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FEDERAL POWER COMMISSION'S
WHOLESALE ELECTRIC UTILITY RATE PROCEDURE

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HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 15544 and H.R. 15626

BILLS TO AMEND THE FEDERAL POWER ACT TO PROVIDE
FOR INTERIM MODIFICATION OF THE FEDERAL POWER COM-
MISSION'S PROCEDURES FOR CONSIDERING PROPOSED ELEC-
TRIC UTILITY RATE INCREASES, AND FOR OTHER PURPOSES

SEPTEMBER 20, 1976

Serial No. 94-161

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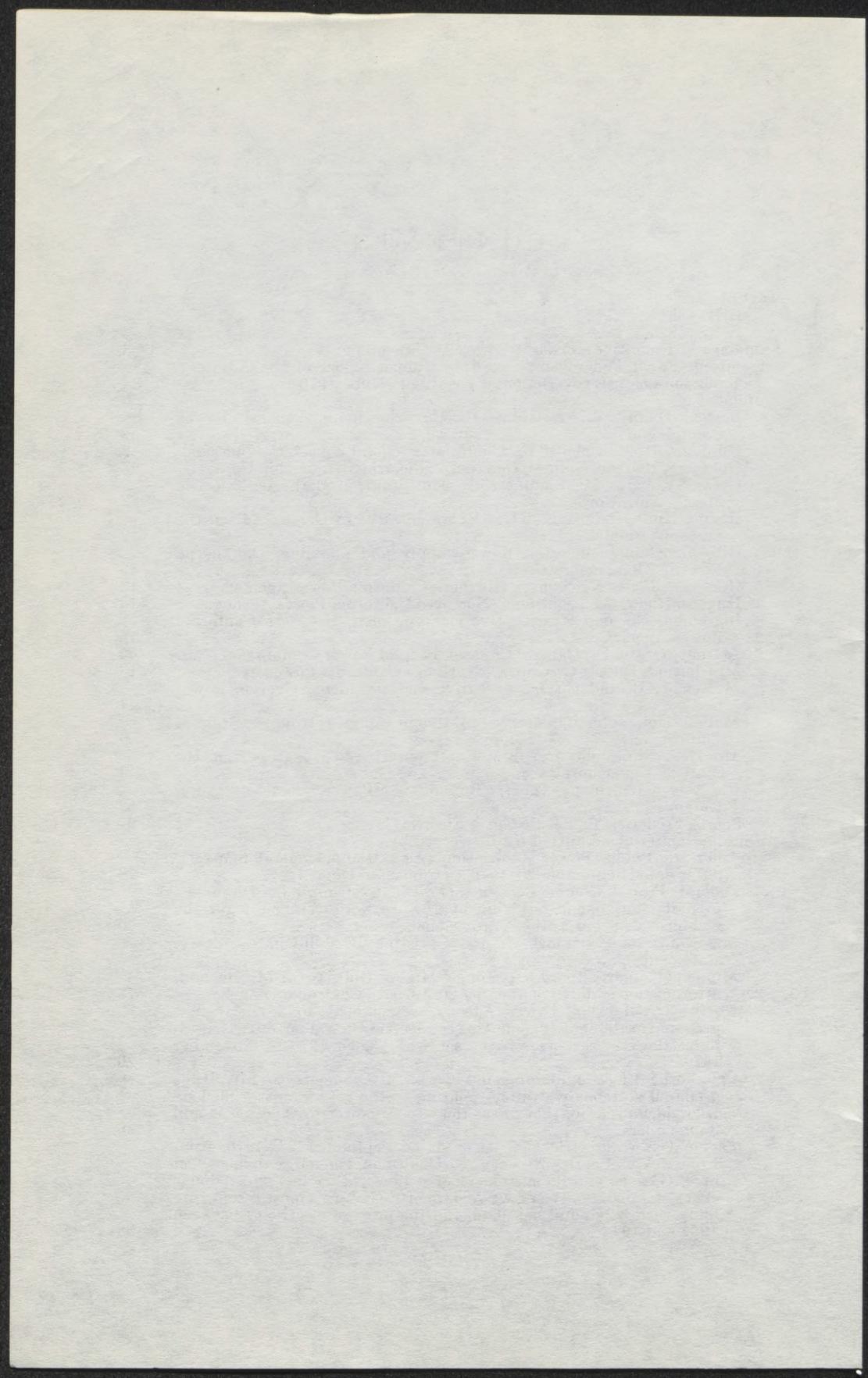
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FEDERAL POWER COMMISSION'S WHOLESALE ELECTRIC UTILITY RATE PROCEDURES

MONDAY, SEPTEMBER 20, 1976

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

The subcommittee met at 2 p.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John D. Dingell (chairman), presiding.

Mr. DINGELL. The subcommittee will come to order. This afternoon, the Subcommittee on Energy and Power is holding a hearing on H.R. 15544, introduced by our colleague on the subcommittee, Phil Sharp.

Our hearing addresses a matter, the Federal Power Commission's procedures for considering proposed increases in wholesale electric power rates, which has been the subject of extensive hearings in this Congress by our subcommittee, the Oversight and Investigations Subcommittee, and the Senate Commerce Committee.

Energy and Power held 2 weeks of hearings in March and April on electric utility rate reform and regulatory improvement including 3 days of hearings on issues relating to FPC wholesale rate regulation.¹

The Oversight and Investigations Subcommittee of the Interstate and Foreign Commerce Committee has held three hearings which took place in the following places—Hartford, Conn., on November 21, 1975; Las Vegas, Nev., on June 12, 1976; and Richmond, Ind., on July 16, 1976—relating to the wholesale rate regulation issues that we address today.²

Our witnesses will appear in two panels—each panel consisting of a representative of a municipal or cooperative power system and a representative of that system's wholesale supplier. The panels will be followed by Hon. Richard Dunham, Chairman of the Federal Power Commission.

My distinguished colleague, who has been very much interested in this matter and expressed his concern over the problem on a number of occasions, Hon. Phil Sharp will be recognized for such comments or statements he may choose to give on his bill, H.R. 15544.

However, before he does so, I would like to commend him for his excellent work in analyzing the problems which beset the FPC's regu-

¹ See Subcommittee on Energy and Power hearings: Electric Utility Rate Reform and Regulatory Improvement, pts. 1 and 2, serial Nos. 94-127 and 94-128.

² See Oversight and Investigations Subcommittee hearings: Regulatory Reform, vol. No. VI, serial No. 94-85.

lation of wholesale electric power rates, and in formulating the bill which is before us today.

The Chair observes the bill deals with three separate but inter-related problems which a number of witnesses in previous hearings have identified—namely, so-called “pancaking”—that is the practice of filing an application for a new rate increase before the last one is disposed of, the procedure for suspending proposed rate increases, and proposals by wholesale suppliers to reduce or discontinue service to their wholesale customers.

Without objection, before we hear from Congressman Sharp, the text of his bills, H.R. 15544 and H.R. 15626 will be printed at this point in the record.

[Text of H.R. 15544 and H.R. 15626 follows:]

[H.R. 15544 introduced by Mr. Sharp (for himself, Mr. Dingell, Mr. McFall, Mr. Brodhead, Mr. Fithian, and Mr. Moffett) on September 13, 1976, and H.R. 15626 introduced by Mr. Sharp (for himself, Mr. Moss, Mr. Maguire, Mr. Jones of North Carolina, Mr. Harris, and Mr. Wirth) on September 17, 1976, are identical as follows:]

A BILL

To amend the Federal Power Act to provide for interim modification of the Federal Power Commission's procedures for considering proposed electric utility rate increases, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Emergency Federal
4 Power Act Amendments".

5 SEC. 2. (a) The first section of section 205 (e) of the
6 Federal Power Act is amended (1) by striking out "have
7 authority, either upon complaint or" and inserting in lieu
8 thereof "upon complaint, and may", (2) by striking out
9 "to" where it first appears and inserting in lieu thereof a

1 comma, and (3) by striking out “, upon filing with such
2 schedules and delivering to the public” and all that follows in
3 such sentence and inserting in lieu thereof “shall suspend
4 the operation of such schedule and defer the use of such
5 rate, charge, classification, or service until such schedule
6 and any such rate, charge, classification, or service is deter-
7 mined to be lawful by an order issued by the Commission
8 and not stayed under section 313 (c).”.

9 (b) The penultimate sentence of section 205 (e) of the
10 Federal Power Act is amended (1) by striking out all of
11 such sentence down through “the Commission may by order
12 require” and inserting in lieu thereof “If at any time after
13 the notice period under subsection (d) and prior to issuance
14 of such an order, such public utility applies to the Commis-
15 sion for a preliminary proceeding with respect to such new
16 schedule, the Commission shall hold such preliminary pro-
17 ceeding. On its own motion or application of any interested
18 person, the Commission may order such utility to submit,
19 at least ten days before such proceeding, such additional
20 information as may be material to the lawfulness of such new
21 schedule. To the extent that such utility shows in such pro-
22 ceeding that it is likely to prevail on the merits on the issue
23 of the lawfulness of any part of such schedule, the Com-
24 mission shall order into interim effect such part of such
25 schedule. Such an order shall be entered within sixty days

1 after the date of initiation of the preliminary proceeding,
2 shall take effect not later than five months after such date
3 of initiation, and shall not be deemed an order of the Com-
4 mission for purposes of section 313. In case of an increased
5 rate or charge resulting from such preliminary proceedings,
6 the Commission shall by order require", and (2) by striking
7 out "may" before "further order" and inserting in lieu
8 thereof "shall".

9 (c) Section 205 (e) of the Federal Power Act is
10 amended by adding at the end thereof the following: "A
11 public utility may not file a schedule which seeks to in-
12 crease a rate or charge, which rate or charge is the subject
13 of a schedule not finally determined by the Commission,
14 unless such determination by the Commission has been pend-
15 ing in excess of eighteen months, or unless the Commission
16 finds that it would be confiscatory not to permit such a
17 schedule to be filed."

18 (d) Section 205 of such Act is amended by adding at
19 the end thereof the following:

20 "(f) For purposes of subsection (e) :

21 "(1) The term 'preliminary proceeding' means a
22 proceeding during which interested persons are given
23 an opportunity to submit written (and, if the Com-
24 mission so provides, oral) data, views, and arguments,

1 “(2) The term ‘lawful’, with respect to a new
2 schedule filed by a public utility under subsection (d),
3 means just, reasonable, and otherwise lawful. Such
4 schedule shall not be considered lawful if differences
5 between such utility’s wholesale rates under such
6 schedule and its retail rates are unreasonable or anti-
7 competitive.”.

8 (c) The amendments made by this section shall apply
9 only with respect to schedules filed under section 205(d)
10 of the Federal Power Act which were not in effect prior to
11 September 13, 1976, and are filed before April 1, 1978.

12 SEC. 3. (a) Section 202 (c) of the Federal Power Act is
13 amended by inserting after the first sentence the following:
14 “In order to insure continuity of service to retail and whole-
15 sale customers, the Commission—

16 “(1) shall require each public utility to report
17 promptly any anticipated shortage of electric energy
18 which would affect such utility’s capability of serving its
19 wholesale customers,

20 “(2) may require by order such utility to accommo-
21 date such shortage in a manner which affects the retail
22 customers of the utility and the retail customers of util-
23 ity’s wholesale customers in an equal and nondiscrimina-
24 tory manner, with special regard to service to residential
25 customers, and

1 “(3) may require by order such connection of facili-
2 ties and such generation, delivery, interchange, trans-
3 mission of electric energy, pooling, wheeling, or other
4 transmission service as in its judgment will best serve the
5 public interest.

6 No proceeding to issue an order under paragraph (2) or (3)
7 of the preceding sentence may be commenced after March 31,
8 1978.”.

9 (b) The last sentence of section 202 (c) of such Act is
10 amended by striking out “affected by such order” and insert-
11 ing in lieu thereof “affected by any order under this sub-
12 section”.

Mr. DINGELL. Mr. Sharp, the Chair recognizes you.

Mr. SHARP. Thank you, Mr. Chairman. I appreciate your kindness and your efforts to have the subcommittee consider this matter. We have a situation in my district and in many districts where municipal electric systems are under a great financial squeeze and other difficulties and in some cases, have been for some time.

It is important that we act in this matter. I recognize and most people understand that the subcommittee has had difficulty because of our lengthy schedule of other activities to go into depth on this very difficult question of FPC regulation.

We have been looking at long-range proposals. This hearing today is an effort to provide us with some immediate change on a temporary basis so that the subcommittee and the Congress will have an opportunity to make those more fundamental changes.

Mr. Chairman, I do have a very brief summary of the bill but rather than read it at this time, I would ask unanimous consent that it be made a part of the record.

Mr. DINGELL. Without objection, the statement will be inserted in the record at this point.

[The summary of the bill follows:]

SUMMARY OF EMERGENCY FEDERAL POWER ACT AMENDMENTS

The purpose of the Emergency Federal Power Act Amendments is to temporarily modify the Federal Power Act as it applies to proposed wholesale electric power rate increases, and continuance of service to wholesale customers, to assure that the economic and competitive viability of municipal and other wholesale customers of utilities regulated under the Federal Power Act will be preserved during the period necessary for Congress to consider and enact into law permanent changes in the Federal Power Act.

Section 2 modifies the FPC's authority under section 205(e) of the Act to suspend proposed rate increases for up to 5 months. Under the new procedure, a proposed new rate not in effect on date of the bill's introduction but filed before April 1, 1978, could not go into effect until the Commission finally determined its lawfulness; however, the Commission after a preliminary proceeding could permit all or part of the proposed rate increase to go into effect if the utility shows that it is likely to prevail on the merits on the issue of the lawfulness of the proposed rate (including issues under *FPC v. Conway*). Such an increase, if allowed, must take effect within 5 months of the commencement of the preliminary proceeding.

Section 2 also provides that during the 18-month period ending April 1, 1978, a utility may not file a proposal to increase a rate which is subject to a rate-making proceeding which has been pending for less than 18 months, unless the Commission finds that it would be confiscatory not to permit the schedule to be filed.

Section 3 of the bill amends section 202(c) of the Federal Power Act to direct the FPC to require that jurisdictional public utilities promptly report anticipated power deficiencies which affect the utilities' capability to serve its wholesale customers. The Commission is authorized, until April 1, 1978, to commence proceedings to require that the utility accommodate the deficiency in an equal and nondiscriminatory manner and to require the delivery of power, and interchange, wheeling and other transmission services.

Mr. DINGELL. We are now very pleased to recognize our good friend and colleague, Hon. John McFall.

STATEMENT OF HON. JOHN J. McFALL, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

Mr. McFALL. I come here today in support of the legislation which Mr. Sharp has introduced and I wish to commend him on his introduction of the legislation.

I would like to submit my statement for the record which provides all of my reasons for supporting the legislation, and I would also like to introduce at this time, my constituent who will appear later on your agenda to provide some of the details in support of this legislation, Mr. Richard Hughes of California.

Mr. Hughes is the mayor of the city of Lodi and also the chairman of the Northern California Power Agency. He will present the kind of important testimony that will support this legislation.

I would like to again commend you, Mr. Chairman, for your interest in this legislation and for holding this hearing.

Mr. DINGELL. Let me express my commendations for your being here with us and your long interest in this problem. Without objection, your full statement will appear in the record.

[Mr. McFall's prepared statement follows:]

STATEMENT OF HON. JOHN J. McFALL, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF CALIFORNIA

Mr. Chairman and members of the subcommittee; during this Congress, the Energy and Power Subcommittee began work on proposed legislation to bring about long needed improvements to the authority and operation of the Federal Power Commission.

Hearings were held on Chairman Dingell's bill, H.R. 12461, the Electric Utility Rate Reform and Improvement Act, a proposed comprehensive legislative remedy.

By the work it already has accomplished, the Subcommittee on Energy and Power has recognized that deficiencies in the Federal Power Act require correction if the goals of the Act are to be maintained.

Sufficient time, however, does not remain during this Congress for the Subcommittee or the Congress to complete the work already underway in both the House and Senate.

Yet, Mr. Chairman, there are areas of needed reform that require immediate and resolute action if many of these small municipal and cooperative systems are to remain in operation during the months ahead.

The bill, H.R. 15544, which I have co-sponsored, provides these temporary measures to assure that certain municipal and cooperative electric systems can continue while Congress finishes its work.

Two basic questions come to mind upon reading H.R. 15544:

(1) Why is such proposed legislation needed in the first place?

(2) What is the "emergency" that has brought about the introduction of H.R. 15544 and the work during these closing days of the 94th Congress for its enactment?

Present today, Mr. Chairman, are persons who will respond in detail to those and other questions. Among those is the Honorable Richard L. Hughes, Mayor of the City of Lodi, a community in California I have been privileged to represent for 20 years in the Congress. Lodi owns and operates its own municipal electric system. Mayor Hughes serves also as Chairman of the Northern California Power Agency, a consortium of municipal systems in Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara

and Ukiah and the Plumas-Sierra Rural Electric Cooperative (an Associate Member).

The Federal Power Act, as passed by the Congress in 1935, was designed to protect small utilities purchasing power at wholesale from private power companies. Under the Act, this is to be accomplished by insuring that only just and reasonable wholesale rates are allowed, and that competition be maintained between utilities, whether large or small, or whether privately-owned, publicly-owned, or cooperatively-owned.

The Federal Power Commission is given jurisdiction to regulate private power company wholesale sales in interstate commerce, while retail rate regulation is left to the jurisdiction of the States.

In California, as in many other states, retail rate increases proposed by utilities do not go into effect until approved by the appropriate state regulatory body.

Under Section 205(e) of the Federal Power Act, the Commission is allowed to suspend a proposed rate increase schedule for up to five months after which the rate goes into effect, subject to refund, until a final determination is made as to the lawfulness of the filed rate.

What is disturbing is that, according to a September 7, 1976, report of the Comptroller General, the average time for disposition of an electric rate case is 34 months, with some cases pending for more than 5 years. Save for the five-month maximum suspension period, the purchasing utility, such as the Lodi system and its customers, pays a wholesale rate which has never been found to be legal.

Coupled with this and adding to the dilemma of wholesale purchasers is that during the time one rate is pending Commission action, private utilities are permitted to file one or more rate increases. The result is potentially, if not actually devastating to municipal and cooperative purchasers of electricity from private companies as they become caught in a price squeeze situation.

As of June 30, 1976, there were 49 cases involving 27 states pending before the FPC in which "price squeeze" is an issue. At stake in these 49 cases is the competitive viability of 395 of the approximately 867 municipal utilities which purchase all or part of their power from companies regulated by the Commission. These 49 cases also involve 143 of the 400 rural electric cooperatives which purchase all or part of their power from private companies. The problem is further compounded by the Commission's narrow interpretation of the Supreme Court's decision of June 7, 1976 (FPC v. Conway Corporation). The decision held the Commission was wrong in not examining the disparity between wholesale and retail rates when wholesale customers are placed in an anticompetitive situation, and that the Commission must take remedial steps to adjust the wholesale rate downward.

The combined result of the time involved to resolve proposed rate increases, "pancaking," and narrow interpretation of the Conway Decision is that communities such as Lodi pay more for wholesale electricity than certain classes of retail customers. People in communities having municipal or other similar systems often find they are paying more for electricity than customers in neighboring communities that are served by private utilities.

I believe that H.R. 15544 will correct these deficiencies and provide equity to both the private seller and municipal buyer of wholesale electricity.

Thank you, Mr. Chairman, for providing me the opportunity to submit my views in support of H.R. 15544. It is my hope that during the time remaining in this Congress this legislation can be enacted. I look forward to working with you in achieving that goal.

Mr. McFALL. Thank you, Mr. Chairman.

Mr. DINGELL. We thank you.

Mr. SHARP. If I may make a comment. The gentleman from California has been very active in this matter and has had major legislation pending before our subcommittee to which we addressed hearings earlier this year.

It is partly because we have not been able to come to a final resolution on that major piece of legislation that we feel we should

move on this temporary measure. I certainly appreciate the strong interest he has taken and the great work he has put into this.

Mr. DINGELL. The Chair of course is very familiar with that. Thank you, Mr. McFall.

Without objection, the Chair wishes to place in the record, as though read, statements submitted by Congressmen John Joseph Moakley of Massachusetts and Herbert E. Harris II, of Virginia.

**STATEMENT OF HON. JOHN JOSEPH MOAKLEY, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MASSACHUETTS**

Mr. MOAKLEY. Mr. Chairman and members of the subcommittee, thank you for giving me the opportunity to testify in support of H.R. 15544, a bill to amend the Federal Power Act.

In my view, the need for this legislation is obvious and immediate. The best way to illustrate the need is to cite the situation now in existence in the town of Norwood, Mass., which is a part of the Ninth Congressional District which I represent.

For over 75 years, the town of Norwood has operated a municipal utility in order to offer its residential customers, industries and commercial establishments of the town lower utility rates than those that exist in other areas of the State. This was indeed the case until 1970.

Since that time, there have been three increases of 20, 46, and 10 percent imposed upon the Norwood Light Co.

The Federal Power Commission ruled on the first increase approximately 5 years after it was imposed in 1970. Boston Edison, the bulk electric supplier, is now appealing this ruling in the courts, a procedure which will again delay a final decision. The other increases, all being currently collected, are still under review by the FPC. To add to this, I have learned from a GAO audit this month that Boston Edison has potentially overcharged some customers—one of which is the town of Norwood—\$8.7 million over the last 6 years.

I believe that this example makes clear the need for the proposed bill before your subcommittee today.

H.R. 15544 states that its purpose is to assure the economic and competitive variability of municipal and other wholesale customers of utilities regulated under the Federal Power Act. At the present time, according to the GAO audit, Norwood residential and industrial customers are paying higher electric rates than many other Boston Edison customers. This legislation would provide justice for Norwood and other municipal utilities.

H.R. 15544 states that new rates cannot be put into effect without at least a preliminary hearing. At the present time, Norwood customers are paying for three rate increases, two of which have not been determined to be lawful as yet, by the FPC. This measure provides that Norwood and other municipal utility customers will not bear the brunt of the so-called pancaking effect.

Mr. Chairman, it is the responsibility of the Congress to insure fair treatment for wholesale consumers of private utilities. I urge the adoption of H.R. 15544 as a step toward that goal.

**STATEMENT OF HON. HERBERT E. HARRIS II, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF VIRGINIA**

Mr. HARRIS. I want to commend the Subcommittee on Energy and Power for expediting consideration of H.R. 15544, the Emergency Federal Power Act amendments. As a cosponsor of this bill, I appreciate your consideration of H.R. 15544.

The bill before the subcommittee provides interim modification of the Federal Power Commission's procedures for considering proposed electric utility rate increases. Most importantly, the bill stops the Federal Power Commission from allowing wholesale suppliers to raise their rates until the Commission determines that a rate increase is lawful. Currently, rate increases become effective during the rate-making process. Since at least part of requested rate increases are often denied, this FPC practice results in situations where suppliers overcharge wholesale customers who, in turn, overcharge consumers.

Although consumers are supposed to receive refunds for overpayments, no interest is paid on a overcharge, nor are electric cooperatives reimbursed for the cost of making refunds. The manager of the Prince William Electric Cooperative, Mr. Harry K. Bowman, in his letter to me of July 28, 1976 pointed out the need to reform FPC's practices. The Prince William Electric Cooperative, which is located in my district, buys electricity from Vepco and sells it to its 25,000 members. Because the FPC allowed Vepco to raise its rates and then later decided that the rate increase was unlawful, some \$1,332,426.55 will be refunded—without interest—to the cooperative's members. The administrative costs to the cooperative of making the refunds will be about \$25,000 which will be borne by the cooperative's members. I understand that another rate case is pending before the FPC. Should the cooperative convince the FPC that this rate increase is also unlawful, another refund will be paid. Under H.R. 15544 this situation would be avoided, as rate increases will not become effective until a final determination is made.

The Emergency Federal Power Act amendments also stops the FPC from allowing utilities to "pancake" rate increase requests; currently a utility can file for an additional rate increase before the previous rate request is finally determined. It is important to terminate this practice.

By prohibiting "pancaking" and by stopping rate increases from becoming effective until the rates are determined, Congress will take positive steps toward reforming rate regulation. This legislation will be beneficial to consumers throughout the Nation and particularly to the 25,000 consumer-members of the Prince William Electric Cooperative.

I want to point out, however, that we must continue to work for comprehensive utility rate reform. Fair standards for utility rates are needed to lower rates for the consumer, to bring rates under control, and to assure efficient use of energy resources and capital investment. It is evident to me that Federal standards are needed to achieve real reform of utility rates and state regulatory commissions.

I urge the subcommittee to continue to expedite consideration of both the emergency reform bill, H.R. 15544, and comprehensive utility rate reform legislation.

Mr. DINGELL. At this point, I will now call forward Hon. Richard Hughes, mayor of the city of Lodi, Calif. I understand Mr. Hughes is accompanied by Mr. Robert McDiarmid, and also Mr. Frederick T. Searls representing the Pacific Gas & Electric Co.

Gentlemen, if you would come forward please, Mr. Hughes, Mr. Searls, and Mr. McDiarmid. If each you gentlemen will identify yourself for the record, we will be most pleased to receive your statements.

STATEMENTS OF RICHARD L. HUGHES, CHAIRMAN, NORTHERN CALIFORNIA POWER AGENCY, ACCOMPANIED BY NORMAN P. INGRAHAM, EXECUTIVE VICE PRESIDENT, NCPA, AND ROBERT C. McDIARMID AND JAMES N. HORWOOD, COUNSEL; AND FREDERICK T. SEARLS, ON BEHALF OF PACIFIC GAS & ELECTRIC CO.

Mr. HUGHES. If I might introduce my associates, James Horwood and Robert McDiarmid from the law firm of Spiegel & McDiarmid.

Mr. SEARLS. My name is Frederick T. Searls, a member of the law firm of Debevoise & Liberman, here in Washington, D.C. For many years, I was on the legal staff of Pacific Gas & Electric Co. and served as its vice president and general counsel.

Mr. DINGELL. I think we can start with Mr. Hughes first.

STATEMENT OF RICHARD L. HUGHES

Mr. HUGHES. Thank you, Mr. Chairman. I would also like to note that with us today is Norman Ingraham who is executive director of the Northern California Power Agency. Mr. Ingraham is immediately behind me.

My name is Richard L. Hughes. I am the mayor of the city of Lodi, Calif., a city of 32,500. We have a long history of being in the electric utility business, having first entered the business in 1910 and then served our citizens since that time.

In addition to my duties as mayor of the city of Lodi, I am also chairman of the Northern California Power Agency which is a joint power agency made up of 11 California cities and a rural electric cooperative.

These cities, just for the record, are the cities of Alameda, Healdsburg, Lodi, Lompoc, Ukiah, Santa Clara, Biggs, Gridley, Palo Alto, Redding, and Roseville, and the rural electric co-op is the Plumas Sierra Co-op in the Feather River Canyon.

In my role as chairman of NCPA, I represent over 400,000 California citizens who last purchased over 330,000 kilowatts of capacity and related energy of over 1,500 million kilowatt hours, I think we represent a large amount of power as purchased directly from the Pacific Gas & Electric Co., or as we more lovingly refer to them in California, as the P.G. & E.

For five of our 11 cities our sole source requirements are served from P.G. & E.; therefore these five cities, which are Alameda, Healdsburg, Lodi, Lompoc, and Ukiah, are all wholesale purchasers of power from P.G. & E. and therefore subject to Federal Power Commission Jurisdiction.

One of our major cities, Santa Clara, purchases a large bloc of power from the P.G. & E. but currently is in a dispute as to who they are really buying their power from, the Pacific Gas & Electric Co. or from the Bureau of Reclamation.

Of course there is quite a difference in rate depending on the outcome of that dispute. Our remaining five cities all buy their power directly and solely from the Bureau of Reclamation through their Central Valley project.

The heart of the matter, as I am sure you gentlemen are well aware, is the pancaking that has been referred to. I would like to cite the instances that are occurring with respect to our northern California cities.

Almost 4 years ago in November 1972, P.G. & E. filed for a rate increase which was put into effect without hearing on April 1973. To date we have still not received a hearing or ruling on the justness or lawfulness of this rate increase.

Some 20 months later, in July 1974, after an unprecedented 1-day suspension, a second rate was pancaked on top of the first going into effect in August 1974 and again no rulings to date have been handed down by the Federal Power Commission with respect to the justness of these rates.

Finally, just a month or two ago in July of this year, almost unbelievably a third pancaked rate increase was submitted by the Pacific Gas & Electric Co. and unless relief is granted, hopefully through this emergency legislation, if it can be possibly passed through Congress this rate increase will go into effect in October of this year. Again all three of these rate increases have not had any rulings with respect to the rate increases.

This contrasts during the same period of time with activities before the California Public Utilities Commission were P.G. & E. has submitted their rate request for their retail customers.

I might point out that most recently in a rate request submitted by P.G. & E. to the California Public Utilities Commission in February 1975, a ruling was handed down after hearings in August of this past year granting an interim 40 percent of the requested increase.

Yet during this period of time, the northern California cities have been paying the full amount of these three increases dating back over 4 years and of course there are promises of refunds if and when these rates are determined to be less than those raised but we are sure when we might ever see those refunds.

Of course there is some question as to how those refunds would be applied equitably to the customers over that period of time.

We are concerned as yourselves and everyone else that P.G. & E. have a sound fiscal situation but our real concern is that we wholesale

customers of P.G. & E. represent less than 2 percent of their total business.

No matter what rate they are to charge these northern California cities and other wholesale customers there is no way that we could make or break the Pacific Gas & Electric.

On the other hand, there is every possibility that with this continued pancaking of rates without hearings, we may very well break the cities and we will not be around to contest the concern.

I would like to place in the record, and I believe it is being submitted with my formal statement, a table and two graphs which reflect I think very vividly the comparison of the P.G. & E. retail and industrial rate versus the wholesale rate.

It shows that the cities are paying more for their wholesale power than an equivalent retail customer would pay for this power. This clearly puts us not only into a price squeeze but where we are being asked to pay more for power than our customers can buy directly from P.G. & E. at retail.

This just presents a problem that we are finding very difficult to live with. The U.S. Supreme Court has indicated that it is within the jurisdiction and the proper jurisdiction of the Federal Power Commission to concern itself with price squeeze and indications of relief must come from the Power Commission.

To specifically indicate the difficulties that the city of Lodi is experiencing, I should note that our power purchases from P.G. & E. represent approximately 70 percent of our total system costs and of course as these rate increases are applied to us and we must pay, they are passed on to our customers and we are getting more and more outcries from our citizens.

I am getting calls every night at home demanding to know what is happening to their utility bills. This is becoming probably the major crisis in our city right now, dealing with the outcries from our citizens with respect to these increases.

I just shudder at the thought of what will happen when we have to raise our rates to take into account the proposed rate increase, that without emergency legislation will go into effect on October 26, a little more than a month away.

This will just bring down an entire new surge of complaints and dissatisfaction with the city utility. We feel that after 4 years of having these rates before the Federal Power Commission and the fact that we have no rulings on their justness, in fact renders the wholesale rates unregulated which is certainly not the task given to the Federal Power Commission by Congress by in the early 1930's.

Certainly the bottom line on my testimony is that I see no way, as the mayor of the city of Lodi, which buys its power at wholesale from P.G. & E., to be in a position of having to pay more to P.G. & E. as a wholesale purchaser than we would if we were to substitute ourselves as a retail purchaser and buy directly from P.G. & E. There is just no way we can survive in that type of environment.

That is exactly where we find ourselves as clearly documented by the data we are presenting. What we are asking is that this disparity in the regulatory treatment between the State regulations and the Federal Power Commission be addressed and that relief be given.

It is often argued that refunds will solve our problems, but it is as pointed out, life insurance is no good to a corpse. Gentlemen, I plead with you that our survival is dependent on this emergency legislation and if we can pass it before this Congress adjourns, it may very well be the salvation of our cities. Thank you very much.

[Mr. Hughes' prepared statement and attachments follow:]

STATEMENT OF RICHARD L. HUGHES, CHAIRMAN, NORTHERN CALIFORNIA POWER AGENCY

Mr. Chairman, my name is Richard L. Hughes. I am the Mayor of the City of Lodi, California, a city of 32,500 which has owned its own electric utility and distributed power to its citizens since 1910. I am Chairman of the Northern California Power Agency, a joint exercise of powers agency formed by the Cities of Alameda, Healdsburg, Lodi, Lompoc, Ukiah, Santa Clara, Biggs, Gridley, Palo Alto, Redding and Roseville, California and Plumas Sierra REC. I am accompanied today by Norman P. Ingraham, NCPA's Executive Director, and by Robert C. McDiarmid and James N. Horwood of the Washington, D.C. law firm of Spiegel & McDiarmid.

In my role as Chairman of NCPA I represent over 400,000 California citizens who last year purchased over 330,000 kilowatts of capacity and related energy of over 1,500,000,000 kilowatt hours from the private, investor-owned utility in our area, Pacific Gas and Electric Company, commonly known as PG & E. Five of our Cities, Alameda, Healdsburg, Lodi, Lompoc and Ukiah currently purchase all their electric requirements from PG & E and are therefore wholesale customers and the rates to them are subject to regulation by the FPC. Another member of NSPA, Santa Clara, is billed for a substantial block of its power by PG & E; however, Santa Clara is involved in a dispute with PG & E and with the U.S. Bureau of Reclamation over whether it has been and is purchasing low cost Bureau or high cost PG & E power. The remaining five cities and the REA buy all their power from the Bureau's Central Valley Project.

Almost four years ago, on November 10, 1972, PG & E filed for a wholesale rate increase. The FPC allowed the full amount of the requested increase without hearings to become effective subject to refund on April 27, 1973.

Twenty months later, on July 24, 1974, PG&E filed for a second wholesale rate increase over our vigorous objections, and again without hearings or determination, the FPC allowed the full amount of that rate increase to become effective on August 24, 1974, after an unprecedented one-day suspension rather than the five months previously considered by the Commission to be the norm.

And, now, unbelievably, on July 26, 1976, PG&E filed for yet a third wholesale rate increase, the full amount of which will go into effect subject to refund on October 26, 1976, unless legislative relief is forthcoming promptly.

The justness and reasonableness of none of these wholesale rate increases has been decided by the FPC despite the fact that the first of them was filed almost four years ago and that in all cases the Commission recognized that they might be unjust and unreasonable.

During this period, PG&E has been filing before the California Public Utilities Commission for rate increases to its retail customers which have been permitted to go into effect only after hearings and decisions and only to the extent found by the CPUC to be justified. For example, the most recent of these retail cases was filed on February 25, 1975 and was decided on August 24, 1976 after hearings and PG&E was permitted only about 40% of its proposed rate increase. We, on the other hand, as I stated earlier, have been paying the full amount of each of the increases proposed by PG&E with the distant prospect that some time in the future, if we have not been put out of business before then, there may be

refunds in some measure if the FPC agrees with us and its own Staff that we have been overcharged. However, we recognize the unfortunate fact that the FPC, despite its stated duty to protect the consumer, has apparently been seeking to assure the financial health of utilities against alleged and unproven adversities by its example in raising the bases upon which wholesale rates are set in an effort to provide "leadership" to state regulatory agencies. Of course, any action taken with respect to PG&E's wholesale electric rates, which represent less than 2% of its business, would have no practical effect on PG&E's health but could severely cripple and/or eliminate its wholesale customers such as Lodi, Alameda, Healdsburg, Lompoc, and Ukiah—all members of NCPA.

I would like to have placed into the record of this hearing the attachments to my prepared statement which consists of a table and two graphs comparing PG&E's rates to its wholesale customers with its rates to its large industrial customers as approved by the CPUC. That exhibit, which was prepared by NCPA's rate consultants, shows that the new filing would result in a substantially higher rate as of October 26, 1976 to an average wholesale customer of PG&E than the rate that such a customer would pay if it received service directly from PG&E under the retail rate which was most recently approved (less than a month ago) by the CPUC. Comparisons similar to this were submitted to the FPC by NCPA's members in connection with each of the 3 wholesale rate increase filings in an effort to have such filings rejected. Not only did the FPC not reject the findings but it ordered that there be no consideration of the anticompetitive effect of such a rate differential because it believed it lacked jurisdiction to consider the effect of its decisions on consumers. Fortunately, the Supreme Court unanimously reversed the Commission's incorrect view of its responsibilities and let me state once again the FPC has done nothing except to let the rates go into effect.

Over 70% of the cost experienced by Lodi's electric system is its bill from PG&E for purchased power. We have done everything we can to hold down our costs of distribution, which are those costs we can control, but because of the rapidly escalating monthly increases in our bill for purchased power we have had to raise rates to a level which the citizens of Lodi are finding unacceptable. Hardly a day goes by when I am not called at home by one or more Lodi's residents complaining of the substantial increase in their electric bills. In fact, this is the single most important issue in the city. If PG&E's most recent wholesale rate increase filing goes into effect, Lodi will be forced to once again raise its rates substantially. Lodi is not alone in this predicament. All of the PG&E-served members of NCPA are similarly affected. I note with dismay and grave concern the increasing agitation in other areas by the citizen owners of municipal electric systems to sell their municipal systems because of the high cost of power compared to the cost of power being sold in adjacent areas at retail by this wholesale supplier. I realize that this may be a result of different forms of regulation, but when the FPC takes four years or more to decide a case while allowing the requested wholesale rate to be charged it is effectively an unregulated rate as compared to the retail rate regulated by the state commission.

The bottom line is this. We, in Lodi, as a wholesale customer of PG&E will be paying more for the electricity we buy, than if we bought the same electricity as a retail customer of PG&E I doubt whether we can survive for long if PG&E is allowed to put these rates into effect as they have proposed. It is ironic that the FPC which was specifically established by Congress to protect the wholesale customers of private utilities, is allowing rates to go into effect which will on their face force our utilities out of business.

It is just this disparity in regulatory treatment to which this bill is addressed. All we are asking for is a fair procedural situation that we can live with. If the FPC's procedures were brought into line with those of the CPUC and rate increases were only allowed to go into effect after a determination that they are reasonable, we will either not continue to be placed in a price squeeze or, if we are, it will be because someone has decided that the rates are proper. The possibility of refunds at some distant future date—more than four years after a filing is made—is no answer to our plight. Life insurance is of no use to a corpse. Literally, our survival may be dependent on the passage of this emergency legislation.

PACIFIC GAS & ELECTRIC CO. RATE COMPARISON¹ INDUSTRIAL SERVICE VERSUS RESALE SERVICE, AUGUST 1974
TO NOVEMBER 1976

Line No.	Time period	Industrial rate schedule	Resale rate schedule	Theoretical customer A1 ² cost/kWh (mills)		Theoretical customer A2 ³ cost/kWh (mills)	
				Industrial	Resale	Industrial	Resale
1	Aug. 24, 1974 to Sept. 1, 1974	A-14	R-1	\$14.90	\$13.91	\$14.66	\$13.83
2	Sept. 1, 1974 to Oct. 1, 1974	A-14	R-1	14.90	14.89	14.66	14.36
3	Oct. 1, 1974 to Nov. 1, 1974	A-14	R-1	14.90	15.04	14.66	14.51
4	Nov. 1, 1974 to Dec. 1, 1974	A-14	R-1	14.90	15.41	14.66	14.88
5	Dec. 1, 1974 to Jan. 1, 1975	A-14	R-1	14.90	15.83	14.66	15.30
6	Jan. 1, 1975 to Feb. 2, 1975	A-14	R-1	14.90	16.10	14.66	15.57
7	Feb. 1, 1975 to Mar. 1, 1975	A-14	R-1	16.12	17.51	15.88	16.98
8	Mar. 1, 1975 to Apr. 1, 1975	A-14	R-1	16.12	17.96	15.88	17.43
9	Apr. 1, 1975 to May 1, 1975	A-14	R-1	16.12	18.27	15.88	17.74
10	May 1, 1975 to June 1, 1975	A-14	R-1	16.12	18.67	15.88	18.14
11	June 1, 1975 to July 1, 1975	A-14	R-1	16.12	19.01	15.88	18.48
12	July 1, 1975 to Aug. 1, 1975	A-14	R-1	16.12	19.24	15.88	18.71
13	Aug. 1, 1975 to Sept. 1, 1975	A-14	R-1	16.12	19.29	15.88	18.76
14	Sept. 1, 1975 to Sept. 21, 1975	A-14	R-1	16.12	20.46	15.88	19.93
15	Sept. 21, 1975 to Oct. 1, 1975	A-13	R-1	19.82	20.46	19.57	19.93
16	Oct. 1, 1975 to Nov. 1, 1975	A-13	R-1	19.82	20.52	19.57	19.99
17	Nov. 1, 1975 to Dec. 1, 1975	A-13	R-1	19.82	20.78	19.57	20.25
18	Dec. 1, 1975 to Jan. 1, 1976	A-13	R-1	19.82	21.19	19.57	20.66
19	Jan. 1, 1976 to Jan. 2, 1976	A-13	R-1	19.82	21.46	19.57	20.93
20	Jan. 2, 1976 to Feb. 1, 1976	A-13	R-1	19.82	19.48	19.57	18.95
21	Feb. 1, 1976 to Mar. 1, 1976	A-13	R-1	19.82	19.37	19.57	18.84
22	Mar. 1, 1976 to Apr. 1, 1976	A-13	R-1	19.82	19.81	19.57	19.28
23	Apr. 1, 1976 to May 1, 1976	A-13	R-1	19.82	20.14	19.57	19.61
24	May 1, 1976 to June 1, 1976	A-13	R-1	19.82	20.55	19.57	20.02
25	June 1, 1976 to June 15, 1976	A-13	R-1	19.82	21.37	19.57	20.84
26	June 15, 1976 to July 1, 1976	A-13	R-1	21.61	21.37	21.36	20.84
27	July 1, 1976 to Aug. 1, 1976	A-13	R-1	21.61	22.25	21.36	21.72
28	Aug. 1, 1976 to Aug. 27, 1976	A-13	R-1	21.61	23.07	21.36	22.54
29	Aug. 27, 1976 to Sept. 1, 1976	A-13	R-1	23.62	23.07	23.37	22.54
30	Sept. 1, 1976 to Oct. 1, 1976	A-13	R-1	23.62	24.27	23.37	23.74
31	Oct. 1, 1976 to Oct. 26, 1976	A-13	R-1	23.62	* 27.27	23.37	* 23.74
32	Oct. 26, 1976 to Nov. 1, 1976	A-13	R-1	23.62	* 26.46	23.37	* 25.84

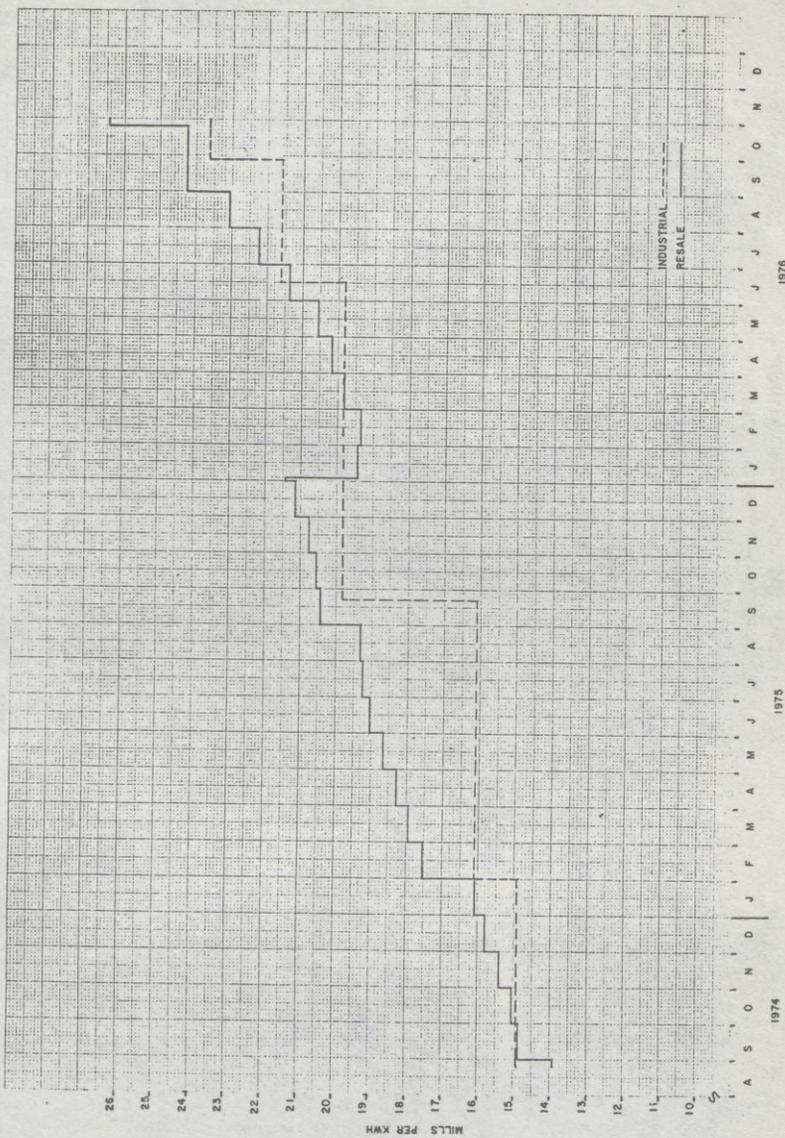
¹ Includes appropriate fuel adjustments and voltage discounts. Industrial rate includes the effect of the billing demand ratchet by increasing the billing demand by 6 percent per the testimony of P.G. & E. Witness Spier in FPC Docket No. E-8928. Industrial rate includes fuel collection balance adjustment of (0.42) mills/kWh ordered by CPUC effective June 15, 1976. Power factor assumed to be 85 percent in all cases.

² Theoretical Customer "A1" Requirements: Demand—25,000 kW; energy—10,950,000 kWh; load factor—60 Percent; primary voltage service.

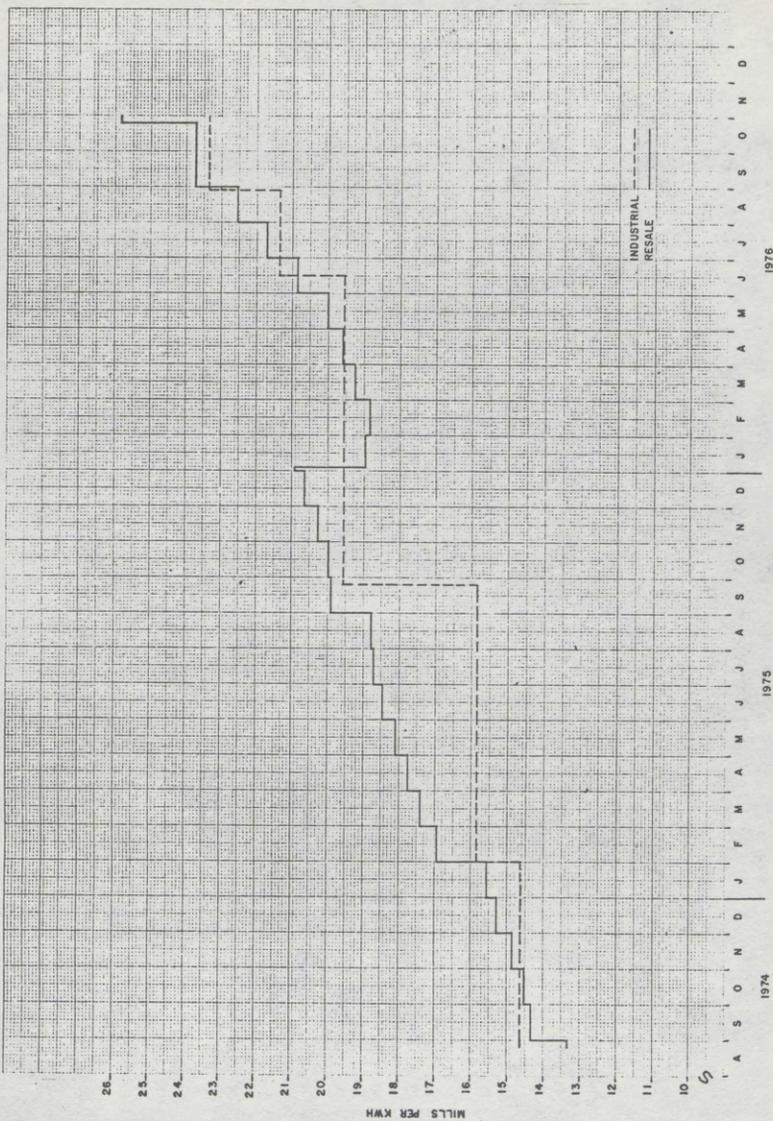
³ Theoretical Customer "A2" Requirements: Demand—25,000 kW; energy—10,950,000 kWh; load factor—60 percent; transmission voltage service.

* Resale fuel adjustment charge for October estimated at 12.19 mills/kWh (same as September).

PACIFIC GAS AND ELECTRIC COMPANY
RATE COMPARISON - THEORETICAL CUSTOMER A-1
INDUSTRIAL SERVICE vs. RESALE SERVICE



PACIFIC GAS AND ELECTRIC COMPANY
 RATE COMPARISON - THEORETICAL CUSTOMER A-2
 INDUSTRIAL SERVICE vs. RESALE SERVICE



Mr. SHARP [presiding]. Thank you, Mr. Searls?

STATEMENT OF FREDERICK T. SEARLS

Mr. SEARLS. I will not attempt to read my statement which goes into some detail as to the processes of the Federal Power Commission actually files in these rate cases.

Mr. SHARP. We will be happy to make your entire statement a part of the record [see p. 24], if you wish to summarize.

Mr. SEARLS. I would like to briefly summarize it and respond to some of the remarks made by Mayor Hughes.

Mr. SHARP. Fine.

Mr. SEARLS. The basic problem, as the mayor indicates, is regulatory lag. It does take time to decide these cases. The Federal Power Commission, let us say, with a large number of utilities to regulate has not proven to be as expeditious as State commissions which have relatively speaking only a handful of electric utilities to regulate in each of the States.

The cost of transmitting and distributing and generating electricity have been going up very markedly over a long period of time. In addition to the normal effects of inflation, we have seen the unprecedented increase in prices of fuel used for generation which have meant that the inflationary effects are added to this extraordinary fuel cost effect.

Fuel costs are recovered through adjustment clauses that are designed and in their present form now, assure that the recoveries of fuel cost increases will be no more and no less than the actual costs of increases in fuel.

It is in large part these large increases in fuel costs which have been responsible for the rate increases and for the total increases in rates. When the other cost increases are added on top of it, it is not surprising that the customer notices and is very concerned with the size of the increases.

The fact of the matter is that the utilities did very well for a long period of time in combating inflation. There is a built-in lag in the regulatory process because of the reliance on historical figures, the use of original costs for rate base purposes and other factors in the process such as the presence of low cost bonds derived from a period when we were able to issue bonds at rates like 3 percent.

It is only in the more recent years that the inflation has been catching up with the utilities. Naturally increased costs call for increased rates. Without our cost recovery, the utilities are not going to be able to do the job it may have to be able to do to meet the demands for electric energy.

I am a little bit surprised at Mayor Hughes' argument that because the wholesale customers represented only a small part of the P.G. & E. system they should somehow be favored and not bear their share of the cost increases because it would mean so little to the P.G. & E.

Even that small proportion of the business is important to maintaining the credit of the company. When the subcommittee considers an amendment to the Federal Power Act, it must recognize that there are many utilities that have very substantial parts of their business regulated by the Federal Power Commission.

I am aware of two companies which have the entire amount of their rates regulated by the Federal Power Commission and delays, or what amounts to an actual failure to recover increased costs could well be disastrous for companies in that situation.

Regardless of the percentage, fairness suggests that the utilities be permitted to recover rates which will cover their costs. To be sure, there are disputes over the exact amounts of costs and service to be allowed.

That is one of the reasons for lengthy cases in rates and for the complex of proceedings. The Federal Power Commission does have standards for accounting and for rate filings and does review those filings before they are ever allowed to go into effect.

There is a very substantial limitation on the increases which a utility can actually request and put into effect. The idea that these increases go into effect without scrutiny is entirely erroneous.

I would point out that under Federal Power Commission regulations future cost increases cannot be taken into account beyond 1 year from the time when the proposed rate increase is requested to become effective.

This means that if you have an 18-month limitation on filing, you are going to have a period during which cost increases cannot be recovered by the utility. This can be particularly important if a major plant comes into service during that period or other significant cost changes occur.

The collection subject to refund procedure has, of course, its disadvantages; but it would seem to be far more reasonable and a fair way of dealing with the situation rather than to say that the utility must go for substantial periods of time with portions of its costs unrecovered.

This is in a time when utilities are faced with a need to raise vast amounts of capital and cannot expect to do so if their finances are in precarious position. The proposed procedures of this bill would tend to enlarge the regulatory lag, which is a basic part of the problem, by requiring a hearing in every case where a complaint is filed.

I think this would undoubtedly lead to complaints filed for the purpose of delay. It would call for a preliminary hearing procedure which would be an extra burden on the administrative staff of the Commission, the Commission's own time and on the parties, and on the whole process of allowing at least some of the rate increase to go unrecovered would simply encourage the opponents of a rate increase to delay and delay. They are often responsible for some of the delays which occur now.

Let me just respond quickly to some of Major Hughes' remarks. I think he corrected himself but I would like to make it clear that on P.G. & E.'s first rate increase which became effective in 1973, a hearing has been held.

I would add, as the mavor did not, that an administrative law judge has issued a decision in that case which reaches substantially the conclusion that no refund is due to the municipal customers under the showing in that case.

The second rate increase, which became effective in 1974, has been heard, has been briefed and a law judge decision is to be expected, I think, in the relatively near future. A large number of the issues are the same as in the preceding case.

I think that at least it is fair to conclude that this shows that P.G. & E. has not been overreaching in these rate filings. It is true that neither the first nor second case have been passed on by the Commission, although the Commission now has the first case before it.

Again, I would expect that it would be in a position to issue a decision before long.

The third case seems to be, from the way the legislation is set up, and from Mayor Hughes' remarks, a specific target of this legislation. The third case was filed in the latter part of July of this year, was requested to become effective in the latter part of August, and was suspended for 2 months and now is due to become effective on October 26.

This legislation coming at this stage in the proceeding would in effect purport to set aside the order of the Commission which would allow the increase to become effective in October and require the company to go in on a preliminary proceeding and wait 2 months for a Commission order to be allowed to put some portion of the rate increase into effect.

We believe that to single out the few companies who, like P.G. & E., are in the midst of a filing and in the midst of the early stages of the rate increase procedure for treatment under rules which are changed after the filing was made is extremely unfair. We believe that if legislation like this is to be adopted, it should have a prospective effect only.

Mayor Hughes commented on the fact that the California Commission allowed only about 40 percent of its proposed increase in the order which the California Commission issued in August of this year.

I would point out that the company reduced its original request very substantially when it appeared that the Diablo Canyon nuclear units would not come on the line when expected and would have to be excluded from the rate base for the test year which was used for the case.

This accounts for a major part of this reduction in rate increase. There is no quarrel about that. I might also point out that the company's preceding rate increase was granted almost in full in September 1975. That is the preceding retail increase.

Incidentally, I would like to point out that the 1972 filing which was the first increase referred to by the mayor was the first increase in wholesale rates which P.G. & E. had requested in a period of some 15 years, which illustrates as I said earlier, that we have done well when conditions are favorable in keeping up with and combating inflation and increased costs.

In recent years, it has been catching up to us. With respect to the price squeeze and the comparison with retail rates, I would like to say that the simplistic kind of comparison which the mayor has offered here is not representative of the actual situation which prevails.

You cannot compare to rates in this fashion because you have different mixes of different kinds of kilowatts and kilowatt hours. Certainly this is not the place to go into it but it is a subject that will be examined by the Federal Power Commission and considered in depth.

The disparities in this chart are really not—basically not great. You have to remember in judging the scale of these things, that the chart starts with the lowest figure on there, which is 10 mils per kilowatt

hour, so to get a better picture of the relative differences here, you should think of this chart as extending much farther down below the bottom line.

I would also point out that at the end of this year or earlier when the California retail fuel cost adjustment goes up there will be a marked change in this comparison. There has been a sort of leap frog effect.

One way to avoid the retail against resale disparity would be for the Federal agency to simply abdicate and say we will just charge whatever the State agency allows for retail service.

You would still have the difficulty of equating wholesale service to retail service. I do not think it is the intention of Congress to say that the Federal regulation shall be subservient to State regulation.

Finally, I think I will mention that the mayor shudders at the thought of having to have another increase and I may say, from a long experience in the business, that every utility executive has the same kind of shudder and receives the same kind of outcries and has to go through proceedings in all sorts of forums and hear the complaints about rising costs.

They are going up and we do what we can about them but rates do have to cover costs. Thank you.

[Mr. Searls' prepared statement follows:]

STATEMENT OF FREDERICK T. SEARLS, ON BEHALF OF PACIFIC GAS & ELECTRIC CO.

I am Frederick T. Searls, a member of the law firm of Debevoise & Liberman, 806 15th Street, N.W., Washington, D.C. 20005, and am appearing at the invitation of the Subcommittee as a representative of Pacific Gas and Electric Company which provides electric service to 3 million customers and gas service to 2½ million customers in northern and central California.

We appreciate the opportunity which the Subcommittee has afforded us to comment on H.R. 15544, and hope that the information and views which we present will be of assistance to the Subcommittee in reaching its conclusion.

I am a graduate of Stanford University and Harvard University Law School and a member of the bars of the State of California, the District of Columbia, the United States Supreme Court and the United States Courts of Appeal in a number of circuits. After completion of law school I joined the legal staff of Pacific Gas and Electric Company in 1936, became its General Attorney in 1955 and its Vice President and General Counsel in 1970. Upon my retirement from the latter position, I joined by present firm at the beginning of 1975. A major part of my work during the last 25 years has been in the field of public utility regulation, at both the state and federal levels, and currently I am primarily concerned with matters before the Federal Power Commission.

I. THE PROPOSED AMENDMENTS TO SECTION 205 OF THE FEDERAL POWER ACT WOULD BE CONTRARY TO THE PUBLIC INTEREST

A. The fundamental problem is the continuing increase in the cost of providing electric service.

The amendments to Section 205 of the Federal Power Act proposed by H.R. 15544 are a manifestation of the concern which all of us share in the rising price of electric service. The basic reason for the price rise, however, is the inescapable increase in costs of service, which must be met if electric utilities are to be able to continue to meet the demands for their service.

By far the biggest increase has been in the cost of fuel for generation. The fuel cost increases are recovered, of course, through fuel cost adjustment provisions in the rates. But the fact that other substantial cost increases must be recovered, on top of the large rate increases occurring under the fuel clauses, is one of the major reasons for dissatisfaction.

A second reason for dissatisfaction arises, paradoxically, from the relative success of electric utilities in combatting inflation during the decade of the sixties. With return allowances for rate making based on historical costs of utility plant

and on historical costs of interest, and with the aid of substantial improvements in technology and efficiency electric utility rates were slow to reflect the steady inflation which affected almost all other prices. In the past several years, however, inflation has been catching up with electric utilities with a vengeance. Because inflation has affected construction costs more than other costs and because environmental protection has required very large expenditures for additional equipment and facilities, as well as replacement, conversions, and retrofitting of old facilities, the investment in electric utility plant has had to grow at a much faster pace than the growth of demands.

Rising interest rates have also had a major impact on electric utility costs of service. To finance new construction and to replace maturing low cost debt issues electric utilities have had to borrow large amounts of money at very high interest rates. This translates into necessary increases in rate of return requirements so that the utilities may maintain their financial integrity and their ability to continue to finance needed additions.

High interest rates and high construction costs tend to have their full effect on utility costs of service only with a time lag and, along with increases in costs of operating labor and materials, will continue to require even higher rates as time goes on.

We do not suppose that wholesale customers who buy power under rates regulated by the Federal Power Commission intend to avoid paying the increased cost to serve them which results from their supplier's increases in operating costs and cost of capital. Yet, essentially, H.R. 15544 seems to be designed to require utilities to provide wholesale service for substantial periods of time without recovering their full cost of service.

Under the Act as it has stood for over 40 years, a utility may make a proposed rate increase effective after no more than a 5 month suspension period. Should the Commission find that only part of the increase was justified, it may order refund of the excess. The end result is that the utility may not retain revenue in excess of that provided by just and reasonable rates. This basically sound scheme would be weakened by H.R. 15544 to the extent that it delays the effectiveness of all or part of a rate increase and bars the utility for the period of delay from obtaining the full amount of the increase eventually determined to be justified.

In the following sections of this statement we describe the procedure for rate increases under the jurisdiction of the FPC to show how it protects the consumer interest, and then address the specific problems that would be created by the proposals of the H.R. 15544 to change this procedure.

B. The present procedures under the Federal Power Act protect the consumer interest while permitting the utility an opportunity to recover its increasing operating costs and capital costs.

Under the Federal Power Act and the Commission's regulations implementing it, the utility initiates a rate increase by filing with the FPC the proposed higher rate schedule together with a showing as to its cost of service and an explanation of its rate design. The cost of service must be supported by a series of 15 statements presenting in detail the elements of the utility's cost of service for all its electric operations, including its rate base, its actual cost experience for a twelve month period, and the basis for its claimed rate of return, together with the allocation of its costs to the service for which the rate is to be increased. In addition, an estimated cost of service, in similar detail with supporting work papers, is normally filed for a twelve month period beginning not later than the proposed effective date of the rate increase so that the Commission may be informed as the costs which will be incurred after the increase takes effect. Along with the wealth of figures thus supplied to the Commission, the utility must file testimony and exhibits which will constitute the company's case-in-chief in the event that the matter is set for hearing. Preparation of a rate increase filing will usually require several months work.

Copies of the filing are served upon the wholesale customers affected and interested state commissions.

Upon receipt of a rate increase filing the Commission reviews it to determine whether the filing requirements have been satisfied. If not, it so notifies the utility and refuses to assign a filing date until the deficiencies are corrected. When the filing is complete the Commission publishes notice of the filing and sets a date for the filing of protests and petitions to intervene. The Commission then proceeds to evaluate whether a hearing is required and, if so, the length of time for which the increase should be suspended, up to the 5 month maximum permitted

by the Act. In this evaluation, the Commission considers any protests and arguments submitted in response to the notice. Experience indicates that any substantial doubt as to whether the increased rate would meet the standards of the Act is resolved in favor of holding a hearing. When a filing employs concepts or methodologies not previously accepted by the FPC, the Commission has not hesitated to make a summary disposition of the matter.

If a hearing is ordered, the utility's rate filing serves as its case-in-chief and the Commission staff and intervenors proceed with the preparation and filing of testimony and exhibits in support of their positions. Because many disputes can be resolved by meetings around a table the Commission provides opportunities for settlement discussions and these frequently result in the termination of proceedings on mutually agreeable terms. The Commission must be satisfied, however, that there is reasonable support for a conclusion that the end result of the settlement agreement is just and reasonable and meets the other standards of the Act.

Where settlement is not possible the process of hearings, initial decision by an administrative law judge, and final decision by the Commission on exceptions is likely to involve three years, and more. If judicial review is requested, at least and additional year is likely to be required before final disposition.

C. The time limitations on making a filed rate increase effective would unreasonably enlarge regulatory lag.

Section 2(a) of the bill would require that a hearing be held with respect to every rate change to which objection is made by complaint to the Commission. Further, in every case in which a hearing is ordered, the proposed change would be stayed until finally approved by Commission order. Some measure of relief from this long delay is provided by Section 2(b) of the bill which would permit a filed rate change, or any part thereof, to become effective subject to refund if the Commission finds, in a preliminary proceeding, that the utility has shown that "it is likely to prevail on the merits on the issue of the lawfulness of any part" of the change.

The mandate for a hearing on every rate change against which a complaint is made invites complaints for the mere purpose of delay. The present law wisely delegates to the Commission discretion to permit filing to become effective without a formal hearing (any protests by customers, are considered) where, in its expert judgment, no further proceedings are warranted. This give the Commission an opportunity to use its own time and that of its Staff to best advantage. H.R. 15544 would deprive the Commission of this control over its own resources and efficiency.

Even more importantly, by staying the effectiveness of a proposed rate change until a final order is issued, the proposed amendments would aggravate, rather than ease, the principal problem facing all parties before the FPC—regulatory lag. Under present procedures, a case which is not settled takes about 3 years to trace its way to a final Commission decision. Notwithstanding this delay, the wholesale customer is protected because the increase is subject to refund (with interest at 9%). The procedural change proposed by the amendments would not shorten this time, only deprive the filing utility of revenues throughout it. Since a utility cannot collect an increase retroactively, if it is not permitted to place the increase in effect soon after filing it will suffer a permanent loss—even though the increase may subsequently be found fully justified on the date filed.

Equally significant, the suspension for the duration of the proceeding would provide an almost irresistible incentive for wholesale customers to lengthen even further the substantial period now required for final disposition of proceedings. A skillful advocate for a wholesale for resale customer—and, usually, such customers are well represented—would have little difficulty in extending the period required for final decision.

At the present time both the utility and its customers have an incentive to obtain a final disposition of a rate proceeding as promptly as possible. For its part, the utility needs such disposition since the fact that a portion of its revenues are subject to refund necessarily creates a cloud on its earnings for the purpose of determining its ability to meet indenture and charter tests for the new securities, and the appraisal of such new securities by rating agencies, underwriters and investors. For its part the wholesale customer seeks an early disposition so that it can obtain any refund to which it is entitled. It is this mutuality that accounts for the substantial number of proceedings that are settled (subject to FPC approval) prior to final decision by the FPC. Indefinite suspension would

destroy this mutuality of interest in early disposition. It would not only lengthen the period required for disposition of proceedings but it would also significantly reduce the likelihood of settlement.

The drastic curtailment of construction programs of public utilities during the past 2 to 3 years was occasioned, largely, by financing constraints—i.e., basically, by insufficient earnings—and the concurrent recession only obscured the adverse long-term consequences of such curtailments. For a utility with substantial revenues subject to FPC regulation, suspension for the duration, could only result in a substantial impairment of ability to meet public utility responsibilities.

The proposed "preliminary proceeding" for determination of the amount of an increase to be permitted to become effective pending completion of the proceeding could ameliorate some of the harm which would result from the mandatory suspension requirement. However, as a practical matter the end result would be, all too often, that the utility would have to supply electric service below cost to its wholesale customers. This would continue indefinitely since the utility would be faced with the same type of shortfall in each succeeding rate case. None of this deficiency could ever be recovered or made up.

The "preliminary proceeding" approach has administrative disadvantages as well. The time of the Commission and its staff and of the utility and any interested parties taken up in presentation of evidence, argument and decision as to whether the utility "is likely to prevail on the merits" of the issues in the case could be spent far better in moving ahead to the final disposition of these same issues.

It should also be noted that the requirement that the order in a "preliminary proceeding shall be entered within 60 days after the date of initiation of the preliminary proceeding" is uncertain because it is not clear when the proceeding is "initiated." If the date of filing by the utility is intended, that should be made clear. Finally, if a "preliminary proceeding" is to be held, there is no reason why the Commission should not be required to make its order effective at once, since there would be no justification for further suspension of the portion of the increase to be permitted to become effective subject to refund.

D. The 18 month limitation on filing of rate increases fails to recognize the need for cost justified rate increases and unreasonably enlarges the regulatory lag.

Section 2(c) of the bill also would contribute to regulatory lag by prohibiting the filing of a rate increase while another filing is pending determination, unless the determination has been pending in excess of 18 months or the Commission finds that it would be confiscatory not to permit the filing.

Unfortunately cost increases do not occur on a neat time scale, such as every 18 months. Furthermore, the utility is not permitted under the present FPC regulations, to base its rate filing on costs estimated for a period ending more than 12 months after the proposed effective date. In fact, as a practical matter, such filed estimates of future costs often do not extend that far into the future. The proposed 18 month filing limitation, therefore precludes a utility from seeking rate increases to recover cost increases in the last six months, or more, of each 18 month period.

This can be a matter of serious concern if a large addition to plant, such as a nuclear generating unit, is to become operational within the forbidden period. At that time the utility stops accruing earnings from the allowance for funds used during construction and commences accruing depreciation and all the other expenses of operation of the unit. The effect on earnings can be drastic unless offset by revenue increases. Surely the wholesale customers should not be temporarily, or at all, immunized from bearing their share of the required revenue increase. In those cases where a substantial part of all of the utility's revenues are from wholesale sales, the impact of such immunity could be devastating. Regardless of the proportion of sales at wholesale, however, the unreasonableness of the filing restrictions is apparent.

It is true that the 18 month limitation contains an escape clause recognizing the constitutional right to protection against confiscation but this is bound to be illusory. A Commission determination that "it would be confiscatory not to permit the filing" would take time, probably most of the time to the end of the 18 month period, during which the increased costs would remain unrecovered. More significantly, however, it would be poor policy, from the standpoint of the public interest, to drive an electric utility to the verge of confiscation. The elec-

tric energy needs of this nation cannot be met by utilities whose finances are in a precarious state.

The effects of the 18 month limitation must also be considered in conjunction with the mandatory suspension and the "preliminary proceeding" provisions in Section 2(a) and 2(b) of the bill which impose substantial additional delays on the ability of a utility to make rate increases effective. It appears that a utility would be able to place only part of a proposed increase in effect no earlier than 20 months after its filing date for the proceeding increase.

As a footnote to this portion of our statement it should be noted that it is not clear to what point in the Commission's proceedings "determination" refers and from which time the 18 month period runs. Is it the date on which the previous filing was accepted by the Commission? This would seem the most reasonable approach to this form of limitation. Or is it the date after hearing on which the Commission takes the case under advisement for decision? This is the result suggested by the wording proposed here and would result in the intervals of 3 and 4 years during which no rate increase could be filed

E. The definition of "Lawful" rates should not be adopted.

The first sentence of the definition of "lawful" in Section 2(d) merely restates the clearly articulated standards of Section 205(a) and (b) of the Federal Power Act that a rate be "just, reasonable, and otherwise lawful." The second sentence of the definition seems to be an attempt to codify the rule established by the Supreme Court in *Federal Power Commission v. Conway Corp.*, — U.S. —, 48 L.Ed 2d 626 earlier this year. We would suggest that this is a matter which should be explored very thoroughly before any change is made in the present wording of the law. Electric utilities must serve two masters: their respective state commissions and the Federal Power Commission. Working out the implications of the *Conway* rule will be difficult at best and it would be most inadvisable to complicate the situation further by changing the words of the statute which *Conway* interpreted unless there is a clear understanding as to what the change is intended to accomplish.

F. The proposed changes in Section 202(c) of the Federal Power Act are unwise and unnecessary.

Section 3 of the bill would amend Section 202(c) of the Act which, in its present form, gives the Commission broad powers to deal with emergency situations. The proposed additional provisions, to the extent that they may give the Commission additional powers, are not needed to cope with emergencies and seem, in fact, to be directed to matters of long run policy which are inappropriate for a measure which is proposed to be effective for only 18 months.

The provisions of Section 202(b) of the Act, giving authority to the Commission to order interconnection of facilities and the sale or exchange of energy thereby, were adopted only after extensive debate in the Congress and careful consideration of the merits of alternative proposals. The basic reliance of Section 202(a) on voluntary interconnection and coordination has proven effective as the establishment and effective functioning of the regional reliability councils and the National Energy Reliability Council demonstrate. The Commission's powers under Section 202(b) have rarely been invoked.

A full exposition of the problems which would be created by the grant of more extensive powers to the Commission in non-emergency situations, if that is intended, is beyond the scope of this statement because of the limited time available for preparation, but it is clear that the subject is one with broad ramifications and affects the entire electric industry. Temporary legislation in this area would be highly undesirable because planning for electric energy requires a long run perspective and long run commitments.

G. The proposed bill would unfairly affect Pacific Gas and Electric Company.

For the most part, PGandE's concern with the proposed amendments to the Federal Power Act are believed to parallel those of regulated electric utilities generally. In one respect, however, the bill would have an effect as though it were aimed squarely at the wholesale rate increase which PGandE filed with the Federal Power Commission in July of this year. The proposed date for the increase was August 25, but it has been suspended by the Commission until October 26. Under the language of the bill, since the rate increase was not effective by September 13, automatic suspension for the duration of the entire proceeding might be required, subject to such relief as the Commission might

grant in a "preliminary proceeding." To make such a change in the rules applicable to rate increases filed before enactment of this bill would be most unfair to PGandE—and to others which find themselves in the same situation.

We appreciate this opportunity to present our statement to the subcommittee and will be glad to respond to any questions.

MR. SHARP. Mayor, did you want to respond in any way to any of Mr. Searls' comments?

MR. HUGHES. Just one point. I think I understand many of his points. I would like to possibly include with our submittal actual breakdown of rates from the city of Lodi determined by class of customer from residential to industrial, et cetera, which do show, in a very precise manner, the fact that there will be more paid in each of these classes, even taking into account these latest increases granted by the CPUC.

I think it would tend to be more specific than possibly the chart that is referred to.

MR. SHARP. Without objection, that will be made a part of the record.

[The material referred to was not available to the subcommittee at the time of printing.]

MR. HUGHES. Then if I could defer to my friend, Mr. McDiarmid?

MR. McDIARMID. If we could just answer a couple of Mr. Searls more technical points. Since we also deal quite regularly with the FPC and are also familiar with them, I think the record could stand a little bit clearer if we added something there.

Mr. Searls said that the FPC reviews filings before they are allowed to go into effect and it is not correct to say that the filings are permitted to go into effect as requested. It is true that the FPC does have a filing section which reviews filings for procedural completeness, by and large.

In fact, I think that is all they do. It is very difficult to find out exactly what they are doing now but that is all they have been doing for the last 20 years.

That means they will reject a filing that does not have the necessary exhibits and they will reject a filing which is in a form which is precluded by the applicable regulations. Anybody is entitled to ask for anything not precluded, which is almost anything you can think of.

The FPC has acknowledged on several occasions that companies are allowed to request anything they want and the rate will be allowed to go into effect subject to a suspension between 1 day and 5 months, subject to refund.

The refund may be—in one case I tried, some 5 years after the rate was initially filed and allowed to become effective, then 5 years later the FPC directed that almost all of the increase be returned as excessive.

That was the case which is referred to in the report of the controller General, dated September 7. There is a letter which has been filed with the subcommittee from the town of Reding, Mass., requesting that report be taken into account.

I might say that after that 5 years it was very, very difficult for the town of Reding to find the people who had originally paid the money. Many of them had left, even after forwarding checks to last known addresses, it was almost impossible—they could not find something like 10 percent of the people involved.

They simply disappeared. In any event, it is simply not so that the FPC will exert any substantive control over the size of the filing when first made. It will allow it to go into effect subject to refund.

The only substantive control it will exert is that something which is plainly excessive to its eyes will probably be suspended for longer than an increase which is not so plainly excessive.

Indeed, several times during August the FPC, which is required to notice publicly a rate increase, and ordinarily does so with an intervention date before that time it will have to act to suspend, noticed several cases approximately 2 days before it was going to act, and with intervention dates set sometime after that date then acted and suspended for 1 day only, without bothering to wait for interventions or consider what the other parties had to say.

Mr. Searls suggests that the wholesale customers here are asking for an unfair advantage; quite to the contrary. All that the wholesale customers are here seeking, which is what your staff has wisely brought out in the way of a compromise bill, is an interim period where they are treated similarly, not advantageously, to the retail customers who support 90 percent of P.G. & E.

In the California retail situation, none of those rates go into effect until after a finding by the State Commission. In the wholesale case, all of the rates go into effect without a finding or any ruling at all.

All we are asking for here is equivalent treatment. Mr. Searls suggested that somehow or other P.G. & E. is unfairly being made a target—I take it because this bill was introduced after they filed their rate increase but before it becomes effective.

Obviously I am not quite sure I understand that. This is plainly not retroactive legislation. No matter when a bill was introduced, passed or became effective, it is obviously going to affect some companies because there is a continuous stream of rate filings at the FPC.

There are several hundred electric companies that file there. I believe they are something in the nature of 100 filings per year. I am not sure of the exact number, it varies from year to year.

Obviously, as they are distributed more or less regularly over the course of the year, any bill will hit some and not others.

My partner, Mr. Horwood reminds me that in response to Mr. Searls' suggestion that there would be very little refunds due under the presiding administrative law judge's determination in the first P.G. & E. case, there would be some refunds due.

If the same principles were applied to the second case, which is something you cannot be too sure of these days, but if they were, there would be very substantial refunds due at that point.

This is precisely the kind of thing that will hurt these wholesale customers. How much extra do we have to pay and for how long before we can find out? Thank you.

Mr. SHARP. Thank you. Mr. Searls, would you like an opportunity to comment on those last remarks?

Mr. SEARLS. Just briefly. As to what the FPC does on review, you have to remember that the figures which are the base of the utility's support for its filing must be certified as coming from its books.

The FPC does regularly scrutinize the company's books. I am talking of course about the base year. I see Mr. McDiarmid shaking his head. The base year on which the figures are based or on which the

rate increase is based should come from the books so any marked discrepancy between rates requested and the cost experienced of the utility could be questioned by the Commission.

The Commission itself had better speak to what it does but I believe Mr. McDiarmid or his firm was responsible for a rejection of one rate increase because it was based on principles which they persuaded the Commission were not consistent with the general principles which the Commission follows.

As to the comparison with retail regulation, I would say that retail rate increases in California have customarily been disposed of within a year of the time of filing, which is about one-third of the customary FPC period.

It represents an entirely different sort of situation. The recent experience of P.G. & E. has been with longer delays but I think there is a reasonable expectation that they will be coming back to a more reasonable timing.

Finally, with respect to Mr. McDiarmid's comment on P.G. & E. that an amendment of this sort is bound to hit some utility's rate filing, I would say simply that the fair thing is to make it apply to filings in the future and not those in midstream. Thank you.

Mr. DINGELL. The Chair recognizes the gentleman from Indiana for questions.

Mr. SHARP. Thank you. Mayor, I was wondering during this course of waiting for decisions which led to triple pancaking I think it is, what steps did you people take to try to persuade the Commission to act? Did you have a variety of contacts with the Commission in an effort to get them to act?

Mr. HUGHES. I would say; yes, very extensively. Let me defer to counsel for the specifics of our actions.

Mr. HORWOOD. We tried several things, I think, with respect to all of the rate increases. We sought to have them rejected because of the anti-competitive effect, the price squeeze that we feel we had shown in our pleadings to the Commission.

We took one up to the court of appeals. The Commission said these issues would be considered by the Commission in terms of the anti-competitive effect of the rate. They told the court that if the appeal was dismissed the issues would be considered. After our appeal was dismissed because the Commission said it would consider these, they then read the issue out of the case and would not consider the price squeeze.

In both the second and third cases, we sought to have at least a 5 months suspension if the rate increases were not rejected. We were turned down in both. In the summer of 1975, we asked the Commission for an expedited consideration of the fuel adjustment clause issue which seemed to be a rather simple, clear-cut issue. We felt that P.G. & E.'s fuel clause was over recovering its fuel costs and the Commission could decide that rather simple issue which did not involve any vast evidentiary presentation.

P.G. & E. opposed us and the Commission refused to consider that issue independently of the rest of the case. One avenue which could have gotten relief during the period of time the rates were going into effect and one that should have been a simple issue was one that was not decided at all by the Commission and was sent back to the administrative law judge.

Mr. SHARP. Do I understand that in addition to making your case at the appropriate moment, you made one request on this particular issue of the fuel estimate clause? Are you able by letter or any other means to contact the Commission to urge them, ask them, why has it been 2 years, 3 years, and now 4 years.

Mr. HORWOOD. I think a contact of that type other than through a formal pleading would have been improper. I know the Commission's *ex parte* rules—I think those rules do serve a useful function.

Part of the problem we have had here was the delay caused in the first case by retirement of the administrative law judge who happens to have been the same administrative law judge involved in the case that Congressman Sharp is familiar with.

There was a long delay in this case, over a year, before a new administrative law judge was appointed. He finally did proceed to issue his decision and the case has only been just recently briefed to the Commission.

The delay in reaching the decision has not been a delay in the Commission's deliberative process, it has been a delay in the Commission refusing to take actions to short cut the full run of the administrative procedures in a fashion which it legally could do to decide some issues at the inception.

Mr. McDIARMID. If I could, Congressman Sharp, there is perhaps another answer which might be given as well which is that these P.G. & E. cases are not extraordinary in their character. The Commission has pending before it a large number of wholesale rate cases, many of which are pancaked.

It seems sometimes to the wholesale customer that there is so much delay that the only way to get relief is by accepting an unfair settlement and that this may be intentional. I am sure it is not so, it just seems that way because such a settlement may be the only way they will get back any money in the foreseeable future.

The Commission's electric rate regulation is very badly backed up. The GAO report to which reference has been made, indicates that the delay has been getting worse and worse as a practical matter.

What happens is that each time the FPC decides some new regulatory method which has the effect of increasing rates which customers have to pay, there is a new flood of filings by virtually everybody able to take account of it.

They charge their wholesale customers more. There is, with the filing utilities, as with the customers, a harder set of time now than there used to be. If there is money available somewhere fairly quickly, there is incentive to go look for it there.

Since there is money available at the FPC fairly quickly, albeit comparatively small compared to a retail case, that is an incentive to come look at the FPC. It is hard for a wholesale customer to say "FPC, we would like to have expedited consideration of our case" when we know there are 55 or 60 other cases in similar circumstances, and that they are all having the same problems.

Mr. SHARP. It seems to me that the way in which the present procedures operate, as you pointed out, could have the effect of placing a financial squeeze on the wholesaler and causing him to sell even though that may not be the intended action of the Federal Power Commission or the wholesale seller.

It seems to me that also we have the situation where the incentive for the Federal Power Commission to act is wanting given the complexity and the boredom of these kinds of cases and from the case at which I am looking, appear to be just bad management in relation to other burdens of the Commission.

Perhaps the Commission would have more incentive to act since we may have a wholesaler coming in who is in a genuine financial crunch. I do not doubt that some of them are. I think that is a serious question to which we have partially addressed ourselves with the investment tax credit this year.

It seems to me that their priorities might get set on the basis of dealing with a utility in desperate straits whereas it is very difficult for them to remember about Lodi, Henderson, Richmond, and communities which are sometimes difficult to find on the map, but I suggest that they know I. & M., P.G. & E., American Electric & Power, who are likely to catch the attention of the Federal Power Commission.

That is why it seems to me that we need to turn around that burden which is the purpose of the bill so that the FPC will have to consider whether rates are just and reasonable before small utilities go under.

Given the experience of a number of cases where the FPC is going to have to order refunds it will be very difficult to equitably carry it out.

We need a procedure whereby if utilities are genuinely in need, they will be able to get a preliminary determination. While I realize that the chairman is going to tell us that it is essentially two proceedings, perhaps I have not had a chance to read his total testimony.

He distinguished between the two as I read the bill, very clearly quite different in character, the preliminary procedure requiring much less analysis than the final determination.

It seems to me to the wholesalers this is the benefit.

Mr. McDIARMID. I think that is plainly right. The fact of the matter is, the Commission has put a lot of its resources on gas curtailment cases where the issue is pinching and where if something is not done, there may in fact be various kinds of disasters.

Obviously there is an incentive to put resources where there are serious things that have to be done immediately. Your analysis I think is quite correct. In fact, I could perhaps shed a little light on that.

Section 205 of the Power Act as it stands says that when electric and wholesale rate increases are allowed to go into effect subject to refund, the Commission shall give to those cases priority over, I am not sure whether it says any other cases, but that is certainly the effect.

As a practical matter what has happened is that there are a couple of situations where wholesale customers have contracts which require that the FPC make a determination of justness and reasonableness before rates can become effective, the so-called 206 contracts.

In spite of the language in section 205, as to which cases the Commission shall speed up and give priority to, the Commission's practice has been to give priority to the section 206 cases where the increase does not become effective until after action.

I think that is plainly an indication that a procedure such as the one suggested by this bill would in fact result in some expedited decisions from the FPC in this area.

Mr. SHARP. Thank you, Mr. Chairman.

Mr. DINGELL. The Chair recognizes the gentleman from Ohio, Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman. Mayor Hughes, let me ask you how long have you been mayor?

Mr. HUGHES. I am a member of the city council and this is an election from the city council. I am serving my second term as mayor and have been on the city council for some 7 years.

Mr. BROWN. In that period of time or in the last 3 or 4 years, have other cities services costs gone up?

Mr. HUGHES. Yes; that is certainly the case.

Mr. BROWN. How have you dealt with those in the city?

Mr. HUGHES. We have had to incorporate those increases into the budget much as we have had to do with our increased electrical rates.

Mr. BROWN. Do you have services for which people pay like garbage collection or water services or anything like that?

Mr. HUGHES. We have had those, of course, and when we wish to increase garbage rates or whatever, we at the local level hold a public hearing and air all of the differences and the discussions of the bill before reaching our decisions on a rate increase.

Mr. BROWN. What is your average lag time in dealing with those problems?

Mr. HUGHES. No more than 30 to 60 days.

Mr. BROWN. Were it longer, how would you finance?

Mr. HUGHES. We would have to judge our hearing procedures with respect to our financial needs. I feel that the main importance to the revenues of the city as well as to the expenses of our citizens that expeditious hearings in making the decision is paramount in handling this matter.

Mr. BROWN. Do you ever cut back services?

Mr. HUGHES. Yes, sir, we have had to do a great deal of curtailing of services as a result of the increases to which you referred.

[Excerpts from "Trends in Fiscal Federalism," referred to on p. 43 follows:]

[From Significant Features of Fiscal Federalism, 1976 Edition—Trends, a report of the Advisory Commission on Intergovernmental Relations—June 1976]

TRENDS IN FISCAL FEDERALISM

HIGHLIGHTS

In the score of years from the mid 1950's to the mid 1970's, fiscal relationships between the levels of government have changed dramatically, and the public sector has grown much faster than the private sector. This publication provides some data which will help the reader to evaluate these trends.

The reader should be aware that trends in this publication are attributable to many factors, including inflation, population growth, urbanization, and assumption of the costs of programs previously administered at other levels of government or by the private sector. Other growth factors include revisions in priorities leading to new governmental activities and efforts to improve service levels and performance.

The following paragraphs provide a narrative summary derived from the statistical tables and charts which follow.

Expenditures

Government expenditures as a percentage of all the goods and services produced by the national economy (GNP) have risen from 26.5 percent of GNP in 1954 to 34.2 percent in 1976. While both the Federal and state-local components of the public sector have increased, the state-local sector has increased at a faster rate, from 7.4 percent of GNP in 1954 to 11.0 percent in 1976, a 49 percent

increase. During the same period, the Federal sector increased from 19.1 percent to 23.2 percent of GNP, a 21 percent increase. (Table I.)

Civilian domestic expenditures (including social security) increased dramatically from 13.6 percent of GNP in 1954 to 26.8 percent in 1976. The growth of civilian domestic expenditures was financed in two ways: about half from new or increased taxes and deficit spending, and the other half by a shift in Federal expenditures from national defense to civilian programs. (Tables II, III, and III-A—upper right hand portions.)

Among the major programs, social security and Federal aid stand out as the fastest growers in the expanding Federal domestic sector; however, the rate of Federal aid growth has declined in recent years. Social security expenditures have grown to the equivalent of 5.8 percent of GNP in 1976 compared to only 1.0 percent in 1954. This program has emerged as the fastest growing major component of Federal domestic expenditures.

Federal aid to state and local governments (including welfare transfer payments) increased at an average annual rate of 14.5 percent between 1954 and 1971; however, the rate of increase slowed significantly following the enactment of "no strings attached" general revenue sharing in 1972. The revenue sharing program may have contributed to this slowdown. The temporary jump in Federal aid in 1975 largely reflected increases to help state and local governments combat unemployment during an economic recession. (Table IV—the right hand portion.)

In the state-local sector, the state government role is steadily expanding. The state government's share of state-local general expenditure from own funds has increased from 46.4 percent in 1954 to 55.5 percent in 1976. Among local governments, school district spending has leveled off and trended downward in relation to GNP, after substantial growth between 1954 and 1971. (Table V.)

Social welfare expenditures

The Federal government has emerged as the ever more dominant provider of income maintenance throughout the post World War II period. Federal income support outlays—including social insurance and public assistance payments—grew from about 50 percent to 67 percent of public and private spending on income maintenance in the period 1950–1975. (Table VII.)

Notwithstanding this dramatic increase in the Federal share, state and local expenditures increased in absolute terms, rising from \$8 billion in 1965 to \$30 billion in 1975. Most of this increase can be attributed to the rise in (a) public assistance outlays from \$2.7 billion to \$12.5 billion and (b) public employee pension payments from \$1.7 billion to \$7.3 billion.

Since the mid 1960's Federal financial support for health and medical activities has risen rapidly. Between 1965 and 1975 the Federal share of total public and private outlays for health and medical care rose from 11.8 percent to 28.5 percent. The enactment and rapid growth of the Medicaid and Medicare programs are primarily responsible for this sharp increase. (Table VIII, especially column 4.)

For the past 25 years, the shares of school expenditures provided by the public and private sectors have remained relatively constant. Education outlays stem mainly from public sources (about 85%) rather than private sources (about 15%). Most of the fluctuations in Federal support reflect variations in outlays for veterans' educational programs. (Table IX.)

The Federal government now provides about two-thirds of public and private outlays for welfare services other than public assistance. In contrast, the Federal share was slightly less than one-third of the total in 1950. This social welfare services category includes food stamps, surplus food for the needy and for institutions, child nutrition, institutional care, child welfare, economic opportunity and manpower programs, veterans' welfare services, vocational rehabilitation, and housing. (Table X.) As previously noted, cash outlays for public assistance are included in the income maintenance category.

Revenues

Federal own source general revenue has been growing at a slower pace than that of the state-local sector. Major Federal income tax cuts and the fact that neither social security nor deficit financing is counted as "general revenue" explain this trend. State governments in the aggregate doubled their share of total Federal-state-local general revenue between 1952 and 1975, from about one-eighth to about one-fourth. (Table XI.)

The Federal government has come to rely on taxes measured by individual income to raise both general and insurance trust revenue. By 1976, personal income taxes and social security payments (FICA) accounted for two-thirds of

total Federal revenue whereas in 1954 these levies produced less than half of all Federal revenues. (Table XIII.)

Increased reliance by state and local governments on Federal aid, income taxes, and fees and charges has produced a far more diversified state-local revenue system that existed 20 years ago. Based on 1976 estimates the national picture reveals a fairly high degree of balance—Federal aid 19.9 percent; property tax 18.5 percent; sales and gross receipts 18.7 percent; income tax 11.1 percent; charges and miscellaneous 15.4 percent; and utility, liquor store, and insurance trust revenue 12.5 percent. (Table XIV.)

Tax burdens

While the direct tax burden of the "average" family increased by 92.4 percent during the period 1953–1975, families earning four times the national average experienced an increase of 46 percent. The "average" family in 1953 had an income of \$5,000 and paid 11.8 percent of family income in direct Federal, state, and local taxes. By 1975, the "average" family had an income of \$14,000 and paid 22.7 percent. A family earning \$20,000 in 1953 paid taxes amounting to 20.2 percent of income. In 1975 a comparable income was \$56,000 and the tax burden was 29.5 percent. (Table XVI.)

Although state-local tax burdens have increased dramatically—from an average of 7.6 percent of personal income in 1953 to 11.9 percent in 1975—there remain great interstate variations. In 1975, state-local tax burdens ranged from 9.51 percent of income in Ohio and Tennessee to 15.72 percent in New York. (Table XVII.)

When measured on a per capita basis, state-local taxes also vary widely among regions and states. While the 1975 state-local tax collections averaged \$666 per capita, the regional per capita figures range from \$490 for the Southeastern states to \$841 for the states of the Far West. As would be expected, interstate variations are even greater—from \$405 per capita in Arkansas to \$1009 in New York State. (Table XVIII.)

Federal and State aid

Federal aid has grown as a proportion of state-local own source revenue in the period 1954 to 1976, and local governments in particular have come to depend more heavily on both Federal and state aid. Federal and state aid to local governments has increased from \$5.9 billion in 1954 to \$68.8 billion in 1976, and now represents 43 percent of total local general revenue, compared to less than 30 percent as recently as 1959. (Tables XIX, XX, and XXI.)

Public employment and wages

Employment in the state-local sector has grown faster than any other major sector of the economy—public or private—during the last 20 years. The number of full-time state and local employees has increased from 4.1 million in 1955 to 9.3 million by 1974, a 125 percent increase. During the same 20-year period, Federal employment increased by only 19 percent and private employment by 39 percent. (Table XXII.)

For the period 1955 to 1974, average earnings in the Federal sector increased by 194 percent, compared to 182 percent in the state-local sector, and 149 percent in the private sector.¹ However, in recent years, for the period 1970–1974, the percentage increase in earnings has been approximately the same for all three sectors, slightly under 29 percent. (Table XXIII.)

Public debt and interests costs

Throughout the postwar period Federal debt expressed as a percentage of GNP has trended downward until recent years when record peacetime Federal deficits caused a leveling of the trend line. Federal debt as a percent of GNP declined steadily from 97 percent in 1949 to 41 percent in 1969, and has remained between 35 to 40 percent since then. State-local debt increased from 8 percent of GNP in 1949 to 15 percent in 1964, and has held steady for the last decade. (Table XXIV.)

The average interest cost on long-term Treasury, corporate triple A, and high grade municipal bonds has tripled since 1949. The yield on Treasury long-term

¹ These facts are intended only to highlight important fiscal trends in governments' largest expenditure component—wages. ACIR has undertaken no research to interpret or explain these trends which are at least partially attributable to the differences among the three sectors concerning employment composition and factors affecting wages during the period.

bonds increased from 2.3 percent in 1949 to 7.0 percent in 1975. For the same period, corporate triple A yields increased from 2.7 percent to 8.8 percent, and high grade municipal bonds rose from 2.2 percent to 6.9 percent. (Table XXV.)

During the last 20 years government interest payments have been rising at a faster rate than government revenues. Federal interest payments now equal 16 percent of Federal general revenue up from 9.1 percent in 1954. During the same period, state and local interest payments have also slowly but inexorably come to claim a larger proportion of own source revenue—interest payments for states rose from 1.6 to 3.2 percent of own source revenue and for local governments from 3.9 to 6.3 percent. (Table XXVI.)

Mr. BROWN. Mr. Searls, what would a partial prohibition of filing the rates scale, such as the 18-month provision in this bill mean in terms of dollars of additional cost to customers?

Mr. SEARLS. I am not sure I understand your question.

Mr. BROWN. I assume if your costs go up and you fail to meet those costs through rate increases, then you have to go out and borrow the money to cover those costs—either that or cut back services, do you not?

Mr. SEARLS. As a basic result of having an unreasonably low return is an increase in the cost of capital. We see it reflected in part by a reduction by one of the services in the rating of—P.G. & E. fortunately from only A to AA—last year but this is the kind of thing that means borrowing money becomes more costly.

An even more marked effect comes in the cost of equity capital, although it is more difficult to measure. In a business where expenditures have to be very substantial, to build a facility as needed, to provide the electrical services which people want, these increases in cost of money do end up in the rates.

Unfortunately, many of them are built in for a long time to come.

Mr. BROWN. Can you give me a specific about what it costs you to either borrow capital or what the cost would be if you cannot borrow the capital? In other words, if your rating goes down to the point that you cannot benefit from the ability to borrow capital—

Mr. SEARLS. A loss in rating can be a substantial increase in the dollars of interest costs. I would hesitate to put a number on it because this sort of thing changes. I am not a financial expert.

Mr. BROWN. Maybe you could give us that for the record, if somebody from your company could provide that.

Mr. SEARLS. We could do that. I would suggest a figure on the order of one-half of 1 percent. When you are borrowing \$300 million or more a year, 0.5 percent on that comes to quite a lot of money.

Mr. BROWN. What has happened to the cost of electricity say in the last 20 years?

Mr. SEARLS. —

Mr. BROWN. How much increase, what percentage increase, could you tell me?

Mr. SEARLS. Twenty years ago, 1956—

Mr. BROWN. Give me 1954 to 1974. I want to compare them with another figure I have.

Mr. SEARLS. I do not have those figures with me. I would be glad to supply them but I would hazard a guess that they are not materially higher now than they were then if at all.

[The following letter was received for the record:]

DEBEVOISE & LIBERMAN,
Washington, D.C., September 22, 1976.

HON. JOHN D. DINGELL,
Chairman, Subcommittee on Energy and Power, Committee on Interstate and
Foreign Commerce, House of Representatives, Washington, D.C.

DEAR SIR: At a hearing before your subcommittee on September 20, 1976 with regard to H.R. 15544, Representative Clarence J. Brown requested information from Pacific Gas and Electric Company on three points, and asked that it be submitted for the record: (1) the dollar effect on PGandE and its customers of a downrating in its bonds: (2) the dollar effect of a delay in the effective date of PGandE's most recent rate filing with the Federal Power Commission: and (3) the net change in the price of electricity between 1954 and 1974.

With respect to the first question, I think it would be best simply to refer to the testimony of Mr. James T. Doudiet, PGandE's Treasurer, submitted to the FPC on July 26, 1976.

Question 39. What effect would there be on the market value of PGandE's outstanding mortgage bonds in the event of a bond downgrading from Aa/AA— to A/A?

Answer 39. There would be a market loss to existing bondholders of almost \$75 million. This market loss to existing bondholders would occur because the bonds would become a higher risk investment with a correspondingly lower market value.

Question 40. What effect would there be on interest rates for future bond issues if PGandE were downgraded to A?

Answer 40. Interest rates would become more expensive to PGandE and therefore to PGandE customers. New bondholders would have to be compensated for increased risks with a higher interest rate than would be the case with an Aa/AA—bond rating. Extra interest expense of \$700,000 per year per \$175 million bond issue, or over \$22 million over the life of a 32-year bond, could easily result from a bond downgrading to a full A rating. As PG and E anticipates the sale of \$375 million of new mortgage bonds in 1976 alone, we are speaking in terms of additional interest as a result of a single bond downgrading in the neighborhood of \$48 million for only two bond series.

The additional interest expense that would be incurred at an A rated category is not the only detriment associated with the lower bond rating level. A great fear is that a lower bond rating might impair the ability of PGandE to sell our bonds when money market conditions tighten. This point cannot be overemphasized. [Testimony of James T. Doudiet, FPC Docket No. ER76-811, pp. 12-13].

As to the impact of a delay in the effectiveness of PGandE's filed rates, each month of suspension would result in a permanent revenue loss of approximately \$465,500. While this amount is modest in comparison with PGandE's total revenue the cumulative effect of such losses can have a substantial adverse impact on the ability of PGandE to continue to meet its obligations to both its wholesale and retail customers.

Finally, the price of electricity has risen only modestly in the twenty year period 1954-1974, despite substantial inflationary increases in the overall consumer price index. In that time the price of electricity to the ultimate consumer rose from approximately 1.90 cents per kilowatt hour (1954 dollars), to approximately 2.50 cents per kilowatt hour (1974 dollars), an increase of only 32 percent.

Thank you for the opportunity to testify before your subcommittee and to submit this additional information.

Sincerely,

FREDERICK T. SEARLS,
Attorney for Pacific Gas & Electric Co.

Mr. BROWN. Not materially higher?

Mr. SEARLS. Than 1956 or 1954.

Mr. BROWN. The figure I have for the increase in expenditures by local governments over that same period of time is that it has gone up 200 percent in that period of time. I would like to get the comparable figure for the cost of electricity.

Under the bill, the utilities proposed rate schedule would be automatically suspended unless the utility requested a preliminary pro-

ceeding and was able to show that it was likely to prevail on the merits.

As to the lawfulness of that new rate in the proceeding, how difficult is the showing of "likely to prevail on merits"?

Mr. SEARLS. It is relatively difficult to see how you can present an adequate case on that without going into all the basic facts that are involved. The standard of "likely to prevail on the merits" of course is a vague one.

It is difficult to see just how that will be applied.

Mr. BROWN. Would this in fact—would it have the impact of requiring that you have to have two determinations to the FPC, one that you had prevailed on the merits and the other that you were likely to prevail on the merits in which essentially the same materials or data would be presented?

Mr. SEARLS. That is exactly the way I see it.

Mr. BROWN. Then in effect, you are doubling the caseload in this legislation with every case, is that not true?

Mr. SEARLS. I think that could substantially be true. I do believe at the time—that the time could be far better spent determining whether the utility can prevail rather than doing it in a two-step method such as this.

Mr. BROWN. Mr. Hughes, do you see it differently than that in terms of the FPC caseload?

Mr. HUGHES. Let me make one remark with respect to that. I think the underlying point that we are trying to get at is that the bottom line effect to the cities where we are experiencing a situation where we are paying more than the customers, we are attempting to show where that would be directly served by P.G. & E.

Mr. BROWN. I thought the problem here was the delay of decision-making by the Federal Power Commission that was causing these rate increase requests to be deferred for an extended period of time, and not decided so that the income was taken from the customer, whether it is a wholesaler or retailer, in anticipation of those decisions?

Mr. HUGHES. That is precisely correct but what we are saying is that under the current procedure, notwithstanding the workload of the FPC, what is happening now is that we are being subjected immediately of course to the higher rates which put us at a severe economic disadvantage with respect to the industrial customers and the residential customers for which, in effect, we are competing.

Mr. BROWN. My question is if you have two proceedings on the same rate increase, how would that speed up a decision and relieve your problems?

Mr. HUGHES. Let me refer the procedural question to Mr. McDiarmid.

Mr. McDIARMID. If I might, the procedure which this bill suggests is really rather analogous to one which the FPC used some time ago which was approved by the Supreme Court in a case called *FPC v. Tennessee Gas Transmission Co.*, in 1962.

In that case, the FPC, faced with a large number of gas transmission line price increases, decided that what it was going to do was to separate out some issues from those it was going to handle in the ordinary fashion, which is thought could be decided fairly rapidly.

On those, it was going to hold quick hearings because it did not take much and go to immediate decision on those matters. Primarily what that was addressed to was rate of return.

The Supreme Court said that was in the best tradition of regulatory action, that it avoided having the problem, which has been adverted to here, which would be to having refunds come some years later after they got through everything, and was a good and excellent means of accomplishing the regulatory ends.

That is not quite the same—

Mr. BROWN. I would not think it would be.

Mr. McDIARMID. It did, in fact, break the matter up into two separate procedures. What happened was—

Mr. BROWN. These are two procedures to deal with the same thing. That was two procedures to deal with different things so there is a distinct difference.

Mr. McDIARMID. Let me go a step further. One of the problems with FPC ratemaking is that there is not any real framework of decisional law within which to decide the case. That means in substance, that in every filing, almost everything is up for grabs.

Mr. BROWN. What about the 41 years of case law that the Federal Power Commission has been in existence? Is that not an appropriate guide? That seems to me to be sort of—

Mr. McDIARMID. There is not much left of that anymore. There is 41 years of case law—actually not that we can decide cases in the late 1930's, but there is a fair amount. However, in each case, the FPC has—these were decided as being “just reasonable in this case,” but for years and years there was a fairly well understood framework there.

In recent years, the FPC has been changing what everybody thought were the ground rules and opening up new areas, tax normalization, construction work in progress, the various elements of rate of return.

All things which had been thought to be reasonably well established and to provide a framework within which to decide a case have all been opened up to the extent that administrative law judges were allowed, I think properly under the circumstances, to allow most anything to be tried at considerable length under this standard of “just and reasonable.”

Companies will come in with new departures and filings which are a fairly major dollar effect. New departures such as construction work in progress, that was the one thing the Commission refused to allow as being contrary to regulations.

It is thinking of changing that too with new departures on tax normalization and treatment of that, that means that they will pretend to pay taxes for cost-of-service purposes when in fact they do not. There are a whole set of things of that nature which make it very different.

Mr. BROWN. I am not sure I understand what you are suggesting. Are you suggesting that they should not take these things into account or are you suggesting this is the reason the Federal Power Commission has seen its caseload go up from an average of 21 months to 34 months per case now?

Mr. McDIARMID. There are two reasons for that. One reason is that costs have been increasing. There is no question about that, just like

municipal costs or any other costs, electric costs, generation costs have increased and no one disputes that.

The other reason is that when companies come in with a filing, if you hired a lawyer and told him to "make a filing for me and do the best you can," the logical reaction or what you would expect and actually what happened is that the lawyer and the experts will look at what the FPC has done, look at what they think they may be able to get by with and they will file it and, as a practical matter, the FPC will suspend it for somewhere between 1 day and 5 months.

There have not been very many 5 month ones recently. It will go into effect and they will collect it. They will collect it subject to refund and subject to payment of interest at a rate which is now 9 percent but was 7 percent only recently.

That is still pretty cheap for a lot of companies so there is no real disincentive not to do that.

Mr. BROWN. It is the same kind of incentive, I gather, that applies to the municipality when its costs of garbage collection goes up, that as the mayor pointed out, that they want to raise the fees within 30 days or so to catch up with the increased cost and for the same reason, I assume, because do not municipalities also have bond ratings, do they not?

Mr. McDIARMID. Yes.

Mr. BROWN. One of the reasons we are doing this would be so that you can borrow money for municipal exemption and provide the services to additional citizens that you would have in your community. Would that not be the case?

Is that not unlike the problem Mr. Searls has with his company? I sort of remember that New York did not raise its charges and its bond rating, to put it in the vernacular, "went to hell." They could not get municipal financing for the needed modernization improvements in the city of New York which has been in some difficulty as a result and has been looking for money wherever they can find it, including the Federal Government which is in so much better shape than everybody else.

Is that about where we are on all of these things?

Mr. HUGHES. I think your point is well taken, but if you examine the effect of what is happening to us with respect to these rate increases about which we are talking today, we find ourselves in a position of suffering a very severe financial hardship, a very severe effect on our bond rating, our ability to borrow because we are being asked to buy power at a higher price and attempt to resell it.

It is just mathematically impossible to attempt to resell it to an industrial customer within our service area when we have to buy that power at a price greater than P.G. & E. would sell the power to that industrial customer directly.

We have all of the problems of our distribution system, our line losses, our collections, accounting, the whole thing, to take on top of that. I think the question of magnitude is so overriding in this situation with respect to our financial capability, this is the reason that I stress the fact that our literal survival is at stake here.

Certainly we are not worried about a plus or minus on our bond rating. It is a question of being there tomorrow to even make those payments.

Mr. BROWN. I see the Chair is about to drop the gavel but let me conclude with this thought. That is, it seems to me what you have just described is a rate problem of wholesale rates versus retail rates rather than one that would be addressed by this legislation.

This legislation, it seems to me, frustrates the policy for the utility which the municipality would consider to be bad business for them if they were asked to pursue the same policy, is that not correct?

Mr. HUGHES. I do not agree with you at all.

Mr. BROWN. Will you be willing then to defer your increased utility charges if garbage pick up is a utility service for 18 months or pending a final determination of whether or not that is a legitimate cost?

You have told me before that you would not do that. You try to adjust your rates within 30 days.

Mr. HUGHES. That is right because we would attempt to hold our hearings expeditiously and get them out, so the problem with which we are involved—

Mr. BROWN. You do not control the hearings, that is the Federal Power Commission. The problem is maybe we do not want to deny the money then to P.G. & E. any more than we want to deny it to the municipality.

We want to figure out a way to get the Federal Power Commission to hold those hearings more promptly and make the decision more promptly rather than add to their decisionmaking load which it seems to me this legislation can only do.

Mr. HUGHES. I really do not see that would necessarily follow. I think what we are trying to do is bring the two regulatory processes into an accord so that the wholesale customers are not being left out in the cold during this dissimilarity of periods.

If both regulatory agencies acted in the same manner, we would not have the problem that we are discussing with you today.

Mr. BROWN. If you had a problem of differential rates between their industrial customers and your rate, that gave the advantage to P.G. & E. serving directly industrial customers, you would still complain, would you not?

Mr. HUGHES. I do not think that is part of the problem. I think what we are saying is that it can be definitely shown that service to a wholesale customer is less expensive to P.G. & E. than service to a retail industrial customer just because of the additional ingredients that go into the service of that retail customer.

When we find ourselves in a wholesale condition of paying more than we are being able to charge the respective industrial customer, we have no place to go.

Mr. BROWN. Maybe you could go to the California State PUC, would that be helpful? Would it be quicker?

Mr. HUGHES. We are not, of course, under their jurisdiction at this point in time.

Mr. BROWN. Maybe that is what we ought to do. Maybe that would speed it up. How long does it take the California State PUC to make its determination on rate cases, do you know?

Mr. HUGHES. Based on the last one, it took them approximately 18 months.

Mr. SEARLS. That is correct.

Mr. BROWN. That is better than 34 months. Maybe we ought to consider doing that and getting the Federal Power Commission out of the business because they obviously do not have the bureaucratic know-how to reduce the time from 34 months to 18 months.

I have no further questions.

Mr. SHARP [presiding]. The time of the gentleman has expired. Gentlemen, we appreciate your cooperation and your testimony. We will now hear from our second panel.

Mr. HUGHES. Thank you, Mr. Chairman.

Mr. SHARP. Our second panel will be composed of Mr. Stan Hill, director of power supply and planning at the Oglethorpe Electric Membership Corporation in Decatur, Ga., and Mr. Harold McKenzie, Jr., executive vice president, Georgia Power Co., Atlanta, Ga.

Mr. BROWN. If I may interrupt, and ask that a study by the ACIR Advisory Commission on Intergovernmental Relations about the increase in municipal costs entitled, "Trends in Local Federalism" which does relate to the cost of increased municipal services other than electric rates be put into the record at the point I made reference to the increased service costs of local government [see p. 34].

Mr. SHARP. Without objection, the study will be made available to all members of the subcommittee and may be found in the subcommittee files.

Gentlemen, if you will identify yourselves for the record. Mr. Hill and Mr. McKenzie, if you wish to we will of course make your written statements a part of the record and if you wish to summarize, that would be fine.

STATEMENTS OF G. STANLEY HILL, DIRECTOR, POWER SUPPLY AND PLANNING, OGLETHORPE ELECTRIC MEMBERSHIP CORP., ACCOMPANIED BY ROBERT M. GROSS, ENGINEERING CONSULTANT, AND REUBEN GOLDBERG, COUNSEL; AND HAROLD C. MCKENZIE, JR., EXECUTIVE VICE PRESIDENT, GEORGIA POWER CO.

Mr. HILL. My name is G. Stanley Hill. I am a resident of the State of Georgia. I am employed by Oglethorpe Electric Membership Corp. as director of power supply and planning.

Our offices are located in the city of Decatur, Ga. I am accompanied today by Mr. Robert M. Gross, engineering consultant, Southern Engineering Co. of Georgia and Mr. Reuben Goldberg of Goldberg, Fieldman & Hjelmfelt, a Washington law firm.

Oglethorpe was founded on August 8, 1974, as a nonprofit corporation for the purpose of providing both generation and transmission of electric power and energy to the consumer-owned electric membership corporations of Georgia.

Oglethorpe is the bulk power supplier to 39 such electric membership corporations operating in the State of Georgia who serve some 500,000 consumer-owned members.

Oglethorpe is presently purchasing about 90 percent of its power and energy requirements from Georgia Power Co. and through ownership participation in generating units is providing about 10 percent of its power and energy requirements.

By early in the 1990's, Oglethorpe expects to have purchased and constructed generating facilities sufficient to supply all of its power and energy requirements.

Oglethorpe owns and operates transmission facilities with sufficient capacity to carry all of its present power and energy requirements and will continue to make the necessary investments in order to carry the future loads.

Since January 1, 1975, we have committed and have arranged for an investment of approximately \$1.5 billion in generation and transmission facilities. This investment will not take care of all of the increased loads projected for the future, however. Oglethorpe intends to shoulder the burden of the investment necessary to meet its growing loads itself and to acquire and construct such generating capacity and transmission capacity as are necessary to make Oglethorpe self-sufficient.

All this is being accomplished without imposing any part of the burden on Georgia Power Co. In other words, Georgia Power Co. is not being asked to assume the cost and expense of meeting our increasing requirements.

In fact, our program will better enable Georgia Power Co. to meet its own load growth with a smaller level of investment in new capacity and at a lower unit cost because the existing capacity that becomes available to Georgia Power Co. by the reduction in our purchases from Georgia Power is lower cost capacity.

I am here this afternoon on behalf of Oglethorpe and its 39 membership corporations in support of H.R. 15544, a bill to amend sections 202 and 205 of the Federal Power Act. Oglethorpe and its 39 membership corporations support the amendments as in the public interest.

The principal objectives of the amendments are to make the administrative process before the Federal Power Commission more responsive to the needs of the consumers while at the same time protecting the legitimate interests of the public utilities regulated by the Federal Power Commission.

The consumers are to be protected against being required to pay exorbitant rates for long periods of time before the Commission finally gets around to reducing them to just and reasonable levels. This is to be done by providing that the filed increase in rates is not to become effective until the Commission has conducted a full investigation of the lawfulness of the rate increase and has issued a determination.

History of rate proceedings before the Commission discloses that the rate increases as finally approved by the Commission are usually substantially lower than the rate increases as filed by the utility. There are attached to my statement several exhibits which show the pertinent facts relating to the rate increases filed by Georgia Power Co. that affect the cost of power to Oglethorpe and its members. A review of the exhibits by this committee will disclose that one rate increase is filed on top of another increase, that the proceedings remain pending for an interminable period of time, and that when there finally is a conclusion of a proceeding the rates approved are substantially less than the rates filed by the power company.

It is true, of course, that the substantially higher rates that the consumers have been required to pay are subject to refund, but as the Supreme Court of the United States has observed, the protection of refunds is illusory.

We might also add from the standpoint of the wholesale payer, the same can be applied. Refunds that have been received by Oglethorpe in the past several years have been immediately followed by a new wholesale rate increase and thus have been wiped out completely.

For one thing, by the time a decision is made and refunds are ordered, many of the ratepayers are no longer on the system and never get the refunds. But more important than that is the impact on the wholesale consumer. The excessive rates which the wholesale consumer is forced to pay impede that consumer in competing for customers particularly industrial customers which are desirable and often essential customers for an economically viable electric operation.

To illustrate: When Georgia Power Co. files for an increase in rates and places that increase into effect, Oglethorpe must pass on these increased costs to its membership corporations.

They, in turn, must increase their rates. These membership corporations compete for industrial loads with Georgia Power and other distributors.

Their ability to compete is affected by these excessive increases. Once the industrial customer is lost to a competitor, that customer is lost for good.

The refunds that come later, when rates are reduced to just and reasonable levels that would have enabled our membership corporation to acquire the industrial load, are of little consolation.

I would like to state at this point that we feel we have worked out some joint ventures with Georgia Power Co. that will benefit mutually both Georgia Power Co. and the rural electrics of Georgia.

However, if the rate increases continue to be filed as they have in the past several years and if we continue to experience the long lag time before decisions are made by FPC, we may not last to really fully enjoy the economics that can be derived.

From the viewpoint of the utility, the bill provides a procedure that enables the utility to secure an interim increase, pending final decision, upon an appropriate submission to the Commission showing that the utility is likely to prevail on the merits of the lawfulness of any part of the rate schedule.

I should like to make the point that the administrative lag that has developed before the Power Commission in the disposition of rate cases imposes a significantly greater burden on the wholesale customers than upon the utility supplier. This is so because the wholesale business subject to the Power Commission's jurisdiction, revenue-wise, represents a minor part of the utility's business. From the viewpoint of the wholesale customer, however, the purchase of power from the supplier represents the single, largest element of the cost.

To explain, Georgia Power Co. is the largest wholesaler in the country; yet the wholesale business is only about 20 percent of its total business. To Oglethorpe and its 39 members, the impact is about 90 percent. For many utilities, the wholesale business is less than 5 percent.

With respect to the amendments to section 202(c), we think that subparagraph (2) of section 3(a) of the bill does nothing more than make express the authority the Commission has under section 205, as made clear by the decision of the Supreme Court of the United States construing the companion section 4 of the Natural Gas Act in *FPC v. Louisiana Power and Light Co.*, but we think it desirable that any

question about such authority be put to rest through the proposed amendment.

As for the amendment proposed in subparagraph (3) of section 3(a) of the bill, it is important to say that in any emergency the Commission have available the full arsenal of remedies there outlined.

Oglethorpe Electric appreciates the opportunity to appear before this subcommittee and to express our views on H.R. 15544. Oglethorpe would be pleased to provide the subcommittee with any additional information which we have available.

Thank you, Mr. Chairman.

[The exhibits referred to follow:]

[Exhibit No. 1]

GEORGIA POWER COMPANY

[WR (Wholesale Rate)-6 Rate Case (FPC Docket No. E-7548)]

Filing date: May 26, 1970.

12-month total wholesale revenue increase: \$12.2 million (exclusive of fuel clause).

Percentage increase: 34 percent (exclusive of fuel clause) 56 percent (including fuel clause).

¹Suspension: 5 months.

Effective Subject to Refund: January 1, 1971.

Hearings: February 2, 1971, intermittently through January 13, 1972.

Examiner's Initial decision: August 3, 1972.

Appeals to full Commission: By company and intervenors.

Status: Final order approving settlement, June 17, 1975.

Refunds: Approximately \$6 million (cooperatives and municipalities).

— [Exhibit No. 2]

GEORGIA POWER COMPANY

[WR (Wholesale Rate)-7 Rate Case (FPC Docket No. E-8170)]

Filing date: June 12, 1973.

12-month total wholesale revenue increase: \$17.5 million.

Percentage increase: 25.6 percent.

Suspension: 5 months.

Effective Subject to Refund: December 12, 1973.

Hearings: Waived by the parties so that settlement negotiations could be pursued.

¹Settlement Agreement filed with Commission: May 8, 1974.

Final Order approving settlement: June 17, 1975.

Note: Settlement covered both R-6 and WR-7.

Refunds from WR-6: \$6 million (cooperatives and municipalities).

Reduction in WR-7: \$14.8 million (cooperatives and municipalities), including agreement by Georgia Power Company not to file another wholesale rate increase to be effective prior to April 1, 1975.

[Exhibit No. 3]

GEORGIA POWER COMPANY

[WR (Wholesale Rate)—8 Rate Case (FPC Docket No. E-9091)]

Filing Date: October 31, 1974.

12-month total wholesale revenue increase: \$43 million.

Percentage increase: 36 percent.

Suspension: 4 months (to end of moratorium agreed to in Settlement of WR-6 and WR-7).

Effective Subject to Refund : April 1, 1975.
 Hearings: August 31, 1976 (to be completed in November, 1976).
 Reduction ordered because of disallowing of Construction Work in Progress :
 \$11.3 million (cooperatives and municipalities).

[Exhibit No. 4]

GEORGIA POWER COMPANY

[PR (Partial Requirements Wholesale Service)—1 Rate Case (FPC Docket No. E-9521) (Applicable only to Oglethorpe)]

Filing Date : June 30, 1975.
 12-month revenue increase : \$1.4 million.
 Percentage increase : 1 percent.
 Suspension : None.
 Effective Subject to Refund : As of July 1, 1975.
 Hearings : to begin November 18, 1976.
 Reduction ordered because of disallowance of Construction Work in Progress :
 \$9.3 million (cooperatives only).
 A separate issue is involved in this docket with respect to Rate Schedule WR-5. It is the position of Oglethorpe that the rates provided in WR-5 are not subject to unilateral change by Georgia Power until the term of the schedule has expired. The parties agreed to an expedited, separate determination of the issue and the Commission granted a motion for an expedited decision. Briefs have been filed and no decision has yet been rendered despite the passage of 11 months. The facts are :
 Amount in controversy : \$2.5 million.
 Motion for Expedited Decision Granted : October 15, 1975.
 Final briefs filed : November 28, 1975.
 "Expedited" Decision Rendered : Still pending 11 months after promised by Commission.

[Exhibit No. 5]

GEORGIA POWER COMPANY

[PR (Partial Requirements Wholesale Service)—2 Rate Case (FPC Docket No. ER76-587) (figures applicable only to Oglethorpe)]

Filing Date : March 31, 1976.
 12-month revenue increase : \$17.9 million.
 Percent increase : 15.5 percent.
 Suspension : 3 months.
 Effective Subject to Refund : August 1, 1976.
 Hearings : Not yet calendered.

STATEMENT OF HAROLD C. MCKENZIE

MR. MCKENZIE. I am Harold C. McKenzie, executive vice president, Georgia Power Co. As Mr. Hill pointed out, over 20 percent of our sales are wholesale to the Electric Membership Corp., municipal electric distributors of Georgia.

This makes us the utility with the largest amount of wholesale business of any company within the jurisdiction of the Federal Power Commission. For this reason, we are vitally concerned with any legislation which affects our regulatory climate or the jurisdiction of that Commission.

For that reason, we sincerely appreciate this opportunity to comment on the proposed legislation. I would like to speak to two aspects of H.R. 15544 that being the proposed amendments to section 205(e) of the Federal Power Act and section 202(c).

Let me begin by assuring the committee that the Georgia Power Co. does not like the inordinate delays that it encounters at the Federal Power Commission than do our wholesale customers. It is difficult enough for us to attract the capital needed to carry on this construction program, even though we now have partners in that effort.

As it is, if large amounts of revenue had to be collected subject to refund, that does not help this process at all. I might also say in response to a comment by Mr. Hill that there have been times, I was not sure if my company was going to survive to participate in this partnership.

As recently as the last part of 1974 to early 1975, we were literally on the brink of insolvency. Had it not been for very prompt emergency action by the Georgia Public Service Commission we would have been insolvent.

Let me say that section 205(e) of the Federal Power Act is not the cause of the regulatory lag encountered by the Federal Power Commission. Section 93207-1 of the Georgia code contains a file and suspend procedure modeled after the Federal Power Act.

The Georgia Public Service Commission has developed the ability to handle cases expeditiously, the Federal Power Commission has not. In two recent cases involving my company, one retail and the other wholesale, I think very well illustrate this point.

In October 1974, the company filed rate schedule WR-8 with the Federal Power Commission. In December 1974, the company filed a petition for a permanent retail rate relief with the Georgia Public Service Commission.

The Public Service Commission decided its case in April 1975. The Federal Power Commission has not even finished taking evidence in the WR-8 case, although almost 23 months have passed since those rates were tendered for filing.

At this particular juncture, I would like to add one additional comment that Mr. Hill referred to earlier cases before the Federal Power Commission and has attached to his statement an addendum of descriptions of those earlier cases which I will not take issue with.

The WR-6 and WR-7 case was filed respectively in 1970 and 1973. The conclusion of those cases was not reached by order of the Federal Power Commission until the parties themselves settled those cases.

An order was entered in 1975 finally concluding a case that was 5 years old and the other was only 2 years old by bringing a settlement.

The inspiration is on the Georgia Power Co. just as on our customers to have those rates finally fixed and determined—to have them count toward recovery requirements where we have to earn twice the interest on bonds outstanding plus any new bonds we may have to sell.

We were only able to meet that test for a significant period of time. That has a bearing on settlement of cases and that has a bearing on the amount of money that was refunded then.

The WR-8 case is illustrative of some of the sources and consequences of regulatory lag. The company filed that case when it was in serious financial circumstances; indeed, we had to borrow the money to pay the filing fee. The documentation submitted in support of the rate increase weighed 26 pounds, one copy, single spaced, printed on both sides of the paper. We have since supplied an additional 7,000

pages of information in response to various data requests from the Federal Power Commission staff and intervenors.

Additionally, because of the passage of time, the company was forced to completely update the filing on three separate occasions. Each of these updates showed the deterioration of return that the company was experiencing under rate schedule WR-8.

The hearings in that case were repeatedly delayed, each time at the request of either the Federal Power Commission staff or the intervenors. Hearings finally began on August 31 this year, at which time the company presented its direct case; the hearings were recessed at the end of the week until November 1.

While the WR-8 case was pending, the costs of serving our wholesale customers continued to increase. As a result of the WR-8 rates—which were designed to produce an overall rate of return of 10.03 percent—yielded significantly less than this. Based on actual 1975 operating experience, the return from the municipal customers, which were the only customers served under the rate after June 30, 1975, yielded a return on rate base of 6.52 percent and return on equity of our capital of only 3.62 percent. Had this rate stayed in effect during 1976, the return on rate base from the municipal customers would have further deteriorated to 5.56 percent and return on equity would have been 0.26 percent.

The only protection now afforded the company against the deteriorating return is to make a completely new rate filing with new tariffs. Rates of return such as those experienced in 1975 required that we file for another rate increase, WR-9, which we did on March 1, 1976. That filing was greeted with something approaching outrage by our municipal customers, who sent a large delegation to Washington to protest this so-called pancaking of rate increases.

I submit to you that Georgia Power has no choice but to request a rate increase from those customers, even though the WR-8 rates had been in effect only 11 months. Each class of customer should bear its fair share of the costs of providing electricity.

Obviously, if one class of customer is charged rates which yield only a 3.62 percent return on equity, that class is not bearing its fair share; and if the utility is precluded by law from raising its rates to one class of customer for at least 18 months, that class of customer is receiving a subsidy which I find impossible to justify.

Our employees, our suppliers, and the people who lend us the capital we need for our construction program must all be paid with cash. Our revenues must keep pace with the rising costs of providing service. Those costs are not subject to an 18-month moratorium. We all know how quickly and unexpectedly inflation or recession, or a combination of the two, can strike the economy. It is essential that utilities be able to respond immediately whenever the economic situation necessitates an increase in rates.

It is no answer to this argument that H.R. 15544 would permit a utility to file for increased rates before the expiration of 18 months if the Commission finds that it would be confiscatory not to permit the increased rates to be filed. I believe that any rate which is unreasonably low is confiscatory, almost by definition. If I am correct, then the "exception" eliminates the 18-month moratorium, since no one

files for a rate increase unless the present rates are, or soon will be, inadequate.

On the other hand, if I am incorrect, the retail class will inevitably subsidize the wholesale class. I don't know whether the Federal Power Commission—or the courts—would consider a 3.62 percentage rate of return on equity to be confiscatory, but I certainly do.

I cannot emphasize enough the need for Georgia Power to be able to raise its rates promptly whenever its earnings begin to erode. During the years of 1976–80 Georgia Power will spend over \$3 billion on new construction. This \$3 billion figure does not include over \$1,500 million which our cooperative and municipal partners will spend on their shares of new generating plant being jointly owned and constructed by them and Georgia Power.

During this 5-year period, Georgia Power must raise approximately \$1,800 million in the capital markets. In order to raise that amount of money, it is absolutely essential that the company earn a reasonable rate of return on both the wholesale and retail classes of customer. The capital we must raise is the absolute minimum which we need in order to meet the future demands of our customers. If these demands are not met, the economy of Georgia will suffer. I am not talking about Georgia Power's earnings, I am talking about jobs for the people of Georgia.

The wholesale class of customer looks at a rate increase from a far different perspective. The fact that between 1970 and 1975 Georgia Power's average retail rate per kilowatt-hour increased 25 percent more than the average wholesale rate has not convinced many of our wholesale customers that we are not using regulatory lag to take unfair advantage of them. I consider this misconception to be an unfortunate fact of life and one that is in everyone's interest to dispell.

The "preliminary proceeding" permitted by H.R. 15544 is not the solution. The Commission already holds a preliminary proceeding—as that term is defined in the bill—every time it decides how long to suspend a rate increase.

H.R. 15544 only delays that decision by 60 days and authorizes the Federal Power Commission, in effect, to reject part of the proposed increase. That authority concerns me very much.

The bill requires the utility to make refunds if the rates prescribed after the preliminary proceeding are ultimately found to be too high, but there is no corresponding protection afforded to the utility if the preliminary rates are ultimately found to be too low.

In other words, the bill would permit the Federal Power Commission to deprive a utility of revenues to which it is statutorily and constitutionally entitled without affording the utility the full hearing required by due process.

Interim proceedings do not cure regulatory lag. Rather, they assume that the problem is incurable and attempt to make the best of an unsatisfactory situation. Yet, by placing one more burden on the Federal Power Commission, they only exacerbate the problem.

I believe that the problem can be cured but not by this bill. Given sufficient imagination by the Federal Power Commission and funding by the Congress, I see no reason why the problems of regulatory lag in this area cannot be eliminated.

I would now like to comment briefly on the proposed amendment to section 202(c) of the Federal Power Act which authorizes the Federal Power Commission to order a utility to curtail service to its retail customers in the event that there is a shortage of electricity.

My company takes considerable pride in the steps which it has taken to help its wholesale customers eventually become self-sufficient in bulk power generation and transmission. We have already sold Oglethorpe EMC a 30-percent interest in the Hatch Nuclear Plant and a 30-percent interest in the Plant Wansley, a two-unit coal-fired plant.

We have also signed an agreement with Oglethorpe to sell it a 30-percent interest in the Vogtle Nuclear Plant. In addition, we have signed agreements with the Municipal Electric Authority of Georgia, to sell 17.7-percent interest in the Hatch and Vogt facilities and a 10-percent interest in Plant Wansley and Plant Scherer, a 4-unit coal-fired plant.

MEAG has an option to purchase an additional interest in Plants Wansley and Scherer. As a result of these transactions, Oglethorpe and MEAG will own an aggregate of 4,397 megawatt of capacity. They cannot be "cutoff" from this capacity, because they own it.

Georgia Power has also sold to Oglethorpe, and will sell to MEAG, transmission facilities, thereby permitting Oglethorpe and MEAG to shop around for bulk power for their own use from any bulk power supplier interconnected with Georgia Power.

I cannot speak for utilities in other parts of the country, but I do not foresee an energy shortage in the State of Georgia during the period specified by the bill—that is, before March 31, 1978.

However, it has been my experience that if an agency is given temporary authority, that temporary authority eventually becomes permanent.

My fear is that a permanent authority of the kind proposed by H.R. 15544 could jeopardize the new relationship between Georgia Power and Oglethorpe and MEAG. We in Georgia have chosen through joint ventures to provide for the future electrical needs of our State.

I do not want to see the Congress pass legislation, however well-intended that legislation may be, which undermines the long-run solution, which we have chosen, to the problem of providing electricity for the people of Georgia.

Mr. SHARP. Thank you. I wondered if, Mr. Hill, you would want to briefly respond to those remarks?

Mr. HILL. I do have a couple of points I would like to make. First of all, Mr. McKenzie mentioned the insolvency problem of the near insolvency problem that came about in late 1974 and early 1975 and it is true that they did get any emergency retail rate increase.

However, it was also at this time that Oglethorpe injected about \$200 million into the Georgia Power Co. system through the purchase of facilities. I think this also had a great deal to do with aiding them to get back to a sound financial position.

Mr. MCKENZIE. I will concede that point, Mr. Chairman. It played a very vital role there.

Mr. HILL. Once again, the prime concern at which we are looking is the long lag time before FPC rules on a rate case. In one of the exhibits

attached to my statement, you will find that we presently have three rate cases before the Federal Power Commission.

The first was filed by Georgia Power Co. in October of 1974 and as Mr. McKenzie stated, that case just came to hearing last week. A good deal of that delay dealt with actually three updates of the data by Georgia Power Co.

Each time they updated this information, we of course objected. We did not prevail so this has extended the time. We now have to face our consumers, they know that we have now had three rate increases imposed upon us, none of which are solved or have had a decision rendered.

We have to answer the question why can this continue? How can these long lag times continue when they must foot the bill during this period of time?

This is of vital concern. We feel that if something is not done about it, it will cause a bad situation among ratepayers. It will set up this question concerning the anticompetitive aspects of retail and industrial considerations.

Mr. McKENZIE. I said in my testimony and I cannot reiterate more strongly that I understand and sympathize with Mr. Hill's problem. Like Mayor Hughes, I get these irrate phone calls at home at night, too.

We have been just as aggressive before the Georgia commission as we have been before the Federal Power Commission trying to keep our rates in tune with our costs. The WR-8 case contrary to what might be the impression that we were overcollecting and that there will be some vast refunds at some point down the line, the position of the FPC staff has been filed indicating in their opinion it would take an additional \$4,300 million in revenue per year to achieve a fair rate of return.

In the PR-1 case, the second one involving OEMC, the deficit, is on the order of \$6,500,000, so quite to the contrary, we are undercollecting in those two filings. That is the reason we have had to file subsequent cases following both of those and attempting to catchup.

As I say, we do not like the delay. We need hard earnings that count, that show up on a balance sheet and help us sell bonds.

Mr. HILL. We do not want to try the rate cases here but I think we have placed into testimony and evidence submissions that would disprove some of this. However, Mr. Chairman, if you would allow our legal counsel, Mr. Goldberg, he has some legal points he would like to make.

Mr. SHARP. If you would briefly, sir.

Mr. GOLDBERG. To begin with the Georgia Power Co., Mr. McKenzie, he states that the Commission already holds a preliminary proceeding as that term defined in the proposed bill.

Every time it decides how long to suspend the rate increase—that subject has already been touched on by the previous witnesses but I think it is worth emphasizing, that the Commission has usually acted a very limited period of time more often within 30 days.

In that 30 days a memorandum has to be prepared and submitted to the Commission and that matter has to be on the Commission's agenda for the meeting by a certain time, usually a week in advance, with the result that there is less than 30 days of very limited amount of time

that the staff of the Federal Power Commission has to review the filing.

All of the Power Commission staff can do in that time is merely find out whether all of the regulations of the Commission have been complied with and give the filing a most cursory analysis.

This is confirmed by the fact that when the Commission does issue its order suspending the rate increase, and initiating an investigation, voluminous requests for information are made by the staff to the company in order to determine whether the rates are just and reasonable.

I think it is important to emphasize here because the impression seems to be conveyed that what the bill proposes is unique. The bill does not propose any procedure that is not already in effect in many States.

In many States, as you have already heard, when the filing is made, it may not be made effective, the increase in rates does not become effective until after a hearing and a final order by the Commission is issued.

Moreover, I might point out that the proposal of the bill produces some equality that does not exist at the present time. The bill—the act at the present time permits the utility filing an increase to secure that increase subject to refund at the end of a maximum period of suspension of 5 months.

If they award a rate reduction in order, and I know nowadays it is silly to talk about rate reduction, but that situation has existed in the past and hopefully it may exist again in the future.

Under the Federal Power Act, section 206, the rate decrease is not effective until after the hearing and final order issued by the Commission. This bill really brings about some equality that has not existed and does not exist today.

As for the preliminary procedure that the bill proposes, it is not significantly different from procedure that exists in other States for the granting of interim or emergency relief. It is not unique in that respect either.

Bear in mind that the function and purpose of the suspension period in the act was to afford the Federal Power Commission a reasonable opportunity to determine whether the rate increase was reasonable before it became effective at all.

It was thought at the time the bill was enacted in 1935 that 5 months was sufficient for that purpose, as things have turned out, 5 months is not sufficient for that purpose and we know there are suspension periods in effect in many of the States for as long as 12 months and perhaps some of them are even longer.

The Federal Power Commission, instead of taking advantage of the full 5 months, has instead been suspending for 1 day or 1 month which makes the opportunity that Congress intended the Commission have impossible to achieve.

I think the bill is trying to redress a situation and doing so appropriately.

Mr. McKENZIE. I would say to my knowledge the last count of 38 or 40 States, they did have a file or suspend order of approval to handle direct filings and the time of suspension period did vary significantly from 60 days to longer than 12 months, I am sure.

I would like to point out that when we file a case in the Federal Power Commission, we are obligated to file our entire case, all the supporting evidence which we intend to submit at the hearing must be filed originally so that the Commission has available to it and its staff, the entire case of the applicant utility.

I would also like to point out that in the filing of our recent rate cases, the Commission rejected the filing because we included construction work in progress in the rate base on the basis that the Commission would like to wait until it had ruled in its general rulemaking on that subject.

There obviously was a close scrutiny of those two filings and my only point is that they do have our whole case available, they have time to look at it, the extent of the "preliminary proceeding," I have no way of knowing.

I would ask this question, if the gentleman would be willing in the fairness and equity adjustment to a provision in the bill which required the wholesale customers to pay any amount in arrears found due that had not been collected because of this preliminary proceeding?

In other words, if the Commission preliminarily established the rate too low and the utility was entitled to a higher level of revenue, certainly equity and justice would indicate a need for the utility to collect that retrospectively.

Mr. SHARP. I am not sure we got your response.

Mr. GOLDBERG. I said the suggestion made by Mr. McKenzie I think would subvert the whole purpose of the bill.

Mr. SHARP. The gentleman from Connecticut is recognized for 5 minutes.

Mr. MOFFETT. Thank you, Mr. Chairman. Mr. McKenzie if I might direct a question to you.

You pointed out in your testimony that the capital which must be raised is the absolute minimum needed in order to meet the future demands of customers. That is according to your projections, I assume?

Mr. MCKENZIE. It is according to our projections. We have attempted to become more sophisticated. We have retained outside experts to our econometric model, to look at the future of the State of Georgia.

We have used two universities in Georgia and a national concern. As a matter of fact, the University of Georgia's econometric model, which is the only one near completion, projects a little higher demand than we do internally but that statement is a little more complex than that because we have designed our system with a much lower level of reserve in the eighties than anything would indicate is a proper level of reserves.

That is, the excess capacity to take care of machinery breakdown and that kind of thing.

Mr. MOFFETT. Have you instituted peakload pricing?

Mr. MCKENZIE. With three rate experiments underway in three cities in Georgia right now, working with the Georgia commission, utilizing three different approaches to it, we are analyzing those results to see which one may be the most effective, particularly in view of the metering cost involved and the customer response.

Mr. MOFFETT. Is this part of the FEA proposal?

Mr. McKENZIE. We are doing this on our own. I might say we have also for some 5 years now—are somewhat pioneers in the industry and a summer-winter rate differential in—it is the summer air-conditioning loads that really causes our problems.

Mr. MOFFETT. Do you go beyond the residential classification with the peakload pricing experiment?

Mr. McKENZIE. Our industrial influx commercial rates are almost completely peakload pricing. We have loaded up the demand charge and cut the energy charge attempting to encourage offpeak use in every way we can to give an economic reward for it.

Mr. MOFFETT. I am wondering what change might take place in your projections and in future demand if, in fact, peakload pricing were adopted across the board in Georgia. How that might affect your capital data and how that might affect your Federal Power Commission?

Mr. McKENZIE. It is very much a part of this experiment and both from the experiment and the econometric model we are trying to build into this ability to test responses to rate level to get a handle for it, yes.

It could, but at this point, we really do not know.

Mr. MOFFETT. From your testimony, I take it you object to H.R. 15544, the bill before us?

Mr. McKENZIE. Yes.

Mr. MOFFETT. Do you also object on the grounds that it is too much of a Federal intrusion?

Mr. McKENZIE. No; well, I am somewhat concerned as I said about an amendment to 202(c) that we have worked out an arrangement which this could complicate and make more difficult if it were adopted, but my objections are strictly to Federal regulations which already exists. That is my point.

Mr. MOFFETT. Would you object to the type of bill that this subcommittee was considering some months ago that would have rate reform guidelines imposed on the State commissions, with some flexibility of course?

Mr. McKENZIE. I and my company both are on record as in opposition to that legislation. I think we have very different problems for instance than in Vermont from what we have in Georgia.

I think the legislation deals with the subject which is very heavy on the mind of every committee and regulatory commission in the country today. Things are going forward, we are learning, we are in the process of finding out what we can do, and how people will respond.

I think it is premature to try to lock into any concepts. I think if we try to lock in on a national level we could create real problems because of the seasonal variations, the differences in peoples' use characteristics in different parts of the country.

It is a very different problem in Vermont where your main energy consumption is in the wintertime and in Georgia and in the southeast, it is in summer because we are trying to deal with a very hot climate.

That is one instance.

Mr. MOFFETT. You feel it should be left to the States?

Mr. McKENZIE. Definitely, yes.

Mr. MOFFETT. Do you feel the same way about the President's proposals to mandate construction work in progress as part of the rate base?

Mr. McKENZIE. No. I do not. If we are not able to earn on our investment of construction, we very simply are not going to be able to build the plants. I have said frequently in Georgia that the greatest thing that could happen to our company is that we would never have to build another plant.

If we could serve with the plants we have, if we could design our rates to help people learn to use the energy more economically, we would have only to contend with inflation and its effect on our general costs.

Mr. BROWN. If the gentleman will yield?

Mr. MOFFETT. I have not decided whether to yield or not. I hope that what you are saying is that the investor-run utilities can survive in a period of limited growth rather than relying on the tremendous amount of growth?

Mr. McKENZIE. We have long since ceased to rely on growth. We have had no growth in this area in our company for a long time. We have not promoted the use of electricity in 6 years.

We have attempted in every way we can to help our customers learn to use it more wisely and we are doing that in every way that we can.

Mr. MOFFETT. Thank you.

Mr. MAGUIRE [presiding]. Thank you. The gentlemen from Ohio?

Mr. BROWN. Thank you. Mr. McKenzie, if your experiments on the peakload pricing do not work out and you plan your growth as if they did work out, what would be the impact?

Mr. McKENZIE. There might be a very serious shortage of electricity in Georgia in the mid-1980's or possibly in the early eighties.

Mr. BROWN. Let me ask Mr. Hill, when you receive a rate increase, do you pass it along to your customers immediately or what is your practice?

Mr. HILL. It depends on the size of the rate increase. For instance, the rate increase filed on July 1, 1975, which is known as PR-1, was a very small increase. We did not pass that on to our wholesale or member consumers.

We have recently had the PR-2 rate increase filed which represents approximately a 16 percent, 15½ percent or 16 percent increase to us and we have now passed those increases on to our 39 member systems.

Mr. BROWN. Your first increase was how much?

Mr. HILL. The first increase which came on July 1, 1975, was roughly somewhere between 1 and 5 percent.

Mr. BROWN. You did not pass that on?

Mr. HILL. We did not.

Mr. BROWN. Passing the 16 percent on in what timelag? What is the timelag?

Mr. HILL. The second increase, which was filed earlier this year, went into effect on us on August 1. Our new rate went into effect on our member systems on September 1, 1 month after the second rate increase and of course we held off from the first one for about 15 to 18 months.

Mr. BROWN. That was a 1- to 5-percent increase?

Mr. HILL. Yes.

Mr. BROWN. Was that passed on regularly by the Georgia Public Utilities Commission?

Mr. HILL. No, sir; it is not.

Mr. BROWN. Would you be willing to hold up for 18 months to pass on your 16-percent rate increase?

Mr. HILL. It would depend on the nature of the increase, how large the increase was.

Mr. BROWN. Sixteen-percent increase.

Mr. HILL. On the 16-percent increase, we could not survive if we could not pass it on at this point in time.

Mr. BROWN. But you think Georgia Power can?

Mr. HILL. It depends on what is the lawful and reasonable rate increase. My testimony is directed at the fact—

Mr. BROWN. I do not think that is covered in the legislation, it is just a flat out prohibition from passing it on for 18 months as I understand in the legislation before us.

Mr. HILL. Is this—this is true.

Mr. BROWN. Do you think that is sound?

Mr. HILL. Yes.

Mr. BROWN. For somebody else?

Mr. HILL. I think it is sound, what the past history has proven is that all of the rate increases which have been filed have been excessive.

Mr. BROWN. Could you accept it in your company?

Mr. HILL. Could I accept it if we were under the regulation?

Mr. BROWN. Could you accept it in your company?

Mr. HILL. The 18—

Mr. BROWN. The 18 months prohibition of a pass on?

Mr. HILL. Dependent upon the nature of the increase.

Mr. BROWN. Sixteen percent?

Mr. HILL. Right now we could not.

Mr. BROWN. Thank you. What would a partial prohibition on filing before the FPC mean in terms of dollars to the Georgia consumers?

Mr. McKENZIE. That is a very difficult question to answer, are you talking about retail?

Mr. BROWN. Mr. Searls had difficulty with it and if you cannot answer I will be glad to have you submit something for the record that can address it but if you can address it in a way that Mr. Searls was not able to, I would be happy to have your comments.

Mr. McKENZIE. I think I might fall back on an illustration as you saw it from Mr. Searls. We related the cost of downgrading of bonds which is an inevitable result of failing to get relief when needed.

Mr. BROWN. Which upgrades your rate of interest?

Mr. McKENZIE. We were rated AA in 1970. We subsequently were downgraded to A, then to B, AA or BB depending on the agency rating and then in 1975, we lost our rating entirely for a short period of time.

Mr. BROWN. What does that mean?

Mr. McKENZIE. We were unable to sell bonds. In fact there was a time when there were no bids.

Mr. BROWN. Which means that you could not expand or make repairs or could not get the funds to maintain service to your customers?

Mr. McKENZIE. Right, but in one instance, we did sell bonds as a B, AA company and another company sold bonds the same week with

AA rating which we had earlier. There was a 2-percent difference in rate on those bonds, it was a \$100 million bond issue.

There is to my knowledge 1 year over the life of a bond which is 30 years so that was \$60 million expense to the ratepayer built into our cost to service as a result of that downgrading.

That is a much more general answer than what you have sought.

Mr. BROWN. Which means your consumers have to pay the difference, is that correct?

Mr. McKENZIE. Absolutely.

Mr. BROWN. Because that is an item that the PUC will allow you to pass on to the consumers?

Mr. McKENZIE. That is right.

Mr. HILL. If I might make a point with reference to the question you asked me previously on rate increase. I might point out again that the purchased power cost to Oglethorpe from Georgia Power represents approximately 90 percent of our total costs.

The wholesale business represents on the Georgia Power system only approximately 20 percent so there is a significant difference between the total impact on the Georgia Power system and as contrasted to Oglethorpe.

Also the past rate filings of WR-8 and WR-9 which now is Georgia Power's latest wholesale rate, there it's a period of 16 months between the time the first and second was filed so they are approximating the 18 months now.

Mr. BROWN. I have two other questions I would like to submit for the record, Mr. Chairman. They are as follows. With the same 26-pound document to which you referred on page 22, Mr. McKenzie, in your testimony, would that be subject for consideration of the preliminary proceeding which is required by this legislation?

If so, then how would this help alleviate the problems of the regulatory lag if that same document has to be gone through in a preliminary proceeding?

Second question is on page 5 of your testimony. You state that the Georgia Power Co.'s average retail rate per kilowatt hour increased 25 percent more than the average wholesale rate. How is that so? What is the circumstance that brings that about, what is the average case time of the Georgia Public Utilities Commission?

If you do not have the answers, I would like for you to submit them for the record.

Mr. McKENZIE. The average time before the Georgia Commission is 4 or 5 months. I cited an instance in my testimony a case filed in December, decided in April by the Georgia Commission. That is a typical period of time for action by that Commission.

Mr. BROWN. Surely then the California Commission is ambient?

Mr. McKENZIE. Yes.

Mr. BROWN. I have already asked this question but I want to repeat that maybe the legislature ought to give these problems to the State commission rather than have jurisdiction continue with the Federal Power Commission.

Mr. McKENZIE. I might say in conclusion briefly that with regard to this 20 percent and 80 percent, 20 percent is a significant part of our business. If the wholesale portion does not carry its load, then the 80 percent has to do so.

I personally find nothing fair or equitable or right about that.

Mr. MAGUIRE. Mr. Hill, do you have a response to that question?

Mr. HILL. No, Mr. Chairman.

Mr. GOLDBERG. I do not know whether Mr. McKenzie responded to the question about the use of the bulky document in connection with the preliminary proceedings. If he did, then I missed it.

Mr. MCKENZIE. I did not, but I did say earlier before you came in, Mr. Brown, that represented our entire case, every bit of evidence that we had to submit in support of the rate increase.

We were required to file that under the regulations of the Commission. That is available to the staff and Commission when they decided how long to suspend a rate increase. That was the point I attempted to make, that there already is a preliminary proceeding.

Certainly in answer to your question, if there had to be an elaborate preliminary proceeding to consider all of that evidence, it only could compound the work of the Commission and delay its actions.

Mr. GOLDBERG. I would like to point out that there is nothing in the bill that suggests that a hearing has to be held on the preliminary proceeding or that there has to be a long and complicated proceeding.

There is nothing in the bill that would suggest that the Commission has to do anything more than examine more carefully than it has, the opportunity to examine usually in 30 days the filing that is made in order to determine whether there ought to be some interim relief.

I cannot see that the bill either undermines what Georgia Power Co. has been trying to do in Georgia according to Mr. McKenzie or complicates the proceedings or draws them out any longer.

Mr. BROWN. Mr. Chairman, if I may proceed on your time?

Mr. MAGUIRE. Is the gentleman now seeking more time?

Mr. BROWN. Yes.

Mr. MAGUIRE. How much more time would the gentleman like?

Mr. BROWN. Just enough time to make a comment and ask a further question.

Mr. MAGUIRE. The gentleman will have two additional minutes.

Mr. BROWN. Thank you. Is not the language in the bill and I am sorry I do not know your name?

Mr. GOLDBERG. Mr. Goldberg.

Mr. BROWN. "Likely to prevail on the merits" and if an issue is likely to prevail on the merits then it seems to me that one of the things in our consideration would have to be the merits of the case and the merits of the case are contained, if there are any, in that 7,000 page document that weighs 26 pounds.

My question is how could that be avoided? How could you avoid looking at that document if you wanted to consider the case on its merits?

Mr. GOLDBERG. I have not suggested that the Commission would avoid looking at it. What I have suggested is that the Commission, under the bill, would have the opportunity that it does not have under the present bill, under the present act.

Mr. BROWN. I think the present act results in its taking 34 months to make a decision.

Mr. GOLDBERG. But there is a requirement that the Commission act to suspend before the effective date of the increase proposed by the uti-

lities. If the Commission permits that time to pass without acting, that increase becomes effective without being subject to refund.

What this bill does—

Mr. BROWN. One method of dealing with the 34 month delay—

Mr. GOLDBERG. The present act does not deal with any 34 month delay, the proposed bill does.

Mr. BROWN. But that requirement is method of dealing with the 34 month delay, that is my point, because if the Commission does not act, then it takes effect. We have several proposals that say to the Congress that if you do not do something by a certain date, then the law will take effect.

Mr. GOLDBERG. I had understood your point to be that the provision for a preliminary proceeding complicates matters, draws them out. I am suggesting to you that the bill as drafted provides the Commission with the time that it would need to make this preliminary examination of that material in order to determine and it not need do so in the hearing, whether to determine if there should be interim relief.

Mr. MAGUIRE. The gentleman's time has expired. I will let the counsel, Mr. Nordhaus ask some questions.

Mr. NORDHAUS. Mr. McKenzie, you had mentioned earlier in your testimony that you thought that fairness required that, under the interim rate procedure proposed by the bill, in the case where the interim rate turned out to be lower than the rate eventually found to be just and reasonable by the Commission in their final determination, that the utility proposing the rate increase be entitled to recoup the difference between the interim rate and what was eventually to be just and reasonable, with interest.

Was that your suggestion earlier?

Mr. MCKENZIE. Yes, off the top of my head suggestion.

Mr. NORDHAUS. Could you indicate for the record if the bill were modified to include that suggestion of yours, would you have any objection to subsections (a) and (b) of section 2?

Mr. MCKENZIE. Yes, frankly I would because the bill does not go to the heart of the problem. The bill avoids the problem. The problem can be handled by giving the Federal Power Commission the wherewithal and the direction to decide these occasions as promptly as in my case is done by my State commission.

That would remove the uncertainty, the collection of revenue from customers who did not know whether—it would avoid us collecting revenue which might not be good earnings, and therefore could not be used until a final order.

The answer to the problem is expeditious decision of rate cases, not a complication of it which this provision does.

Mr. NORDHAUS. In the present situation where there are some 200 pending rate cases, is there any prospect in your view of the Commission being able to substantially reduce the time required to decide these cases in the near future?

Mr. MCKENZIE. I have seen nothing to indicate any drastic changes, no, but I said given the wherewithal and the direction by Congress, I think the Commission could do it.

Mr. NORDHAUS. Do you feel that there are any steps that Congress could take in the next 6 months or so which would result in an immediate decrease in the length of time necessary to consider these cases?

Mr. MCKENZIE. I think with a backlog like that there has to be a transition period in which the backlog is cut down. I do not mean to be cryptic. I am saying apparently there is not enough staff or there is some problem at the FPC with which I am not familiar that does not permit these cases to be processed as rapidly as they are at the State level.

These cases are not so complex that they cannot be decided in 6 months. It is done all over the country all of the time.

Mr. NORDHAUS. Do any of you gentlemen wish to comment on this?

Mr. GOLDBERG. There is one complaint that has contributed to delays by reason of the Commission's revisions of the rules to permit a future test period to be used which is a projected test period, not based on actual facts.

This has complicated the ability to come to grips with the base period that is being used to justify the right increase. As a matter of fact, it is my impression that the staff of the Federal Power Commission is almost able to come to grips with it.

Today many of the utilities are using computer programs to determine their cost of service in the filing hearings with the Federal Power Commission. In one case with which I was associated, the computer programs involved were over 100 programs.

The witness that presented the testimony in the case knew absolutely nothing about the programs, some of them were outside services that they actually claimed proprietary information, which meant that you could not even ask them for the data in order to determine whether it was valid.

These were trade secrets according to them. The Federal Power Commission staff had not been able to come to grips with those computer programs. Our client spent many thousands of dollars and many months trying to come to grips with it.

That has in part complicated the situation.

Mr. MCKENZIE. In concluding in response to this because the FPC staff is also using a computer program to attempt allocation of rate base and the FPC has available period one data and period two data.

In every case, period one being actual operating results, period two being the projected test periods, so there is a basis upon which to examine the validity of the projections in period two.

Mr. MAGUIRE. Thank you gentlemen for your testimony. The next witness is the Honorable Richard L. Dunham, Chairman of the Federal Power Commission, accompanied by Whit Ridgeway, Chief, Bureau of Power, Drexel D. Journey, General Counsel, and Danny Boggs, assistant to the Chairman.

I want to thank you for your patience waiting through the testimony of previous witnesses. I am sorry it has taken so long to get to this point in the hearing and of course you are free to summarize your statement if you choose to do so.

STATEMENT OF HON. RICHARD L. DUNHAM, CHAIRMAN, FEDERAL POWER COMMISSION, ACCOMPANIED BY WHITMAN RIDGWAY, CHIEF, BUREAU OF POWER; DREXEL D. JOURNEY, GENERAL COUNSEL; AND DANNY J. BOGGS, ASSISTANT TO THE CHAIRMAN

Mr. DUNHAM. Thank you, Mr. Chairman. I will submit the complete statement for the record [see p. 66] and cover now only the major points of my statement.

I appreciate the opportunity of having the chance to testify on this bill. We feel that there is need for congressional action updating various provisions of the Federal Power Act and interim modification of the Federal Power Commission's procedures for considering proposed electric utility rate increases as a fit starting point.

We recognize the problems that we have in the long delays, problems that the delays cause both consumers and the utilities themselves. The solution of the delay problem is dual, it requires both legislative changes and secondly, importantly, administrative and procedural changes within the Commission itself.

We have taken a number of steps attempting to get at the backlog problem including organizing a settlement task forces and instituting a topsheet procedure which will enable us hopefully to get to grips with the fundamentals of a particular filing sooner than examining the whole record.

To promise to you that this is the solution to the total problem would not be correct, in my opinion, at this stage. In an effort to find solutions it is helpful to look at the causes that created it.

The most dramatic fact, of course is the increase of electric rate cases over the last few years. Since fiscal year 1970, the number of formal electric rate proceedings that were initiated during any one fiscal year has accelerated to more than 20 times the number that were initiated then.

Rising industry costs, particularly capital labor and fuel supplies have made it necessary for electric utilities to submit rate increases much more frequently. I have a table in my statement which shows the history of the situation in the last 6 years.

This points out that we are now concluding more cases this fiscal year than ever before, three times as many as the average of the years 1971, 1974. Yet the rising tide of case filings still swamps our efforts.

We are in a position of getting further behind but running faster. Historically electric rate cases have been handled on a case-by-case basis with formal hearings subject to cross examination and all the built in delays which are a part of the formal hearing process under the Administrative Procedure Act. In addition we must operate within the constraints of other Acts and 40-plus years, court generated cases which severely constrain our ability to decide cases.

H.R. 15544 is one response to the problem we all recognize exists. It would temporarily amend the Federal Power Act. I certainly do not object to amending or repealing or completely rewriting the Federal Power Act. What was effective and appropriate 40 years ago is not the solution to the needs of the country today.

What I would like to discuss are the specific changes mandated by H.R. 15544 to point out some problems I feel might be created by the solutions embodied in the bill. I would also like to submit alternative

conceptual approaches for your consideration, without at this time necessarily endorsing all of the approaches I will mention. Their consideration may stimulate avenues of thought which may lead to more satisfactory results.

This bill has three basic provisions, the first would create a preliminary proceeding if applied for by the public utility filing a rate increase as part of the regular rate proceeding. Unless the utility can show at this preliminary hearing that it is likely to prevail on all or part of the filed rate schedule, the schedule is suspended until it is determined to be lawful by an order issued by the Commission at the conclusion of the formal hearing. In effect, this new procedure would permit and in practice generate two proceedings and two rate determinations by the Commission. I am concerned that while it would stop any rate increase from going into effect before a preliminary proceeding has taken place, it would be counterproductive to any efforts to cut the current or future backlog of pending rate determinations before the Commission. It is my recommendation that rather than adding an additional step to already protracted rate determinations, efforts should be directed toward streamlining and expediting the regulatory process. This might better achieve the objective of this legislation, namely minimizing the collection of increases later found unlawful.

The second main provision of the bill would have the effect of a moratorium for a period of 18 months for the filing of an increase of a rate or charge, which is subject of a pending proceeding before the Commission. First of all, let me point out to you that many pancake rate filings would still be permitted by this section. It is that quite rare case in which the electric utility files an increase and a rate schedule significantly sooner than 18 months.

Most of our pancaking problems result from the fact that at the present time fully litigated cases require an average of 2½ years, and some considerably longer, and most successive rate schedules are filed during the latter part of the regulatory lag.

Of course I recognize that my insistence that it is a better solution to get rid of the regulatory lag rather than adopting the proposal before you to solve the existing problem is not worth much without plans which promise to be successful in actually getting electric rate cases on a current basis.

I believe that a substantial shortening of rate proceedings is possible through a change in the Commission's present practices of determining rate increases in long-drawn out formal hearings. The present system utilized is the oral presentation, cross-examination, rebuttal and sur-rebuttal technique. This may cause years of delay in rate adjustments which are made just and reasonable by changing circumstances.

An informal procedure for ratemaking is authorized by the Administrative Procedure Act including submission of all or part of the evidence in written form. The informal hearing procedure has been used by the Commission, albeit very rarely, in electric rate determinations. I anticipate increased use of this procedure and believe it would substantially cut down on the time required for the hearing process. While electric rate determinations generally may have to be made on an individual basis, many of the issues in these cases are not unique to

one particular electric utility. The Commission is making a further effort at the reduction of issues which would be subject to determination by the Commission in individual cases by making statements of policy and adopting rules which will determine recurrent questions applicable to electric utilities in general and serve as precedents for the resolution of issues in electric rate cases.

Other possibilities to reduce delay which I would like to put before you would require congressional action. A substantial number of electric rate determinations by the Power Commission are on appeal to the courts. This is not only delays the final determination of rate schedules but also has the effect of leaving in suspense policy determinations which are expected to serve as guidelines and precedents in the determination of the lawfulness of any of the filings before the Commission.

If more Commission determinations could become effective without lengthy delay in the courts, adjudication of many other cases before the Commission could be simplified or eliminated and the parties would be more willing to settle issues which were decided and not challenged in the courts.

I want to emphasize to you that I am not suggesting elimination of judicial review of the Commission's procedure. Such action would not only create constitutional problems, but also would be clearly undesirable.

However, I recommend to you as one possibility of tightening the regulatory process that the standards of review now applicable under the Federal Power Act be adjusted, at the present time the Federal Power Act provides for a court review under the substantial evidence and error of law test.

A statute providing for reversal of Commission determination only when arbitrary, capricious or an abuse of discretion would narrow the issues that a reviewing court would consider and limit review to what the spirit of the law requires.

Another possibility which has been suggested before the Oversight and Investigation Subcommittee of the House Interstate and Foreign Commerce in a hearing in Las Vegas this year is to have the Congress reduce the electric rate regulation under the jurisdiction of the Federal Power Commission and to restore a greater part of electric rate regulation to the States.

Congress would limit regulation to sales actually made across State lines. The effect of such an action can be seen from the statistics and rate filings before and after the Colton case in which the Supreme Court confirmed that the Federal Power Commission had full authority to regulate all sales of electricity and wholesaling in interstate commerce, not just the first sale in the State.

In 1962, prior to the determination of its jurisdiction in the Supreme Court Colton decision, 477 electric rate filings were received by the Commission. In 1963, the total rose to 1,882. With minor fluctuations the number has risen ever since.

Many factors contribute to delay in the regulatory process, the large number of cases which create an excessive workload not only for the staff but also for the administrative law judge, and also the ever

present request for extensions of time that are made by parties involved in FPC proceedings and have been granted rather liberally in the past. In order to expedite the regulatory process it is anticipated that in the future those requesting time extensions will have to demonstrate exceptional need in cases where such will delay the proceedings.

Beyond the rate reform measure in section 2 of H.R. 15544, section 3 contains provisions dealing with cases of anticipated power deficiencies in such manner as to avoid discrimination between a utility's retail customers and the retail customers of the utility's wholesale customers.

Nobody can quarrel with the proposition that no group of retail customers can be discriminated against in the situation of general shortage of available electricity.

Under the Federal Power Act, section 202(c), the Commission has clear authority to require continued service in order to serve the public interest whenever the Commission determines that an emergency exists by reason of a sudden increase in demand or shortage of electric energy facilities.

Under section 205 and 206 of the Federal Power Act, the Commission also has the power to prevent discrimination in rates, charges, services, facilities or in any other respect either between localities or between classes of services.

Under section 35.15 of the regulations under the Federal Power Act any proposed cancellation of a rate schedule has to be filed with the Commission prior to the date of cancellation. Whether the Commission will order continued service where such a proposed cancellation is filed in cases not involving emergency situations, is presently an issue in several cases pending before the Commission. Problems raised in section 3 will be addressed by the Commission in the determination of these cases and the pending request for rulemaking. It is premature at this time to ask for legislative authority to deal with these issues.

If statutory authority beyond the provisions of the Federal Power Act is needed, the Commission will submit legislative proposals to Congress on this section. In case the Committee should nevertheless decide to recommend enactment of the provisions of section 3, I submit FPC staff comments on the technical aspects of the provision as attachment 1 to my statement.

In addition to issues in the regulation of electric rates which we are primarily talking about today, energy regulation in the country faces many other problems. There is no question that the establishment of clear national energy policies would be beneficial for all aspects of energy regulation. At the present time not only is jurisdiction divided with respect to many aspects of energy regulation, but numerous statutes have been enacted by Congress which leave doubt as to the final accountability and responsibility for overall energy decisions.

The point is that the problems addressed in the bill before the committee at this time are very real and very serious. We recognize them. As I pointed out earlier, I see the solution to the problem in a combination of both legislative remedies and very substantial administrative and procedural changes within the Federal Power Commission and within existing authority.

We are attempting to move in that direction. I would hope that in the not too unforeseen future we will get some payoff from the adoption of those changes.

That concludes my testimony and I have submitted my complete statement for the record.

[Mr. Dunham's prepared statement and attachment follow:]

STATEMENT OF HON. RICHARD L. DUNHAM, CHAIRMAN, FEDERAL POWER COMMISSION

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify on H.R. 15544, the "Emergency Federal Power Act Amendments". There is need for Congressional action updating various provisions of the Federal Power Act. Interim modification of the Federal Power Commission's procedures for considering proposed electric utility rate increases is a fit starting point.

At your invitation I appeared before you in April to testify on H.R. 12461 which addressed in part the same issues which it is the intent of this bill to resolve. As I expressed to you then, I share with you the deep concern over the tremendous increase in electric rates experienced by homeowners over the several years. Although the Commission's procedures for the determination of just and reasonable rates for the interstate transmission and sale of electricity at wholesale for resale are not the cause for these increases in the cost of electricity, the regulatory lag in reaching final rate determinations by the Commission has increasingly come under attack. The Commission has recognized that the backlog of rate-increase cases is a severe problem and we have undertaken steps in an effort to reduce it. Not all remedial action is within the Commission's existing statutory authority. Legislative changes would be helpful.

Administratively the use of "top sheet" procedures for focusing early on important issues and the creation of an Electric Rate Settlement Task Force to facilitate settlements are among present Commission efforts to reduce the back-log of pending cases. However, I recognize that although these present efforts will help, they will not in themselves be able to solve the problem. The statistics show that the situation will get worse unless additional new procedures and legislative changes are initiated to attack the present backlog and prevent a future build-up. I agree with you, something needs to be done.

In an effort to find solutions to the problem it is helpful to look at the causes that created it. The most dramatic fact, of course, is the increase in electric rate cases over the last few years. Since fiscal year 1970, the number of formal electric-rate proceedings that were initiated during any one fiscal year has accelerated to more than 20 times the number that were initiated then. Rising industry costs, particularly capital, labor, and fuel supplies, have made it necessary for electric utilities to submit rate increases much more frequently. The following statistics illustrate the effects on the electric rate caseload of the Commission:

ELECTRIC RATE PROCEEDINGS

	Fiscal year—						
	1970	1971	1972	1973	1974	1975	1976
On hand July 1.....	28	28	50	60	96	135	179
Initiated.....	7	53	45	56	77	114	141
Total workload.....	35	81	95	116	173	249	320
Completed.....	7	31	35	20	38	70	92
On hand June 30.....	28	50	60	96	135	179	228

Thus, we are now concluding more cases this fiscal year than ever before (three times as many as the average of the years 1971-74). Yet the rising tide of case filings still swamps our efforts.

Historically, electric rate cases have been handled on a case-by-case basis, in formal hearings, subject to cross-examination and all the built-in delays which are part of the formal hearing process under the Administrative Procedure Act. In addition, we must operate within the constraints of other Acts, and 40-plus years of court-generated case-law, which severely constrains our ability to decide cases.

H.R. 15544 is one response to the problem we all recognize exists. It would temporarily amend the Federal Power Act. I certainly do not object to amending, or even repealing and completely rewriting the Federal Power Act. The Federal Power Act, as defined by precedent, litigation and judicial interpretation over 41 years is badly out of date. The Federal Power Act was enacted when the facts of economics and energy were entirely different from those which prevail today. We have moved from a condition of declining energy costs and substantial energy supplies to a condition of rapidly rising energy prices and energy shortage. A Federal Power Act which was effective and appropriate 40 years ago is not the solution to the needs of the country today.

I would like to discuss the specific changes mandated by H.R. 15544, and to point out some problems that I fear might be created by the solutions embodied in the bill. I would also like to submit alternative conceptual approaches for your consideration, without at this time necessarily endorsing all of the approaches which I will mention. Their consideration may stimulate avenues of thought which could lead to more satisfactory results.

H.R. 15544 has three basic provisions. The first would create a preliminary proceeding, if applied for by the public utility filing a rate increase, as part of the regular rate proceeding. Unless the utility can show at this preliminary hearing that it is likely to prevail on all or part of the filed rate schedule, the schedule would remain suspended until such schedule is determined to be lawful by an order issued by the Commission at the conclusion of the formal hearing. In effect this new procedure would permit and in practice generate two proceedings and two rate determinations by the Commission. I am concerned that while it would stop any rate increase from going into effect before a preliminary proceeding has taken place, it would be counterproductive to any efforts to cut the current or future backlog of pending rate determinations before the Commission. It is my recommendation that rather than adding an additional step to already protracted rate determinations, efforts should be directed toward streamlining and expediting the regulatory process. This might better achieve the objective of this legislation, namely minimizing the collection of increases later found unlawful. Of course, should it be the judgment of Congress that the advantages of a two-hearing process for the determination of electric rates would justify the substantial additional budget expenditures, we would implement the Congressional decision with dispatch.

In order to prevent an absolute breakdown by the accumulation of an even more immense backlog, and to comply with the time limitations prescribed by the provisions of the bill, the Commission would need additional personnel. If it is your desire, I would be glad to furnish you with budget estimates as to the number of additional rate analysts, engineers, accountants, economists and attorneys that would be required to handle the additional workload adequately and to prevent any further backlog in rate schedule determinations.

The second main provision of the bill would have the effect of a moratorium for a period of 18 months for the filing of an increase of a rate or charge, which rate or charge is the subject of a pending proceeding before the Commission. First of all, let me point out to you that not many rate filings would be prohibited by this section. It is the quite rare case in which an electric utility files an increase in a rate schedule significantly sooner than 18 months. Most of our "pan-caking" problems result from the fact that at the present time fully litigated cases require an average of 2½ years, and some considerably longer, and most successive rate schedules are filed during the latter part of this regulatory lag. Of course, I recognize that my insistence that it is the better solution to get rid of the regulatory lag rather than adoption of the legislative proposal before you in order to solve the existing problem is not worth very much without plans which promise to be successful in actually getting electric rate cases on a current basis.

I believe that a substantial shortening of rate proceedings is possible through a change in the Commission's present practice of determining rate increases in long drawn out formal hearings. The present system utilizes the oral presentation, cross-examination, rebuttal and surrebuttal technique. This may cause years of delay in rate adjustments which are made just and reasonable by changed circumstances.

Informal procedures for ratemaking are authorized by the Administrative Procedure Act, including submission of all or part of the evidence in written form. The informal hearing procedure has been used by the Commission in the "coal by wire" electric rate determinations, *New England Power Pool Par-*

participants, et al., Docket No. RM74-22, Orders issued on August 26, 1974 and September 26, 1975. I anticipate increased use of the procedure and believe that it will substantially cut down on the time required for the hearing process.

Since 1970¹ the Commission has used the rulemaking procedure to fulfill its producer ratemaking responsibilities under the Natural Gas Act, and this methodology has been judicially sustained.²

Experience gained in these proceedings has demonstrated that the rulemaking procedure is not only workable but essential to practical producer rate regulation. As reflected in the Commission's early natural gas area rate opinions³ area ratemaking through adjudicatory proceedings, took years to decide. In contrast, the Commission was able to prescribe a single uniform national rate by rulemaking within slightly over one year from the commencement of the proceedings.⁴ Although rate determinations for electric utilities, because of the nature of the industry, will continue to be made on an individual basis, rather than for whole areas of the country, submission of written evidence instead of the formal hearing procedure should achieve similarly beneficial results.

While, as I just mentioned, electric rate determinations will have to be made on an individual basis, many of the issues involved in these cases are not unique to one particular electric utility. The Commission is making a further effort at the reduction of issues which will be subject to Commission determination in individual cases by issuing statements of policy and adopting rules which will determine recurrent questions applicable to electric utilities in general and serve as precedents for the resolution of issues in electric rate cases.

These actions can be taken by the Federal Power Commission under the present provisions of the Administrative Procedure Act without any help from Congress. (Anticipating the desirability to increase the use of rulemaking procedures instead of the cumbersome and time-consuming adjudicatory procedures in rate cases the Commission reported in opposition to amendments of the Administrative Procedure Act pending before Congress which would remove "ratemaking" from the definition of rulemaking in the Administrative Procedure Act and thereby jeopardize our authority to expedite rate cases under the more informal procedures).

Other possibilities to reduce delay which I would like to put before you would require Congressional action. A substantial number of electric rate determinations by the Federal Power Commission are appealed to the courts. This not only delays the final determination of rate schedules involved in the particular case, but it also has the effect of leaving in suspense policy determinations which are expected to serve as guidelines and precedents in the determination of the lawfulness of any other filings before the Commission. If more Commission determinations could become effective without lengthy delay in the courts, adjudication of many other cases before the Commission could be simplified or eliminated and the parties would be more willing to settle issues which were clearly decided and not challenged in the courts.

I want to emphasize to you that I am not suggesting that judicial review of the Commissions decisions should be eliminated. Such action would not only create constitutional problems but also be clearly undesirable. However, I recommend to you as one possibility of tightening the regulatory process, that the standards of review now applicable under the Federal Power Act be adjusted. At the present time the Federal Power Act provides for a court review under the "substantial evidence" and "error of law" test.

A statute providing for reversal of Commission determination only when arbitrary, capricious or an abuse of discretion, would narrow the issues that the

¹ *Area Rates for the Appalachian and Illinois Basin Area, et al.*, Docket No. R-371, et al., Order No. 411, 44 FPC 1112 (1970).

² *Phillips Petroleum Co. v. F.P.C.*, 475 F. 2d 842, 848-52 (10th Cir. 1973), cert. denied, 414 U.S. 1146 (1974). *Shell Oil Co. v. F.P.C.*, (5th Cir., 1975), 520 F. 2d 1061, 1074-5, cert. denied, sub nom. *California Co., et al.*, v. F.P.C., 44 U.S.L.W. 3716 (1976); *American Public Gas Association v. F.P.C.*, 498 F2d 718 (CADC, 1974).

³ The first area rate proceeding was *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968). The order initiating the proceeding was issued December 23, 1960 (24 FPC 1121) and the Commission decision was not issued until 1965 (34 FPC 159). In the second such proceeding, *Austral Oil Co. v. F.P.C.*, (Southern Louisiana Area Rate Proceeding), 428 F. 2d 407 (5th Cir. 1970), cert. denied, *Municipal Distributors Group v. F.P.C.*, 400 U.S. 950 (1970), the proceedings began in 1961 (25 FPC 942) but the Commission decision was not issued until 1968 (40 FPC 530).

⁴ *Opinion And Order Prescribing Uniform National Rate For Sales Of Natural Gas Produced From Wells Commenced On Or After January 1, 1973, And New Dedications Of Natural Gas To Interstate Commerce On Or After January 1, 1973*, Docket No. R-389-B, Opinion No. 699, issued June 21, 1974.

reviewing court would consider and would limit court review to what the spirit of the law and fairness to the parties requires.

Another possibility, which has been suggested before the Oversight and Investigation Subcommittee of the House Interstate and Foreign Commerce Committee in hearings in Las Vegas, Nevada this year, is to have the Congress reduce the electric rate regulation now under the jurisdiction of the FPC and to restore a greater part of electric rate regulation to the states. Congress would limit federal regulation to sales actually made across state lines.

If Congress should determine that determinations of electric rates by the states to an increased extent is desirable, the effect on the Federal Power Commission would be to reduce drastically the number of rate schedules subject to Commission jurisdiction. This should reduce sharply the existing unsatisfactory regulatory lag. The effect of such an action can be seen from the statistics of rate filings before and after the *Colton*⁵ case in which the Supreme Court confirmed that the Federal Power Commission had full authority to regulate all sales of electricity at wholesale in interstate commerce, not just the first sale into a state.

In 1962, prior to the Commission determination of its jurisdiction which led to the Supreme Court *Colton* decision, 477 electric rate filings were received by the Commission. In 1963 the number rose to 1882. With minor fluctuations the number has risen ever since.

After the Supreme Court decision in the *Colton* case, Congress considered curbing the jurisdiction of the Federal Power Commission, as in the so-called Holland-Smathers bill, S. 218 in the 89th Congress. At that time, however, Congress considered it advisable to retain full federal regulation of the interstate electric industry, and the sale at wholesale for resale by electric utilities.

Many factors contribute to the delay in the regulatory process, the large number of cases which create an excessive workload not only for the staff, but also for the Administrative Law Judges, and also the ever present requests for extensions of time that are made by parties involved in FPC proceedings and have been granted rather liberally in the past. In order to expedite the regulatory process, it is anticipated that in the future those requesting time extensions will have to demonstrate exceptional need in cases where such extensions would delay the proceedings.

Beyond the rate reform measures in Section 2 of H.R. 15544, Section 3 contains provisions which are aimed at dealing with cases of anticipated power deficiencies in such manner as to avoid discrimination between a utility's retail customers and the retail customers of the utility's wholesale customers. Nobody can quarrel with the proposition that no group of retail customers should be discriminated against in a situation of general shortage of available electricity.

Under the Federal Power Act, Section 202(c) the Commission has clear authority to require continued service in order to serve the public interest whenever the Commission determines that an emergency exists by reason of a sudden increase in demand or shortage of electric energy or facilities.

Under Sections 205 and 206 of the Federal Power Act the Commission also has the power to prevent discrimination in rates, charges, service, facilities, or in any other respect either as between localities or as between classes of service.

Under Section 35.15 of the Regulations under the Federal Power Act, 18 C.F.R. 31.15, any proposed cancellation of a rate schedule has to be filed with the Commission prior to the date of cancellation. Whether the Commission will order continuance of service where such a proposed cancellation is filed in cases not involving emergency situations, is presently at issue in several pending cases before the Commission.⁶ Problems raised in Section 3 will be addressed by the Commission in the determination of these cases and in the pending request for rulemaking in Docket No. RM76-11. It is premature at this time to ask for legislative authority to deal with these issues. If the need for statutory authority beyond the provisions of the Federal Power Act is needed, the Commission will submit legislative proposals to the Congress on this question.

If the Committee should nevertheless decide to recommend enactment of the provisions in Section 3, I submit FPC staff comments on the technical aspects of the provision as Attachment 1 to my statement.

⁵ *FPC v. Southern California Edison Co.*, 376 U.S. 205 (1964).

⁶ *Nevada Power Co.* FPC Docket No. E-9306 awaits decision by Administrative Law Judge; *City of Mishawaka, Indiana v. American Electric Power Company, Inc., et al.*, FPC Docket No. E-9548; *The City of Anderson, Indiana v. American Electric Power Company, Inc., et al.*, Docket No. E-9549—Order Instituting Investigation issued August 27, 1976.

In addition to issues in the regulation of electric rates which we are primarily talking about today, energy regulation in the country faces many other problems. In my testimony before this Committee on April 8, 1976, I noted: the real cost of electric power depends, basically, on the costs of generation. "Solutions" which do not focus on encouragement of low cost power and on conservation measures to curtail demand are only partial "solutions." Congress now has the opportunity to use the current interest in electric problems in a most constructive way. Congress has before it measures to promote low-cost power generation, whether through promotion of solar energy, encouragement of less expensive fossil fuel or other means * * *.

There is no question, that the establishment of clear national energy policies would be beneficial for all aspects of energy regulation. At the present time not only is jurisdiction divided with respect to many aspects of energy regulation, but numerous statutes have been enacted by Congress which leave doubt as to the final accountability and responsibilities for overall energy decisions. Congress should consider synchronization of all aspects of the law dealing with energy regulation.

ATTACHMENT 1

Section 3.(a) of the bill would insert a new sentence after the first sentence of Section 202(c) as follows: "In order to insure continuity of service to retail and wholesale customers, the Commission—

"(1) shall require each public utility to report promptly any anticipated shortage of electric energy which would affect such utility's capability of serving its wholesale customers,

"(2) may require by order such utility to accommodate such shortage in a manner which affects the retail customers of the utility and the retail customers of utility's wholesale customers in an equal and nondiscriminatory manner, with special regard for service to residential customers, and

"(3) may require by order such connection of facilities and such generation delivery, interchange, transmission of electric energy, pooling, wheeling, or other transmission service as in its judgment will best serve the public interest."

This appears to be a commendable effort to deal with cases of anticipated power deficiencies in such manner as to avoid discrimination between a utility's retail customers and the retail customers of the utility's wholesale customers. There are, however, two problems with the section that should be addressed:

(1) The term "wholesale customers" which appears in several places in the section, while not defined in the bill may be interpreted in accordance with Section 201(d) of the Federal Power Act,⁷ to mean all buyers of electricity for resale. If that were the proper interpretation, service to wholesale customers would include sales by public utilities of various classes of power and energy (such as economy energy, emergency energy, etc.) under various kinds of interconnection agreements with other public utilities including power pooling agreements. This could impose a large and complex burden on the Commission and goes beyond the apparent intended purpose of the bill which is to protect wholesale customers that purchase all or most of their power requirements from a bulk power supplier in the form of firm power for resale.

(2) The section authorizes the Commission to "order such utility to accommodate such shortage in a manner which affects the retail customers of the utility and the retail customers of utility's wholesale customers in an equal and nondiscriminatory manner. . . ." Since the FPC generally has no authority to regulate sales by wholesale customers, it would be desirable to limit the Commission's authority to providing wholesale customers with the ability or opportunity to serve their retail customers in such manner as to avoid discrimination vis-a-vis the retail customers of the utility.

Mr. SHARP. Thank you you. We appreciate your analysis of the situation and your time and effort that you are making to speed up things at the Federal Power Commission.

Obviously there needs to be a change in procedures. I would like to give our counsel a moment if I might to ask a few questions.

⁷"The term 'sale of electric energy at wholesale' when used in this part means a sale of electric energy to any person for resale." (Section 201(d))

Mr. NORDHAUS. We have a series of statistical questions, the answers to which could be submitted after the hearing, if you do not have them readily available.

We would like to try to get as many of them today as possible.

The first question is how many electric rate cases at present have been filed but not yet finally determined? What is the total caseload pending including those not yet under submission and those which are being judicially reviewed?

Mr. DUNHAM. I have some figures here. I want to give an answer and hold open the record to make sure I have clarification. Interestingly enough just last week was the first time as far as I know, in at least 15 years that we now have a record of the number of filings and a method of getting ready access to it. Our new computerized regulatory information system was inaugurated last Thursday or Friday. In electric rate cases, as of that date, which is the latest date we have, it shows about 120 dockets that are still pending, so it is somewhere in the neighborhood, a very substantial number.

Mr. NORDHAUS. This includes dockets that are filed but not suspended, those that are suspended, and those past suspension but in the adjudicatory process?

This includes all the cases between filing and termination or determination by the courts?

Mr. DUNHAM. It would not include cases that are under adjudication after Commission opinion. In other words, these are only ones—

Mr. NORDHAUS. Of these 120, how many have been filed but are still within the 30-day notice periods?

Mr. DUNHAM. I do not have it broken down that way. We will get that to you.

Mr. NORDHAUS. Do you have how many are filed but have not taken effect yet?

Mr. DUNHAM. That would be the caseload for the last 30 days. I do not have this figure with me. That can also be supplied.

Mr. NORDHAUS. If we could have that by tomorrow morning it would be helpful.

Mr. DUNHAM. We will make every effort.

Mr. NORDHAUS. The subcommittee is planning a markup in the near future. I think the information would be useful to them. Maybe what I should do is just give you a list of the matters that I think we need and would be useful to us: The total number of cases including those that are within the notice period and those under judicial review, those within the 30-day notice period, those under suspension, those past suspension but not finally determined by the Commission, and those determined by the Commission but which are still being judicially reviewed.

The other statistical matter is the subject of the so-called pancake rate increase. We would like some indication of how many so-called pancake rate increases are now pending, and of this pending pancaked rate increases, how many of them could not have been filed had our 18-month rule been in effect at the time they were proposed to be filed.

I would like to go on to a couple of other questions. In your testimony you indicated that the Commission has authority to require a continuance of service in emergency cases; section 3 of the bill of course is not limited to emergency cases and in fact, by its terms, deals with anticipated shortages in electric energy.

One of the questions that we have is to what extent does the Federal Power Act require the wholesale supplier to continue service to one of his wholesale customers, and to what extent does the Commission have authority to deal with a threat by a wholesale supplier to discontinue service at some fixed time, either at the expiration of a contract or in the case of a tariff? Would you respond to that?

Mr. DUNHAM. Page 14, at the bottom of the page, Mr. Journey may have some additional responses.

Mr. JOURNEY. As the chairman pointed out in his testimony the Commission can suspend a rate filing which proposes to cancel service. The Supreme Court dealt with this question in a case called *Penn Water*, 343 U.S. 414.

The Court found service questions to be within the scope of the Commission's jurisdiction under sections 205 and 206 of the Power Act. The Commission itself dealt with that question in the underlying *FPC* case, 8 FPC 170.

The Commission now has this question before it in the cases cited in the chairman's testimony in footnote 6, page 15. It also has pending before it a rulemaking proposal by the American Public Power Association, which has requested a nationwide curtailment program for public utilities.

Under the Federal Power Act, the Commission has substantial authority under section 202(c). If you would like the records of the subcommittee to show the implementing orders of the Commission, they can be supplied. They are orders 520 and 520-A which state how the Commission will go about ordering service changes among systems that are short of transmission capacity, generation fuel, et cetera.

Additionally, the Commission has—

Mr. NORDHAUS. That is the so-called emergency?

Mr. JOURNEY. Under 202(c). Additionally the Commission has issued order 445 which deals with the curtailment or the question of shortage of capacity or energy under the Power Act. It has tied this into its reliability council program under 202(a).

I think the committee records should probably have all of these orders. They summarize the Commission's implementation of the statute as it has presently been done.

Mr. NORDHAUS. Will you submit them for the hearing record. In your view, is section 3 of the bill unnecessary because it states existing law; does it deal with the area of law that is unsettled now; or is it a complete departure from existing law.

Mr. JOURNEY. It is the second point. It is not settled at the moment.

Mr. NORDHAUS. So that there is question as to whether the Commission does have authority to require a wholesale supplier to continue service to one of its wholesale customers?

Mr. DUNHAM. This is essentially the question posed in the rulemaking. It is an unsettled question before us.

Mr. NORDHAUS. It is unsettled in the sense that you are not sure that the Commission has the authority to order that kind of relief. Could you, for our record, describe for us the Commission's procedures and standards for adjusting rate filings under existing law and the Commission's procedures and standards if any for deciding on whether to suspend the proposed rate schedule and if so, for how long?

Mr. DUNHAM. With regard to the question of suspension, we rely basically on a Bureau of Power memorandum which makes a preliminary judgment on the basis of the filing itself, bearing in mind, as one of your earlier witnesses pointed out, that we must take that action within 30 days of the filing.

The Power Act requires us to take action to the extent that the Bureau of Power staff makes a preliminary analysis upon the record filings. There is a judgment in the recommendation made by them to the Commission as to the length of the suspension period.

Mr. NORDHAUS. Is this judgment made, going now to procedure, solely on the basis of the filing by the utility requesting the rate increase?

Mr. DUNHAM. Yes. Of the filing, the internal memos by the staff.

Mr. NORDHAUS. In other words, there is no consideration of your intervenors or would-be intervenors?

Mr. DUNHAM. We sometimes get interventions before our decision, and if so, they are considered.

Mr. NORDHAUS. Sometimes, but there is no requirement. Talking now procedurally, and looking at what materials would be available to the Commission staff, the activities of the staff, and the burden on the staff; to what extent would the proposal in section 2(b) of the bill differ from that now being followed by the Commission in determining whether or not this has been a proposed rate increase?

Mr. DUNHAM. The first is the longer length of time. It would be about 70 days as opposed to the 30 minus in which the Commission now must act.

Mr. NORDHAUS. Sixty days is an outside time, they can do it quicker if they wish.

Mr. DUNHAM. Sixty days outside time compared with 30 days outside time, under the existing Power Act, that was my point. It is additional time, which means it would permit greater examination by the staff and inquiries if necessary. The hearing mentioned, I do not believe is specified in terms of formal hearing.

Mr. NORDHAUS. By its terms, all the bill would require the Commission to do is to receive written presentations by the utility and other interested parties, no requirement of oral presentation?

Mr. DUNHAM. That does not preclude it either. I think the most direct answer is obviously it is a function of the time. When more time is given it implies that more extensive application, more examination will be taken. That is in itself it seems to me would require perhaps more extensive and detailed review than is presently either possible or practically required under existing law.

Mr. NORDHAUS. Do you feel it is inappropriate for the Commission, in the course of making a somewhat more extensive review of these written materials to be authorized or required to review materials sub-

mitted by the wholesale customers of the utility that is proposing the increase in rates?

Mr. DUNHAM. That is not now.

Mr. NORDHAUS. I gather from your answer that generally you sometimes look at the material submitted by the would-be intervenors. I thought the implication was that was rather rare.

Mr. DUNHAM. If they submit the comment, it is considered. The point which we are talking about is not a substantial change except in the time period by which the Commission would have to act.

In other words, the 60 days versus the 30.

Mr. NORDHAUS. Your feeling is that having more time to act will result in a more thorough examination of the materials before the Commission, and therefore will encumber the administrative proceeding, is that a fair summary?

Mr. DUNHAM. It certainly would be more thorough. As I pointed out in my testimony the time for conclusion, for a whole variety of reasons, on the average has been 2½ years. It would less thorough than completed cases, more thorough than a 30-day time period.

Mr. NORDHAUS. If I could go on to the return to the first part of the question, what are your procedures and standards for rejecting the filing?

Mr. DUNHAM. Basically if they do not comply with the rules and regulations. In other words, the information supplied is inadequate or incomplete or in noncompliance.

Mr. NORDHAUS. Are they ever rejected on—I gather from your earlier testimony that they are—grounds that the requested increase is unlawful, that it is contrary to—

Mr. DUNHAM. The lawfulness decision is the final decision.

Mr. NORDHAUS. If the utility asked for an 80 percent rate of return, would you reject the filing or accept it?

Mr. DUNHAM. No, we would suspend it. In cases where rejection of some items is indicated by either policy or rulemaking, we would suspend and order the utility to file revised schedules, eliminating the particular item. I think CWIP was mentioned earlier as an example of that.

Mr. NORDHAUS. If the characterization made earlier in the hearing namely that nothing is rejected unless specifically prohibited by a rule of the Commission is essentially correct—

Mr. DUNHAM. That is right.

Mr. NORDHAUS. Your procedures for dealing the alleged violations of the *Conway* case pending adjudication of the lawfulness of the rate, could you explain to the subcommittee how the Commission in deciding whether to accept a rate for filing and whether to suspend, how the Commission deals with allegations that the rate is inconsistent with the doctrine of the *Conway* case?

Would you answer?

Mr. DUNHAM. It is essentially the same as any other issue on the question of lawfulness or unlawfulness. With regard to the *Conway* issue—

Mr. NORDHAUS. The Commission has no procedure for rejecting the filing or for modifying the rate that would take effect after the suspension period by reason of allegations that the rate is unlawful. Doesn't relief have to wait until disposition of the case?

Mr. DUNHAM. That is correct too. We have a pending rulemaking, an attempt to find and prescribe the Conway issues in the latitudes or parameters of that issue. If there is a major Conway element in the case at this point in time, we attempt to sever that or set it aside until we can go through the entire process of resolving the Conway rulemaking.

Mr. NORDHAUS. Would the pending rulemaking affect—have any effect on rates that are in effect pending adjudication of the rate case?

In other words, is your rulemaking a proposal for given interim relief on Conway grounds pending final adjudication of the validity of the rate or is it your proposal to examine the lawfulness of the proposed rate and include that issue in the final determination of the rate?

Mr. DUNHAM. This does involve a lot of legal change. May I ask Mr. Journey to respond to that?

Mr. NORDHAUS. Please.

Mr. JOURNEY. What we have attempted to do is have a rulemaking in conjunction with the National Association of Regulatory Utility Commissioners, the goal is to have the same standards apply before the State public service commissions and the FPC as relates to Conway. Recognizing that there are a number of cases in the pipeline, I, as general counsel, directed staff counsel in the individual pending dockets to apply the concepts that were in the rulemaking to the individual cases, staff counsel is going before the law judges, going through the 9 yards of litany. We will try each of these on an individual basis.

Going forward, not ignoring the Conway problem, but trying to handle it on an ad hoc basis. This was done.

Mr. NORDHAUS. Is your proposed handling on these cases which would provide some interim relief to the customers who are alleging Conway violations?

Mr. JOURNEY. It would not go specifically to that question. What it would do would be to identify areas of Conway dispute and find out what kind of a hearing record may be needed; whether it was adjusting rate of return or rate design to handle the Conway problem.

It does not necessarily preclude raising one issue ahead of the other but it is not specifically geared to phasing it out. The Supreme Court's Conway decision indicated that rate of return is probably the area within which the Commission would consider most Conway questions.

Essentially it will be to insure full factual development of the whole record and then go forward with that as a piece of evidentiary material in the case bearing on the lawfulness question just as you would on any other issue.

Historically the Commission has phased cases, but my memorandum does not run to the phasing of it.

Mr. NORDHAUS. Is the Commission engaged in any phasing now in any issues in any of its cases?

Mr. JOURNEY. It has in some of the pending dockets handled the various parts of the disputed issues. There have been contract questions which have been raised, which have been put forward. If you like, we can supply those for the record. Another cases we have handled cost allocation questions separately.

Mr. NORDHAUS. I gather on your existing records, phasing is rather rare?

Mr. JOURNEY. I think it is fair to say it is rare.

Mr. NORDHAUS. That is all I have.

Mr. SHARP. We heard testimony from FEA on this kind of question and I am not sure you would care to comment on it but obviously we are all aware, painfully so, that costs have suddenly increased and a whole series of changes have occurred in the economy, that have made the whole business of regulation more difficult for both the wholesaler and retailer of electricity.

Is there any reason to suspect that these kinds of situations are going to be stabilizing?

Mr. DUNHAM. I would probably not want to speculate that in the near foreseeable future we are going to have a flattening or simplification of the problems. It is quite likely that the fuel increases, from what I read in the newspapers with regard to OPEC particularly, are going to be increased.

You are familiar with the natural gas situation, we are familiar with the difficulty on the coal side, the difficulty on the nuclear side. It seems to me that until some of these basic questions can be resolved, we are going to be for the next 5, 10 or perhaps longer period of years, in a period of rapid change one way or the other.

We are going to either decide to go heavily to coal and nuclear or decide not to.

The OPEC nations are either going to change their pricing methods quite substantially or are not. I certainly hope that the inflationary aspect of this, with the exception of the oil pricing, external pricing, over which we have no control, will stabilize. I can foresee in terms of utilities attempting to plan ahead, not knowing the direction in which the country is going, perhaps what the solutions are, that we are going to be in a period of ferment.

I am afraid I see nothing in the foreseeable future which is going to indicate a diminution of caseload under electric utilities.

Mr. SHARP. I noticed one of your proposals was to try to reduce the FPC role in this area because you are charged with many different responsibilities from natural gas to electric utilities.

Have you reached the point where we ought to totally separate those functions or do they still belong under the one agency?

Mr. DUNHAM. You mean natural gas and electricity? I think a case can be made for either separating them completely or combining other energy regulation aspects in a single regulatory energy agency per se.

There is no particular logic it seems to me for having some aspects of regulation in electricity and natural gas in one agency, and some aspects of another in other agencies. Either they could be segmented and I think I would argue strongly that they ought to be combined somewhere, a new agency, one place or another.

It is the right hand not knowing what the left is doing, the difficulty of coordination and the very nature of the agency differences, independent regulatory commission versus line agencies so to speak, who in terms of regulatory approaches are quite different. I think I would try to make the case quite substantially that the policy area should be separate from the economic regulation of utilities. To have natural gas and wholesale electricity together is rather historical.

Mr. SHARP. We appreciate your indulgence at this hour in the afternoon and your cooperation. I think there is some effort to upgrade management techniques which seems to be absolutely vital in all of our agencies as well as in the House of Representatives and other parts of government.

Thank you very much for your cooperation.

[The following statement and letters were received for the record:]

TESTIMONY OF CHRISTINE B. SULLIVAN, SECRETARY OF CONSUMER AFFAIRS OF THE COMMONWEALTH OF MASSACHUSETTS

To the Hon. John Dingell, Mr. Chairman, I am today submitting testimony on behalf of the consumers of Massachusetts in support of H.R. 15544, emergency federal power act amendments. This bill contains a number of provisions which are essential to the reform of the country's electric power regulatory system. These reforms will not only strengthen the rights of consumers in wholesale power cases, but should also enhance competition and more efficient operation in the electric utility system.

The current FPC system of allowing rate increases subject to refund is no longer acceptable. It is clearly unfair to charge consumers for a rate increase that has not been closely examined by a regulatory agency. Even though refunds may eventually be ordered, this can take months or years to occur. In the meantime, families and businesses have paid in excess of the legitimate cost of power. This is a free source of interest-free capital to utility companies, paid at the expense of retail customers of electricity.

The effect of the present FPC procedure is felt most strongly by the municipal light departments of cities and towns. Many of these publicly owned distribution companies buy most of their power wholesale from privately owned power companies. Many also have access to only one wholesale company as a source of bulk power. Thus, trapped by a monopoly supplier, a municipal is at the whim of substantial rate increases imposed with little or no regulatory review.

We in Massachusetts have 40 municipal light departments. These departments are well thought of by their customers and generally offer lower electric rates than those in neighboring communities served by investor-owned utilities. It is the established policy of the Dukakis Administration to support the continued viability of these local systems. In a business that tends strongly to monopoly, they are the one source of real competition. Their presence is a reminder and incentive to the private companies to increase efficiency and maintain high levels of service. The present regulatory system places these municipal light departments and their customers at the risk of essentially unregulated, and potentially unjustified, rate increases. This system creates a true incentive for the private power suppliers to take advantage of a captive customer, often with the hope of eliminating it as competition.

A recent general accounting office audit, prepared at the request of Congressman Moakley, documented this problem in Massachusetts. I understand that the situation is even more severe in other parts of the country. The antipathy of the private power industry toward publicly owned electric systems is sometimes strongly felt. The current regulatory system encourages an unfair competitive advantage between the two.

The suggested changes in federal power commission procedures would result in a great improvement in the situation. Besides the removal of the subject-to-refund decision method, the elimination of "pancaking", filing rate increases when previous increases have not yet been decided, is a positive step.

As a final note, we strongly support the bill's provisions for expanding the right of discovery during wholesale rate cases. The current procedure results in an essentially one-sided proceeding. A simple sense of justice and fairness would lead one to argue for a more open investigatory process, and this bill is a good step in that direction.

Thank you for this opportunity to submit my views to your committee. I hope that expeditious action on this bill will be forthcoming.

AMERICAN PUBLIC POWER ASSOCIATION,
Washington, D.C., September 20, 1976.

HON. JOHN D. DINGELL,
*Chairman, Subcommittee on Energy and Power, Rayburn House Office Building,
Washington, D.C.*

DEAR CHAIRMAN DINGELL: The American Public Power Association, the national organization representing more than 1,400 local publicly-owned electric utilities in 48 States, the Virgin Islands, Guam, Puerto Rico, and American Samoa, urges your strong support for enactment of H.R. 15544, the Emergency Federal Power Act Amendments. If enacted, this bill would alleviate, for a temporary period, the serious plight of many small consumer-owner utilities which purchase power at wholesale, while affording time to consider long-term legislative solutions.

H.R. 15544 effectively addresses several problems which pose an imminent threat to the survival of many of the almost 1,000 municipally owned electric utilities which purchase power at wholesale from private power companies subject to the jurisdiction of the Federal Power Commission.

One such problem is the "price squeeze," which occurs when a power company charges more for wholesale power than it charges certain retail customers. When this situation occurs—which is quite frequent—the municipal utility (the wholesale purchaser) is unable to compete with its neighboring power supplier. Pressure thus builds up to sell the municipal utility to the wholesale supplier.

The frequent occurrence of this situation could ultimately lead to the destruction of institutional competition between the municipally owned utilities and the private power companies, thereby endangering the Nation's unique pluralistic electric industry, to the detriment of consumers.

H.R. 15544 would address this problem by directing the Federal Power Commission not to approve a wholesale rate increase "if the differences between such utility's wholesale rates under such schedule and its retail rates are unreasonable or anti-competitive."

"Price-squeeze" problems are compounded when new increases are added to old ones, without any FPC determination of the reasonableness of either old or new, a process called "pancaking." The bill would alleviate "pancaking" by requiring a lapse of 18 months before a new increase is filed, if a previous increase is still unapproved.

The bill also would prevent private power companies from curtailing service to wholesale customers, while at the same time providing full service to all other classes of customers. It would authorize the Commission to require reporting of anticipated shortages of power, and to order fair curtailment of service plans which insure that wholesale customers will get continuous service. The Commission could also order transmission and pooling arrangements to alleviate power shortages.

We believe that without this legislation, a number of small municipal utilities are in danger of being forced to sell out to their large investor-owned suppliers. Many of those which may survive the next year and a half will do so only at the expense of a greatly weakened competitive position.

We strongly urge you to vote "yes" on H.R. 15544 when it is considered by the Subcommittee on Energy and Power.

Sincerely,

ALEX RADIN, *General Manager.*

MUNICIPAL LIGHT BOARD,
Reading, Mass., September 20, 1976.

Re H.R. 15544.

HON. JOHN D. DINGELL,
*Chairman, Subcommittee on Energy and Power, Committee on Interstate and
Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR CHAIRMAN DINGELL: This letter is written, at the request of the Municipal Light Board of Reading, Massachusetts, which requests that this letter be incorporated in the record of the hearings to be held today on the above captioned bill. Reading is a wholesale customer of Boston Edison Company, and has been subject to a series of overlapping and pancaking rate increases filed by Boston Edison at the Federal Power Commission. These matters are detailed at substantial length in the Report of the Comptroller General of the United States

dated September 7, 1976, and entitled Management Improvements Needed in the Federal Power Commission's Processing of Electric Rate Increase Cases. Reading requests that the report, as well be made a part of the record in this proceeding, since it emphasizes the result of the FPC's current handling of wholesale rate changes. As that report notes, the only one of the four pancaked filings (actually a fifth filing, as to a partial rate increase is also pending) which has been decided was the so called "S-1" increase filed in the Spring of 1970, and decided by the FPC in the summer of 1975. Indeed, appeals were taken from that final order, and are still pending in the Court of Appeals for the District of Columbia Circuit. Problems encountered with a time lapse of this magnitude are quite substantial. Reading determined that, in spite of Edison's contention that it was entitled to some of the refunds back in its pending Court of Appeals Case, that we would attempt to distribute these monies to the customers who had initially paid them. This was a massive undertaking made more massive by the fact that many customers who had initially paid the increase during the period of its pendency and moved, and could not be located. These problems would be substantially alleviated by the proposed bill pending before you.

There is one statement in the Report of the Comptroller General to which we call your attention with some concern. That is the statement on the cover page that "the potential overcharges had minimal impact on Edison's municipal customers". That statement is quite misleading, but reference to page 5 of the Report demonstrates that what the Comptroller General means is that because the municipal customers were forced to pass on the rate increases to their retail customers, the municipal customers *themselves* were not seriously injured by the increase. Of course, Reading, and most other municipal electric systems, seek to operate on a basis which will provide electricity to their citizens at the minimum possible cost consistent with efficient operation of the system itself. Thus, we are forced to pass on to our retail customers the substantial wholesale rate increases. Because of our publicly owned nature, however, we do not regard the municipal customer as a body apart from our own retail customers for this purpose. If the impact is substantial on our retail customers, it is equally substantial upon us, since we try to act on behalf of our retail customers.

For these reasons, Reading will appreciate your favorable consideration of this bill.

Yours very truly,

ROBERT C. McDIARMID, *Attorney.*

[Whereupon, at 5:21 p.m., the hearing was adjourned.]



