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90-62 UNITED STATES RELICENSING OR RECAPTURE OF
GOVERNMENT LICENSED HYDROELECTRIC PROJECTS

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HEARINGS
BEFORE THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE
NINETIETH CONGRESS

SECOND SESSION
ON

S. 2445

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

FEBRUARY 26 AND 27, 1968

Serial No. 90-62

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

MONDAY, FEBRUARY 26, 1968

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee convened, pursuant to notice, at 10 a.m., in room 5110, New Senate Office Building, the Honorable Howard W. Cannon presiding.

Present: Senators Cannon and Pearson.

Senator CANNON. This hearing will come to order.

OPENING STATEMENT OF THE CHAIRMAN

The Senate Committee on Commerce this morning opens hearings on S. 2445, a bill which would amend part I of the Federal Power Act to clarify the manner in which the licensing authority of the Federal Power Commission and the right of the United States to take over a hydroelectric project or projects upon or after the expiration of any license shall be exercised.

When Congress enacted the Federal Water Power Act in 1920 it provided that licenses for non-Federal hydroelectric power development, to be issued by the FPC, should last no more than 50 years. The congressional purpose was to provide an opportunity to review the use of the Nation's water resources in light of changing conditions and national goals. Important licenses issued under the statute, now part I of the Federal Power Act, will soon begin to expire in increasing numbers. It is therefore imperative that Congress make certain that an orderly and effective procedure is followed in reviewing these projects as the licenses expire. For this reason the Federal Power Commission was asked by this committee to submit its recommendations for legislation to deal with the problem now at hand.

The Commission submitted its proposal which was introduced on September 20, 1967, by Senator Warren G. Magnuson, chairman of this committee. Sections 14 and 15 of the Federal Power Act provide for "recapture" or takeover by the United States of licensed hydroelectric projects or, in the alternative, for relicensing to the original

Staff member assigned to this hearing: Mark A. Hutcheson.

licensee or to a new licensee. Projects owned by a State or municipality are exempt from recapture but not from relicensing. Under its present procedure the Federal Power Commission will refer to the Congress each project which is subject to Federal takeover.

The bill under consideration would assign to the Federal Power Commission the primary responsibility for sorting out the licensed projects. It would relieve the Congress of the necessity of reviewing each individual project where Federal ownership was not recommended although Congress could act on its own motion in any case.

As it now stands the proposed legislation would direct the Commission, after suitable hearings and upon receiving advice as appropriate from Federal, State, and interstate agencies, and from other interested parties, to make the initial determination in all recapture and relicensing cases. The Commission would forward to Congress with its recommendations all cases in which it has recommended Federal recapture. Where the Commission decides to relicense and other Federal agencies recommend recapture, the Commission is directed to stay the effect of its relicensing decision to provide Congress with an opportunity to consider their objections if it so desires. The bill provides for a maximum stay period of one full Congress immediately following the Congress during which the Commission issued the relicensing order.

The bill further authorizes the Commission to relicense a project to a nonpower user if it should decide that an exclusively nonpower use would best meet the standards of the act. The nonpower licensee would be required to pay the original licensee the same recapture price as the United States would have had to pay had it taken over the project. The maximum license term would continue to be 50 years with Commission discretion to provide lesser license terms.

During these 2 days of hearings we will hear statements from both government and industry witnesses which will describe the existing procedure, discuss the need for a bill, and suggest improvements in its present provisions. I hope that we can all work together to produce legislation which will provide for the best possible means of dealing with an expired hydroelectric project license.

I should emphasize that today we are concerned with the merits of this bill, not any particular license which is about to expire.

Before asking our first witness to come up, I would like to insert in the record at this point the text of the bill S. 2445, the Federal Power Commission's letter of transmittal, and the agency comments. (The documents follow:)

[S. 2445, 90th Cong., first sess.]

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

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

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

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

- Whereas the Congress has delegated to the Federal Power Commission the power to issue a new license to the original licensee, or to a new licensee "if the United States does not, at the expiration of the original license, exercise its right to take over, maintain, and operate any project" but has not specified a procedure by which the United States would determine whether to take over a project; and
- Whereas the Congress desires that the Federal Power Commission, after considering timely recommendations of other Federal agencies, shall initially identify those projects which would best be relicensed and those which would best be taken over; and
- Whereas the Congress desires that all cases in which takeover is recommended by the Federal Power Commission or by another Federal agency be forwarded to it; and
- Whereas in cases where the Federal Power Commission decides in favor of relicensing the Congress desires to establish a reasonable period of time in which other Federal agencies may present their case for takeover to the Congress before a relicensing order of the Federal Power Commission may become effective; and
- Whereas Congress intended in enacting part I of the Federal Power Act upon the expiration of these licenses, the United States should have a further opportunity to determine whether the water power resources of the Nation were being developed, improved, and utilized in a manner best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes, and to determine whether future development, improvement, and utilization of those resources in the public interest would be achieved most effectively by relicensing the project or projects on appropriate terms and conditions or by taking over the project or projects; and
- Whereas the following amendments to part I of the Federal Power Act will permit the responsibilities for relicensing or Federal takeover to be exercised more effectively and efficiently and without undue disruption of the Nation's electric energy supply: Now, therefore,

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

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

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

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

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

"(b) Notwithstanding the provisions of section 6 of this Act regarding the alteration of licenses, the Commission may, at any time after the issuance of any license under section 15(a) except an annual license, by order, after notice

and opportunity for hearing, imposed upon the licensee such further reasonable requirements as are not inconsistent with the other provisions of this Act."

"(c) In issuing any licenses under this section, except an annual license, the Commission, on its own motion or upon application of any licensee, person, State, municipality, or State commission, after notice to each State commission and licensee affected, and after opportunity for hearing, whenever it finds that in conformity with a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses all or part of any licensed project should no longer be used or adapted for use for power purposes, may license all or part of the project works for nonpower use. Licenses for nonpower use shall be issued on condition that any existing power facilities shall be removed or otherwise disposed of as directed by the Commission. A license for nonpower use shall be issued to a new licensee only on the condition that the new licensee shall, before taking possession of the facilities encompassed thereunder pay such amount and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof. Any license for nonpower use shall be a temporary license. Whenever, in the judgment of the Commission, a State, municipality, interstate agency, or another Federal agency is authorized and willing to assume regulatory supervision of the lands and facilities included under the nonpower license and does so, the Commission shall thereupon terminate the license. Consistent with the provisions of the Act of August 15, 1953 (67 Stat. 587), every licensee for nonpower use shall keep such accounts and file such annual and other periodic, or special reports concerning the removal, alteration, nonpower use, or other disposition of any project works or parts thereof covered by the nonpower use license as the Commission may by rules and regulations or order prescribe as necessary or appropriate."

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

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

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

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

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

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

THE PRESENT PROCEDURE

Sections 14 and 15 of the Federal Power Act (16 U.S.C. 807, 808) provide for "recapture" by the United States of licensed hydroelectric projects or, in the alternative, for relicensing to the original licensee or to a new licensee. Projects owned by a state or municipality¹ are exempt for recapture but not from relicensing (Act of August 15, 1953, 67 Stat. 587, 16 U.S.C. 828b.) The decision to recapture must be made by Congress. If Congress recaptures a project, the licensee must be paid the "net investment of the licensee in the project or projects taken" within the meaning of the Federal Power Act (but in any event not more than the "fair value of the property taken") plus reasonable severance damages. If any, to the remaining electric facilities of the licensee. If Congress does not act before the expiration of the initial license, the Commission may issue a new license, but the Act does not expressly state the appropriate steps to be taken if the Congress has not expressed its intentions as to a given project. If the Congress has expressed its decision and the Commission does not issue a new license, the Act directs the Commission to issue a year-to-year license to the original licensee until the project is recaptured or relicensed. The Commission strongly believes that it should not relicense projects on a long-term basis until the Congress has made known its decision either through enactments concerning specific projects or through general legislation such as we propose today.

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

1. *Notice, Review and Recommendations to Congress.* At the outset, the Commission informs the Congress and the public of all projects whose licenses will expire during the succeeding five years through notice given in the Commission's Annual Reports² to the Congress and in the Federal Register. This notice provides the following information: License expiration date; licensee's name; project number; type of principal project works licensed; location; and installed capacity. Starting five years before the license expiration date, the Commission undertakes a review of each project. As part of this review, the Commission solicits both the views of the licensee concerning its plans for future development and use of the project and the views on recapture and relicensing of Federal and State agencies which might have an interest in the recapture of the project. On the basis of information received and Commission staff studies, the Commission formulates its recommendations to the Congress and also transmits the views submitted to it by the licensee and by the interested Federal agencies. As the Commission noted in its letter of February 23, 1967 recommending against recapture of Project No. 2221 (the Ozark Beach Project of The Empire District Electric Company), this procedure does not give the Commission "the benefit of a relicensing proceeding, involving formal proposals and counter-proposals by the licensee, our staff, intervenors or others who might apply for a new license. New criteria or information uncovered in the course of such a proceeding might warrant further consideration of the recommendation reached" in the initial report. The Commission's procedure adopted in 1964 undertook to report to the Congress two years prior to the license expiration date. The Commission has fallen slightly behind in its time table in the cases of Project No. 2221 and Project No. 619 (the Bucks Creek Project of Pacific Gas and Electric Company).

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

3. *Relicensing.* In those cases where Congress forgoes its right to recapture a project, relicensing procedures must be undertaken by the Commission. Relicensing would involve public notice to all interested parties, an opportunity for the original licensee and others to seek a license, an opportunity for interested state

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

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

and Federal agencies to review project performance and capabilities and to recommend changes, an opportunity for such agencies and for members of the public to intervene in formal relicensing proceedings, and opportunities for formal hearings, oral argument, and judicial review of the Commission's relicensing order. Upon relicensing the Commission would not only select which applicant was to receive the license; it would also determine the conditions upon which a new license should be issued and the term of years (not to exceed 50) for which the new license should stand. The existing provisions of the Federal Power Act assign the Commission the same powers to condition new licenses issued under section 15 as it has to condition original licenses issued under section 4.

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

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

THE PROBLEM

The fundamental choices upon license termination fall into these categories:

- (1) Where the United States has an interest which it will want to express either by recapture or by conditions in the relicense. This interest may arise out of the federal power marketing program, but more probably out of other water use programs, such as irrigation, fish, recreation, pollution control or domestic and industrial use.
- (2) Where the United States is not interested and the licensee desires a relicense, but a state or local agency or private party has an interest which it will want to express either by contesting for the new license or by conditions in the relicense. The interest in question may be either essentially in power use or in non-power use.
- (3) Where the licensee wants to abandon a project, but the public interest requires that it be maintained in whole or in part for non-power purposes.
- (4) Where the United States, the licensee or any other potential licensee is not interested in the continued existence of the project.

The present three-fold procedure seems inadequate to secure the maximum advantages from the opportunities preserved by the Congress in 1920 for the present and future generations of Americans. This procedure does not facilitate systematic consideration of all the alternatives available and tends to diffuse the attentions of interested parties whereas a more concentrated procedure might be more effective in bringing to bear all the conflicting interests at a single point in time.

THE PROPOSAL

We propose that the Congress enact legislation which would:

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

nation with other systems in light of regional power needs; hydraulic coordination with other projects on the stream; and navigation.

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

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

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

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

f. Authorize FPC, notwithstanding the provision of section 6 of the Act regarding alteration of licenses, to include as a condition to issuance of a new license under section 15, a broad authority to modify the license, consistent with the other provisions of the Act, as may reasonably be required, subject to the safeguards of adequate notice, opportunity for public hearing and judicial review. This added authority would extend the Commission's rulemaking powers to modify license conditions at any time during the license term, now limited under section 10(c) to matters relating to the protection of life, health and property, to matters relating to all license conditions. It is patterned after the broad conditioning authority of section 10(g) which now authorizes the Commission to include at the beginning of any license term "such other conditions not inconsistent with the provisions of this Act as the Commission may require."

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

ALTERNATIVE CONSIDERED

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

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

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

CONCLUSION

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

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

Respectfully,

LEE C. WHITE, *Chairman.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., October 23, 1967.

B-140031.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate.*

DEAR MR. CHAIRMAN: By letter dated September 22, 1967, you requested our comments on S. 2445, 90th Congress, which would amend part I of the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised.

Section 2 of the bill would amend section 14 of the Federal Power Act, as amended, 16 U.S.C. 807, to provide in pertinent part:

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

We would suggest that the above language be revised to require any Federal agency having an interest in any relicensing proceeding to timely inform the Commission, in writing, whether it does or does not propose that the Government exercise its right of recapture, together with the basis for such determination. It would seem that such a mandatory requirement would provide greater assurance of protecting the Government's interest.

We have no further comment to offer concerning this measure.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

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

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on S. 2445, a bill "To amend part I of the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised."

We recommend the enactment of the bill.

The bill would amend the Federal Power Act:

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

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

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

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

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

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

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

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

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

Sincerely yours,

KENNETH HOLUM,
Assistant Secretary of the Interior.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 1, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 2445, a bill to amend Part I of The Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised.

Section 1 of S. 2445 would add a new subsection to Section 7 of the Federal Power Act (16 U.S.C. 800) to provide that the Federal Power Commission shall determine whether the United States should exercise its right to take over any project for public purposes and shall submit its recommendation to Congress.

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

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

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

S. 2445 does not affect the activities of the Department of Justice; accordingly, the Department defers to the views of the Federal Power Commission concerning the desirability of enacting this legislation.

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

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

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

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Foreign Commerce,
U.S. Senate.*

DEAR MR. CHAIRMAN: This is in response to your letter of February 13, 1968, requesting a report on S. 2445, a bill "to amend part I of the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised."

The bill establishes standards and procedures for the recapture or relicensing of hydroelectric projects upon expiration of their license terms in accordance with Sections 14 and 15 of the Federal Power Act, and authorizes the Federal Power Commission to license for nonpower use project works no longer used or adapted for use for power purposes. The provisions of the bill are as described in the letter of September 20, 1967, from Commission Chairman Lee C. White to the President of the Senate, transmitting the bill for consideration by the Congress (reproduced in the Congressional Record for September 20, 1967, at pages S13272-3).

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

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

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

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

Senator CANNON. Our first witness is the Honorable Lee C. White, Chairman of the Federal Power Commission.

Mr. Chairman, we are happy to have you here. You may proceed.

STATEMENT OF HON. LEE C. WHITE, CHAIRMAN, FEDERAL POWER COMMISSION, ACCOMPANIED BY F. STEWART BROWN, CHIEF ENGINEER AND CHIEF, BUREAU OF POWER; M. FRANK THOMAS, CHIEF, DIVISION OF LICENSED PROJECTS; RICHARD A. SOLOMON, GENERAL COUNSEL; EDWARD BERLIN, ASSISTANT GENERAL COUNSEL; AND JOSEPH B. HOBBS, PRINCIPAL STAFF ATTORNEY

Mr. WHITE. Thank you, Mr. Chairman. We are very pleased to be able to present the Commission's views on what we regard as an important piece of legislation.

With me at the witness table, to my right, is Mr. F. Stewart Brown, the Chief Engineer of the Federal Power Commission and the head of our Bureau of Power. To his right is Mr. Frank Thomas, who is the Chief of our Division of Licensed Projects. Immediately to my left is Mr. Richard A. Solomon, the General Counsel of the Commission. To his left, Mr. Edward Berlin, Assistant General Counsel of the Commission. And to his left Mr. Joseph B. Hobbs, Principal Staff Attorney.

We have a rather detailed statement, Mr. Chairman, which we would like to submit for the record. It contains a somewhat fascinating and interesting history of the Federal Water Power Act of 1920, which I believe gives some insight into the problems from the point of view of the Congress when it first enacted this legislation, as well as some detailed observations. If you have no objection I would prefer to read an abbreviated version of that statement, and then hold ourselves open for any questions that you may have.

Senator CANNON. The statement will be made a part of the record.

You may proceed.

Mr. WHITE. It is a pleasure to appear before the committee in support of S. 2445 introduced by Chairman Magnuson at the unanimous request of the Federal Power Commission. The bill would amend the provisions of part I of the Federal Power Act which govern the Commission in the processing of expiring hydroelectric licenses. Simply stated, it is a bill designed to establish more adequate procedures for determining whether, upon the expiration of a hydroelectric license, a project should be recaptured by the Federal Government or relicensed.

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

Under current practice the recapture and relicensing determinations involve a three-fold process. Five years before a license is to expire, the Commission solicits the views of the licensee concerning its plans for the future development of the site and the views of each Federal and State agency which may have an interest in recapture. Two years before the expiration date, the Commission makes a report on the project to the Congress on whether the project should or should not be recaptured. The Congress is then asked to decide whether it wishes to recapture a project. Where Congress forgoes that right, relicensing procedures must be undertaken by the Commission.

This procedure is unsatisfactory. It requires the Commission, in advance of the more detailed factfinding relicensing proceeding, to adopt its position as to recapture even though some facts bearing on the desirability of recapture may not be disclosed until a relicensing proceeding. Existing procedure requires the Congress to focus on each expiring licensed project that is subject to recapture, even though no Federal agency has expressed any interest in recapture.

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

We strongly urge that a procedure be established whereby all the alternatives may be canvassed and all of the facts bearing on the desirability of recapture, as opposed to possible relicensing, be brought to light before the Commission and the Congress are required to consider the recapture question. We do not believe Congress will wish to be burdened with a requirement that it consider recapture of a project where, after such a proceeding, neither the Commission nor any interested Federal agency recommends recapture. A procedure should be developed which would permit the concentration of Commission staff and outside resources in one proceeding and which would *require* the Congress to give consideration to recapture only where, as a result of that factfinding proceeding and upon the basis of the record there established, some federal interest in recapture has been articulated. Quite obviously, Congress should not—and could not—be precluded

from considering recapture of any project even if all Federal agencies recommend against it; what we are focusing on here is a procedure for handling the large volume of expiring licenses in a reasonable and rational fashion.

S. 2445 would establish such procedures. It should be clear that it is a procedural bill designed solely to permit the recapture and relicensing determinations to be made efficiently and in harmony with the purpose underlying the limited term license. The bill does not attempt to modify any of the substantive standards which the Commission is required to apply in determining whether or not to recommend recapture and in passing upon relicensing proposals.

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

If the Commission were to conclude that recapture would not serve the statutory objective of optimum site utilization in the public interest, it would be able to proceed to issue a new license upon appropriate conditions either to the original licensee or some other applicant. It would, however, be required to stay the effectiveness of its order upon the motion of any Federal department or agency desiring to recommend recapture to the Congress. Unless earlier terminated upon motion of that department or agency, any such stay would automatically terminate at the expiration of the next full Congress immediately following the Congress then in session and the license would become effective.

In selecting this procedure for recommendation to the Congress, the Federal Power Commission rejected a suggestion that it seek legislation granting it the final say on the recapture question. In view of the financial commitments and policy considerations involved, we believe that such a decision is one that the Congress would not wish to delegate, at least as a matter of general law. Similarly, we consider it inappropriate to make a Commission decision against recapture the final word on the matter. We believe the Congress is entitled to the advice of any Federal agency or department that wishes to urge recapture and such agency or department's channel of communication should not end at the steps of the Federal Power Commission. We think the procedures contemplated by S. 2445 strike a proper accommodation of these basic concepts.

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

In preparing the draft legislation, we have rejected recommendations that we should establish a statutory preference for the existing licensee, even where a competing applicant could better meet these criteria. And on the other hand, we have also rejected the suggestion that we should extend the existing preference provisions of section 7(a) of the act, to make them applicable to a contest for a new license between an original licensee and a party who, in the case of a contest for an unconstructed project, is entitled to statutory preference.

The bill would effect a modest extension of the Commission's licensing authority insofar as any new licenses for a project are concerned by reserving to the Commission the right at any time after relicensing, to impose upon a section 15(a) licensee, subject to notice and opportunity for hearing, such further requirements as are consistent with the act. As matters now stand the Commission enjoys broad conditioning authority at the time of license issuance, including the time of relicensing, but only limited authority during the course of the license term. Accordingly, in order to preserve its ability to insure that a licensee will continue to respond to the changing demands of the public interest, the Commission has placed increased reliance on open-ended license conditions. But these conditions can be used satisfactorily only to the extent that changes can be anticipated. Greater flexibility is needed, particularly in light of the growing public concern for conservation objectives such as esthetics, and would be provided by the proposed section 15(b).

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

Mr. Chairman, let me conclude by stating that in formulating S. 2445 in response to Chairman Magnuson's request, the Commission focused on whether a procedure could be formulated which would relieve Congress of the burden of reappraising individually each expiring license while at the same time permitting the concentration of staff and outside resources on the simultaneous consideration of recapture and relicensing under the broad standard of comprehensive development. S. 2445 is the Commission's considered response. In our view its enactment would provide for procedures which would give optimum effectiveness to the purposes underlying the limited term license.

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

We at the Commission are very much aware of the need to have a clearly formulated procedure which will make sense to the Congress, to the Federal Power Commission, to all departments and agencies, to all present licensees and to all who are interested in either the recapture or relicensing of hydroelectric projects. The present procedure flows from the fact that the Federal Water Power Act of 1920 contemplated that 50 years from that time a great deal would have happened to change the attitude of the Congress. Indeed there was some reason to wonder exactly how the power industry in this country would develop. The 50-year period is now drawing to a close. We are relatively certain that the procedure under which we now operate is not going to meet the needs of the Congress, and certainly not the needs of the licensees. Thus we are pleased that the committee is holding hearings on what we regard as a very important problem and we are pleased that they are being held on a timely basis.

If this particular legislation or something comparable to it is not enacted before the expiration of this session of Congress, there is reason to fear that the pileup of expiring licenses will present a very difficult problem both for the Congress and the Commission.

That is about all we have to say, Mr. Chairman. We are pleased now to respond to any questions that you may wish to put to us.

(The detailed statement of Lee C. White, Chairman, Federal Power Commission, follows.)

DETAILED STATEMENT OF LEE C. WHITE, CHAIRMAN, FEDERAL
POWER COMMISSION ON S. 2445

Mr. Chairman, we welcome this opportunity to appear before the Committee in support of S. 2445, a bill designed to establish procedures for determining whether, at the expiration of a hydroelectric license, a project should be recaptured by the United States or relicensed.

BACKGROUND

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

In section 14 of the Act Congress provided that "the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project" upon the fulfillment of certain conditions. Alternatively, the Commission may issue a new license to the original licensee or may, upon specified conditions, issue a license to a new applicant. The Act does not, however, implement these prerogatives procedurally. S. 2445 is designed to fill this breach. In our view it establishes a procedure which

will permit the responsibilities for relicensing or recapture to be exercised effectively and efficiently without undue disruption of the Nation's supply of electric energy and in a manner designed to further comprehensive development.

HYDROELECTRIC LICENSING BEFORE 1920

Preliminary to our discussing the mechanics of the proposed procedure we would like briefly to review the history behind the 1920 enactment of the Federal Water Power Act for we view S. 2445 as a product of that history.

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

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

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

Thus, it is fair to say that the situation prior to 1920 was characterized by uncertainty and inconsistency of rights and obligations, and the retarded development of the Nation's hydroelectric resources. Where there was development it was haphazard and often failed to protect nonpower resources. In addition, the Congress, which was not equipped to do more than consider each proposal

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

in virtual isolation, was encumbered with the need to focus on literally hundreds of requests for special legislation. Most disconcerting was the fact that the great majority of projects authorized by Congress never were constructed.

THE FEDERAL WATER POWER ACT AND EXISTING PROCEDURES

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

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

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

There are at least four situations that may exist at the expiration of a license term: First, where the United States has an interest in the continued operation of the project arising out of Federal power or nonpower programs, which interest could be protected either through recapture or the Commission's conditioning authority. Second, where the licensee seeks a new license and a private party,

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

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

a State or a local agency either competes for the license or seeks the inclusion of specified conditions. Third, where the licensee wishes to abandon a project which public interest considerations dictate be maintained for nonpower purposes. Fourth, where there is no interest expressed by anyone in the continued operation of the project for power or nonpower purposes.

The existing procedure cannot adequately respond to these varied situations. It does not guarantee the kind of reevaluation that the limited term license was designed to preserve. Two defects are critical: First, because of the division to which we already have alluded and the fact that Congress must focus on the question of recapture before the Commission conducts a relicensing proceeding, Congress may not have before it all of the facts bearing on the effect of the project under consideration upon other projects in the river basin. This information gap could lead to the type of haphazard planning that preceded passage of the 1920 Act. Comprehensive planning will require analysis of all such projects, including those projects which, while subject to relicensing, are not subject to recapture.⁴

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

THE PROPOSED NEW PROCEDURES

In formulating our legislative proposal in response to Chairman Magnuson's request, the Commission focused on whether a procedure could be formulated which would relieve Congress of the burden of reappraising individually each expiring license while at the same time affording thorough and simultaneous consideration of recapture and relicensing under the broad standard of comprehensive development. S. 2445 is the Commission's considered response. In our view its enactment would provide for procedures which would permit the expeditious development of our hydroelectric resources and would give optimum effectiveness to the purposes underlying the limited term license.

S. 2445 would permit concurrent consideration and evaluation to be given the alternatives of recapture and relicensing. It would relieve the Congress of the burden of having to focus on those projects as to which there has been no recommendation in favor of recapture either by this Commission or by another Federal agency thereby permitting more expeditious relicensing and realization of the benefits flowing to the public therefrom.

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

If, during such a proceeding, the Commission concludes that upon or after the expiration of any license, recapture may be appropriate it would be required to

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

submit its recommendation to the Congress and could not issue a new license other than an annual renewal of the expired license.

If, in the judgment of the Commission, recapture would not be appropriate the Commission would be authorized to issue a new license either to the original licensee or to some other applicant. However, should any Federal department or agency, during the pendency of the relicensing proceeding, recommend recapture, then upon motion by such department or agency the Commission would stay the effectiveness of any order issuing a license, except an order issuing an annual license, until the expiration of the next full Congress immediately following the Congress then in session. During the stay period the interested department or agency would have the opportunity to make known to the Congress its desire that the project be recaptured. The Commission would be under an independent obligation to advise the Congress of any stays so granted. Unless terminated earlier upon motion of the department or agency requesting the stay, the stay would automatically terminate at the expiration of the specified period. At such expiration the new license would become effective. The stay period proposed in the bill would provide a minimum of two and a maximum of almost four years for Congressional consideration of recapture recommendations submitted by Federal agencies other than the Federal Power Commission. The Commission views that period to be a reasonable one although it is by no means the only appropriate period. For example, alternative time periods which the Congress may wish to consider would be a two-year period beginning on the last day of the calendar year in which the Commission issued the relicensing order, or a two-year period running from the date of such order. The latter period conforms to a similar licensing stay provided for in section 4(e) of the Federal Power Act where the Commission has found, and advised the Congress, that a government dam may advantageously be used by the United States for public purposes in addition to navigation.

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

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

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

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

The bill would effect a modest extension of the Commission's conditioning authority. As matters now stand, the Commission has broad authority to condition a license at the time of issuance, including at relicensing. Under section 10(g), for example, the Commission is authorized to include "such other conditions not inconsistent with the provisions of this Act as the Commission may require." The Commission's authority to modify conditions during the license term is, however, limited. In an effort to keep pace with changes in technology and water use which have taken place in recent years and which may be expected to continue at an accelerated rate in the future, the Commission, during the last decade, has increasingly relied on open-ended license conditions as a means of assuring that a licensed project will continue to be operated and maintained in the public interest. Typical open-end conditions relate to water releases, joint use of project reservoirs and properties by the licensee and others, installation of additional capacity and construction, maintenance and operation of facilities for the conservation and development of fish and wildlife resources. Examples of open-ended conditions are attached as Appendix "B" to this statement. Of course, open-end conditions can be used satisfactorily only to the extent that changes can be foreseen. Greater flexibility is needed to accommodate inevitable future developments which cannot now be anticipated. Section 15(b) would provide added flexibility by reserving to the Commission the right to at any time after the issuance of a license under section 15(a), except an annual license, impose upon the licensee such further reasonable requirements as are not inconsistent with any other provisions of the Act, subject to the requirement of notice and opportunity for hearing.

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

The term net investment is of considerable significance for recapture or relicensing purposes. Under sections 14 and 15 of the Act it is one of the two items for which the original licensee is to be compensated by the United States in the event of recapture or by the new licensee in the event that the Commission issues

a license to someone other than the original licensee.⁶ The second item is severance damages, or, to oversimplify, the damage to the remaining property of the original licensee as a result of the taking. There is a further qualification that the net investment component may not exceed the fair value of the property taken.

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

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

The Commission recognizes that numerous licenses relate to projects which are located on lands which are administered by another Federal agency. For example, many licensed projects are located within national forests. Any action to issue a license under section 15 for nonpower purposes would take into consideration the functions and programs of the agency administering the lands. Before issuing a nonpower license the Commission intends to consult with such Federal agency and to issue the nonpower license where that agency acquiesces and subject to any reasonable conditions which it may suggest. Procedures will be established to effect, upon issuance of the nonpower license, the simultaneous transfer of supervisory responsibility to that agency.

Mr. Chairman, let me conclude my remarks by stressing that S. 2445 accepts the logic of the Congressional decision to delegate primary responsibility for the development of this Nation's hydroelectric resources to the Federal Power Commission. We think the procedures contemplated will further the basic objectives underlying the Federal Power Act while preserving fully Congress' option to recapture for the public any project which in its judgment should be the subject of Federal development and operation.

We urge the expeditious enactment of S. 2445.

Thank you.

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

APPENDIX A

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

License expiration date	Licensee	Project No.	State	County or town	Stream	Installation (kilowatts)	Facilities under license	Period of license (years)
May 17, 1968	Edible Herring Products, Inc.	1998	Alaska	On Baranof Island	Big Port Walter Falls Creek	300	Division dam, wood stave pipe, powerhouse	20
Aug. 31, 1968	The Empire District Electric Co.	2221	Missouri	Taney	White River	16,000	Dam and integral powerhouse	10
Sept. 30, 1968	Calvert Corp.	21880	Alaska		Hantley Creek	280	Diversion dam, flume, penstock, powerhouse, transmission line	25
Dec. 31, 1968	Pacific Gas & Electric Co.	619	California	Plumas	Bucks Creek	66,000	4 reservoirs, pipeline, tunnels, penstock, powerhouse	44½
Do	Utah Power & Light Co.	1740	Wyoming	Lincoln	Pine Creek	350	Diversion dam, conduit, powerhouse, transmission line	25
Do	Jardine Mining Co.	1878	Montana	Park	Bear Creek	880	Diversion dam, ditch, pipeline, powerhouse, transmission line	25
Dec. 31, 1969	Margaret P. Dawson	1890	California	Mono	Miner Creek	250	Diversion dam, pipeline, powerhouse, transmission line	25
Do	Interoceanic Packing Co.	2026	Alaska	On Kodiak Island	Crater and Ash Creeks	150	2 diversion dams, ditch, flumes, pipeline, powerhouse	25
Do	The Montana Power Co.	2301	Montana	Stillwater	West Rosebud Creek	10,000	Storage dam, tunnel, pipeline, penstock, powerhouse, transmission line	7½
Apr. 12, 1970	The Western Colorado Power Co.	733	Colorado	Ouray	Uncompahgre River	432	Storage dam, conduit, penstock, powerhouse	10
June 15, 1970	Southern California Edison Co.	372	California	Tulare	Tule River	2,000	2 diversion dams, conduits, regulating reservoir, penstock, powerhouse, transmission line	28½
June 30, 1970	The Western Colorado Power Co.	400	Colorado	La Plata, San Juan, San Miguel, Ouray	Animas and South Fork, San Miguel Rivers	11,600	4 dams, 3 reservoirs, 3 conduits, 2 powerhouse, 5 transmission lines	35
Do	Utah Power & Light Co.	472	Idaho	Franklin	Bear River	30,000	Storage dam, steel pipe, penstocks, powerhouse, transmission line	43½
Do	do	486	Utah	Cache	Logan River	2,000	Diversion dam, wooden flume, 2 penstocks, powerhouse, transmission line	43½
Do	Idaho Power Co.	503	Idaho	Ada and Owyhee	Snake River	10,300	Storage dam and powerhouse	42½
Do	Utah Power & Light Co.	597	Utah	Salt Lake	Big Cottonwood Creek	1,000	Diversion dam, channel, steel pipe, powerhouse, transmission line	43½
Do	do	665	do	Utah	Santaquin or Summit Creek	880	Diversion dam, conduit, steel pipe, powerhouse, transmission line	43½
Do	do	696	do	do	American Fork Creek	950	Diversion dam, conduit, penstock, powerhouse, transmission line	43½
Do	do	703	Idaho	Bear Lake	Paris Creek	650	Diversion dam canal, forebay, penstock, powerhouse, transmission line	43½
Do	do	713	Utah	Salt Lake	Mill Creek	300	Diversion dam, conduit, penstock, powerhouse, transmission line	43½

Do	do	1744	do	David, Morgan, Weber	Weber River	2,500	Dam, conduit, powerhouse, 2 transmission lines.	32½
Do	Wisconsin Michigan Power Co	1759	Wisconsin	Iron	Michigan and Menominee Rivers.	22,500	3 dams, 3 reservoirs, tunnel, conduits, 3 powerhouses, 2 transmission lines.	32½
Do	New England Power Co	1855	Vermont, New Hampshire	Windham, Windsor, Vt.; Cheshire, Sullivan, New Hampshire	Connecticut River	40,800	Dam, canal, powerhouse, 4 transmission lines.	32½
Do	Pennsylvania Power & Light Co	1881	Pennsylvania	York and Lancaster	Susquehanna River	109,800	Dam and integral powerhouse	32½
Do	Metropolitan Edison Co	1888	do	Dauphin, Lancaster, York	do	19,600	2 dams, headrace, powerhouse	32½
Do	Western Massachusetts Electric Co	1889	Vermont, Massachusetts, New Hampshire	Windham, Vt.; Franklin, Mass.; Cheshire, N.H.	Connecticut River	55,800	2 dams, canals, 2 powerhouses, transmission line.	32½
Do	New England Power Co	1892	Vermont, New Hampshire	Orange, Windsor, Vt., Cheshire, Graton, Sullivan, N.H.	do	32,400	Dam, integral powerhouse, 4 transmission lines.	32½
Do	Public Service Co. of New Hampshire	1893	New Hampshire	Hillsboro, Merrimack	Merrimack River	16,000	Dam, powerhouse, transmission line	32½
Do	South Carolina Electric & Gas Co	1894	South Carolina	Fairfield	Broad River	14,900	Dam and integral powerhouse	32½
Do	do	1895	do	Richmond	do	10,600	Dam, canal, powerhouse	32½
Do	Pennsylvania Electric Co	1899	Pennsylvania	Susquehanna	North Branch, Susquehanna	600	Dam and integral powerhouse	32½
Do	New England Power Co	1904	Massachusetts, Vermont, New Hampshire	Franklin, Worcester, Mass.; Windham, Vt.; Cheshire, N.H.	Connecticut River	24,400	Dam, integral powerhouse, 2 transmission lines.	32½
Do	Public Service Co. of New Hampshire	1913	New Hampshire	Merrimack	Merrimack River	1,600	Dam and powerhouse	32½
Do	Wisconsin Public Service Corp	1957	Wisconsin	Vilas	Wisconsin River	1,750	Dam and integral powerhouse	32½
Do	Writing Paper Corp	1967	do	Portage	do	600	2 dams and part of factory building	32½
June 30, 1970	Wisconsin Public Service Corp	1968	do	Oneida	do	1,440	Dam and 2 integral powerhouses	32½
Do	do	1989	do	Lincoln	do	1,840	Dam, headrace, powerhouse	32½
Do	do	1999	do	Marathon	do	5,400	Dam, integral powerhouse, guard locks, 2 transmission lines.	32½
Do	International Paper Co	2095	Pennsylvania	York	Susquehanna River	2,500	Headrace, powerhouse, parts of 2 factory buildings.	32
Do	Consolidated Water Power Co	2110	Wisconsin	Portage	Wisconsin River	3,800	Dam, integral, powerhouse, transmission line.	32½
Do	St. Regis Paper Co	2161	do	Oneida	do	2,120	Dam, canal, powerhouse	32½
Do	Consolidated Water Power Co	2192	do	Wood and Portage	do	3,300	Dam, integral powerhouse, integral grinder building.	32½
Mar. 2, 1971	Henry Ford & Son, Inc. ^a	13	New York	Albany, Saratoga, Rensselaer	Hudson River	3,280	Powerhouse	50
Do	Southern California Edison Co	67	California	Fresno	Tributaries of San Joaquin River	138,500	2 storage reservoirs, diversion dams, conduits, 2 powerhouses, transmission lines.	50
Mar. 3, 1971	do	120	do	Fresno, Kern, Madera, Los Angeles, Tulare, Coosa and Chilton	San Joaquin River	110,000	Diversion dam, tunnel, penstock, powerhouse, transmission lines.	48¾
June 26, 1971	Alabama Power Co	82	Alabama	Coosa River	Coosa River	72,500	Dam, reservoir, powerhouse	50
Aug. 8, 1971	Northern States Power Co	108	Wisconsin	Sawyer	Chippewa River	50	Dam and reservoir	50
Sept. 16, 1971	Georgia Power Co	1218	Georgia	Dougherty and Lee	Flint River	5,400	2 dams, 2 reservoirs, powerhouse	38¾
Dec. 31, 1971	Leonard Lundgren	1097	Oregon	Jefferson	Jack Creek	90	Diversion dam, canal, penstock, powerhouse, transmission line.	20

See footnotes at end of table.

APPENDIX A

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

License expiration date	Licensee	Project No.	State	County or town	Stream	Installation (kilowatts)	Facilities under license	Period of license (years)
Feb. 22, 1972	Pacific Gas & Electric Co.	184	California	Alpine, Amador, and Eldorado	South Fork, American River	20,000	4 storage reservoirs, conduit, powerhouse, transmission line.	50
Apr. 14, 1972	do.	77	do.	Mendocino	Eel and Russian River	8,800	Storage reservoir, diversion dam, forebay, pressure conduit, 2 powerhouses, discharge canal.	50
July 27, 1972	do.	175	do.	Fresno	North Fork, Kings River	128,200	Diversion dam, afterbay dam, conduit, powerhouse-transmission line.	50
Sept. 26, 1972	Portland General Electric Co.	135	Oregon	Clackamas	Clackamas River and Oak Grove River	51,000	Storage reservoir, diversion dam, forebay-reservoir conduit, powerhouse and transmission line.	50
Oct. 12, 1972	Pennsylvania Electric Co.	309	Pennsylvania	Clarion	Clarion River	28,800	Dam and powerhouse	50
Dec. 1, 1972	Pacific Gas & Electric Co.	98	California	Madera and Fresno	San Joaquin River	34,100	Dam, conduit, powerhouse, transmission lines.	50
Feb. 6, 1973	Arkansas Power & Light Co.	271	Arkansas	Montgomery, Garland, Hot Springs, Humboldt and Yuba	Ouachita River	65,300	2 dams, 2 reservoirs, 2 powerhouses	50
Feb. 11, 1973	Pacific Gas & Electric Co.	498	California	do.	Canyon Creek	2,700	Diversion dam, conduit, penstocks, powerhouse, transmission line.	50
Apr. 22, 1973	do.	187	do.	do.	North Fork Yuba River	6,500	Dam, reservoir, penstock, powerhouse, transmission line.	50
Apr. 26, 1973	Southern California Edison Co.	344	do.	Riverside and San Bernardino	San Geronimo River	2,300	2 diversion dams, 2 canals, 2 forebay tanks, 2 penstocks, 2 powerhouses, and transmission line.	50
June 6, 1973	Ford Motor Co.	362	Minnesota	Hennepin and Ramsey	Mississippi River	14,400	Powerhouse	50
June 8, 1973	Alabama Power Co.	349	Alabama	Elmore, Tallapoosa and Coosa	Tallapoosa River	154,200	Dam, reservoir, powerhouse	50
June 30, 1973	Owens-Illinois Glass Co.	2,180	Wisconsin	Lincoln	Wisconsin River	3,000	Dam, integral powerhouse, transmission line	35½
July 4, 1973	Utah Power & Light Co.	20	Idaho	Bannock and Caribou	Bear River	14,000	Dam and integral powerhouse, reservoir	50
Aug. 24, 1973	Minnesota Power & Light Co.	348	Minnesota	Morrison	Mississippi River	12,000	Dam and integral powerhouse	50
Sept. 18, 1973	Michigan Gas & Electric Co.	401	Michigan	St. Joseph	St. Joseph River	1,700	do	50
Oct. 23, 1973	Pacific Gas & Electric Co.	233	California	Shasta	Pit River	292,250	3 dams, 3 powerhouses, 3 reservoirs, penstocks, pressure tunnels, surge tanks, transmission lines.	50
Oct. 25, 1973	Minnesota Power & Light Co.	469	Minnesota	St. Louis and Lake	Kawishiwi River	4,000	Dam, reservoir, penstocks, powerhouse, and transmission line.	49½

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

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

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

⁴ Application for surrender of license filed.

APPENDIX B

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

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

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

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

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

Senator CANNON. Thank you for your statement, Mr. Chairman.

In your opening statement you say: "In preparing the draft legislation, we have rejected recommendations that we should establish a statutory preference for the existing licensee, even where a competing applicant could better meet these criteria." It would seem to be less desirable if the competing applicant could better meet the criteria.

Mr. WHITE. You are right. That statement was merely meant to demonstrate the breadth of the suggestions that come to the Commission. One of the suggestions that we looked at and considered in determining what to recommend to the Congress was just that, that the existing licensee should be preferred even though somebody else might be able to demonstrate that they could do a better job of the maximum utilization and development of the particular water resources of the basin. I hasten to add that there was never any serious consideration given by the Commission to a procedure which would give to an existing licensee a preference over anybody else, regardless of considerations of comprehensive development.

Senator CANNON. I am wondering whether it is absolutely necessary for the legislative process to be involved in this matter. You state that under your current practice the recapture and relicensing determination involve a threefold process and then you outline them. Why couldn't the Commission just have one proceeding under the present law which focuses on the question of whether to recapture or to relicense, and, if it is decided to relicense, to proceed to relicense the project, giving Congress sufficient time to decide whether to overrule the Commission and recapture the project before the expiration of the original license term?

In other words, why couldn't you just amend your regulations to cover this particular type of a procedural matter and not get Congress involved in it?

Mr. WHITE. I understand the question completely. Obviously the suggestion makes some sense. What it does not address itself to is the basic problem that we at the Commission see under the existing procedure. The existing procedure depends upon our evaluation of when the Congress has made the negative decision that it does not want to recapture. We believe, in all candor, that there could be a great deal of difficulty if, toward the end of a period that we specify in our regulations, the Commission sensed that the Congress was not going to act and a Member of the Congress were to introduce a bill recommending recapture. We would then be in the awkward position of not knowing whether or not we should proceed to relicense. Frankly, we believe that we can provide very useful service to the Congress by sorting out those particular projects in which there is no serious interest in recapture and acting on them by way of relicensing. Where the Commission or some other Federal agency recommends recapture, S. 2445 would provide procedures for bringing this recommendation to the attention of Congress.

As an arm of the Congress the Commission is very reluctant to act in a manner where we must divine what it is that Congress wants us to do. Here we have provided a procedure, only a procedure—as my statement says, we are not trying to change the substantive standards. All we are really asking is that Congress tell us how to proceed.

We have offered this particular procedure as the one we think best. If this does not have congressional endorsement or sanction, we would hope that Congress would tell us how to proceed by passing appropriate legislation. In this way there would be no confusion, and no misunderstanding in our minds or in the minds of the licensees with whom we must deal.

Senator CANNON. Section 14 of the act reserves to the United States the right to recapture a project upon or after the expiration of the term of the original license?

Mr. WHITE. Yes, sir.

Senator CANNON. Do you interpret the United States to mean the Congress and not the Commission? Or, is this one of the areas of difficulty?

Mr. WHITE. I do not think there is any difficulty about that, Mr. Chairman. It has been claimed by some that the Congress intended the Federal Power Commission to be the "United States" and to make the recapture decision. But quite candidly the language of the act itself is crystal clear. Section 14 of the existing Federal Power Act provides:

[U]pon not less than two years' notice in writing from the Commission, the United States shall have the right * * * to take over * * * in any project.

That hardly could be interpreted to mean that the Commission shall have this right.

Moreover, even if it were not clear from the statutory language, this would seem to me the type of a decision that should not be made by the Federal Power Commission. As you may know, we are not necessarily timid about asking for new authority.

Senator CANNON. It seems to me I have heard that upon occasion.

Mr. WHITE. I hope that this note can be preserved somewhere for those who believe that we are always looking for additional responsibilities.

Senator CANNON. Since Congress delegated to the Commission the right to grant the original license, why shouldn't it be given the sole authority to make the relicensing decision? In other words, Congress can always overrule the Commission's decisions, if it wanted to recapture, couldn't it?

Mr. WHITE. I think the Commission's authorities with respect to relicensing should be analogous to that which it now exercises in issuing original licenses. In delegating licensing responsibility to the Commission Congress has not quite said to go ahead and license this project to the best private applicant. Congress has said, in section 7(b) of the act, tell us if you believe Federal development would be superior. The relicensing procedures proposed in S. 2445 would carry through that same pattern.

Senator CANNON. Under the existing law, how do you go about giving the appropriate Federal, State, and interstate agencies an adequate opportunity to present their positions to the Commission? This is on an original application.

Mr. WHITE. Notice is provided. Every applicant is required to submit its proposal.

The proposal is then noticed in the Federal Register and through standard devices both the Federal, State, and local authorities, as well as private parties are alerted, as to what is proposed.

In our licensing proceedings, people are given an opportunity to come forward and express their views, and even following the decision by the examiner, when the matter comes to the Commission for its consideration, we still have the 7-B requirement that I mentioned, which requires the Commission to focus on whether the proposal will best meet the basic objective of the statute, the maximum development of the water resources.

So under the existing statute we already have the responsibility and duty to entertain and give consideration to all relevant views.

Senator CANNON. Under the existing procedure and under the provisions of this proposed bill, these same agencies would have similar opportunity to present their case before the Commission on relicensing, would they not?

Mr. WHITE. Yes, they would. They would indeed.

Senator CANNON. Why then does the Commission believe that a Federal department or agency should be permitted to stay the proceedings, to stay the effect of the Commission's relicensing decision, and give the Congress the opportunity to consider the matter further?

Mr. WHITE. I understand exactly why that question was asked.

I would say that it was intended to be scrupulously fair to the executive branch of the Government. We, in effect, act as a quasi-judicial body in this type of proceeding.

If an agency—and to take one out of the air as an illustration—if the Department of the Interior came before the Commission and recommended that a particular project not be relicensed, contending instead that recapture or takeover by the Federal Government was more in the public interest, and if the Commission concluded that even though a fair case had been made for recapture the project should be relicensed, we do not believe that in such a situation the Congress would want the Commission to make the final determination.

At that point, the Department of the Interior, to continue this illustration, would have an option. They need not file a motion to stay the effectiveness of the relicensing order. However, if the Department believed that the Commission had erred and that the matter was important enough and should be brought to the Congress' attention, all it need do is file a stay motion with the Federal Power Commission.

Frankly, I would think a matter of that character would probably involve some pretty important political considerations and that it would make sense to flag it in this way for the attention of the Congress.

What we are really trying to do here is to sort out for the Congress those projects which are relatively free from controversy and should go forward and be relicensed, either to the existing licensee or somebody else, and to separate these from the ones where questions have been raised about the advisability of takeover.

To continue further with the illustration, if the Department of the Interior files a motion with the Federal Power Commission saying stop, don't let that licensing order become effective, and the Congress believes that the Interior Department is just trying to delay the project Congress can always pass a resolution or statute telling the Federal Power Commission that it doesn't consider recapture feasible. That would be the end of the matter and there need be no further time delay.

We are faced with a difficult problem, Mr. Chairman, of presenting to you a procedure which will minimize opportunities for confusion and misunderstanding. We do not believe that it is appropriate or seemly for the Federal Power Commission in effect to be racing the Congress to issue a license. If we issue a license, that is pretty final subject to appeals to the courts.

Senator CANNON. Actually, the Congress would have had the benefit of the Commission's recommendations for a period of 2 years before, would they not?

Mr. WHITE. No. That is under the existing procedure.

Senator CANNON. Yes.

Mr. WHITE. Under our proposed procedure, we would have a consolidated hearing and in those cases where we believe that the matter should come to the Congress' attention, that is where we recommend recapture, the whole record of the proceeding, together with the Commission's detailed recommendation and justification, would be submitted to the Congress. Where the Commission does not recommend recapture but another Government agency believes the project should be recaptured, and where it has felt strongly enough about recapture to stay the effective date of the proposed license, again the Congress would have the opportunity to look at the matter.

Senator CANNON. That, timewise, could result in a 4-year period.

Mr. WHITE. It might result in something close to 4 years. Four years would be the maximum.

As I point out, there are several ways in which the timelag could be affected. The first is by the decision of the Department as to whether it wants to file a stay motion. If it decides not to, there is no time problem, even though it has told the FPC it thinks recapture makes the most sense.

Second, if the Congress sees that the case is being held up because of a motion filed by a department or agency, all it need do is to act on that individual project. It can adopt a statute saying that the project ought to be relicensed, or that it ought to be taken over. Congress need not wait.

We have only selected a full Congress following the Congress in which the action takes place as a convenient measure. If the Congress itself wishes to shorten that period of time, our detailed statement provides alternative dates that we had ourselves focused on. We selected this particular time period out of an abundance of caution, so that we would not be put in the awkward position of recommending to Congress such a short period of time that the Congress would think we were trying to race them to the resolution of a particular issue.

Senator CANNON. Of course, we all recognize that the Congress is not the fastest-acting body in the world.

You say you have a period of 4 years. Actually, you have a two-step process. If the Congress decides to recapture, it has the problem of making that determination and then must go through the appropriations process to recapture, too.

So you are really talking about considerably longer than 4 years, under some circumstances.

Mr. WHITE. It could be. The Congress in 1920 recognized this by providing, in the existing language of the act, that the Commission should continue to license each project on a year-to-year basis, pend-

ing resolution of this question. The scheme developed in 1920 was designed to insure that, during the period that the question of recapture or releasing was being considered, the project would neither be idle nor would there be confusion about how to handle it.

That part we have no difficulty with.

Senator CANNON. Is there any reason for not imposing a limit on the time in which an agency might have to file an objection?

Mr. WHITE. No, I see no objection to that, although I don't remember our having discussed it. I would say, quite obviously the department or agency would have had to prepare its position in order to come into our proceeding, and they should know full well within a reasonable period after our decision whether they wish to file a motion staying the license.

I see no objection to imposing a time limitation. Frankly, I don't remember having discussed it. Let me ask my colleagues.

Mr. SOLOMON. We would assume the Commission would specify under its rules that any such motion would be made either during the licensing proceeding itself or certainly within a 30-day or some other appropriate period thereafter. We have full control here to prescribe a limited time in which the agency shall make known whether it is going to ask for a stay.

Mr. WHITE. Although I don't think that is in the language of the bill, if it is a matter of concern to the committee, it would be a simple matter to put in.

Mr. SOLOMON. The bill definitely prescribes that we can establish such rules and regulations as are appropriate, and I think what we are saying is right: that, if this is an appropriate rule, we would contemplate saying that within, for example, 30 days of the decision of the Commission, the agency would have to make its motion to stay.

Senator CANNON. The agency comes directly to the Commission, or would it have to apply to Congress?

Mr. WHITE. Since that would be a situation in which the Commission had indicated that it was going to issue a license, and since the stay is directed at the product of the Commission's proceedings, that particular action or motion by the department or agency would come to the Federal Power Commission under the proposed legislation. The motion would have us hold up the effectiveness of the license that we were about to grant.

The Congress would be notified of any such stays.

Senator CANNON. The bill does provide that?

Mr. WHITE. Yes, sir. On page 4, section 2, the last sentence, "The Commission shall notify the Congress of any stay granted pursuant to this subsection."

Senator CANNON. Senator Pearson?

Senator PEARSON. I take it that the license period is 50 years, and we passed the act in 1920. Have you had any of these cases yet or are you anticipating them in 1970?

Mr. WHITE. There are two licenses that expire in the calendar year 1968. We have made recommendations, as required by existing procedures, to the Congress by letters to the President of the Senate and the Speaker of the House. In addition the Commission has by letter to the Congress submitted its recommendation on a group of approximately 20 comparatively small projects.

The matter of formulating a workable procedure was brought to the Commission's attention by Senator Magnuson. We in turn focused on whether a procedure could be formulated to do this particular job more effectively and more efficiently. This led to the bill which we recommended last August.

Senator PEARSON. Is it work on those procedures which gave rise to the recognition of some of these problems?

Mr. WHITE. That is correct. We recognized that existing procedures involved an inherent duplicative effort on our part. Our staff would much prefer to use our resources as efficiently as possible. Under the existing procedure, we tried to explore the two major projects the licenses of which expire in 1968 as thoroughly as we knew how, and to canvass the Federal and State agencies for their views. We have made our recommendations to the Congress, through a very lengthy, detailed letter to which was appended a Commission staff report.

Assume if you will that the Congress follows our recommendation in these two cases which is that there not be recapture. We must then have another proceeding in connection with an application for a relicensure by the existing licensee. For all I know there may be others who will believe that they can do a better job than the licensee and they too will appear. That means we will then have had two proceedings.

The procedure that we have proposed in this bill will consolidate all of those efforts into a single major proceeding, in which we would expect to develop all the facts.

Senator PEARSON. What do the Vice President and Speaker of the House do once they get your letter of recommendation?

Mr. WHITE. It is customarily referred to the congressional committees that have jurisdiction over the particular subject matter.

Senator PEARSON. Will it come back to the Commerce Committee?

Mr. WHITE. In this case, it will be forwarded to the Senate Commerce Committee.

Senator PEARSON. I understand about the two hearings in the hypothetical case.

Tell me this: In this stage, which I take it is 2 years prior to expiration, you have to make a report to the Congress, and I guess you do it as you indicated, to the Vice President and the Speaker. Don't you have a hearing at that time?

Why is it that you don't feel that you have adequate knowledge and sufficient facts and so forth to act?

Mr. WHITE. Thus far, we have not had a hearing prior to submitting our recommendation to Congress. We have solicited from the licensees their plans and ideas as to what they intend to do.

Senator PEARSON. I understand that comes in 5 years ahead of time.

Mr. WHITE. That is correct.

Senator PEARSON. And 2 years before the expiration before you make a recommendation.

My point is, after 48 years, or whatever the period of the license may be, can't you, 2 years before the expiration have a hearing and find out everything you need to know to make a recommendation to Congress?

Mr. WHITE. On the recapture point?

Senator PEARSON. Yes.

Mr. WHITE. Indeed we could, but if the answer—

Senator PEARSON. Is "No," then you have to have another hearing?

Mr. WHITE. Precisely.

Senator PEARSON. This licensee or another one.

Mr. WHITE. Yes.

Our view is that this ought to be consolidated into a single procedure early enough to be able to recommend recapture to the Congress, if we believe recapture is appropriate. If we do not believe recapture is appropriate, it is our view that the commission should go ahead and license the project, relicense the project, without the necessity of further action by the Congress. There are plenty of opportunities for notification and we would of course keep Congress advised.

Throughout all of this, it seems to me important to repeat, in any particular case where the Congress wants us to act one way or the other, whether it be to recapture or not to recapture, it would be very simple for Congress to take that up as a separate matter.

The history of the Federal Water Power Act of 1920 clearly demonstrates the inadvisability of requiring the Congress to act on each particular project by individual legislation. The Congress soon realized that this piecemeal approach was not a very satisfactory way of handling this particular problem. That gave rise to the creation of the Federal Power Commission in 1920.

Senator PEARSON. Isn't the Commerce Committee going to have to have a hearing on each one of these to make a recommendation?

Mr. WHITE. Not under our proposed procedure.

Senator PEARSON. Under the present procedure?

Mr. WHITE. Under the present procedure, I don't know whether it has to have a hearing. We would expect it would have to act. The awkward spot we are placed in is that we have, in effect, said to the Congress, "Here is the way we propose to do this without the benefit of any new legislation. We will advise you 2 years in advance. When we sense that the Congress is not going to recapture, or that it has no interest in recapture, then we will consider relicensing."

We do not believe that is a very satisfactory way for us to function, to divine the right time. For example, if one individual Member of Congress introduces a bill for recapture, should that stay the Commission's hand? Should we wait until that bill has been voted up or down?

Senator PEARSON. I think you would have to.

Mr. WHITE. We would not want to say yes to that because it would mean that one Member of Congress could indefinitely block a licensing action. This is the reason we are coming to you with a legislative proposal so that we can have a procedure under which all relevant matters can be considered and under which we can proceed in an orderly manner.

Senator PEARSON. On the legislative history, has anybody checked this?

In 1920, when this act was passed, was it of great moment then that Congress was specifically retaining its right to act on this again? Was this a vital point in the passage of the original act?

Mr. WHITE. Yes, and in our detailed statement, I think we do focus, Senator Pearson, on that point.

Senator PEARSON. I apologize. I didn't get a chance to read it.

Mr. WHITE. I didn't read it here, either. I submitted it for the record.

In our detailed statement, we go into the history of the 1920 act, and I think that point is clear. One of the reasons which prompted the Congress to reserve that option is fairly obvious. In 1920, the electric power industry was in its infancy. Nobody then could really, with any assurance, have predicted how this industry was going to evolve in the United States.

Senator CANNON. I think there is one point that makes it quite evident the progress that has been made.

Under section 6 of the present act, you are prohibited from altering the license conditions without the licensee's approval. Under this proposal, in relicensing you are specifically, in section 3, trying to retain the right to change the terms of the license, to make further reasonable requirements during the period of the relicense term.

Mr. WHITE. That is correct. We have not requested the same authority with respect to new licenses which may be issued in the future, but with respect to the period on top of the initial license period. We think this makes sense, and that is one of our proposed—

Senator CANNON. What do you actually envision as coming within the term "further reasonable requirements"? What type of things are you talking about?

Mr. WHITE. It is a little difficult to be precise. As your question suggests, we are talking about the future. Ten years ago not very many people would have predicted that the Nation would be so concerned about esthetics, about the impact of the construction of a project on the beauty of an area. Yet in recent years the courts have sent cases back to the Federal Power Commission saying that it did not devote enough attention to these particular considerations.

I think we are today in a position to focus on a large number of considerations of this kind and in our license conditions, conditions that we impose on new licensees, we are very careful to reserve our ability to take care of those areas of future concern that we are able to anticipate. A typical example would be the supply of a municipal water supply for a community nearby. This has arisen in some of our licenses.

Senator CANNON. You weren't thinking about the Boulder Canyon Act by any chance, were you?

Mr. WHITE. No, sir. But this is the nature of the type of the problems.

Another innovative suggestion here is that some of these projects might be taken over by the Federal Government or relicensed for non-power purposes, nonpower uses. There are some projects that are still capable of generating some power, but the needs of the area are such that continued use of the project as a power-producing facility would not best meet comprehensive use of water resources of the region.

We have thus tried to provide again a procedure whereby should that be the case, as the expiration of a license, there would be an opportunity and a means of converting the project to nonpower uses.

Senator CANNON. Isn't this open-ended provision likely to inhibit investment capital or expansion in connection with the project?

Mr. WHITE. Not very much for the simple reason that for the most part these projects are already constructed, they are in being. It is conceivable of course that this might have an impact if somebody wanted to rebuild the project completely. Under that situation

it may well turn out to be equivalent to or tantamount to an initial license as distinguished from a relicense. The relicense period is really something on top of the original license period which prompted the initial investment.

I think the answer is no, that it will not have the effect of inhibiting action either by a new licensee or by the old licensee.

Senator CANNON. The various notices that are provided for in the bill I presume would be published in the Federal Register?

Mr. WHITE. Yes, sir. If I recall correctly they are also published locally—I can ask our general counsel here, and Mr. Thomas. We also provide for some direct notification of agencies that are interested.

Senator CANNON. The agencies and the parties involved receive direct notice?

Mr. WHITE. Yes.

Senator CANNON. So that there is no question but what everyone who wanted the opportunity to be heard would certainly have the opportunity for notice?

Mr. SOLOMON. There is also a publication in the local paper.

Mr. WHITE. The answer is yes, they will have had an opportunity. We feel the obligation to see to it that people who are interested, or who might have an interest, are advised. The last thing we want to do is to go through the procedure and then have it challenged on the ground that we failed to give proper notice. We are very mindful of the need for this. We feel our procedures are quite adequate.

Senator CANNON. Would the Administrative Procedure Act apply to a relicensing procedure?

Mr. WHITE. Yes, sir.

Senator CANNON. Under the old bill these licenses were for 50 years?

Mr. WHITE. Up to 50 years. Fifty years is the maximum.

Senator CANNON. Were any not granted for a 50-year period?

Mr. WHITE. Yes, a large number were not for the maximum. Some were for 40 years, some for 25 years.

Senator CANNON. So it is conceivable here that the authority to relicense for a shorter period of time might well be used?

Mr. WHITE. Yes, sir.

Senator PEARSON. Mr. Chairman, will you yield?

Senator CANNON. Yes, sir.

Senator PEARSON. Mr. White, suppose we pass this bill and set up the new procedure. What would be the general counsel's advice to you if a Member of Congress still put in a bill for recapture?

Mr. WHITE. Our general counsel, Senator, is an extraordinary fellow. I would hate to predict what he would advise.

Senator PEARSON. You are a pretty good lawyer, too.

Mr. SOLOMON. If this bill went through, Senator Pearson, I think it is clear that if the Commission relicensed and there was a stay, that this member's bill would be of significance legally, at least, through the remainder of the stay period specified in the bill, the end of a subsequent Congress after the report was made—

Senator PEARSON. I put the case—

Mr. SOLOMON. That is the legal aspect. I think the license would automatically go into effect if Congress had not acted prior to the expiration of that stay period. The bill is drafted in terms of a condition subsequent. We would relicense, subject to a stay. If Congress

within the period had not acted, the relicense would become effective as a matter of law.

Senator PEARSON. This could take place even though there was a pending piece of legislation in the existing Congress then?

Mr. SOLOMON. That is correct. The procedure here is not to sign off; the Commission would relicense, if that is what it believed was appropriate. This relicense would be effective as a license unless Congress acted within the specified term.

Senator PEARSON. Suppose you relicensed and Congress passed the act?

Mr. SOLOMON I beg your pardon?

Senator PEARSON. Suppose you relicensed and Congress passed a piece of legislation that was introduced by a member of the Senate or the House?

Mr. SOLOMON. Your question, as I understand it, is this. The Commission relicenses; the Department of the Interior, again to use the Chairman's example, requests a stay. Congress does not act during the stay period. At the expiration of the stay period the license automatically goes into effect. Thereafter Congress passes an act authorizing recapture of the project. What would be the effect of this act upon the new license? Congress can, of course, take over any project at any time, even after relicensing has become effective. At that time, however, Congress would be acting against a person with a valid license and would therefore be acting under its power to condemn, a power expressly reserved to Congress in section 14 of the present act. By electing to act in the midst of a license period, Congress would have to pay the full condemnation price.

Mr. WHITE. I think, Senator Pearson, there is one additional factor that bears on the point you put your finger on.

There would be nothing to bar the Congress from adopting a special piece of legislation, a moratorium, so to speak, prior to the issuance of a license instructing the Federal Power Commission not to grant a license until December 31, 1970, or whatever the date might be. In initial licensing proceedings there have been a few instances in which Congress has adopted legislation saying to the Federal Power Commission do not grant a license under your authority in this particular reach of the river until the expiration of the next Congress, or until a specified date.

Thus, there are opportunities for a Congress that is focusing on a specific project to tell the Federal Power Commission to do exactly what it wants the Federal Power Commission to do. What we have tried to focus on are the great bulk of cases where the Congress will be comparatively disinterested in the ultimate resolution so long as the proceedings are handled expeditiously, fairly and under satisfactory procedures.

It is our hope that we can come up with a procedure whereby the Congress will not have before it 50 different projects that it must look at. Under the present procedure, we must give you our recommendation for or against recapture with respect to every expiring license and you must consider each recommendation and decide what if anything you wish to do about it. Where you do not focus on a recommendation we must gage the passage of time as an indication of congressional desire. What we have attempted to come up with is a

filtering mechanism, so that we make sure you get the projects we believe should come to your attention, as well as those which another department or agency of the Federal Government wishes to bring to your attention. We think this is a useful recommendation.

Senator CANNON. Mr. Chairman, the present law exempts from recapture, but not relicensing, those projects owned by States and municipalities. Would these projects be subject to being relicensed to someone else under the act?

Mr. WHITE. Yes. Those licenses also have expiration dates and would be subject fully to the Commission's relicensing procedures. As your question states, however, there would be no opportunity for recapture by the Federal Government.

Senator CANNON. And if they were relicensed, would they be subject to section 3 of the bill here that provides for adding additional requirements on them?

Mr. WHITE. Yes, sir.

Senator CANNON. One final question, Mr. Chairman. Does the Federal Power Commission currently have the necessary staff and resources to adequately process applications for relicensing and recapture?

Mr. WHITE. As the saying goes, I am glad, Mr. Chairman, that you asked me that question. We have pending before the Congress a budget which asks for a few additional people to do this work. We have been slightly tardy in our desire to have specific recommendations before the Congress 2 years in advance of the license expiration date. We have not been far behind. We are very anxious to do what we can. We take this responsibility seriously and we do have a group of people who are working on this.

One of our motivations for making this recommendation, this proposed procedure, is to hold down the number of people we will need. So that instead of having duplicative hearings, we will have a single proceeding.

The answer in short is we don't have all we need. We have requested funds from this year's budget for additional personnel. We hope Congress will look upon that sympathetically.

Senator CANNON. Assuming your budget is favorably acted upon this year, have you anticipated this situation?

Mr. WHITE. We have. We have been aware for the past few years that the big bulge was coming. A number of licenses expire in 1970, 1971, and 1972. We are doing our very best to stay abreast of these problems. It is rather disheartening however, to go through a detailed discussion, analysis, interpretation, and finally a recommendation to Congress, and then realize that after a while we will have the very same case back before the Commission to determine whether a new license should be granted to the existing license or to a new applicant.

That is really the basic motivation for this legislation.

Senator CANNON. Do you have a backlog on new applications at the present time?

Mr. WHITE. Let me ask Mr. Thomas.

Mr. THOMAS. Yes, sir. About 190.

Mr. WHITE. What Mr. Thomas is talking about are those projects which are already constructed but which are not under license. There are a large number of projects that were constructed at a time when the owners were not aware of the fact that licenses were required.

Mr. THOMAS. There are 33 pending applications for unconstructed projects.

Senator CANNON. Thirty-three pending applications?

Mr. WHITE. For new unconstructed projects.

Senator CANNON. How long a time would it normally take for you to dispose of those applications?

Mr. WHITE. It is rather difficult to give you an average. Sometimes they continue for years, simply because there is not an adequate showing of the project's feasibility and the applicant wishes to continue the application in order to strengthen it. In others, the application is disposed of rather rapidly. In the most recent case I can think of, which involved a major project in South Carolina, it took less than a year to issue the license. In this case, there were political problems in the Congress concerning competing proposals that had to be worked out. Once the politics of it had been resolved the Commission's procedure itself took less than a year.

Senator CANNON. Thank you very much. We appreciate your being here and giving us your views.

Mr. WHITE. Thank you.

Senator CANNON. The next witness is Mr. Jack Horton, president, Southern California Edison Co., Los Angeles, Calif.

We are very happy to have you here, Mr. Horton. You may proceed.

STATEMENT OF JACK K. HORTON, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF SOUTHERN CALIFORNIA EDISON CO., LOS ANGELES, CALIF.; ACCOMPANIED BY BRUCE RENWICK, SPECIAL COUNSEL, AND ALAN P. O'KELLY, GENERAL COUNSEL, THE WASHINGTON WATER POWER CO.

Mr. HORTON. Thank you, Mr. Chairman.

I have with me to my left Mr. Bruce Renwick, a former vice president of Southern California Edison Co., and presently special counsel for the company.

On my right, Mr. Alan P. O'Kelly, who is general counsel of the Washington Water Power Co., and who proposes to follow me on the witness stand, I believe, and whose testimony we expect to be complementary to that which I have to offer.

It would be my proposal, Mr. Chairman, to endeavor to summarize this prepared statement that you have before you, if that is agreeable.

I ask that the complete statement be incorporated in the record.

Senator CANNON. The statement will be made a part of the record, and you may proceed to summarize.

(The complete statement of Mr. Horton follows:)

STATEMENT OF JACK K. HORTON, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF SOUTHERN CALIFORNIA EDISON CO.

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

Let me first express to Senator Magnuson, Chairman of the Senate Commerce Committee, Senator Cannon and to each member of the Senate Commerce Committee my appreciation and the appreciation of the investor-owned electric utility industry for the opportunity to appear before your Committee.

The relicensing of licensed hydroelectric projects which are subject to takeover by the United States has been the subject of study of investor-owned electric

utility companies operating licensed hydro projects for many months. Representatives of these companies have had discussions with the Federal Power Commission and members of its staff concerning this matter. In order that your Committee may be apprised as to the many complex and important problems confronting the Congress, Federal Power Commission and existing licensees with respect to the relicensing of FPC hydro projects with expiring licenses, my testimony and that of my colleagues will present what I believe to be the consensus of the views of investor-owned electric utility companies operating licensed hydro projects and their recommendations with respect to S. 2445, a bill in which we are vitally interested.

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

We also believe that the recommendations we will make with respect to S. 2445 have a sound basis and are fair and reasonable and in the public interest.

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

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

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

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

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

Chairman Lee C. White of the Federal Power Commission in his letters dated August 28, 1967, to Honorable Hubert H. Humphrey, President of the Senate, and to Honorable John W. McCormack, Speaker of the House of Representatives, transmitting copies of a draft bill to amend Part I of the Federal Power Act, which was subsequently introduced in the Senate (by request) by Senator Warren G. Magnuson (D-Wash), Chairman of the Committee on Commerce, as S. 2445, and in the House of Representatives by Representative Harley O. Staggers (D-W. Va.), Chairman of the Committee on Interstate and Foreign Commerce, as H.R. 12698, stated as follows: "The Commission strongly believes that it should not relicense projects on a long-term basis until the Congress has made known its decision either through enactments concerning specific projects or through general legislation such as we propose today."

Unless legislation is enacted, FPC will refer to the Congress each project with an expiring license on a project-by-project basis. This procedure will subject the Congress to the burdensome task of having to consider in detail and

resolve the many complex issues of comprehensive development of water resources of 50 expiring licensed projects in the next 3 years. To avoid this cumbersome, inefficient and costly procedure, we urge the Congress to enact legislation which would set forth its objectives and policies with standards and guidelines to govern the handling of expiring licenses and which would delegate to the Federal Power Commission, which has the expertise, the authority to consider applications for renewal of existing projects and to issue renewal licenses as well as applications for licenses for new projects.

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

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

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

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

Edison's wholly owned electric generating system consists of 36 hydroelectric plants operated under 21 FPC licenses which expire at various times between 1970 and 2009 with an effective operating capacity of 841,900 kilowatts and 13 thermal electric plants (including the San Onofre nuclear electric generating plant, 80% owned by Edison and 20% by San Diego Gas & Electric Company, placed in commercial operation on January 1, 1968). The total effective operating capacities of these plants are approximately 8,570,000 kilowatts, of which approximately 90% is steam electric generation. In addition, the Company has the use of approximately 277,000 kilowatts of effective operating capacity at the Hoover Dam Power Plant owned by the United States.

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

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

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

One of the world's great hydroelectric developments is "Southern California Edison Company's Big Creek-San Joaquin River Hydroelectric Development," located on the western slope of the Sierra Nevada Mountains east of Fresno, California, popularly called "Big Creek." This project is an outstanding example of American free enterprise and represents a total investment of more than \$215

million contributed wholly by private investors. Big Creek consists of 6 major reservoirs, 15 major dams, 10 major tunnels and a series of 8 licensed hydroelectric plants with a combined effective operating capacity of 690,000 kilowatts, operating under 7 Federal Power Commission licenses, representing an aggregate present net book investment of approximately \$150 million.

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

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

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

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

- (1) Disruption in the operations of Edison Company.
- (2) The operational plan of the Big Creek hydroelectric system would have to be drastically modified to compensate for the removal of, or the separation of the projects, or either of them, from the Edison system.
- (3) Since each of the 6 major reservoirs (combined capacity of 568,830 acre feet in the Big Creek complex is operated under agreements with and in cooperation with downstream irrigators and with the Bureau of Reclamation and other governmental agencies to provide domestic water supply irrigation waters and flood control, the Company's interrelated water rights and irrigation water contracts would present substantial renegotiation problems.
- (4) Loss of at least \$4,600,000 per year in tax revenue to various local, state and federal agencies.
- (5) In addition to the direct tax effects, an indirect and adverse effect upon taxpayers would result from the fact that conservation practices, recreational developments and in some cases, flood control benefits would of necessity have to be supported by additional taxes, by a direct charge against users, or would have to be abandoned.
- (6) Edison would be required to provide the energy and capacity lost by takeover from other sources. This would require replacement of project capacity and kilowatt-hour output by other means of generation on the Edison system; and would also require the installation of new electric lines and facilities and the

reconstructing and rearranging of portions of Edison's existing interconnected transmission and distribution system. The cost of these new facilities is difficult to estimate with certainty and could total several millions of dollars.

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

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

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

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

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

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

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

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

The provisions of the present Act, as amended by S. 2445, with the amendments and changes therein to be suggested by Mr. Alan P. O'Kelly, and a declaration by the Congress of its objectives and policies with standards and guidelines to govern the processing of expiring licenses, and the delegation of authority to FPC to issue renewal licenses, we believe, would be in the public interest, assure the orderly comprehensive development of the Nation's water resources and carry out these policies.

Mr. HORTON. First of all I would like to express our appreciation to you, Mr. Chairman, and to Senator Magnuson, and to Senator Pearson for the opportunity of our industry to appear before your committee this morning.

The relicensing of hydroelectric projects which are subject to takeover by the United States has been the subject of study by the investor-owned electric utility companies who operate licensed hydro projects for many, many months. My testimony and that of my colleagues will present what I believe to be the consensus of the views of the investor-owned electric utility companies operating licensed projects, and their recommendations with respect to S. 2445, a bill in which we are vitally interested.

The investor-owned electric utility industry in the United States is composed of about 300 operating companies, as of December 31, 1967. This industry has approximately \$70 billion invested in electric facilities and an installed capacity of 202.5 million kilowatts. Also as of that date 275 projects with an aggregate capacity of some 29 million kilowatts were operated under FPC licenses.

The terms of the original licenses, as you know, began to expire in 1967 and by the end of 1971 the licenses of 50 hydroelectric projects located in various parts of the United States will expire.

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

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

We think that unless legislation is enacted it is obvious that the FPC will refer to the Congress each project with an expiring license on a project-by-project basis, as Chairman White indicated this morning. To avoid this cumbersome, inefficient, and costly procedure, we urge the Congress to enact legislation which would set forth its objectives and policies with standards and guidelines to govern the handling of expiring licenses and which would delegate to the Federal Power Commission, which has the expertise, the authority to consider applications for renewal of existing projects and to issue renewal licenses as well as applications for licenses for new projects.

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

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

Our company, as I think you know, Mr. Chairman, our company serves more than 7 million people throughout our service territory which includes an area of about 65,000 square miles in central and southern California and Nevada.

Our company's wholly owned electric generating system consists of 36 hydroelectric plants operated under 21 FPC licenses which expire at various times between 1970 and 2009 and have an effective operating capacity of 841,900 kilowatts. We also have 13 thermal electric plants, and the total effective operating capacities of all these plants are approximately 8,570,000 kilowatts, of which about 90 percent is steam-electric generation.

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

Senator CANNON. What do you mean by net book investment?

Mr. HORTON. That is roughly the original cost less depreciation. It is a term I believe that is referred to in the statute.

Although steam-electric generating capacity does approach 90 percent of our system's resources, hydrogeneration plays a very important role in the Edison electric generation system.

Our Big Creek development, which is located on the western slope of the Sierra Nevada Mountains east of Fresno, Calif., consists of six major reservoirs, 15 major dams, 10 major tunnels, and a series of eight licensed hydroelectric plants here with a combined effective operating capacity of 690,000 kilowatts, operating under seven Federal Power Commission licenses, and representing an aggregate present net book investment of approximately \$150 million. So that as you can see is our largest single system of hydroelectric properties. In addition to the capacity and billions of kilowatt-hours it annually supplies, Big Creek provides important contributions to many beneficial public purposes, including water supply, conservation of natural resources, watershed improvement, irrigation, soil erosion controls, flood control, fish and wildlife protection, and recreation. It also furnishes millions of dollars in tax revenues to Federal, State, and local governments. Property taxes paid to Fresno County, Calif., alone amount to over \$2,500,000 annually.

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

Each of the eight licensed hydroelectric plants—including projects 67 and 120—in the Big Creek development is operated as an integral part of a comprehensive development of the Sierra Nevada watershed and of the Edison electric system. The FPC licenses for projects 67 and 120 are for terms of 50 years which expire in March 1971.

And I am mindful of your comment earlier this morning, Mr. Chairman, that we are not here to deal with specific license projects that are expiring. What I have to say here is merely to illustrate the point and thrust of our testimony.

In connection with these projects 67 and 120, we have advised the Federal Power Commission that it would have the following adverse effect upon the Edison Co. and its customers, and the comprehensive

development of the San Joaquin River watershed if either of them or both were to be taken over—and these are the adverse effects we see—disruption in the operation of the Edison Co. system.

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

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

4. Loss of at least \$4,600,000 per year in tax revenue to various local, State, and Federal agencies.

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

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

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

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

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

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

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

We also believe it is in the public interest to assure continued ownership, unless FPC should find that the project, with or without modifications proposed by the licensee or prescribed by FPC, could not continue to fulfill the needs of comprehensive river basin development.

Taking a licensed project away from the original licensee can only be justified where the existing licensee is unable or unwilling to carry

out whatever modifications are found desirable for comprehensive development, or where takeover is required to achieve a necessary or desirable public use of the water resources which is incompatible with continued power development under license.

The provisions of the present act, as amended by S. 2445, with the amendments and changes therein to be suggested by Mr. Alan P. O'Kelly, and a declaration by the Congress of its objectives and policies with standards and guidelines to govern the processing of expiring licenses, and the delegation of authority to FPC to issue renewal licenses, we believe, would be in the public interest, assure the orderly comprehensive development of the Nation's water resources and carry out these policies.

Senator CANNON. Thank you, Mr. Horton.

Getting back to the question that I asked you on how you defined net investment: In your bookkeeping process do you depreciate your entire investment over the term of the license itself?

Mr. HORTON. No, sir. We depreciate it over the estimated useful life of the project or parts of the project. For example, as you know, these licenses are for terms not in excess of 50 years. I believe, in the case of dams, we have an estimated useful life of, say, 100 years. So that, to illustrate what I am saying, these projects 67 and 120 that are currently expiring at the end of 50 years are about one-third depreciated.

Senator CANNON. And this then would be the net investment cost should the Government decide to go in and recapture, that is, whatever you figured was remaining?

Mr. HORTON. That is my understanding, yes.

Senator CANNON. Would there be any change in the event the Government determined, the FPC determined, to license another license holder? Would the situation still be the same?

Mr. HORTON. Another license holder?

Senator CANNON. Another applicant, let's say.

Mr. HORTON. I would think so. For one thing, the licensee whose project is being either recaptured or transferred to a new licensee, would be entitled to not only the net investment but to severance damages. And so the value of those severance damages would of necessity be added to the third party's new investment.

Senator CANNON. And that would come into these itemized disadvantages that you outlined. A number of those would have a value insofar as a new licensee was concerned, whereas they might not have as great a value so far as the Federal Government is concerned?

Mr. HORTON. To the extent, if I interpret your question, Senator Cannon, presumably the new licensee would have to recover his new investment in rates from the power produced from the project and since he would have severance damages added to the present net investment, theoretically somebody would be paying higher rates.

Senator CANNON. In your item 4, where you show there would be a loss of at least \$4.6 million in tax revenues to various State and local agencies, that would be the case in the event of recapture by the Federal Government but not necessarily in the event a new licensee were to come in?

Mr. HORTON. It would be the case in the event a new licensee were a public agency.

Senator CANNON. That is right. A nontaxable agency.

Mr. HORTON. Yes, sir.

Senator PEARSON. Mr. Horton, I should have asked Mr. White this question. Has there ever been any case of recapture by the Government in any installation such as we are considering today?

Mr. HORTON. I think not.

Senator PEARSON. Has there ever been a case where the licensee has been changed after hearings?

Mr. HORTON. No, sir; not to my knowledge.

Senator PEARSON. So all cases here to date pertaining to this subject matter have been those where we have had a renewal of the present licensee, is that right?

Mr. HORTON. Yes. And there haven't been a good many of those. The big batch is just coming up.

Senator PEARSON. They are on the horizon now?

Mr. HORTON. Right.

Senator CANNON. Do I correctly understand that the basic difference between your position and that of the FPC relates to the preference for existing licensees? You may recall I asked Mr. White a question in connection with page 6 of his statement where he said:

In preparing the draft legislation, we have rejected recommendations that we should establish a statutory preference for the existing licensee, even where a competing applicant could better meet these criteria.

Mr. HORTON. Let me answer you this way, Mr. Chairman. First of all I think that the two approaches, that of the FPC and our approach, have much similarity. The objectives in general are the same. You asked about basic differences. I think first of all we would, as you can see from my direct testimony, delegate to the Federal Power Commission the authority to renew licenses without going back to Congress. Again on the assumption that the FPC has the expertise in this field and for, I suppose, many of the same reasons that this delegation was given to them in 1920, all of course to be conducted within guidelines and standards to be set by Congress.

Mr. O'Kelly is going to, in his testimony, describe to you two other rather fundamental differences that we have with the FPC proposed language.

On this question of the right of the present licensee to have some priorities of renewal, to use that term, we think, as Mr. O'Kelly will cover in his testimony, that the present statute and its legislative history demonstrate that we do have that right. So what I am really saying to you in my testimony and I should say that you will probably hear before you are finished, possibly, some views from others who have a different point of view on that interpretation of the legislative history of the statute—what I am really saying to you is that if there is any doubt on this score then in that event I would urge that the Congress make that clear by amendment to the statute.

Senator CANNON. Aside—

Mr. HORTON. Would you like to add to that, Mr. O'Kelly?

Senator CANNON. I think it would be best to wait until he makes his statement, and then we may be further into this thing.

I have a further question. Aside from the Commission's expressed hesitancy to relicensing projects on a long-term basis until it knows whether Congress wants to recapture, do you have any other objections to the present procedure?

Mr. HORTON. Only those to which I referred and to which Mr. O'Kelly will testify.

Senator CANNON. Only those which you mentioned now. Very well. Senator Pearson?

Senator PEARSON. Are you advised that under the present statute the existing licensee has the preference?

Mr. HORTON. Yes, providing that he meets the standards of the act which relate to the comprehensive development of the waterway, and would meet any reasonable conditions that are new, that the Federal Power Commission would find after hearing on the matter.

Senator PEARSON. You said that if there is doubt in the committee's mind you would hope we would add it in. Is there any doubt in the advice that you have been given by your General Counsel as to whether or not a preference exists in the statute?

Mr. HORTON. No, sir.

Senator PEARSON. You think there is?

Mr. HORTON. Right.

Senator PEARSON. And there certainly is, by virtue of the realities of the situation. You estimated that severance damage plus investment of the new licensee would be a substantial undertaking?

Mr. HORTON. Yes, it would.

I should say I have no doubt about the right of the Congress to recapture.

Senator PEARSON. I understand this.

Mr. HORTON. In that event we would be entitled to net investment plus severance damage.

Senator PEARSON. Thank you.

Senator CANNON. Mr. O'Kelly, we will hear from you at this time.

STATEMENT OF ALAN P. O'KELLY, GENERAL COUNSEL, THE WASHINGTON WATER POWER CO., OF PAINE, LOWE, COFFIN, HERMAN & O'KELLY, SPOKANE, WASH.

Mr. O'KELLY. My name is Alan P. O'Kelly. I am a partner in the law firm of Paine, Lowe, Coffin, Herman & O'Kelly, 602 Spokane & Eastern Building, Spokane, Wash., general counsel for the Washington Water Power Co., East 1411 Mission Avenue, Spokane, Wash., and make this statement on behalf of this company.

The Washington Water Power Co., which operates an electric system in eastern Washington, northern Idaho, and the extreme western part of Montana, is very interested in any matters that affect hydroelectric licenses. The company owns and operates hydroelectric plants with a capability of 830,600 kilowatts and purchases on a long-term basis a portion of the output of additional hydroelectric plants in central Washington owned and operated by public utility districts. It is unique in that it is one of two—I believe Idaho Power Co. is the only other one—major investor-owned systems in the United States which is "100 percent hydro." In other words, all of our plants are hydroelectric at the present time.

Mr. Horton's statement of the effect of taking a hydro project away from an original licensee is certainly applicable in varying degrees and to a very great degree to the Washington Water Power Co. I am sure that all investor-owned electric utilities would endorse his statement of policy.

The proposed legislation embodied in S. 2445, which was proposed by the Federal Power Commission, is fundamentally an improvement in the mechanism of relicensing hydroelectric projects on the expiration of an existing license and is an essential modification of the present law, if it is assumed that the Federal Power Commission is correct in the position it has taken that it cannot or should not relicense a project without first referring the matter to Congress.

However, there are a few questions raised by the present drafted legislation, some that are procedural and some that are substantive.

The first problem is raised by the sixth and seventh "Whereas" and section 2(b). I think Mr. White discussed these at some length this morning. These provisions contemplate that any agency of the United States can—and I don't know how many agencies would be interested—in addition to all the remedies they presently have, automatically block the issuance of a new license for up to 4 years—two sessions of Congress. This provision is undesirable since it could nullify the objectives of this bill to provide prompt solutions to this problem and to avoid numerous controversies in Congress, which as Mr. White pointed out, occurred prior to 1920 and which would occur in much greater volume if something isn't done in the next 10 or 15 or 20 years.

If the agencies are given this authority, their tendency will be to endeavor to avoid criticism by utilizing it to the maximum.

There is always a tendency when an agency becomes swamped with work—and I think this is understandable—to put in an automatic objection to delay making of a decision. The adoption of this provision by Congress could thus result in lengthy delays in all relicensing procedures and impose an intolerable burden on the Congress.

In addition, such a provision seems unnecessary because the agencies have the power to intervene in the proceeding before the Federal Power Commission and to take appeals to court which can tie up the licensing procedure for many years. This provision could add 2 to 4 years to a 5-year period contemplated by the bill for all relicensing. It would aggravate the already complicated problems of the utilities in planning for future reliable sources of power.

In addition, this provision is unnecessary, because if in any particular case, and this was pointed out this morning when Mr. White was before you, if Congress decided prior to expiration of a license, and they would have 5 years to look at this, and decided that the public interest indicated that a project should be taken over or even that a takeover should be considered, it would have ample opportunity as it had in the past, to either bypass the relicensing procedure or to order a delay in the relicensing procedure.

There appears to be no sound reason for giving the government agencies greater control over the relicensing proceeding than they have over the original licensing. The Commission in both instances should continue to have the basic responsibility for determining whether a project should be originally licensed or relicensed at the end of the license period.

I would interject here that the experience over 50 years doesn't really indicate the need for this provision because the present act has worked out very well in the original licensing, and if anything it would seem to me to be of greater importance to look at original licensing than it would be to in most cases look at relicensing.

The second problem is raised by section 3(b) of the proposed act. This provision is not a procedural provision, but is a substantive change in the law. At first blush it might appear innocuous since the Federal Power Commission has broad authority to put any reasonable condition into a license at the time it is issued. Upon careful analysis, however, it becomes obvious that with the proposed section 3(b) in the act a new license is no longer even a license; it is only a permit.

Any licensee accepting a license under these conditions would be, in effect, giving the Federal Power Commission a blank check to require the licensee to do almost anything it decided it wanted the licensee to do regardless of cost or effect on the licensee.

The licensee, in effect, would be accepting unlimited liability which could seriously affect the appraisal by the investing public of the relative merit and safety of the licensee's security issues. This was the philosophy inherent in the pre-1920 acts which long delayed the development of the hydro resources of the United States.

I was interested to note Mr. White's recognition of this pre-1920 problem.

Reverting back to this approach to licensing could only be expected to have similar unsuccessful results. Licenses have been granted under the present law since 1920, a period of tremendous advance in technology and river development. The law as it now stands has proven itself and has proven itself to be flexible to meet changing needs. I am not aware of any reason based on experience for departing from a time-tested formula. This authority would be particularly damaging—where the licensee proposes a substantial redevelopment of the project. The financing of such redevelopment without a firm license would be difficult if not impossible.

The third problem which arises in connection with this legislation does not relate to anything that is written into the bill but has been raised in discussion of the bill by various groups. This is the question of preference or priority on the issuance of a new license. Under the law as it now stands, it appears that the license should be granted to the original licensee if his development and operation of the project meets the standards of the act. I would interject, because of some of the questions, the standards of the act require the best development for comprehensive development. So there aren't any best or better. It does require the licensee, if he wants a new license, to propose or accept a plan that is best for comprehensive development.

Senator CANNON. But according to Mr. White's statement, there would be no statutory preference even then. Right?

Mr. O'KELLY. It is not a statutory preference. It is a preference based on the fact that you are the original applicant. And our memorandum, which I will refer to later, points out how that developed.

Senator CANNON. All right.

Mr. O'KELLY. Mr. White has misunderstood, if he thought we made proposals to the effect that we should have a preference even though someone else had a superior development. I think there was a misunderstanding between us because I don't think that we propose a preference which would override a superior development which would better accomplish the purposes of the act.

The present statute is reasonably clear that preference rights of public bodies exist only on the granting of a preliminary permit, an original license or a new license to a new licensee, which assumes that the Commission has determined that the license should not issue to the original licensee on relicensing. The words of the statute are quite clear in this respect.

We would like to incorporate in the record a memorandum discussing this in more detail. The memorandum is entitled "Memorandum on Priority Among Applicants for Licenses Under Section 15 of the Federal Power Act."

Senator CANNON. That will be made a part of the record.

(The memorandum follows:)

MEMORANDUM ON PRIORITY AMONG APPLICANTS FOR LICENSES UNDER
SECTION 15 OF THE FEDERAL POWER ACT

SUMMARY

This memorandum establishes that an original licensee has a prior right to a new license term over any applicant seeking to acquire the original licensee's project if the original licensee's plans are, or, with such modification and conditions as the Commission may prescribe under Section 10(a) of the Federal Power Act would be, best adapted to a comprehensive plan for improving or developing a waterway in accordance with standards of the Act.

The preference granted to State and municipal applicants applies only to:

- (1) The grant of a preliminary permit,
- (2) The granting of a license for new projects if no preliminary permit has been issued, and
- (3) The relicensing of a project whose license has expired where the original licensee does not apply for renewal or will not or cannot meet the standards of the Act.

THE ACT

The only provision relating to preference for State and municipal applications for license are contained in Section 7 of the Act. Section 7(a) provides in part:

"Sec. 7(a) In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 thereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; . . ."

Section 15 of the Act which is referred to in Section 7(a) provides:

"Sec. 15. That if the United States does not, at the expiration of the original license, exercise its right to take over, maintain, and operate any project or projects of the licensee, as provided in section 14 hereof, the commission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the original license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof: Provided, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the original licensee, upon reasonable terms, then the commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the original license until the property is taken over or a new license is issued as aforesaid."

It should be noted that throughout section 15 a careful distinction is drawn between "the original licensee" and "a new licensee." The section provides authority for the Commission at the end of an original license period to issue a new license to the original licensee or a license to a new licensee. In addition,

it provides that, if "a license to a new licensee, or . . . a new license to the original licensee" is not issued, "an annual license to the then licensee" shall be issued. The distinction between the original licensee and a new licensee is maintained in every clause.

It should be noted further that section 7, while giving preference to State and municipal applications for "preliminary permits" and initial "licenses," does not give such preference in the case of new licenses. It would have been a simple matter for Congress to have so provided if it had wished to do so. Section 7 provides preference for State and municipal applications under section 15 only "in issuing licenses to new licensees." When the two sections are read together, it is clear that section 7 provides for preference to State and municipal applications under section 15 only over applications by other potential "new licensees" and not over "the original licensee."

The fact that the Act does not give a State or municipal applicant a preference as against the original licensee in the grant of a new license for an existing project is precisely parallel to the way in which the Act deals with State or municipal applications for a new project where a preliminary permit has been issued to another applicant. In that instance, section 7(a) of the Act makes clear that State or municipal preference is not applicable—the whole purpose of a preliminary permit being, of course, to "maintain priority of application"¹ while the permittee is conducting its investigations and planning. The "priority of application" granted by preliminary permit is controlling as against a State or municipal application.

The "priority of application" concept antedated the enactment of the Act, and had its roots in homestead and mineral claims laws and regulations, as well as in the early power permits granted by Federal agencies. It is that concept which was the basis for the denial of preference to State and municipal applicants as against both preliminary permittees and existing licensees.

LEGISLATIVE HISTORY

A. Priority of original licensees

The overriding concern of the conservationists during the early part of the century in connection with resources was comprehensive development for all beneficial public uses. Regulations under the Act of February 15, 1901, "An act relating to rights of way through certain parks, reservations and other public lands", for instance, provided that

"Final power permits will be issued only in case it appears that the proposed development will be in general accord with the most beneficial utilization of the resources involved and consistent with the public interest . . ."²

Prior to any statutory preference for particular applications, it was still necessary to decide which of two similar applications should be granted. As might be expected, the only fair and rational basis was the one adopted—priority of application. The regulations of the Department of Interior provided:

"Priority of consideration of applications for final power permits shall be initiated in the order of filing complete applications whether such applications shall be for preliminary permits as prescribed in regulation 10 or for final power permits as prescribed in either regulation 11 or regulation 12 . . ."³

In connection with renewal of permits, if they had not been revoked prior to the end of the 50-year term, the regulations provided that, upon notification to the Secretary of the Interior of a desire to renew and a willingness to "comply with all then existing laws and regulations governing the occupancy and use of lands of the United States for power purposes, the existing permit will be considered as an application for such new permit."⁴ In this fashion the initial permittee received priority of consideration for a new permit.

When statutory mandate first changed the rule of priority of application and required a "preference to municipal purposes" for disposal of surplus Federal water power under the Reclamation Laws,⁵ the preference was narrowly con-

¹ Section 5.

² Department of the Interior, Regulations under Act of February 15, 1901 (31 Stat. 790), approved March 1, 1913, Regulation 4.

³ *Id.*, Regulation 3. Priority on the basis of first use or application or claim-staking has a long history in the water rights field as well as in homesteading, mineral rights, grazing and the like.

⁴ *Id.*, Regulation 6.

⁵ Townsite Act of April 16, 1906, 34 Stat. 116, 43 USC 522, 561 *et seq.*

strued in order to prevent any conflict with the standards of comprehensive development.⁹ The conservationists were fearful that some projects proposed by States and municipalities might not make full use of the resources. They were, however, willing to permit some leeway in this regard if the project proposed by the State or municipality served an essential public purpose. The debates on this subject from 1911 through 1917 were reflected in the administration water power bill introduced by Mr. Raker on January 15, 1918 as H.R. 8716. It provided:

"That in issuing licenses, hereunder, the commission may in its discretion give preference to applications for licenses by States and municipalities for developing power for State and municipal purposes, provided the plans for the same are deemed by the commission to be adapted to conserve and utilize in the public interest the navigation and water resources of the region."

"Municipal purposes" were limited in the bill (section 3) to those "directly pursued by the municipality itself with the primary object of promoting the security, health, good government or general convenience of its inhabitants."

The provision that the preference be discretionary was thought, on the one hand, to be a protection against licensing new developments which did not make full use of the water resources solely because the applicant for license was a State or municipality. On the other hand, the preference section as proposed by the administration would have permitted the licensing of such less than complete developments "for State and municipal purposes," if the Commission deemed it appropriate. Such discretion had been provided in the first Ferris bill for the development of water power on public lands, introduced in 1913 as H.R. 14893, 63rd Congress. The definition of municipal purposes in section 3 of the administration bill was taken directly from the definition in section 7 of the regulations of the Department of Interior, in relation to the use of government lands. In regard to licenses at the end of the original license term, the administration witnesses assumed that the standards of priority would give a first option to the original licensee, provided he could meet the standards of the Act and would comply with then existing regulations.⁷

The preference proposed by the administration bill was thought to be not so much for a particular type of applicant as for particular water uses. This was in line with the recommendations in the final report of the National Waterways Commission, issued March 25, 1912.⁸ It also was consistent with the then interpretation of the Townsite Act of April 16, 1906.

This is not to say that there were not those who had advocated an indiscriminate preference for States and municipalities prior to 1918. The "Adamson bill" of 1914, H.R. 16053, 63rd Cong., was amended on the House floor to provide such a mandatory preference.⁹ M. O. Leighton reflected the administration position on this amendment in commenting on the bill at the request of Sen. Jones, as follows:

"One may advocate municipal ownership of public utilities to the uttermost limit and still wisely oppose this proviso. The municipal use of water power is frequently not the highest and most productive use, . . . the Secretary . . . should not be required to give preference to a municipal corporation when, in his judgment and in that of the Chief of Engineers, such a proceeding would be detrimental to the common good."¹⁰

Similarly, two years later during a Senate debate on S. 3331, Sen. Shields stated:

"There should be no arbitrary preference in favor of municipalities, for a small town or city desiring to develop a part only of the potential water power of a great stream for its limited uses, could in this way block the complete development of its resources necessary to supply numerous other towns and public utilities with hydroelectricity."¹¹

The advocates of public power, however, were unwilling to accept a discretionary preference provision or one limited to municipal purposes as defined in the 1918 administration bill. They were successful in forwarding their position on both points: the preference for State and municipal applicants for original licenses in section 7 was made mandatory, and the definition of municipal pur-

⁹ 30 Ops. Att'y Gen. 197 (1913).

⁷ Hearings before the House Water Power Committee, at 106, 447 (quoted, post, at 11, 12).

⁸ S. Doc. No. 469, 62d Cong., at 61.

⁹ 51 Cong. Rec. 13256.

¹⁰ S. Doc. No. 570 on H.R. 16053, 63d Cong., 2d Sess., at 10-11.

¹¹ 53 Cong. Rec. 1309.

poses in section 3 was expanded to embrace all purposes within the municipal powers of the applicant, without limitation.

The final version of section 7 in this regard, however, also represented a victory for the conservationists. While municipal preference was made mandatory in connection with competing applications for preliminary permits and, in the absence of a preliminary permit, its applications for licenses for new projects, the conservationists were successful in amending the proposed legislation to require comprehensive development of the water resources by municipal applicants. Under section 7 as enacted, the new Commission was given authority to give such a municipal applicant preference only if its plans "are deemed . . . *equally well* adapted . . . to conserve and utilize . . . the water resources." (Emphasis supplied.)

B. Preference upon expiration of original licenses

The statutory scheme in the early part of the century of special legislation for each non-federal project on a navigable stream included a perpetual grant of the water resources. It was this feature in particular that called down Presidential vetoes and eventually resulted in the enactment of the 1920 Federal Water Power Act.

In President Roosevelt's veto message dated April 13, 1908, of special legislation in connection with the construction of a dam across the Rainy River, the importance of a limited term as against a perpetual grant was repeatedly stressed. He and other conservationist leaders looked upon a definite license term as the method to assure that the water resources would be available in the future for their highest public uses. In connection with the disposition of a project at the end of the granted term, the President stated that he would "leav(e) to future generations the power or authority to renew or extend the concession in accordance with the conditions which may prevail at that time."¹²

President Taft would have provided "some equitable provision for fixing terms of renewal."¹³

At the 1911 hearings before the National Waterways Commission, Gifford Pinchot, the chief of the Forest Service, stated:

"I am very strongly of the opinion there ought to be a definite line beyond which all the rights of each company terminate. On the other side of that line it may well be that in the great majority of cases it would be the company which had the first franchise that would hold the second franchise."

Chairman Burton asked, "You believe in giving them the preference?", to which Pinchot responded,

"Yes; within limits. They have an important preference in the possession of the plant, and the chances are that the same company would continue. But the termination of the franchise would give the public a very valuable opportunity to readjust the conditions of public service. . . ."¹⁴

Similarly Rep. Anderson stated in 1914 in connection with the Adamson bill: "[The Government] does not want to operate these waterpower plants. It wants the right of recapture simply as a protection to the Government in case the grantee does not fairly operate the plant. It wants it merely as a reservation in the interest of the public. Nobody expects that the Government is ever going to have to use the recapture power. We are simply putting it in this bill as an additional precaution, and that is all. It is a means of bringing the grantee to terms acceptable to the Government in the public interest. . . ."¹⁵

The position of Mr. O. C. Merrill, Chief Engineer of the Department of Agriculture, on this matter was stated in 1914, as follows:

"With respect to the matter of renewal, I believe that provision should be made in any lease granted that the original lessee should have the right to renew except under two conditions, first, when the site is needed for *public purposes*, either by the nation, by a State, or by a municipality; second, when the lessee refuses to accept at the time of renewal the conditions imposed upon all other lessees."¹⁶ (Emphasis supplied.)

¹² Cong. Rec. of April 13, 1908, at 4854.

¹³ Special Message to Congress, H. Doc. No. 533, 61st Cong., 2d Sess., at 6.

¹⁴ Hearings before National Waterways Commission, S. Doc. 274, 62d Cong., 2d Sess., at 156-157.

¹⁵ 51 Cong. Rec., at 13040.

¹⁶ Hearings before the House Public Lands Committee on H.R. 14893, 63d Cong., 2d Sess. at 417.

All of these statements were in line with the prevailing concepts, pointed out earlier that priority of application and use of the water resources would mandate an opportunity to renew in the original licensee or lessee; that fairness and equity required that the original licensee who had undertaken all the risks of development be permitted to continue to own and operate the project so long as he was, in effect, doing a good job.

In 1918 before the House Water Power Committee, Mr. Merrill stated this administration position as to the possibilities at the end of the license period, as follows:

"The Government will do one of three things. If it is not satisfied with the operations of the existing licensee and does not believe it can get satisfactory operations from the existing licensee for a new period, it can issue a license to somebody else. If it does not it can do one of two things. It can either issue a new license to the existing licensee, or it can take over the property for its own use. It will not take over the property for its own use unless it needs it for its own use."¹⁷

It is clear that members of both Houses recognized that under section 15 the initial preference would be for the original licensee. On June 28, 1919, Rep. Begg offered an amendment which would reduce the maximum license period from 50 to 20 years. In explaining the reason for the amendment (which was rejected), he stated:

"I wish only to say in behalf of my amendment that according to this bill any licensee may renew his license, as he has a preference in the renewal of the same if he is living up to the conditions and regulations laid down by this commission, and all he has to do is to come before that commission and ask for a renewal and he can get it. I offer this amendment on the ground that I believe it is contrary to the best interests of public policy to license any corporation without any opportunity to come back at them and get an adjustment oftener than every 50 years. I offer it for that reason."¹⁸

So also in the Senate. On January 7, 1920, Sen. Phipps made some general remarks about the bill, during the course of which he stated:

"Another feature has been the uncertain tenure of property under existing laws, whereby no assurance is offered the investor that the property will not be taken from the company during the customary term or life of a mortgage; that is to say, the ordinary life of a railway or manufacturing company's mortgage. The 50-year term proposed in the present bill, accompanied by reasonable conditions providing for recapture of Government property, offers some encouragement and relief from existing conditions, and it does not seem unreasonable to accord a preference for renewal to the first holder of license and developer of power possibilities, so long as the Government retains the right to take over the property itself at termination of the lease, or earlier through condemnation proceedings, or to give a lease to some other applicant on reasonable terms provided the original lessee declines to accept same."¹⁹

There is, then, little question that the Congress considered that the original licensee, by reason of his original development and utilization of the resources, had a preference for renewal over the issuance of a license to a new licensee. From the time of the early predecessor bills, a clear distinction had always been drawn between the original licensee or lessee and potential new licensees or lessees. By specifically refusing to give a preference to any other entity, it was assumed that a priority of application reposed in the original licensee.

At the time of the re-enactment of the 1920 Act as Part 1 of the Federal Power Act, there was no change made or proposed that is relevant to the question here considered. In 1956, however, the Commission recommended legislation that would have made explicit the first option of licensees to renewal of licenses for projects which were not taken over by the United States, and the National Association of Railroad and Utilities Commissioners filed a brief supporting the proposed legislation as desirable to clarify section 15.²⁰ In the following year, 1957, after further study, the Commission did not renew this legislative recommendation, on the explicitly stated ground that the Act, properly construed, al-

¹⁷ Hearings before House Water Power Committee, 65th Cong., 2d Sess., at 106.

¹⁸ 53 Cong. Rec. 2037.

¹⁹ 59 Cong. Rec. 1172.

²⁰ Hearings before the Subcommittee on Transportation and Communications of the House Committee on Interstate and Foreign Commerce on H.R. 7468, 84th Cong., 1st Sess., at 6.

ready provided licensees a first option to renew their licenses so that additional legislation was not required.²¹ As pointed out above, this position is fully supported by the legislative history.

In 1964, the American Public Power Association expressed, in its comments in Docket No. R-250, the point of view that the Act gave States and municipalities a preference as against original licensees on license expiration. It is noteworthy that on February 18, 1965, former Commissioner David S. Black, now Under Secretary of the Department of the Interior, in addressing an American Public Power Association workshop, politely noted:

“ * * * The validity of this view—that a municipality enjoys a preference should the Federal Government not exercise recapture rights—is doubtful under the legislative history of the Act.”

For the reasons set forth above, we submit that the precise terms and over-all structure of the Act, as well as its legislative history, compel the conclusion that an existing licensee possesses the “priority of application” which requires the grant of a new license to it as against all applicants to acquire its properties for the new license term, provided, its plans meet the standards of the Act.

Mr. O’KELLY. It is my understanding that the Federal Power Commission representatives have on several occasions expressed similar views of the law. The letter from the Chairman of the Federal Power Commission transmitting this bill to Congress as well as the report to Congress by the Commission in 1957, referred to in our memorandum, are consistent with the views expressed in this memorandum. However, there are some groups who have questioned this interpretation of the statute and some who have contended that the statute should be amended to provide for a preference to public bodies on relicensing.

In considering this problem, it must first be remembered that under the Federal Power Act as it presently exists public bodies as well as the United States have retained the right of eminent domain and can take over any hydro project, where the power of eminent domain has been granted to them by their local State, upon the payment of just compensation. So, we are not talking about whether projects should be owned by an investor-owned utility or whether they should be owned by a public body. We are talking strictly about the price that a public body would have to pay for a project if it took over at the expiration of a license.

Section 15 of the Federal Power Act might be construed—I emphasize that because it has never been construed yet—to provide that on expiration of a license, the takeover of a project by public bodies, as well as the United States, would be on the basis of net investment plus severance damages. The question of severance damages has never been determined by the courts in this case so we have no way of knowing exactly what this may mean. The term “net investment” means the original money put into the plant less certain items including depreciation which are presently being considered by the Federal Power Commission in connection with a rulemaking proceeding—Docket No. R-297. How much these items will amount to is not presently determinable. The only thing that can be said with certainty at this point is that the only advantage in giving a public body the right to take over a new license on the relicensing rather than having to exercise its power under its right of eminent domain is to in effect give the public agency a bargain price which is less than the fair and just compensation provided by the U.S. Constitution and the laws relating to eminent domain.

²¹ 1957 Hearings before the House Committee on Interstate and Foreign Commerce on FPC legislative recommendations, 84th Cong., 2d Sess., at 180.

A project could become a bargain if a large part of the original investment had been written off or time had proven it to be a very good investment. So, what these advocates of a priority for public bodies apparently desire is to have something that has been built up by one group of investors and one group of the consuming public taken away from them and turned over at a depreciated price to a new group of investors and consumers who had no part in the original investment or in the payment for depreciation and other items going into the reduction of the original investment. They, of course, would not want to take over the projects that had proven to be poor investments or to absorb any of the losses on abandoned projects.

The law can be continued in its present state either by an amendment to the bill to express in clear terms the intent of Congress that a new license should be issued to the original licensee unless he cannot or will not meet the requirements of the act for comprehensive development or by making no amendment at this time which we assume would be tacit recognition of the state of the law as described in our memorandum.

I want to thank the chairman and the committee for this opportunity to express my views.

Senator CANNON. Your company buys considerable power from public-owned plants, does it not?

Mr. O'KELLY. Yes.

Senator CANNON. Do you foresee any difficulties that might arise if the FPC imposed additional requirements on public power projects in connection with relicensing?

Mr. O'KELLY. I think some of them are going to bring that to the committee's attention, if I understand rightly. I would see very substantial difficulties myself because they would be faced with this open-ended provision that the Commission has suggested. I would think, anyway, that they may have very serious legal problems in accepting such a provision because normally the municipality or State agency isn't entitled to delegate its authority to the extent of giving anybody a blank check.

Senator CANNON. As I interpret your statement here, then, you feel that there would very definitely be a situation where a public agency might come in and under the terms of the bill and be able to buy out the present license holder at considerably less than the fair market value.

Mr. O'KELLY. This would be the only purpose in giving them the preference, as has been mentioned in answer to a number of questions. As a lawyer I have to confess that we have a statute which has certain words in it which have never been construed by the courts. I am sure that I would take the position if I ever had to in court, that the amount set forth in the statute was the minimum they had to do as a condition of accepting the license, but they would still, if we owned property, they would still have to condemn it. Whether this is true or not, I don't know. I wouldn't want to give the impression that the law is crystal clear in this area.

Senator CANNON. You wouldn't want to be in the position of having advocated both sides of the case?

Mr. O'KELLY. That is right. It becomes difficult.

Senator CANNON. I wouldn't want to put you in that position. Frankly, that is a question that has been in my mind somewhat, and the reason I asked Mr. Horton what his definition was of the term "net investment" is because I can foresee, and I am sure that there are many of these projects that will have been substantially depreciated, and as Mr. Horton said, the period of depreciation of some of the investment is over a much longer period than the term of the license. At least a very substantial amount of this investment may have been depreciated and still may be perfectly usable and have a very important value in connection with the overall operation of the project.

Mr. O'KELLY. This is correct. It is also true that if the United States takes over a project, this is the limit they have to pay. They could also pay the fair value, if that were less. If the public agencies had this, they, too, would have the best of all worlds. They could either use the net investment if the property were substantially depreciated, and were worth a great deal more than the net investment, or take the fair value, whichever were the least.

Senator CANNON. Mr. White suggested the possibility of a 2-year waiting period if a Government agency objected to the relicensing and said this would conform to section 4(e) of the act. Do you agree with that?

Mr. O'KELLY. I think if the Commission had suggested that when they recommended a recapture or takeover, that that would sit in Congress for a 2-year period, and if it didn't they would proceed to relicense, the parallel would be much closer. Actually 4(e) doesn't provide any escape for the FPC. They are still making the decision. The thing we object to, the thing we think is fundamentally unsound, is having the FPC in a position under this bill where they can in effect duck all the controversial cases and just screen out the projects where there is no controversy, which is what I understand Mr. White said this morning. It seems to me they have the expertise and the ability and they have this authority under the original act to screen all projects and either recommend Federal construction or issue a license.

I can't see any difference between that and the relicensing. They should accept the same responsibility on relicensing as they have had on licensing.

Senator CANNON. You state that the law could be continued in its present state either by amendment to the bill to put in clear terms the intent of Congress that a new license should be issued to the original licensee, unless he cannot meet the requirement of the act for comprehensive development, or by making no amendment at this time, which would be tacit recognition of the law as you state in your memorandum. I take it from that that you definitely feel that some type of a preference to an existing licensee should be made crystal clear, whether it is by statute or some other means?

Mr. O'KELLY. This is correct. Assuming that the original licensee is able to meet the standards of the act which is that he can and will provide the best comprehensive development.

Senator CANNON. If we were to pass the bill as it now stands, certainly in view of the legislative history here, where Mr. White says:

In preparing the draft legislation, we have rejected recommendations that we should establish a statutory preference for the existing licensee, even where a competing applicant could better meet these criteria.

That would clearly establish that there would be no preference.

Mr. O'KELLY. I would say he said even where someone else could provide a superior development, which is the qualification. If you read that in connection with Mr. White's letter submitting this matter to the Congress, he amplified that a little bit in two different places. In the beginning he said:

In those rare cases—

I am not sure I agree that they would be necessarily rare—

where the two applicants are equally matched, the Commission believes that the new license should be issued to the original licensee so long as he can meet the standards of the act at least as well as the other applicant.

Later on he said:

Finally we have considered establishing an additional preference for the original licensee to apply in cases where a rival applicant could slightly better achieve the objectives of the act. We believe that all other things being equal, continuity of ownership and management is a value in itself which should be recognized and is to be recognized under the present statute. However, when another applicant demonstrates a superior ability—

A superior ability, which is the same thing he said today—

to meet the congressional objectives, in our view no preference should assure the position of the original licensee.

I think the problem between us is mainly a choice of words. As I said, I don't think we would claim a preference which would override the carrying out of the proper purposes of the act or obtaining the best development. It would seem to me that under normal circumstances if the applicant could or would meet whatever the Commission felt was the requirement for the best comprehensive development, then he should get the license and the matter shouldn't be thrown open for cat-and-dog fights or something like that over minor incidental matters as to whether someone could offer an additional boat-launching ramp or an additional picnicking table. It would get ridiculous if it ended up in something of that nature.

All we are saying is when the license application is made, and when the Commission has found what are the requirements for the best comprehensive development, and the applicant says fine, I accept this license on that basis, that that should end it.

Senator CANNON. You raised as the first problem with the bill the provision permitting any Federal department or agency to stay a Commission relicensing decision. While the Federal Power Commission may be expert in hydroelectric power matters it may not be expert in outdoor recreation, conservation, irrigation, and other non-power uses of a water resource.

Furthermore, some of the agencies given power to stay a relicensing decision as well as some of the possible nonpower uses of water, didn't exist in 1920 when the original act was enacted.

Now do you think it would be in the best public interest to provide the Federal Power Commission with the sole authority to decide the recapture issue?

Mr. O'KELLY. If you mean the total authority to decide the whole issue, in other words to issue a notice of recapture without going to Congress, no, I don't think that is possible. I think the Congress can't abdicate its authority to appropriate money, which is what is involved here.

So far as between the various Government agencies as to whether or not a license should be granted, I think they should have the same authority they have in the present act, which is either to recommend Federal development or grant a license. The experience has been that Congress has had no problem in staying or holding up a controversial project and in stopping relicensing if this seemed to be indicated by the general situation. But these other people, if they are expert, under the bill, without the provisions objected to, would have authority to intervene in the action, to present all of their views to the Commission, and the Commission acts like a judge in a quasi-judicial function where they can weigh the testimony and the evidence of all the experts and relieve Congress of that burden, which I think without something of this kind, could well become intolerable to Congress.

Senator CANNON. What would you think of a provision that the Federal agency could only have the right of recapture by getting congressional approval, an appeal only to Congress?

Mr. O'KELLY. I think that is inherent in the law as it stands, in this provision. I can see—I can't imagine, if this act were passed without that provision, if some Federal agency wanted to get Congress to initiate a recapture proceeding well ahead of the expiration of the license, that anything in this bill would stop them from doing that.

What we object to is we have a 5-year period when this thing is being processed before the Federal Power Commission and is being considered. That sort of a situation is upsetting to both the company and its employees and everybody else because you don't know whether you have a project, don't know whether you are going to be able to continue to rely on this project, the employees don't know whether they are going to continue to have a job. This is a very upsetting proposition. We just feel that 5 years is ample, and they don't need another 4 years beyond that. That makes 7 to 9 years that this could well be kicked around. I don't think that is in the public interest to have that long drawn out period to accomplish this result.

Senator CANNON. Mr. Horton, do you have anything further to add?

Mr. HORTON. Only this, Mr. Chairman: I think that there have been good policy reasons why the present licensees should be permitted to have their position maintained if they can meet the standards of the act. Even if that weren't already the law, as we contend it is. In the first place these companies have, I think, built these projects over the years with considerable risk and entrepreneurship. Now that they are a going concern it seems to me it would be very unfair to allow some Johnny-come-lately to carve out, you might say, what are the best projects that someone else has made a going concern.

Secondly, what I think is very important, we have mentioned in our testimony and I would like to reemphasize, all of these hydroelectric projects are an integral part of a total electrical system. In the nature

of our business we don't plan any single resource solely with respect to that resource per se, but as part of the whole picture of our resources. Again to carve out one of these hydro projects or more would be not only costly to our customers, it would be very disruptive to our electrical system operations themselves, not to mention the impact, as I have said, on flood control programs and recreation programs, all of which are very closely intertwined with the electrical features of the hydro projects themselves.

Finally, as I have said, I think you would have a very substantial tax loss which would occur if these projects were turned over to a public body.

Senator CANNON. Thank you very much.

The next witness is Mr. Walter Bouldin, President of the Alabama Power Co.

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

STATEMENT OF WALTER BOULDIN, PRESIDENT, ALABAMA POWER CO., BIRMINGHAM, ALA., ACCOMPANIED BY GRADY SMITH, VICE PRESIDENT, SOUTHERN SERVICES, INC., AND S. EASON BALCH, ATTORNEY, PARTNER IN MARTIN, BALCH, BINGHAM, HAWTHORNE & WILLIAMS

Mr. BOULDIN. Thank you, Mr. Chairman, for this opportunity. I understand that my entire statement will be a part of the record.

Senator CANNON. That is correct.

(The complete statement of Walter Bouldin follows:)

STATEMENT OF WALTER BOULDIN, PRESIDENT, ALABAMA POWER CO.

My name is Walter Bouldin. I reside in Birmingham, Alabama, and have been president of Alabama Power Company since 1957.

Alabama Power Company is one of the affiliated companies of the Southern Company group, which is made up of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Services, Inc., and Southern Electric Generating Company (SEGCO). The Southern Company owns all the common stock of the first five companies named.

Alabama Power Company is engaged in the generation, transmission, and sale of electric power in 56 of the 67 counties of the State of Alabama. Georgia Power Company, likewise, serves substantially all the State of Georgia; Gulf Power Company serves the northwestern portion of Florida; and Mississippi Power Company serves the southeastern portion of the State of Mississippi. Southern Electric Generating Company owns and operates a steam-electric generating station with an installed capacity of a million kilowatts. The stock of this company is owned in equal shares by Alabama Power Company and Georgia Power Company. Southern Services, Inc., a service company, provides engineering and specialized services at cost for the operating affiliates, SEGCO, and The Southern Company.

Your attention is invited to the map of The Southern Company generating and transmission system attached to my testimony as Exhibit 1. On this map are shown the locations of 29 hydroelectric projects, licensed or in course of being licensed under the Federal Power Act. This map also indicates the tie lines with neighboring utility systems. Exhibit 2 to my testimony shows for each licensed project the capacity, the plant investment, and the date of the expiration of the license.

At December 31, 1967, the operating companies, including SEGCO, owned and operated 29 hydroelectric generating stations, with an installed nameplate capacity of 1,673,605 kilowatts, and 23 fuel-electric generating stations, with an

installed nameplate capacity of 6,499,250 kilowatts, a total installed nameplate capacity as follows:

Company	Hydroelectric stations		Fuel-electric stations	
	Number	Capacity—Kilowatts (nameplate)	Number	Capacity—Kilowatts (nameplate)
Alabama Power Co.....	12	¹ 1,243,225	³ 5%	1,656,250
Georgia Power Co.....	17	² 430,380	9	2,596,000
Gulf Power Co.....			3	610,000
Mississippi Power Co.....			³ 4%	637,000
SESCO.....			1	1,000,000
Total.....	29	1,673,605	23	6,499,250

¹ This does not include the 59,000-kilowatt increase in capacity at Lay Dam and the 40,000-kilowatt generating plant to be installed at Holt lock and dam. Both of these projects have been licensed and are under construction.

² This includes the 240-kilowatt plant at Estatoah Dam, which is not licensed by the Federal Power Commission.

³ Alabama owns 60 percent of 1 station jointly with Mississippi which owns 40 percent thereof.

At December 31, 1967, affiliates of The Southern Company (the Southern System) served 1,894,678 electric customers without taking into account 757,114 customers of the operating affiliates' wholesale customers. The territory served by the group has an area of 120,000 square miles and an estimated population of 7½ million. (1960 Census)

As early as 1912, the founders of this enterprise envisioned an interconnected electric system having geographical bounds not greatly different from the Southern System as it exists today. Before the end of the 1920's, the Alabama, Georgia, Florida and Mississippi companies were affiliated; and thereafter these companies moved steadily toward implementing the concept of major transmission lines throughout their territories and then the full integration and coordination of their systems so that they could be coordinated through a central load coordinating and economic dispatch office. By the early 1930's the operating affiliates were becoming fully integrated within themselves, and interconnection facilities and integrated operations among the several systems were being constantly expanded to provide a completely interconnected and integrated system.

After extensive proceedings, the Securities and Exchange Commission on August 1, 1947, (26 S.E.C.) rendered a decision authorizing the creation of a new holding company to acquire the Alabama, Georgia, Gulf, and Mississippi companies as a single interconnected and coordinated electric system. The new holding company was named The Southern Company. The following excerpts from the Securities and Exchange Commission opinion are pertinent:

"The evidence shows that the four companies have had a history of common planning, development and operation commencing in the middle nineteen-twenties and that since 1930, the central load dispatching office in Birmingham, Alabama, has closely coordinated the use of the generating capacity and the power interchange among the companies pursuant to contractual arrangements which exist among them."

* * * * *

"The record indicates that the large size and the different types of hydroelectric facilities in Alabama and in Georgia require that there be close coordination of such facilities among themselves and with the fuel-electric generating plants to achieve maximum generation from the available water supply. . . .

"According to the record, there are substantial savings in operating costs and fixed charges resulting from coordinated planning and operations. Power supply economies are achieved through sharing of reserve capacity and through joint planning of generating facilities so as to stagger construction and cause facilities to be erected at the sites of cheapest operation irrespective of corporate limits. Further power supply economies result from central load dispatching whereby, by the control of reservoirs, run of river and fuel-electric plants, substantial amounts of water which might otherwise be wasted are conserved and thereby the need for additional generating facilities with accompanying fixed charges is averted or delayed.

"... The aforementioned coordination and the relatively economical operation of the properties which appear, in part, to be due to common control, and the long history of association and other factors previously referred to, have led us to the conclusion that the Section 2(a) (29) (A) size standards, when viewed on an over-all basis, do not bar our approval of the continuance of the proposed combination of properties under Southern..."

The Southern System will in the near future contain 29 licensed hydroelectric generating plants with an aggregate nameplate capacity of 1,772,365 kilowatts. Such capability will amount to about 19 percent of the total thermal and hydroelectric generating capacity on the Southern System. During 1967, electric generation from hydroelectric generating plants on the Southern System amounted to 5.8 billion Kwh, which was almost 12 percent of the 49 billion Kwh total energy supply to the system in that year. These hydro plants are a most substantial and essential component of the generation and transmission resources now being used to provide reliable and economical electric service to consumers in the area served by the Southern System affiliates. In many cases, the high-voltage transmission lines connected to licensed hydroelectric projects form an important part of the bulk power supply transmission network of the Southern System.

The hydroelectric plants on the Southern System are located throughout Alabama and Georgia. The nature of rainfall and resultant runoff in the rivers of Alabama and Georgia is such that great variations occur in river flows, varying from periods of high flow during normally wet periods of the year to periods of very low flow during the dry season. Reservoirs constructed by Alabama and Georgia provide a means of retaining waters for use to supplement the natural flow during periods of otherwise low flow. Storage and subsequent controlled release makes optimum use of water that would otherwise run off to the oceans and be wasted during high flow periods. Such storage releases, together with natural flows occurring during dry periods, provide enough water during dry periods for operation of hydroelectric facilities to meet the short-time requirements of consumers in the area. The demand for electric energy on the Southern System is not constant, but varies widely on an hourly, daily, and seasonal basis. The peak-load period of the Southern System, which normally occurs during the hot weather months of June, July, and August, is characterized by a multiplicity of relatively short-time demands which are in excess of the base loaded steam capacity and which vary in undetermined amounts from moment to moment. Because of varying characteristics of the load, the portion of the company's load in excess of the base load would be less efficiently supplied solely from steam-electric generating plants, the inherent characteristics of which make them more suitable for supplying loads of a more constant nature. Hydroelectric plants are eminently better suited for variable operating requirements since they can be kept synchronized with the system and ready to respond instantaneously to changes in load requirements. The reduction in efficiency of hydroelectric units for this type of operation is much less than that of steam-electric units if operated in the same manner. The use of hydroelectric generating units to supply loads of short duration thus permits the use of steam-electric generating units to supply the more constant, or base load, portion of the System's total load. The combined use of hydro and steam-electric generating facilities, as heretofore described, results in a highly desirable and efficient method of operating in meeting total system requirements.¹

On the Southern System the interconnected, integrated and coordinated operation of hydroelectric generating plants results in greater usefulness and efficiency than operation of such plants in smaller systems.² This can be attributed to the following:

- (a) *Wide geographic dispersion while interconnected with a strong transmission system*³

A reference to the map attached as Exhibit 1 will show that the hydroelectric plants in Alabama are located on three rivers, all of which flow to the Gulf of Mexico at Mobile. In Georgia, hydroelectric generating plants are located on the Chattahoochee and Flint Rivers, which drain to the Gulf of Mexico through

¹ National Power Survey, a report by the Federal Power Commission, 1964, pp. 117, 171, 172.

² National Power Survey, a report by the Federal Power Commission, 1964, p. 171.

³ Prevention of Power Failures, a report to the Federal Power Commission, June 1967, Vol. II, p. 46.

Apalachicola, Florida, and on the Oconee, Ocmulgee, and Savannah Rivers or their tributaries, which drain to the Atlantic Ocean at or south of Savannah. River basins located over such a wide geographic area offer opportunity to take advantage of diversity of rainfall and resultant runoff which may affect water available for generation at any particular plant or groups of plants in a single river basin. The result is that, while flows in one river to one part of the system may be less than normal, flows in another part of the system on another river may be in excess of normal. Many years of operation as an integrated system have shown the benefits of such diversification of geographic area and rainfall patterns.¹ Such diversification permits use of statistical records and operating procedures which result in greater aggregate capability under adverse flow conditions than that which might be obtained for any one plant or group of plants operating independently.

(b) *Interconnected and coordinated system to supply an integrated load*

One of the measures of value of a hydroelectric plant is its ability to deliver a large amount of energy for relatively short periods of time to meet short-time requirements of electric consumers.² In a large interconnected system such as the Southern System, large blocks of capacity are needed to supply the requirements of consumers for only a small portion of the time. For example, during 1966, 1,824,000 kilowatts, or 22 percent of the 8,291,000 kilowatts of peak load on the Southern System, lasted 10 percent of the time or less. While the pattern of demand on small systems may not vary greatly from those on large systems, it is evident that the number of kilowatts required to carry a given percentage of the load is much greater in a large system such as the Southern System than would be required in a small system and, therefore, the ability to make use of large amounts of hydroelectric power to meet short-time peak demands is much greater in a system such as the Southern System than in a small system and is thus economically more valuable in the larger system.

(c) *Spinning Reserves*

Spinning reserves are an important factor in a reliable bulk power supply system.³ The wide geographic dispersion of hydro plants on the Southern System makes them particularly valuable in assuring area reliability. All major hydro units on the Southern Systems are provided with equipment needed for them to run at continuous speed with the gates closed, taking a small amount of energy from the transmission system for this purpose, so that whenever power is required, gates may be opened, releasing water to pass through turbines to generate power at full capacity in a matter of seconds. Another licensee might elect to shut down the units when not loaded, and this spinning reserve would be lost.

(d) *Increased measure of assurance against extensive blackouts under emergency conditions*

In addition to acting as spinning reserves in the manner described above, many of the hydroelectric units on the Southern System are equipped with devices which automatically cause them to generate the power required up to maximum capability in the event system load exceeds system generation for any reason and causes a resultant decrease in system frequency. In such event, relays and associated devices come into play automatically, release water to pass through turbines to generate power at required capacity in a matter of seconds, thereby providing an increased measure of assurance against extensive blackouts under emergency conditions. This type of operation would not be assured without unified control.

(e) *Start-up of steam electric units in emergencies*

Major electrical disturbances publicized in recent years have emphasized that it may be necessary to provide a means of starting steam-electric generating plants without the use of any electric power from their own generating units.⁴ In case the entire Southern System or a portion of it were to lose power, the

¹ National Power Survey, 1964, p. 171.

² National Power Survey, 1964, pp. 107, 120.

³ Prevention of Power Failures, a report to the President by the Federal Power Commission, July, 1967, Vol. I, p. 100; Vol. II, p. 21.

⁴ Prevention of Power Failures, a report to the President by the Federal Power Commission, July, 1967, Vol. I, pp. 11, 100; Vol. II, p. 134.

hydro plants can be placed in operation merely by opening gates releasing water to the turbines, and can then supply large amounts of "cranking" power to steam-electric plants for start-up. In order to effect this important function, it is necessary that a hydro plant be connected to a steam plant through a transmission line with adequate capacity. Our dispatchers have prepared procedures using existing personnel and equipment to perform necessary functions to provide a clear path from specific hydroelectric plants to selected steam plants should the need for such cranking power arise. Anyone taking over our hydro projects could not be expected to operate them in this manner, and especially could not be expected to interrupt his own loads in order to provide starting power to the steam plants of the Southern System.

Interrelation of specific hydro projects

Reference to specific projects will point up the additional public benefits which would accrue from a relicensing policy. One of these projects is Alabama Power Company's Mitchell Dam project on the Coosa River. That project was built in the early '20's, under license from the Federal Power Commission. This license expires June 27, 1971. Under license for Project No. 2146, issued 1957, Alabama Power Company undertook what is probably the largest investor-owned project ever undertaken in Alabama. That project entailed the building of four new hydroelectric developments on the Coosa River and the redevelopment of a fifth, the Lay Dam development, immediately upstream from Mitchell Dam. These developments under License No. 2146 were designed for a comprehensive development for power and flood control and other public benefits on the entire Coosa River. The navigable pools and canals provided for in that development will, with Federal projects under construction on the Alabama River, form the basis for a navigable channel from Mobile, Alabama, to Rome, Georgia. Construction under this license began in 1957. The four new dams under that license have all been completed, and the redevelopment of Lay Dam will be completed this year. The total cost of these projects will be approximately \$195,000,000. This license does not expire until 2007. Mitchell Dam is downstream from four of these dams and is upstream from two other dams on the Coosa River. It is evident that to obtain the full power potential of the river, the Mitchell Dam project must be coordinated with the other projects on the river, a result which cannot be assured without relicensing to assure common ownership of these developments.

A similar situation exists at Jordan Dam, the project immediately below Mitchell Dam. The Jordan Dam license expires in 1975. A new project—Walter Bouldin Dam—built under License No. 2146, expiring in the year 2007, is fed from the same reservoir as the Jordan Dam project. While there are provisions in License No. 2146 dividing the flow of the stream between these two projects, these provisions cannot assure the development of the full power potential of the river that common control of the projects would insure. In fact, these provisions are an illustration that common ownership would result in a more efficient use of natural resources than would otherwise occur. Under integrated operation in the Southern System, the installation at Jordan Dam can be considered as dependable capacity by assigning to its use only a minimum amount of water during critical periods. The remainder of water available should be, and is, scheduled for use at Walter Bouldin Dam, where increased head results in obtaining 39 percent more electric energy from a given amount of water than can be obtained by passing the same amount of water through the turbines at Jordan Dam. The result is the most efficient use of this water to provide maximum energy and dependable capacity. It is significant that the license for Project No. 2146 contains a requirement, in event of transfer of Jordan to another licensee, for Alabama Power Company to make available to the lower head Jordan power plant more water than is required under coordinated operation. The use of such increased amount of water at Jordan Dam rather than at Bouldin Dam would constitute a waste of a natural resource, since no more dependable capacity would result but the total energy output from the two plants would be greatly reduced.

Another situation exists on the Tallapoosa River, on which Alabama Power Company has three licensed projects. These projects consist of Martin Dam, a large storage project, and two smaller projects downstream from Martin Dam. The Martin Dam license expires in 1973; the licenses for the lower projects expire in 1993. Again we have the situation where the development of the full power potential requires common ownership.

It seems evident from these facts that the licensed projects are dedicated to the public service as integral parts of an integrated electric system, and it is beyond my imagination to conceive how they could render a higher public service. Conversely, it is also evident that these projects could not be severed from this system without a severe and adverse impact upon the system of which they are an important part with a consequent drastic impairment of the public service which these projects help to render.

Importance of licensed projects to state and local government tax revenues

Another impelling reason for the relicensing of these projects is that relicensing will preserve the tax revenues of the state and local governments.

The licensed hydro projects, including reservoirs, of Alabama Power Company are located in 14 Alabama counties. The taxes paid on these projects are important to the economy of these counties and to the entire State of Alabama.

The state and local property taxes paid on these projects alone totaled about \$1,500,000 in 1967. This annual payment will increase to approximately \$1,750,000 when construction is completed on all currently licensed projects. Over \$25,000,000 of property taxes have been paid to date on these projects.

In 1967, Alabama Power Company paid a hydro generation tax to the state of \$1,050,269. Additional generating units recently placed in service and scheduled to go in service this year will cause a significant increase in this annual tax payment. The entire proceeds of this tax have always gone to the state's educational system, and a total of \$19,482,359 of hydro generation taxes have been paid to date on these projects.

Alabama Power Company is Alabama's largest taxpayer and is also the largest taxpayer in 9 of the 14 counties in which these projects are located. In 3 counties the property tax payments on these projects alone provide more than 30 percent of the total taxes collected by the tax collectors, and the taxes paid on these projects in the other counties account for a very substantial portion of their tax revenues. In 1967, four of these counties received over one-third of their total property taxes from the company.

A similar tax situation prevails in Georgia, which operates 16 hydroelectric generating projects licensed or in course of being licensed under the Federal Power Act. These projects, including reservoirs, are located in 16 counties and 3 municipalities in Georgia; 3 counties in Alabama; and 1 county in South Carolina. Total ad valorem taxes paid on these properties amounted to more than \$950,000 in 1967, of which \$883,500 was paid to Georgia counties and municipalities. It will be noted that by far the greater part of these taxes went to these local governments because the State of Georgia, recognizing the tax revenue need of these local governments, has practically relinquished state ad valorem taxes to local governments. The ad valorem taxes paid on these projects since they were built or acquired exceed \$17,500,000. As in Alabama, these taxes constitute a highly important part of the tax revenues of such local governments.

Under existing law, if these projects are taken over by the Federal government, these tax payments would be lost to local authorities with serious consequences to them.

Alabama Power Company and Georgia Power Company have for many years been cognizant of the growing public interest in these licensed projects as recreational areas; and both companies are working closely with the Federal Power Commission and state and local agencies to enhance the attractiveness of the projects for public recreation and to extend recreational use of these projects by such means as improved access, boat-launching ramps, the sponsorship of fishing contests, organization of water-safety programs, and development of sites for family and group recreation. Among the groups for which sites have been made available are individual families, Boy Scouts, Girl Scouts, YMCA, military personnel, and churches.

Renewal of the licenses would insure the continuance of this cooperative effort to bring the public the benefit of the recreational potential of these projects. It is significant that the Governor of Alabama in recommending the relicensing of the Mitchell Dam project to Alabama Power Company, a matter already under consideration by the Federal Power Commission, cites the recreational program as one of the reasons for the relicensing.

Licensed projects should continue to serve the general public

The cost of our licensed hydro projects is being amortized from rates paid by the public generally in our service area. The benefits of such amortization should, therefore, accrue to the general public being served by those projects. If these

projects were taken over and the power from them made available to any particular entity or group, the general public would be deprived of the benefits of amortization which they have paid in their rates for electric service.

A decision on the policy of relicensing, or take-over, of licensed projects is certain to have far-reaching consequences of national importance. A decision to follow the policy of take-over would be considered a decision materially adverse to the electric utility industry by the investing public. Public confidence in the future of that industry is essential to public acceptance of the securities issued by that industry and that acceptance is essential to the existence of the industry. A decision adverse to the industry on the question of relicensing would undoubtedly have an adverse effect on the price at which utility securities could be sold, thus increasing the cost of rendering electric service and ultimately increasing the cost to consumers. Establishment of a policy of relicensing would just as surely increase the confidence of the investing public with ultimate benefit to consumers.

EXHIBIT 2

ALABAMA POWER CO. HYDROELECTRIC GENERATING PLANTS LICENSED BY THE FEDERAL POWER COMMISSION

License No.	Name	Nameplate capacity (kilowatts)	Investment ¹	Date of license	Expiration date of license
82	Mitchell Dam.....	72,500	\$8,329,105	June 27, 1921	June 27, 1971
349	Martin Dam.....	154,200	16,953,540	June 9, 1923	June 9, 1973
618	Jordan Dam.....	100,000	9,484,590	Nov. 7, 1925	Nov. 7, 1975
2146	Weiss Dam.....	87,750	38,627,934	Aug. 1, 1957	Aug. 1, 2007
2146	Logan Martin Dam.....	128,250	47,080,133	do.....	Do.
2146	H. Neely Henry Dam.....	72,900	30,845,685	do.....	Do.
2146	Walter Bouldin Dam.....	225,000	37,799,032	do.....	Do.
2146	Lay Dam.....	177,000	² 23,771,784	do.....	Do.
2165	Lewis Smith Dam.....	157,500	31,439,270	Sept. 1, 1957	Sept. 1, 2007
2165	Bankhead powerplant.....	45,125	³ 8,940,851	do.....	Do.
2203	Holt powerplant.....	40,000	⁴ 7,384,000	Sept. 1, 1965	Sept. 1, 2015
2407	Yates Dam.....	32,000	5,077,657	Apr. 1, 1962	Dec. 1, 1993
2408	Thurlow Dam.....	50,000	6,321,449	⁵ Apr. 1, 1962	Do.
Total.....		1,342,225	272,055,030		

¹ Includes plant as reported on FPC form No. 1, schedule 433, line 19.

² Scheduled completion date is May 1968. Investment is as follows:

Original plant.....	\$3,942,328
4 new units.....	7,890,000
Construction work in progress.....	9,516,519
Land acquisition.....	2,422,937
Total.....	23,771,784

³ Improvements, structures and equipment for power generation only at U.S. Corps of Engineers dam.

⁴ Scheduled service date is March 1968. Amount shown is estimate for construction work in progress.

⁵ License issued. Application for rehearing pending.

GEORGIA POWER CO. HYDROELECTRIC GENERATING PLANTS LICENSED BY THE FEDERAL POWER COMMISSION

License No.—	Name	Nameplate capacity (kilowatts)	Investment ¹	Date of license	Expiration date of license
485	Bartlett's Ferry.....	65,000	\$11,195,788	Dec. 15, 1924	Dec. 15, 1974
1218	Flint River.....	5,400	² 2,064,008	Jan. 1, 1933	Sept. 16, 1971
1951	Sinclair Dam.....	45,000	14,028,046	Sept. 1, 1947	Sept. 1, 1997
2177	Goat Rock.....	³ 26,000	3,652,674	Jan. 1, 1955	Jan. 1, 2005
2177	Oliver Dam.....	³ 60,000	14,122,285	do.....	Do.
2177	North Highlands.....	³ 29,600	7,374,047	do.....	Do.
2237	Morgan Falls.....	16,800	1,987,140	Mar. 1, 1959	Mar. 1, 2009
2336	Lloyd Shoals.....	14,400	2,344,106	May 1, 1965	Dec. 31, 1993
2341	Langdale.....	1,040	² 382,817	Mar. 1, 1959	Do.
2350	Riverview.....	480	² 186,234	do.....	Do.
2354	Burton.....	6,120	² 3,219,193	Jan. 1, 1956 ⁴	Do.
2354	Nacoochee.....	4,800	² 1,297,990	do ⁴	Do.
2354	Terrora.....	16,000	4,250,784	do ⁴	Do.
2354	Tallulah Falls.....	72,000	4,924,949	do ⁴	Do.
2354	Tugalo.....	45,000	5,873,017	do ⁴	Do.
2354	Yonah.....	22,500	4,124,153	do ⁴	Do.
Total.....		430,140	81,027,231		

¹ Includes plant as reported on FPC form No. 1, schedule 433, line 19, except as noted in (?).

² Classified as small plants and reported on FPC form No. 1, schedule 434.

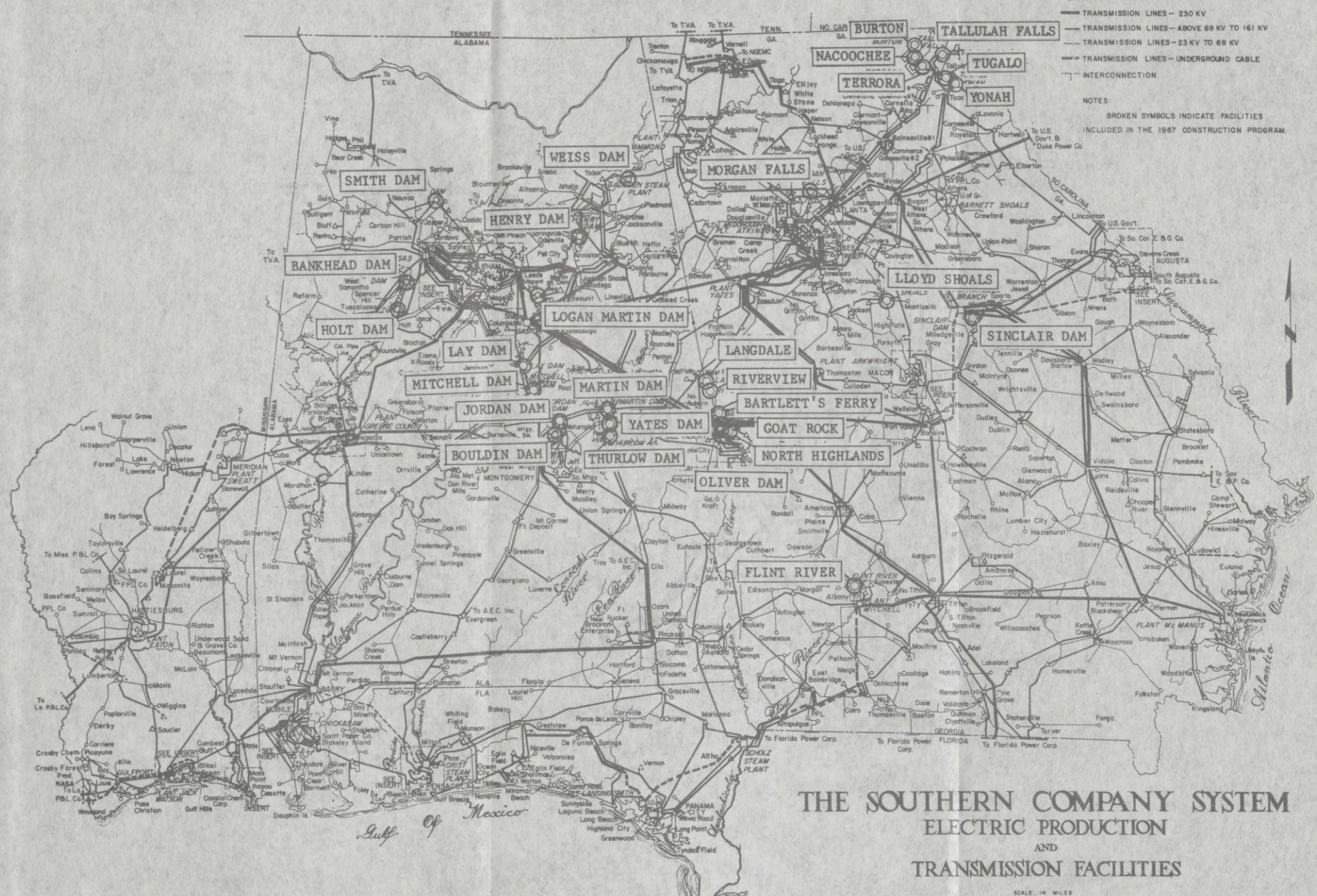
³ Licensed as the Middle Chattahoochee Development.

⁴ License No. 2354 granted for north Georgia development but not yet accepted by Georgia Power Co.

to Statement of Walter Bouldin, President, Alabama Power Company (February 1968)

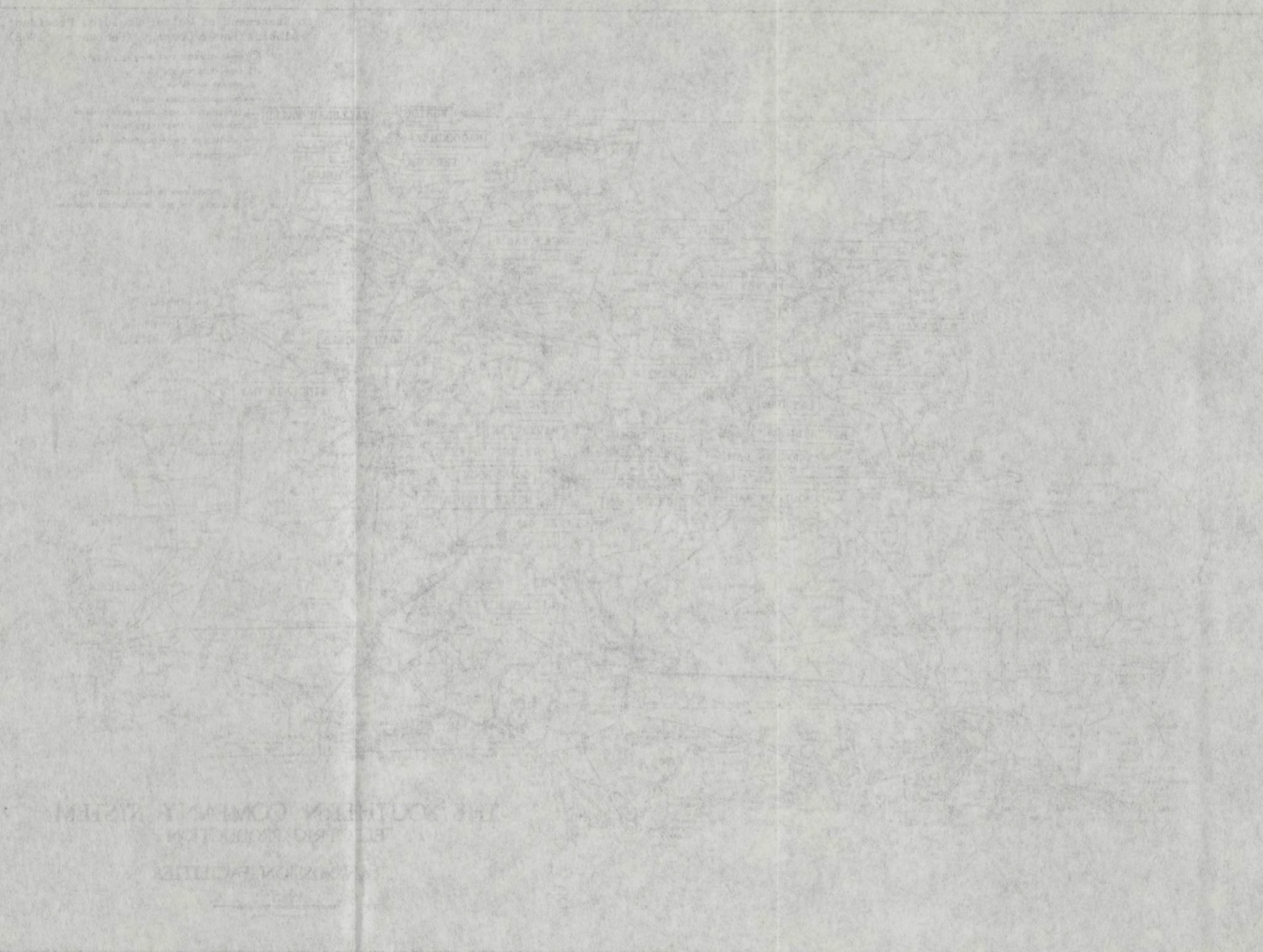
- ⊙ HYDRO-ELECTRIC STATION - LICENSED
- STEAM-ELECTRIC STATION
- △ PRIMARY SUBSTATION
- TRANSMISSION LINES - 230 KV
- TRANSMISSION LINES - ABOVE 69 KV TO 161 KV
- TRANSMISSION LINES - 23 KV TO 69 KV
- TRANSMISSION LINES - UNDERGROUND CABLE
- - - INTERCONNECTION

NOTES:
BROKEN SYMBOLS INDICATE FACILITIES INCLUDED IN THE 1967 CONSTRUCTION PROGRAM.



THE SOUTHERN COMPANY SYSTEM
ELECTRIC PRODUCTION
 AND
TRANSMISSION FACILITIES

SCALE IN MILES
 0 10 20 30 40 50
 JANUARY 1, 1967



Department of Energy
Alabama Power Company
Mobile, Alabama

MOBILE PLANT
TURBINE ROOM

GENERATOR ROOM
CONDENSER ROOM

STEAM ROOM

WATER ROOM

THE SOUTHERN COMPANY SYSTEM
ELECTRICITY
GENERATION FACILITY

Mr. BOULDIN. I have with me Mr. Grady Smith, vice president of Southern Services, Inc., one of our affiliated companies, and Mr. S. Eason Balch, attorney.

The first page of my statement is devoted to a brief description of the seven companies that make up what we call the Southern Company Group. I won't give that in detail.

I would like to invite your attention to the map which is attached to this statement as exhibit 1. That shows the location of 29 hydroelectric projects that are licensed or in the course of being licensed under the Federal Power Act. This map also includes the tie lines to the neighboring utility systems.

No. 2, following that map, shows for each licensed project, the date, plant investment and the date of expiration of the license.

I set out in the table at the beginning the total generating capacities of the Southern Company Group, both steam and hydro.

I think it is noteworthy that the Southern system group at the end of 1967 served 1,894,000 customers without taking into account 750,000 customers of the affiliates wholesale customers. The territory served is about 120,000 square miles, with an estimated population of seven and a half million. This system has a long life. As early as 1912 the founders of the enterprise envisioned an interconnected electrical system having geographical bounds not greatly different from the Southern system as it exists today. Before the end of the 1920's, the Alabama, Georgia, Florida, and Mississippi companies were affiliated; and thereafter these companies moved steadily toward implementing the concept of major transmission lines throughout their territories and then the full integration and coordination of their systems so that they could be coordinated through a central load coordinating and economic dispatch office. By the early 1930's, the operating affiliates were becoming fully integrated within themselves, and interconnection facilities and integrated operations among the several systems were being constantly expanded to provide a completely interconnected and integrated system.

In 1947 the SEC held that this system constituted an integrated holding company system permissible under the act and I have quoted some pertinent excerpts from that opinion.

The Southern system will, in the near future, contain 29 licensed hydroelectric generating plants with an aggregate nameplate capacity of 1,772,365 kilowatts. Such capability will amount to about 19 percent of the total thermal and hydroelectric generating capacity on the Southern system. During 1967, electric generation from hydroelectric generating plants on the Southern system amounted to 5.8 billion kilowatt hours, which was almost 12 percent of the 49 billion kilowatt hours total energy supply to the system in that year. These hydro plants are a most substantial and essential component of the generation and transmission resources now being used to provide reliable and economical electric service to consumers in the area served by the Southern system affiliates. In many cases, the high-voltage transmission line connected to licensed hydroelectric projects form an important part of the bulk power supply transmission network of the Southern system.

The hydroelectric plants on the Southern system are located throughout Alabama and Georgia. The nature of rainfall and result-

ant runoff in the rivers of Alabama and Georgia is such that great variations occur in river flows, varying from periods of high flow during normally wet periods of the year to periods of very low flow during the dry season. Reservoirs constructed by Alabama and Georgia provide a means of retaining waters for use to supplement the natural flow during periods of otherwise low flow. Storage and subsequent controlled release makes optimum use of water that would otherwise run off to the oceans and be wasted during high flow periods. Such storage releases, together with natural flows occurring during dry periods, provide enough water during dry periods for operation of hydroelectric facilities to meet the short-time requirements of consumers in the area.

The demand for electric energy on the Southern system is not constant, but varies widely on an hourly, daily, and seasonal basis. The peak-load period of the Southern system, which normally occurs during the hot weather months of June, July, and August, is characterized by a multiplicity of relatively short-time demands which are in excess of the base loaded steam capacity and which vary in undetermined amounts from moment to moment. Because of varying characteristics of the load, the portion of the company's load in excess of the base load would be less efficiently supplied solely from steam-electric generating plants, the inherent characteristics of which make them more suitable for supplying loads of a more constant nature. Hydroelectric plants are eminently better suited for variable operating requirements since they can be kept synchronized with the system and ready to respond instantaneously to changes in load requirements.

The reduction in efficiency of hydroelectric units for this type of operation is much less than that of steam-electric units if operated in the same manner. The use of hydroelectric generating units to supply loads of short duration thus permits the use of steam-electric generating units to supply the more constant, or base load, portion of the system's total load. The combined use of hydro and steam-electric generating facilities, as heretofore described, results in a highly desirable and efficient method of operating in meeting total system requirements.

Further on I describe some of the reasons why the hydro projects are so much more valuable in a large system than they would be if separated into smaller systems. As I have just pointed out, that permits us to take advantage of the diversity of rainfall over a very wide geographical area. The system load is big enough that we can take full advantage of this hydroelectric generating capacity to make it available for the main purpose for which it is used, that is, the carrying of a load in excess of that which is being carried by the steam plants.

Another instance of the value of these hydros in an interconnected system is that they will provide spinning reserves which are reserves that are turning on the system but are not generating any power, but are ready, instantaneously, in hydro plants, to pick up load in the event you have some failure of another project or some condition on your system that causes it to lose load. That spinning reserve is highly important in preserving the reliability of your system.

Also they perform a valuable function in that these hydro projects can respond almost instantaneously to a critical situation, and will,

by taking care of local situations, or systemwide situations, prevent a collapse of your system and having an extensive blackout.

These hydro systems also would perform if we had a blackout on the Southern system of any size, they would perform a very essential function. As you know, in the blackouts that have been studied, it has been pointed out that one of the great needs in the event of a blackout is for some kind of power that can crank up your steam generating units. On the Southern system we have these hydro units so geared and so connected that if we should have a blackout on the system, immediately we could use the hydro plants to crank up the steam plants and eliminate the blackouts more quickly than otherwise would be possible.

I have pointed up some illustrations that exist in our on system, specific illustrations, that show how important it is to relicense some of these projects whose licenses are expiring, in order that they may be coordinated with projects which we have licensed and which won't expire for many, many years.

The year 2007 is the expiration date of the latest of our licenses on the Coosa River, whereas we have one license right in the middle of the Coosa River, in the middle of those projects, that expires in 1971, another that expires in 1975. They are on the same river with other projects whose licenses don't expire until the year 2007. Obviously there ought to be some kind of relicensing of those projects so that all of those projects on the same river could be utilized in coordination.

In my statement I have emphasized the importance of these projects to State and local tax revenues. If those taxes were lost it would cause real trouble in our State and local finances.

I have mentioned State and local recreation programs. If these projects are relicensed, of course, that cooperation would continue. I think it is significant that the Governor of Alabama, in recommending that the Mitchell Dam project be relicensed—that by the way is under consideration by the Federal Power Commission—the Governor pointed out the cooperation that our company was given in the recreational field.

I also make the point that I would like to emphasize somewhat, and that is that the cost of our licensed hydro projects is being amortized by the rates paid by the public. The benefit of that amortization should therefore accrue to the general public being served by those projects. If these projects were taken over and the power from them made available to any particular entity or group, the general public would be deprived of the benefits of amortization which they have paid in their rates for electric service.

A decision on the policy of relicensing, or takeover, of licensed projects is certain to have far-reaching consequences of national importance. A decision to follow the policy of takeover would be considered a decision materially adverse to the electric utility industry by the investing public. Public confidence in the future of that industry is essential to public acceptance of the securities issued by that industry and that acceptance is essential to the existence of the industry. A decision adverse to the industry on the question of relicensing would undoubtedly have an adverse effect on the price at which utility securities could be sold, thus increasing the cost of rendering electric service and ultimately increasing the cost to consumers. Establishment of a

policy of relicensing would just as surely increase the confidence of the investing public with ultimate benefit to consumers.

I would like in closing to concur with the statements made by the prior witnesses, Mr. Horton and Mr. O'Kelly.

Senator CANNON. You believe that if there is nothing written into the law, that a preference for relicensing would actually be accomplished satisfactorily?

Mr. BOULDIN. I think Mr. O'Kelly's memorandum is valid on that subject. I think that priority of application does exist under the present law, yes, sir.

Senator CANNON. If the bill were passed, as now before you, with Mr White's interpretation, do you think that would be a legislative recognition of the fact that there was no preference given to a present licensee?

Mr. BOULDIN. I am not sure but what Mr. O'Kelly was right, that we are talking of words. I don't understand Mr. White's position to be that there is no priority of application. He is saying there ought not to be any advantage given to a licensee if he is not going to do as good a job as somebody else. We say if we can do as good a job as anybody else, we ought to have the priority.

Senator CANNON. I don't understand Mr. White's language to say exactly that. Maybe I am misreading it.

Mr. BOULDIN. That is the way I interpreted it.

Senator CANNON. I think I understand your position. It is the only way I can reconcile his statement with his letter.

Thank you very much. Do either of you gentlemen have anything to add?

Mr BALCH. No, sir.

Mr. SMITH. No, sir. Thank you.

Senator CANNON. The next witness is Mr. William Dunham, president, Central Maine Power Co., Augusta, Maine.

STATEMENT OF WILLIAM H. DUNHAM, PRESIDENT, CENTRAL MAINE POWER CO.; ACCOMPANIED BY RONALD JONES, ESQ.

Mr. DUNHAM. Mr. Chairman, my name is William H. Dunham. On my left is Ronald Jones, of the law firm in New York City who has been counsel to our company.

I am the President of Central Maine Power Co., 9 Green Street, Augusta, Maine. I wish to express to this committee my appreciation for the opportunity to present my comments on the proposed amendments to the Federal Power Act. I would like to say in doing so that I am authorized to state that these comments are endorsed in principle by Penn Daw Hydroelectric Co., the Public Service Co. of New Hampshire, New England Power Co., Central Vermont Public Service Corp., and Northeast Utilities. These New New England utilities, plus my own company, are the largest owners of utility hydro facilities in New England, and together they own over 95 percent of all such facilities in the region.

Of these utilities, New England Power Co. is the largest owner, and is filing, I understand, a separate concurring statement for the record. My own company is the second largest owner.

I do have this six-page statement which I have filed with the committee, and which I request be made part of the record.

Senator CANNON. It will be made a part of the record.

(The complete statement of William H. Dunham follows:)

STATEMENT BY WILLIAM H. DUNHAM, PRESIDENT OF CENTRAL MAINE POWER CO.

Central Maine Power Company generates, transmits and distributes power in the southern and western areas of the State of Maine where two-thirds of the population resides. At the present time, hydroelectric projects subject to FPC licensing provide about 40% of the Company's generating capacity, making it the second largest owner of hydro facilities in New England. My Company also has three steam plants, three small internal combustion plants in isolated areas, and, in recent years, has participated with other New England utilities in the development of jointly owned atomic power plants. Central Maine's hydroelectric projects are located in Maine primarily on the Kennebec, Androscoggin and Saco Rivers. The Company also has the majority interests in upstream storage reservoirs on the Kennebec and Androscoggin Rivers.

I am here to support legislation that will enable the Federal Power Commission to process applications for relicensing as project licenses expire, and to issue new licenses to the project owners for continued operation. The Commission's belief that, under the terms of the Federal Power Act as it now exists, the Commission is not free to relicense projects, leaves it only with the choice of issuing annual licenses or denying any extension of a license. Legislative action affirming the Commission's power to relicense projects appears necessary to eliminate the potential confusion and hiatus that will otherwise occur as licenses expire.

The need for prompt determination on relicensing becomes greater as utility systems find it necessary to plan further and further in advance to meet future loads. The alternative of license extensions on a year-to-year basis offers little protection when replacement power would take up to six years to become available. Full Commission authority to relicense projects is necessary to enable utility systems to continue to plan in an orderly manner for efficient and reliable service to their customers.

EXISTING HYDRO PROJECTS ARE BASIC IN THE DEVELOPMENT OF NEW ENGLAND

The New England area in which Central Maine and its neighboring utilities was a pioneer in the use of riverways for power and other purposes. Many of Maine's hydroelectric projects are located at sites that were initially developed in the nineteenth century to provide mechanical power to the emerging industries of the region. For all of these years, these developments have supplied power to aid the economy of Maine. The Maine rivers have also been extensively used for the transportation of logs from the upstream forests to downstream mills. The development and use of the rivers, and the upstream storage reservoirs, have been designed to facilitate these operations. For example, many of Central Maine's dams have facilities for passing logs downstream. Finally, Maine's numerous lakes and waterways, including many of the artificial lakes created by power and storage dams, provide excellent recreation potential, not only for the residents of the State, but also for visitors from the densely populated areas to the south.

Central Maine has joined with industrial and other owners in regulating the flow of the Kennebec and Androscoggin Rivers to provide flood control, power, transportation and other benefits. These owners have joined together to develop and maintain extensive headwater storage reservoirs so that the run-off from the water sheds can be conserved and spread evenly over the year. These developments are now, because of changing concepts of the Federal Power Commission's jurisdiction, being brought under license. As the licenses for the power and storage developments expire, the Commission will need clear and definite authority to relicense the projects so that there will be no interruption in the coordinated control and use of the river flows.

Central Maine integrates its hydroelectric and thermal generating operations. Hydro power is now used for meeting peak loads, spinning reserve and base load operations. Some of the base load hydro projects reregulate the flows from the larger peaking projects to meet river control requirements. As additional con-

ventional steam and atomic plants are added, the hydroelectric plants will be relied on even more for peaking. Thermal plants are generally most economic when operated at full capacity around the clock. When they are used in combination with hydro plants, which meet system peaks, maximum benefits are obtained. On the Central Maine system, as in most systems with adequate reservoir capacity, one of the most important roles of hydro power is to provide a quick source of reserve power to meet emergencies. This adds greatly to the reliability of the system.

COMMENTS ON DETAILS OF THE BILL

I agree with the objection to the novel proposal that would permit the Commission to modify at any time licenses issued after a relicensing proceeding. This is directly contrary to the policy set forth in Section 6 of the Act, which has long been recognized to provide desirable certainty to a licensee. For example, in *Rumford Falls Power Company v. F.P.C.* (355 F. 2d 683, 1st Cir. 1966), the reviewing court refused to approve a license condition that attempted to reserve rights to modify the license in ways which could have been detrimental to the licensee. The certainty provided by present law not only enables a licensee to finance the development or redevelopment of a project, but it also enables a utility system to plan its future developments to provide the best combination of generation for maximum reliability at the least cost.

The Federal Power Commission's letter transmitting the proposal that is now S. 2445 contained a suggestion that, in relicensing hydro projects, the Commission may provide short license terms, especially where there has been little redevelopment necessary. I believe that Congress should make it clear that second licenses should run for a reasonably long term, again to provide the necessary certainty.

Because utilities have the obligation to provide for continuing load growth, it is essential that they have the assurance as to what plant capacity will be available to meet future loads. This is becoming even more critical as the lead times lengthen for bringing in additional generation. Every effort should be made to preserve and enhance the certainty now provided licensees by the Act.

I also join in opposition to the proposal in S. 2445 that would enable any Federal agency to obtain a stay of a relicensing order for a period of up to four years. To allow Federal agencies, for the most part having special interests of their own, to override a determination by the Federal Power Commission that continuing operation under a license is most in the public interest, would ignore the expertise and experience of that Commission. All Federal agencies have an opportunity to participate before the Federal Power Commission, and their proposals should receive full consideration there. There is no need to give them a second chance to delay or defeat relicensing. The Commission's powers to relicense projects should not be qualified.

I appreciate very much the opportunity to appear before this Committee, and strongly urge that the Commission be given prompt assurance that it has the power to relicense hydroelectric projects as current licenses expire.

Mr. DUNHAM. In the interest of brevity I will merely summarize it at this time. First as to brief description of my own company. It generates, transmits and distributes power in the southern and western part of the State of Maine where two-thirds of the population reside. At the present time hydroelectric projects, subject to FPC licensing, provide about 40 percent of the company's generating capacity, making it, as I said, the second largest owner of hydroelectric facilities in New England. These hydroelectric projects are located in Maine primarily on the Kennebec, Androscoggin, and Saco Rivers.

The company also has the majority interest in upstream storage reservoirs on the Kennebec and Androscoggin Rivers. And our long-range plans include further hydroelectric development by way of small additional generators in existing projects, and also by way of constructing pump storage projects along the Maine rivers. These developments over the next 10 to 15 years could add up to 1,200,000 kilowatts and require over \$100 million of new investment. So we have a very real concern in the legislation which is before your committee.

I am here to support the legislation that will enable the FPC to

process applications for relicensing as project licenses expire, and to issue new licenses to the project owners for new authorization.

The Commission's belief that under the terms of the Federal Power Act as it now exists the Commission is not free to relicense projects leaves us only with the choice of issuing annual licenses or denying any extension of the licenses. Legislative action affirming the Commission's power to relicense projects appears necessary to eliminate the potential confusion and hiatus as licenses expire. Also the need for prompt determination on relicensing becomes greater as utility systems find it necessary to plan further in advance to meet future needs and future loads.

The alternative of license extensions on a year-to-year basis offers little protection when replacement power could take up to 6 years to become available. Full Commission authority to relicense projects is necessary to enable utility systems to continue to plan in an orderly manner for efficient and reliable service to their customers.

In my statement I have given the background of hydro developments in New England and particularly in Maine. I have pointed out that the Maine rivers have been extensively used for the transportation of logs from the upstream forests to downstream mills. This I think is probably unique in the 50 United States.

The development and use of the rivers and the upstream storage reservoirs have been to facilitate these operations. For example, many of Central Maine's dams have facilities for passing dams downstream. On the Kennebec River a quarter of a million cars of pulp are transported annually from the storage reservoirs to the pulp and paper mills below, a distance, as you go down the river, of something like a hundred miles.

Finally, Maine's numerous lakes and waterways, including many artificial lakes created by the dams, provide recreation, not only for the residents of the State but visitors of the densely populated areas to the south. I think this, too, is unique.

We have joined with the industrial and other owners in regulating the flow of the Kennebec and Androscoggin Rivers to provide flood control, power, transportation as I said, and other benefits. These owners, the Central Maine Power Co., and the industrial owners on the rivers, have joined together to develop and maintain extensive storage reservoirs on the headwaters, so that the runoff from the watersheds can be conserved and spread evenly over the year. These developments are now, because of changing concepts of the Federal Power Commission's jurisdictions, being brought under license. As the licenses for the power and storage developments expire, the Commission will need clear and definite authority to relicense the projects so that there will be no interruption in the coordinated control and the use of the river flows.

We operate our hydroelectric and thermal generation on an integrated basis. We, and Mr. Bouldin pointed this out very clearly, hydro power is used for meeting peak loads, spinning reserves and base load operations. Thermal plants are generally most economic when operated at full capacity around the clock. When used in combination with hydro plants which meet system peaks, maximum benefits are obtained.

On the Central Maine system, as in most systems with adequate reservoir capacity, one of the most important rules of hydro power is to provide a quick source of reserve power to meet emergencies. This adds greatly to the reliability of the system and it has been demonstrated time and time again on our own system.

While we do support the proposed legislation in general, we also agree with the objections of the proposal that will permit the Commission to modify at any time licenses issued after a relicensing proceeding. We feel that this is contrary to the policy which is set forth in section 6 of the act, which has long been recognized to provide desirable certainty to a licensee.

Again, the Federal Power Commission's letter transmitting the proposal that is now S. 2445 contained a suggestion that in relicensing hydro projects the Commission may provide short license terms, especially where there has been little redevelopment necessary. I believe that Congress should make it clear that second licenses should run for a reasonably long time, again to provide the necessary certainty.

I also join in opposition to the proposal in S. 2445 that would enable any Federal agency to obtain a stay of a relicensing order for a period of up to 4 years. To allow Federal agencies for the most part having special interests of their own to override a determination by the Federal Power Commission that continuing operation under a license is for the public interest, would ignore the expertise and the experience of the Federal Power Commission.

All Federal agencies have an opportunity to participate before the Federal Power Commission and their proposal should receive full consideration there. We do not believe that there is need to give them a second chance to delay or to defeat relicensing. We feel that the Commission's powers to relicense projects should not be qualified.

In closing I do endorse in principle the statements which have been made by the previous speakers for the investor-owned electric utilities. May I say again I do appreciate very much the opportunity to appear before this committee, and strongly urge that the Commission be given prompt assurance that it has the power to relicense hydroelectric projects as current licenses expire.

Senator CANNON. Thank you very much, Mr. Dunham. I don't have any questions of you at the moment. I appreciate your appearing here.

Mr. Fred Searls—Mr. Searls is a general attorney representing Pacific Gas & Electric Co., San Francisco, Calif. You may proceed.

**STATEMENT OF FRED T. SEARLS, ESQ., GENERAL ATTORNEY,
PACIFIC GAS & ELECTRIC CO., SAN FRANCISCO, CALIF.**

Mr. SEARLS. Thank you, Mr. Chairman. I appreciate the opportunity given to me and to Pacific Gas & Electric Co. to present our views to this committee.

The points which we wish to make have been covered adequately, I believe, by the witnesses who have preceded me. Mr. Horton, Mr. O'Kelly, Mr. Bouldin, Mr. Dunham. Rather than take the committee's time I would ask permission to file a statement which I do not have with me but which will be ready before the record is closed in this proceeding.

Senator CANNON. Your statement will be filed for the record.
(The statement referred to follows:)

PACIFIC GAS AND ELECTRIC CO.,
San Francisco, Calif., March 15, 1968.

Re S. 2445: Procedure Upon Expiration of Hydroelectric Licenses Issued by the Federal Power Commission.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, New Senate Office Building,
Washington, D.C.*

DEAR SENATOR MAGNUSON: This statement is submitted on behalf of Pacific Gas and Electric Company to provide some background material and express our views on S. 2445.

Prior to the passage of the Federal Water Power Act in 1920, development of the hydroelectric resources of the United States was proceeding at a slow pace. Most of the larger potential developments either affected navigation or required use of federal lands, or both. It was virtually impossible for private capital to obtain rights adequate to justify investment in hydroelectric facilities except by special act of Congress. Any rights granted by the executive departments under general statutes were subject to revocation on short notice. In consequence, the first two decades of this century saw numerous demands upon Congress to authorize individual projects.

By 1908, when President Theodore Roosevelt directed particular attention to the problem, Congress had acted upon some 79 projects, many of them more than once. The need for more study of such projects and for establishment of a general policy in this area was already apparent, but many years of Congressional investigations, hearings and debates were required before adoption of the Federal Water Power Act in 1920. This Act created a Federal Power Commission and delegated to it authority to issue a 50-year licenses for hydroelectric projects which, in the judgment of the Commission, were best adapted to a comprehensive plan for development for navigation, power, and other beneficial public uses.

This Act, later amended to become part of the Federal Power Act, was successful in achieving development of the hydroelectric resources of the United States. By the end of 1967 there were 275 projects under license, many of which include two or more generating plants, with a total capacity of more than 29,000,000 kilowatts.

As a particular example, Pacific Gas and Electric Company owns and operates 66 hydroelectric plants with a capacity of almost two and a half million kilowatts representing an original investment of almost \$630,000,000. Most of this investment was made in projects under Federal Power Commission license, the exceptions relating to certain developments prior to 1920 and to projects which did not, at the time, require a Federal Power Commission license. After deducting accrued depreciation, the Company's present investment in these plants exceeds one-half billion dollars. Nothing in excess of this actual investment is allowed in the Company's rate base for these hydroelectric plants by either the California Public Utilities Commission, which regulates its retail rates, or by the Federal Power Commission which regulates its rates for wholesale to other utility systems.

PG&E's hydroelectric plants constitute an integral part of the Company's electric system and furnish about 30% of its capacity requirements. Although there was a time when hydro generation supplied the major part of PG&E's electric load, today thermal plants are the major source of power and the hydroelectric plants are used primarily for peaking. This means that generally they are used to supply the peaks of daily and seasonal loads and, except in periods of abundant water or emergencies, are not used during off-peak periods.

These hydroelectric plants not only supply peak load requirements economically, but they also contribute substantially to the reliability of power supply. This is due to their ability to respond quickly to changes in load requirements and their ability to start up independently and come to full load on very short notice. These characteristics are important not only in supporting the PG&E system, but also in supporting the Pacific Northwest-Southwest Interties which will link California to the Pacific Northwest with some three million kilowatts of

transmission capacity. Such heavy ties require strong support if they are not to endanger the reliability of the interconnected systems.

The bill before this committee is concerned with the future of these hydroelectric plants. As the preamble in the bill recites, Congress intended that license expiration should be the occasion for re-examination of whether the project meets the test that it be best adapted to the comprehensive development of the waterway in the public interest. Under present law, in the absence of more explicit provisions, we see this question being considered at three stages as licenses approach and reach their expiration dates.

First, the Federal Power Commission, under rules which it adopted in 1964 calls for a report, to be due four years before the expiration date, from the holder of the expiring licensee and from each of the Federal agencies which may have an interest. After consideration of these reports, and in some cases oral argument, the Commission makes a recommendation to Congress as to whether the project should be taken over by the Federal government under Section 14 of the Federal Power Act.

The second stage is Congressional consideration of the federal take-over question. The Congress may make its own independent determination on this question and is not bound by the Commission's recommendation.

The third stage is reached if Congress does not direct a take-over and appropriate money for the purpose. One of the problems which the Commission may have to face at this point is how to interpret Congressional inaction. If the Commission is satisfied that it will not be contrary to the intent of Congress to proceed, it may consider applications for a new license under Section 15 of the Act. Such a new license may then be issued to the original licensee or, in appropriate cases, to a new licensee, after the date of expiration of the old license.

The bill would substitute for this time-consuming, multi-stage procedure with its attendant uncertainties a single proceeding before the Federal Power Commission prior to license expiration, to determine whether the public interest will be best served by relicensing the project to the original licensee, by federal take-over, or by licensing the project to a different licensee. The bill would relieve the Congress from consideration of all projects with expiring licenses except those which in the Commission's judgment should be taken over by the United States. This parallels the present procedure as to original licenses, where the matter comes before Congress only when the Commission determines, under Section 7(b) of the Act, that in its judgment the United States should develop the resource. In granting a new license under the procedure proposed by the bill the Commission would have, of course, the same powers which it now has to impose conditions to protect the public interest.

Under this bill the future of a project could be decided sufficiently in advance of the license expiration to eliminate much of the uncertainty which is inherent in the present procedure. This will permit redevelopment or enlargement of a project to proceed in a timely and orderly fashion. The bill thus would further the original objective of the Federal Water Power Act, the development of the nation's hydroelectric resources consistently with a comprehensive plan in the public interest.

There is, however, a procedural requirement of the bill that is inconsistent with this objective. The automatic stay of proceedings when the Commission does not accept a federal agency recommendation for take-over is evidently designed to put the matter to Congress for determination. This proposed procedure is contrary to that followed in the case of an application for an original license where the Commission alone is, under the Act, qualified to dispose of competing claims of federal agencies. There is every reason to consider the Commission equally well qualified to make the same sort of determination in a relicensing case. We urge, therefore, that the provisions for stay be deleted from the bill as unnecessarily derogating from the powers of the Commission, unnecessarily delaying proceedings on relicensing, and unnecessarily burdening Congress with issues that are within the special competence of the Commission.

A second aspect of the bill inconsistent with the public interest in the development of hydroelectric resources is the provision of Section 3 which would make licenses issued in a relicensing proceeding subject to subsequent unilateral change by the Commission. This would revive the very difficulty which the Water Power Act was designed to meet. It would discourage proposals to redevelop or enlarge existing licensed projects and would even jeopardize investments needed to maintain operation of existing projects under a new license. This provision is not in the public interest.

Our third comment deals with the silence of the bill upon the right of the original licensee to receive a new license upon the expiration of its old license. The important place of hydroelectric power in the PG&E system, which is typical of the use of much hydroelectric power by licensees throughout the United States, shows that this is a significant aspect of relicensing. Separation of a hydroelectric resource from a system into which it has been integrated will have disruptive consequences both from an economic and an operational standpoint. In many cases licensed hydro power is an especially economic source of power because the investment in the project has been reduced by depreciation accruals which have been included in the rates charged to the licensee's customers. There would be a major element of unfairness in turning such projects over to a system supplying a different group of customers. It is for such reasons, among others, that, as Chairman White of the Federal Power Commission has said, it normally will be in the public interest to relicense a project to the original licensee.

We believe that the legislative history shows that under existing law the original licensee has the prior right to a new license if it can still meet the test of adaptation to a plan of comprehensive development in the public interest. Consistently with this, as the Commission's letter transmitting the bill to Congress shows, the priority given by the Act to municipalities in a proceeding for award of an original license does not apply against the original licensee in a relicensing proceeding. Under these circumstances, the silence of the bill on relicensing priority should continue this existing law without change.

To sum up, we believe that the basic objective of the bill is sound, but that this objective would be defeated unless the provisions for unilateral amendment of licenses by the Commission and for an automatic stay of proceedings are removed. With these amendments, we believe enactment of the bill would be in the public interest.

Sincerely,

FREDERICK T. SEARLS.

Mr. SEARLS. I would also like to mention that one of the first licenses involving a project of any substantial size to expire is the license for FPC project No. 619, covering the Pacific Gas & Electric Co.'s Bucks Creek hydroelectric project. That project license will expire at the end of this year. We have already gone through the first stage that Commissioner White has described of the Federal Power Commission proceedings. The Commission has reported to the Congress, as he stated, that it does not recommend takeover. And the Commission has also reported that none of the Federal agencies have recommended takeover.

I think the committee might be interested in seeing the report which we prepared and submitted to the Commission in connection with that license expiration. It shows in some detail many of the problems which have been referred to by the witnesses here before the committee today. I think it will help to illuminate the whole problem that the committee faces and the Federal Power Commission faces as these licenses come to expiration.

I would simply like to offer a copy of this Bucks Creek report for the committee files. Obviously it would be impracticable to reproduce it for the record. I will ask that copies be made available for all the members of this committee and anyone else who wishes it.

Senator CANNON. Fine. We will be happy to make that a part of the committee files.

Mr. SEARLS. Thank you.

Senator CANNON. Does that complete your statement?

Mr. SEARLS. Yes, sir.

Senator CANNON. You concur completely in the objections that have been advanced by the witnesses who preceded you. And you have no additional points that you care to raise?

Mr. SEARLS. That is exactly true.
 Senator CANNON. Very good. Thank you very much.
 (The Commission's report to Congress on project No. 619 follows:)

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

Project No. 619, Pacific Gas & Electric Co.

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

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

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

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

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

Before completing our analysis of the Bucks Creek project, we sought the advice and recommendations of each Federal department or agency which might have an interest in recapture. We received comments from the Departments of the Interior, Agriculture, Army, and Health, Education, and Welfare, copies of which are attached. None recommended recapture of this project. Also attached are the comments of the licensee expressing its desire to continue operation under a new license. Comments were requested from the State of California,

but none were received. PG&E has been furnished copies of recommendations submitted by the various departments.

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

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

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

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

Water stored in PG&E's Bucks Creek and other North Fork reservoirs is used for both irrigation and electrical generation. The irrigation diversions are made

below the Oroville project. It is estimated that an average of about 20,000 acre feet of water per year released from the Bucks Creek storage has been available for irrigation purposes. In the future, such use will need to be coordinated with the operation of the Oroville reservoir.

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

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

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

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

Were Bucks Creek to be recaptured, one consequence would be that an additional average annual generation of approximately 200 million kwh would be available for distribution to the preference customers of the federal marketing system, with a corresponding decrease to those customers now receiving this power. One logical preference customer would be the State of California. The output of Bucks Creek could be connected with that of the soon to be completed state-owned Oroville project by the construction of approximately 30 miles of 230 kv transmission line at an estimated cost of \$1,200,000. However, the construction of additional transmission lines may not be necessary in order to make the Bucks Creek power available to the State. Under existing arrangements the State of California sells the power generated at its projects, including the power to be generated by Oroville, to PG&E, which company, for consideration, redelivers power to the State when and where it is required by the State of

California's Water Project for municipal water supply and irrigation purposes. If the output of Bucks Creek were to be disposed of under a similar arrangement, it would not be necessary, nor would it be beneficial from an electrical standpoint, to connect that project with Oroville. The situation would be the same if the State of California were to become the licensee of the Bucks Creek project.

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

We believe that the Bucks Creek project can be relicensed consistent with the comprehensive development of the Feather River Basin. In so concluding we have considered whether the Section 10(a) standard could better be served by the federal ownership of the Bucks Creek project and based upon our analysis do not find recapture to be warranted. Considering the population growth of California in general and of the Feather River Basin area in particular, not only will the demand for power increase, but, as the enclosed Appraisal report indicates (p. 66), so too will the demand for "better flood control, more dependable irrigation water, vastly more and better outdoor recreation facilities, assured and good quality municipal and industrial water supplies, abatement of pollution at the source, and water quality control to standards appropriate to the various water uses." From our studies to date we have no reason to doubt that all public services which could be made available as a consequence of federal ownership can and will be assured by the inclusion of appropriate conditions in any new license that is issued. If facts disclosed during the course of a licensing proceeding raise any doubts as to the licensee's ability to fulfill these public needs we will, of course, reevaluate our present recommendation against recapture. It is precisely because of the fact that all of the considerations bearing upon recapture may not be disclosed until a relicensing hearing is conducted that the Commission has submitted legislation which is intended to combine the recapture investigation with the relicensing proceeding. See S. 2445. In licensing proceeding any public body will be free either to compete for the license of the Bucks Creek project or to urge that our recapture recommendation be reevaluated because of the need for additional preference power or to request the inclusion of any license conditions which are deemed appropriate either to the operation of neighboring public or private systems or to assure that all appropriate services are rendered by the licensee.

As stated earlier in this letter, the licensee, upon recapture, is entitled to receive its net investment not to exceed the fair value, and severance damages, if any. These sums are to be determined by the Commission after notice and opportunity for a hearing. We pointed out in our prior letter recommending against recapture of The Empire District Electric Company's Ozark Beach Project No. 2221 that Commission studies were underway to determine proper standards for fixing net investment and severance damages. Those studies have not yet been completed

and therefore it is not now possible to determine what the total cost would be to the government were this project to be recaptured.

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

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

Respectfully,

LEE C. WHITE, *Chairman.*

Senator CANNON. The committee will now stand in recess until 10 o'clock tomorrow morning.

(Thereupon, at 12:33 p.m., the committee was adjourned, to reconvene at 10 a.m., Tuesday, February 27, 1968.)

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

TUESDAY, FEBRUARY 27, 1968

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee convened pursuant to notice at 10 a.m., in room 5110, New Senate Office Building, the Honorable Howard W. Cannon presiding.

Senator CANNON. The committee will come to order. We will resume today with our hearings on S. 2445.

The first witness to be heard will be Mr. Alex Radin, general manager, American Public Power Association.

Mr. Radin, we are very pleased to hear from you this morning.

**STATEMENT OF ALEX RADIN, GENERAL MANAGER, AMERICAN
PUBLIC POWER ASSOCIATION; ACCOMPANIED BY NORTHCUTT
ELY, ESQ.**

Mr. RADIN. Mr. Chairman, I am accompanied by Northcutt Ely, general counsel of the American Public Power Association. He will supplement our testimony.

Senator CANNON. Very good.

Mr. RADIN. I am Alex Radin. I am general manager of the American Public Power Association, a national trade organization representing more than 1,400 local publicly-owned electric utilities, mainly municipal systems, in 46 States, Puerto Rico, and the Virgin Islands.

Since its inception in 1940, the American Public Power Association has supported the orderly, comprehensive development of America's rivers for all purposes—hydroelectric power, flood control, irrigation, recreation, navigation, and water supply—as a wise investment in future national growth and prosperity.

S. 2445, which this committee is considering today, proposes to clarify and provide guidance to the Federal Power Commission "in the processing of expiring hydroelectric license."

Congress, by enactment of part I of the Federal Power Act, delegated to the Federal Power Commission the responsibility to issue licenses to private and public entities wishing to utilize the Nation's

navigable streams and rivers. These licenses are for a maximum term of 50 years. Upon license expiration, recapture for Federal operation or the issuance of a new license is provided for under the act. In 1953, part I of the act was amended to exempt projects owned by a State or municipality from recapture, but not from relicensing.

On January 31 of this year, the APPA Legislative and Resolutions Committee approved the following resolution on recapture and relicensing of hydroelectric projects:

Whereas, there exist numerous hydroelectric projects licensed by the Federal Power Commission under the Federal Power Act, the licenses of which are nearing expiration, and

Whereas, Congress provided in the Federal Power Act for recapture by the United States upon the expiration of licenses granted under that Act, in order to prevent exploitation and monopolization of the nation's water resources, as well as provisions for new licenses to existing or other licensees, and

Whereas, Section 7(a) of the Federal Power Act affords preference to applications of states and municipalities for preliminary permits, licenses and new licenses issued under Section 15 of the Act, if such applications are "equally well adapted to conserve and utilize in the public interest the water resources of the region," and

Whereas, S. 2445 and H.R. 12698 of the 90th Congress attempt to clarify the manner in which the United States may recapture or relicense hydroelectric projects upon license expiration;

Now, therefore, be it resolved: That the American Public Power Association supports legislation which would clarify procedures relating to the recapture and relicensing of hydroelectric projects licensed under the Federal Power Act, if such legislation provides that: (1) the Federal Power Commission is the proper agency to recommend and effectuate recapture, (2) the provisions of Section 7(a) of the Federal Power Act giving licensing preference to public bodies for projects whose licenses have expired is preserved, and (3) that new terms and conditions may be set by the Federal Power Commission to protect the public interest and encourage comprehensive development of water resources when a license is granted to a prior licensee of a project.

FPC SHOULD EFFECTUATE RECAPTURE

Under S. 2445, and under present procedures established by FPC, Congress would determine whether recapture should occur. Both approaches apparently rest on the belief that "United States," as used in part I of the Federal Power Act means Congress, not the Federal Power Commission. APPA believes that a reasonable reading of part I of the act shows that it was the intent of Congress to delegate to FPC the responsibility for the recapture of projects, with congressional review through the appropriation process.

That the Commission is to act on behalf of the United States in effectuating recapture is recognized in a proviso attached to section 15 of the act which states:

Provided, that in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or a new license to the original licensee . . . the Commission shall issue from year to year an annual license.

In the proviso, both licensing and recapture functions are vested in the United States. These functions are precisely what Congress delegated to the Federal Power Commission under part I of the act. The Commission is the "United States," and has the power to recapture hydroelectric projects, as well as to relicense a project, after the giving of notice to the licensee as required in section 14.

There is a significant difference between initial authorization by Congress for Federal development of a new site and the recapture of a site which has been developed and operated by private interests for a term of up to 50 years. In the case of recapture, there is an existing, proven facility. Figures and data showing economic feasibility are readily available, as is data showing effects on the watershed in which the project is located. There appears to be no need to subject such existing projects to the same scrutiny and criteria contained in Senate Document 97, as required for initial Federal development, and such a procedure is not in accord with the present language of the Federal Power Act. The procedure suggested by FPC would impose an unnecessary burden on the Congress.

It should be emphasized that Congress will, when recapture is effectuated by the Commission, have an opportunity to pass its judgment on the desirability of Federal operation. That action will come on the appropriation of funds to compensate the private licensee for his "net investment" in the project and damages, as provided in section 14 of the act. If the Congress failed to provide such funds, the Commission would then open the project for relicensing as set forth in section 15 where a new license may be issued to a prior or new licensee.

APPA believes that enactment of S. 2445 would formalize the approach used by FPC at the present time, substantially changing the thrust of part I of the act concerning recapture of hydroelectric licenses.

NEW CONDITIONS NEEDED FOR RELICENSING

APPA further believes that any proposed legislation considered by the committee should insure that FPC has adequate authority to set new terms and conditions for new licenses.

Section 10(a) of the Federal Power Act provides that all licenses issued by FPC "shall be . . . best adapted to a comprehensive plan . . . for the improvement and utilization of waterpower development . . . and for other beneficial public uses, including recreational purposes." New licenses issued for projects whose licenses have expired are encompassed by section 10(a), a fact recognized in the preamble of S. 2445.

New licensing proceedings will give FPC the opportunity to see that our Nation's water resources are utilized in the best possible manner during a subsequent licensing period. Of particular interest to APPA members are new provisions for enlarging generating facilities, wheeling terms, releases of water for the benefit of downstream projects, and the utilization of excess capacity in project lines.

However, it does not seem reasonable to authorize the Federal Power Commission to alter the terms and conditions of a license at any time after issuance of a new license, as would be possible under section 3(b) of S. 2445. License applicants are entitled to some degree of assurance as to the character of their license. FPC should apply the broad standards of section 10(a) of the Federal Power Act during action on an application for a new license, including consideration of the electrical provisions I have mentioned, and incorporate in the new license conditions which will properly protect the public interest and guide the conduct of the licensee during the life of the license.

PREFERENCE TO PUBLIC BODIES SHOULD BE RETAINED

In its transmittal letter of S. 2445, FPC states that its general counsel has advised it that the preference in licensing given to States and municipalities under section 7(a) operated "only after it has been determined that the original licensee should not receive a new license."

S. 2445 does not alter the preference provisions of the act. APPA believes that the interpretation given by the FPC General Counsel is not correct, and I have asked Mr. Northcutt Ely, APPA's general counsel, to discuss the preference provisions of the Federal Power Act, as they relate to the issuance of new licenses.

Thank you.

Senator CANNON. You may proceed, Mr. Ely.

Mr. ELY. Mr. Chairman, my name is Northcutt Ely, I am a partner in the law firm of Ely and Duncan, 1200 Tower Building, Washington, D.C., general counsel for the American Public Power Association.

As Mr. Radin has indicated, my comments are limited to a discussion of the operation of sections 7(a) and 15 of the Federal Power Act as they relate to the issuance of new licenses upon the expiration of licenses previously issued on existing projects. I have annexed a copy of our interpretation of the operation of these sections, with respect to the preference afforded public agencies, and I ask that this be incorporated in my statement and made a part of the record.

Senator CANNON. It will be made a part of the record.

(The document referred to follows:)

ELY AND DUNCAN,
Washington, D.C., March 24, 1967.

Mr. ALEX RADIN,
American Public Power Association,
Washington, D.C.

DEAR ALEX: The American Public Power Association has requested our interpretation of sections 7(a) and 15 of the Federal Power Act as they relate to the issuance of new licenses, upon the expiration of licenses previously issued on existing projects by the Federal Power Commission.

The precise question is: whether the Federal Power Commission must honor the preference afforded public agencies by section 7(a) of the Federal Power Act¹ in the issuance of new licenses under section 15,² where the competing projects proposed by a non-preference applicant and by a public agency are or may be made equally well adapted to develop, conserve and utilize in the public interest, the water resources of the region.

In our opinion the question must be answered in the affirmative.

I. THE PROVISIONS OF THE ACT

Sections 14 and 15 of the Federal Power Act³ are the principal sections of the Act concerned with the right of the government to take over or "recapture" an existing project upon the expiration of the license issued for that project.

Section 14 concerns itself with the right of the United States to take over, maintain and operate any licensed project or projects upon expiration of the license, upon the express condition that the existing licensee be compensated for his net investment including severance damages. We are not concerned here with the right of the United States to "recapture" an existing project. It is

¹ Section 7(a) provides: "In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission, be made equally well adapted to conserve and utilize in the public interest the water resources of the region. . . ." (41 Stat. 1068, 16 U.S.C. § 301.)

² 41 Stat. 1072, 16 U.S.C. § 809.

³ 41 Stat. 1063, 16 U.S.C. 791 *et seq.*

only when the United States does not exercise this right that the language of section 15 becomes operative.

Failing the exercise of its right to recapture under section 14 by the United States, the Commission is authorized under section 15 to issue a new license, under such terms and conditions as may be authorized or required under the existing laws and regulations, to the original licensee or to a new licensee, provided that if a license is issued to a licensee other than the holder of the original license, compensation must be paid to the original licensee in the same amount as would be required of the United States if it had elected to take over or "recapture."

It should be noted that section 15 also provides for the issuance of an annual license to the existing licensee if, at the expiration of the original license, the United States has not exercised its right or the Commission has not issued a license to a new licensee or a new license to the original licensee. Such a license is issued on a year to year basis until the property is taken over or a new license is issued.

Section 7 (a) of the Act contains the language affording preference to applications of States and municipalities for preliminary permits, licenses, and new licenses issued under section 15, provided that the public agency's plans for a project are equally well adapted, or can, within a reasonable time, be made equally well adapted to those of a competing applicant for the same project. Presumably, however, the project for which a new license is to be issued will be the then existing project, substantially unchanged.

II. THE LEGISLATIVE HISTORY

A. The legislative history of the Federal Power Act reveals a progressive strengthening of the provisions for preference to public agencies

The intent to prefer public agencies under some type of federal licensing scheme was embodied in most of the bills involving water power legislation from 1914 to the passage of the Federal Water Power Act in 1920.⁴

Congress received the Wilson administration bill in 1918, largely in the format now present in the Act, creating a Federal Power Commission to consist of three Secretaries (Interior, Agriculture, War) who had administered water power permits under prior legislation.

The House Water Power Committee considered the administration draft, and after amending it, reported it out leaving the matter of granting preference to public agencies discretionary with the Commission.⁵ The bill was amended on the House floor to make the preference language mandatory. The author of the amendment, Representative Doremus, explained that it:⁶ ". . . makes it mandatory for the Commission to grant a license to the State or municipality, if the plans submitted by it are, in the judgment of the Commission, as good as those submitted by the private applicant."

In the Senate, very much the same desire to insure that any preference would be mandatory was expressed. See, *e.g.*, the colloquy between Senators Borah and Walsh:⁷

"Mr. Borah. . . . I do not expect at this time to have a bill which will contain nothing but provisions with reference to public ownership, but I do want a bill, when the public ownership question is presented which shall compel those executing the measure to give them the preference, and that is all I hope for. When the people of a community decide they want public ownership I want that to be final.

"Mr. Walsh. The Senator and I are at one on that point."

The mandate for public agency preference remained in the bill through the duration of the 65th Congress, and was embodied in section 7 (a) of the Administration bill introduced in the 66th Congress, H.R. 3184. The bill was favorably reported by the House Committee on Water Power,⁸ and when it came before

⁴ The Federal Water Power Act, now Part I of the Federal Power Act, was enacted as the Act of June 10, 1920, 41 Stat. 1063, in the 66th Congress. It was preceded by bills in the 63d, 64th, and 65th Congresses, some of which passed both Houses but failed of approval of conference reports. The Act acquired its present format in the 65th Congress, in 1918. Background of this legislative effort is found in H. Rept. No. 715, 65th Cong., 2d Sess., 13-15 (1918).

⁵ H. Rep. No. 715, 65th Cong., 2d Sess. 5 (1918).

⁶ 56 Cong. Rec. 9804 (1918).

⁷ 56 Cong. Rec. 10484 (1918).

⁸ H. Rep. No. 61, 66th Cong., 1st Sess. (1919).

the House, Representative Sinnott moved to amend the language of section 7 to further strengthen the preference. The language he proposed would preserve the preference even if the public agency's project was less well adapted to comprehensive development of the waterway than the competing project of a non-public license applicant, provided that the public agency's plan could be made equally well adapted within a reasonable time to be fixed by the Commission. The Sinnott amendment was adopted⁹ and the bill passed on July 1, 1919, and was sent to the Senate.¹⁰

The Senate Committee on Commerce reported out H.R. 3184 without hearings, which amended the public preference language of section 7, without explanation, to read as follows:¹¹

"That in issuing preliminary permits hereunder or licenses where no preliminary permit has been issued *and in issuing licenses to new licensees under section 15 hereof* the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted or shall *within a reasonable time to be fixed by the Commission* be made equally well adapted, to conserve and utilize in the public interest the navigation and water resources of the region."

The Senate approved the Committee amendment without debate, and¹² the bill passed the Senate on January 15, 1920.¹³ The bill then went to conference to resolve the remaining Senate and House differences. A conference report was submitted on April 30, 1920, in which the conference approved the Senate amendments to section 7.¹⁴ Following approval by both the House and Senate, the bill was signed into law by President Wilson on June 10, 1920.¹⁵

B. The legislative history reveals no support for the proposition that preference provisions of section 7 (a) do not apply to licensing proceedings where competing applications are offered by the original licensee and a public agency

Sections 14 and 15 of the Act were among the most controversial sections of the legislation throughout its consideration by several Congresses. Chief items of concern were the provisions affording the Government the right to recapture, and the length of the licenses to be issued, both for the original project and for new licenses upon the expiration of the original project license.

When hearings were held in 1914 on Representative Ferris' bill, H.R. 14893 providing for the development of water power on the public lands under a leasing system to be administered by the Secretary of the Interior, Mr. O. C. Merrill, Chief Engineer of the Forest Service in the Department of Agriculture and a principal architect of the Federal Power Act testified as to procedure upon the expiration of the original lease:¹⁶

"With respect to the matter of renewal, I believe that provision should be made in any lease granted that the original lessee should have the right to renew except under two conditions, first, when the site is needed for public purposes, either by the nation, by a State, or by a municipality; second, when the lessee refuses to accept at the time of renewal the conditions imposed upon all other lessees."

In later bills which replaced the leasing system with provisions for issuance of licenses, the procedures to be followed upon expiration of the existing license were incorporated in sections 14 and 15, as previously discussed. Section 7 (a) was amended to extend the public agency preference to the issuance of "licenses to new licensees under section 15."

Senator Phipps objected strongly to what he termed the "undue preference to municipalities in the matter of securing preliminary permits and licenses."¹⁷ He suggested that an amendment of the bill (H.R. 3184) to preclude exercise of the preference right under section 7 (a) would be proper in order to protect those people who take the initial risk, particularly with respect to later development of the secondary power possibilities of a stream. Although he made no direct reference to relicensing upon expiration of an existing license, the im-

⁹ 58 Cong. Rec. 2038 (1919).

¹⁰ *Id.* at 2262.

¹¹ S. Rep. No. 180, 66th Cong., 1st Sess. 13 (1919) (Additions underscored)

¹² 59 Cong. Rec. 1105 (1920)

¹³ *Id.* at 1574

¹⁴ H. Rep. No. 910, 66th Cong., 2d Sess. 3, 8 (1920)

¹⁵ 41 Stat. 1063

¹⁶ Hearings on H.R. 14893 Before the House Committee on Public Lands, 63rd Cong., 2d Sess. 414 (1914)

¹⁷ 59 Cong. Rec. 1172-73 (1920)

port of his suggestion as to the "initial risk" could clearly be extended to the issuance of a new license to the existing licensee.

The amendment offered by Senator Phipps received strong opposition, and was subsequently rejected.¹⁸

Under section 15 of the Act, the Commission is authorized to issue a *new* license to the original licensee or a *new* license to a new licensee. In either event there would be a new license and a new licensee authorized to act under the terms and conditions of that new license. The Act draws no distinction between the original license, issued for a project subsequently to be built, and a new license to operate and maintain a presently existing project, insofar as the applicability of the preference language is concerned. Quite obviously upon the expiration of the fixed term of the original license, a *new* license must be issued. An entirely new licensing procedure must be undertaken by the Commission upon the expiration of the old license, in the event of competing applications. There is no automatic renewal or relicensing; such terms do not appear in the Act in any section involving the Commission's licensing authority. Contrast this with section 5 of the Boulder Canyon Project Act (45 Stat. 1060, 43 U.S.C. § 617 d (c)) which does provide for renewal of leases and contracts.

It is a matter of obscure semantics to urge, simply because section 7(a) refers to a "new licensee" and section 15 distinguishes between the "original licensee" and a "new licensee," that the framers of the Act intended to make the preference purportedly given to public agencies totally inoperative if the original licensee should apply for a new license.

It would have been a relatively simple task for the authors to have excepted from the preference provisions of section 7(a) situations wherein the original licensee desired to apply for a new license to operate and maintain his existing project. No such intent on the part of the authors of the legislation can be inferred from the language of the Act or from its legislative history. The demonstrated successful efforts to strengthen the public agency preference provisions make it quite clear that the contrary effect was intended.

With kind regards,

Faithfully yours,

NORTHCUTT ELY.

Mr. ELY. In the interest of time, I shall only briefly summarize the conclusions we have reached.

The precise question we considered was: whether the Federal Power Commission must honor the preference afforded public agencies by section 7(a) of the Federal Power Act in the issuance of new licenses under section 15, where the competing projects proposed by a non-preference applicant and by a public agency are or may be made equally well adapted to develop, conserve, and utilize in the public interest the water resources of the region.

In our opinion, the question must be answered in the affirmative.

Sections 14 and 15 of the act are the principal sections concerned with the right of the Government to take over or "recapture" an existing project upon the expiration of the license issued for that project.

Section 14 concerns itself with the right of the United States to recapture an existing project. It is only when the United States does not exercise its rights under section 14 that section 15 becomes operative.

Under section 15, the Commission is authorized to issue a new license either to the original licensee or to a new licensee. It also provides for the issuance of an annual license to the existing licensee under certain conditions.

Section 7(a) of the act contains the preference language under which the Commission is directed to prefer the license application of a public agency provided that its plans are equally well adapted, or can, within

¹⁸ *Id.* at 1533

a reasonable time, be made equally well adapted to those of a competing applicant for the same project.

In considering the application of the preference provisions of section 7(a) to the issuance of new licenses under section 15, the legislative history of the act is revealing.

The intent to prefer public agencies under some type of Federal licensing scheme was embodied in almost every bill, involving water power legislation from 1914 to the passage of the Federal Water Power Act in 1920.

When the Wilson administration bill was received in 1918, and considered by the House Water Power Committee, the question of preference to public agencies was made discretionary with the Commission. The language was made mandatory on a floor amendment and henceforth was to remain in every subsequent version.

The preference provisions approved by the 65th Congress were strengthened by the 66th, when preference was afforded to a public agency whose plans were not as well adapted as a competing nonpublic applicant to comprehensive development of a waterway, provided that the public agencies' plan could be made equally well adapted within a reasonable time.

Section 7 contained no reference to new licenses issued under section 15 when it was considered by the Senate Committee on Commerce in 1919, but the Committee amended the public preference language to read as follows:

That in issuing preliminary permits hereunder or licenses where no preliminary permit has been issued *and in issuing licenses to new licensees under section 15 hereof the Commission shall given preference to applications thereof by States and municipalities . . .* (new language italicized.)

A conference approved the Senate amendments to section 7, and the bill was signed by President Wilson on June 10, 1920.

It seems quite clear that Congress at every turn of the way consistently adopted language which strengthened, rather than diluted, the application of the public preference language even in the face of formidable opposition expressed by the supporters of investor-owned utility interests.

By the same token, the legislative history reveals no support for the proposition that preference provisions of section 7(a) do not apply to licensing proceedings where competing applications are offered by the original licensee and a public agency.

Sections 14 and 15 of the act were certainly among the most controversial sections, but the chief items of concern were primarily the right of the government to recapture, and the length of term of licenses to be issued, both for the original project and for new licenses as well.

Mr. O. C. Merrill, Chief Engineer of the Forest Service in the Department of Agriculture, and a principal architect on the act, testified before the House Committee on Public Lands in 1914:

With respect to the matter of renewal, I believe that provision should be made in any lease granted that the original lessee should have the right to renew except under two conditions, first when the site is needed for public purposes, either by the Nation, by a State, or by a municipality. * * *

Later bills replaced a leasing system with a licensing procedure. As late as 1920 there was opposition expressed to the preference to

municipalities, and Senator Phipps suggested an amendment which would have precluded the operation of the preference clause to new licenses on the theory that those taking the initial risk should have the benefit of a new license later. His amendment was rejected.

Under section 15 of the act, the Commission is authorized to issue a new license to the original licensee or a new license to a new licensee. In either event there would be a new license and a new licensee authorized to act under the terms and conditions of that new license. The act draws no distinction between the original license, issued for a project subsequently to be built, and a new license to operate and maintain a presently existing project, insofar as the applicability of the preference language is concerned. Quite obviously upon the expiration of the fixed term of the original license, a new license must be issued. An entirely new licensing procedure must be undertaken by the Commission upon the expiration of the old license, in the event of competing applications. There is no automatic renewal or relicensing; such terms do not appear in the act in any section involving the Commission's licensing authority. Contrast this with section 5 of the Boulder Canyon Project Act (45 Stat. 1060, 43, U.S.C. s 617 d(c)) which does provide for renewal of leases and contracts.

It is a matter of obscure semantics to urge, simply because section 7(a) refers to a "new licensee" and section 16 distinguishes between the "original licensee" and a "new licensee," that the framers of the act intended to make the preference purportedly given to public agencies totally inoperative if the original licensee should apply for a new license.

It would have been a relatively simple task for the authors to have expected from the preference provisions of section 7(a) situations wherein the original licensee desired to apply for a new license to operate and maintain his existing project. No such intent on the part of the authors of the legislation can be inferred from the language of the Act or from its legislative history. The demonstrated successful efforts to strengthen the public agency preference provisions make it quite clear that the contrary effect was intended.

Thank you, Mr. Chairman.

Senator CANNON. Thank you, Mr. Ely.

In Mr. Radin's statement, I was intrigued by your analysis there concerning the fact that "Congress and Commission are one and the same."

Did you hear the discussion we had yesterday with some of the witnesses on that point?

Mr. RADIN. No, I am sorry I was not present yesterday.

Senator CANNON. The first sentence of section 14 of the act says.

Upon 2 year's notice from the Commission the United States shall have the right to take over the project.

Doesn't that seem to make a definite distinction between the United States and the Commission, which you contend is one and the same in your interpretation?

Mr. RADIN. Yes, sir.

Our interpretation is on the basis of the proviso I quoted here, that the Commission shall make that determination. The rationale, the reasoning is this: If you look at the sentence I have quoted here, I stated "that in the event the United States does not exercise the right to take

over or does not issue a license to a new licensee, or a new license to the original licensee, the commission shall issue from year to year an annual license."

Embodied within that sentence the Commission is given the authority to issue a new license to the original licensee, and we would assume that the Commission refers there also back to the provision to take over a project.

I think the net effect of our position there, Senator Cannon, is that in some cases the authorization procedure would be obviated. The Congress would still have the right to make the final determination, because the Congress would have to appropriate the money for recapture of a project. But you would eliminate, by the procedure we have suggested here, the authorization step for recapturing a project. That is really the net effect of the difference in the interpretation of the legislation as we see it.

Senator CANNON. Generally, Mr. Ely, you support the bill, this approach, except that you do want to make it clear that, in your interpretation of it, the public body would have priority, other things being equal, even over an application by the original licensee?

Mr. ELY. That is correct, Mr. Chairman.

We are concerned by this. The bill does not contain any language on the subject of a preference or non-preference to the public agencies with respect to new licenses. The difficulty is created by the fact that the Commission, in submitting its recommendation, now embodied in the bill before you, volunteers its interpretation of section 15 with respect to this preference provision.

It appears in the Commission's letter to Speaker McCormack. The Commission, as I say, volunteers this interpretation. Under section 7(a) the Commission says:

Under the Federal Power Act the Commission is instructed to give preference to applications by States and municipalities in issuing licenses to new licensees under section 15.

It continues:

We believe that this preference applies only after it has been determined that the original licensee should not receive a new license. In those instances, where the original licensee and another applicant seek a new license for the same project, the Commission believes that the new license is to be issued to whichever applicant can best meet the standards of the Act.

In those rare cases where the two applicants are evenly matched, the Commission believes the new license should be issued to the new licensee, so long as he can meet the standards of the Act as well as the other applicant.

Our concern is that in later interpretation of S. 2445, if it should be enacted, someone would urge that the legislative history of the bill before you, since it contains this somewhat gratuitous interpretation by the Commission of the preference effect of section 15, would be deemed to have been approved by this committee and therefore by the Congress even though the bill you are on does not contain a word on the subject.

This has happened before. We note in some of the prepared testimony of the utility representatives, this interpretation is relied upon. It has led to the protective legislative history. We think it appropriate for this committee, if you are not going to legislate on a preference on the issuance of new licenses, to show you that you do not adopt the Commission's interpretation by silence in enacting an amendment to section 15.

Indeed, if the Commission is correct, then this same committee of the Congress, in amending the Federal Power Act in 1920 to add a preference to the public agencies on the issuing of new licenses under section 15, was a wholly futile act. It is inconceivable upon what set of circumstances any public agency would have any preference to a new license, if the Commission's interpretation of section 15 is correct.

We do not wish the committee, by sort of negative legislative history now, to be deemed to have reversed the decision of this same committee of Congress made 40 years ago. If you are going to legislate on the question of the preference, so be it.

We hope you would adopt language which we would urge, that affirming preference to public agencies.

If you are not going to legislate on that subject, then let us not have the unrefuted assertion by the Commission of its interpretation of section 15 adopted by silence.

We refute it. We collide with it head on.

We ask the committee to protect our view in the way I have described.

Senator CANNON. Let's assume that your view was followed and that a private licensee and a public agency had both applied for the new license and that the public agency was not one of the agencies of the Federal Government where the Congress had to appropriate the funds. What would be your position with respect to the required payment to the previous licensee of its capital investment?

Mr. ELY. We regard the act, the Federal Power Act, as intending fair compensation to the original licensee. We would not assert a right, as some witnesses have indicated, to take anybody's property at a gain. Quite the contrary. On the other side of the coin, the act itself prohibits the licensee from capitalizing the value of the water power. It is established law, by the U.S. Supreme Court, that it is inconceivable that any person should have a private property right in the flowing waters of a navigable stream. Consequently on relicensing, new licensing, if a public agency should present a plan equally well adapted to that of the original licensee for the future utilization of the resource, the development of the river, we think the preference should apply as though these were two new competing license applications, with the difference that the prior licensee to the extent that he had not amortized his investment by the rates approved by the Federal Power Commission, should be compensated by the new licensee for the fair value of the property taken. I would not contend that the new licensee had any right to take that property at any fair sale price. It should be fair compensation.

Senator CANNON. You are raising a question in my mind. You say to the extent that his capital investment has not been amortized. Yet you turn around and say the fair value, fair market value. It seems to me that there is a difference between the fair market value and the unamortized capitalization.

Mr. ELY. There may well be in certain cases.

Senator CANNON. Would your position be that a public agency under those circumstances would be required to pay the fair market value of the assets that they were taking just as though they were taken under condemnation proceedings?

Mr. ELY. It is. I draw no distinction. There is a distinction of what should happen to the proceeds. The company should not be paid twice, once by the rate payer, once through rates which have in effect amortized by providing for complete depreciation, and the second time by the new licensee. There should in the public interest be some regulation of the windfall, if there is one, of the sale by the old licensee of its property twice. So far as the new licensee is concerned, we seek no windfall. The fair value of the property taken as of the date of its taking, just as in condemnation, I assert is the fair standard.

Senator CANNON. Let's go a step further. You say they should not have a windfall. Let's assume it was not a profitable operation that was being taken over and they were actually receiving less than, as the fair market value, less than the amount that they were carrying on their books, which imposed an added burden on the rate payers. What would your position then be?

Mr. ELY. It is for the Commission in the first instance, and ultimately on review by the courts, to determine the value of the property acquired by the new licensee. And the question of whether the property was economic or not economic I suppose should be taken into account by the fixing by an impartial agency of the price to be paid. If there is an obsolete plant and the generators taken out and replaced, or if it is taken about the time when the useful life of the property has expired and the company has not made provisions for replacement, obviously you have a different valuation problem than if the turbines had just been renewed or had been maintained in first-class condition. Each case would have to be adjudged on its merits.

Senator CANNON. Mr. Radin, you indicated that the Appropriations Committee would have the right to review and therefore perhaps some of these steps were unnecessary. Do you believe that the Appropriations Committee would have the same degree of expertise in substantive legislation as an authorizing committee might, which might initially have considered that problem?

Mr. RADIN. Yes, I certainly think so. But beyond that, as my statement points out, I believe that the issues are not nearly so complex on the recapture of an existing project as they are on the authorization of a new project because the feasibility would have been demonstrated over the period of the operation of the project. So I think the analogy is not the same as between the authorization of a new project and the recapture of an existing project. Also of course on that point, the expertise of the Commission would be brought into play, too.

Senator CANNON. Thank you very much, Mr. Radin and Mr. Ely, for your appearance here this morning.

Mr. RADIN. Thank you, sir.

Mr. ELY. Thank you, Mr. Chairman.

(The following letter from Mr. Ely clarifies his statement:)

ELY & DUNCAN,
COUNSELLORS AT LAW,
Washington, D.C., March 19, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: Upon reviewing my testimony given before the Senate Committee on Commerce on S. 2445, on February 27, I find that I may

have conveyed a wrong impression in a colloquy with Senator Cannon (p. 121) relating to the price that would have to be paid to the original licensee by a new licensee were it issued the license.

I think the Federal Power Act is clear that if the project is taken away from the original licensee either as a consequence of recapture by the United States or licensing to a new licensee, the original licensee is to be paid its "net investment . . . in the project or projects taken, not to exceed the fair value" plus reasonable severance damages, if any (Sections 14 and 15, Federal Power Act), notwithstanding the fact that the fair market value of the project may exceed the price arrived at by application of the statutory formula.

To the extent that my testimony may have created the impression that the new licensee's obligation may in some instances exceed net investment plus reasonable severance damages, I would request that this letter, rather than my testimony on this point, be treated as an expression of the views of the American Public Power Association. To this end it would be helpful if this letter could be incorporated in the record of the hearing.

As a matter of courtesy I have forwarded a copy of this letter to each of the witnesses who appeared before the Committee.

Respectfully,

NORTHCUTT ELY.

Senator CANNON. The next witness will be Dr. Spencer M. Smith, Jr., secretary, Citizen's Committee on Natural Resources. I am advised that Dr. Smith is ill this morning. His statement will be filed for the record.

(The statement referred to follows:)

STATEMENT OF DR. SPENCER M. SMITH, JR., SECRETARY OF THE CITIZENS COMMITTEE ON NATURAL RESOURCES

Mr. Chairman, members of the committee, I am Dr. Spencer M. Smith, Jr., Secretary of the Citizens Committee on Natural Resources, a national conservation organization with offices in Washington, D.C.

The Citizens Committee on Natural Resources is a legislative action group whose gifts and bequests are not tax deductible by the donor and is registered under the provisions of the Lobbying Act with the Congress. Members of our Board of Directors serve as individuals and act in their individual capacities. The policy of the Citizens Committee on Natural Resources is established by the Board of Directors at their Annual Meeting. The Executive Committee meets from time to time, especially if interpretation is needed of the decisions of the Board relative to a particular measure. Those serving as members of our Board of Directors are distinguished professionals in the various disciplines of the conservation of our natural resources. Many are executive officers of scientific, educational, and non-profit organizations in the field of conservation.

We appear today, Mr. Chairman, in support of S. 2445, which would amend Part I of the Federal Power Act, which relates to the procedures involved when hydroelectric licenses expire. The basic question is whether the Federal Government should re-capture a project upon the expiration of a hydro-electric license, or whether re-licensing should be effected. The Federal Power Commission was created in 1920 to license non-Federal hydroelectric projects for a period not to exceed fifty years.

We are pleased that S. 2445 clarifies and better establishes the processes by which the decision to re-capture or to re-license is determined. We do not have any significant expertise in addition to the information the Committee already possesses in defining the role of the Commission, or the Congress, and the

further establishment of appropriate procedures for arriving at a conclusion. We support Chairman White's recommendations that in the decision to re-license, the determination of which plans are best adapted to the comprehensive development of the waterway would include in that criteria for comprehensive development all beneficial public purposes. Such public purposes would include further the serious consideration of recreation, conservation, fish and wildlife protection, and water quality control. All of these criteria are of substantive importance for any project under active consideration for re-licensing.

It would be impertinent to suggest that those appearing before the Committee regarding S. 2445 were concerned only with the consideration of their own economic posture. While we do not so claim, we are aware that many witnesses do not have the primary concern for other public benefits which this Committee has recognized over a period of years and which could be compared to the consumer's concern when the Federal Government acts to protect the consumer interest or the broad public interest, often by restricting the prerogative of directly involved economic enterprises. It would appear that Section 3(B) of S. 2445 may well fall within this type of context. The bill would increase or extend the Commission's licensing power, which would permit the Commission at any time after the issuance of any license under Section 15(A) of the Federal Power Act, to impose upon the licensee such further reasonable requirements as are not inconsistent with the other provisions of the Act.

We are quick to discern that this particular section of the proposed legislation would be hard-pressed to find a champion among the prospective licensees. Their position is completely understandable and is comparable to allowing one of the parties to a contract to re-negotiate it at his option but not at a time certain. The reasons given are direct and understood by all, such as the difficulty of planning, the fluctuation of a variety of economic indices with which the licensee must cope, and perhaps tantamount to these concerns is the feeling of uncertainty that would be evident if the Commission possessed this authority.

While one can understand the concern of the licensee and his need for a considerable degree of certainty in his operation, it must be subordinated, in our judgment, to the necessity of serving the broad public interest. It is impossible for the Federal Power Commission at the time the license is granted to be omniscient for a period of fifty years. The events of the last two decades should make this intuitively obvious. The problems of water availability, water quality, diminution of recreation areas, population increases and concentration, and technological changes represent changes of such rapidity and magnitude that not even the most pretentious clairvoyant could have grasped in any reasonable perspective forty years ago. Technological changes especially have accelerated in the recent past and continue at an ever more rapid rate. The difficulty of digesting this engineering and scientific largesse is apparent and it would appear mandatory that the public interest should receive consideration and possible re-evaluation from time to time.

The bill is quite specific as to any additional requirements being imposed upon the licensee in meeting the tests of reasonableness. Public hearings would have to take place and it seems inconceivable that the Commission would not have as one of the criteria for that evaluation the economic impact on the area, as well as the licensee himself. Also, public hearings would allow for opportunity of the various interests to be represented prior to the Commission making a decision. Also, it would be inconceivable to us if the Commission did not consider such action with the greatest of care and make every human effort to conduct the maximum amount of analysis and research even prior to the preliminary finding.

We feel Mr. Chairman, that he events of the past have proven conclusively that had the Commission had this power some of our most egregious problems relative to water pollution, recreation, and appropriate conservation measures could have been handled at a much earlier date, resulting in an advantage to everyone concerned. We do not think that the passage of this measure will cause any wide spread disinterest in the application or re-application for licenses nor do we feel the burden of such uncertainty to be so great that we should refuse to place in the hands of the Commission the means by which the broad public interest can be served in a complex, fast changing world.

We hope that the Committee will find it convenient to approve S. 2445 at an early date and retain the provision recommended in Section 3(B).

Senator CANNON. Is Mr. Stalbaum here?

Mr. STALBAUM. Yes, sir.

Senator CANNON. Mr. Lynn Stalbaum, legislative consultant, National Rural Electric Cooperative Association.

**STATEMENT OF LYNN STALBAUM, LEGISLATIVE CONSULTANT,
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, WASH-
INGTON, D.C.**

Mr. STALBAUM. Mr. Chairman, my role today is primarily that of a messenger, because our association is holding its national convention in Dallas, Tex., and those people in our legislative department who have worked on this legislation are all busy down there. There are nearly 10,000 local representatives of our various associations registered there. And, of course, it is a very busy schedule.

I might add, as an aside, one member of your committee, Senator Morton, is scheduled to speak at the convention tomorrow morning as part of the morning session down there.

A member of our staff, Mr. Charles Robinson, Jr., who is our staff engineer and staff counsel, has done the background work and has followed closely the introduction of S. 2445. He asked me to submit his statement, which I filed with the clerk. I ask that it be made a part of the record as the official statement of the NRECA.

Senator CANNON. It will be made a part of the record.

(The statement of Mr. Robinson follows:)

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

National Rural Electric Cooperative Association is the national service organization of REA-financed rural electric systems. Nearly 1,000 of these systems—or approximately 95 percent of all REA electric borrowers—hold voluntary membership in NRECA.

We appreciate this opportunity to present the views of our member rural electric systems on S. 2445, which would amend the Federal Power Act to clarify the means of recapture or relicensing of non-Federal hydroelectric projects.

We strongly support early enactment of that portion of Section 3 of S. 2445 which would add to the Federal Power Act a new Section 15(b). The new language, to which we refer, appears beginning line 24 of Page 4 of S. 2445. In effect, it provides that in the event the United States does not, at the expiration of any original project license, exercise its recapture rights, the Commission, in issuing a new license to either the original licensee or a new licensee, may specify not only conditions appropriate at the time of issuance, but may, in addition, impose additional conditions on the holder of the new license at any time during the license period as may be required to serve the public interest.

This provision wisely recognizes that during the substantial number of years over which the new license will be effective, changing economic and social circumstances, as well as unforeseen departures from normal rainfall, stream-flow, and other environmental parameters, may require temporary or permanent changes in project operation in order to assure optimum use of the resource involved.

It seems to us, also, that the language of this proposed new Section 15(b) would, at least to some extent, avoid a proliferation of contested cases involving recapture.

It is probable that many rural electric systems, and perhaps some of the smaller municipally-owned electric systems, may not command the financial resources with which to justify their own applications for a license on a major project for which the original license has expired. Thus, it might be anticipated

that recapture by the United States would be the most likely objective of the small system which seeks for itself a portion of the potential benefit available from an expiring license.

However, the recapture provision of the Act, as presently interpreted by the Federal Power Commission and as proposed by S. 2445, will be burdensome and time consuming even under the more favorable procedure which we will advocate later in this statement. Therefore, it appears that very few projects will, in fact, be recaptured.

As a result, rural electric system participants in relicensing proceedings will, in terms of realistic possibilities, frequently be seeking neither recapture nor licenses of their own, but instead, will be looking toward relicensing of the project to someone else under special conditions. Such conditions might include delivery to the rural electric cooperative by the new licensee of a block of wholesale energy at a specified cost; the use of the licensee's transmission system for wheeling wholesale energy to the cooperative from other sources; or an arrangement whereby the licensee would pass on to the intervening rural system a portion of the economic benefit available from the water resource involved.

Therefore, we feel that Section 3 of the Bill, which adds a new Section 15(b) to Federal Power Act, is of extreme importance to small electric systems which desire to participate in benefits available from hydroelectric developments, the total cost of which is beyond their financial capability. In addition, it will permit existing licensees to avoid extended recapture and relicensing proceedings by agreeing to share the benefits of the projects for which they seek a new license. Moreover, in terms of overall public interest, this section will allow the FPC to arbitrate relicensing and recapture controversies and to retain the continuing jurisdiction over each license necessary to enforce its decision.

As to Sections 1 and 2 of S. 2445, we respectfully disagree with the recommendations of the Federal Power Commission as to implementation of the recapture provisions of the Act. S. 2445 assumes that the Commission has no authority to decide recapture under the present law, and imposes on the proponent of recapture in each individual case the almost impossible procedural burden of: (1) successfully persuading FPC that recapture is justified and should be recommended to Congress; (2) persuading the Congress to enact special legislation authorizing recapture of each individual project involved on a case by case basis; and (3) persuading Congress that funds necessary to compensate the original licensee should be appropriated. This type of procedural burden suggested by S. 2445 will be virtually insurmountable.

By contrast, it is our position that the language of the Act, as now written, and as originally intended by Congress, is a delegation to FPC of the legislative authority necessary to exercise the recapture power reserved by the United States. Thus, as we view it, the Commission already has authority to issue by administrative process whatever regulations are necessary to guide it in deciding recapture cases. Its decision in each such case, of course, would be subject to control by Congress through the appropriation process, because at least some funds will be required to compensate the original licensee.

This interpretation of the Federal Power Act seems highly logical in view of its purpose of relieving Congress from the burden of case by case decisions on matters largely beyond its technical competence. It does not, however, destroy Congressional control over policy, which is retained via the appropriation process.

If, however, additional legislation is required to effectuate project recapture, it should, in our opinion, take the form of a general grant of authority to the Federal Power Commission sufficient to enable the Commission to decide recapture cases by administrative procedure as they arise, subject to only the appropriation power of Congress. There is, we believe, no policy justification for requiring Congress itself to decide each case separately by the legislative process, which is completely unsuited to resolving technical administrative controversies. This is the type of authority which Congress has historically and repeatedly delegated to administrative agencies in a great variety of regulatory areas.

In effect, Sections 1 and 2 of S. 2445 contain no new law, do not modify any existing law and add nothing whatsoever to that which the Commission can already do under the Federal Power Act as now written. The submission of S. 2445 by the Commission is, therefore, no more than a request for legislative guidance which could probably be supplied as well by a report of this Committee as by enactment of Sections 1 and 2 of S. 2445. The legislation takes an unrealistically limited view of the recapture and relicensing power granted the Com-

mission under the Act as it now stands, an interpretation which we believe was not intended by Congress when it passed the Act in 1935.

In addition to the provisions of S. 2445 itself, we respectfully direct attention to the letter of August 28, 1967, with which FPC Chairman Lee C. White transmitted the proposed Bill to Congress. On pages 4 and 5 of that letter, Chairman White refers to the licensing preference afforded to states and their political subdivisions under Sections 7(a) and 15 of the Federal Power Act as presently in force. He states that in any Section 15 relicensing procedure, the preference for states and their political subdivisions will not be applied by FPC until it is first determined that the original licensee should not receive a new license, and, that all matters being equal, the original licensee should receive the new license so long as he can meet the standards of the Act as well as the other applicant.

This position, it seems to us, runs wholly contrary to the clear intent of Section 7(a) which reads in part:

“ . . . in issuing licenses to *new licensees* under Section 15 hereof the Commission shall give preference to applications therefor by states and municipalities, provided the plans for the same are deemed by the Commission equally well adapted . . . ” (underlining supplied)

It is our contention that the words “new licensees” in the above language apply to all applicants for a new license, including the holder of the original license. To hold otherwise grants to the original licensee a preference not contemplated by the Act.

We suggest that the Committee report on S. 2445 make clear that the application of this preference shall apply to relicensing procedures in the same manner as it does to original licensing procedures.

We also respectfully call attention to the fact that the Federal Power Act is the only major Federal statute in the area of electric power which grants preferential rights to states and their subdivisions without also granting the same rights to rural electric cooperatives. All Federal power marketing statutes include both public bodies and cooperatives in the same class of wholesale customers entitled to a priority on hydroelectric power generated at Federal dams. It would, we believe, be appropriate at this time to amend Section 7(a) of the Federal Power Act to add “rural electric cooperatives financed by loans from the Rural Electrification Administration” to those entities entitled to licensing preference under that section.

Cooperatives, like the municipalities already granted such preference, are non-profit in operation and are consumer-owned. They should, we believe, be entitled to the same rights under Section 7(a).

In summary, we respectfully ask that Sections 1 and 2 of S. 2445 be amended to constitute a legislative declaration that the Federal Power Commission already has authority under the Act as now written to recapture licensed projects by administrative procedure, subject only to the appropriation of funds with which to compensate prior licensees. As an alternative, we suggest that Sections 1 and 2 be amended to constitute a general grant to the Commission of whatever additional authority may be required to so permit recapture by FPC administrative process, subject only to the appropriation of necessary compensation for the prior licensee.

We further respectfully request that Section 3 of S. 2445 be enacted as soon as possible so that the Commission will have the authority necessary to adequately protect the public interest in relicensing existing projects for which the original licenses have expired.

Finally, we ask that Section 7(a) of the Federal Power Act be amended to include “rural electric cooperatives financed by loans from the Rural Electrification Administration” with the publicly owned electric systems which already enjoy preferential licensing rights under Section 7(a); and that the Committee Report on S. 2445 indicate to the FPC that such preference rights apply to the relicensing procedures under Section 15 of the Act in precisely the same manner as they apply to original licensing procedures.

MR. STALBAUM. I have given you this background because I feel that the mere filing of a statement without any comment might be construed by the committee that our association and its members are not vitally interested in this subject of licensing and recapture, when actually the reverse is true. It is of deep concern to us. To my knowledge, no other statement will be presented by a rural electric spokes-

man. If these hearings are to continue at a later date, when Mr. Robinson does not have this conflict, he would be most willing to appear before you personally for such questions as the committee might have.

In order that the main points of the statement are fully presented, permit me to read the last three paragraphs of it, which are a summary of the views presented therein.

In summary, we respectfully ask that sections 1 and 2 of S. 2445 be amended to constitute a legislative declaration that the Federal Power Commission already has authority under the act as now written to recapture licensed projects by administrative procedure, subject only to the appropriation of funds with which to compensate prior licensees. As an alternative, we suggest that sections 1 and 2 be amended to constitute a general grant to the Commission of whatever additional authority may be required to so permit recapture by FPC administrative process, subject only to the appropriation of necessary compensation for the prior licensee.

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Senator CANNON. Thank you very much, Mr. Stalbaum, for presenting the position of the NRECA. I don't know whether we will have additional questions of Mr. Robinson. If we do we will notify your organization. We have received numerous requests that additional time be allowed for the submission of statements of position on this legislation.

At this time I want to announce that the record of these hearings will be kept open for three more weeks in order that additional statements might be presented for inclusion in the official record.

We have received letters from the Department of the Interior and the New England Power Co., which will be made a part of the record. Also a statement by Mr. George O'Connor, president of the Montana Power Co. and chief operating officer for electric operations. Also a statement from Mr. Gordon M. Freeman, president, International Brotherhood of Electrical Workers, AFL-CIO-CLC. These will all be made a part of the record.

(The statements follow:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 21, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I regret that, due to prior commitments, I was unable to appear before you personally and testify at the February 26-27 hearings on S. 2445.

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

Sincerely yours,

KENNETH HOLUM,
Assistant Secretary of the Interior.

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

Mr. Chairman and members of the committee, it is a distinct pleasure to appear before the Committee to testify concerning S. 2445, introduced by Chairman Magnuson at the request of the Federal Power Commission. My testimony will expand upon the basic position of the Department of the Interior in support of the bill as expressed in our report of February 23, 1968. We believe that the provisions of the bill, which would amend Part I of the Federal Power Act in respect to the procedures which the Federal Power Commission is to follow in processing expiring hydroelectric licenses, are both worthwhile and workable.

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

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

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

We understand that this bill is strictly of a procedural nature and does not amend the Act with regard to such substantive determinations as to whether a project should be taken over, the proper basis for compensation in the event of Federal takeover, or the relative priorities to be followed in relicensing. If the Committee intends to act upon such substantive issues, either through amendment of S. 2445 or establishment of legislative history which changes existing policies, this Department would want the opportunity to present further testimony concerning the effect of such determinations on the Federal power marketing program.

The provisions for a moratorium to stay the effect of a new license until the expiration of the following full Congress, in the event the Commission does not intend recapture of a project, establishes a reasonably brief but adequate period in which a Federal agency which moves for the stay may act through the administrative processes of the Executive Branch to prepare and present its case before the Congress. The Federal Power Commission is an independent agency, not an executive agency. Unless a sufficiently long moratorium is provided, the Executive Branch will not have an opportunity to discharge its constitutional responsibility to make recommendations to the Congress on policy issues of this nature.

Particularly in light of the exception allowing the Commission to issue temporary licenses pending expiration of the prescribed moratorium period, the period provided for in the bill, from two to four years, is not an overly long time for a vitally important determination of this type. It should be emphasized that the Congress may terminate the stay at any time and the Federal department which requested the stay also may move to terminate it. If the bill is enacted, we intend to invoke the moratorium provision only when recapture clearly would be the

course of action best adapted to a comprehensive plan of water resource development in the public interest.

We strongly support the provision for open-ended conditioning of licenses issued pursuant to section 15(a), except for temporary licenses, and the measure providing for temporary nonpower licenses pending assumption of control of a facility by an appropriate governmental organization. The requirements in the bill for notice and opportunity for hearing and for reasonableness of conditions; and the administrative safeguards built into Commission procedures will serve to prevent arbitrary or capricious tampering with basic terms of the new license. At the same time, this authority will be of great value in developing each relicensed project fully in a manner best suited to the comprehensive development of a river basin. This will permit the Commission, on a long-range basis, to assure water resource development which best serves the traditional purposes of power generation, flood control, and irrigation, and also such values as fish and wildlife enhancement, recreation, pollution control, and the preservation or restoration of aesthetic and historic values, which have received increasing emphasis in recent years. In this manner, the highest possible water resources conservation and use consistent with the licensee's economic interest will be maintained.

The provision for issuance of a temporary, exclusively nonpower, license, pending assumption of supervision by a governmental agency should provide another appropriate vehicle for advancing these same objectives. For example, in the case of a marginally economic hydropower project on a small stream, a temporary nonpower license might be granted to reserve a project for use as part of a water pollution control or fish and wildlife enhancement scheme.

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

NEW ENGLAND POWER CO.
Boston, Mass., February 23, 1968.

S. 2445: Procedure upon Expiration of Hydro Electric Project Licenses issued pursuant to Part I of the Federal Power Act.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce, U.S. Senate,
New Senate Office Building, Washington, D.C.*

DEAR SENATOR MAGNUSON: New England Power Company supports the basic purpose and concept of S. 2445.

A very substantial number of licenses for hydro-electric projects, in all parts of the country, will expire in the next few years. It is vital to orderly planning that the future of these important projects be settled promptly. Only in this way can the interests of consumers in an abundant and reliable supply of electric energy be fully met; and only in this way can the broader public interest in the continued development of our water resources be assured.

In enacting the Federal Water Power Act in 1920 Congress wisely reserved a right to re-examine licensed hydro-electric projects at the expiration of an initial license. Congress was then launching a new scheme for the development of the nation's hydro-electric resources and provision for a moment of future reappraisal was a prudent precaution.

In the intervening years the Federal Power Commission has carried out the broad directives embodied in the Federal Water Power Act, and the nation's hydro-electric potential has been successfully developed within the framework of a comprehensive development of the nation's water resources. In the course of its administration of the Act the Commission has become fully cognizant of the details of individual licensed projects, including their electrical and hydrau-

lic characteristics, their interrelation with other developments on the same waterway, and their contribution to the overall development of the region. With this background the Federal Power Commission is pre-eminently qualified to act as the agent of Congress in deciding the question reserved in 1920: whether a hydroelectric project should be taken over by the United States at the expiration of the initial license, or re-licensed for a further term.

This is the principal purpose of S. 2445. We believe that the Federal Power Commission is fully qualified to make the necessary decisions at the expiration of initial licenses, just as the Commission is qualified to determine at the outset whether new developments should be carried out by the United States or by a licensee.

We suggest further that other Federal departments and agencies can be assured that their views as to the possible benefits of Federal ownership of an individual project will be fully considered in the national interest by the Federal Power Commission. We therefore urge that the bill be modified so as to make the Commission's decision controlling, and not subject to an automatic and indefinite stay upon the motion of other Federal departments and agencies.

We recognize that under some circumstances a project originally licensed for private development would best serve future needs under Federal ownership. We are confident that such situations are the exception rather than the rule, and that this decision can wisely be committed to the Federal Power Commission. Absent overriding considerations of national importance, we believe that a hydroelectric project which serves as an integral part of an integrated power supply system can best serve the needs of the future by continuing under present ownership, subject to the continuing surveillance of the Federal Power Commission. This we understand to be the original intent of Congress in 1920 and the accepted reading of the Act.

We suggest, however, that the proposed new section 15(b) of the Act (set out in section 3 of the bill) is unnecessary and should be eliminated. The Federal Power Commission has broad powers under existing provisions of the Act to prescribe the terms and conditions of all licenses. The proposed new section 15(b) implies that a special grant of power is necessary for this purpose with respect to renewal licenses, and thus tends to cast doubt on the Commission's authority to prescribe the terms and conditions of licenses for new projects. Deleting this section from the bill would avoid this anomalous result.

Yours very truly,

D. G. ALLEN, *Vice President.*

STATEMENT OF GEORGE W. O'CONNOR, PRESIDENT, MONTANA POWER CO.

My name is George O'Connor. I am President of The Montana Power Company and Chief Operating Officer for Electric Operations.

The Montana Power Company operates in the western two-thirds of Montana serving both electricity and gas in most of our service area.

Our Company's service area embraces some 96,000 square miles, which is the largest area served by any utility company in the United States. A total of 578,000 people, or 82% of Montana's 700,000 population, reside in our service area. Our population density is approximately six persons per square mile. This compares with a population density on the system of Consolidated Edison Company serving New York City of over 24,700 persons per square mile.

We have 520,000 kilowatts of hydroelectric generation on our system, which is 88% of our total present generating capability. We operate 4,686 miles of high-voltage transmission lines and 9,773 miles of distribution lines to serve our 167,000 electric customers. Late this year, we will add 180,000 kilowatts of steam generation to our system when the new Billings steam plant goes into operation. All of our hydroelectric generating projects are, or will be, subject to Federal Power Commission licenses issued under Part I of the Federal Power Act.

We have one hydro plant license which expires next year. This license was issued to us in 1962 for a period of seven years. This plant has a capacity of 11,500 kilowatts.

The next license to expire covers our Thompson Falls plant with a capability of 40,000 kilowatts. The license for a 37-year period was issued in 1938 to expire in 1975.

Our 180,000 kilowatt Kerr plant was licensed in 1931 for a 50-year period. However, at its expiration date of 1980, we will have had only 41 years of operation under the license.

A license for our nine Missouri River plants, having a total capacity of 284,000 kilowatts, will expire in 1998.

As you can see, The Montana Power Company has a vital interest in the subject matter of S. 2445, which is intended to better define the relicensing procedure of the Federal Power Act.

NEED FOR LEGISLATION

I appear here today to urge the Congress to enact S. 2445, subject to some amendments or policy statements, to establish a policy and procedure for relicensing. There are many compelling reasons why clarifying legislation is necessary on this matter. Permit me to discuss a few of the more pertinent items.

We must plan years ahead in order to assure an adequate power supply to live up to the responsibility to provide our customers with a reliable and continuous source of electricity at reasonable rates. Because we have such a major percentage of our system generating capability under FPC hydroelectric licenses, it is imperative to us that there be some well-defined relicensing procedure and policy so we may be assured to the extent possible that we can provide our customers with a dependable supply of electricity.

I. We believe that the Federal Power Act contemplates that the original licensee should have a project relicensed to him at the end of the original license term and that the term of the new license should be long enough so that the power supply from the project may be relied upon in the long-range planning of the licensee. We realize, of course, that such licensee must, upon relicensing, meet the standards of comprehensive developments provided in the Act.

There are several very sound and persuasive reasons why the Federal Power Act contemplates relicensing to the original licensee, as has been pointed out on several occasions over the years by the Federal Power Commission:

(1) These projects, for the most part, are an integral part of the licensee's total system and cannot be divorced from the respective system operations without serious impairment thereto.

(2) Depreciation and similar costs charged against the licensed project were borne by the customers of the original licensee. These customers are entitled to the future benefits of depreciated generating costs. The detriment to be suffered by these customers should be taken into consideration upon takeover of the project by the government or licensing it to another power supplier.

(3) The Commission should not recommend takeover or authorize licensing of the project when it merely results in transferring this source of power from the original licensee's customers to another group of power consumers.

(4) As now licensed, these projects provide large tax contributions to local and state governments. If takeover is exercised by federal authorities, serious financial problems would be caused for these governmental entities.

In Montana, for instance, all school districts and city and county governments are almost totally dependent on the receipts from property taxation. The Montana Power Company is the largest single taxpayer in the state. In the several counties where our licensed projects are located, the taxable value of these facilities usually constitute a major portion of the tax base.

I have attached hereto a table with a breakdown of tax benefits in the counties where our licensed projects are located. You will notice that in one county, our project represents almost 24% of the total taxable valuation of the entire county. Furthermore, substantial additional tax payments are made to our state government through electrical energy license taxes and corporation license taxes due to the operation of these licensed projects by Montana Power.

(5) Unless the project is needed to perform a governmental function not being provided by the present owner under the license, there appears to be no reason for takeover by the United States. If the federal government takes over the project, there will be no greater development of the natural resources. Moreover, the licensee is contributing to the support of government by taxes levied on the project and, at the same time, aiding the comprehensive development of the waterway by operating the project pursuant to the terms of the federal license.

(6) The Federal Power Act requires payment of severance damages to original licensees for the serious disruption caused to their electric systems by government takeover. This appears to be a wasteful expenditure of federal

funds when the takeover will not produce any greater development of our natural resources, and the substantial payments for severance damages will add greatly to the costs of power produced by the project.

II. In relicensing hydroelectric projects, the Federal Power Commission should follow the procedure of the Federal Power Act for the issuance of original licenses.

Federal agencies should be required to present any pertinent evidence bearing on takeover of a project to the Federal Power Commission.

The relicensing of a project by the Federal Power Commission should be final except to the extent appeals to the courts are provided for in the Federal Power Act. The Federal Power Commission is the federal agency with expertise in this field in which it has been exercising its jurisdiction for nearly fifty years.

Congress should be called on to consider the takeover of a project only in the event the Federal Power Commission recommends takeover rather than relicensing.

Section 2 of S. 2445, providing for a stay of the relicensing procedure of up to four years while federal agencies present their case for takeover to Congress, should be deleted. To allow such a delay in the relicensing procedure would negate the very purpose of S. 2445, which is to give definition and stability to the relicensing procedure provided by the Federal Power Act.

III. A licensee must have some assurance when he accepts a license that he knows what his obligations, liabilities and rights will be under the terms of the license. He should have the opportunity to reject the offered license if he does not agree to some of the terms. Under the Federal Power Act, once a license is accepted, the licensee is protected from unilateral action by either the Commission or Congress in changing the terms of such issued and accepted license. Section 6 of the Federal Power Act requires that the Commission and the licensee agree on any changes in the license terms, and Section 28 exempts any existing licenses from subsequent changes in the law.

These two provisions are highly essential and afford basic protection to a licensee in making large investments based upon the license and who should, therefore, have the assurance of knowing the full extent of his obligations and the rights. To do otherwise would stifle development because no one will commit to a large capital investment without adequate economic assurance as to cost obligations.

One of the provisions of Section 3 of S. 2445 would repeal the Section 6 protection from unilateral changes in the license terms by the Commission so far as the relicensing procedures are concerned. We urge that such a repeal is repugnant to achieving comprehensive development in relicensing. Under relicensing, large sums of money will have to be invested in many cases on redevelopment of the project. Such investments should have the same protection now provided by Section 6 of the Act. To do otherwise will discourage and thwart comprehensive development.

We therefore urge that paragraph (b) of Section 3 of S. 2445 be deleted.

Thank you for the opportunity to present our views on this vital and necessary legislation.

STATE AND COUNTY TAXATION OF MONTANA POWER HYDROELECTRIC FACILITIES FOR THE YEAR 1967

	Taxable value	Total taxable value of county	Percent	Montana Power Co. tax	Total taxes in county	Percent
Kerr (including transmission lines), Lake County.....	\$3,752,220	\$15,745,634	23.83	\$530,078	\$2,821,604	18.79
Hebgen Reservoir, Gallatin County.....	278,393	26,487,251	1.05	39,284	4,573,886	.86
Madison Plant, Madison County.....	321,186	8,437,655	3.81	41,114	1,205,623	3.41
Holter & Hauser, Lewis and Clark County.....	1,760,685	31,966,392	5.51	250,921	6,401,182	3.92
Black Eagle-Ryan-Cochrane-Rainbow-Morony, Cascade County.....	4,064,428	72,105,501	5.64	678,852	13,627,987	4.98
Thompson Falls, Sanders County.....	815,359	13,701,713	5.95	97,070	1,810,215	5.36
Milltown, Missoula County.....	89,070	47,147,264	.19	13,262	10,223,446	.12
Flint Creek, Deer Lodge and Granite Counties.....	43,731	19,374,196	.226	6,106	3,161,837	.19
Total.....	11,125,072	234,965,606	4.74	1,656,687	43,825,780	3.78

STATEMENT ON BEHALF OF GORDON M. FREEMAN, PRESIDENT, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC, SUBMITTED BY RICHARD R. RAPATTONI, DIRECTOR OF THE BROTHERHOOD'S UTILITY OPERATIONS DEPT.

Mr. Chairman and Members of the Committee, on behalf of the International Brotherhood of Electrical Workers, I submit this statement in support of S. 2445 which will amend Part I of the Federal Power Act to clarify the manner in which licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised.

The International Brotherhood of Electrical Workers represents a total of nearly 900,000 members. Of these, 220,000 are directly employed in the generation, transmission and distribution of electrical energy. We represent, through collective bargaining agreements the employees of 75% of all the investor-owned private utilities throughout the United States. In addition we have agreements covering wages, hours and conditions of employment with Bonneville Power Administration through the Columbia River Trades Council; also with Tennessee Valley Trades and Labor Council; the Southwestern Power Administration and many Public Utility Districts. We also have labor agreements covering employees of over 265 Rural Electrification Cooperatives as well as the Bureau of Reclamation and many municipalities throughout the United States.

Our primary interest in S. 2445 is to assure the continuity of employment opportunities for the thousands of IBEW members employed in the hydro projects throughout the country. The investor-owned Utilities have invested hundreds of millions of dollars in the existing facilities. Most of the hydro locations are in remote sections of our states and as a result the personnel necessary to operate and maintain these hydro projects, must necessarily, live in the immediate vicinity. This requirement in turn makes it virtually impossible for these workers to find other employment except that they move their families long distances and undergo retraining in order to continue their employment with the licensee of the hydro project.

We believe that inasmuch as the Congress extended the original license question to the Federal Power Commission that the F.P.C. should maintain authority to determine the question of relicensing.

We do not particularly support the proposed wording to SEC. 2, Section 14 (b) "No earlier than five years before expiration of any license, the Commission shall entertain applications for a new license and decide them in relicensing proceeding pursuant to the provisions of Section 15, . . ." We believe the current provision as stated in Section 14 of the Act that two years is sufficient notice prior to the expiration of an existing license.

The IBEW feels any take-over by the Federal Government must inevitably result in some disruption in the operations of the licensee. Such disruption and the severance damages which must be paid on take-over are wasteful to the national economy and, wherever possible consistent with other relevant considerations, should be avoided. The take-over of a licensed hydro project which is an integral part of the system would require replacement of the project capacity and kilowatt hour output by other means of generation. The relocation and disruption to the personnel involved would not be in the best interests of our membership.

Further, the take-over of an existing licensed hydro project from the investor-owned utility would have a direct derogatory effect on the tax structure of the county and state in which the facility were located, this loss of tax revenue would have to be absorbed by the remaining business and private citizens in the area.

The IBEW would encourage and support language in the Federal Power Act, as amended, which would specifically provide preference for the reissuance of a license to the original licensee.

On behalf of the members of our Organization, I wish to express my appreciation for your consideration.

Senator CANNON. Those are the only witnesses that have been scheduled to appear on the proposed legislation. Accordingly, the hearings will now be adjourned.

(Thereupon, at 10:42 a.m., the committee was adjourned.)

ADDITIONAL LETTERS AND STATEMENTS RECEIVED

STATEMENT OF PACIFIC POWER AND LIGHT COMPANY

Pacific Power & Light Company provides electric utility service to 434,000 customers in parts of the states of Oregon, Washington, Idaho, Montana, Wyoming and California. It owns and operates 37 hydroelectric plants with a name-plate capacity of 867,787 kilowatts. Twenty of the Company's hydroelectric plants are presently under Federal Power Commission license. These licenses expire at varying periods beginning in 1974. The Company has applied or is in the process of applying for licenses for the remaining plants under the Taum Sauk doctrine. Pacific's system load, except for its system in Wyoming, is carried almost entirely by hydroelectric generation. In 1967 41.6% of the Company's total load, excluding Wyoming, was supplied from hydro generation from the Company's own plants. The remainder was supplied through purchases from licensed hydroelectric plants of others in the Mid-Columbia and from the federal government. Load increases will be met after 1975 by very large nuclear plants which, to be economic, must be provided with lost cost peaking—a substantial portion of which is expected to be provided from the Company's hydroelectric plants.

We have reviewed the testimony of Mr. Horton presented to your committee and endorse the position that he has taken. It is evident that there is need for a reasonably simple and effective procedure for deciding issues on relicensing. It is furthermore evident that a general policy of recapture would be seriously adverse to the best interests of the customers of this Company. It would be necessary to replace a substantial portion of hydro energy with higher-cost energy, and the Company would lose low cost hydro peaking required, in turn, to make the alternate energy resource economic. We have also reviewed the testimony presented before your committee by Mr. Alan P. O'Kelly, and endorse the viewpoints presented by him.

STATEMENT SUBMITTED ON BEHALF OF THE WASHINGTON PUBLIC UTILITY DISTRICTS' ASSOCIATION, SEATTLE, WASH.

The Washington Public Utility Districts' Association of Seattle, Washington, is comprised of member Public Utility Districts located in the State of Washington. Its member Utility Districts serve in excess of 300,000 electric customers and 16,000 water customers and cover over 50 percent of the land area of the State.

A number of our member Districts own and operate hydroelectric projects licensed by the Federal Power Commission under the Federal Power Act. Much of the electricity sold by these Districts is obtained from the power generated at Federally owned dams and transmitted over the transmission grid of the Bonneville Power Administration.

The coordination of non-Federally licensed projects with the Federal dams is of direct interest to the member Public Utility Districts of this Association. We have studied the statement on S. 2445, submitted by Alex Radin, General Manager of the American Public Power Association, and the statement which augments his testimony by Northcutt Ely, General Counsel for the American Public Power Association, given before the Committee on Commerce on February 27, 1968. We concur and endorse such statements.

In presenting this statement on behalf of the Association, we wish to emphasize that, while first regard of the licensing and relicensing of projects by the Federal Power Commission has to do with the production of electricity which involves our Districts directly, the State Statute under which these Districts are formed and operated by the local voter-consumers, includes the authorization of both electric and water utility service with water service for the purpose of both domestic supply and irrigation.

We emphasize this status of these Districts at the outset of this statement for a particular purpose which is referred to later.

We join with the American Public Power Association in the view that it was the intent of Congress in establishing the Federal Power Commission to establish that agency for the purpose of recapture determination as well as licensing and relicensing. The referral of decision on recapture back to the Congressional level would eliminate the expertise afforded Congress through the duly established Federal Power Commission.

Congressional action should pertain to the appropriation of funds to compensate the private licensee for his "net investment" in the project and to cover any damages as provided in Section 14 of the Act if and when recapture were effectuated.

Next, we want to re-emphasize that the amendment made to Part One of the Act in 1953, which exempted projects owned by a state or municipality from recapture, is right and proper and this new legislation in no manner should nullify such exemption. It might be advisable, since there is a question as to whether or not a project owned by such state or municipality, since it is not now subject to recapture under the Federal Power Act, would require relicensing after the initial 50-year period of license. If this is so, then S. 2445 might provide for automatic relicensing of the non-Federal but publicly owned facility which is dedicated directly to a public purpose.

We are opposed to the conditions or authority extended the Federal Power Commission to alter the terms and conditions of a license "at any time" after issuance of a new license as would be possible under Section 3(b) of S. 2445. While it may be proper to re-evaluate the project during a relicensing procedure to make certain such project is best adapted to a comprehensive plan for the improvement and utilization of water power development, and for the other reasons enumerated in the Act, once the license is granted then the owner and user of the project should have definite conditions on which he could establish his financing and operation of the project.

We wish to emphasize that it is our position that the preference to licenses afforded to states and municipalities under Section 7(a) of the Act, applies in a relicensing procedure involving a privately owned project just as it does in an original licensing procedure. We believe the legislative history surrounding the enactment of the Federal Power Act and subsequent amendments verifies Congressional intent that before any public resource is dedicated to a private use, first preference should be given to the dedication of the use of a public resource for a public purpose.

We are aware that the General Counsel of the Federal Power Commission, in the transmittal of S. 2445 for introduction purposes, has rendered an opinion that public preference will not apply in the relicensing procedure. We do not agree with that opinion and feel that the interpretation is incorrect. Most certainly, consideration of S. 2445 for the purpose of clarifying the relicensing procedure of projects to privately owned corporations, should not obviate the intent of the original Federal Power Act. This is indeed important from the standpoint of our member Districts. We refer to our original emphasis on the fact that a Public Utility District is responsible for not only electric utility service but also water service.

Illustrative of the desirability to maintain the public preference in a relicensing procedure can best be found in the Southwest part of the State of Washington on the Lewis River. All the territory in which this river originates and flows through is in areas where local voters have established Public Utility Districts to provide electric and/or water utility service.

A number of hydroelectric projects owned by a private corporation have been built along this river for the express purpose of producing electricity. One of these projects was licensed and constructed even prior to the decision of the local people to establish their own utility service. Most certainly, it would appear logical that this water resource would be dedicated to the purposes of the local areas, and especially when such usage would be dedicated to a public purpose. Most certainly, the higher use of the water might be for domestic consumption rather than power production at a later date when any relicensing for such projects are being considered.

We, therefore, definitely urge Congress to make certain that in providing new procedures on relicensing as contemplated under S. 2445, that the present preference of states and municipalities in the licensing and relicensing procedure be retained.

STATEMENT OF REEVES E. RITCHIE, PRESIDENT, ARKANSAS POWER & LIGHT CO.

My name is Reeves E. Ritchie. I am president of the Arkansas Power & Light Company, an investor-owned utility company serving over 350,000 customers located in 61 of the State's 75 counties. The Company owns and operates steam generating units having a capacity of 1,671,000 kilowatts. The Company also owns and operates two (2) hydroelectric plants with a combined capability of 69,000 kilowatts under license from the Federal Power Commission. These two (2) projects are located on the Ouachita River in south central Arkansas near the City of Hot Springs. Even though the capacity of these two (2) hydroelectric projects is relatively small in terms of our total generating capacity, they are the only hydroelectric facilities owned by the Company and serve a valuable purpose in supplying a part of our peaking capacity requirements. They also add to our spinning reserve and provide a dependable source of emergency start-up power for steam generating units, if required.

We are basically in accord with the stated objectives of S. 2445 insofar as they would simplify and more clearly define the procedures under which FPC could recommend the relicensing of hydroelectric projects in those instances where the FPC does not recommend take-over of the projects by the federal government. This, in our opinion, would greatly improve the mechanism for relicensing and would relieve the Congress of the burden of considering each individual situation where take-over by the government does not appear to be in the public interest.

As presently drafted, however, there are certain provisions in the proposed legislation which might create more problems than would be solved and could result in inequities to existing licensees, their customers, and security holders. One of the more serious of these, in our view, is the additional power granted to the Commission to require indeterminate conditions in the renewal license granted to an original licensee which would subject the license to unilateral amendment and would reduce it to more the status of a permit than a license. There seems to be no valid reason why the Commission needs, or should have, powers on relicensing greater than those it has in granting an original license. We, therefore, feel that Section 3 of S. 2445 should be revised so as to give the same, but no more, authority to the Commission than it would have in the case of an original license.

A second objection to the present draft lies in the provisions of Section 2 of the bill providing for a stay of from two (2) to four (4) years of any permanent relicensing by the Commission simply upon motion of any federal department or agency. It seems to us that this is an unnecessary provision. Such a power is not contained in the present law in connection with original licensing proceedings. Historically, the right of government agencies to intervene and to obtain judicial review of Commission decisions has proved to be adequate protection for the public interest and the interested agencies in the case of original license; and we see no need for burdening a relicensing procedure with additional delaying provisions.

We also feel that the bill should contain specific statutory preference for relicensing to the original licensee in the event the Federal Power Commission determines that the United States should not exercise its right of take-over. We do not believe that any preference should be granted to the licensee if the licensee cannot or will not meet the standards of comprehensive development of water resources as set forth in the Federal Power Act. However, it seems only fair that, if the licensee will consent to any reasonable conditions or modifications required for comprehensive development, the licensee who developed the project should have a preference over any third party or agency. We believe this preference should be stated clearly in the statute. The mere fact that some governmental agency or cooperative might wish to acquire a developed project for a bargain price should not be an element to be considered in a relicensing proceeding.

Arkansas Power & Light Company appreciates the opportunity to submit its views to the Committee.

STATEMENT OF JOHN G. QUALE, PRESIDENT, WISCONSIN MICHIGAN POWER CO.

My name is John G. Quale. I am President of Wisconsin Michigan Power Company which furnishes electric service to some 73,000 customers in an area in the east-central and northern portions of Wisconsin and in the Upper Peninsula of Michigan. The principal office of the Company is at 231 West Michigan Street,

Milwaukee, Wisconsin and the operating headquarters is at 807 South Oneida Street, Appleton, Wisconsin.

The Company has 16 hydroelectric plants with a total installed capacity of 91,000 kilowatts, and 14 of these plants are under license and the remaining 2 are in the process of being considered for licenses. At the present time these 16 plants constitute the total generating capacity of the Company. (There is under construction a two-unit nuclear plant of 908,000 kilowatt capacity owned equally by the Company and its parent, Wisconsin Electric Power Company scheduled for completion in 1971). Under normal water conditions the capacity of these plants is 75,000 kilowatts. Three of these hydroelectric plants together with the Michigamme Reservoir involve one project license (Project No. 1759) which will expire on June 30, 1970. The installed generating capacity of Project No. 1759 is 22,944 kilowatts. This project is at three separate locations on the Michigamme and the Menominee Rivers in Wisconsin and Upper Michigan.

Wisconsin Michigan Power Company over the years has endeavored to conduct its operations in co-operation with the interests of other river users and riparian owners. The public interest in the waters has consistently been recognized in stream regulation and planning. The Company has effectively cooperated with and, in turn, has enjoyed the assistance of Michigan, Wisconsin and federal agencies responsible for beneficial conservation practices.

Wisconsin Michigan supports the proposition that legislation by the Congress is most appropriate at this time in order to provide guidelines to the Federal Power Commission in connection with the relicensing of hydroelectric projects whose license terms will expire in the near future.

The Company supports an approach that will give adequate preference to the existing licensee of each project in question, provided such licensee is not unable or unwilling to continue to operate the project in the public interest. The reasons for this position are demonstrated clearly in the case of Wisconsin Michigan. At present, the Company's own generating capability is comprised completely of the aforementioned hydroelectric plants. The Company buys virtually all power required in excess of such capability from its parent corporation, Wisconsin Electric Power Company. The hydroelectric plants are fully integrated into the electric system of the Company and its parent and make a valuable contribution to the reliability of the entire system, which serves a population of over 2,000,000. The ability of these plants to add or drop load quickly substantially strengthens system operations during unexpected fluctuations in load. In the event of a power interruption, this hydroelectric capacity can be used to start up large thermal generating plants.

Loss by the Company of any of its hydroelectric plants would require the Company to construct replacement generation facilities and would also require the installation of new transmission lines and related facilities. Such a loss would result inevitably in increased cost of service to the Company's many customers.

Pursuant to existing Federal Power Commission procedure, in September, 1966 the Company submitted to the FPC its report in regard to Project No. 1759 in which it urged that the project not be recaptured but be relicensed to the Company. In addition to its vital importance to the Company's electric operations and the adverse effect upon customers and stockholders if the project were not relicensed to the Company, it was pointed out that the local communities involved would suffer substantial losses in tax revenues. Local property taxes alone would amount to about \$125,000 and over 10% of the tax revenues of Dickinson and Iron Counties in Michigan.

In short, the Company believes that legislation on this subject is appropriate, but further believes that such legislation would not be consistent with the public interest unless adequate recognition is given to the interests of existing licensees of the hydroelectric projects in question. It seems clear that private investment in power facilities on navigable waters would be greatly discouraged by any approach which does not emphasize preference to the existing licensee who is and has been operating his project consistently with the public interest.

There are two provisions of the bill which Wisconsin Michigan believes should be amended, namely:

1. Section 2(b) contemplates a substantial delay of up to four years in the issuance of a new license, merely upon application by any agency of the United States. This is in addition to the five-year period presently contemplated by the bill for relicensing. This, I believe, would be an intolerable delay and would seriously impede proper utility planning of power supply.

2. Section 3(b) of the bill would vest in the FPC virtually unlimited authority through the "open end" concept to rewrite licenses long after their issuance and after substantial investments have been made in reliance upon the terms and conditions of the license.

These provisions are not desirable and should be amended accordingly.

I have had the opportunity of reading the statements of Messrs. Jack K. Horton, Alan P. O'Kelly, Walter Bouldin and William H. Dunham. Wisconsin Michigan concurs in the views stated by these witnesses.

On behalf of Wisconsin Michigan Power Company I appreciate the opportunity of presenting to the Senate Committee on Commerce our views on this important legislation.

DUKE POWER Co.,
Charlotte, N.C., March 5, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
New Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: Duke Power Company appreciates the opportunity to submit the following statement for the record in connection with the February 26-27, 1968, Committee hearings on S. 2445.

Duke Power Company is an investor-owned electric utility serving over 877,000 customers in the central and western portions of North Carolina and South Carolina. Its generating plants have a capacity of over 5,000,000 kilowatts. It is a licensee under Part I of the Federal Power Act, having over 800,000 kilowatts of hydroelectric capacity on the Catawba-Wateree River and 750,000 kilowatts on upper tributaries of the Savannah River under license from the Federal Power Commission. Its major hydro plants are used almost exclusively for peaking purposes, with the base load of the Company's customers being supplied by coal-fired steam plants.

Duke Power Company is in agreement with the testimony given before the Committee on Commerce by Mr. Jack K. Horton, President of Southern California Edison Company, and Alan P. O'Kelly, Attorney for the Washington Water Power Company. We support their views as presented to the Committee at the February 26-27 hearings.

While our Company favors the basic purpose of S. 2445, we feel that the bill as introduced needs certain revisions, in order to assure continued development and redevelopment of hydroelectric projects in keeping with the purpose and intent of Part I of the Federal Power Act.

1. We feel it extremely important, and in keeping with the legislative history of Part I of the Federal Power Act, that the statement of policy suggested on Page 10 of Mr. Horton's testimony be incorporated into S. 2445:

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

2. We feel that the proposed new Subsection (c) to Section 7 of the Federal Power Act should be amended to provide for notice to the original licensee and opportunity for hearing before the Federal Power Commission makes a determination that the United States should take over a project.

3. We feel that the proposed new Section 14(b) of the Federal Power Act, as embodied in Section 2 of S. 2445, should be revised by deleting the requirement that the Federal Power Commission shall stay the effective date of an order issuing a license upon motion of any Federal department or agency. This provision would defeat the purpose of orderly procedures for relicensing without undue delay.

4. We feel that the proposed new Section 15(b), as embodied in Section 3 of S. 2445, should be deleted in its entirety. This section would give the Federal Power Commission the authority to impose entirely new conditions upon a licensee at any time during the term of the license. It is a complete departure from the concept embodied in Part I of the Federal Power Act, that a license, once accepted, becomes a contract between the Government and the licensee. It would in effect repeal the following provisions of Section 6 of the present Federal Power Act:

"Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this Act, and may be altered or surrendered only upon mutual agreement between the licensee and the Commission after thirty days public notice."

If licenses issued under Section 15 were to be subject to change at the will of one party, without the concurrence of the other, we anticipate that the same difficulties with financing and development of hydroelectric resources as were experienced under the original Federal Water Power Act would again recur with respect to redevelopment of projects previously licensed. It was to eliminate such uncertainty as to license terms that Part I of the Federal Power Act was enacted in 1920. Only after its enactment, with assurances to the licensee as set forth in Section 6, quoted above, was private capital attracted in significant amounts to hydroelectric projects under Federal license. It is submitted that no good reason has been advanced for repealing this basic provision of Part I of the Federal Power Act.

In summary, Duke Power Company favors the enactment of S. 2445, if revised as suggested above.

With thanks for this opportunity to present our views on this very important legislation,

Very truly yours,

DUKE POWER Co.,
CARL HORN, Jr.,

Vice President, Finance, and General Counsel.

STATEMENT OF A. H. HERBERT, PRESIDENT, MINNESOTA POWER & LIGHT CO.

Minnesota Power & Light Company, a licensee under provisions of the FPC is most interested in this proposed legislation being considered by your committee. Procedure that would expedite and clarify the recommendations by the FPC regarding take over of licensed projects is favored. The Federal Power Commission proposal to make its recommendation on relicensing only after a full hearing and after having received full reports of all interested agencies has merit. Of doubtful merit is the proposal that other government agencies submit separate reports directly to Congress on the desirability of take over. Certainly each agency is entitled to present its position but unless FPC acts as the agency through which all such recommendations are channeled to Congress, mass confusion may very likely result. All information should be collected by one agency, preferably FPC and be available for review at one source. All reports from, or positions of other agencies should be filed and submitted to FPC prior to a date set by it.

If Congress decides against take over the present licensee should obtain a relicense. Circumstances could arise that would preclude an existing licensee from carrying out as satisfactorily as a new applicant the plan best adapted to comprehensive waterway development. This is hard to envision but in that case, and only in the case where the existing licensee cannot perform approximately on a par with a new applicant should a new licensee be considered. In connection with the discussion of extending preference provisions of Section 7A of the existing Act to relicensing Chairman White's position that it has no place in this legislation is sound. All customers of existing licensees are just as much preference citizens and taxpayers as the customers of municipal or other governmental power operations. The present statutory language of Section 15 adequately states the priority right of existing licensees. If the Commission wishes to further clarify the position that so-called preference groups have no priority in a relicensing matter, such position would be sound.

For emphasis only and not to be repetitious or redundant, our company advises the committee that it agrees with the testimony of Messrs. Bouldin, Horton and O'Kelly that the bill, as it exists, contains provisions which are harmful to the investor owned electric utility industry and to the country as a whole. One of the most objectionable features is the provision (Section 3) permitting the FPC to alter the terms of a license at any time after issuance to impose reasonable requirements that are not inconsistent with the other provisions of the Act. A document with such a provision would not constitute a license but would be a mere sufferance permit.

Chairman White was asked if such a provision would retard investment. He replied that it would not because the investment would already have been made. The Chairman's response clearly reflects the unfavorable position in which any licensee would be placed. The licensee would be bound by any changes having previously tied itself to the project not only by investment but by the provisions of the Act that preclude abandonment without the consent of the Commission. No licensee should be placed in such an intolerable position.

Unforeseen problems may arise if it is true. However, over the last 50 years of license history they do not seem to have caused FPC any great difficulty. If such problems do arise, a provision for periodic reviews to update license conditions to conform to the circumstances then prevailing could be determined by good faith negotiations on mutually acceptable terms. While it would seem eminently fair that both parties have the right to initiate such negotiations the industry would probably be willing to have such initiation available only to the Commission. Under existing law both parties must accept the terms for the entire period up to 50 years regardless of what may transpire. Economic evaluations must be made now for the next 50 years which can result in undue hardship on the customers of a utility. Nevertheless, such determinations are based upon then known firm conditions. If the ground rules are to be changed unilaterally at various times the risks and the burden to the utility and its customers are severely increased.

Of great concern is that the Commission's only expressed reason for desiring this change seems to be the recent emphasis on aesthetics. While recognizing this phenomenon, it is questioned how far it is to be encouraged. Aesthetic concentration could result in beautiful forests, fish filled lakes and faultless physical panorama that would be fatal to previously developed sound economics which have produced a tax base of unestimatable value to school, roads, police protection and other needful worthy civic ventures. Enjoyment of the aesthetic wonders will be severely limited if the expense of undergrounding, beautifying and recreation rise to make the cost of electricity prohibitive. Electricity is a vital element in the nation's productive capacity and the capacity of families to enjoy low cost labor saving devices. Such cost increases can only result in fewer jobs and lower tax revenues. Appropriate moderation and cooperation between government and industry will preclude such dire consequences. To insure this result it is deemed necessary to the public interest to speak out against the granting of this relatively unrestricted license modification power to this and unknown future Commissions.

It is submitted that this legislation is only needed to clarify procedures for handling take over problems arising from license expirations but if this bill is to be enacted the weaknesses cited should be corrected.

STATEMENT OF ARTHUR M. WILLIAMS, JR., PRESIDENT OF SOUTH CAROLINA
ELECTRIC & GAS CO.

I appreciate the opportunity of being allowed to make a statement in regard to the take-over of hydroelectric projects on expiration of existing licenses. I refer specifically to the proposal to amend Part I of the Federal Power Act to establish new procedures for the processing of expiring hydroelectric licenses.

The proposed changes would create serious problems in three principal areas, viz., the likelihood that additional and lengthy delays in relicensing procedures would be encountered; the Federal Power Commission would be given broad powers to impose added conditions to a licensee at any time during its term; and, the absence of any priority to a licensee to continue the operation of a vital part of its electric program on which total system planning has been predicated and long-term financing secured.

Under present procedures, the Federal Power Commission is assigned the task of soliciting and correlating opinions as to take-over from all interested government departments and agencies and the licensee. Based on comprehensive studies by its Staff of all such proposals, the Commission then makes its recommendation to Congress as to whether the national interest would best be served through continued operation of the project by the licensee or through take-over by the United States. While this procedure does not place authority for the ultimate decision in the Commission, it does provide for an orderly manner in which the most qualified and experienced agency of federal government can assimilate all proposals into a single recommendation to be made to the Congress.

The amendment would allow any federal department or agency to recommend that the federal government take over a project even if the Federal Power Commission should not agree. The effect of this amendment would be to place a tremendous burden on Congress to review and inter-relate the various recommendations (including possible divergent opinions of the Federal Power Commission and other government agencies) requiring an enormous staff and considerable time to perform a function which has traditionally been the responsibility of the Commission. This could create intolerable delay in the effective date of a new license (as much as 4 years) during which period a licensee would be unable to project plans for future development or obtain proper financing on the project facilities.

The amendment would further require a mandatory hearing of an evidentiary nature prior to any decision by the Commission, which hearing would be a re-licensing proceeding. This, as the Commission itself stated in 1964 in its Order Number 288, "would not be appropriate, and would tend to delay [Commission] reports to Congress unduly." Since the Commission is given authority to issue new licenses, and has the experience of regulating licensees over the years, it should be the primary agency to make a recommendation to Congress based upon the factual information and expert analysis it most uniquely has available.

In any instance where neither the Commission nor any interested federal agency recommends take-over, I agree with the statement of Chairman White that Congress should not be burdened with a requirement that it consider take-over. In those cases, the Commission should have the authority to grant a new license in the same manner as it would grant an original license.

Where legislation is introduced to "clarify the manner in which the right of the United States to take over a project upon expiration of any license shall be exercised", the Congress should provide, in the public interest, for assurance of continued ownership unless the project licensee is incapable or unwilling to take such measures as are prescribed to fulfill the needs for comprehensive river basin development. It is possible through systematic take-over or preference relicensing to seriously damage the integrated investor-owned power systems. Where a licensed project has been operated for years as an integral segment of a system, and where the project's potential has been reasonably developed within economic bounds, the Congress should indicate in the Act that relicensing preference should be given to the original licensee.

Section 3(b) of the amendment would grant the Commission rule-making powers to modify license conditions at any time during the term of a new license. I earnestly recommend that this section be deleted. This amendment would constitute a drastic change in existing law and would raise serious questions as to the value of the license. A firm license is necessary for economical and practical engineering and construction, as well as for financing.

The orderly comprehensive development of the nation's water resources must be a matter of concern to Congress and to the private segment of the electric industry as well. An effort to improve and clarify the procedure whereby this objective can be obtained is desirable. I urge the Congress, however, to use considered caution in the declaration of its objectives and policies and to adopt such standards and guidelines as will continue public confidence in the electric industry and protect the interest of the ultimate consumer.

PENNSYLVANIA POWER & LIGHT Co.,
Allentown, Pa., March 6, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
New Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: Pennsylvania Power & Light Company (PP&L) welcomes this opportunity to submit a statement regarding S. 2445 for consideration by the Senate Committee on Commerce.

PP&L is an electric public utility operating in a 10,000 square mile territory in central-eastern Pennsylvania. It has almost 800,000 customers, over 6,000 employees and about 90,000 shareholders. The PP&L system had a generating capability of 2,353,000 kw at the end of 1967 and a peak demand during that year of 2,202,000 kw. This large system is operated in turn as part of the Pennsylvania-New Jersey-Maryland Interconnection (PJM).

PJM is one of the world's largest fully integrated power pools, with the companies which are interconnected serving close to 20 million people. As of the end of 1967, the systems in PJM had a generating capability of about 22,000,000 kw, 92% being thermal capacity. The licensed projects which are part of PJM are generally operated to produce energy during the hours of greatest need on the interconnected system.

PP&L has an interest in three of those projects, representing 220,000 kw of its generating capability. PP&L is licensee for Holtwood (Project No. 1881) and Wallenpaupack (Project No. 487) and owner of one-third of outstanding capital stock, representing one-half of the voting shares, of Safe Harbor Water Power Corporation, licensee for Safe Harbor (Project No. 1025). The licenses for these projects expire in 1970, 1976 and 1980, respectively.

PP&L favors enactment of S. 2445 with the minor changes discussed below. In our view, the question whether or not the United States should take over a project upon expiration of a license is not one that Congress should make on a project-by-project basis. We agree that that decision should be left, in the first instance, to the expertise of the Federal Power Commission.

We also agree with the testimony of FPC Chairman Lee C. White before your Committee at the hearing held on February 26 and 27, 1968, to the effect that the Bill should not include any statutory preferences. As was pointed out to your Committee by Mr. Alan P. O'Kelly at that hearing, under existing law the licensee has preference over all other applicants for a new license except an applicant who will develop the project in a manner better adapted to a comprehensive plan for the development of the stream involved. This is as it should be. It is only in the area of decision making with respect to takeover of the project that the Act is not sufficiently specific.

The Bill does, however, create two unfair differences between a license for a new project and a re-license which involves substantial reconstruction of a project whose license has expired. That the Bill creates these same differences between a license for a new project and a re-license for a project which already represents full development of its reach of a river may be justified, but, where a re-license involves substantial reconstruction, we can find no valid reason for any difference. Both would require major new investment and both would have been found by the FPC to be best adapted to a comprehensive plan for development of a stream.

It seems basically unfair that a license for a new project is a contract, fully protected from the insertion of additional requirements by Section 6 of the Act, while the subsection (b) which the Bill would add to Section 15 of the Act would empower the FPC to insert, at any time, additional requirements in a re-license involving substantial reconstruction.

It seems similarly unfair that a license for a new project does not require the establishment and maintenance of the amortization reserves until 20 years after the beginning of project operation while the sentence which the Bill would add to Section 10(d) of the Act would require establishment and maintenance of such reserves from and after the effective date of the re-license, even before the substantial reconstruction has been completed.

We therefore urge an amendment to the Bill which would exempt from the application of the subsection (b), which the Bill would add to Section 15 of the Act, re-licenses involving substantial reconstruction of projects whose licenses had expired. Similarly, we believe that Section 4 of the Bill should be amended so that the sentence which it would add to Section 10(d) of the Act would not apply to the investment made in a substantial reconstruction of a project under a re-license.

In summary, we believe that Congress should establish a method for determining whether or not the United States should take over a project upon the expiration of a license. We believe that the question can best be disposed of initially by the FPC. We would therefore endorse a Bill like S. 2445 which incorporated the suggestions set forth above.

Sincerely,

JACK K. BUSBY.

GENERAL PUBLIC UTILITIES CORP.,
New York, N.Y., March 7, 1968.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
 U.S. Senate,
 New Senate Office Building,
 Washington, D.C.*

MY DEAR MR. CHAIRMAN: General Public Utilities Corporation ("GPU") is a public utility holding company registered as such under the Public Utility Holding Company Act of 1935. Three of GPU's subsidiaries, namely, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company are the holders of licenses for hydroelectric projects, which licenses were issued under Part I of the Federal Power Act. We, therefore, have a keen awareness of, and deep interest in, the issues involved in S. 2445, a bill to amend the provisions of Part I of the Federal Power Act by establishing more adequate procedures with respect to the issuance of licenses for hydroelectric projects upon the expiration of initial licenses.

In our view the principal objective of S. 2445—namely, to extend to the relicensing process the same delegation of authority that exists in the case of initial licensing—is not only sound; it is essential to orderly and careful analysis of the merits of the relicensing of a particular hydroelectric project. The same considerations which required Congress to delegate such authority almost a half century ago apply with even greater validity to relicensing today, when the work-load of the Congress has increased at least ten-fold, on the one hand, and the complexities of the engineering and economic evaluation of hydroelectric projects have increased to a similar extent. Congress can always choose to intervene in connection with the proposed relicensing of a particular project, if it desires to do so, but it should not be forced to act or withhold action on each project simply because no clear-cut procedure exists for relicensing or no delegation of authority exists to consider the relicensing of such project.

S. 2445 does have two defects. The first of these, which is contained in Section 2(b) of the Bill and the sixth and seventh preambles thereto, tends to defeat the professed objective of the Bill. The effect of these provisions is to suspend for a period of up to four years (two sessions of Congress) the authority of the Federal Power Commission to act upon a relicensing application (except to grant an annual license) if any Federal agency shall move for a stay. The stated purpose of this procedure is to provide an opportunity for Congressional consideration of take-over recommendations submitted by Federal agencies other than the Federal Power Commission. Inevitably, however, the result of this provision would be to transfer to the Congress the burden of making decisions (by action or inaction) in the case of many projects, since there will be a natural tendency for some Federal agencies to submit take-over recommendations to Congress. Without this provision, Federal agencies in relicensing cases, just as in the case of original license cases, would have full opportunities to participate in relicensing proceedings before the Commission, to develop an evidentiary record in support of their views in such relicensing proceedings, and, if they so desire, to seek appellate review by the courts, if they are unable to convince the Federal Power Commission of the soundness of their views.

A second defect in S. 2445 is contained in Section 3(b) which the Commission's testimony characterizes as a "modest extension" of the Commission's licensing authority, but which, in fact, goes far beyond this. In essence, this provision would permit the Commission at any time during the relicense period to impose new requirements upon the licensee. As a result, a licensee would be unable to determine, at the beginning of the relicense period or any time thereafter, the terms of the license. The whole underlying concept of Part I of the Act is to give licensees a reasonable measure of certainty for a fixed term of the conditions under which an investment in a project would be made. If the licensee is not satisfied with the terms of the license, it is free to reject the license and not make an investment. The most important change made by the Federal Water Power Act of 1920 was the provision of a definitive license as a substitute for the revocable permits of prior legislation which had proven to be an unsound basis for developing the Nation's hydroelectric potential.

Many of the same considerations apply in the case of re-licensing. In some cases, the project owner would wish to redevelop the project. In other cases, investments in transmission facilities outside the project boundaries would be

made in reliance upon the existence of the project. In other cases, one type of generating facilities (e.g. base load generation) will be built because of the existence of the project, whereas another type would be built if the project did not exist. The industry can live with the "open end" conditions already prescribed by the Commission in specific fields, but that philosophy underlying the open-end conditions should not be extended so as to enable the Commission, by new conditions imposed at any time during the relicensing period, to undercut the technical and economic basis upon which the licensee has proceeded.

Thank you for the opportunity to submit these comments. Thirty-five additional copies of this letter are enclosed.

Respectfully submitted,

W. G. KUHN, *President.*

STATEMENT OF W. C. TALLMAN, PRESIDENT OF PUBLIC SERVICE CO.
OF NEW HAMPSHIRE

We are submitting this statement regarding Senate Bill 2445 because of our serious concern with the problem which the bill is intended to meet. Public Service Company of New Hampshire now has under Federal Power Commission license five hydroelectric plants having a total installed capacity of 41,950 KW; licenses for two others having a total installed capacity of 11,400 KW have been applied for. These seven plants are now and will continue to be an important part of the Company's generating system. Since licenses for three of them expire within the next seven years (two in 1970 and one in 1975), S. 2445 is of direct and immediate concern to this Company.

In your deliberations on the bill, we respectfully urge the members of the Senate Commerce Committee to consider the position of this Company as stated below.

First, we support the basic principle contained in S. 2445; namely, that the Federal Power Commission rather than Congress should have the time-consuming burden of developing facts and making initial determinations relative to recapture or relicensing of hydro plants. Passage of the bill will enable the Commission to process applications for relicensing in an orderly manner and, if it finds that the existing standards of the Federal Power Act would be met, to issue new licenses to the present owners for continued operation.

Second, we strongly object to Section 2(b) of the proposed Act, which would give any federal department or agency the power to delay for a period of up to four years the effectiveness of a Commission order granting a new license. This provision would prevent the legislation from achieving its intended results; namely, relieving Congress of an unnecessary burden and expediting relicensing.

Third, we object to the provisions of Section 3(b) of the proposed Act, which would permit the Federal Power Commission, at any time after relicensing, to impose further conditions on the licensee. This would make it impossible for a licensee to know in advance the extent of his obligations under the license and would almost certainly have a discouraging effect on proposed redevelopments. The Commission already has sufficiently broad powers to prescribe license conditions and these powers are being exercised.

Fourth, we believe that it should be Congressional policy, to be followed by the Federal Power Commission in relicensing proceedings, that if the original licensee applies for a new license, such a license should be granted unless the Commission finds that the project would not meet the standards of the Federal Power Act. It now takes more than sixty months to construct a generating station, and recapture or licensing to another licensee could have significant adverse effects on the original licensee unless and until he can obtain replacement power.

In making this statement as brief as possible, we would like the Committee to know that in general we support the statements made before the Committee by other representatives of the investor-owned electric utility industry.

We appreciate the opportunity of submitting our comments for the record and for consideration by the Committee.

Very truly yours,

PUBLIC SERVICE CO. OF NEW HAMPSHIRE,
W. C. TALLMAN, *President.*

AMERICAN ELECTRIC POWER SERVICE CORP.,
New York, N.Y., March 8, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
New Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: This letter is submitted, on behalf of the seven operating public utilities which comprise the American Electric Power System,* to state our views on the questions raised by S. 2445.

In sum, it is our position that:

1. The Congress should be relieved of the almost impossible burden of dealing with each license expiration on a case-by-case basis and FPC should be authorized, under standards prescribed by the Congress, to deal with each project whose license term has expired;
2. Comprehensive development of the nation's water resources, to the fullest extent practicable, should be assured; and
3. The disruption, waste and inequities which are inherent in the take-over of licensed projects should be minimized to the fullest possible extent.

We believe these three objectives can best be achieved by delegating authority to the Federal Power Commission to pass upon applications for new licenses under procedures similar to those under which FPC now deals with applications for licenses for new projects; and by authorizing FPC to issue a new license to the existing licensee whenever the existing licensee is willing to take such action as FPC finds to be necessary and appropriate for comprehensive development and to protect the public interest.

Since we understand that these are the general principles underlying, and the objectives sought to be achieved by, S. 2445, we support this bill and, with two modifications, urge its favorable consideration by your Committee. The first of our suggested modifications would be to eliminate the provision which could have the effect of delaying, for as much as four years, the effectiveness of decisions reached by FPC after a full hearing. The second would eliminate the provision authorizing unilateral alteration of licenses by FPC during the entire term of the license.

The American Electric Power System has or soon will have under license from the Federal Power Commission eleven projects with an aggregate installed capacity of 652,219 kw, representing a net book investment of approximately \$86 million. In addition, an application for a proposed \$140 million combination hydroelectric and pumped storage project with an installed capacity of 980,000 kw is presently pending before the Commission.

The eleven existing hydro projects, which are either under license or for which license applications are pending, are fully integrated into the AEP System's seven-state power network and provide the System with a valuable source of peaking and pumped storage capacity which complements, and thereby renders more economical, the operations of the System's large, highly efficient base load steam plants. Also, due to their quick start-up characteristics, because they provide the System with a ready source of spinning reserves and because they contribute to System voltage regulation, these eleven hydro projects have the effect of significantly enhancing the overall reliability of System power supply.

By way of illustrating the kind of problems which would be created by the takeover of a licensed hydroelectric project, we think it may be helpful to describe in somewhat more detail the role which one project—the Smith Mountain Combination Hydroelectric and Pumped Storage Project (FPC Project No. 2210 licensed to Appalachian Power Company)—plays in our system. This Project, located on the Roanoke River in Virginia, has an installed capacity of 472,250 kw and consists of an upper and a lower dam creating two adjacent reservoirs in the River. Power is generated at the upper dam during periods of peak demand on the System. During off-peak periods—that is, during the night and early morning hours and on weekends—the System's high efficient steam capacity which would otherwise be idle is utilized to pump water from the lower reservoir back into the upper reservoir so that it will be available for generation during subsequent peak periods. Thus, Smith Mountain's pumped-storage operations have the beneficial effect of increasing the load factor of the System's base load steam capacity.

*Appalachian Power Company, Indiana & Michigan Electric Company, Kingsport Power Company, Michican Gas and Electric Company, Kentucky Power Company, Ohio Power Company and Wheeling Electric Company.

In terms of reliability, the Project's pumping operations afford significant advantages in addition to the aforementioned quick start-up, spinning reserve and voltage regulation characteristics which inhere in conventional hydro projects. For example if, during the pumping phase, a major emergency were to occur on the AEP System (or on a neighboring system with which AEP is interconnected), not only could the hydro capacity at the upper dam be brought into play almost immediately, but the steam capacity then being used for pumping purposes could be diverted practically instantaneously to help the System ride out the disturbance. From this it can be seen that the pumping operations at Smith Mountain, in effect, afford a double protection against a System outage. Also, the Smith Mountain Project, because of its great flexibility of operation, contributes substantially to the flexibility of operation of steam plants as well, by giving the System power dispatcher a ready-to-use means for the modification, from hour-to-hour, of the System demand to be supplied by steam generation.

All of these advantages were, of course, consciously considered and evaluated in planning the Smith Mountain Project as an integral part of the AEP System; and the subsequent development of AEP's generation and transmission network has proceeded with the knowledge that these advantages were present in the System. If upon license expiration the Smith Mountain Project were to be lost to the System, not only would it be necessary to supply 472,250 kw of peaking capacity from some presumably less economical source, but the void created would have a profound adverse effect upon the entire AEP System through decreased reliability, decreased operational flexibility and a lower load factor on base loaded steam capacity.

As stated at the beginning of this letter, we believe that the solution of the hydro project license expiration problem should achieve three basic objectives:

1. A workable procedure should be provided which would relieve the Congress of the almost impossible burden of handling each license expiration on a case-by-case basis; the obvious answer in our opinion is to delegate the necessary authority to the Federal Power Commission to deal with each such project under procedures similar to those followed by FPC in dealing with applications for licenses for new projects;
2. Comprehensive development of the nation's water resources, to the fullest extent practicable, should be assured; and
3. The disruption, waste and inequities which are inherent in the takeover of licensed projects should be minimized to the fullest possible extent.

We will discuss each of these in detail:

1. *Delegation of authority to the Federal Power Commission.*—The Commission is of the view that, under existing law, the determination whether or not hydro projects whose licenses have expired should be taken over by the Federal government must be made by the Congress on a project-by-project basis. It is obvious that this approach will result in a legislative nightmare.

The fact is that the impracticality of Congressional authorization of new projects case-by-case, which was followed prior to 1920, was one of the principal reasons for the enactment of the Federal Water Power Act. Congress then resolved the comparable problem by creating the Federal Power Commission and authorizing it to decide on the licensing of new projects under policies and standards prescribed by the Congress. Thus, under §10(a) of the Federal Power Act, FPC is authorized to license new projects which, in its view, are "best adapted to a comprehensive plan for improving or developing a waterway . . .", while under §7(b) of the Act the Commission, whenever it deems it appropriate, is authorized to recommend that a proposed project be developed by the United States rather than by the applicant.

Over the years, FPC has developed considerable expertise in this area—an expertise which, we submit, involves essentially the same considerations and is, therefore, equally applicable to relicensing and to initial licensing proceedings. We, therefore, believe that legislation along the lines contained in S. 2445 should be enacted which will delegate to the Federal Power Commission the same authority with respect to license expirations as it has been exercising for almost five decades with respect to applications for new licenses. Such legislation, which would authorize FPC to relicense projects under standards prescribed by the Congress, is essential if a return to the burdensome and unworkable procedure followed prior to 1920 is to be avoided.

2. *Assurance of comprehensive development.*—Under the existing provisions of the Federal Power Act, the Commission has the authority to condition the issuance of a license for a new project upon such terms and conditions as it finds to be desirable for comprehensive development and in the public interest. With the enactment of S. 2445, it is our understanding that FPC would have the authority—within the standards and provisions already contained in the Act—to determine what project modifications are necessary for comprehensive development and to issue a new license to the existing licensee where such licensee agrees to carry out such modifications.

Whenever the existing licensee is willing to carry out all modifications which the Commission finds to be necessary and appropriate for comprehensive development, issuance of a license to the existing licensee will obviously assure comprehensive development.

We believe that existing licensees will accept such conditions and carry out such modifications in all but a very small number of cases. In the exceptional case where the existing licensee will not do so, the Commission could issue a license to a new licensee who is willing to accept the Commission's requirements for comprehensive development or, if no such new licensee exists, then the Commission would present its recommendations to the Congress.

It seems to us that such a policy would clearly ensure the most comprehensive development of the Nation's water resources to the fullest extent practicable, while at the same time minimizing the disruptions inherent in takeover and reducing to a minimum the burden on Congress.

3. *The disruption, waste and inequities which are inherent in the takeover of licensed projects should be minimized to the fullest extent possible.*—

(a) *Disruption of Power Supply.* As in the case of the AEP projects referred to above, licensed hydro projects throughout the utility industry are generally fully integrated with the licensees' utility systems. Also, the projects of industrial licensees are generally fully integrated with the production facilities of the licensee which in many cases are constructed with specific reference to, and in reliance upon, the power to be generated at the licensed project. Federal takeover of such licensed projects would have material adverse repercussions on the power supply of the affected utility or industry—in terms of rates or economics (if the project is an efficient and low cost power producer) and in terms of reliability in the loss of a facility which normally could be especially useful for spinning reserve, to meet peak loads, for system voltage regulation and for quick start-up purposes).

(b) *Disruption to Local Communities.* A project owned by a taxpaying licensee may frequently represent the major source of taxes in the surrounding community or communities. Where such a project is taken over by the Federal government or is relicensed to a tax-exempt entity, there would be very substantial disruption in the community or communities which have been largely dependent on the tax payments of the original licensee. The result in a great many instances may be a drastic curtailment in such essential local public services as education, sanitation and police and fire protection.

(c) *Adverse Effect on Consumers of the Existing Licensee.* Generally speaking, a project which has reached the expiration of its license term is likely to have accrued substantial depreciation reserves. Where such a project is taken over by the Federal government or is relicensed to another licensee, the net result is likely to be that the consumers of the original licensee—who have paid in the depreciation accruals—will be deprived of the benefits associated with the continued receipt of power from a project which has been so depreciated.

(d) *Waste of Resources.* Takeover of a project or its relicensing to a new licensee will almost inevitably render useless some facilities and require the construction of other facilities. This will inevitably result in a waste of national resources. One measure of this waste will be the severance damages which § 14 of the Federal Power Act requires to be paid upon takeover. Although to date there has been no judicial determination of the meaning of the statutory term "severance damages," the amounts involved could prove to be very substantial.

Since takeover will result in disruption of power supply, shrinkage of local tax base, inequities to the consumers of electricity, and waste of national resources, it can be justified only where the existing licensee is unable or unwilling to carry out whatever project modifications are deemed necessary by the Commission to achieve comprehensive development. It is our understanding that S. 2445 is intended to incorporate this philosophy and, therefore, would minimize the dislocations inherent in takeover.

SUGGESTED MODIFICATIONS OF S. 2445

Since we believe that it is logical and sensible that FPC's authority over relicensing should be substantially similar to its authority with respect to initial license applications, we recommend deletion from the bill of the following two specific provisions:

1. *Four Year Delay in Effectiveness of FPC Order.*—The seventh "Whereas" clause and the last two sentences of §2 of the bill would make it possible even in cases where FPC, after a full hearing, decides in favor of relicensing, to stay the relicensing by as much as four years. We respectfully submit that such a provision is entirely unwarranted and might result in a reimposition on Congress of a large portion of the project-by-project burden which S. 2445 is expressly designed to avoid. All those urging Federal takeover, including any other federal agencies, will have adequate opportunity to present their views to the Commission in a relicensing proceeding, just as they now have with respect to initial license proceedings. No justification exists for conferring upon them greater rights in the one case than in the other.

2. *Unilateral Alteration of Licenses by FPC.*—Section 3 of S. 2445 states that the provisions of a license issued in a relicensing proceeding may, *at any time during its term*, be unilaterally altered by the Commission. To confer upon the granting agency the unilateral right to amend the authorization granted would bring about a fundamental change in the nature of that authorization—it would reduce its status from that of a license, which is in the nature of a contract, to that of a permit.

We suggest that there is no need for such a far reaching provision and that it should be deleted from the bill. In relicensing a project, the Commission will have the power to condition the issuance of the license upon such terms and conditions as it deems desirable in the interests of comprehensive development. We submit that this, together with the right (preserved by § 14 of the Act) of public agencies to condemn a project during its license term, affords sufficient protection of the public interest. The existing licensee, or if he declines, a new licensee must accept such terms and conditions in order to obtain the license. Acceptance of such terms and conditions will, in many cases, entail expensive redevelopment of the project. As was the case during the early part of this century, investors will be reluctant to embark upon such expensive undertakings unless they are granted specified rights in the project for a fixed term of years.

CONCLUSION

S. 2445, if enacted with the modifications suggested above, would provide a practicable answer to the existing procedural nightmare which appears to require the Congress to pass upon each project on a case-by-case basis. It would delegate to the Commission, within statutorily prescribed standards, the authority to issue renewal licenses just as the Congress in 1920 delegated to the Commission the authority to license new projects. It would authorize the Commission to grant a new license to the existing licensee whenever such existing licensee were willing and able to take whatever action the Commission found to be necessary and appropriate for comprehensive development. There would be left for individual Congressional consideration only the very small number of projects in which the existing licensee or a new applicant was unable or unwilling to make the modifications required by the Commission in the interests of comprehensive development.

In all but the few exceptional cases (which would have to be handled on a case-by-case basis), S. 2445 would (i) ensure comprehensive development (since by hypothesis, the existing licensee would have agreed to take whatever steps the Commission found to be necessary for such purposes); (ii) avoid disruption

in power supply; (iii) avoid the disruption of local communities caused by a sudden shrinkage of their tax base; (iv) avoid the waste of resources associated with takeover—and the payment of severance damages; and (v) give existing customers the benefits of the lower rate base associated with a substantially depreciated project for which such consumers had supplied the depreciation accruals.

I should like to emphasize in closing that S. 2445 with the deletions suggested above would in no way modify or impair the existing right "of the United States or any State or municipality to take over . . . any project . . . at any time by condemnation proceedings . . ." (Federal Power Act, § 14). This provision fully protects the right of government to take over any such project in the future, for any reason or reasons which may not now be foreseen, but which is then found to require government takeover in order to further the public interest.

For their convenient reference, I am sending a copy of this statement to each of the other members of the Committee.

Respectfully submitted,

HERBERT B. COHN,
*Executive Vice President,
Administration and Corporate Services.*

STATEMENT OF E. M. NAUGHTON, PRESIDENT OF UTAH
POWER & LIGHT CO.

My name is E. M. Naughton. I am president and general manager of the Utah Power & Light Company. I appreciate the opportunity to comment regarding Senate Bill 2445.

The Utah Power & Light Company and its subsidiary The Western Colorado Power Company own and operate 13 hydroelectric projects under license from the Federal Power Commission. These projects vary in size from 300 kilowatts to 30,000 kilowatts. They are scattered throughout the systems of the Company and its subsidiary and form an integral and very useful part of the total production capacity of each. We are predominately a steam generating system and these plants in total magnitude do not constitute a major portion of the capacity of the Utah Company's system. They do constitute a great number of important and necessary links in the chain of the production and transmission system—the loss of which would be difficult to replace, both economically and electrically.

I am sure this situation is typical of many electric utility systems which have been developed over many years with a substantial number of hydroelectric plants located throughout their systems. Because such hydro plants form such an integral part of a whole system, meticulous care should be given to any consideration involving recapture or relicensing to any entity other than the original licensee. The simple reason for this is, of course, that any damage done to the electric utility holding the original license for the plant results in direct damage to the general public served by that utility. We believe that some clarification of the administrative procedure may be beneficial to the relicensing problem.

With specific reference to the proposals embodied in S. 2445. I believe there are three points which should be raised and given careful consideration by the Congress. First, no action should be taken by the Federal Power Commission to recapture or license a project to anyone other than the original licensee without the affirmative recommendation of the state utility commission having jurisdiction. The Federal Power Commission should make an early request of such state utility commission and receive its recommendations at the same time it receives the licensee's proposal regarding the expiring license. The original licensee should have priority for the issuance of a new license. Under present law, we believe that the original licensee should be granted a renewed license if the proposal for the development and operation of the project meets the standards of the Commission set forth under the Act. This should not be changed.

The second major area in the proposed legislation to which we have objection is the proposed Section 3(b) which, in effect, gives the Federal Power Commission authority to continually change the requirements of the licensee throughout the period of the license regardless of the effect upon the licensee and the public served. State utilities commissions and the electric utilities which they regulate must maintain service rates on the basis of long-range physical and economic planning. If major licensed projects are subject to continually changing

costs and other conditions, it would introduce an uncertainty which, we believe, would be both unnecessary and undesirable.

The third problem with the proposed legislation involves the same type of uncertainty. Under the provisions of the proposed law, any agency of the United States could forestall the issuance of a new license for up to four years or two sessions of the Congress. This would be in direct conflict with the stated objectives of the Bill which are to clarify present procedure and provide prompt action under the licensing procedures. At the present, any interested party has the opportunity to offer its views and recommendations which should, and we feel do, receive the careful consideration of the Federal Power Commission. To encourage Federal agencies to intervene and automatically delay the Commission's decision, as this Bill proposes, would add to the uncertainty involved in relicensing and create controversy where none now exists.

Careful analysis of the wording of the whereases and the sections of the Bill, S. 2445, tends to indicate an intent toward recapture and a definite invitation to public agencies to compete for relicensing at the expiration of the existing license. We do not believe this to be good public policy since an upheaval of a long-standing economic condition would result. Power production facility ownership would be shifted from one agency to another, generally located in different service areas. The existing tax base would be altered or totally eliminated from a tax district—thus creating an imbalance among public agencies and taxpayers, all of which would work to the detriment of taxpayers and ratepayers generally. For these reasons, we believe that the present law, if amended at all, should only be amended to clarify the position that Congress shall take in its review of any recommendation of the Federal Power Commission for recapture or for relicensing to a new licensee.

STATEMENT OF FRANK M. WARREN, PRESIDENT OF PORTLAND GENERAL ELECTRIC Co.

My name is Frank M. Warren. I am President of Portland General Electric Company, whose address is 621 S. W. Alder Street, Portland, Oregon 97205.

Portland General Electric Company is an Oregon corporation operating as a public utility in the State of Oregon and is licensee under the Federal Power Act of several licenses, some of which will expire within the relative near future.

Portland General Electric Company supports the passage of S. 2445 with changes which will (1) eliminate the delays which may result from the sixth and seventh "Whereas" in Section 2(b), and (2) eliminate the right on the part of the Federal Power Commission to make unlimited changes in license provisions as contemplated in Section 3(b) of the proposed Act.

Portland General Electric Company adopts the written statement of Alan P. O'Kelly on behalf of The Washington Water Power Company and the written statement of proposed policy by Jack K. Horton, on behalf of Southern California Edison Company, and the reasons for the reissuance of licenses to original licensees suggested in the written statement of Walter Bouldin on behalf of Alabama Power Company, submitted to this Committee at its hearing on the proposed legislation February 26, 1968.

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

Senate Bill 2445, which has been introduced in the Senate, is of considerable concern to The Empire District Electric Company, and we wish to take this opportunity to state our observations following our review of the Bill.

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

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

Section I of the Bill adds a new sub-section to Section 7 of the Federal Power Act. It provides that, when the Federal Power Commission decides the United

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

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

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

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

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

Proposed sub-section (c) provides, in effect, that the Federal Power Commission will hereafter have authority to license non-power projects. This sub-section provides that, in issuing any license under Section 15, except on an annual license, the Federal Power Commission, on its own motion, or upon the application of any licensee, person, state, municipality or state commission, after opportunity for a hearing, whenever it finds that, in conformity with a "comprehensive plan for improving or developing a waterway or waterways for beneficial public uses," all or any part of the licensed project should no longer be used for power purposes, may license all or part of the project for non-power use. Under a license for non-power use, the Federal Power Commission could require

the removal of existing power facilities. Such a license would be temporary in nature, and could be terminated by the Federal Power Commission whenever, in its judgment, a state, municipality or Federal agency would be authorized and willing to assume the supervision of the lands and facilities included under the non-power license. This proposal appears to provide another opportunity for takeover by the United States. The Federal Power Commission could decide that a project should be licensed only for non-power purposes, could require the removal of power facilities, and then could cancel a temporary license, if a state or Federal agency would wish to take over the project.

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

STATEMENT OF VIRGINIA ELECTRIC & POWER CO.

Virginia Electric and Power Company respectfully requests the Committee's consideration of these comments upon S. 2445, a bill proposed by the Federal Power Commission as an amendment of Part I of the Federal Power Act to deal with now approaching expirations of hydroelectric licenses.

To identify our Company we mention that we provide the electric requirements of the public in the greater part of Virginia and parts of West Virginia and North Carolina. Our peak load in 1967 was 3,499,000 kilowatts and we supply nearly 1,000,000 customers. Our experience with licensing under the Federal Power Act stems largely from our construction and operation of major hydroelectric developments on the Roanoke River in Virginia and North Carolina under license from the Commission.

1. Our Commendation of the Purpose and Design of the Bill

First, in our Company's view the Commission's proposal performs a highly valuable public service in devising sound machinery and standards for decision by the United States, when hydroelectric licenses expire, whether to take over the licensed projects for federal ownership and operation or to relicense them. Such machinery and standards are now indispensable as outstanding licenses are now beginning to expire and in a few years they will be expiring at a substantial rate.

We commend the proposal in recognition that one of the basic purposes of Congress in passage of the Act was to relieve Congress of the burden of studying each individual project to decide between licensing and federal construction, and, as recited in the Commission's bill, "congressional consideration of each project upon the expiration of its license is no more feasible than congressional consideration of each initial license application. . . ."

We also commend the Commission's proposal in recognition that the present Act expresses no standards upon which the Congress will make the decision between take-over or relicense or which shall guide the Commission in any recommendations it makes to the Congress on that issue. The Commission's proposal supplies these standards for Commission recommendation, and supplies them as essentially those which the Commission has developed with the approval of the Congress and the courts in discharge of the Commission's duty to decide whether to grant an initial license or to recommend federal development.

2. The Proposed Power to Change Relicenses After Issuance

The Commission's bill proposes one substantive change in present law which goes quite beyond the basic purpose of the bill to provide the machinery and establish the standards to decide in each case whether there shall be federal take-over or relicense. The proposed change is, we are convinced, subject to serious objections and at the same time is altogether unnecessary.

Under Section 15 of the present Act, if the United States does not take over at license expiration, the Commission may relicense. The Commission's bill proposes in its section 3(b) that *after* such a relicense, issued and accepted, the Commission may impose upon the licensee new and undefined burdens, unknown to the licensee at the time the relicense is accepted.

This has nothing to do with the basic purpose of the bill to help the Commission and the Congress make an intelligent decision between take-over and relicense, unless we assume that at the time of license expiration the Commission and the Congress are unable to make up their minds between take-over and relicense. But a new power to change the rules after relicense is not needed to guard against a premature, improvident decision because already, under the present Section 15, the contingency that neither take-over nor relicense has been decided upon at expiration is taken care of by the provision that, in such case, the original license shall merely be continued from year to year on an annual basis. Certainly it cannot be supposed that the Commission and the Congress could never make up their minds between take-over and relicense. The choice will be made and it will then be a choice between federal take-over and a new license to be issued upon requirements and conditions then found appropriate by the Commission and for such term, long or short, as the Commission finds to be in the public interest. The Commission is already empowered by the present Section 15 to write new conditions and requirements in a relicense or new license. This section provides that such may issue "upon such terms and conditions as may be authorized or required under the then existing laws and regulations. . . ." Even if Commission consideration requires several annual relicenses upon the original terms, there is no reason the Commission cannot decide the requirements for a relicense at its beginning, and it can make the relicenses as short as it finds desirable.

Nor can it be supposed that the Commission must have this new power to change the rules after relicense in order to prevent a licensee from defeating imposition of new requirements at the beginning of the relicense by a technique of repeated rejection of the proffered relicenses, hoping to compel perpetual automatic annual licensing under present law. The licensee may not do this in resistance to any lawful relicense conditions. If that is attempted, continued operation of the project is unlawful under the present Section 23(b) and can be enjoined under the present Sections 26 and 315 as well as punished under Sections 315 and 316. For this very reason it is possible that amendment of Section 15 as proposed by the bill may lead a licensee to discontinue operation and abandon a project rather than accept any relicense with its commitment to undefined future burdens.

It is true that the future burdens are described in the bill disarmingly. The proposal is that at any time after relicense the Commission may "impose upon the licensee such further reasonable requirements as are not inconsistent with the other provisions of this Act." Although it may be soothing to a licensee to be told he signs only a reasonable blank check, nevertheless he has no way of knowing what others will consider reasonable. And it is unjust, altogether unnecessary and unjustifiable that he should be required to sign such a blank check.

The present Act already empowers the Commission both under original licenses and relicenses to make new rules during the term of any license in one specified area, but there the justification is self-evident. Section 10(c) provides that a licensee "shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property." No one objects to continuing authority to redetermine safety requirements; the industry did not, and neither did we, when the Commission proposed and adopted its present Regulations, Part 12, for "Inspection of Project Works with Respect to Safety of Structures", made applicable to projects already licensed, including ours. Order No. 315, December 27, 1965, 34 F.P.C. 1551. Beyond such clearly necessary authority however, we believe there is every reason the Commission should determine license obligations before a licensee is expected to assume them and there is no reason that the Commission should not do so.

The proposal that the Commission should have power to change a relicense during its term is a departure from the protection which outside the specific authority as to safety requirements is given by the present Section 6 against midterm changes of initial licenses. The Commission's proposal to treat a relicense differently may stem from the view that need for assurance of stable license terms to invite the investment necessary to bring about the original development is not necessary for relicense after development. But new investment during the term of the original license and new investment for redevelopment upon license expiration may either or both be thoroughly desirable for full development of resources. Both are discouraged if the law of relicense is

now changed so that none will be available except an unstable license subject to unknown future burdens.

The Commission itself recognized in transmitting the bill that the length of term of relicense might appropriately depend upon the amount of redevelopment outlay which may be then needed. The prospect of future burdens of unknown nature or degree can discourage new investments just as harmfully as a short term of relicense. Indeed we respectfully submit that, rather than through a continuing right to change the relicense after it is issued. The proper approach for the Commission's safeguard for needs of the future is through balancing the term of relicense, along with such new license requirements as the Commission finds appropriate, against desirable new investment and other public benefits and burdens resulting from continued operation and maintenance of the project under license. The Commission already has full authority to exercise its discretion to promote and protect the public in this way.

3. Suggestions to Clarify the Proposed Procedure

Our comment here deals only with mechanics of the proposed bill with suggestions which we believe will enhance effectuation of the purposes of the bill.

There is an apparent conflict between the proposed amendment of Section 7 of the Act and the present Section 15. It probably is not intended, but the wording may have unintended results. The provision, the first Section of the bill, is:

"Whenever, in the judgment of the Commission, the United States should [take over a project at license expiration], the Commission shall not issue a new license to the original licensee or to a new license but shall submit its recommendation to Congress. . . ."

We are confident that this proposal is not intended to prevent the Commission's compliance with the direction in Section 15 to issue an annual license from year to year on the original terms until take-over or issuance of a new license, but literally the proposed wording can be read as precluding such annual relicensing. The draftsman may have deemed the words "a new license" in the above as different from the words "an annual license" in Section 15 and thus to avoid conflict. However, none of these are defined terms and so there does exist the needless hazard that the unqualified prohibition of licenses by this Section 7(c) may be read as prohibiting yearly licenses under Section 15. That reading would either force the Congress to a precipitous decision or automatically turn the licensee into a trespasser merely for lack of congressional action at license expiration.

Another hazard in the wording of Section 7(c) is that it may possibly be read to mean that once the Commission recommends take-over its licensing authority is never thereafter restored even though Congress does not accept the recommendation. Of course Congress can at that time reauthorize Commission action, but this would require a new Act of Congress for each such project. Surely with passage of time, and no take-over action, projects should not be left in limbo and the Commission without power.

That the problem of interpretation here is serious enough to warrant clarification is emphasized by the strenuous contention made by the Secretary of the Interior in *U.S. v. Federal Power Commission*, 191 F. 2d 796, 806 (4th Cir., 1951), that where, under Section 7(b), the Commission has once reported to Congress that in the Commission's judgment a project should be federally developed, the Commission thereupon forever loses its licensing power. While the Circuit Court disagreed in view of Congressional inaction, the question was not resolved by the Supreme Court which held merely that the Commission's report did not in fact recommend federal development in preference to a license. *Chapman v. U.S.*, 345 U.S. 153, 173 (1953).

We submit that both above problems of interpretation should be clarified and that this may readily be done by adding to the proposed Section 7(c):

"Provided, That if the United States does not so take over within — years from such recommendation the Commission may thereafter issue a license as provided in Section 14 of this Act and until such project is taken over or licensed the Commission shall annually relicense such project as provided in Section 15 of this Act."

4. *The Need for Adequate Notice of Take-Over*

We believe it to be a matter of very serious concern that there should be adequate notice of take-over in order to safeguard in full the reliability and economy of power supply affected by the take-over. The present Section 14 provides two years notice as a minimum. We realize it will be fully within the province of the Commission upon recommendation of take-over to include findings as to the period of notice that would be appropriate to protect power supply, and Congress can agree. We submit, however, that it would be desirable that the procedure for take-over include express congressional recognition and sanction that the notice of take-over should be for such period as the Commission deems appropriate for safeguarding power supply.

For a small project relatively unimportant to the area load, the notice could be shorter than two years. If, however, the project is large and its capacity is to be withdrawn from the system within which it is integrated it must be replaced with no interruption. Replacement with large modern fossil fueled generation requires approximately five years and replacement with nuclear fueled generation requires even longer. From its National Power Survey the Commission is thoroughly familiar with the vital importance of timely advance scheduling of new capacity.

5. *Reports to Congress*

The Commission's constructive proposal in Section 2(b) of the bill that, by addition of a Section 14(b) to the Act, recommendation as to take-over shall be considered by the Commission simultaneously with its consideration of applications for a relicense or new license will bring about preparation of one record for the choice between the alternatives. The procedure includes provisions under which if a government agency recommends take-over but the Commission does not so recommend the Commission will stay any license and notify Congress of the stay so that Congress may consider the choice. The bill does not provide that the Commission shall also make its recommendations to Congress and transmit to Congress the record made before the Commission. These needs, however, we believe will be adequately met by the Commission's performance of its general statutory functions and in accordance with its Regulations adopted pursuant thereto providing specifically for proceedings upon license expiration. These include in Section 2.6(b) a provision that after such proceedings "the Commission will forward to Congress . . . its recommendation . . . as to whether the project [should be taken over] accompanied by all submissions to the Commission by federal agencies and the licensee plus such other material of record as in its judgment might be useful to Congress."

Our Company will greatly appreciate the Committee's consideration of these comments upon S. 2445.

STATEMENT OF CAROLINA POWER & LIGHT CO.

My name is Shearon Harris, I am President of Carolina Power & Light Company, whose address is 336 Fayetteville Street, Raleigh, North Carolina 27602, and am submitting this statement on its behalf.

Carolina Power & Light Company is a public service corporation which is engaged in the generation, transmission, and distribution of electricity in an area of approximately 30,000 square miles, including a substantial portion of the Coastal Plain in North Carolina, the lower Piedmont section in North Carolina and in South Carolina, and an area in western North Carolina in and around the City of Asheville. It now serves more than 516,000 electric customers.

The Company's facilities in Asheville and vicinity are connected with the Company's system in the other areas served by the Company through the facilities of Appalachian Power Company and of Duke Power Company so that power may be transferred from or to the Asheville area through interconnections with such companies. In addition to interconnections with Appalachian and Duke, there are interconnections with the facilities of Tennessee Valley Authority, Virginia Electric and Power Company, South Carolina Electric & Gas Company, and Yadkin, Inc.

As of December 31, 1967, the total electric generating capacity of the Company was 2,257,645 kilowatts. That capacity includes 100,000 kilowatts at the Company's Walters Hydroelectric Generating Plant, 86,000 kilowatts at its Tillery Hydroelectric Generating Plant, and 25,000 kilowatts at its Blewett Falls Hydro-

electric Generating Plant, all of which are licensed projects under the Federal Power Act. The license for the Walters Hydroelectric Generating Plant was issued in 1926 for a term of 50 years. A single 50-year license was issued for the other two plants by the Federal Power Commission in the year 1958. These three hydroelectric generating plants are essential generating resources for the Company's integrated system, so S. 2445 is of vital interest to us.

We agree with other representatives of the electric utility industry who have submitted statements to the Senate Commerce Committee that further legislation setting forth objectives and procedures to be followed upon the expiration of licenses issued under the Federal Power Act is desirable, but that S. 2445 contains certain objectionable provisions.

Specifically, and for reasons stated by other industry representatives, we respectfully suggest that the third and fourth sentences of Section 2(b) (authorizing a stay of the relicensing procedure while Federal agencies present their case for take-over to Congress), to which the sixth and seventh "Whereas" clauses of the Bill are related, and Section 3(b) (authorizing unilateral changes in provisions of the license by the Commission "at any time after the issuance of any license") should be deleted.

The "stay" provisions of Section 2(b) would produce unnecessary delays in the take-over or relicensing procedure, with resulting uncertainties for existing licenses.

Section 3(b) would permit the Commission to alter licenses issued under Section 15 by imposing "further reasonable requirements" at any time, despite the existing provision of Section 6 that licenses "may be altered or surrendered only upon mutual agreement between the licensee and the Commission." This proposal is not procedural. It would affect the rights of all Section 15 licensees by unreasonably subjecting them to the possible imposition of requirements which, although considered "reasonable" by the Commission, might produce intolerable burdens for the licensees.

NORTHEAST UTILITIES,
Hartford, Conn., March 12, 1968

Re S. 2445, procedure upon expiration of hydroelectric project licenses issued pursuant to part I of the Federal Power Act.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce, U.S. Senate, New Senate Office Building,
Washington, D.C.*

DEAR SENATOR MAGNUSON: Northeast Utilities has been following with great interest the proceedings before your Committee on S. 2445. Four of Northeast's operating subsidiaries, The Connecticut Light and Power Company, The Hartford Electric Light Company, Holyoke Water Power Company and Western Massachusetts Electric Company, each have hydro-electric plants under licenses by the Federal Power Commission or have applications for license pending. Included among these plants is the 1,000,000 kilowatt Northfield Mountain Pumped Storage Project, located on the Connecticut River in Massachusetts. When completed in 1971, this project will be the largest pumped storage plant in the world.

We wholeheartedly endorse the purpose of S. 2445, for we believe it will eliminate much of the uncertainty which a licensee faces upon expiration of a license. Western Massachusetts Electric Company's Turners Falls Project is among those plants whose licenses expire in 1970. A portion of this project will serve as the lower reservoir of the Northfield Mountain Project and coordination of operations between these two projects is essential. Western Massachusetts Electric has proposed to make several substantial alterations to the Turners Falls Project to permit that project's use in conjunction with the Northfield Mountain Project without the benefit of knowing whether or not the Turners Falls Project will be relicensed to it. This uncertainty could be resolved under the procedures established in S. 2445.

At the hearings before your Committee held on February 26, 1968, a number of representatives from the investor-owned electric companies presented statements pointing out certain problems raised by the bill in its present form. We concur in the statements of Messrs. Horton, O'Kelly, Bouldin and Dunham as presented to your Committee. We would respectfully urge that the Committee amend the bill in accordance with the suggestions of these gentlemen.

In particular, we would urge that the proposed new section 14(b) of the Federal Power Act (set out in section 2 of the bill) be amended to provide that

a determination by the Federal Power Commission that the United States should not exercise its right to take over the project in question shall be final, and the present provision for a stay of a relicensing order of up to four years be eliminated. Unless the stay provision is deleted, licensees will be faced with nearly the same uncertainty and delay that presently prevails and thus much of the salutary purpose of the bill will be negated.

Very truly yours,

SHERMAN R. KNAPP, *President.*

STATEMENT OF CARROLL H. BLANCHAR, PRESIDENT OF PUBLIC SERVICE CO. OF INDIANA, INC.

Mr. Chairman and members of the committee, my name is Carroll H. Blanchar, and I am President of Public Service Company of Indiana, Inc. I am filing this statement with this Committee to support favorable action of this Committee and final passage of Senate Bill 2445 with certain changes in the Bill.

Public Service Company of Indiana, Inc. is an electric utility which serves more than 412,000 customers in 68 of the 92 counties in the north central, central and southern parts of Indiana. We serve 700 cities, towns and communities, 31 Rural Electric Membership Corporations and have 5 steam generating plants in operation and a hydro electric generating plant on the Ohio River at Markland, Indiana, for which we are the licensee under the Federal Power Commission Act.

Public Service Company of Indiana, Inc. adopts the written and oral statements of Alan P. O'Kelly, Jack K. Horton and Walter Bouldin as it applies to reissuance of licenses to original licensee, which statements and oral testimony was received by this Committee on February 26, 1968.

It is recommended to this Committee that the proposed Bill be amended in the following:

1. Sec. 2(b) and 2, the sixth and seventh "Whereas" eliminate the right to block the issuance of a new license for as long as 2 sessions of the Congress.
2. Sec. 3(b), by eliminating this subsection.
3. The act should be changed to grant preference to the former licensee in the issuance of a new license.
4. FPC should be authorized to grant a license where a license has expired under standards set by Congress.

I thank you for your consideration of these points.

STATEMENT ON S. 2445

C. A. Erdahl, Director of Public Utilities, City of Tacoma, Washington.	Mr. Robert Gillette, Manager, Grant County P.U.D., Ephrata, Washington.
Mr. John Nelson, Superintendent, Seattle City Light, Seattle, Washington.	Mr. Owen W. Hurd, Manager, Wash. Public Power Supply System, Kennewick, Washington.
Mr. Byron Price, Manager, Eugene Walter & Electric Board, Eugene, Oregon.	Mr. Alan H. Jones, Manager, McMinnville City Water & Light, McMinnville, Oregon.
Mr. Fred Lieberg, Manager, Douglas County P.U.D., Wematchee, Washington.	Mr. Thomas Black, Manager, Benton County P.U.D., Kennewick, Washington.
Mr. Kirby Billingsley, Manager, Chelan County, P.U.D., Wematchee, Washington.	

Submitted to Senate Commerce Committee, March 13, 1968

This statement is in further response to the telegraph message to the Committee Chairman dated February 23, 1968, requesting additional time for the submission of statements of position regarding S. 2445. It is our understanding that the Committee hearings were completed February 27, 1968 but the transcript has been held open for this purpose.

The background information relating to each utility joining in this statement is attached by separate letter of transmittal and incorporated by this reference as an integral part of this statement for the record.

The APPA Legislative and Resolutions Committee on January 31, 1968 approved the following resolution on recapture and relicensing of hydroelectric projects:

"Whereas, there exist numerous hydroelectric projects licensed by the Federal Power Commission under the Federal Power Act, the licenses of which are nearing expiration, and

"Whereas, Congress provided in the Federal Power Act for recapture by the United States upon the expiration of licenses granted under that Act, in order to prevent exploitation and monopolization of the nation's water resources, as well as provisions for new licenses to existing or other licensees, and

"Whereas, Section 7(a) of the Federal Power Act affords preference to applications of states and municipalities for preliminary permits, licenses and new licenses issued under Section 15 of the Act, if such applications are 'equally well adapted to conserve and utilize in the public interest the water resources of the region,' and

"Whereas, S. 2445 and H.R. 12698 of the 90th Congress attempt to clarify the manner in which the United States may recapture or relicense hydroelectric projects upon license expiration:

"Now, therefore, be it resolved: That the American Public Power Association supports legislation which would clarify procedures relating to the recapture and relicensing of hydroelectric projects licensed under the Federal Power Act, if such legislation provides that: (1) the Federal Power Commission is the proper agency to recommend and effectuate recapture, (2) the provisions of Section 7(a) of the Federal Power Act giving licensing preference to public bodies for projects whose licenses have expired is preserved, and (3) that new terms and conditions may be set by the Federal Power Commission to protect the public interest and encourage comprehensive development of water resources when a license is granted to a prior licensee of a project."

The recapture procedures proposed under S. 2445 appear to be inconsistent with the intent of Congress, in enacting the Federal Power Act, to delegate to the Federal Power Commission the responsibility for the recapture of projects and reserving congressional review by the appropriation procedures. The proposed procedure would place an unnecessary burden on Congress and is not in accord with the present language of the Federal Power Act.

The relicensing procedures proposed under S. 2445, although recognizing that the Federal Power Commission has present authority to set new terms and conditions for new licenses, extends in Sec. 3(b) unnecessary broad authority to alter the terms and conditions "at any time" after issuance of a new license. The possibility of the exercise of such power would seriously prejudice the licensee in planning and implementing long term financing, marketing and management matters for which project stability during the license period is essential and in the best public interest.

Previous testimony indicates some discussion of the matter of preference in licensing given to states and municipalities under Sec. 7(a) of the Federal Power Act. No reference to this matter is made in the proposed S. 2445. If there is any need for clarification of this preference at this time, in the proposed or related legislation, the licensing preference to such public bodies for projects whose licenses have expired should be preserved.

We trust that these matters will be appropriately clarified in S. 2445, or in any substitute or related legislation that may be considered by this committee.

DEPARTMENT OF PUBLIC UTILITIES,
Tacoma, Wash., March 12, 1968.

Hon. WARREN MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: This letter attaches a statement and thirty-five (35) copies for the record in the Committee Hearing on proposed legislation S. 2445 held Monday and Tuesday, February 26 and 27, 1968, at Washington, D.C. This letter contains background information concerning this Utility's interest in the proposed legislation.

The City of Tacoma, located in Pierce County, Washington, is a municipal corporation of the State of Washington and is the third largest city in the State with a population of 163,961. Pierce County, Washington, has a population of 361,146. The Department of Public Utilities is managed by a Public Utility

Board and has jurisdiction over three utilities of the City, the electric generating plant & system and electric power and light transmission & distribution system, operated by the Light Division of the Department, and the water supply and Municipal Belt Line Railway operated by the Water and Belt Line Divisions respectively.

The electric system serves the area inside the City including the industrial tideflats, approximately 48 square miles, without competition, and in addition serves directly a large part of the surrounding suburban areas and indirectly serves additional portions of the greater metropolitan area through 12 cooperatives, mutuals and municipal systems. The entire area served directly or indirectly comprises approximately 650 square miles.

The Light Division, under licenses from the Federal Power Commission, operates at present a total of five hydroelectric generating facilities; two facilities, the Alder Plant and LaGrande Plant, located on the Nisqually River which flows down the western slope of the Cascade Mountains; two facilities, Cushman Plants No. 1 and 2, located on the Skokomish River which flows down the eastern slope of the Olympic Mountains; and the Mayfield Development, which is a part of the Cowlitz Power Development Project, on the Cowlitz River which flows down the western slope of the Cascade Mountains. The Mossyrock Development, also a part of the Cowlitz Project, will be completed in 1968. The Light Division also operates two standby steam electric generating facilities located within the City limits. The combined total output of these plants is approximately 718,000 KW.

Transmission and distribution of the power is made through facilities owned by the City or in coordination with other Northwest Utilities including the Bonneville Power Administration.

The City is involved in a substantial number of complicated power purchase contracts and arrangements in order to adequately provide for the needs of the consumer public it serves now and in the future. These include a requirements contract with BPA under which in 1966 the City purchased 1,327,980,000 KWH of prime power at a cost of \$2,825,650.00.

Energy received from the Grant County Public Utility under a long-term contract by which the City receives 8% of the Priest Rapids Project on the Columbia River, amounted to 358,474,000 KWH at a cost of \$847,473.00 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% in receiving the output of the generating station at Richland, Washington. Steam for the station is supplied by the nuclear New Production Reactor built by the United States Atomic Energy Commission as part of its Hanford Development.

In 1964 the City, in cooperation with other Northwest Utilities, became a member of the Columbia Storage Power Exchange (CSPE) a non-profit corporation which financed the construction of several dams on the Columbia River and its tributaries in Canada for the purpose of regulating the flow of that river and assuring more efficient operation of the various Columbia River Hydroelectric Projects in the United States. The power contracts for the security of the bonds provide for the city to annually take 12½%, estimated at 172,125 KW of 1,377,000 KW in 1974 of Canada's 50% share of the additional power to be generated. The City 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 has arranged backup agreements with BPA, Puget Sound Power & Light Company and others to provide further reassignment if necessary.

The City signed, along with fifteen other public, private and Federal agencies in the area, a Pacific Northwest Coordination Agreement in 1964. This will make available surplus energy or capacity to the other participants to guarantee ability to carry predetermined amounts of firm load.

The City along with other Northwest utilities on December 1, 1967, executed a letter of intent with the Pacific Power & Light Company and Washington Water Power Company to join in the construction of a steam-electric generating plant at a site near Centralia, Washington. The plans call for the construction of a generating unit of 650-megawatt name plate with net capability of 700 megawatts with provisions for a second unit. Arrangements have been made under

which it is expected that the first unit will become commercially operative about September 1, 1971.

The City is also a member of the Northwest Power Pool and has an interchange agreement with Seattle City Light and BPA designed to assure meeting its utility obligations to the ever-increasing consumer public it serves.

It is, therefore, in the best long-range public interest for the City and all the various Federally-licensed utilities with which it shares utility responsibility to have assurance that the many and diverse licensed projects, mutual contractual arrangements and pooling operations will be properly regulated as provided in the Federal Power Act to provide stability of planning, operations and financing so necessary in these matters.

The City, therefore, joins in and supports the statement made by Alex Radin and Northcutt Ely on behalf of the APPA member generating utilities in the Pacific Northwest, and urges the Committee to seriously consider the bill in the light of the suggestions offered, and requests the right to give further oral presentation or to be heard at any further hearing to the extent that the Committee may deem appropriate or desirable.

Respectfully submitted.

C. A. ERDAHL, *Director of Utilities.*

PUBLIC UTILITY DISTRICT No. 1,
Chelan County, Wash.

HON. WARREN MAGNUSON,

Chairman, Senate Commerce Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR: This letter is attached to and is in support of a statement for the record in the Committee Hearing on S. 2445 held February 26th and 27th, 1968, at Washington, D.C. It is intended to be informative as to the interest of this public utility district in the proposed legislation.

Public Utility District No. 1 of Chelan County, Washington, is a municipal corporation of the State of Washington, and since 1948 has owned and operated an electric distribution system serving substantially all of the 50,000 inhabitants of Chelan County, Washington. The District is managed by a board of three elected commissioners.

The District also owns and operates three Federally licensed hydro-electric power projects with a combined peaking capability of 1,117,000 kilowatts as follows:

(1) The Chelan Hydro-Electric generating plant, (F.P.C. Project 637-Washington), located on the Chelan River at the foot of Lake Chelan in Chelan County, Washington, and having a peak capability of 53,000 kilowatts. The existing license for this Project will expire May 8, 1976;

(2) The Rock Island Generating Plant, (F.P.C. Project 943), located on the Columbia River in Chelan and Douglas Counties, Washington, and having a peak capability of 249,000 kilowatts. The existing license for this Project will expire January 21, 1980; and

(3) The Rocky Reach Power Project, (F.P.C. Project 2145), located on the Columbia River in Chelan and Douglas Counties, Washington, and having a peak capability of 815,000 kilowatts. The existing license for this Project will expire July 12, 2006. The District is planning the early installation of four (4) additional generating units in this Project to increase the peak capability of the plant to 1,221,000 kilowatts. The estimated cost of the additional units is \$40,000,000.

A portion of the electric energy output of the three licensed projects is used by the District to serve the people of Chelan County and the remainder is sold under long term contracts to electric utility companies in the states of Washington and Oregon.

Each of the licensed projects was financed with the proceeds of revenue bonds, that is to say, bonds which are payable solely from the revenues received from the sale of the energy produced by the respective project. The total revenue bonds issued to finance the three projects aggregated the sum of \$367,275,000.

The District participated with other Northwest Utilities in the formation of the Columbia Storage Power Exchange (C.S.P.E.) a non-profit corporation, which financed the construction of three dams on the Columbia River and its tributaries in Canada pursuant to the Treaty between United States and Canada. The District contracted to purchase one percent of Canada's share of the addi-

tional power to be generated as a result of the construction of said dams and has completed an assignment of its said percentage to electric utilities in the State of California.

The District is a party, together with other utilities and agencies in the Northwest, to a long term Pacific Northwest Coordination Agreement under which surplus power and energy is made available to the various participants to enable them to carry their firm loads.

The District is also a member of the Northwest Power Pool which assists in the coordination of the power resources of the Northwest.

The District's ownership and operation of the three Federally licensed power projects, its long term power sales contracts and the contracts which it has entered into in order to coordinate its power resources with other power resources in the area, imposes upon it a vital public utility responsibility and it is most necessary that it have assurance that the terms and conditions of licenses for its projects not be subject to change after the licenses are issued.

The proposed Section 3(b) in the Bill could result in changes in a license which would substantially reduce the electric output of the project or require the expenditure of large sums of moneys for purposes other than the production of power, either of which could make the project uneconomical. The ability of a public utility district or other municipality to finance the construction of a project by means of revenue bonds or to enter into stable long term power contracts would be seriously impaired, if not made impossible.

Accordingly, the District joins in and supports the statements made by Alex Radin and Northcutt Ely on behalf of the A.P.P.A., member generating utilities in the Pacific Northwest and requests the privilege of presenting further written or oral testimony at such further hearing or hearings as the Committee deems appropriate.

Respectfully submitted.

KIRBY BILLINGSLEY, *Manager.*

PUBLIC UTILITY DISTRICT No. 1 of DOUGLAS COUNTY,
East Wenatchee, Wash., March 11, 1968.

Re S. 2445, amendment to Federal Power Act.
Re Relicensing.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: Public Utility District No. 1 of Douglas County, Washington, is a municipal corporation of the State of Washington with its principal office located at 1151 North Main Street, East Wenatchee, Douglas County, Washington. The District is operated by a three-member Commission elected by the residents of Douglas County. The Distribution System, operated by the District, sells and distributes approximately 226,000,000 kilowatt hours of electrical energy annually to approximately 6,000 customers located throughout Douglas County. In 1962, the Federal Power Commission issued its License No. 2149 to the District for the construction of the Wells Hydroelectric Project on the Columbia River. This project will have peaking capability of 820,000 kilowatts and for which construction costs the District has obligated itself to repay approximately \$202,000,000.00 in revenue bonds.

Thirty per cent of the output from the Wells Hydroelectric Project has been reserved by the District and 8% of the output has been reserved to Public Utility District No. 1 of Okanogan County, Washington, for future electrical needs of the two last mentioned Public Utility Districts. The electrical energy developed by the Wells Hydroelectric Project, subject to the aforementioned reservations, has been sold under long-term contracts to electric utility companies in the Pacific Northwest.

The Public Utility District of Douglas County is a party to a long-term Pacific Northwest Coordination Agreement, under which surplus power and energy is made available to the various participants to enable them to carry their firm loads.

The District also participated in the formation of the Columbia Storage Power Exchange (CSPE) which financed the construction of three dams on the Columbia River and its tributaries in Canada pursuant to the Treaty between the United States and Canada.

Public Utility District No. 1 of Douglas County is also a member of the Northwest Power Pool which assists in the coordination of the power resources of the Northwest.

A careful examination of your S. 2445 causes us considerable concern. We are fearful that such legislation, in its present form, could permit the Federal Power Commission to qualify the License in such a manner as to substantially reduce the output of a project or require changes or additions therein which could make the project uneconomical. Any such changes of a substantial nature solely at the discretion of the Federal Power Commission could seriously affect the financing and construction or refinancing and future development of such a project as Wells.

The District has, with its general counsel, Richard G. Jeffers, carefully reviewed the statements made by Mr. Alex Radin, General Manager, American Public Power Association, and Mr. Northcutt Ely, General Counsel for the American Public Power Association, on behalf of the APPA, and Mr. C. W. Erdahl, Director of Public Utilities, City of Tacoma, Washington, and concurs in these statements. Accordingly, Public Utility District No. 1 of Douglas County, Washington, joins in and supports the position taken by the APPA, The City of Tacoma and other member generating utilities in the Pacific Northwest in opposing S. 2445 in its present form.

Respectfully submitted.

FRED W. LIEBERG, *Manager.*

PUBLIC UTILITY DISTRICT OF GRANT COUNTY,
Ephrata, Wash., March 8, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: This letter contains background information relating to this utility's interest in the proposed legislation, S. 2445, and to the statement in which this District has joined other publicly owned utilities in the Northwest.

Public Utility District No. 2 of Grant County, Washington, is a municipal corporation of the State of Washington, with its headquarters office in Ephrata. The District is managed by a five-member board of commissioners, each of whom is an elected official and resident of the County.

The District's electric system serves the entire area of Grant County with the exception of the Town of Grand Coulee, which operates a municipal system, and approximately 50 farm customers who are served by a Rural Electric Cooperative.

The District, under license from the Federal Power Commission, has constructed, owns and operates the Priest Rapids Project, comprised of the Priest Rapids Development and the Wanapum Development, with a combined total name plate rating of 1,619,750 kw. The District financed the construction of each development by the sale of revenue bonds based on the future needs of the District and long-term power sales contracts. It, therefore, has continuing obligations in management of sales contracts and repayment of debt. Transmission of the power from the Project is through the facilities owned by the District, other Northwest utilities and the Bonneville Power Administration.

The District is a member of the Northwest Power Pool and numerous other organizations associated with the generation, transmission and distribution of electric energy.

In supporting the joint statement on S. 2445, the District also wishes to emphasize that language in this legislation should in no way abrogate the preference rights of publicly owned utilities in the consideration of future power developments. This District also joins in and supports the statement made by Mr. Alex Radin on behalf of the American Public Power Association, of which the District is a member.

Respectfully submitted.

R. W. GILLETTE, *Manager.*

WATER AND LIGHT DEPARTMENT,
McMinnville, Oreg., March 7, 1968.

HON. WARREN MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This letter provides background information which is attached to a joint statement on S. 2445.

The City of McMinnville, located in Yamhill County, Oregon, is a municipal corporation of the State of Oregon and is the oldest municipally owned utility on the West Coast, organized in 1889. We serve both inside our corporate city as well as our immediately surrounding market area. We have approximately 5,000 meters in service, serving a population of approximately 11,000 to 12,000. The utility is governed by a Water and Light Commission, which has utility responsibility for the area.

While we are a small utility, we have an interest in the Columbia River projects of the Grant County PUD, namely Priest Rapids and Wanapum projects, and as such have appropriate contracts with Grant County PUD. We are also a customer of the Bonneville Power Administration.

We have cooperated with others in the region by participation in the Canadian Storage Power Exchange Agreement as well as the Hanford arrangement with Washington Public Power Supply System and the Bonneville Power Administration.

We feel that in the long-range public interest will best be served, if the integrity of the Federal Power Act is maintained. The City Water and Light, therefore, joins in and supports the statement made by Alex Radin and Northcutt Ely on behalf of APPA and urges the Commerce Committee to seriously consider the bill in the light of the suggestions offered.

Sincerely yours,

ALAN H. JONES, *General Manager.*

WASHINGTON PUBLIC POWER SUPPLY SYSTEM,
Kennewick, Wash., March 12, 1968.

HON. WARREN MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: The Washington Public Power Supply System supports the position of the American Public Power Association, as well as other Northwest utilities, as set forth in the joint statement concerning S. 2445.

The Supply System is a municipal corporation of the State of Washington composed of seventeen operating Public Utility Districts and one municipality. The System serves as a generating agency which sells power to members as well as to 58 other utilities throughout the Pacific Northwest. It does not own or operate power distribution systems.

The Washington Public Power Supply System is the owner and operator of the Packwood Lake Hydroelectric Project, FPC Project No. 2244, in eastern Lewis County, Washington. Power generated at the project is marketed to eleven member Public Utility Districts through arrangements with the Bonneville Power Administration.

The Supply System also operates the Hanford Nuclear Generating Plant at the Atomic Energy Commission's Hanford Project. The generating plant is presently the world's largest nuclear powered generating station, capable of producing 860,000 KW. The power generated at the Hanford generating plant is purchased by seventy-six utilities in the Pacific Northwest, both publicly and privately owned, and is marketed through arrangements with the Bonneville Power Administration.

The Washington Public Power Supply System is presently an applicant for the issuance of a license to construct the High Mountain Sheep Project on the Snake River in Oregon and Idaho, FPC Project Nos. 2243/2273. This application has been filed jointly with Pacific Northwest Power Co., and is now pending before the Federal Power Commission.

The Washington Public Power Supply System affirms its support of the position of the American Public Power Association as expressed by Alex Radin and Northcutt Ely before your committee, as well as the resolution adopted by the As-

sociation's Legislative and Resolutions Committee on January 31, 1968. Favorable consideration of the inclusion of recommended provisions in this bill by the Committee is urged as a means of protecting the public interest and assuring a continued low cost power supply to the power consumers of the Pacific Northwest.

Very truly yours,

OWEN W. HURD, *Managing Director.*

EUGENE WATER & ELECTRIC BOARD,
Eugene, Oreg., March 12, 1968.

HON. WARREN MAGNUSON,
*Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.*

DEAR SENATOR: Attached is a copy of a joint statement, together with 35 copies of this letter, containing the Eugene Water & Electric Board's comments on legislation proposed by S. 2445. It is requested that these comments be incorporated in the record of the Commerce Committee Hearings on S. 2445 on February 26 and 27, 1968, held in Washington, D.C. It is the intent of this letter to indicate the Eugene Water & Electric Board's position in the electric utilities industry and its interest in S. 2445.

The City of Eugene, Oregon, a municipal corporation of the State of Oregon, acts by and through its Eugene Water & Electric Board, to supply the water and electric requirements of the City of Eugene and its associated metropolitan area. The electric system of the Board serves 38,781 customers. In providing this service, the Board, acting on behalf of the City of Eugene, owns and operates three hydroelectric projects on the McKenzie River and a steam electric generating plant and has entered into agreements with other utilities and entities to meet the electric requirements of its customers.

The Board purchases electric power from the Bonneville Power Administration, a share of the output of the Priest Rapids and Wanapum Developments of Grant County, P.U.D., a portion of the output of the Hanford Nuclear Power Development, and as a member of the Columbia Storage Power Exchange, a share of the downstream power benefits provided by the three Canadian dams. The Board is a member of the Northwest Power Pool, a signatory to the Pacific Northwest Coordination Agreement and a member of the Western Systems Coordinating Council.

The foregoing recitation is made to indicate the Board's active participation in the electric power industry in the Pacific Northwest, and hence, its interest in any legislation which would directly or indirectly effect such participation. The Board is particularly concerned with the following three points mentioned in the joint statement, relative to S. 2445 as now written:

- (1) The added burden imposed upon Congress.
- (2) The right of the Commission to "at any time . . . impose upon the licensee such future requirements as are not inconsistent with the other provisions of this Act."
- (3) The possible need for an expression in S. 2445 of the preference of public agencies for licenses under the Federal Power Act.

The Board respectfully requests that S. 2445 be reconsidered on the basis of the above comments and those contained in the attached joint statement.

Very truly yours,

BYRON PRICE, *General Manager.*

CITY OF SEATTLE DEPARTMENT OF LIGHTING,
Seattle, Wash., March 12, 1968.

HON. WARREN G. MAGNUSON,
*Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.*

DEAR SENATOR MAGNUSON: This letter will confirm our participation in a joint statement by certain publicly owned Pacific Northwest utilities on Senate Bill 2445 to be submitted to the Commerce Committee in accordance with our previous telegraphic message to the Committee Chairman dated February 23, 1968.

The City of Seattle, Department of Lighting has a current peak load of approximately 1,300,000 kw, most of which is supplied from four major hydroelectric projects which it owns and operates under license from the Federal Power Commission. It thus is vitally interested in the proposed amendments to the Federal Power Act.

Consistent with our participation in the above statement, we fully support the statements previously made by Alex Radin and Northcutt Ely on behalf of the American Public Power Association in such connection.

In addition to the above statements, we must express serious concern with respect to the proposed addition of a Section 15C to the Federal Power Act which apparently contemplates the exclusive licensing for non-power purposes of previously licensed power projects either on the motion of the FPC or on application therefor.

Adoption and application of such procedure would raise very difficult questions, especially with respect to publicly-owned projects which are already devoted to multiple public purposes including those of a non-power nature, but as to which an additional non-power use would be completely incompatible.

We note that discussion of the rationale and scope of this proposed "non-power" amendment to the Federal Power Act was quite limited at the Committee hearing on February 26-27, 1968, and would therefore appreciate the opportunity for further inquiry, discussion, and possible hearing in connection therewith.

Respectfully submitted.

JOHN M. NELSON,
Superintendent of Lighting.

BENTON COUNTY PUBLIC UTILITY DISTRICT No. 1,
Kennewick, Wash., March 13, 1968.

Hon. WARREN MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This letter contains background information relating to this utility's interest in the proposed legislation S. 2445, and to the statement in which this District has joined other publicly owned utilities in the Northwest.

Public Utility District #1 of Benton County, Washington is a municipal corporation of the State of Washington with the headquarter offices in Kennewick, Washington. The District's policy is established by a three member Board of Commissioners, each of whom is an elected official residing in the County.

The District's electric system service area includes the entire area of Benton County with the exception of the town of Richland and certain loads in the A.E.C. Hanford reservation. Electric service is rendered to 12,800 consumers throughout the County including several large privately owned irrigation projects.

In 1964, this utility, in cooperation with the other Northwest utilities became a member of the Columbia Storage Power Exchange (CSPE), a non-profit corporation which financed the construction of several dams on the Columbia River and its tributaries in Canada for the purpose of regulating the flow of that river and assuring more efficient operation of the various Columbia River hydroelectric projects in the United States.

This utility is also a member of the Washington Public Power Supply System, who jointly with other public utilities in the State of Washington have secured to license to construct and operate the Packwood Hydroelectric Project in Lewis County, Washington.

This District is also anticipating entering into power exchange agreements with other utilities owning hydroelectric generating facilities for a future source of power supply.

The District also has contractual arrangements through W.P.P.S.S. on the Hanford Steam Plant with contractual exchange agreements with other utilities for the disposition of the District's portion of this generation.

It is, therefore, in the best long range public interest for the District and all the various Federally licensed utilities with which it shares utility responsibility to have assurance that the many and diverse licensed projects, mutual contractual arrangements and pooling operations will be properly regulated as provided in the Federal Power Act to provide stability of planning, operations and financing so necessary in these matters.

The Public Utility District #1 of Benton County, Washington, therefore, joins in and supports a statement made by Alex Radin and Northcutt Ely on behalf of the APPA members, and urge the Committee to preserve the public agency preference provision of the Federal Power Act in any recapture provision enacted. Respectfully submitted.

THOS. E. BLACK, *Manager.*

BALTIMORE GAS AND ELECTRIC COMPANY,
Baltimore, Md., March 31, 1968.

Re S. 2445, relicensing hydroelectric projects

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR MAGNUSON: Baltimore Gas and Electric Company appreciates the opportunity afforded it by the Senate Committee on Commerce to make a statement on the proposed legislation embodied in S. 2445. Baltimore Gas and Electric Company supplies electricity, gas and steam in an area of approximately 2,300 square miles in central Maryland. Electricity is furnished by the Company throughout the entire area to a population of more than 2 million persons. Included in the territory served are Baltimore City, Annapolis, Towson, Westminster, Laurel, Bel Air, Hayre de Grace, Aberdeen, and more than 40 other communities. The Baltimore Metropolitan Area is the 12th largest in the United States and has an increasing population growth rate, with kilowatt-hour sales over the last 50 years having on the average doubled approximately every ten years. At the end of 1967, Baltimore Gas and Electric Company was serving more than 647,000 electric customers. The Company's 1967 peak load (attained on August 3) was 1,927,000 kw, and the summer capability of the Company's system, including its entitlement to Safe Harbor capacity (see next paragraph), at the end of 1967 was approximately 2,150,000 kw. The Company's system is operating in turn as a part of the Pennsylvania-New Jersey-Maryland Interconnection (PJM). PJM is one of the world's largest power pools, and the companies which are interconnected serve approximately 20 million people.

Although Baltimore Gas and Electric Company is not itself a licensee under the Federal Power Act, it is nevertheless vitally interested in, and will be greatly affected by, the relicensing of the Safe Harbor Water Power Corporation hydroelectric plant located on the Susquehanna River between York and Lancaster Counties in the State of Pennsylvania. Baltimore Gas and Electric Company owns two-thirds of the outstanding capital stock representing one-half of the voting shares of the Safe Harbour Company (the remaining one-third of such stock being owned by Pennsylvania Power & Light Company of Allentown, Pennsylvania) and by virtue of such stock ownership is entitled to 152,000 kw of capacity and the associated energy from the Safe Harbour hydroelectric generating plant. This represents a significant part of our Company's total requirements. In addition to being an economical source of power and energy to Baltimore Gas and Electric Company, the Safe Harbour hydroelectric generating plant is an important factor in the bulk power transmission system of the PJM Interconnection. A major tie between the Baltimore system and PJM is through the Safe Harbour station bus and the Manor Substation located adjacent to the hydroelectric generating plant. The Safe Harbour Water Power Corporation Project was licensed for a 50-year period on April 22, 1930, as Project No. 1025, and its license will expire April 22, 1980.

With respect to S. 2445, Baltimore Gas and Electric Company feels that there is a need for the Congress to enact legislation which will clearly set forth its objectives with standards and guidelines to govern the processing of expiring hydroelectric licenses.

We firmly believe that it is in the public interest to assure continued ownership in the original licensee. In the recent hearings before your Committee, the Chairman and the General Counsel of the Federal Power Commission expressed opinions that under existing law the preference of states and municipalities under Section 7(a) of the Federal Power Act will not apply upon the expiration of an existing license where recapture is not exercised and where the holder of the expiring license applies for a new license. Despite those opinions, we feel that it would be in the public interest for Congress to take this opportunity (by amending S. 2445) to make it clear that such preference does not exist where the holder of the license applies for a new license.

This Company suggests also that the 6th and 7th whereas clauses together with Section 2(b) of S. 2445 are undesirable since these portions of the bill nullify the legislation's objectives of handling relicensing promptly and expeditiously. Under these provisions, any agency of the United States Government can automatically block the issuance of a new license for up to a period of four years. In view of all the other remedies that such agencies presently have, we do not feel that these provisions are in the public interest. Baltimore Gas and Electric Company also suggests that the Congress eliminate Section 3(b) from S. 2445 which authorizes unilateral alteration of licenses by the Federal Power Commission during the entire term of the license.

In view of the fact that a license for a new project does not require the establishment and maintenance of amortization reserves until 20 years after the beginning of projection operation, it seems unfair to require establishment and maintenance of such reserves from and after the effective date of any relicensing, and, accordingly, we suggest that Section 4 of S. 2445 be deleted.

Very truly yours,

T. W. TRICE.

PUGET SOUND POWER & LIGHT CO.,
Bellevue, Wash.

STATEMENT OF PUGET SOUND POWER & LIGHT CO.

Puget Sound Power & Light Company hereby respectfully submits this brief statement for the record.

The Company is an investor owned utility operating primarily in Western Washington. Puget owns and operates hydroelectric plants with a capacity in excess of three hundred thousand kilowatts. It also receives substantial power and energy from hydroelectric plants owned by Public Utility Districts on the Columbia River under long term power contracts. Puget's plants and those of the PUDs are either currently licensed under the Federal Power Act or are in the process of licensing by reason of the Taum Sauk principle. Accordingly, the subject matter of S 2445 is of direct and vital concern to Puget both as owner and purchaser.

Puget's position with respect to this legislation has been well expressed in the testimony of Mr. Horton and Mr. O'Kelly and we endorse such testimony. An effective relicensing procedure is an essential element in our continuing ability to provide power to our customers at the lowest possible cost. Such procedure must be reasonably simple, must recognize the right of existing licensees to continued operation of their projects, and must provide for the fixing of terms and conditions for the duration of the relicensed project so that the rights and obligations of a licensee are not subject to continual impairment or modifications.

Respectfully submitted.

L. E. KARRER, *Senior Vice President.*

STATEMENT OF IDAHO POWER CO.

I am Albert Carlsen, President of Idaho Power Company, 1220 Idaho Street, Boise, Idaho, and make this statement of Idaho Power Company's position with respect to S 2445 now pending before the Senate Committee on Commerce.

S 2445 involves amendments to Part I of the Federal Power Act and specifically to those parts relating to relicensing of hydroelectric projects. Idaho Power Company has a very continuing and vital interest in any matter relating to amendment of hydroelectric licenses, since the Company is the present holder of eight Federal Power Commission licenses for hydro projects, and presently has on file with the Commission applications for three more hydro projects. In addition, the Company has under license a number of transmission lines. The all persuasive interest of Idaho Power Company is better shown by pointing out the fact that the Company, along with one other company, is a 100% hydro system relying for its own generation entirely upon water power. Of the Company's total name plate generating capacity of 1,289,345 kilowatts, 1,183,465 kilowatts are now licensed and 74,380 kilowatts are the subject of pending license applications. This results in 97.56% of the Company's entire generation being subject to relicensing. One of these projects—Swan Falls FPC License No.

503—will expire in 1970 and, therefore, the relicensing problem insofar as Idaho Power Company is concerned is no longer an academic question, but instead is an actual pressing problem.

Oral testimony before your Committee relating to suggested amendments and changes has heretofore been presented by Alan O'Kelly on behalf of The Washington Water Power Company and Idaho Power Company adopts and concurs in these comments and suggestions. The Company also supports the general statements relating to S. 2445 made before your Committee by Jack K. Horton on behalf of Southern California Edison Company and Walter Bouldin, President of Alabama Power Company.

Based upon our Company's experience and problems relating to its initial plant for which the original license is terminating, the Company supports the basic premise that amendments relating to licensing procedures are necessary and we believe that the elimination of the time and motion consuming process of Congressional action in all cases where Congress has not expressed a desire to act is a forward step and one which should expedite the relicensing procedure. The Company does have strong doubts about the wisdom of the provision which allows any agency of the Government in effect to nullify for up to four years the recommendations of the Commission with respect to the granting of a relicense. It would appear that the expertise of the Commission in weighing all pertinent factors should govern over the possible self-serving desires of any particular Governmental agency. Any agency would have the full opportunity to express to the Commission its views on relicensing and it certainly seems that the orderly and legal procedure would best be served by the Commission's making the decision without any possibility of harassing and time consuming delays.

The proposed Section 3(b) in S. 2445 relative to the right of the Commission to impose additional requirements upon the license at any time appears completely unnecessary. With such a provision, what could a company say to an investor with respect to his reliance on the terms and conditions set forth in the license, since with this provision there is no commitment nor assurance as to what additional burdens or requirements may be imposed? The only limitation is the word "reasonable" and what may be perfectly reasonable to one person may be completely unreasonable to another. This provision would result in an effective elimination of the "license" and instead provide merely a "permit" with all of its limitations. We would seriously doubt that any company under that type of situation would feel free to make the substantial expenditures in rebuilding that may be necessary under relicensing, if it felt that benefits therefrom could be eliminated in the future. For example, the Company in connection with its Swan Falls relicensing, contemplates substantial changes and improvements. However, it would appear that in spending the substantial sums of money necessary for such improvements, more than a "permit" type of license would be required.

As a practical matter, the Company's existing licenses have been amended or changed with the Company's consent a number of times and it would seem that the existing procedure has been satisfactory. For this reason we do not believe there is any practical need for a provision such as proposed in Section 3(b).

We respectfully submit that S. 2445 with the changes and amendments as suggested in the Statement of Mr. Alan O'Kelly of The Washington Water Power Company should be passed.

ALBERT CARLSEN, *President.*

SAFE HARBOR WATER POWER CORP.,
New York, N.Y., March 18, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: Safe Harbor Water Power Corporation (Safe Harbor) appreciates the opportunity afforded by your Committee on February 27, 1968 to present its views concerning S. 2445.

Safe Harbor owns and operates the Safe Harbor hydroelectric development which is located on the Susquehanna River in Pennsylvania about 18 miles north of the Pennsylvania-Maryland State line. This development presently contains seven main generating units with a capacity of 230,000 kw. Project plans provide for an ultimate capacity of about 300,000 kw with nine generating units.

The Safe Harbor hydroelectric development was constructed and is being operated under the provisions of a Limited Power Permit issued by the Department of Forests and Waters (Water and Power Resources Board) of the Commonwealth of Pennsylvania and Project License Number 1025 issued by the Federal Power Commission under the Federal Water Power Act of 1920. The license expires on April 22, 1980.

Fifty per cent of Safe Harbor's voting stock and all of its non-voting stock (the latter being one-third of Safe Harbor's entire capital stock) are owned by Baltimore Gas and Electric Company (BG&E). The remaining fifty per cent of Safe Harbor's voting stock is owned by Pennsylvania Power & Light Company (PP&L). BG&E and PP&L are entitled to two-thirds and one-third, respectively, of the capacity and energy from the Safe Harbor hydroelectric development.

BG&E furnishes electricity in an area of approximately 2,300 square miles in mid-Maryland, including Baltimore City, and at the end of 1967 it was serving more than 647,000 electric customers. The total population of the territory it serves with electricity is estimated at about 2,000,000. The Company's 1967 peak load (attained on August 3) was 1,927,000 kw, and the summer capability of the Company's system, including its entitlement to Safe Harbor capacity at the end of 1967, was approximately 2,150,000 kw.

PP&L is an electric public utility operating in a 10,000 square mile territory in Central-Eastern Pennsylvania. It had almost 800,000 electric customers and a generating capability of 2,353,000 kw at the end of 1967, with a peak demand during that year of 2,202,000 kw.

The Safe Harbor hydroelectric development is integrated with the systems of BG&E and PP&L, both of which are part of the Pennsylvania-New Jersey-Maryland Interconnection (PJM) which is the world's largest integrated power pool with the interconnected companies serving close to 20 million people.

The hydroelectric projects which are an important part of PJM, including the Safe Harbor hydroelectric development, are generally operated to produce energy during the hours of greatest need on the interconnected system and provide valuable peaking capability. The hydro generators also supply quick start up in case of emergency, and spinning reserve, and contribute to the stability of the integrated systems.

Safe Harbor provides an economical source of power and energy to the owning companies whose customers derive the advantages of these low costs.

With regard to S. 2445, Safe Harbor agrees that there is need for Congress to set forth clearly its objectives by enacting legislation to govern the processing of expiring hydroelectric licenses. We agree that the question of whether or not the United States should take over a project upon expiration of a license is not one that Congress should make on each project as the license expires. In our opinion the decision should be made, in the first instance, by the Federal Power Commission which has the expertise and capability to render such decisions.

The opinion of the Chairman of the Federal Power Commission, the Honorable Lee C. White, as well as that of its General Counsel, as expressed in their statements to your committee, is that the preference of states and municipalities under Section 7 (a) of the Federal Power Act in the case of an initial licensing of a project will not apply upon the expiration of an existing license if recapture is not exercised and the holder of the expiring license applies for a new license. Safe Harbor believes it generally will be in the public interest for the original licensee to continue ownership of the project provided its plans are equally well adapted to the comprehensive development of the waterway. We believe it will be advantageous for Congress to make it abundantly clear in S. 2445 that no preference exists if the holder of an expiring license applies for a new license.

The main objective of S. 2445 is to create standards and guidelines to govern the process of relicensing so that it may be done promptly and expeditiously. Under the 6th and 7th "whereas" clauses and Section 2 (b) of S. 2445, any agency of the United States Government can block the issuance of a new license for up to a period of four years. These provisions tend to defeat the purpose of this act. We do not believe these provisions are in the public interest as such agencies have other remedies available.

Safe Harbor suggests that the Congress delete Section 3 (b) from S. 2445 which would, in effect, give the Federal Power Commission authority to require the licensee to do almost anything it decided it wanted the licensee to do regardless of the cost or effect on the licensee.

In S. 2445 it is proposed to add the following sentence to Section 10 (d) of the Federal Power Act: "For any licenses issued under Section 15 hereof the

amortization reserves shall be established and maintained from and after the effective date of the license." It seems unfair that a license for a new project does not require the establishment of the amortization reserve until 20 years after the beginning of project operation while this provision would require such reserve from and after the effective date of the re-license. This is particularly unfair where a substantial investment is to be made in the project at the time of relicensing and may tend to discourage substantial added investments to further develop projects in periods of high money costs, such as the present.

Safe Harbor believes that Congress should establish the mechanism for the relicensing of hydroelectric projects on the expiration of an existing license. We believe that the question can best be disposed of initially by the F.P.C. We would therefore endorse a Bill like S. 2445 but suggest the changes set forth above.

Yours very truly,

HAROLD D. BEEBE.

STATEMENT OF R. F. GILKESON, PRESIDENT OF PHILADELPHIA ELECTRIC CO.

Philadelphia Electric Company (Philadelphia Electric) is deeply interested in Senate Bill No. 2445 which would amend Part I of the Federal Power Act so as "to clarify the manner in which the licensing authority of the [Federal Power] Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised." Philadelphia Electric is interested in this legislation because it owns and operates the Muddy Run pumped storage hydroelectric project (FPC Project No. 2355) which has a nominal capacity of 800,000 kw and, through its subsidiaries, also owns and operates the Conowingo Project plant (FPC Project No. 405) which has a nominal capacity of 500,000 kw.

The Company is in general agreement with the purposes of the Bill and it is believed that with the revision hereinafter described, enactment of the Bill would be in the public interest.

Philadelphia Electric is an investor owned electric utility serving approximately four million people in southeastern Pennsylvania and northeastern Maryland. Its electric service territory approximates 2,225 square miles and its investment in electric plant was \$1.48 billion at the end of 1967. It owns and operates 10 thermal electric generating stations with a total capacity of 3,317,000 kilowatts and is a joint owner with others of thermal generating plants with a capacity of 1,800,000 kw. Its two hydroelectric plants have a total capacity of approximately 1.3 million kw.

Philadelphia Electric is a member of the oldest and one of the most important power pools in the United States, the Pennsylvania-New Jersey-Maryland Interconnection (PJM). This power pool by membership or association is comprised of 12 electric operating companies which operate in Pennsylvania, New Jersey, Maryland, Delaware and the District of Columbia. It serves approximately 20,000,000 people; has a total generating capacity of about 23,000,000 kilowatts and is interconnected throughout by high voltage transmission lines. It is also interconnected by high voltage transmission lines with all of the adjacent electric reliability coordination areas. Both the hydroelectric and thermal generating plants of the power pool are operated as a unit so as to achieve the most reliable and most economical power supply feasible. The twelve operating companies have recently formed a planning organization under the Mid-Atlantic Area Coordination agreement (MAAC) in order to assure the highest degree of electrical reliability. The hydroelectric facilities of the system, which can be started instantly, make a significant contribution to voltage control and service reliability. The plans of each member are mutually dependent on the plans of all other members and the rates of all the members are regulated by state agencies. All of the members are also subject to regulation by the Federal Power Commission.

The function of hydroelectric developments in the Philadelphia Electric system and in other similar systems has changed greatly in the last 40 or 50 years. Thus in 1928 Conowingo supplied about 40% of the total energy generated by Philadelphia Electric, whereas in recent years it has supplied less than 10%. Conowingo and Muddy Run are operated as a unit; Muddy Run using the pond created by the Conowingo Dam as the source of water during its own storage cycle. In order to make their greatest contribution to the electric energy economy of the area, these hydro plants have been integrated into the Company's large thermal generating system. This is necessary because the plants do not have adequate water to function as base load plants, but must function as "peak-

ing plants", which is to say, during the hours each day when the system experiences its peak demands. This is a tremendously important function and a most economical one, for otherwise other types of peaking plants, with their very high operating costs, would have to be constructed and maintained ready for use at all times even though operated only a few hours each day. Thus the only genuine contribution which can be made by such plants as Conowingo and Muddy Run is their use as peaking plants in large integrated thermal electric generating systems. This, to reiterate, is an extremely important function.

The license for the Conowingo Project expires in 1976. If this plant is taken out of the Philadelphia Electric system, a great economic loss will occur and it is possible that the reliability of the power supply throughout the MAAC Area will likewise be affected because of Conowingo's contribution to voltage control and service reliability.

In addition to its contribution as a necessary component of a predominately thermal system, Philadelphia Electric has insured that the entire Conowingo Project is operated in accordance with principles and policies of the Federal Power Act. Among other things, the Company has provided extensive recreational facilities at Conowingo and is constructing a comprehensive recreational development at Muddy Run. It has cooperated fully with State agencies with respect to all matters relating to waterways. Under agreement with the licensees, the Conowingo reservoir is used as a source of water for municipal purposes by the City of Baltimore, Maryland, and licensees have agreed to permit the reservoir to be similarly used by Chester Water Authority.

Accordingly it is vitally important not only to Philadelphia Electric and its associated companies in the described power pool, but particularly to the large number of consumers in its populous service area, to know at the soonest possible date whether or not the Conowingo Project will continue to function as it does today. Similar situations undoubtedly exist in many parts of the country.

At the present time a good deal of uncertainty, confusion and delay exists under Federal Power Commission procedures involved in determining whether a new license will be issued to the original licensee or whether other action will be taken at the end of the license period. S. 2445 proposes to clarify this situation by providing five years in advance for notice of expiration of a license, and giving the Federal Power Commission authority to renew a license under certain conditions. The aims of the Bill are in the direction of more orderly administration while at the same time protecting the interest of the Federal government. Moreover, S. 2445 would delegate to the Federal Power Commission, an expert body, authority to determine the importance of licensed hydroelectric projects to the economy of the particular region and broader authority to act in accordance with its knowledge of important and often technical facts.

The Federal Power Commission, through its licensing and constant review, is well equipped to ascertain and evaluate the technical facts which would naturally be involved in considering whether a project, such as Conowingo, should be relicensed to the then licensee or whether it would be in the public interest for the project to be taken over by the Federal government. Giving the Federal Power Commission wider discretion with respect to these important and often highly technical matters would appear to be in the public interest. We therefore support S. 2445 with the addition of the clarifying passage set forth below.

Because many of the projects licensed by the Federal Power Commission are woven into the fabric of systems such as PJM and MAAC in such a way as to take the greatest advantage of the special characteristics of hydroelectric generation, we suggest that there be a reasonable limitation on the time for Congressional consideration of any recommendation for the taking over of a project and that when the Congress fails to take over a project any original licensee who has financed, developed and operated the project in accordance with sound principles of public interest be authorized to continue the operation. We feel that the following language added after the first paragraph of Section 2 of S. 2445 would provide such clarification:

"If no recommendation is made for the taking over of a project by the United States, or if the Federal Power Commission or any Federal department or agency recommends such taking over and Congress does not provide therefor by the end of its next full session, the project shall be relicensed to the original licensee if the Commission finds:

"(1) That the licensee is operating the project in accordance with the provisions and policy of the Federal Power Act,

"(2) That the rates of the licensee are regulated by appropriate governmental authority,

"(3) That the project is reasonably consistent for plans for the comprehensive development of the particular waterway, or the licensee agrees to make such modification as will achieve such consistency,

"(4) That severance of the project will cause consequential detriment to the licensee and its customers.

"With the foregoing modification I believe that enactment of S. 2445 is clearly in the public interest."

NATIONAL WILDLIFE FEDERATION,
Washington, D.C., March 18, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: It was not possible for the National Wildlife Federation to be represented when public comments were invited during hearings upon S. 2445, amending Part I of the Federal Power Act, and I should like to have this letter made a part of the record.

After careful consideration of S. 2445, and the principles expressed therein, the National Wildlife Federation recommends that the Committee give favorable consideration to it. We think it is both necessary and desirable that the Congress clarify the manner in which the Federal Power Commission shall exercise its licensing authority and the right of the United States to take over a project when its license has expired.

This problem had its origin in 1920, when the Congress delegated authority for issuing hydro-electric power project licenses to the FPC. Prior to that time, each project was authorized by individual acts. In delegating this authority, the Congress placed a maximum limit of 50 years upon each license, the idea being to re-evaluate the uses of each project in the light of new developments over the half century. Several of these licenses soon will expire and it appears to be highly desirable and reasonable that appropriate procedures be followed with respect to review.

Sections 14 and 15 of the Federal Power Act allow the U.S. to recapture a privately-owned facility constructed under license. The Federal Government would have an option of (1) taking over the operation of the project, with due compensation being paid the current licensee, or (2) to reissue the license, to the same or a different licensee. A decision to recapture, appropriately enough, must be made by the Congress but we believe the FPC should continue to have the authority to relieve the Congress of the need for individual action on licenses to be reissued.

Since nearly 50 years have elapsed, we think it would be wise for the Congress to re-evaluate and reaffirm and clarify its intent with relation to recapturing, to relicensing, or, in some cases, to abandonment. In our experience, most of these projects have widespread interest and applications other than power production in which the public is concerned: fish and wildlife production, recreation, low flow augmentation for pollution control, irrigation, navigation, and municipal and industrial uses. These interests must be taken into account with respect to any future plans for a project.

In view of the foregoing, we agree with the provision in S. 2445 which requires FPC to submit to Congress any proposal to take over a project for public purposes. This procedure should allow ample protection and consideration for all interests which may be concerned.

Second, it appears reasonable that consideration for reissuance of licenses should begin at least five years in advance of expiration, as proposed in S. 2445.

Third, we believe it is essential that FPC have the authority to impose upon the licensee additional reasonable requirements to protect the public interest. For example, we easily can visualize situations where facilities such as fish ladders should be added to improve public recreational uses of the waters involved. In many cases, facilities constructed for power purposes have pre-empted all or most other uses and these should be taken into full account in the reissuance of a license.

Fourth, we are in agreement with section 3 of S. 2445 and the provisions for non-power uses of licensed facilities.

Thank you for the invitation and opportunity to make these observations.

Sincerely,

THOMAS L. KIMBALL,
Executive Director.

LEBOEUF, LAMB, LEIBY & MACRAE,
New York, N.Y., March 18, 1968.

Re S. 2445.

Hon. WARREN G. MAGNUSON,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: This letter is presented to your Committee, with the request that it be included in the record of the hearings on S. 2445, which were conducted by your Committee on the 26th and 27th of February.

This letter is presented on behalf of a number of industrial corporations, and wholly-owned subsidiaries of industrial corporations, that own hydro-electric projects licensed by the Federal Power Commission. These include Great Northern Paper Company, St. Regis Paper Company, two subsidiaries of Aluminum Company of America, Tapoco, Inc., and Yarkin, Inc., and a subsidiary of Deering Milliken, Inc., Lockhart Power Company. These major industrial organizations require substantial amounts of power for their operations, and utilize in their own manufacturing processes all or most of the power generated at their licensed projects.

For entities such as these, the Federal Power Commission's proposed bill, S. 2445, raises questions different from those that would confront public utilities.

Because of the questions raised about the Federal Power Commission's authority to relicense hydro-electric generating plants after licenses expire, legislation carrying out the general purposes of S. 2445 may be useful. There are however specific objections to provisions in the current draft of S. 2445.

In addition to these objections, Congress, in acting on the legislation, should make it clearer that the Commission, when determining whether to relicense or recommend take over by the Federal government, is to weigh heavily the many reasons for delicensing the original licensee.

REASONS FOR RELICENSING HYDRO-PROJECTS FOR INDUSTRIAL PURPOSES

The record of these hearings contains many statements by public utility licensees setting forth reasons for relicensing the original licensee. Many of these reasons, which are not reiterated in this statement, are also valid for industrial licensees. In addition to these, other reasons call for the relicensing of hydro-projects owned by industrial corporations.

(1) The importance of the industry as an employer and taxpayer and the possible transfer to a new area if it is deprived of its economic source of power.

The availability of hydro-power has in the past been a determining factor in locating major industrial plants. If this power supply were taken away, economic forces might require the industry to abandon its plant and move to a new area. Such an economic reorientation would have serious effects on local employment and tax revenues.

Several paper companies, for example, own and operate mills located in the Northeastern United States utilizing wood from northern forests. Very often these mills are the largest, and sometimes, the only significant employer in the villages or towns where they are situated. Electric power from hydro-electric projects that have been built by these companies is essential to the economic operation of these mills. Were these companies deprived of an economic source of electric power by failure to obtain a relicense, they would be faced with a difficult decision. If their electric power had to be obtained from different sources, at higher costs, the operation of these mills could become uneconomic. The companies would have to balance the increased cost of electricity against the cost of operating in areas where economic conditions were more favorable.

(2) The coordination of the operation of the hydro facility with the operation of the industrial plant.

In many cases, water for manufacturing processes and water for the generation of electricity are diverted from a stream through the same facilities, which may be parts of licensed projects. Some of the projects owned by paper companies generate mechanical power, used to operate large machines, as well as electric power. Project reservoirs are used in some cases for transporting logs used in downstream mills. Project reservoirs and other lands owned by the licensees provide outdoor recreation. If the power facilities were taken away from the industrial corporations, serious problems could arise in coordinating the use of the waters, water flows, and generating equipment.

(3) Uncertainty about relicensing would affect investment in non-hydro industrial facilities.

All owners of hydro-projects having licenses soon to expire will be extremely hesitant to commit capital to the projects unless they have reasonable indications that they will be relicensed without the open ended conditions the Commission so eagerly seeks. Industrial licensees have an added concern. Faced with the possible loss of their hydro facilities, industrial licensees may not be able to justify additional investment in their non-hydro manufacturing facilities for some years prior to the expiration of their licenses. The Federal Power Commission has acknowledged the desirability of industrial development by project owners. The Commission has lengthened the license terms in recognition of substantial investments in non-project industrial facilities by the project owner. See *Kennedy River Pulp & Paper Company, Inc.* 35 F.P.C. 707 (1966). This policy should not be thwarted by creating uncertainty about the possibility of getting relicensed.

(4) The investment of the industry in the development of the stream and of the area.

The industrial hydro-project owners have made substantial capital investments in the licensed projects. If a project were turned over to a new licensee or to the government at a price substantially less than current value, another group would be obtaining a great bargain to the detriment of the original developers of the stream and the area.

DETAILED OBJECTIONS TO S. 2445

Turning to the specific provisions of the bill, the industrial licensees oppose Section 2, which provides that if any federal agency decides that a project that has been relicensed by the Commission should be taken over by the government, the Commission will stay its relicensing order for up to a four-year period. Another agency, with no particular expertise in the field, could thus overrule the Commission, and incidentally, tie up relicensing proceedings for a long and economically damaging period.

The proper time for other agencies to present their views is in the relicensing proceedings, as the draft bill provides. The Federal Power Commission should weigh the recommendations of these other agencies just as it presently weighs them in granting original licenses. If the Federal Power Commission recommends that the project should be relicensed, that conclusion should be final, subject only to judicial review. The Congress, acting upon the F.P.C.'s recommendation, would then have to decide whether to recapture only those plants which the F.P.C. recommends it should recapture.

The proposed new Section 15(b) of the Federal Power Act, which would grant the Commission the right unilaterally to amend any relicense at any time, is in direct contravention to the basic policy of the Act. Section 6 of the Act provides that licenses may be amended only by mutual agreement. Section 28 of the Act, which would not be amended, provides that Congress cannot affect the rights of any existing licensee by amending the Act. It would be strange indeed to have Congress confer upon the Commission the power to interfere with a licensee's rights when Congress has expressly given up that power itself.

The current Act is designed to provide reasonable certainty to the licensee, to encourage investment to develop rivers and streams by those who were and are willing to assume the economic risks and burdens of FPC license regulation. In addition to the project investment, industrial developers have made substantial investments in non-project mills and facilities that are dependent on project operations. The Federal Power Commission should not have the power to destroy these investments.

It is no solution to say that the danger of such an event is not imminent and that giving the power to the Commission would have no present impact. The existence of this unilateral power in the Commission could make it extremely difficult to obtain further financing for any of these projects. The rights of licensees to certainty as to the terms of their licenses have been zealously guarded by the courts. In fact, as recently as in *Rumford Falls Power Company v. F.P.C.*, (355 F.2d 683, 1st Cir. 1966), when the Commission attempted to postpone for future determination whether the licensee would be hurt by the imposition of a condition reserving rights to the Commission, the Court commented: "Rarely have we seen a more specious contention. If the Commission * * * reserves something which * * * was not reserved, the fact, as here appears, that it is not presently threatening or seeking to exercise rights thereunder, does not mean that petitioner is not presently affected" (p. 688).

The proposed Section 15(c) of the Act, contained in S. 2445, which provides for licenses for non-power uses, poses another threat to industrial project owners. This section also would represent a fundamental change in policy. The Federal Power Commission was created to license hydro-power projects, but by this new section it would now be empowered to license projects or parts thereof for exclusively non-power uses. Under existing law, the Commission may issue a license only when it finds that the project will be "best adapted to a *comprehensive* plan for improving or developing" the waterway. It seems unlikely that any truly *comprehensive* development of a waterway could be limited to a single use of that resource such as recreation. Of course, some streams should be preserved in their natural, wild state but the Commission has full power to preserve such rivers and has dealt satisfactorily with them in the past. In *Namekagon Power Co.*, 12 F.P.C. 203, for instance, it refused to issue a license on the grounds that the river was best used as a preserve for fish, wildlife, and recreation. Furthermore, it is unlikely that any plant coming up for relicensing could be located on such a river, particularly since the Commission, when it issued the original license, had to find that that plant was "best adapted to a comprehensive plan for" the waterway.

It is submitted, therefore, that proposed new Sections 15(b) and (c) be deleted. Section 14 should be amended to provide that the Commission must seek the views of other federal agencies on relicensing, but that its decision to relicense will be final.

Respectfully yours,

LEBOEUF, LAMB, LEIBY & MACRAE.

STATEMENT OF ERWIN I. HATCH, PRESIDENT AND CHIEF EXECUTIVE OFFICER,
GEORGIA POWER CO., ATLANTA, GA.

My name is Edwin I. Hatch. I am President and Chief Executive Officer of Georgia Power Company. I appreciate the opportunity to submit this statement on the bill before your Committee, S. 2445.

Georgia Power Company is an operating subsidiary of The Southern Company and generates and distributes electric energy through 97.7 percent of Georgia. We serve about 57,000 of the State's 59,000 square miles, supplying electric power at retail in 645 towns and communities and at wholesale to 39 REA cooperatives and 50 municipalities having their own distribution systems.

The reasons why it is in the public interest to relicense the hydroelectric plants of The Southern Company and our Company as licenses expire have already been given in considerable detail by Mr. Walter Bouldin, President of Alabama Power Company. As part of the electric system, the hydroelectric plants supply energy and peaking power, strengthen the reliability of the whole system and its components, furnish spinning reserve, and provide emergency start-up power for other generation. They bring important tax revenues to the State and local governments. We also subscribe to the views of Mr. Jack K. Horton and other witnesses you have heard from the electric utility industry. We are submitting this statement to concur in such remarks and to present our views as to certain elements of S. 2445.

Before going into these details, however, it seems well to provide you with a few additional pertinent facts about our Company and its situation relative to its directly served customers and the Federal preference customers.

We own 16 hydroelectric projects that are either under license or in the process of being licensed as constructed projects under applications made to the Commission and to which this bill would presumably apply. The original cost of these projects aggregates more than \$81,000,000. In addition, we have made application to the Federal Power Commission to construct two more hydroelectric projects, and have been granted a preliminary permit on a possible project.

The total capacity of all our generating plants, including the thermal plants, is presently 3,290,180 kilowatts. We directly supply about 900,000 customers. This is about 64 percent of the consumers in Georgia. The electric cooperatives supply about 23 percent of Georgia consumers and the wholesale towns operating their own distribution systems, about 13 percent. These Federal preference customers obtain about 21 percent of their power from the Federal Government and about 79 percent from us. We wheel the Federal power to them under

contract with the Southeastern Power Administration of the Department of the Interior and supply the remainder of their needs with our own power. This is done in accordance with contracts that we have with each of them. I do not know of any that are dissatisfied with their contracts, which are under the regulation of the Federal Power Commission. We expect to furnish any requirements these preference customers may have in the future over and above that which the Federal Government furnishes them. Our rates to residential customers are 22 percent below the national average and those to commercial, industrial and wholesale customers correspondingly low. From all this, it can readily be seen that there is no requirement or need for the Federal Government to take over any of our plants in order to furnish the preference customers economical power.

We support the general principles embodied in S. 2445 which would allow improvements in procedures presently being used by the Federal Power Commission. If it is assumed that the Commission is correct in its view that, under present law it must refer each relicensing case to Congress, it is desirable that this bill be enacted. However, we object to two specific provisions of the bill and wish to comment on two other aspects of the matter.

We join in the objections that have been raised to the sixth and seventh "Whereas" and to that part of Section 2(b) that would require the Commission to stay a relicensing order up to four years if any Federal agency recommended that, regardless of the Commission's finding in the matter, the United States exercise its rights to take over a project. We think this is somewhat inconsistent with the provisions of Section 7(b) of the Federal Power Act, which only requires the Commission to refer such a matter to Congress when in its own judgment the original development of the water resources should be undertaken by the United States. We realize that these are not exactly parallel cases. However, it has been the policy of Congress as set forth in the Act to allow the Commission to form this type of judgment, and by virtue of its experience it is in an ideal position to do so. Adoption of the provision that provides for staying the effective dates of orders issuing licenses could result in lengthy delays in large numbers of relicensing procedures. As the Federal agencies have the power to intervene in proceedings before the Commission and to take appeals to Commission decisions, it would seem that no further authority need be accorded them.

We also object to the provisions of Section 3(b) of the bill that would allow the Commission, after issuance of a license, to impose upon the licensee further "reasonable" requirements not in the license. This in our opinion would mean that actually the licensee had no license at all but instead was permitted to continue operating the project at the pleasure of the Commission. A license necessarily places on a licensee many obligations, which may include substantial redevelopment of its project. A licensee should at least be relatively secure in the terms of its license.

In this connection, Mr. Charles A. Robinson, Jr., testifying for the National Rural Electric Cooperative Association on February 27, 1968, stated that he felt Section 3 of the bill would be of extreme importance to small electric systems in that it would allow them to participate in benefits available from the hydroelectric developments of other licensees, presumably the original licensees. Such benefits might include delivery of a bulk of wholesale energy at a specified cost, the use of the licensees' transmission system for wheeling energy, or an arrangement whereby the licensee would pass on to the small system a portion of the economic benefit derived from the project. We are compelled to not let such a statement go unanswered because it is obvious that Section 3 of the bill, and the Federal Act that it amends, are not susceptible of such an interpretation.

The Commission letter forwarding the draft bill to Congress said the Commission believed that in relicensing projects a license term substantially shorter than 50 years might be appropriate when no extensive redevelopment outlay was needed. It seems probable that for many years electric utilities who have the obligation of providing electric service under greatly increasing load conditions. At least seven years of lead time are presently required for providing new generation. Transmission lines as well as generating plants are involved. While the Committee may not wish to insert in this bill any provision concerning the length of licenses, we would hope that this matter could be commented on in the Commission report and we would suggest that all licenses should run for at least a reasonably long term, preferably limited to less than 50 years only when circumstances make this desirable.

TALLY, TALLY & LEWIS,
ATTORNEYS AND COUNSELLORS AT LAW,
Fayetteville, N.C., March 20, 1968.

Re S. 2445.

Senator WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR MAGNUSON: I am General Counsel of North Carolina Municipally Owned Electric Systems Association. NCMOESA is an organization, as you know, of more than seventy North Carolina municipalities which own and operate their own electric systems. Our member cities serve about one million North Carolinians with electricity. In behalf of NCMOESA I request that this letter be placed in the hearing record on subject Bill.

Rather than consuming the time of the Committee by having requested to appear personally to have made a full statement of our own upon this Bill, we have carefully examined the statements upon it made by Alex Radin, General Manager, American Public Power Association, and Northcutt Ely, General Counsel for American Public Power Association, on 27 February 1968 and we wish to record that NCMOESA endorses and joins in each of these statements and in every respect, and urges each consideration represented by Mr. Radin and Mr. Ely.

Thank you for your attention and kindness to the request to have this statement of position of NCMOESA included in the record.

Sincerely,

JOE TALLY.

PENNSYLVANIA RURAL ELECTRIC ASSOCIATION,
Harrisburg, Pa., February 23, 1968.

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SIR: The staff of the Pennsylvania Rural Electric Association is now attending the annual business meeting of the National Rural Electric Cooperative Association in Dallas, Texas, and, unfortunately, will not return until after the hearings on the Recapture of Non Federal Hydro Projects Licensed by FPC (S. 2445) have been concluded.

However, the Pennsylvania Rural Electric Association, on behalf of its 13 member systems, would like to be on record as subscribing to the position set forth by the National Rural Electric Cooperative Association in its written statement submitted to the Committee on Commerce.

We vigorously oppose S. 2445 for many reasons outlined by NRECA and already known to the Committee Chairman. We do believe that Section 3 of the bill has merit, but we have no choice but to oppose the bill.

We will appreciate having our views made a part of the record.

Sincerely yours,

SALLY L. BROWN,
Assistant Director Member Services.

WISCONSIN PUBLIC SERVICE CORP.,
Milwaukee, Wis., March 7, 1968.

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR MAGNUSON: Wisconsin Public Service Corporation is a public utility serving a population of over 600,000 in a 10,000 square mile area in north-eastern Wisconsin and an adjacent portion of Menominee County in Michigan. For the record, we would like to submit a statement on Senate Bill 2445, Relicensing of Hydro Projects. This bill is a major concern to us inasmuch as our hydro plants play an important part in our integrated electrical system.

To provide the electricity needed by our 197,000 customers, we have the following generating facilities:

	Number of plants	Capacity (kilowatts)
Steam electric generating plants.....	3	537, 500
Hydroplants.....	15	62, 676
Diesel plants.....	2	7, 000
¼ interest in Wisconsin River Power Co.....		11, 667
Total.....		618, 843

In 1967, our hydro plants accounted for 10% of the total amount of electricity generated. In addition to helping meet capacity requirements, these plants are valuable in other ways, namely:

1. They are useful for peaking capability.
2. They can carry the load in scattered areas in the event of major storm trouble or other disasters.
3. They are available for start-up power for our two largest steam plants in the event of a disaster.

Failure to have the plants relicensed would cause a serious disruption in our highly coordinated system. Not only would it be costly to replace the lost generating capacity but also many expensive changes would have to be made in our transmission lines and substations. Needless to say, these costs would have to be passed on to our customers, either in the form of higher rates or in a slow-down of our downward rate trend.

It is for these reasons that we are concerned over some of the changes proposed in this bill which, if approved, would create needless delays in relicensing projects and in uncertainties after the projects are relicensed. This is especially true in Sections 15(b) and 15(b) of the bill.

Under Section 15(b), federal departments could recommend a take-over of a project even if the Federal Power Commission should not agree. Other agencies now have the power to intervene in proceedings before the Federal Power Commission and have legal recourse to the courts if they want to appeal a decision by the Commission. It is our belief that Congress should receive recommendations from only one source. A lengthy delay in the procedure of relicensing is inevitable if any other course is followed.

Section 15(b) is opposed by us because it would, in effect, make licenses issued by the Federal Power Commission amount to only permits that could be altered at any time by the Commission. This amounts to a substantial change in the law and places the license of a hydro plant in jeopardy from the date of issue until the termination date. This subsection is not needed because the present law provides adequate protection for everyone concerned by stipulating that licenses may be altered or surrendered only by mutual agreement between the licensee and the Federal Power Commission after a thirty-day public notice.

We believe the public interest should be protected when a licensee desires a relicense and we are not opposed to a reasonable time for due processing. We are in opposition to those parts of this bill as stated which will contribute nothing to the public interest but will result only in delays and uncertainties in the relicensing procedure.

Sincerely,

L. G. ROEMER, *President.*

SPORT FISHING INSTITUTE,
Washington, D.C., March 19, 1968.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
Senate Office Building,
Washington, D.C.*

DEAR MR. CHAIRMAN: The Sport Fishing Institute was unable to appear before your committee when public comments were invited during hearings on S. 2445, amending Part I of the Federal Power Act. Therefore, we take this opportunity to comment for the record.

After careful study of S. 2445, and the principles expressed therein, the Sport Fishing Institute recommends that the committee give it favorable consideration. We think it is both necessary and desirable that the Congress clarify the

manner in which the Federal Power Commission shall exercise its licensing authority and the right of the United States to take over a project when its license has expired.

Prior to 1920, each hydro-electric project was authorized by individual act. In delegating this authority to the FPC, the Congress placed a maximum limit of 50 years upon each licensee, the idea being to reevaluate the uses of each project in the light of new developments over the half century. Several of these licenses soon expire and it appears to be highly desirable and reasonable that appropriate procedures be followed with respect to review.

Sections 14 and 15 of the Federal Power Act allow the U.S. to recapture a privately-owned facility constructed under license. The Federal Government would have an option of (1) taking over the operation of the project, with due compensation being paid the current licensee, or (2) to reissue the license, to the same or a different licensee. A decision to recapture, appropriately enough, must be made by the Congress but we believe the FPC should continue to have the authority to relieve the Congress of the need for individual action on licenses to be reissued.

We think it would be wise for the Congress, since nearly 50 years have elapsed, to reevaluate and reaffirm and clarify its intent with relation to recapturing, to relicensing, or, in some cases, to abandonment. In our experience, most of these projects have widespread interest and applications other than power production in which the public is concerned: fish and wildlife production, recreation, low flow augmentation for pollution control, irrigation, navigation, and municipal and industrial uses. These interests must be taken into account with respect to any future plans for a project.

In view of the foregoing, we agree with the provision in S. 2445 which requires FPC to submit to Congress any proposal to take over a project for public purposes. This procedure should allow ample protection and consideration for all interests which may be concerned. Too, it appears reasonable that consideration for reissuance of licenses should begin at least five years in advance of expiration, as proposed in S. 2445. In addition, we believe it is essential that FPC have the authority to impose upon the licensee additional reasonable requirements to protect the public interest. For example, we easily can visualize situations where facilities such as fish ladders should be added to improve public recreational uses of the waters involved. In many cases, facilities constructed for power purposes have preempted all or most other uses and these should be taken into full account in the reissuance of a license. Finally, we are in agreement with Section 3 of S. 2445 and the provisions for non-power uses of licensed facilities.

Thank you for the opportunity to make these observations for the record in behalf of the Sport Fishing Institute.

Sincerely,

PHILIP A. DOUGLAS,
Executive Secretary.

SIERRA CLUB,
Washington, D.C., March 15, 1968.

Senator WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR MAGNUSON: The Sierra Club is interested in implementation of provisions in S. 2445 which will clarify and extend the licensing authority of the Federal Power Commission so as to be responsive to public interest needs after a project license has been issued.

We support the principles contained in the proposed new subsections (b) and (c) as additions to Section 15 of the Federal Power Act. The Commission needs the authority which subsection (b) would provide so that issued licenses may be altered to cover "reasonable requirements" to meet problems not anticipated, perhaps even unknown, at the time of the license issuance.

The new subsection (c) would give the Commission needed flexibility to license all or part of project works for nonpower use. There is growing public concern for conservation objectives, including aesthetics, and this amendment would make it possible to reserve projects for water supply, recreation or other needed public uses.

It would seem that both of these proposals are consistent with "public interest" aims of the Federal Power Act as recently described in an opinion of the Supreme Court of the United States. In the case *Udall vs. Federal Power Commission* (Nos. 463 and 462—October Term, 1966), the prevailing opinion held:

"The question whether the proponents of a project 'will be able to use' the power supplied is relevant to the issue of the public interest. So too is the regional need for the additional power. But the inquiry should not stop there. A license under the Act empowers the licensee to construct, for its own use and benefit, hydro-electric projects utilizing the flow of navigable waters and thus, in effect, to appropriate water resources from the public domain."

"The grant of authority to the Commission to alienate federal water resources does not, of course, turn simply on whether the project will be beneficial to the licensee. Nor is the test solely whether the region will be able to use the additional power. The test is whether the project will be in the public interest. And that determination can be made only after an exploration of all issues relevant to the 'public interest', including future power demand and supply, alternate sources of power, the public interest in preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish for commercial and recreational purposes, and the protection of wildlife."

The Court interprets the licensing procedure to include consideration for preserving wild river and natural landscape values involved in project areas. The Commission should be given specific authority to take these public interest needs into account even after a license has been issued.

It will be appreciated if the Sierra Club's expression of interest can be made a part of the hearing record. With best wishes, I am

Sincerely,

LLOYD TUPLING,
Washington Representative.

C

