FEDERAL REGULATION OF THE ELECTRICAL UTILITY INDUSTRY

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It is the purpose of this paper to present a brief summary of the development of Federal regulation of the electrical utility industry, to point out certain weaknesses in that regulation, and to suggest certain changes which may be of value in assisting the industry to play its part in the present war effort. The subject will be discussed according to the following topical division: (a) the legal background of Federal regulation; (b) the present Federal regulatory statutes; and (c) an examination and criticism of present Federal regulation.

I

The entry of the Federal Government into the field of electrical utility regulation was the result of (a) certain technical developments within the industry, and (b) the use of the holding company as a device for creating large “systems” extending across state lines. The development of long distance transmission of electrical energy caused the electrical utility industry to become a problem for national concern. This problem was made more serious by the phenomenal development of the utility holding company in the period between 1920 and 1930.

Under our federal system of government, effective state regulation of public utility industries which do not confine their operations to a single state is difficult to attain. This fact is illustrated by the attempts of the states to impose effective regulation on the railroads prior to the passage of the Interstate Commerce Act in 1887. It is illustrated once more in the attempts of the states to regulate the electrical utilities since World War I.

As an example of the difficulties encountered by state commissions in their attempts to regulate interstate transmission of electrical energy, the Attleboro case may be cited.¹ The Narragansett Electric Lighting Company in 1917 had made a contract with the Attleboro

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Company whereby Narragansett, a Rhode Island utility, was to sell electric current to the Attleboro Steam and Electric Company, a Massachusetts utility, at a specified rate. In 1924 the Rhode Island Public Utilities Commission approved an increase in the rate charged the Attleboro Company. Attleboro protested the increase, and the Rhode Island Supreme Court ordered the rate investigation made by the Rhode Island Commission set aside on the ground that it imposed a direct burden on interstate commerce by a state agency. On appeal to the United States Supreme Court, the decree of the Rhode Island Supreme Court was affirmed.

The term "interstate commerce" is not defined in the Constitution, but it has come to mean not only the movement of goods but also, among other things, the transmitting of gas and electric current from one state to another. The Attleboro case seems to indicate that interstate transmission of current cannot be reached by state regulatory agencies. This principle is valid even when, as in the Attleboro case, the interstate movement of current is but a minor part of the transmitting company's business. Thus, the majority opinion in the Attleboro decision stated:

The test of the validity of a state regulation is not the character of the general business of the company, but whether the particular business which is regulated is essentially local or national in character; and if the regulation places a direct burden upon its interstate business, it is none the less beyond the power of the state because this may be the smaller part of its general business.... Plainly... the paramount interest in the interstate business carried on between the two companies is not local to either state, but is essentially national in character. The rate is therefore not subject to regulation by either of the two states in the guise of protection to their respective local interest; but if such regulation is required, it can only be attained by the exercise of the power vested in Congress.

That the extensive development of the public utility holding company further complicated the problem of state regulation can be readily understood. The most efficient state regulation of operating companies tends to become ineffective when the state regulatory commission cannot look into the intercorporate relations between subsidiary operating company and parent holding company. Intercorporate relations between subsidiary and parent may include such things as service

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2 See Public Utilities Commission of Kansas v. Landon, Receiver of the Kansas Natural Gas Company, 249 U. S. 236-246; Pennsylvania v. West Virginia, 262 U. S. 553-623. The Kansas Gas case was cited by the Court as a precedent in the Attleboro case.

and construction contracts with a service and construction company controlled by the parent holding company. Thus there is the possibility that intercorporate relations may lead to inflated operating expenses and construction costs. The effect of these items on rates charged by the operating company is obvious. Nor should one overlook the possible pressure exerted on subsidiary companies to declare dividends on their common stock in order that the holding companies above may have the necessary funds to pay interest and dividends on outstanding securities. The practice of "milking" subsidiaries has been one of the major causes of criticism of the holding company in the utility field.

It appears from an examination of the case material that the United States Supreme Court prior to 1935 was modifying its attitude toward state commission investigation of intercorporate relations in utility holding company systems. In the Southwestern Bell Telephone Company case, which was decided in 1923, one of the issues involved was the payment by Southwestern, an American Telephone and Telegraph subsidiary, of 4 1/2 per cent of gross revenues to American for equipment rental, licenses, and services. The Public Service Commission of Missouri had judged this payment to be excessive. The Court overruled this decision on the ground that the Commission had exceeded its authority. The Court stated:

Four and a half per cent is the ordinary charge paid voluntarily by local companies of the general system. There is nothing to indicate bad faith. So far as appears, plaintiff in error's (Southwestern's) board of directors has exercised a proper discretion about this matter requiring business judgment. It must never be forgotten that while the state may regulate with a view to enforcing

4 Under the Public Utility Holding Company Act of 1935 holding companies are forbidden to perform service and construction work directly for a subsidiary. (Section 13a.) Contracts made by a subsidiary operating company with a mutual service company or with other subsidiary companies of the parent company are subject to regulation by the Securities and Exchange Commission. (Section 13b et seq.)

5 The 1935 statute enables the Securities and Exchange Commission to control dividend payments by registered holding companies and their subsidiaries. (Section 12c.) Section 12 also gives the Commission regulatory power over other types of intercorporate financial relations.


7 Ibid., 288–289. The Court quoted State Public Utilities Commission ex rel. Springfield v. Springfield Gas and Electric Company, 291 Ill. 209, 234; 125 N. E. 891, 901: "The Commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses, unless there is an abuse of discretion in that regard by the corporate officers."
reasonable rates and charges, it is not the owner of property of public utility companies, and is not clothed with the general power of management incident to ownership.

Seven years later, in the Illinois Bell Telephone Company case, intercorporate relations in the American Telephone and Telegraph Company system were again involved in a case reaching the Supreme Court. One of the points at issue here was the contract relation between Illinois and Western Electric, a manufacturing and servicing subsidiary of American. The Court intimated that it would have been willing to hear some argument on intercompany contracts as a supporting reason for the Illinois Commerce Commission's rate reduction order directed at Illinois Bell Telephone Company.

Finally, in the Western Distributing Company case in 1932, the Court adopted a realistic attitude toward intercorporate relations. In this case, the Western Distributing Company, supplying gas to Eldorado, Kansas, was purchasing gas at forty cents per thousand cubic feet from Cities Service Gas Company. Both Western and Cities Service Gas were “grandchildren” of Cities Service Company. Western applied to the Kansas Public Service Commission for an increase in its retail rate schedule. The Commission refused to grant the increase unless it was allowed to examine the reasonableness of the forty cent wholesale rate. This condition was not acceptable to Western, which argued that, since Cities Service Gas Company was engaged in interstate commerce, its contract with Western could not be examined by the Kansas Commission. The Court, in effect, supported the Commission:

The opportunity exists for one member of the combination to charge the other an unreasonable rate for the gas furnished and thus to make such unfair

9 "The point of the appellant's contention is that the Western Electric Company, through the organization and control of the American Company, occupied a special position with particular advantages in relation to the manufacture and sale of equipment to the licensees of the Bell System, including the Illinois Company, that is, that it was virtually the manufacturing department for that system, and the question is as to the net earnings of the Western Electric Company realized in that department and the extent to which, if at all, such profit figures in the estimates upon which the charge of confiscation is predicated. We think that there should be findings upon this point." Smith v. Illinois Bell Telephone Company, 282 U. S. 153. Italics supplied.
11 Ibid., 124–125. The principle stated in this case does not conflict with the Attleboro decision. The Rhode Island Commission was seeking to regulate the transmission of current to another state, while the Kansas Commission was merely seeking to consider all factors affecting cost of service in its own state.
charge in part the basis of the retail rate. The state authority whose powers are invoked to fix a reasonable rate is certainly entitled to be informed whether advantage has been taken of the situation to put an unreasonable burden upon the distributing company, and the mere fact that the charge is made does not constrain the Commission to desist from all inquiry as to its fairness. Any other rule would make possible the gravest injustice, and would tie the hands of the state authority in such fashion that it could not effectively regulate the intrastate service which unquestionably lies within its jurisdiction.

It may well be that, prior to 1935, the United States Supreme Court was gradually making it possible for state regulatory agencies to deal more effectively with operating subsidiaries in the various electrical utility holding company systems. Whatever may have been the trend in the Court's decisions, however, the passage in 1935 of the Public Utility Holding Company Act and the amendments to the Federal Water Power Act shifted the emphasis from the States' attempts to solve the problem to the Federal Government's attempts to accomplish the same purpose. Therefore, it is necessary to turn to an examination of the two Federal agencies charged with regulation of the electrical utilities.  

II

The first step toward Federal regulation of the electrical utilities was taken in 1920. The Federal Water Power Act of that year established the Federal Power Commission and gave to that body the general duty of supervising the use of Federal water power sites by electrical utilities.  

The Commission was to consist of the Secretaries of War, Interior, and Agriculture. The Chairman of the Commission was to be

12 It is interesting to speculate on what would have been the development of state regulation if the Federal Government had not entered the field in 1935. It seems doubtful, however, that the results would have been completely successful. This thought is expressed in the Annual Report of the Federal Power Commission, 1940, which states: "The tremendous expansion of the electric power business, the tendency of this expansion to disregard State lines, and the increasing dependence of all phases of the people's life upon electricity have necessitated a corresponding increase in responsibility of the Federal Government for assuring ample supplies of power at low cost." See Federal Power Commission Release No. 1470, dated March 23, 1941. It may also be pointed out that the entry of the Federal Government into the utility field through such agencies as Tennessee Valley Authority has also tended to remove the problem of utility regulation from the States and to transfer it to Washington. The Federal Government has become an important utility operator as well as a regulator, and the resulting "yardstick" principle will certainly have an important influence on the future course of Federal regulation. Space does not permit a discussion of the validity of the "yardstick" principle as a basis for regulating privately operated utilities.

13 Public No. 280, 66 Congress.
designated by the President. The necessary staff was to be taken from the three executive departments headed by the Commissioners.\textsuperscript{14}

The duties of the Commission were to be:

(a) To make investigations and collect data concerning utilization of water resources;

(b) To cooperate with the executive departments and other agencies of state and national governments in making such investigations;

(c) To make public from time to time information secured from investigations;

(d) To issue licenses to citizens and corporations for building dams, reservoirs, transmission lines, etc., along, from, or in navigable waters of the United States (including territories) or on public lands;\textsuperscript{15}

(e) To issue preliminary permits preparatory to issuing formal licenses, in order that license applicants may be protected pending completion of examinations, surveys, and plans;

(f) To prescribe rules and regulations for the establishment of a system of accounts for licensees, and to require accounting reports from licensees;

(g) To hold hearings and take testimony in connection with license applications;

(h) To perform all acts and to make such rules and regulations as are necessary to carry out the provisions of the Act.

Licenses issued by the Commission may not exceed fifty years, and a licensee is required to accept conditions imposed by the Act. These conditions are:

(a) Applicant's plan must be adapted for the best utilization of the water power site as viewed by the Commission;

\textsuperscript{14} The Commission was allowed to appoint a full-time secretary; otherwise, the Commission was to have no permanent staff members of its own. Needless to say, this arrangement was very bad from an administrative standpoint.

\textsuperscript{15} The term "navigable waters" was, for a long time, a controversial point between the Federal Power Commission and privately owned utilities. The controversy reached its climax in the Appalachian Power case, decision in which was handed down by the Supreme Court in December, 1940. This decision held that any stream is "navigable" which can be made so by "reasonable improvement." \textit{United States v. Appalachian Electric Power Company}, 311 U. S. 407. Moreover, a "navigable" water of the United States does not lose that characteristic because its use for navigation in interstate commerce has lessened or ceased. \textit{Ibid.}, 408, 409. The Appalachian decision was a signal victory for the Federal Power Commission. See \textit{Annual Report of the Federal Power Commission}, 1940, 15-17.
(b) No alteration in original approved plans will be permitted without the consent of the Commission; 16

(c) Licensee must maintain project in good repair;

(d) Accumulation of amortization reserves is to begin after twenty years of operation; these reserves are to come from surplus earnings over a reasonable rate of return on the investment, and they are to be used for reduction of the net investment in the project;

(e) Licensee must pay a reasonable charge for the administration of the Act and for the use and enjoyment of lands and other property of the United States;

(f) Excessive profits are to go to the United States until the state in which the project is located provides for their expropriation;

(g) Licensee must reimburse other licensees for benefits received as a result of other licensees’ undertakings; 17

(h) Combinations to restrain trade, fix prices, and limit output are prohibited in the electrical utility industry.

Subject to two years’ notice in writing, the United States may, at the expiration of a license, take over and operate, in whole or in part, a licensed project. The United States will pay, in such cases, the “net investment” (not to exceed the “fair value”). “Net investment” is defined as “the actual legitimate original cost (of the project) . . . plus similar costs of addition thereto, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created.” 18 The United States may also take possession of any licensed project when national safety demands.

During the first period of its existence, the Federal Power Commission could not function effectively because of the crude structural

16 An exception is made for additions to capacity of less than 100 h.p.
17 Thus, for example, Pacific Gas and Electric Company of San Francisco must reimburse the Southern California Edison Company Ltd. of Los Angeles for benefits derived from the Edison Company’s storage reservoirs and other headwater improvements on the San Joaquin River above Pacific Gas and Electric Company’s Kerckhoff plant. See Federal Power Commission Release No. 1786, dated December 15, 1941.
18 Section 3.
organization which the Congress had erected. The Commission did not have a full-time staff, and the three Secretaries who served as members of the Commission were busy with their own departmental work. As a result of this unsatisfactory state of affairs, Congress amended the Federal Water Power Act in 1930 to provide for a permanent five-man agency. The Commission is now composed of five members appointed by the President. Each member serves for a term of five years. The members elect one of their own number as chairman.

The final statute affecting the powers of the Commission as an electrical utility regulatory body was passed in 1935. The Public Utility Holding Company Act of that year contained (as Title II of the Act) certain very important amendments to the original Federal Water Power Act. These amendments are presented here.

(a) Federal regulation of interstate transmission and sale of electrical energy at wholesale in interstate commerce is deemed to be in the public interest.

(b) The Federal Power Commission may divide the country into power districts for the purpose of forming power pools by physical interconnection and coordination of facilities for generation, transmission, and sale of electrical energy. In time of war or other emergency, the Commission may require such interconnection.

(c) The Commission is given the power to regulate the issuance of securities and the assumption of liabilities by a company subject to its jurisdiction. The issue or assumption must be for some lawful

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19 Public No. 412, 71 Congress.
20 Public No. 333, 74 Congress. Title I of the Act contains the provisions applicable to utility holding companies. These provisions are discussed below.
21 Thus, Federal regulation was extended to all interstate movements of energy and was no longer to be confined to those companies using Federal water power sites. The exact jurisdiction of the Commission under this section cannot be ascertained from a reading of the section, since it would be impossible to include in the statute a description of all possible situations arising out of "interstate transmission" of electrical energy. For an illustrative case see Federal Power Commission Release No. 1753, dated November 4, 1941, involving the Hartford Electric Light Company.
22 The drought in the Southeast during the summer of 1941 caused the Commission to make use of the power contained in this section. The drought came at a time when the defense program in general, and the aluminum industry in particular, was making heavy demands on the power reserves of the Southeast. The Commission ordered the formation of a seventeen-state power pool in an effort to assure a continuous supply of power to defense industry in the affected area. See Federal Power Commission Release No. 1620, dated June 28, 1941. Voluntary curtailment of use of electricity was undertaken by large commercial, non-defense industrial, and municipal users in such states as Alabama and Georgia.
object and must be reasonably necessary. A company which submits approved reports to the Federal Power Commission in connection with a security issue may file such reports with the Securities and Exchange Commission in lieu of reports required by Section 7 of the Securities Act of 1933 and Sections 12 and 13 of the Securities and Exchange Act of 1934.

(d) Rate schedules and other charges covering transmission and sale of energy subject to the jurisdiction of the Commission must be filed with the Commission. Usually thirty days' notice is required before a change in a rate schedule may take place. The Commission, until public hearing, may suspend new rate schedules, and, after public hearing, may set what it considers to be a "just and reasonable" rate.

(e) The Commission may compel any utility subject to its jurisdiction to provide adequate service, where service is held to be inadequate. It may not, however, compel any enlargement of generating facilities.

(f) The Federal Power Commission may investigate the legitimate cost of property belonging to any utility subject to its jurisdiction, the depreciation of such property, and other facts necessary for rate-making purposes.

(g) The Federal Power Commission may prescribe a system of accounts, including proper and adequate depreciation accounts, for licensees and utilities subject to its jurisdiction.

(h) Any action taken by the Federal Power Commission may be appealed to the Federal Circuit Court of Appeals, but findings of the Commission as to facts, when supported by substantial evidence, are final.

23 This regulatory power is not applicable to notes and drafts maturing not more than one year after issue, renewal, or assumption of liability on such notes and drafts, provided that the aggregate of such notes and drafts does not exceed five per centum of the par value of other securities outstanding or (in the case of no-par stock) five per centum of market value at date of issue of the notes and drafts.

24 An interesting case involving this section occurred during the summer of 1941. The Federal Power Commission ordered a reduction in the rate base of the Chicago District Electric Generating Corporation, following a cost study, as a result of the Commission's acknowledged adoption of the "prudent investment" theory as a basis for rate making. The Commission described its decision in this case as "precedent shattering." Federal Power Commission Release No. 1646, dated July 25, 1941. The Commission later dismissed petitions for rehearing submitted by the affected company and the Illinois Commerce Commission. Federal Power Commission Release No. 1705, dated September 19, 1941. It will be interesting for students of public utility economics to note what action, if any, will be taken to have the Federal courts set aside the Commission's order.
(i) When, in connection with security issues, there is a conflict of jurisdiction between the Securities and Exchange Commission, administering the Public Utility Holding Company Act, and the Federal Power Commission, administering the Federal Water Power Act as amended, the requirements of the Holding Company Act are to prevail.

It is doubtful whether any regulatory statute enacted by the Congress has ever aroused so much controversy, such bitter debate, and so many violent expressions of opinion as the Public Utility Holding Company Act of 1935. This statute was largely the outgrowth of an exhaustive study of utility corporations made by the Federal Trade Commission. The principal provisions of the statute are given below.

(a) Public utility holding companies and their subsidiaries are declared to be “affected with a national public interest.” A “holding company” is any company which owns, controls, or holds the power to vote ten per centum or more of outstanding voting securities of a public utility company or of a company which is itself a holding company, or any person who, in the opinion of the Securities and Exchange Commission, directly or indirectly influences a public utility company or a holding company.

(b) All holding companies must register with the Securities and Exchange Commission and supply information about themselves.

(c) The Securities and Exchange Commission must approve the issuance and acquisition of securities by registered holding companies and subsidiaries.

(d) The Securities and Exchange Commission may control such intercompany transactions as loans; sales of securities; management, service, sales, and construction contracts; dividend payments, etc.

25 Public No. 333, 74 Congress. Title II of this statute contains the amendments to the Federal Water Power Act described above.
26 This study was made at the request of the Senate. See Senate Resolution 83, 70 Congress. Thus far, 95 volumes have been issued as Senate Document No. 92.
27 The first major test of the Public Utility Holding Company Act came as a result of the registration provision. Electric Bond and Share Company sought to escape registration on the ground that the company and its subsidiaries were not “engaged in activities which bring them within the ambit of Congressional authority.” By a cross bill the company also sought a declaratory judgment to the effect that the entire statute was invalid. A decision by the Supreme Court was handed down on March 28, 1938. Electric Bond and Share Company v. Securities and Exchange Commission, 303 U. S. 419–443. The effect of the decision was to uphold the registration provision and to refuse, at that time, to consider the validity of the statute in its entirety.
(e) The Securities and Exchange Commission is required to examine the structure of holding company systems and to simplify them into “geographically integrated systems.” The Commission is further instructed “to take such action as the Commission shall find necessary in order that [each] such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company.” This means that only two holding companies may be superimposed on any one operating company. A holding company system may submit a plan for its own simplification, which, if approved by the Commission, will be put into effect. If a voluntary plan is not submitted, the Commission may impose its own plan.

(f) In the event that it becomes necessary to appoint a receiver or trustee for a registered holding company or subsidiary company, the court may appoint the Commission as such receiver or trustee, provided that the Commission expressly consents to its own appointment. In any event, no plan for the reorganization of a registered holding company, or subsidiary thereof, may be put into effect without the consent and approval of the Commission.

III

At the present time, there are two agencies of the Federal Government directly concerned with certain phases of electrical utility regula-

28 As applied to the electrical utilities, an “integrated system” is defined by Section 2 of the Act as “a system consisting of one or more units of generating plants and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more states, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; ...” This definition is broad enough to allow the Commission considerable freedom of action. In the plan first proposed by the Commission for the United Gas Improvement Company system, “geographic integration” would mean confining United Gas operations to its electrical subsidiaries (giving up gas subsidiaries) in the Philadelphia area, including northern Delaware and northeastern Maryland. See Securities and Exchange Commission Holding Company Act Release No. 2692, dated April 15, 1941.

29 The material contained in the above paragraph constitutes the so-called “death sentence.” Actually, this popular designation of Section 11 is misleading in that the public utility holding company per se is not “doomed.” It may still exist as a part of a “geographically integrated” system.

30 Section 11 (b) (2).

31 In the case of the important Associated Gas and Electric system, reorganization of which was begun early in 1940, the Securities and Exchange Commission declined to serve as trustee when tendered the appointment by Judge Leibell of the Federal District Court for the Southern District of New York.
tion. These agencies are the Securities and Exchange Commission and the Federal Power Commission. The necessity of Federal regulation of the industry is recognized. Whether Federal regulation, as presently provided, is adequate and beyond criticism is another matter.\textsuperscript{32}

Of the two Federal regulatory agencies, the Federal Power Commission appears to be doing the better work at present. The Federal Power Commission realizes the need for expansion of productive capacity in the industry as a necessary part of the nation’s war effort. To that end, it has already proposed a program of expansion. Preparation of this program was begun in 1939, and it was submitted to the President in the summer of 1941, after being considered at a series of conferences with representatives of the major public and private utility systems.\textsuperscript{33}

The plan calls for a five-year construction program which will insure capacity operation of electrical equipment factories reserved for the manufacture of generator units. An annual production of 2,500,000 kilowatts of new steam and 1,000,000 kilowatts of new hydrostation units is contemplated. At the time the plan was first announced in 1941, it was the opinion of the Commission that the new productive capacity would assure ample power for defense industries under “orderly priority arrangements.” \textsuperscript{34}

The cost of the program is estimated at $150,000,000 to $200,000,000 a year, and it has been suggested that a subsidiary of the Reconstruction Finance Corporation be created to assist in financing the program.\textsuperscript{35}

Insofar as a program of expansion would require certain essential metals, the question of government policy toward the utilities in time of war is raised. The Commission has taken the attitude that relatively high priority ratings should be granted to strategic utility plants

\textsuperscript{32} “Regulation” implies that the industry will, for the most part, continue to be operated by private enterprise, subject to the controls imposed by the various regulatory agencies. The merits of complete ownership and operation by government are not considered here. It is quite possible, however, that in the course of the war and post-war periods, we shall see governmental ownership and operation become increasingly important.


\textsuperscript{34} Ibid., 3–4. It should be pointed out that when the plan was announced in the summer of 1941, it was expected that defense expenditures of the Federal Government for the fiscal year 1943 would be about $36,000,000,000. At the present time (February, 1942), it is expected that those expenditures will reach $56,000,000,000. This change will call for some revision in the plan to allow for the greater demand made upon defense industries as a result of the entry of the United States into the war. An even more ambitious program of expansion would seem to be indicated.

\textsuperscript{35} Ibid., 2.
for acquiring new generating equipment. In a speech before the Washington, D. C., and Maryland members of the American Institute of Electrical Engineers, Commission Chairman Leland Olds stated: 36

The Federal Power Commission has repeatedly taken the stand that the possible savings of power through curtailments should be reserved for emergency situations which cannot be met by planned additions to capacity, and that a minimum of additional capacity, equivalent to the ability of the equipment companies to produce land turbine generators should be planned for each year and allotted the necessary priorities.

Reference to the problem presented by the southeastern drought in the summer of 1941 will attest to the wisdom of the Federal Power Commission's view. Unfortunately, other governmental agencies are interested in the matter of public power policy and utility regulation, and the Federal Power Commission must contend with demonstrations of this interest. 37

The work of the Federal Power Commission is not confined to the present war emergency. In prescribing uniform systems of accounting for companies within its jurisdiction, in making national power surveys, and in compiling the Typical Electric Bill Reports, the Commission has shown that, if given an opportunity, it can become a creditable national agency for the regulation of electrical utilities.

With respect to Federal utility regulation, the Securities and Exchange Commission is concerned only with the regulation and simplification of holding company systems. Since the Public Utility Holding Company Act of 1935 is essentially a "reform" measure, rather than a "regulatory" measure, perhaps it is correct to say that the Securities and Exchange Commission is not really a "regulatory" agency at all, so far as the electrical utilities are concerned. This statement is correct if one assumes that the so-called "death sentence" provisions constitute the really important part of the Act.

Since the beginning of the national defense program in 1940, the Securities and Exchange Commission has apparently proceeded on

37 An Associated Press item of July 24, 1941, quotes Secretary of the Interior Ickes as saying, with reference to the plan of the Federal Power Commission for expansion of productive capacity in the industry: "It does not suit this department at all. As far as we are concerned, before Mr. Olds makes recommendations on areas in which we operate, we should be consulted. Some recommendations were very ill advised." The mere fact that two agencies as diverse as the Interior Department and the Federal Power Commission should have a hand in public power policy is a sad commentary on the present state of Federal regulation. It is to be remembered, of course, that Mr. Ickes speaks as an operator of public power projects rather than as a regulator who is supposedly unprejudiced.
the assumption that there is no necessity for curtailment of the reform ordered by the 1935 statute. In defense of the Commission, it should be pointed out that the Commission has no other alternative unless the Congress repeals, or defers action under, Section 11. This raises the question of the wisdom of continuing Section 11 proceedings against holding company systems at this time.

Granted the desirability of ultimately reducing all holding company systems to "geographically integrated" units, and assuming that this goal can eventually be achieved, one may still question the wisdom of insisting upon further drastic reforms in the industry during a time of war. During a period of war emergency, emphasis is placed on an orderly expansion of productive capacity to reduce the pressure of war needs on the nation's existing productive capacity. Section 11 proceedings of the Securities and Exchange Commission have now reached the point where wholesale dissolutions of holding company systems are about to take place. This dissolution process may prove to be very distracting to utility executives, whose attentions should be focused on increased production exclusively. Technical improvements, installation of new equipment, and increased engineering efficiency are more important now than financial and corporate reforms.

One may argue that expansion of productive capacity is a matter affecting only operating companies and their executives, and that it does not matter to the operators what happens to the holding companies above them. This argument does not appear to be sound. The holding company has become such an important part of the utility industries, especially the electrical utility industry, that anything which affects it is of interest to, and, in the present situation, a distraction for utility operating executives. One may regret the fact that post-war finance in the 1920's hit upon the holding company as a device for engaging in many doubtful practices in the utility fields. The fact remains, however, that the holding company has become an integral part of the industry.

38 Plans have been worked out, or are being worked out, for such major systems as United Light and Power Company, Standard Gas and Electric Company, Commonwealth and Southern Corporation, United Corporation, United Gas Improvement Company, and National Power and Light Company. National Power and Light is itself a part of the vast Electric Bond and Share system. The Associated Gas and Electric system is likewise in the process of dismemberment, but in this case the problem is further complicated by reorganization through the Federal courts.

39 No attempt is made here to consider the merits and faults of the holding company as a device for assisting in the legitimate expansion of productive units in the industry. It may be pointed out that the Holding Company Act
No serious move has been made in Congress, as yet, to set aside Section 11 for the duration of the war. There has been some discussion on the subject, however.\(^{40}\) A wise course would be for the Congress to suspend Section 11 until the close of the war. When the nation returns to a peace-time economy, the Congress should reopen the whole question of holding companies. Moreover, it should consider the question more calmly than it did during the summer of 1935.

This suggestion is not to be taken as a criticism of the Holding Company Act in its entirety. There are many provisions in the Act which should be retained. Provisions relating to such matters as the regulation of security issues, intercompany loans, service and construction contracts, dividend payments, accounting practices, etc., are necessary powers which a good Federal regulatory agency should have. Retention of the Holding Company Act as a regulatory measure, however, is quite different from retention of the same statute as a reform measure.

If, in keeping with the above suggestion, emphasis during the present war emergency is to be on regulation and expansion of the industry, rather than on reform of the industry, it is necessary that a strong regulatory agency should be provided. It appears that the Federal Power Commission, rather than the Securities and Exchange Commission, should be this agency. To that end, it is suggested that all regulatory powers now possessed by the Securities and Exchange Commission under the Holding Company Act, including the regulation of utility security issues, should be transferred to the Federal Power Commission.

The Federal Power Commission should become for the electrical utility industry what the Interstate Commerce Commission is for the railroads and other transportation agencies. When the Securities Act of 1933 was passed, railroad security issues were specifically exempted from supervision by the administrators of the Securities Act. The same recognition should be given to the electrical utility industry. Administrative efficiency should be increased by setting up a single agency with adequate powers to regulate all phases of an industry which presents many problems not found elsewhere in the economy.

itself implicitly recognizes that the holding company has something useful to offer within "geographically integrated" units.

\(^{40}\) See, for example, *United States News*, March 28, 1941, 34.