the generating utility groups in the Northwest is also one of the utilities supporting Mr. Culp's presentation here today.

I might just briefly state some of the background, perhaps, that would have some value in connection with your assessment as to my qualifications to be speaking in this area.

I have served on the Western Regional Advisory Committee of the Federal Power Commission that prepared the 1964 National Power Survey. This was a very enlightening experience to me and I hope I made some contribution in this whole area of forecasting what the industry needs or might need out to about 1980.

The power survey is in process of review—

Senator MAGNUSON. Well, Howard, right there, don't you think all of us are sort of thinking about what might happen in the future? If we were just going to stand still I suppose we wouldn't need to worry about this bill at all.

Mr. ELMORE. No.

Senator MAGNUSON. But we all know that we are not going to stand still, they aren't going to let us stand still out here.

Mr. ELMORE. That is right, and I am working on the Western Regional Advisory Committee at the present time updating the survey, the National Power Survey. I had a part in the negotiations and planning of the Pacific Northwest coordination agreement which is very, very essential to our—

Senator MAGNUSON. That is the 1964 agreement?

Mr. ELMORE. The 1964 agreement which is a very essential part of our whole coordinated operation here in the Northwest. Also, I had a part in the working out of the arrangements for the purchase of the Canadian entitlement under the treaty with Canada and exchange of that power for use on a pool basis in the Northwest. I am one of the officers of the Columbia Storage Power Exchange that—

Senator MAGNUSON. I don't like to interrupt, but talking about having things changed a little bit, haven't things changed a little bit up in Canada in their demand for power since 1964?

Mr. ELMORE. Apparently so. This is what they tell us, that their load has grown much faster than they anticipated back at the time that we were working on the treaty.

From experience of our utility in dealing with power pooling problems and working out coordinated operating arrangements with other utilities, both public and private, we are convinced that continuing

growth of this type of activity is necessary if the utility industry is to take advantage of advancements in technology that are making possible cost reductions through construction of large generating plants and extra-high-voltage transmission lines. Without legislation that will provide relief for the contracting utilities from antitrust laws, it is apparent that growth of power pooling arrangements will be restricted to the detriment of the utility industry and to the consuming public.

Our utility generates over 1 million kilowatts of hydroelectric power and we are and will continue to be dependent, to a considerable extent both directly and indirectly, upon energy exchanges with other utility systems, sale of surplus secondary energy and purchase of capacity and energy under conditions of pool operation. We believe contractual arrangements for power exchange, sale and purchase under conditions of powerpooling will be of increasing significance in the future. We can foresee that if the threat of antitrust violation is not removed from such contractual arrangements that our utility and other utilities will be unable to fully carry out our objective of bringing electric service to consumers at the lowest possible cost.

We recommend enactment of S. 683, either in its present form or something substantially in its present form.

Senator MAGNUSON. In other words, the public utility districts, such as your own, are thinking more about the future. Now they have been doing fairly well, but the thing is getting bigger, it is getting more complex and the guidelines have got to be more definitive.

Mr. ELMORE. We are beginning to realize our limitations.

Senator MAGNUSON. Yes, otherwise we will never obtain the objectives as quickly as we should and—all right, Howard, thank you very much. We appreciate it.

(The prepared statement of Mr. Elmore follows:)

STATEMENT OF HOWARD C. ELMORE ON BEHALF OF PUBLIC DISTRICT No. 1 OF CHELAN COUNTY, WASH.

Mr. Chairman and members of the committee, my name is Howard C. Elmore, Assistant Manager and Power Manager for Public Utility District No. 1 of Chelan County, Washington. I am speaking in support of S. 683 on behalf of our Public Utility District. In addition, Mr. Gordon Culp is representing our utility and other Pacific Northwest generating utilities in his appearance here today in support of this bill.

I will state briefly my particular background and experience that qualified me to speak to you on the value and significance of coordinated electric utility operations and power pooling. I participated in the early planning and later negotiations that led to the consummation in 1964 of a long-term Pacific Northwest Coordination Agreement. This is a contract arrangement among public and private electric utilities in the Northwest including the Federal agencies engaged in the generation and transmission of electric power for coordinated operation of their systems and sharing the benefits of pooled operation. In addition, I had a part in working out the contract and financing arrangements that resulted in purchase and exchange of Canada's entitlement to downstream power benefits in the United States pursuant to the Columbia River Treaty between the United States and Canada. I am president of the Columbia Storage Power Exchange, Inc., an organization formed to carry out, on an industry-wide basis in the Northwest, the purchase and exchange of the Canadian entitlement power. This arrangement is making possible the construction of three Columbia River storage projects in Canada as provided in the Treaty which will add more than 15 million acre feet of storage for coordinated regulation to produce power and flood control benefits on the Columbia River in the United States. I served as a member of the Western States Regional Advisory Committee to the Federal Power Commission in assisting in the preparation of the Commission's National Power Survey issued in 1964. Also, I am currently serving on the West Regional Advisory Committee appointed by the Federal Power Commission in 1966 and composed of electric utility repre-

sentatives from the Western States to assist in updating the National Power Survey. Our work on this committee includes investigation and evaluation of reliability of bulk power supply through system interties and power pooling.

From experience of our utility in dealing with power pooling problems and working out coordinated operating arrangements with other utilities, both public and private in the Northwest, we are convinced that a continuing growth of this type of activity is in the public interest and essential if the utility industry is to take advantage of advancements in technology that are making possible cost reductions through construction of large generating plants and extra-high voltage transmission lines. Without legislation that will provide relief for the contracting utilities from anti-trust laws, it is apparent to us that growth of power pooling arrangements will be severely restricted to the detriment of the utility industry and to the consuming public.

Our utility generates over 1,000,000 kilowatts of hydroelectric power and we are and will continue to be dependent, to a considerable extent both directly and indirectly, upon energy exchanges with other utility systems, sale of surplus secondary energy and purchase of capacity and energy under conditions of pool operation. We believe contractual arrangements for power exchange, sale and purchase under conditions of power pooling will be of increasing significance in the future. We can foresee that if the threat of anti-trust violation is not removed from such contractual arrangements that our utility and other utilities will be unable to fully carry out our objective of bringing electric service to consumers at the lowest possible cost.

We recommend enactment of S. 683.

Senator MAGNUSON. All right, Mr. Cliff Erdahl, director of utilities, city of Tacoma. Cliff, we are glad to hear from you.

**STATEMENT OF CLIFF ERDAHL, DIRECTOR OF UTILITIES,  
TACOMA, WASH.**

Mr. ERDAHL. Thank you, Senator. I want to thank you also for coming out and having this hearing that saves us a little money and time from running way back to Washington, and we appreciate it.

Senator MAGNUSON. Well, I like to see you fellows back there, but it is better for me to come home once in a while and talk with you.

Mr. ERDAHL. We like to see you once in a while, too.

My name is Cliff Erdahl, I am director of utilities for the city of Tacoma. I would like to ask, Mr. Chairman, that even my very brief statement be made a part of the record in its entirety.

Senator MAGNUSON. All right; it will be put in the record in full.

Mr. ERDAHL. The first two or three paragraphs, as you might know, gives us another opportunity to tell you and others what a great utility we have in the city of Tacoma.

Senator MAGNUSON. Well, you are pointing out in paragraph 3 what your plans are for enlargement; isn't that correct?

Mr. ERDAHL. Well we are going to tell you what our plans are, how we became involved and the reason we think we need this bill.

Senator MAGNUSON. Yes.

Mr. ERDAHL. 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 Nos. 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 kilowatts.

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 1966 the city purchased 1,327,980,000 kilowatt-hours of prime power at a cost of \$2,825,650.

Energy received from the Grant County public utility under a long-term contract by which the city receives 8 percent of the Priest Rapids project on the Columbia River, amounted to 358,474,000 kilowatt-hours at a cost of \$847,473 including cost of transmission wheeling paid to BPA in 1966.

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 percent in receiving the output of the generating station at Richland, Wash. Steam for the station is supplied by the nuclear new production reactor built by the U.S. 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, 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 percent, estimated at 172,125 kilowatts of 1,377,000 kilowatts in 1974, of Canada's 50-percent share of the additional power to be generated. The city is completing negotiations to assign its share of 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 is arranging backup agreements with BPA, Puget Sound Power & Light Co., and others to provide further reassignment if necessary.

The city signed, along with 15 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 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 utilities with which it shares utility responsibility to have assurance that the many and diverse mutual contractual arrange-

ments and pooling operations will be timely and properly reviewed and regulated as provided in the subject legislation to provide anti-trust immunity and the stability of planning, operations, and financing so necessary in these matters.

The city, therefore, joins in and supports the statement made by Gordon C. Culp on behalf of the generating utilities in the Pacific Northwest, urges the committee to approve the bill and requests the right to give such oral presentation and to be heard at any further hearing to the extent that the committee may deem appropriate or desirable.

Senator MAGNUSON. You have discussed this with the chairman on many occasions, and other members of this committee. I got the impression that you definitely had the feeling that time was of the essence in these matters, and we had better get going?

Mr. ERDAHL. Mr. Chairman, I think that is so and I have expressed it many times to yourself personally. It seems like we get together under the coordination—our operating people get together and they work out a better way to do it, take advantage of more of the diversities in the area and do a better job of keeping the price of power down to all the consumers in the Pacific Northwest. We get through with the operating people and then we talk to the attorneys, and the attorneys—and we tell them to put a package together so we can do this most effectively, and then you know how attorneys are, they always find a way to make things difficult and complicated to accomplish, but they have told us, our attorney, Mr. Nolan, who is with me here today, has told me along with others, that these things are necessary. We get ourselves more involved—I remember when I first went with the city in 1944, we went along and we worked with Seattle and we were part of the power pool and everything was fine, then we get into all these involved items. We were told that we should help out in the Canadian Treaty and the California intertie and all these various things in which we were glad to participate, because we are convinced that these various items will help keep our costs down and keep the costs down for all the people in the area. But if we are going to continue with these kind of plans and programs, coordination and otherwise, not only in the Northwest but possibly from Canada through to Los Angeles, we had better have some clear understanding of what the future holds for us so that we can make these investments from the bankers and give them the feeling that everything is in order. That is a long answer to your very simple question.

Senator MAGNUSON. No. You could have answered it with one sentence, "You know how attorneys are."

Mr. ERDAHL. Yes. [General laughter.]

Senator MAGNUSON. But I guess we are hired to give you the best advice we have. I think sometimes attorneys scare their clients too much, though.

Mr. ERDAHL. Well I am convinced you can't get along with them or without them.

Senator MAGNUSON. Would you care to venture a guess on how many contracts there are in the whole Northwest power pool arrangement?

Mr. ERDAHL. No, I wouldn't want to venture a guess.

Senator MAGNUSON. Well, would it be hundreds?

Mr. ERDAHL. I would say that sometimes we are the best customer that the paper people have because we have more paper and more things to sign and more statements and more contracts. There are many, many contracts that are before us now, for consideration and signing, and it seems like there is an ever-increasing number, and when the attorneys, not only individually, but collectively tell us that they would feel better and their advice to us is to "Get some clarification so that we can write these things to you with a stronger affirmative answer."

Senator MAGNUSON. This may be an extreme example, but it could be possible that an Attorney General could come and take one contract out of a group of contracts and say: "This is violating the anti-trust law, and we reviewed it, and it looks like that." This could have the effect of shaking every other contract, even though they just picked out one or a small group. That is why there is a great deal of merit, I think, in having the body that was created by Congress to look at the whole power policy, decide these issues in the first instance. At least you have got it in one agency which we can rely upon to handle the power policy of the country and the best interests of the consumer in the future. It has been pretty much of a topsy arrangement as we have moved along, and it could get even more complex, I think.

Mr. ERDAHL. It seems like it is going to be. Yes; it seems like it.

I want to go back to the statement you made a while ago. I personally am convinced that what we have done in cooperation with the other utilities and Bonneville is in the broad general public interest, and it will keep the cost of power at the lowest level in the Northwest, Tacoma first, and then in cooperation with all the utilities for all the people.

Senator MAGNUSON. You can always find some reason to be leery of the way that maybe a commission might rule that depends on the people, that depends upon the philosophy, and no one knows it better than I do. I don't know how many confirmation hearings I have sat on—scores of them—to be members of the Power Commission, and sometimes I have been pretty disappointed after they got down there, and other times I have been pleasantly, delightfully surprised at what they do, but by the very nature of things you have to rely upon that.

Mr. ERDAHL. The very fact, as you mentioned a while ago, that we are convinced that we are doing the right thing, doesn't necessarily convince Justice that we are doing the right thing, as they interpret the rules.

Senator MAGNUSON. Or it doesn't mean that all the protection is going to be there if the Power Commission does the wrong thing.

Mr. ERDAHL. Our little operation in Tacoma, Senator, as you know, we are a pretty small utility, but we've got a lot of—

Senator MAGNUSON. It doesn't look to me like you're very small here.

Mr. ERDAHL (continuing). But we would hate to have somebody come back and second-guess us and kick some of these programs aside, because we are doing our planning for a long time in the future; we are writing long-term contracts with California; we are hoping to sign long-term contracts on coordination and so forth. For somebody to come along 5 or 10 years from now and indicate that we did something

wrong, it might be real difficult for us to undo something at that time, particularly if we joined with others in trying to build some of these new larger plants that build this additional capacity during that period.

Senator MAGNUSON. The delay is what is scaring me about this. I see it every day on all kinds of things because I don't think even any of us anticipated what is happening to this area, what is going to happen to this area.

Mr. ERDAHL. I think the cooperation we have had for many years in the Northwest with the public agencies and the private companies and Bonneville, working together as closely as we have, has done nothing more than to keep the cost of power down for the Northwest. I further wanted to add that I would be against anything that would keep any of the utilities out of any kind of a participation program. I think sometimes when we are talking about generating utilities or the Federal agency and the generating public and private utilities who are generating the power, we find ourselves in somewhat of a different problem at times than some of the nongenerating utilities who depend on either the other utilities or Bonneville for their power supply.

Senator MAGNUSON. And of course, we have done, I think, much better in working out these arrangements than other places in the country. All you have to do is just look at the price of power.

Mr. ERDAHL. That is right; we have had a very successful Northwest Power pool for over 25 years and I think anyone or everyone that has had anything to do with making that work, and you, Senator, have done in my opinion an outstanding job in trying to understand our problem.

Senator MAGNUSON. Well, that is a nice complement.

Mr. ERDAHL. Well, that is what the President mentioned at one of his meetings where I was in attendance, and I know he was absolutely right, and I didn't want him to be the only one that said that.

Senator MAGNUSON. In July, the city attorney of Fayetteville, N.C., opposed the bill, because he said that they need the Federal Power Commission and the courts, and the courts haven't abused their position.

The Florida Municipal Utilities Association opposed the bill because they said it removed the protection afforded to small generating systems. The chairman would be against the bill if he thought that was going to happen, and maybe we are going to have to fix it so it doesn't happen or reduce the possibility of it to a minimum. I don't know.

Mr. ERDAHL. We would be opposed to it if a small generating utility would be disallowed confirmation because we are kind of a small utility. Kind of an important one, but small.

Senator MAGNUSON. And the Colorado River Basin Consumer Power Association opposed the bill, but they seem to oppose many things down there. [General laughter.] And some of the eastern people who have, I think a little different situation than we have to cope with in our power situation—

Mr. ERDAHL (interrupting). I think some of them, Senator, haven't had the benefit of the years of experience in working together in the broad general interest. As an aside, when we first started our meetings with California, our first meetings were with only the private utilities in California, and I made a remark to one of my friends down there about it. I noticed the following meetings and all of the subsequent

meetings include the public utilities, that is the publicly owned and privately owned utilities, and I think the California people have learned something from us in working together up here. We hope so.

Senator MAGNUSON. Now, for the record also the bill doesn't attempt to repeal the part of section 202 of the Federal Power Act which enables and almost directs the Federal Power Commission to assist smaller utilities in ordering, and setting the terms of the interconnection if it finds the interconnection to be in the public interest.

Mr. ERDAHL. And I would think that the Federal Power Commission should have no question about this in their minds about what you have intended that they do.

Senator MAGNUSON. All right, thank you Mr. Erdahl.

(The prepared statement of Mr. Erdahl follows:)

PREPARED STATEMENT OF CLIFF ERDAHL, DIRECTOR OF UTILITIES, CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES

This statement is in response to the notice of a Committee Regional Hearing on the subject proposed legislation set for Monday, February 13, 1967, at Vancouver, Washington.

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 license 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 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 1966 the City purchased 1,327,980,000 KWH of prime power at a cost of \$2,825,650.

Energy received from the Grant County Public Utility under a long-term contract by which the City receives 8 per cent of the Priest Rapids Project on the Columbia River, amounted to 358,474,000 KWH at a cost of \$847,473 including cost of transmission (wheeling) paid to BPA in 1966.

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 per cent 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 per cent, estimated at 172,125 KW of 1,377,000 KW in 1974, of Canada's 50 per cent share of the additional power to be generated. The City is completing 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 is arranging backup agreements with BPA, Puget Sound Power and 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 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 utilities with which it shares utility responsibility to have assurance that the many and diverse mutual contractual arrangements and pooling operations will be timely and properly reviewed and regulated as provided in the subject legislation to provide antitrust immunity and the stability of planning, operations and financing so necessary in these matters.

The City, therefore, joins in and supports the statement made by Gordon C. Culp on behalf of the generating utilities in the Pacific Northwest, urges the Committee to approve the bill and requests the right to give such oral presentation and to be heard at any further hearing to the extent that the Committee may deem appropriate or desirable.

Senator MAGNUSON. John Nelson?

John is superintendent, for the record, of Seattle City Light.

#### STATEMENT OF JOHN M. NELSON, SUPERINTENDENT OF SEATTLE CITY LIGHT

Mr. NELSON. Well, sir, we support the statement that Mr. Culp made and I have a short statement to add for the record.

I am John M. Nelson, superintendent of Seattle City Light, the city of Seattle's municipally owned electric utility, which serves a quarter of a million customers in an area including both the city proper and certain suburban areas.

As longtime participants in power pooling operations, we wish to make a statement favoring the proposed bill.

Seattle has three large hydroelectric plants on the Skagit River, 130 miles northeast of the city; another hydroplant on the Cedar River, 30 miles northeast of the city; two steamplants located within the city; and is now nearing completion of a large hydroplant at the Boundary site on the Pend Oreille River in the northeast corner of Washington State. The power from the Boundary project will be wheeled to Seattle over Bonneville Power Administration transmission lines as is power from the Priest Rapids, Box Canyon, and Hanford projects.

We are firm believers in the benefits to be gained by the pooling of power supplies; we have been interchanging power and energy with the city of Tacoma since 1923, and were charter members in 1941 of the informal, but highly effective, Northwest Power Pool. We are also

participants in the Pacific Northwest coordination agreement which is instrumental in obtaining maximum benefits on a coordinated basis from the many hydroelectric and other generating plants in the Pacific Northwest. In addition we have contracted for a part of the power made available under the Canadian entitlement exchange agreement made possible by the United States-Canada Columbia River Treaty, and have or expect to assign parts of such entitlement to other utilities in advance of our need for same.

This extensive background of experience in power pooling operations has convinced us of the desirability and inevitability of development of larger and more complex systems in the future. The growing complexity and scope of such pool operations requires, we think, more effective means and methods of supervising such operations.

We feel that vigorous and effective supervision of such pooling arrangements by the Federal Power Commission will be able to provide both the necessary guidelines and guidance to participating utilities and equally necessary protection to the electric consumer who must ultimately pay the bills.

Senator MAGNUSON. I think that last paragraph sort of sums up very quickly the whole purpose of this exercise. You want it to be in the hands of the people that know your business, know the problems and that are responsible, directly responsible to the people of the United States to see that the future power needs of this country are met at the lowest possible cost.

Mr. NELSON. Yes. We are here in support, sir.

Senator MAGNUSON. Thank you, very much.

All right, Ken, you are next. For the record, Mr. Billington, Ken Billington, who is executive secretary of the Washington Public Utility Districts' Association.

#### **STATEMENT OF KEN BILLINGTON, EXECUTIVE SECRETARY, WASHINGTON PUBLIC UTILITY DISTRICTS' ASSOCIATION**

Mr. BILLINGTON. Thank you, Senator, as you have already indicated my name and position, my appearance is in behalf of certain public utility districts who are members of that association, and who also participate in two area associations, namely the Southwest Washington Public Utility Districts' Association and the Eastern Washington Public Utility Districts Commissioners' Association.

Our members are public utility districts serving approximately 285,000 electric customers in the State of Washington. Several of them have large generating plants. We have a definite and distinct interest in the legislation being considered.

Introduction of S. 683 in the 90th Congress and the holding of these field hearings has occurred at a time prior to a meeting of the board of directors of our State association and we, therefore, do not have a policy as regards this legislation as a State group. However, there was a joint meeting of our area associations comprised of the same membership as our State association, at which this legislation was discussed. Primarily considered was a policy statement approved by the Legislative and Resolutions Committee of the American Public Power Association on January 25, 1967 in Washington, D.C. It was the joint action of the area associations to unanimously accept and endorse such policy statement. I was instructed to appear and present that statement to this hearing on behalf of these area associations.

Senator MAGNUSON. Now Ken, for the record, you don't need to tell us about it now, but put in the record what comprises the organization?

Mr. BILLINGTON. All right, I can submit it for the record.  
(The information follows.)

American Public Power Association is a national trade organization created to promote and protect the interests of local publicly-owned electric utilities. Formed in 1940, APPA today represents more than 1,400 systems, primarily municipally owned and operated electric utilities, in 48 States, Puerto Rico, and the Virgin Islands. It is non-profit and non-partisan, governed by a 24-member Board of Directors elected by the membership.

Senator MAGNUSON. OK.

Mr. BILLINGTON. We recommend that any proposed legislation to exempt electric power pool contracts from the antitrust laws, such as S. 683 of the 90th Congress, be opposed unless it is a part of a larger package of legislation which defines public utility responsibility for wholesale power supply for the smaller retail electric distribution systems of the Nation, and the terms and conditions under which such responsibility shall be exercised. Any determination by the Federal Power Commission that an agreement will not unduly restrain competition should be (1) subject to procedures which give adequate opportunity for hearing to those affected by the agreement and its subsequent administration, (2) require concurrence by the Department of Justice, and (3) provide for continuing scrutiny of the administration of the agreement.

While you note that the statement is made in the negative or in opposition to S. 683, such opposition is conditioned. The purpose is to recommend that this matter be included as a part of a larger package of legislation. Such legislation should define public utility responsibility for wholesale power supply to the smaller retail electrical distribution systems of the Nation. It further states that such legislation should include the terms and conditions under which such responsibilities shall be exercised.

We definitely recognize the problems involved in long-term power pooling contracts, and the need for consideration of such practices by Congress as related to the antitrust laws of the Nation.

Conversely, we are mindful that there are areas in the Nation where the Federal Government does not have a large transmission backbone grid as is present here in the Pacific Northwest. In these areas the small publicly or cooperatively owned utility can be placed at a distinct disadvantage as a "captive wholesale power customer" of a large privately owned utility. As the Nation moves into the era of extra-high voltage power transmission grids, the dangers of monopoly abuse against the small local utilities and the pressures which can be brought to bear, by either higher cost wholesale power rates or outright strangulation of such systems, may become more aggravated.

Therefore, any move to lighten or lessen the Federal antitrust controls which can be a deterrent to this type of action on the part of a large privately or publicly owned monopoly has to be considered carefully. Perhaps if there are going to be these large grids and inter-company pools which are so necessary in the progress of the electrical industry, in order to get better service and lower cost power to all consumers, it may be necessary for the Federal Government to adopt a nationwide public utility responsibility policy. Then in those areas

where no Federal transmission grids are present by which the local utilities can exercise their rights to an uncontrolled power supply, some type of directive or control could be exercised through the Federal Power Commission on the utility serving such area in protection of the small utility.

As the chairman and the members of the committee know, certain individual member districts of our associations have endorsed this legislation. We would feel quite certain that this is not in contravention to our position. We merely are going further than facing a particular transmission power contract problem and are citing the broad public interest issues involved.

As you will note, the American Public Power Association Legislative Committee policy statement further goes on that any Federal Power Commission approval of a particular contract should be under legislation which would give adequate opportunity for hearing to those affected by the agreement, including its subsequent administration. What is meant here is that as time goes on conditions in the power pool might change and a particular contractual arrangement today which is not abusive against the interest of others from the standpoint of restraining competition or creating monopoly abuse might later become so.

During the legislative committee meeting, there was considerable discussion about transferring antitrust jurisdiction to the Federal Power Commission as related to power contracts. Such transfer would provide consideration of the issue by experts in the power business. We support this action. On the other hand, the Department of Justice still seems to be the logical group to measure the matter from an anti-trust standpoint. It was, therefore, thought that the legislation could provide a method to obtain concurrence by the Department of Justice on any power pooling contract and yet let the proceedings be before the Federal Power Commission.

If I might just interpose here, Senator, I think the word "concurrence" is perhaps too restrictive. This would indicate that you would have to have approval by the Department of Justice. I think what we are seeking perhaps is their presence and participation in the hearings with the right of, perhaps, recommendations which would be relayed to and through the Federal Power Commission to the parties involved. Changes might thus be made and thereby avoid the issue of monopoly.

Senator MAGNUSON. Well, I might interrupt you there, that I too looked very startled at the word "concurrence." I think you would get a stalemate there, you would get no place with that. The Department of Justice still does and has the responsibility to intervene in actions of other commissions.

Mr. BILLINGTON. Finally, as you will note, some mechanism should be provided whereby continued scrutiny could be exercised by the Federal Power Commission on the administration of the agreement. This should not be to the extent that financing of transmission lines based on the power contracts would be placed in jeopardy or would be made impossible. But, here again, conditions on which a power contract are approved today can change materially in 10 or 15 years. There should be some proper recourse in the public interest if change of conditions results in monopoly abuses through the restraint of competition.

We would summarize as follows:

- (1) Power contracts as related to transmission facilities needed to allow proper integration of regions and utilities require some procedure to alleviate danger of antitrust proceedings;
- (2) Any such legislative action should incorporate protection to any utilities which might be affected;
- (3) Provisions should be made for some type of review by the Department of Justice on the antitrust factors involved; and
- (4) Procedures should be set down to keep such agreement under future review.

Finally, there is the possible need of the Federal Government establishing basic nationwide requirements on the public utility responsibility governing wholesale power supply which would protect the small utility and assure its local autonomy free from monopolistic pressures of an outside nature.

Senator MAGNUSON. Now I understand that mainly here your testimony today is expressing the viewpoint of the American Public Power Association?

Mr. BILLINGTON. I should emphasize in this regard the deliberations in January were merely the legislative committee of the association.

Senator MAGNUSON. Yes, I understand, and you took that back to the membership.

Mr. BILLINGTON. I took this back to my membership in the area associations and they discussed it and analyzed it and said "We would like to adopt this as our policy, and would you present it to the committee?"

Senator MAGNUSON. Did the public utility districts do something?

Mr. BILLINGTON. Yes; in our State we met a week ago last Friday in Olympia and discussed at great length this APPA legislative committee statement, and they are in concurrence. Now the national group will undoubtedly be looking at this at their May convention.

Senator MAGNUSON. Well, would the public utilities that testified here today, would they be in conflict with this?

Mr. BILLINGTON. No; I do not believe so.

Senator MAGNUSON. That is Chelan, Cowlitz, Douglas, Grant, and Pend Orielle.

Mr. BILLINGTON. No; as I listened to the presentation by Mr. Culp, it certainly seemed to be in line. We have gone further here in the sense of other public interest factors that do not pertain directly to power pool matters.

Senator MAGNUSON. I understand that, but I am talking about our own public utility district associations, have they taken a stand as such?

Mr. BILLINGTON. The State association has not. The area associations have because of the fact that the board of directors of the State do not meet until this coming Friday, and I was just ahead—

Senator MAGNUSON. Well, have any public utility meetings in the State opposed the bill?

Mr. BILLINGTON. No. I think basically we are in favor of this type of legislation.

Senator MAGNUSON. I mean other than the ones that are here, there are other ones too?

Mr. BILLINGTON. No, basically, we have supported and as I emphasized here, we feel that the Federal Power Commission has got to

have this authority to analyze this power pool contracts. But we are putting in, at least from a policy standpoint, certain safeguards for scrutiny, participation of people; and then as a possible means of, we might say, alleviating the conflict between the Department of Justice and the Federal Power Commission, bringing the Department of Justice into any proceedings of this kind, but placing them in a position of recommending only.

Senator MAGNUSON. Yes. Well, I don't imply that anyone has suggested that we lighten or lessen antitrust principles. What I think we are trying to do is to shift the decision as to whether or not a thing is in the public interest from one administrative agency to another, who many of the witnesses say knows more about it and could take into consideration more factors; but they still would be bound, I think, by the general prohibitions of antitrust. I don't think that the Federal Power Commission would violate antitrust basic principles if it was shifted to them.

Mr. BILLINGTON. I would agree that——

Senator MAGNUSON. There is nothing sacred about the Department of Justice handling of antitrust laws.

Mr. BILLINGTON. No; but the only thing is that you do have incorporated in the legislation a new factor which is the granted immunity to participants in a power pool contract. I think that many of us would recognize that this is essential when you have to go out and finance something.

Senator MAGNUSON. Yes. I was going to ask you that question. I think you mentioned—there is a pretty sensitive area here on the question of review.

Mr. BILLINGTON. That is right.

Senator MAGNUSON. You would have some pretty shaky financing if the people thought, "Well, now, this is all right now, but a year from now it is going to be different." This is a sensitive area, but still I do think there should be some right of review when conditions change; but you can't have that harassment every time you turn around or I doubt if you could finance these things, that would be my practical thinking on it.

Mr. BILLINGTON. Well, it is not only practical, it is definite. You can't finance unless you have some safeguards.

Senator MAGNUSON. The Federal Power Commission of course has a continuing responsibility for a continuous review of all public power policy, and I hope they will exercise it.

Now you mentioned that you can't place power contracts in the type of jeopardy which would make financing impossible, and we have covered the other suggestions about the protection of smaller utilities and the procedures. I think maybe this can be resolved to the benefit of everybody concerned.

Mr. BILLINGTON. This is a new concept incorporated in my statement.

Senator MAGNUSON. Now on the broad question you mentioned in the beginning, where you suggest that there should be a larger package, I think you used the word term, you will remember that the President in his state of the Union message paid a great deal of attention to blackouts and reliability of transmission and marketing of energy and recommended that we take a good long look at it. Now I understand that the Power Commission is drafting some broad legislation which

they will submit to us shortly. It may cover what you term a larger package, it may be that.

Mr. BILLINGTON. We are hopeful that this will be.

Senator MAGNUSON. But I don't want to put in jeopardy the obvious necessity that we in this area have got to move. I don't think we can afford to wait for a lot of broad packages or until the boys in Florida get their fight settled or the Southeast-Southwest power people get their fight settled. I don't think we have time for that. It might be possible to have two pieces of legislation; one to meet the needs we are talking about and one for the larger picture. Thank you, Mr. Billington.

Well, all right. I think we have made a good record here today. I hope the rest of you feel that way; but I think we have pursued the problem in some depth, and looked at it in a very commonsense way. There are many facets involved, but I still want to emphasize, let's get going on something, let's just not sit and wait, we can't afford it around here.

Now there are several who wish to indicate their presence here and submit written statements. If they will do so now, we would like to have you on the record and have your written statements.

Washington Water Power is here and Pacific Power & Light, is that correct? George is here from Washington Water Power.

Mr. BRUNZELL. Mr. Chairman, I am George M. Brunzell, president of the Washington Water Power. We have a written statement we would like to put in the record.

Senator MAGNUSON. All right, put that in the record in full.

(The statement follows:)

STATEMENT OF GEORGE M. BRUNZELL, PRESIDENT, THE WASHINGTON WATER POWER CO.

The Washington Water Power Company is engaged in the generation and distribution of electricity and the distribution of natural gas in Eastern Washington and Northern Idaho. It is directly interconnected with the Montana Power Company, Idaho Power Company, Pacific Power and Light Company, Puget Sound Power and Light Company, Grant County Public Utility District, Chelan County Public Utility District, and the Bonneville Power Administration. It is also indirectly connected to all other members of the Northwest Power Pool and adjoining power pool members extending through most of the Northwest, Southwest and Rocky Mountain Regions.

For many years past we have joined in and promoted the concept of power pooling as being the most efficient and most economical way of providing electric power and energy to our customers. Since its inception, we have participated in the Northwest Power Pool which is an informal, unincorporated association of power generating entities which are interconnected and which have attempted to get as many of the benefits of coordination as possible. In more recent years, we were very active in working out a Pacific Northwest Coordination Agreement which has accomplished a much higher degree of coordination.

We, together with Pacific Power and Light Company, are in the process of working out the development of coal fields near Centralia, Washington, which is close to Vancouver where this hearing is being held, and are proposing to build some very large and efficient electric generating stations. These stations will have a capacity in the neighborhood of a million kilowatts in the near future and ultimately possibly two million kilowatts. We have participated in conferences concerning the sale of excess power to power companies and agencies in the State of California as well as in the Northwest. Preliminary discussions of methods of pooling the surplus power in the Northwest and dividing both supply and markets on an equitable basis among people in the Pacific Northwest and people in California have involved us in extensive discussions of the problems of the application of antitrust laws to the attainment of optimum use of the most economical facilities in the West to supply power at the lowest possible cost. These discussions are

still going on, but the development of arrangements and contracts has been seriously impeded and disrupted by the uncertainty as to the possible application of antitrust laws.

We are in agreement with the Federal Power Commission's present policies of promoting interconnection and coordination which make possible the construction of large, efficient generating stations and of large, high-voltage transmission lines to provide the highest possible degree of reliability and economy in the supply of electric service. However, we feel it is imperative that the Federal Government speak with one voice—that a single agency be given the authority within the sphere of federal control to regulate development and operation of large interstate power pools. It is illogical and unfair for another agency of the same government to have the authority to prosecute us for carrying out the policies of an agency of that Government. In addition, the fear that private parties may bring court actions to have practices approved by a federal agency having regulatory jurisdiction declared illegal and void and subjecting an industry to substantial liability for damages can seriously deter the full comprehensive development required by the Federal Power Act.

The Federal Power Commission has for years been passing on practices of utilities which create possible antitrust considerations. It has a staff trained in matters relating to the operation of electrical companies. The Commission itself has had extensive experience in this general field and is capable of making a final decision on the antitrust aspects, as well as all other aspects, of interstate power pooling agreements.

We strongly urge the immediate passage of S. 683 or a bill of similar import so that we can proceed without artificial and completely unnecessary handicaps to do our part to develop the reasonable pooling and marketing arrangements in the Western area which are necessary to provide dependable low-cost electric power to the industrial, commercial, domestic and agricultural customers of the Western States and to conserve and prevent the waste of our natural resources.

We have joined in and support the statement made by Gordon C. Culp on behalf of generating utilities in the Pacific Northwest.

Senator MAGNUSON. And then Pacific Power & Light had a statement?

Mr. diLUCCIA. Yes. This is Mr. Frisbee's statement; he couldn't come. He is out of town and I am representing him. I am E. Robert diLuccia, senior vice president, and I would like to file Mr. Frisbee's statement.

Senator MAGNUSON. Thank you.

(The statement of Mr. Frisbee follows:)

PREPARED STATEMENT OF DON FRISBEE, PRESIDENT OF PACIFIC POWER  
& LIGHT Co.

I am Don Frisbee, President of Pacific Power and Light Company, a utility headquartered in Portland, Oregon, and providing electric, water and telephone utility service in parts of six western states.

For many years the electric utilities within the general region where our company operates have engaged in joint cooperative efforts to coordinate their respective systems for the benefit of each of the utilities and the region as a whole. The technology of the electric utility business has reached a point where further benefits through coordination of system operations depends on the ability of utilities to join together in very complex agreements covering such subjects as power interchange between regions, joint marketing agreements, arrangements for joint planning and construction of resources, load shedding arrangements, and many other agreements. In order for these agreements to support the substantial investments required in new generating and transmission facilities, it is necessary that they be for relatively long terms. Because of the pluralistic nature of the electric power industry and the importance of maintaining the integrity of the individual entities comprising the industry, coupled with technological advances in power generation and transmission, the kinds of arrangements and agreements necessary to achieve maximum benefits are becoming more pervasive in scope and create increasingly complex relationships between the parties.

The antitrust laws constitute a serious obstacle to the realization of benefits which are becoming available on an increasing scale within the electric utility industry. Uncertainties as to the question of how the antitrust laws will be

administered and interpreted over long periods in the future often become the overriding consideration, thereby inhibiting constructive efforts to achieve the ultimate benefits of closer coordination among power systems. The shadow of these laws overhangs even such a great cooperative enterprise as the Pacific Northwest-Pacific Southwest Intertie, even though the Federal Government itself is a major participant. Every intertie contract must be cleared by the Department of Justice, and even then we are told that there is no guarantee that contracts so cleared may not be looked at in a different light at some later date by the Department. There should be a clear statutory method established whereby arrangements found by competent authority to be in the public interest will not be exposed to the risk of attack under the antitrust laws. S. 683 would establish such a method and thereby promote the economic development of the electric industry on its existing pluralistic basis.

For these reasons, we subscribe to Mr. Culp's statement and urge passage of S. 683.

Senator MAGNUSON. Thank you for coming. May I state for the record that it is the chairman's understanding there will be some other statements submitted. Let's get everything in as soon as possible because we must get at this matter, if we are going to do it.

Thank you all very much.

(The statements follow:)

STATEMENT OF R. W. GILLETTE, MANAGER, ON BEHALF OF PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY

Mr. Chairman and members of the committee, I speak in support of S. 683. I concur with the general statement of Mr. Culp on behalf of a group of Northwest utilities and those of Mr. Elmore on behalf of Chelan County Public Utility District.

Public Utility District No. 2 of Grant County owns and operates Priest Rapids and Wanapum dams on the Columbia River, with a combined generating capacity of over 1,600,000 kilowatts. The District is a party to the Pacific Northwest Coordination Agreement and was a co-sponsor of Columbia Storage Power Exchange, along with the public utility districts of Douglas and Chelan Counties.

On behalf of Grant County Public Utility District I support S. 683 from the standpoint that for the best interests of the region's power supply the Northwest utilities need the assurances provided by this proposed legislation in order to share in the benefits of pooled operations in the future.

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STATEMENT OF SACRAMENTO MUNICIPAL UTILITY DISTRICT

Mr. Chairman and members of the committee, the Sacramento Municipal Utility District (SMUD) is a political subdivision of the State of California. It provides electric energy to California's capital city and surrounding area. Its service area comprises over 650 square miles embracing a population of some 600,000. By 1970 it is estimated that this population will increase to about 800,000 and by 1975 to well over 1,000,000. In 1966 the peak demand within the District's service area was 682,391 kilowatts. The energy consumption during that year was about 2.9 billion kilowatt-hours. It is estimated that by 1970 the District's peak demand will have risen to 1 million kilowatts and the energy consumption to about 4.2 billion kilowatt-hours.

The District's generation and transmission facilities are physically connected with the U.S. Bureau of Reclamation and the Pacific Gas and Electric Company. These two systems in turn are intertied. After completion of the construction of the Northwest-Southwest Intertie within the next few years, constructed in part by these two entities, they will be directly interconnected with all of the major power systems on the West Coast. This will mean that, in effect, SMUD too will be a part of this great transmission pool. Additionally, the operation of SMUD's generation is integrated with PG&E and is dispatched so as best to meet the area load requirements.

With this background, the Committee will understand the District's interest in S. 683 which is designed to provide a vehicle under which the District, along with other public agencies and private utilities, can secure advance approval from the Federal Government for future pooling and interconnection arrange-

ments and thus avoid the present uncertainty as to whether such an arrangement may be considered in violation of the antitrust statutes.

It is generally agreed throughout the power industry that further pooling and integration is the way of the future. Only through such coordination can customers be assured of maximum dependability and lowest cost—the goal of the entire power industry. This can best be achieved through voluntary agreements rather than through Government decree. Although the law presently is unclear whether local public agencies come within the purview of antitrust laws, most pooling arrangements to which they will be a party will involve private power companies. Unquestionably they are subject to such laws. Consequently, most public agencies have just as much interest in S. 683 as private companies. The ever-present danger that pooling agreements will be determined to be a violation of antitrust laws constitutes a major deterrent.

Although there is little or no precedent indicating court attitude on the application of antitrust laws to power contracts, the fact that the utility business is by nature, and often by law, a monopoly is not considered a defense. Moreover, the views of the Department of Justice on any particular arrangement cannot be formally ascertained. Even if this were possible, the parties would have no assurance that these views would not change. Normally pooling arrangements are tremendously expensive and call for transmission and generation facilities requiring many years to construct. Faced with these uncertainties, power agencies are hesitant to proceed.

We believe that future pooling would be given a significant spur forward if the agencies involved could present their plans to a federal agency such as the Federal Power Commission to determine in advance whether, in the opinion of the Federal Government, the proposal would “unduly restrain competition”. If approval is given, the participants could then safely proceed without facing the possibility of criminal prosecution by the Government and possible treble damage actions through civil proceedings.

We feel that the Federal Power Commission is the one federal agency having the expertise to thoroughly and intelligently examine proposed pooling arrangements. We think the Commission is best equipped to carefully balance the needs of society involved between pooling arrangements on one hand and the maintenance of competition on the other.

For the reasons set forth, the Sacramento Municipal Utility District respectfully urges the Committee to adopt S. 683.

February 14, 1967.

(Hearing adjourned at 12:35 p.m.)







