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1927

**STENOGRAPHIC REPORT**  
**ON HEARING**  
**POWER MEASURES**  
**BEFORE**  
**GENERAL COMMITTEES**  
**ON**  
**Public Utilities, Interior Waters**  
**and Judiciary**

HOUSE DOCUMENT NO. 10

SENATE DOCUMENTS

Nos. 6, 7, 15, 40 and 75

IN THE

HOUSE OF REPRESENTATIVES

FEB. 24 and 25

1927

STATE OF MAINE

MAR 12 1992



# Proceedings of Hearing on Water Power Bills

CHAIRMAN GRANVILLE:—The assembly will please come to order, that we may proceed with the hearing as advertised for today between the general committees on Public Utilities, Interior Waters and Judiciary, on the following measures:

H. P. 21., H. D. 10 AN ACT to Incorporate the Maine Water Storage and Power Transmission Company, for the Purpose of Interconnecting Electric Power Plants in Maine and Regulating the Flow of Maine Rivers.

S. P. 11., S. D. 6. AN ACT to Amend the Charters of All Corporations Making, Generating, Selling, Distributing and Supplying Electricity.

S. P. 12., S. D. 7. AN ACT to Amend the Charters of Maine Corporations Incorporated for Transmission of Electricity and to Limit the Rights of Foreign Corporations Authorized to Do Business in Maine for Similar Purposes.

S. P. 28., S. D. 15. AN ACT regulating the Exportation of Hydro-electric Power from Maine.

S. P. 100., S. D. 40. AN ACT to Provide for the Organization of Electric Transmission Companies, with Limited Powers, and to Provide for Issuing Permits to Electrical Companies and Others to Sell Electricity Thereto for Transportation and Sale Outside of the State of Maine under Certain Specified Conditions.

S. P. 177., S. D. 75. AN ACT to create a Commission to negotiate a Treaty regarding the Water Powers and Electricity of New England.

Before beginning the hearing, I wish to state that we have reserved the first two rows of the House, or such part thereof as may be necessary, for the proponents and opponents of the several measures. The remainder of the body of the House is for the members of the House and Senate.

Now we are ready to proceed with the consideration of the first measure as advertised; and I wish each opponent and proponent would confine themselves strictly to the bill

under consideration, as we have many matters to consider. Be as brief as you can and properly explain your position.

The Committee is ready to hear the proponents on H. P. 21, An Act to Incorporate the Maine Water Storage and Power Transmission Company.

Will each proponent or opponent when rising to address the Committee please state his name and address?

MR. EDWARD E. CHASE of Cape Elizabeth:

Mr. Chairman, it seems to me quite important in connection with the discussion of water power that one be able to prove what it was that he said; and for that reason, in order that I may be more clear and perhaps be less misquoted, I want to read part of my remarks, and while the information that I present may not be considered ample I trust that the Committee will get the drift of my inclination. It seems to me that in presenting this proposition that while I would confine myself as far as possible to my own bill I must of necessity refer to other measures which are matters of great public importance and are well understood by the people; and in trying to establish my own case I must prove now or eventually that my method is the best method; but I will try, Mr. Chairman, to be as brief as possible in referring to any other bill.

In considering the many features of the water power problem in your effort to evolve a water power policy for the State of Maine and to give that policy definite expression in the form of law, your Committee may find some enlightenment in a brief review of the history of water power and on its influence upon the development of this state.

Although the water power of Maine is manifestly the one natural resource where future development holds forth the greatest promise of prosperity, the importance of Maine water power in popular estimation is in fact a great exaggeration of the

reality. There are today in the United States and Canada several water power plants generating at one site more hydro-electric power than is produced by all the water power plants in Maine. During one year—1926—where was developed, or in process of development, in the Province of Quebec about 1,700,000 H. P. which amount is largely in excess of the capacity of all Maine water powers, both developed and undeveloped. We should no longer cherish the illusion that our undeveloped water powers are likely to attract large industries to Maine on account of a scarcity of power elsewhere.

Nevertheless the force of tradition upon public opinion has closed many minds to the seemingly irresistible logic of events. For a hundred years and more each generation in Maine has handed down to the succeeding generation the conviction, as strong as it is vague, that the water power of Maine constitutes a natural resource upon which the prosperity of Maine can be, and sometime will be, established. And today the old idea still persists, as derived from the reasoning of seventy years ago, when the transmission of electric power was unknown, and when water power in favorable locations could be developed at a cost often as low as one-fifth of the cost of steam power.

In studying the history of the industrial plants which have grown up along our rivers one must remember that water power was not the only factor in promoting the development of some of them. The lumber industry and the pulp and paper industry were in general as dependent upon the availability of raw materials and upon water transportation of those materials as upon the water power to turn the wheels of the manufacturing plants. The only Maine industries which clearly owe their creation to water power as a motive force are the cotton textile and the woolen industries; and there has been no important new development in these industries in Maine for forty years, excepting the natural growth of the best companies.

The construction of water power plants by public utility companies and the erection of transmission lines marks the beginning of the

popular perception of the new power era in Maine. People begin to believe that the energy from our water powers would be transmitted to industries in other states, and that Maine was in danger of losing the advantages as a manufacturing location which it had previously possessed. Reflecting this popular sentiment the Maine legislature in 1909 enacted the Fernald law which prohibits the exportation from Maine of hydro-electric power. It is the proposition of modifying or repealing that law which is now under consideration.

It is obvious that the Fernald law has failed to accomplish its original purpose, which was to bring industries to Maine. There has been no industrial development in Maine by reason of that law, and there are no signs to indicate that any such development will take place in the future. It is claimed that the effect of the law has been actually to retard development by preventing the creation of a large supply of electric power on the lines of the power companies, which have developed power sufficient only to satisfy the demands of the people and industries of Maine.

However, the greatest harm caused Maine by reason of the Fernald law has come about by the poisonous effect upon the political atmosphere which for the last ten years has surrounded every constructive business enterprise which involved Maine water powers. The water power issue has been a football, kicked around the arena of Maine politics. The state has lost millions of dollars by reason of this ridiculous agitation; and we are in grave danger of losing that which is most valuable, the confidence of business men everywhere. Unless we want to establish a dynasty of demagogues, it is time to do something intelligent about water power.

I take it that in the consideration of the water power problem the first step is to define a policy which is wise for the state, and to test all proposed measures by the rules of that policy. The formulation of such a policy requires sound knowledge of existing conditions in Maine, insofar as such conditions involve water power; and I am presenting certain facts and statistics of the

present, and certain opinions as to the future, with the idea that the presentation of all available evidence, whether in confirmation or rebuttal of my own, will be helpful to your committee in arriving at a sound decision.

There is now developed in Maine about 500,000 H. P. of hydro-electric power. Of this amount public utility companies own about 30 per cent, and the Insull companies own about 20 per cent. of the total. The cotton textile industry owns about 10 per cent., and the pulp and paper industry about 50 per cent. The remainder is made up of small powers, principally owned by woolen mills, with only 30 per cent. of our water powers owned by public utilities as compared to 70 per cent. owned by industrials it is obvious that the problem involves many factors separate and distinct from the special problems of the public utility companies. Any power bill that can be applied only to public utility companies is inadequate, for it hardly scratches the surface of the real power problem.

It will be admitted, I think, that the future prosperity of industries in Maine is of far greater importance than the hope of increased earnings of public utility companies. Industrial enterprises have to work out their own salvation under competitive conditions, while public utilities operating in established communities are practically guaranteed by law earnings sufficient to show a fair return on a fair valuation. Furthermore, industrial prosperity is essential to the success of public utilities in Maine.

The immediate future of Maine's principle industries is by no means bright. The paper industry is facing the probability of severe competition during the next few years. The construction in Canada of new paper mills having the advantages of cheaper wood, lower wages, and, in some cases, cheaper power than Maine can offer will create a situation which some of our Maine mills cannot meet successfully. The Maine cotton mills have come through a severe depression in good financial condition, and although there is no reason to hope for the expansion of this industry, we are

justified in the hope that it may be preserved.

The Maine paper industry and cotton textile industry in general do possess the advantage of cheap power which was secured many years ago by the erection of water power plants in favorable locations and at low costs. The power which these mills use would become still cheaper if the companies could sell the unused surplus. The additional earnings from the sale of surplus power would in some cases be sufficient to turn a present loss into a future profit, and would thereby assure the continued operation of plants which otherwise would have to be abandoned.

History shows that, although the value of our water powers has been exaggerated in popular opinion, there was a time when industries were located in Maine by reason of cheap power. We know that today the location of industries is determined sometimes by the availability of cheap power. If we can accept the modern definition of the term "cheap power," and apply that definition to the conditions of today, we may be able to determine what is the prospect for industrial development in Maine on account of the cost of electric energy generated by Maine water powers.

The creation of small industries in Maine will depend upon the availability of raw materials, such as hardwood or feldspar and other mineral resources, rather than upon cheap power. The possibilities for large industrial developments seem to lie in a combination of water shipping and cheap power. By cheap power I mean power that can be delivered in large quantities at a price less than the cost of power generated by steam; and today that means power that can be sold at 5 mills to 8 mills per k.w.h. I know of no supply of primary hydro-electric power that can be sold profitably at such prices under existing conditions.

The greatest opportunity for the State of Maine to benefit from the development of its water power resources lies in some plan of conservation and complete utilization which will bring into existence a large supply of cheap power. This

is the objective at which I aim in my plan to create the Maine Water Storage & Power Transmission Company.

500,000 H. P., which is about the capacity of Maine water powers, would under ideal conditions be capable of generating about 3 billion k. w. h. annually. As a matter of fact, according to recent engineering estimates, the amount of power generated in Maine which is actually used is about one billion k. w. h. If we can evolve a plan of river regulation and inter-connection of power plants which will make useful the potential power which is now wasted, and by the development of that plan can bring most of our water powers up to the same standard of excellence which now prevails on the Presumpscot and the Union Rivers, we may be able almost to double the amount of useful power produced by existing Maine water power plants. The consumation of such a plan, by doubling the power production, would reduce the cost of production nearly 40 per cent.

There are three essential features to be considered in any complete plan for the most efficient use of Maine water power, namely: 1. River Regulation. 2. Inter-connection of Power plants. 3. Opening a market where all surplus power can be sold.

River regulation by water storage reservoirs has not progressed with the speed that the advantages of such regulation would justify. In cases where one interest owns most of the powers on a river, as on the Presumpscot, the West Branch, and the Union River, water storage has been created. On the larger rivers, where the ownership of powers is divided, the necessity for cooperation, the diversity of industry, and the lack of any market for the additional power which could be generated by the stored water all create conflicting interests which it is difficult to reconcile. Nearly twenty years stand between the construction of Azischohos Dam through the cooperation of some of the power owners on the Androscoggin and the creation of Brassua storage through the cooperation of some of the power owners on the Kennebec.

Nothing important has been done on the Penobscot or the Saco through cooperation in storage development. The existing conditions of flow on our principal rivers can be described roughly by the following statistics, which show the minimum flow, or the amount of water available for at least 95 per cent. of the time, measured in cubic feet per second for each square mile of tributary drainage area:

On the East Branch of the Penobscot River at Grindstone, .22 cubic feet per second minimum flow. On the Mattawamkeag River at Mattawamkeag, .19 cubic feet per second. I won't bother you with all these statistics. Kennebec River, without giving effect to Brassua storage, at The Forks above Dead River, .59 cubic feet per second. Kennebec at Waterville, .43 cubic feet per second. On the Androscoggin watershed; Androscoggin River at Berlin, N. H., 1.05 cubic feet per second; at Lewiston, .75 cubic feet per second. On the Saco River at West Buxton, .43 cubic feet per second.

Now look at conditions on the West Branch of the Penobscot where the Great Northern has by water storage brought about a minimum flow of 1.10 cubic feet per second for each square mile of drainage area, and look at conditions on the Presumpscot where the minimum flow is even greater in proportion to its size. Then compare these conditions with that which prevails on Dead River, where the minimum flow is .17 cubic feet per second for each square mile of drainage area; or on the Mattawamkeag, .19; or the East Branch of the Penobscot, .22 cubic feet. Compare the Saco with the Androscoggin, where some of the power owners have cooperated to secure regulation of flow.

To me these figures clearly demonstrate two propositions: One, that wherever one power owner dominates a stream the advantages of river regulation are so apparent and so necessary to him that he hastens to create water storage reservoirs; and, too, that wherever there is a divided ownership in water powers on a river the difficulties of cooperation usually prevent the creation of water storage reservoirs.

Maine's future supply of cheap power lies primarily in the opportuni-

ities for river regulation by water storage; and few, if any, new water power plants will be capable of generating hydro-electric power at a cost low enough to attract industries to Maine until river regulation is secured. As a practical demonstration of this principle let me call your attention to the fact that the cost of producing power at the new Gulf Island plant of the Central Maine Power Company is probably more than 6 mills per k. w. h. According to the report of the Maine Water Power Commission on Brassua and Moosehead storage there would be an increase in the production of power in existing power plants on the Kennebec of more than 60 million k. w. h. annually at a cost of less than 3 mills per k. w. h. by reason of this storage; and if the Kennebec should be fully developed for power and all the power owners should share in the cost of storage the cost of the increase in power produced would be less than 1 mill per k. w. h.

I have not attempted to differentiate between primary and secondary power. You will appreciate that as the daily output of power becomes more constant by reason of regulation of flow the power which is produced becomes worth more per k. w. h. For the Brassua and Moosehead storage just mentioned the result in power production at existing plants on the Kennebec would be an increase in total power of about 60 million k. w. h. and an increase in primary power of about 150 million k. w. h. Figuring primary power as worth 5 mills per k. w. h. and secondary power at 2 1-2 mills, the present annual power production on the Kennebec has a value of about \$1,100,000. With Brassua and Moosehead storage the value of the annual power production would be more than \$1,500,000. Storage on Dead River would bring about a further increase.

What can the State do to stimulate progress in river regulation in order to make this potential supply of cheap power actually available in Maine? There are two practical methods. One method is to compel the water power owners to pay for the benefits of river regulation. My bill provides for compulsion in mild form by compelling the water power owners to pay for the benefits of river regulation, but only upon the condition that such river regulation

shall be directly profitable to each of them.

It may be unusual—my opponents say it may be unconstitutional—but in a matter of great public importance it certainly is not unfair to compel a man to make a profit for himself in order that all may benefit. Everyone knows that the State, either through the police power or by eminent domain, has exercised its authority time and again to bring order out of confusion to the end that all may benefit. Notable instances are the dam companies which compel log drivers to pay a toll; the log driving companies which handle all the drives on a stream and charge therefore; and the Maine Forestry District to which timberland owners are obliged to pay a special tax.

River regulation is a vital feature of a comprehensive water power policy. Even if the methods proposed to bring it about should be unconstitutional, which I do not believe, we can still profitably discuss such methods as long as we are fair and just. If our riparian law is such that the sovereign power of the State cannot be applied to correct a condition of confusion, still the matter is of sufficient importance to justify argument and consideration.

The second method of securing river regulation is to create a situation in which most of the water power owners, actuated by selfish motives and not under compulsion will cooperate in the creation of water storage reservoirs. This method does not involve any constitutional questions, but it is more unfair to the water power owners than the method of compulsion, because it places the burden of paying for river regulation upon the present owners of developed powers, and gives them no way to compel the owners of power plants built in the future to pay their proportional share for the benefits of regulation.

If it appears that this is the only practical method, how can the State bring about such a situation? Obviously, by a modification of the Fernald law so as to permit the exportation of hydro-electric power, and thereby open up a market for power which will enable the water power owner to sell at a profit all of his surplus power to a transmission company whose lines connect with his power plant.



### Inter-Connection of Power Plants

The industrial water power plants in Maine which produce about 70 per cent. of Maine's power are nearly all independent. Generally they have no outlet for their power except in the mills of which they are a part. Generally the capacity of the power plant is made great enough to carry the greatest load which the mill can put upon it. Under normal conditions a substantial part of the potential power output is not utilized. When the mills are idle the power plant does not produce power. There is a great wastage of power under such conditions. In the cotton textile industry in Maine there are water power plants having a total capacity of about 50,000 H. P. These plants, given regulated rivers, should produce 200 million k. w. h. annually. The one million cotton spindles in Maine should require about 100 million k. w. h. annually. But because most of the plants run nine or ten hours a day, and because of the low load factor, the actual useful output is not sufficient to run all the mills. The wastage, in wasted water and useless power, may be 100 million k. w. h. annually. This wastage is almost double the amount of power that the Bangor Hydro-Electric Company requires to supply a population of 100,000 people.

By the plan outlined in my bill the principal water power plants of Maine would be interconnected, and the companies owning these power plants could sell power to the Maine Water Storage and Power Transmission Company, or could buy power from it. The result would be a pooling of the power which is now wasted on a system of transmission lines by which power generated in Maine would be concentrated in Maine, and available for sale in Maine when required. The creation of such a transmission system involves no expensive duplication, for there are not any such lines in existence in Maine now. Such a transmission system would be built to serve Maine first and the company which owned it would supply Maine first, not only because that would be the law and the terms of its contract with the state, but because it would be good business to sell nearest the source of the power.

The exportation of hydro-electric power from Maine is to me less important than the method of such ex-

portation. On this point the method suggested by the Wyman bill conflicts with my idea of the best method. I am not necessarily opposed to the Wyman scheme if no better plan can be secured; and in comparing my bill with the Wyman bill I shall try to analyze rather than to criticize.

In theory the Wyman bill affords an equal opportunity to all to sell surplus power outside of Maine; but in practice the geographical location of the Insull companies denies that equality. If the Wyman bill should become a law most of the water power owners having power for sale would have to choose between selling such power to the Insull transmission companies at whatever price the Insull transmission companies would pay, or building independent transmission systems into New Hampshire or Massachusetts.

(Refers to map) Now, for instance—and this is pure speculation as to what might happen under methods of independent transmission—when the Azischohos reservoir was built, before the Fernald law became a law, it was proposed at that time to generate power from the water which was flowing through the dam and to transmit that power to the Brown Company at Berlin Mills. That opportunity still exists. Let us assume therefore, pure speculation, the condition which would come about by a general modification or repeal of the Fernald law. Draw a line from Azischohos to Berlin. Now on the intersection assume that the Rumford Falls Power Company has surplus power for sale and wishes to sell it to the nearest market, and that happens to be the Brown Company at Berlin; and the Rumford Falls Power Company builds a line up here. The Pepperell Manufacturing Company to develop Union Falls and Cadillac Falls on the Saco, which it could do, being within striking distance of Portsmouth, it could do that and develop those powers there. Naturally the Insull companies would develop their own system of transmission lines, which we will say start on the Kennebec and run down through Lewiston and Webb and Manchester. I do not know where they would

run, but they own companies there. Now the people on the Penobscot River can either join with the Insull companies in a system or they can transmit their power, all these people in there—and there is a great deal of the power of Maine in that section—they can transmit that power over here to connect up with the Insull's transmission system, providing they can make a deal for the sale of that power; or it is possible by pooling their resources they might decide to build an independent transmission system into New Hampshire. Now if these things come about, or part of them come about, what is the result? Instead of concentrating your power in the State of Maine you are concentrating power over in New Hampshire somewhere.

Now the result of the Wyman method may be the creation of several independent lines which serve no useful purpose for Maine, and which concentrate Maine power somewhere in New Hampshire or Massachusetts rather than in Maine. The Wyman plan is defective because his transmission companies are not permitted to sell power in Maine. It seems to me highly important that any such company should be required to sell power in Maine. If his transmission company should build a line from Bingham to Portsmouth at a cost of \$9,000,000 and if this line could not be used for transmission of power within Maine, there would be every reason to continue the exportation of power in order to avoid the loss which would be caused by abandoning part of the line.

I think the author of the Wyman bill had a sincere desire to protect the State of Maine; but it is no less clear that he takes a narrow view of the water power problem, and that he has fallen into the common error of supposing that the public utility companies in Maine produce all the power. The words "other public utilities" used on lines 38 and 47 of page 4 of the printed bill clearly indicate the limits of the author's conception. The theory of what constitutes "surplus power" as outlined in Section 4 of the Wyman bill cannot be applied to give the state any real control over hydro-electric power generated in indus-

trial water power plants. Under the provisions of the Wyman bill the Pepperell Manufacturing Company could develop its powers on the Saco, and, being neither authorized nor required to sell power anywhere in Maine, could by permit transmit or cause to be transmitted outside of Maine all of its power, even though Biddeford and Saco might be destitute for power for public use at the time.

I regard the Wyman bill as a sincere and honest effort to solve the power problem of the Insull companies and to protect the public. As a practical method of solution of Maine's water power problem it seems to me inadequate.

The statement that the people of Maine have used power as fast as it could be developed is far from the truth. The people of Maine, as distinguished from the industries, are using less than 10 per cent. of the amount of electric power which can be generated at existing plants. The farmers of Maine who seem to be reluctant to permit the exportation of power until their own needs are supplied, are perhaps not conscious of the fact that electric service to the whole rural population of Maine at present rates of consumption per capita would not require more power than one good 10,000 H. P. plant could generate. The supply of power is not, nor is it likely to be, a factor in the problem of rural electrification.

Many people seem to think that the power problem is very complicated, and that the legislative problem is even more complicated on account of an abundance of so-called power bills. It does not seem very complicated to me. It is not a question of accepting or rejecting any particular bill. It seems to me that when we find out what to do—when we determine what policy we shall adopt and what principles we shall recognize—the method of execution will be easy to work out. The two Carter bills are negative measures, in the sense that it is not proposed to do anything definite. Apparently the reason for these bills arises in the fear of federal control. The principle of divorcing the generation of power from the transmission of power has been adopted in the Wyman bill and I am willing to adopt it in my bill.

There seems to be some danger of getting excited about Federal con-

trol. If there is anyone who fears Federal control and who has reason to fear it, it is the public utility holding company which controls the operating public utilities. If the smoke which hides the center of this agitation should clear I would expect to find that the parties most worried about Federal control are those in control of the public service corporations. These men do not want the affairs of the public utility holding companies under the supervision of the Federal government. And the State of Maine could have no greater assurance that everything possible will be done to avoid Federal control than is afforded by the fact that the Insull interests own or control most of the Maine power companies.

The right of the Federal government to regulate interstate commerce in electric power is unquestioned; but the authority vested in Congress to do this has never been exercised. Congress has never legislated on the subject, and no such legislation is pending. Herbert Hoover, Secretary of Commerce, apparently voicing the policies of the Administration, has stated that he is opposed to Federal regulation of power companies. As long as the states can handle their power problems the Federal government is not likely to step in. Even if Congress should exercise its right to regulate power companies engaged in interstate business its authority would apply only to rates on power transmitted across state lines. Maine Railroads have been under the supervision of the Interstate Commerce Commission for more than forty years; but the freight rates between points in Maine are still fixed by the railroads subject to the approval of the Maine Public Utilities Commission. One thing we know concerning the right of the people of Maine to the first call on power generated in Maine, that there is no authority on earth that can compel the owner of a power plant in Augusta to sell his power production in Boston when he can sell it in Augusta.

We come then to the consideration of two positive measures which do conflict with one another, and both could not be passed in their present form. The Wyman bill, proposes a general modification of the Fernald law. The practical result of this bill as law would be either the complete domination of power in Maine by the Insull interest or the creation of a

number of transmission lines, each independent of the others, which would concentrate Maine power outside of Maine and not in Maine. This bill would solve the problem of the Insull companies, but it would not solve the power problem of the state.

The Chase bill now before your committee would create a corporation, in which all important water power owners would have a chance to join, for the purpose of regulating the principal rivers of Maine, and of connecting the principal power plants in Maine by a system of high voltage transmission lines, in order to eliminate the waste of power, and to pool all available power on its transmission lines, which would be located so as to concentrate Maine power in Maine. The final result of such a program would be to make power cheap in Maine, and to increase greatly the available supply of power.

(Refers to map) Now here is a graphic illustration of my idea of the power system in Maine which concentrates Maine power in Maine, with an incidental right of exportation. As an illustration I got together this map, which from an engineering standpoint may be wrong; but the proposition of interconnection along this line is perfectly practical. The location of these particular lines, please consider, will be general. On the Penobscot River project a line from Ripogenus down to Millinocket, and on the Penobscot following generally the river, connecting the principal plants on that river coming into a main line in Bangor. This green line might be 110,000 volts; your main line 220,000 volts. A line down the Kennebec leading into the main line; a line down the Androscoggin to a point near Lewiston and a line up from Brunswick. On the Presumpscot River, a line leading into the main line there; and on the Saco River a line feeding up and down that river. Now this line it is thought could be hitched onto the Passamaquoddy Cooper power project if that should be developed; there is no reason why that could not be hitched in. This line here would be a connection with the Aroostook situation, not with the idea of buying power, because there is no power of any amount to ex-

port, but with the idea of selling power, for which there is a market. These blue circles represent the possibility of storage reservoirs. You see as the demand for power increases in the State of Maine all of this system could be utilized. You can cut out this part of the line right here and you have thrown away or junked a very small part of your transmission system; and all of it is designed to interconnect these power plants, to pool all this available power that is now wasted, to feed it into a system which is designed primarily for the purpose of selling power in Maine, with the incidental right of transmitting that power across the line to a market which does exist now during such time as there is no market in Maine.

My purpose in introducing and supporting this charter is to determine, if possible, what is the best proposition that the state will make to private enterprise in order to secure the development of our water resources and to utilize fully our power production. This charter provides for a practical means for solving the water power problem in Maine. It establishes the policy of conservation of natural resources upon a basis of cooperation between the people and the industries of Maine, and between the industries themselves.

The provisions of the charter are predicated upon the following premises:

1. A large supply of electric power actually available is better than a potential supply now represented by wasted water.

2. Maine's future supply of cheap power lies primarily in the opportunities for river regulation by water storage; and few, if any, new power plants will be capable of generating hydro-electric power at a cost low enough to attract industries in Maine until river regulation is secured.

3. The future prosperity of industries in Maine is more important than the hope of development of new power plants by public utility companies.

4. The creation of an interconnected power system in Maine can more safely be committed to a cooperative enterprise in which many of

the industries and people of Maine are joined than to any other organization that is capable of handling the job.

5. The successful consummation of the objects and purposes of the Maine Water Storage and Power Transmission Company will require the financial cooperation of a substantial number of the water power owners of Maine; and such cooperation cannot be secured unless the charter rights afford a real business opportunity, free from political influences, and subject to such regulation as may be essential to assure to Maine the first call upon the hydro-electric power generated in Maine.

The details of the bill are of small importance. Anyone who accepts these principles can work with me.

Now, Mr. Chairman, if the Committee please, I will run over some of the features of this bill and attempt to explain the idea of the various sections.

Now in Section 1 of this bill, "Edward E. Chase of Cape Elizabeth, county of Cumberland, state of Maine, and such other citizens of Maine as the eighty-third Maine legislature may designate" are set up as incorporators. I want at this time to say that the reason my name is inserted as an incorporator in this bill is not because I have any desire to form this company. It is inserted there in order to follow the usual forms of charters and to show that I am not afraid to put my name on the thing as a practical proposition. Now it was my idea, when and if this bill should take such form as it would seem possible to become enacted into law, to have included in this bill as incorporators either the representatives of the principal water power owners who would be willing to undertake the development of our water power resources on this line, or the members of the legislature, or prominent citizens of the State, who would be in effect a committee, put into the bill as incorporators, specifically charged with the job of organizing this company and then getting out. And it is my idea, when and if this bill should become a law, that those who are included as incorporators should be the representatives of the water power owners who are willing to tackle the problem of the further development of our water power resources along these lines.

Now under the objects and pur-

poses of the corporation, set forth in Section 3 of the bill, as I said in presentation, I think it will be wise to accept the principle which is incorporated in the Carter bill, of divorcing the generation of electric power from the transmission of it; and I think that the bill should be amended in lines 14-15 by striking out the phrase "to buy, lease or build electric power stations and to operate and maintain the same," and I think that it should be further amended by putting at the end of that section, "but not to generate hydro-electric power, nor own or control any company that generates hydro-electric power."

Section 4, "Right of Way on Highways: Eminent Domain for Pole Lines," is practically taken from the Dexter Cooper, Inc., charter, and I think that wording was closely followed when the right was given to Dexter Cooper on rights of way on highways.

Now as to the right of eminent domain for such a transmission company, the Committee is no doubt conversant with the fact that when you are transmitting power at voltages of 220,000 or more that that line will cost forty to sixty thousand dollars a mile, and that it is rather expensive to turn it around a corner. Furthermore, there is a big power loss in a crooked line; and if it is desirable to concentrate and pool our power resources so that we can make the most of them and make power cheap in the State of Maine I believe that the right of eminent domain should be granted to such a company so that it may build its pole lines right, so as to save the power and save the expense. This proposition of eminent domain runs only on transmission lines. It does not apply on any storage or any water power proposition.

Section 5 is self-explanatory. "The corporation shall have the right to transmit and sell outside of Maine such surplus of electric power as cannot be marketed profitably in Maine."

Now Section 7, "Maine to be served first: It is the purpose and intent of this charter and the express declaration of the incorporators that the people and industries of Maine shall have first call upon the supply of electric power upon reasonable terms and at reasonable rates." An attorney said to me the

other day, "What do you mean by 'reasonable', and who is going to enforce the clause? And I answered, public opinion, which is the greatest force there is, and in dealing with accumulations of invested capital probably more efficacious than the courts, will enforce that clause, because the public knows what it means. And I would rather have that declaration clearly set forth, that that was the proposition and the intent of this charter than to involve it in mere words and to tie it up with the proposition of permits and contracts, because if this corporation as formed should not treat the people of the State of Maine right it is absolutely helpless in the face of their indignation.

Section 8, "Exclusive Right of Exportation until July 1, 1932." Now if this proposition is built up along lines similar to that laid out upon that map it is going to cost twenty-five to thirty million dollars for storage reservoirs and transmission lines, and the company won't start making any money on that program for two or three years anyway. It will probably be five years before it can start to earn a fair return on the money which is tied up in that transmission system. And the reason for asking for five years to work this thing out under a uniform control proposition is so at the end of the time you will have created a good system of transmission line such as is laid out on that map and which is not a monopoly except with that provision that it does give them a chance to get started, not to exploit anybody, not to make any money, because if they could get all the wasted power there is not power enough to pay a fair return upon that line.

At the present time in Maine we are actually using about one billion k.w.h., which is somewhere near all there is under existing conditions. In order to get enough power to make this line pay you have got to pick up somewhere another billion k. w. h. which is waste power, in order to get your money back on taxes, operating cost and interest charges on that line. So until there is more than a billion k. w. h. of waste power you can pick up you are not going to start making any money, and a billion k. w. h. is about

what all Maine people and industries are using now.

Section 9. "Mill Act to Apply" As the law is now, if I own a dam on a river I have a right to build a storage reservoir in my own name to regulate that river for my benefit; but if you, Mr. Chairman, own a water power on a river and I wish to build a storage reservoir to benefit your power, the Mill Act does not run to me—it has got to be the power owner who does it. Now through an independent agency bringing about these water storage reservoirs the Mill Act may be extended so that this company would have the right not to condemn the site which controls the storage but would have the same right that power owners have now to buy up a site for the storage dam and the flowing of the land back of it under the Mill Act and to pay damages therefor in exactly the same way that all power companies now do.

Now Section 10 which is the basis set up for paying for the benefits of river regulation and the terms and conditions is the one where lies the constitutional argument against this bill. If that section should be enacted and later declared unconstitutional, and, as I say, I do not believe that it is, no one would be harmed except the corporation. No one, if they were prevented from getting the money to pay for the stored water which they were selling would be harmed except the corporation itself. Power owners would be benefited, the river would be regulated, flowage damages would be eliminated, and no one would be out of pocket except this corporation under this charter. This section can be made permissive, so that the company may have the right to collect these tolls, or it can be eliminated altogether.

Now under Section 11, "Description of Existing Conditions of Flow," it provides that if this corporation should request it the Public Utilities Commission should appoint a board of engineers to determine the present conditions of river flow; and that is in there for this reason: that it is not intended to charge for the benefits of existing storage. When this corporation starts it starts from the basis of conditions which exist at this time: it does not go back into the past and attempt to charge for something that is past and gone; it could

not legally do so, and it is not proposed to do so; but they must have a starting point from which to figure the benefits which have accrued to the water power owners by reason of the river regulation secured by this particular company.

Section 12 could be and possibly should be omitted.

Section 13, "Option on Dead River Storage Site." Now in regard to that, I haven't any design on the Dead River storage site, and inasmuch as a bill is pending in this legislature for the creation of storage on Dead River this section can and should be eliminated if the other bill does pass, because my only object is to see that these storage reservoirs are built and that river regulation does come about, and if it can come about under existing methods that is all right.

Now in Section 18, "Management," it says that the personnel of the board of directors shall be fairly representative of the owners of the voting stock of the corporation. Each one of the four major manufacturing industries of the state shall be entitled to one representative on the board of directors. Now that is regardless of stock ownership; and that puts in four men who are vitally concerned with the supply of power in the State of Maine, whose investment and whose business is dependent upon that power being handled in a proper way; and they, a representative of each of the four major manufacturing industries, which no doubt would be paper, cotton textile, woolen, boot and shoe, would be included in the board of directors of this corporation.

Under ownership and control, a basis is set up by which all of the important water powers would have a chance to buy the stock of this corporation. Whether or not they would do so is in the future; but they would have an opportunity to buy pro-rata in accordance with their proportion of ownership in developed or undeveloped water powers at least one-half of the original authorized issue of voting stock.

I have covered, I think, the principal features of the bill and explained them.

Now the Wyman bill proposes a referendum. Attaching a referendum clause to a bill should not relieve the legislature of its duty to determine the merit of a measure. If any pro-

position is to be referred to popular vote let it be the most constructive proposition that the legislature can develop. I feel sure, if we approach this problem with courage and confidence, that this legislature can establish a sound policy for the state, and give that policy definite expression in the form of law, so that power development will be stimulated and political development healthily retarded.

(Applause).

CHAIRMAN GRANVILLE—Has any member of the committee questions to ask Mr. Chase? Is there any other proponent who wishes to appear for this measure? If not, anyone opposed?

HON. PERCIVAL P. BAXTER—Mr. Chairman and gentlemen of the Committee, as my contribution towards the solution by your committee of the several water power measures now pending before the Legislature, I present this brief communication. If there is any citizen of Maine who is not familiar with my views on the Fernald Law and kindred topics, this is not the occasion to attempt his enlightenment. There is no desire on my part to participate in lengthy argument, personal recrimination or heated debate.

What is best for the State of Maine? This is the rock to which all good citizens should cling in the storm of discussion now raging. Those who sincerely believe that the export of power is in the general public interest as well as those who believe otherwise should hold fast to their respective opinions and fight for them to the end. Partisans on each side, however, should analyze their own motives and make sure that their views are based on convictions, uninfluenced by ambition, self-interest or prejudice.

My message is addressed particularly to those honestly in doubt both as to what is best for Maine and as to what is the safe course for the Legislators to pursue in the present crisis.

All sides must admit that to allow power to be exported, even under alleged restrictions and safeguards, opens the door. It may be that the door once opened never can be closed; a difference of opinion exists on this point. Certainly there is grave doubt as to what will happen

in future years, once out of state transmission becomes a reality.

If the Legislature holds fast and refuses to take the risk of opening what later may prove to be an uncloseable door, if matters are left as they are, Legislators will stand on solid ground and later cannot be accused by future generations of having passed laws that adversely affected the progress and prosperity of the State in the years to come.

I believe the patriotic course for those who have Maine's welfare at heart, and who still are undecided on the water power issues, is for them to refuse to pass each and all of the bills allowing the export of power.

As to the Dead River and other Storage bills, in my opinion they should pass provided the storage rights, public lots and flowage rights are leased for a term of years at an adequate rental and under proper safeguards protecting private rights and the public interest. No grant in perpetuity of storage or other rights ever again should be made by a State legislature.

As to specific bills, I unqualifiedly approve the principles of both the Wing and Carter measures. The Carter bill as I understand it, applies the principle of the Fernald Law to all power charters. I oppose the Smith and other export bills as above stated.

No public question ever aroused so widespread discussion in Maine as has Water Power and the people at large are becoming awakened to its importance. Two years of further discussion may bring out information that will help in its ultimate proper solution. Certainly, it is wiser to delay than to make an irretrievable error. The Water Power will remain with us, some common ground on which warring factions may agree may yet be found and finally action may be taken by the Federal Congress that will entirely change the complexion of our local problems.

I plead for caution and deliberation. Rather than have hasty action taken, I should prefer to forego the passage of certain measures in which I strongly believe. I do not want to see the State plunged into the shadows and uncertainties

that surround the export of hydro-electricity.

(Applause)

CHAIRMAN GRANVILLE — Is there anyone else who wishes to appear in opposition to the Chase bill, so-called? If not, we will consider the hearing upon this bill closed and lay it on the table for executive action.

The Committee will now consider the two bills called the Carter bills, S. P. 11, S. D. 6; S. P. 12, S. D. 7. We are ready to listen to anyone who wishes to appear for the measure.

MR. CHARLES B. CARTER—Mr. Chairman, and gentlemen of the Committee, I had hoped to take these bills up directly. I feel that I must give a little preamble. The integrity of purpose with which they are offered I hope nobody doubts, although in a daily paper of the State of Maine the editorial appears this morning, upon the day of this hearing, "Fooling the Folks," "The Third Act of the Drama 'Fooling the Folks', the joint efforts of Messrs. Baxter, Brewster and Carter, was presented in the hall of the House of Representatives before a large and appreciative audience and the former Governor Pinchot," and then carries on down through nearly a page.

It seems to me that this question of the conservation of our water power, the management of our water power and hydro-electricity in Maine is too large and vital a question to be made a joke of by the editors of the newspapers, although they do not agree with the position in the matter which I hold. The press seemed a little troubled that I have said that it was pro-Insull in Maine. Whether or not this editorial to which I refer was written by a pro-Insull editor, I will leave it to the Committee to judge. But this has brought out from me something I did not intend to do. As to the question of whether or not this hydraulic question is vital to Maine, I am going to read to you the last paragraph of a letter which I received about a year ago. I would read you the whole letter, but in the second paragraph it speaks of a citizen of Maine who announced his views on a certain subject, and I do not feel that I should announce that man's views for him. He is perfectly able

to announce it himself. Therefore I read you the last paragraph of a letter written me from the United States Senate at Washington, on January 16, 1926. It is as follows:

"My Dear Charles:

I am not going to discuss this question (which was Water Power) with you now, because it is of such consequence to the people of Maine that I feel we ought to go over the matter together very carefully on my return in the Spring. Suffice it to say that in my judgment, too, you are on the right track and I believe we may get together an argument that will be answerable along the lines you suggest.

With very kind regards, believe me,

Yours truly,

Bert M. Fernald."

I say to you that in spite of satirical editorials, this question is of vital importance to Maine.

(Applause).

Had not the untimely sickness and death of the late Senator Fernald intervened, I should have taken pleasure in trying to work out some policy for Maine under his tutelage and advice.

Other questions have come up which led me to write to the Public Utilities Commission of Maine to get information on certain points, and I will now read you the letter which I wrote the Commissioner and their reply.

"Feb. 16, 1927.

Hon. Charles E. Gurney,  
Chairman, Public Utilities Commission,

Augusta, Maine.

Dear Mr. Gurney:

There is some information which I think you could readily give me and I would like to check up on.

There has been more or less discussion relative to rates. This discussion emanated from the recent full page advertisement of the Central Maine Power Company in our daily papers stating that there was 125,000,000 kilowatt hours running to waste that could be sold for one half a cent per kilowatt.

What is the price per kilowatt hour that the Cumberland County Power & Light Company pay to the Central Maine Power Company for electricity which they buy from them shipped from their Gulf Island Power Station? It has been quoted to me that the Cumberland County Com-



pany pays three mills per kilowatt for that electricity.

What is the price that the S. D. Warren Company pay to the Central Maine Power Company for electricity sold to them? It has been quoted to me at five mills per kilowatt.

What is the price that Ault-Williamson Shoe Company of Auburn, Maine pay for their power? It has been quoted to me at sixteen mills per kilowatt hour.

It has also been stated to me that the Central Maine Power Company within the last few months filed a petition for increase in certain rates in certain localities afterwards withdrawing the petition. Is this true?

This information would have great bearing on pending legislation and I am inquiring for the same as a Senator from Androscoggin County and a member of the Judiciary Committee of the eighty-third Legislature.

An early reply would be appreciated.

Very truly yours,  
Charles B. Carter."

To this letter I got the following answer:

"PUBLIC UTILITIES COMMISSION  
STATE OF MAINE  
AUGUSTA

February 21, 1927.

Honorable Charles B. Carter,  
Maine Senate,  
State House,

My dear Senator:

Replying to your letter of February 16, in the matter of rates for electric current supplied by the Central Maine Power Company and the Cumberland County Power & Light Company:

The rate situations applicable to the services mentioned in your letter are as follows:

The Central Maine Power Company states that the surplus or waste power furnished the Cumberland County Power & Light Company at such times as such electric current is available is sold at \$.005 for the first 40,000 K.W.H. in any one day, and all over that quantity in any one day is sold at \$.004 per K.W.H. The quantities of energy so furnished are subject to variation, and the service may be discontinued immediately upon notice by the company. This current is metered at West Falmouth. Such portion of

this current as is sold by the Cumberland County Power & Light Company to the S. D. Warren Company is metered at Westbrook, and payment for that particular current is made by the Cumberland County Power & Light Company to the Central Maine Power Company on the basis of \$.003 per K.W.H. For reason that the interchange of the total amount of current is based on the meter reading at West Falmouth and the quantity delivered to the S. D. Warren Company is measured at Westbrook, it is estimated that the line loss from West Falmouth to the Westbrook meter equals about \$.001 per K.W.H., and therefore such power as is delivered to the S. D. Warren Company by the Cumberland County Company costs the latter about \$.004 per K.W.H.

In regard to the surplus or waste power delivered to the S. D. Warren Company, it is understood that the present arrangement and the rate applicable thereto started in December, 1926, and is likely to continue for another three or four weeks. It is understood that this energy is supplied the S. D. Warren Company during the night period, or after 10.00 p. m., and that if a similar use were demanded by others, it would be supplied. It might further be stated that since the S. D. Warren Company produces a certain amount of electric current for its own purposes, and has for some time in the past been obtaining surplus power from the Cumberland County Power & Light Company at a rate of \$.006 per K.W.H. for a monthly quantity up to 626,000 K.W.H. and a rate of \$.005 per K.W.H. for all monthly consumptions in excess thereof, it appears that in the middle of December, 1926, the S. D. Warren Company notified the Cumberland County Power & Light Company that for reason of certain operating conditions which materialized, it was not further interested in the \$.006 rate, but would continue to take all surplus power that might be available at the rate of \$.005 per K.W.H. In order to continue the sale of current to this customer, the Cumberland County Power & Light Company revised its rate schedule, effective December 16, 1926, thereby

providing the \$.005 rate for all surplus hydro-electric energy to consumers having twenty-four-hour requirement for power, with the provision that such electric energy would be delivered at such times as might be convenient to the supplying company, having in mind the requirements of other customers.

Referring to the fourth paragraph of your letter, it should be stated that the current is not sold direct by the Central Maine Power Company to S. D. Warren Company, but reaches the latter company through the arrangement above outlined.

Referring to the fifth paragraph of your letter, it is found that current is delivered to the Ault-Williamson Shoe Company, of Auburn, at a rate of \$.016 per K.W.H. This is primary power, available at all times, and the rate is the same as is charged other similar customers in Auburn and Lewiston.

In Connection with the sixth paragraph of your letter: There is no record showing that the Central Maine Power Company has within the last few months filed a petition for increase in certain localities. The only instance that we have of such a petition or rate filing was in the early part of last summer, at which time this power company undertook to revise its rates for seasonal or summer customers, but abandoned the proposal, which has not since been renewed.

Very truly yours,  
Charles E. Gurney,  
Chairman."

Another instance of the situation that we are in and about which we know nothing, or I know nothing, and apparently the people who think along the lines that I do know nothing, comes from Mr. Jones, of Sabattus. Mr. Jones wrote me voluntarily. I afterwards asked him if I might use his letter in public; and he says yes, use it if you want to. This is from Mr. O. R. Jones.

It is dated at Sabattus.  
"Hon Charles E. Carter,  
Auburn, Maine.

Dear Sir:

Just writing a letter to encourage you in your stand on the water power question in discussion so much at present.

If the common people don't say much, lots of us are with you just

the same. I know more about the inside of this question. I have more financial interest in the C. M. P. Co., than any other man in my town and community and have heard the story from all sides by mail and stock salesmen.

I know Mr. Wyman's stand in years past, the song was ever sung "Have a Maine Company financed by Maine capital, managed by Maine people and the power for Maine industries and our rural communities." That is put the way we want it.

The financial investment may be all right from a simple interest and dividend standpoint, whether power is used out of the State or in it. Probably would be. But that is not the question. We want to build up Maine and Maine interests, and if western capital doesn't want to invest in Maine with this in view, send them home; we got along before they came and can now without them.

Too much money accumulated in Maine has already been sent out to build up outside interests. We have more than a money and dividend interest to work for.

All developed power is fast being absorbed in our own State, and will continue to be our greatest enterprise the next four years. It would surprise even you to realize the amount of horsepower used today right here at Sabattus from the C. M. P. Co., and the demand is increasing, the same everywhere else. Stick to it.

O. R. Jones."

Irrespective of other interests in making up your minds, following along the principles I try to follow I think I do voice a very fair representative number of people in the State of Maine; therefore I now present to you Senate Document No. 6, a bill entitled "An Act to Amend the Charters of all Corporations Making, Generating, Selling, Distributing and Supplying Electricity. By this act I simply add to the charters of each company the express condition of limitation which is as follows: "That each and every such corporation so incorporated is expressly limited in its corporate powers as to the transmission of electricity to an area entirely within the boundaries of the state

of Maine is hereby enacted and made a part, limitation and condition of each and every such act."

That carries down through; and the companies situated on boundary waters I have tried to make an arrangement where the electricity developed from such boundary waters, be it State or nation on the other side, should be fairly allocated to the land on both sides of the river.

The first paragraph of the bill applying to those charters which were largely granted by special act of the Legislature; the second paragraph of the bill applying to those companies organized under the general law.

The third section of the bill states the penalty, which is the forfeiture of the charter upon violation of any of the provisions, and stating that it shall be enforced through quo warranto proceedings.

Section 4 exempts the Quoddy Bay project, so-called, from the act, as that is a special project, a very speculative one not even an experiment at the present time by which electricity is generated by tide-water; and the exemption applies only to such tide-water electricity as is passed upon by the people.

Senate Document 7 is a companion piece and simply says no transmission company whether organized in Maine or organized in another state doing business in Maine can own, operate or control a generating company. I suggest to this Committee now, as I will later in executive session, that this bill should come out in a new draft, for the following reasons: In the first sentence of Section 1 of the bill, as it was read over by certain friends of mine, one of them suggested that there might be an ambiguity in speaking of a company organized for the transmission of hydro-electricity; it might cause confusion with those companies designated in Senate Document No. 6. I adopted his suggestion, so that the new draft would read, in line 4, after the word "hydro-electricity" and before the comma, insert "and having no corporate powers to make, generate, sell, distribute and supply hydro-electricity."

The main theme which I shall try to develop as it appears to me in the presentation of this matter to your

Committee is the danger of Federal control and its avoidance through the divorcement of the generation of electricity, which is manufactured, from the carriage of electricity, which is transmission.

Originally, to the layman, "water power" meant that the falling water in our rivers, by the creation of a dam, was transformed to mobile power, and that power turned the wheels of industry in some mill or factory, which mill or factory was located at the dam site. The falling water, translated into power in the factory, created work for men and women, and these men and women were paid—the payroll distributed at the dam site, where the people were, created towns, villages and cities to provide the needs, necessities and pleasures of those laboring in the mills and factories. Almost all the large inland cities are situated on the banks of a river. The law and policy of Maine has always fostered and protected the water mill and the direct assets to the communities flowing therefrom.

Through scientific research and experiment, this falling water or power is now manufactured into electricity. A mobile, elastic commodity, capable of instantaneous transmission to great distances—electricity—it lights our houses, it cooks our food, it lights our streets, it should run our farm machinery, it conveys information the length and breadth of our land, it turns the wheels of our industry in the mills and factories far removed from the dam site. Today the layman thinks of water power in terms of electricity. Wherever electricity is used to turn the wheels of industry, no matter how far from the dam site, there is revealed the true asset of our water power—pay roll.

As a result, the water mill dam, the power of the falling water, may be situated in the wilderness with no town, village or city built around it, and no adjacent property values increased. Today, by the use of electricity, the pay roll is in most instances translated far from the dam site, and possibly may be carried out of the State to the enhancement of values elsewhere than in the State of Maine.

The plant which manufactures the commodity, electricity, by water power, is in almost every instance owned and operated by a corporation. This corporation, owning and

operating the generating plant, and selling its commodity, electricity, to the people, is under our law a public utility—a monopoly, given a restricted area in which by law competition is forever removed.

For this special privilege of monopoly granted it by the State, the utility company agrees with the State that it will first serve the people of that given community—that it will serve them at an equal rate for like classes of its commodity, electricity—that it will serve them at a rate based upon the cost of the production and distribution plus a profit, which profit shall consist of a fair rate return upon the fair value of its property used or usable in serving the people with its commodity.

Particularly, bear in mind, that the first agreement of the public utility company with the State as a consideration for the State's giving it a restricted area in which it may operate as a monopoly, is that it will serve all the people of that community equally. It is this duty of the public utility company to serve every individual of the community that gives to Maine the right to say to this public service corporation that it shall serve Maine first, saturate the Maine market before you seek other markets.

#### **Danger of Federal Control**

Generation of hydro-electricity is a local thing, owned by a local corporation, a public utility company, amenable to the laws of the State creating it—the same as telephone companies, telegraph companies, railroad and gas companies were originally. When these companies cross the line of the State which created them in carrying on their business, the business becomes interstate commerce under the jurisdiction of the Federal Government. The hardships worked to Maine—the Northeastern frontier State of this country—in the regulation and control of these now interstate public utilities by the Federal Government, its laws and its commissions, are common knowledge to all. Our experiences with the freight rates of the railroads and the toll service of the telephone companies, are too recent to need discussion here.

I will discuss later that the commodity, electricity, shipped across the line, shipped without the State, is such interstate commerce, and

would be under Federal Control and protection.

#### **Economic Question**

From an economic standpoint, we have three courses open to us in Maine in the handling of our hydro-electric corporations—three policies for this State to choose from—1. Free Shipment. 2. No Shipment. 3. Restricted Shipment.

##### **(1) Free Shipment**

The free shipment asked for by the Insull interests—although the owner, Mr. Insull has not yet deemed Maine hydro-electricity of sufficient importance for him to come to Maine to discuss it—is death to Maine industry, is death to the hope of Maine farmers ever having the rural communities electrified. It takes the direct tangible asset, pay roll, from Maine water power, and moves pay roll from Maine to the State wherein this electricity turns the wheels of industry.

If Maine decides on the Insull policy of free shipment, let Maine frankly repeal the Fernald Law—do not let Maine beg the question and through its Legislature vote the insidious repeal of the Fernald Law as designed and accomplished by the so-called Smith Bill, which in fact is the Insull Bill, written by the legal luminaries of the Central Maine Power Company.

##### **(2) No Shipment**

This solution, No Shipment, of the economic question at the present time is the one that I advocate, and did advocate at the Republican State Convention held at Portland in April, 1926, at which convention, at the open meeting, of the night before, I suggested a plank for the Republican Platform which was not adopted in words, but was in substance.

The Portland press published this as my plank on the water power question. It was not my own, but was the composition of half a dozen gentlemen. That there might be no misunderstanding of my position, I deemed it necessary to make the following statement as my belief of what the public policy of Maine should be toward this economic hydro-electric question:

"Maine should have the prior right of use of Maine developed water power, at a rate based upon the cost

of production of Maine power in Maine.

Maine should have the sole control and regulation of all Maine companies authorized to generate hydro-electricity within the State.

Until these rights are assured to Maine by legislation, there can properly be no discussion of the question of the transmission of power beyond the confines of the State."

The reason for my advocacy of this phase of the economic question, No Shipment, I will now discuss.

The great physical reason which warrants my advocacy of the second policy, No Shipment, is that there is no surplus power in Maine as I conceive it, and as I am informed, ready for transmission beyond the borders of the State.

"Surplus power," as we laymen speak of it, means and must mean that primary power which is used during the ordinary working and lighting hours of the day. Every big plant has surplus power unless that power plant runs at a peak 24 hours, 7 days a week, and that there is a 24 hour market, 7 days a week, for such power. The ordinary company has its few hours of the so-called "peak" load, which is its maximum production and market. The load and market decreases to the minimum between the hours of 12 at night and 7 in the morning. This diminishing market constantly frees power, which power might be called surplus power,—but it is not surplus power,—Why? Because there is no market for it,—it cannot be sold,—to sell it would deprive the company of that power necessary to carry the company through the peak of the load.

"Secondary power", or "off peak" power, or whatever you may call it, is never "surplus power" within the meaning of the lay mind, any more than intermittent power is valuable, although it is power and may be surplus because intermittent power is that power which can be developed only at intermittent periods throughout the year.

Until we know and understand how power is figured, the term "surplus power" used by the companies, means little to the lay mind. When surplus power is figured by taking the total kilowatt hours generated

or possible of generation, and subtracting therefrom the total kilowatt hours sold, that result means nothing because the market has gone. The kilowatt hours generated over that sold are those kilowatt hours freed by the diminishing market as described in a foregoing paragraph.

Fifty-two per cent. of Maine's population live upon the farms. Approximately four hundred thousand people,—less than 10 per cent. of those farmers, are served with electricity. Recalling the duty the company owes the public, as a public utility company, can there be any surplus electricity in Maine when only 10 per cent. of the farmers have been served by these companies? To the lay mind I say there can be no surplus in Maine while there are approximately three hundred sixty thousand farmers in the rural districts without electricity. Less than half the communities of Maine are served with electricity,—yet more than forty per cent. of our water power developed.

Can there be surplus power in Maine, as the ordinary man understands it, when half our communities are not served,—and if all our communities were served, there would be approximately eighty per cent. of our power developed. Is twenty per cent. too great a margin of safety to save for Maine's future rural and industrial needs?

The President of the Cumberland County Power and Light Company, about three weeks ago at the Augusta House, told me the Company was buying electricity from the Central Maine Power Company at Lewiston,—buying all that the transmission line would carry,—and if the transmission lines were larger, he stood ready to buy the entire production of Gulf Island! Can there be surplus power at Gulf Island ready to be shipped out of Maine when there is a cash customer in Maine, within thirty miles of the dam site, for all that power?

A director of the Central Maine Power Company, an attorney of the Central Maine Power Company, and I were conversing the night I introduced Senate Document six and Senate Document seven into the Legislature. In that conversation they stated that in the present develop-

ment of Maine hydro-electricity, there was no surplus power which would warrant transmission beyond the State line.

### (3) Restricted Shipment

This phase of the economic question, Restricted Shipment, is disapproved by me when I satisfy your minds that the second phase, No Shipment, is the true public policy for Maine to follow at this time.

### Legal History

In 1909 the so-called Fernald Law was passed, which forbade the shipment of electricity beyond the borders of Maine excepting those companies which were at that time shipping electricity out of the state or authorized so to do.

The constitutionality of this Law has often been questioned by lawyers throughout the State. I believe the consensus of opinion today, particularly among those lawyers versed in law applicable to hydro-electricity and public utilities, both intra and inter-state, is that the Fernald Law is not constitutional, although it is at present a moot question.

Were it to be construed by Maine Courts, I believe the Fernald Law would be held constitutional. But if electricity is shipped from Maine, it would be interstate commerce, and the constitutionality of the Fernald Law would be for the United States Supreme Court to decide. Under these circumstances, I believe the United States Supreme Court would hold the Fernald Law to be a general statute of Maine, which places a burden on interstate commerce.

The first legal proposition is that when electricity crosses the state line in shipment from one state to another, by a corporation authorized so to do, such electricity becomes interstate commerce, and is under the protection of the Federal Constitution and under the sole jurisdiction of Congress and the Federal Courts.

In support of this proposition I cite you the case of Public Utilities Commission of Rhode Island and Narragansett Electric Light Company, Petitioners, vs. Attleboro Steam and Electric Company, decided by the Supreme Court of the United States, January 3, 1927:

"It is conceded, rightly, that the sale of electric current by the Narragansett Company to the Attleboro Company is a transaction in interstate commerce, notwithstanding the

fact that the current is delivered at the State line. The transmission of electric current from one State to another, like that of gas, is interstate commerce...."

"The commerce clause of the Constitution, of its own force, restrains the States from imposing direct burdens upon interstate commerce, and a state enactment imposing such a 'direct burden' must fall, being a direct restraint of that which in the absence of Federal regulation should be free."

"That the sale and delivery to the distributing companies was 'an inseparable part of a transaction in interstate commerce—not local but essentially national in character—and enforcement of a selling price in such a transaction places a direct burden upon such commerce inconsistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve.'"

The second proposition is that when electricity is shipped beyond the State line by a corporation authorized so to do, the regulation and control of the rates of such electricity in interstate commerce passes to Congress. I now quote from the Rhode Island case above cited:

"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, however, 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 interests; but if such regulation is required, it can only be attained by the exercise of the power vested in Congress."

The present hydro-electric companies of Maine, should they ship across the State line, if authorized so to do, would become inter-state carriers, and as such would be under Federal jurisdiction and their rates could be controlled and regulated only by an act of Congress. The question involved in the Rhode Is-

land case above cited was that of rates growing out of a contract between a Rhode Island Company, to sell and ship electricity, to a Massachusetts Company which agreed to buy the same.

Under the laws applicable to the situation, Maine is subject to all the dangers of Federal control and regulation, if Maine's hydro-electricity is shipped beyond the State line.

Maine's hydro-electricity is in a situation which I conceive to be harmful and detrimental to Maine, and from that harm and detriment I seek to protect Maine in its economic problem of hydro-electricity by the introduction into this session of the Legislature of two bills, known as Senate Document Six, and Senate Document Seven, which said bills this Committee now has before them for consideration.

#### **Danger of Federal Control Averted. Law**

The Federal Constitution, Article 1, Section 8, says "Congress shall have power... to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

The Constitution of Maine, Article 4, Part Third, Section 14, says:

"Corporations shall be formed under general laws, and shall not be created by special acts of legislature, except for municipal purposes, and in cases where the objects of corporations cannot be otherwise attained; and, however formed, they shall forever be subject to the general laws of the state.

Revised Statutes of Maine, Chapter 51, Section 2 says, "Acts of incorporation, passed since March 17, 1831, may be amended, altered or repealed by legislature as if express provision therefor were made in them, unless they contain an express limitation: but this section shall not deprive the courts of any power which they have at common law over a corporation or its officers."

Citing *Bank of Augusta vs. Earle*, 13 Peters (U. S. Supreme Court) 519.

I will interpolate here and say this case has been cited with approval by almost all the courts of this country, and as far as I know has never been overruled, and is

the law of the United States Supreme Court today:

"It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created." .....

"But although it must live and have its being in that State only, yet it does not by any means follow that its existence there will not be recognized in other places; and its residence in one State creates no insuperable objection to its power of contracting another."

"It is sufficient that its existence, as an artificial person, in the State of its creation, is acknowledged and recognized by the law of the nation where the dealing takes place; and that it is permitted by the laws of that place to exercise there the powers with which it is endowed."

"Every power, however, of the description of which we are speaking, which a corporation exercises in another State, depends for its validity upon the laws of the sovereignty in which it is exercised; and a corporation can make no valid contract without their sanction, expressed or implied." ...

"It may be safely assumed that a corporation can make no contracts, and do no acts whether within or without the State which creates it, except such as are authorized by its charter; and those acts must also be done, by such officers or agents, and in such manner as the charter authorizes. And if the law creating such a corporation does not, by the true construction of the words used in the charter, give it the right to exercise its powers beyond the limits of the State, all contracts made by it in other States would be void."

#### **Danger Averted by Charter Amendment**

We have seen that a general statute like the Fernald Law might be a direct burden on Interstate Commerce, and if so, would fall before the Commerce Clause of the Federal Constitution as being a direct burden.

The prohibition against exportation of electricity, Maine must preserve. How can it be preserved? It can be preserved by that law of Maine which will be construed by

the Supreme Court of Maine, a local thing, and in event the legal question is taken to the Supreme Court of the United States, it must be such a law that the Supreme Court of the United States will uphold it and the jurisdiction of the Supreme Judicial Court of Maine over such law. In other words, it must apply to a local condition, not affecting interstate commerce, but purely local in its character and application.

Where is the vehicle? In what can the law be written? In the charter of the Company!

The charter of a corporation is a contract between the State and the incorporators. A corporation is an intangible thing, a creature of law, a child of the State creating it,—that child can be created by the State in any form the State wishes,—it can be given a broad or a limited charter,—and that contract between the incorporators and the State, the charter of the company, is a local thing, to be interpreted and construed by the Courts of the State which creates it.

The charter is the place and point to write the prohibition contained in the Fernald Law. If the prohibition appears in the charter of the company by amendment, every State Court will uphold it, and will be sustained in this finding by the United States Supreme Court.

How can this be done, without in any way placing a burden on interstate commerce? By applying those same business rules of analysis to the generation of hydro-electricity and its carriage that you do to the manufacture of any commodity and its carriage,—such as shoes.

The corporation manufacturing shoes is a local thing, amenable to the laws of the State which created it. The Federal government has no control over it. The generating plant of the hydro-electric company is a manufacturing plant, which by the use of water power in turning machinery, produces electricity,—a commodity.

These are comparable,—they are local,—neither one under the jurisdiction of the Federal Government through interstate commerce, nor can these commodities be until carriage has taken place. Carriage, or transmission, is a separate thing

from manufacture. The railroad which carries the shoes may very well be interstate. The transmission line which carries the electricity may very well be interstate. The Shoe factory and the railroad are separate things. Shoes, a commodity, may be the subject of commerce, but that commodity does not partake of the characteristics of interstate commerce until delivered to the carrier, bound and destined on an interstate commerce journey.

Apply the same business rule to hydro-electricity. Divorce generation from transmission, and your question is answered, for the generating company, a local thing, can never be under Federal jurisdiction until carriage has taken place by transmitting over the state line.

Senate Document Six was conceived, drafted and introduced into this Legislature—Senate Document Six states that these companies empowered to generate, sell, supply and distribute electricity shall be limited in the scope of their transmission to an area entirely within the boundaries of the State of Maine, except some border companies which are now shipping out, and the electricity generated by them would be allocated.

This proposed bill, enacted, would forever remove the danger of Federal control and regulation from our generating companies, and by no act of Congress could the Federal Government regulate and control the rates of our hydro-electric generating plants.

Can this be done? Yes; by charter amendment. Charters of companies organized in the future can be limited. Can the charters of existing companies be amended? Yes. But you will hear attorneys say charters of existing companies cannot be amended because such amendment would be a retroactive law. Ordinarily that is good law, but read the clause of the Constitution of Maine above cited—read Section 2, Chapter 51 of the Revised Statutes of Maine above cited—and by this Constitutional clause, and this section of the statutes, the charter of every hydro-electric company of Maine can be amended; the State has reserved the right to amend these charters, for all these corporations have been organized since March 17, 1831, and took their charters subject to that reserved right on the part of the State.



The United States Supreme Court has repeatedly upheld the following principle:

"A general statute reserving to the State the right to amend or repeal charters is a part of all special charters thereafter passed even though not expressly made a part thereof."

And again, the Supreme Court of the United States expressed itself as follows:

"A power reserved to the Legislature to alter, amend or repeal a charter authorizes it to make any alteration or amendment of a charter granted subject to it which will not defeat or substantially impair the object of the grant or any rights vested under it, and which the Legislature may deem necessary to secure either that object or any such right."

None of the hydro-electric companies already doing business in Maine will have to change their practical operation by the enactment of Senate Document Six. Senate Document Six is purely a legal question, no vested right is impaired or lessened. Senate Document Six puts the prohibition contained in the Fernald Law into the charters of every hydro-electric company by amendment, by law, by the act of Legislature, and does not repeal in the slightest degree the Fernald Law, so-called, nor impair the obligation of any contract.

Dexter P. Cooper, Inc., more commonly known as the Passamaquoddy Bay Tidewater project, is distinct from all other projects. The Act by which Dexter P. Cooper was incorporated contains many restrictions and limiting conditions. This Act, before it became a law, was submitted to the people of Maine and confirmed by them. The sovereign, the citizens of Maine, confirmed the Act of the Legislature incorporating Dexter P. Cooper as recorded in Chapter 111 of Private and Special Laws of 1925, and this company is particularly exempted from the provisions of Senate Document Six by Section 4 of that document.

Senate Document Six covers companies empowered to generate electricity in Maine, but does not cover companies either existing or to be organized in Maine for the purpose of the transmission of electricity in either state or interstate commerce.

Nor does Senate Document Six cover companies organized outside of this State for the purpose of trans-

mission of electricity which may ask to enter Maine to carry on their business, so that the question of what will be the policy with reference to transmission lines, as such, is now open.

To separate the generating companies from the transmitting companies, two bills were drafted instead of one, and Senate Document 7 treats with transmission companies, domestic and foreign. Under this bill, charters of all existing domestic companies are amended, and the charters of all companies to be organized in the future are restricted by the following words of limitation:

#### (Domestic)

"That each and every corporation is expressly limited in its corporate powers to the transmission of electricity and has not corporate power to own, operate or control any hydro-electric generating plant or electric company," etc.

#### (Foreign)

"All foreign corporations authorized to do business within the State of Maine for the purpose of transmission of electricity are hereby limited and restricted in their business in the State of Maine by the same conditions of limitation and restriction as set forth in Section 1 of this Act."

The fundamental law and constitutionality of this Act is analogous to Senate Document 6, which has been discussed. The same citations supporting Senate Document 6 support Senate Document 7. The transmission company, existing in Maine, or to be organized in Maine, is a local creature of the Maine law, the scope of its business to be fixed by the State of Maine in its charter, and that charter, if questioned, is to be construed by the Courts of Maine.

The only legal proposition not discussed heretofore is contained in Section Two of Senate Document 7, which is—what rights have corporations organized outside the State of Maine for the purpose of the transmission of electricity, when they seek to do business in Maine? Can Maine limit or restrict the scope of the business of such a company? It can, relative to the business that company does in Maine. (*Augusta vs. Earle*, cited above)

"It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty

with which it is created. It exists only in contemplation of the law and by force of the law; and where that law ceases to operate and is no longer obligatory, a corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty. But although it must live and have its being in that State only, yet it does not by any means follow that its existence there will not be recognized in other places....."

"And what greater objection can there be to the capacity of an artificial person, by its agents, to make a contract within the scope of its limited powers, in a sovereignty in which it does not reside; provided such contracts are permitted to be made by them by the laws of the place."

So Section 2 of Senate Document 7 restricts by an express condition of limitation the business a foreign transmission company can do in Maine. Section 2 does not attempt to change the charter of any transmission company organized without the State, but it does limit and restrict the business such a foreign company can do in Maine by forbidding such foreign company to own, control or operate a generating company.

Senate Document 7 places no direct burden upon interstate commerce. Under this Act any common carrier of electricity may enter Maine, transport and transmit any hydro-electricity which it may legally purchase or which may be legally delivered to it for carriage. But the transmission line, the common carrier, cannot own, operate or control a generating plant any more than the railroad, the common carrier, can own, operate or control the shoe factory.

These two bills divorce generation, which is manufacture, from transmission, which is carriage. Nothing in either of these two bills permits Maine generated electricity to be legally shipped beyond the borders of the State.

The penalties of such attempted shipment are forfeiture to the State of the charters of the Maine organized companies, and forfeiture to the State of the right to do business in Maine of the foreign organized companies.

To recapitulate, if this Legislature believes that Maine must first be

served by its hydro-electric public utilities; if this Legislature of Maine believes that Maine shall control the rates at which it is served rather than have the Federal Government, then this Legislature of Maine should pass Senate Document Six and Senate Document Seven, for by their passage Maine will enact into a law, and declare as its own, the policy which I gave to you earlier in my talk.

(Applause).

MR. FREDERICK W. HINCKLEY  
—Mr. Chairman, and gentlemen of the Committee, I have no intention of discussing any of these bills, and I had no intention of speaking when I came here; but after listening to some of the legal propositions suggested by Senator Carter I thought perhaps it might be of value to the Committee to interpret one particular law as it should be interpreted and give you a correct understanding of a recent decision which has been referred to. You have listened to statements concerning a certain decision given by the United States Supreme Court on January 3 of this year. I happened to be in Washington and in the supreme court room when Mr. Justice Sanford delivered that able opinion and Mr. Justice Brandeis delivered his dissenting opinion. Since that time it has been heralded over the State of Maine that the Supreme Court has taken some advanced or different stand from what it has taken in the past. This is not correct. The supreme court in this Rhode Island-Attleboro decision, simply reiterated these principles and these decisions which have been the law for many years, namely, that interstate commerce is still under the control of the Federal government. That has been the law for many years.

This particular case means simply this: A certain corporation in Rhode Island entered into a contract with a certain corporation in Attleboro to supply it with a certain commodity, and necessarily transporting it from Rhode Island to Massachusetts. In transporting, the Court held that it was engaged in Interstate commerce, in doing that particular thing. A contract was entered into between the Rhode Island corporation and the Attleboro corporation whereby it was to supply it with a certain commodity.

Under the terms of that contract the Rhode Island corporation later said, we are not getting sufficient to warrant us in carrying out our contract, and they appeared to the Public Utilities Commission of Rhode Island. The Public Utilities Commission of Rhode Island established a higher rate, and the Interstate Commerce Commission came in and said to the Public Utilities Commission of Rhode Island, "You have no right to fix a rate for a commodity which is being sold in Attleboro, Massachusetts", and that is all it said, except it reaffirmed the right of the Public Utilities Commission of the State of Rhode Island to fix the rate to every consumer within the State of Rhode Island; and that has been the law for many, many years. And it is held up as a dangerous situation to the State of Maine, so that if, under this Rhode Island-Attleboro decision the State of Maine through one of its corporations should perchance ship some power to another state, New Hampshire or Massachusetts, then the Interstate Commerce Commission would have a right to fix the price for which it would be sold in Massachusetts; but the Interstate Commerce Commission or the Federal government under this decision does not intimate or suggest but says in unmistakable terms, that that corporation in the State of Maine is absolutely bound by the rates fixed by the Public Utilities Commission of the State of Maine. So it seems to me there is nothing to worry about in that decision, that decision which reiterates the law of the land for a long, long time.

The second proposition which appealed to me was this—

SENATOR MAHER—Before you pass from that—the Committee is deeply obliged to you for your information. You say there is nothing new in that decision; that that has been the law for a great many years. Please tell the Committee when the Supreme Court of the United States ever before decided that electricity was a commodity.

MR. HINCKLEY—I do not know that they ever decided. We have all known for many years that electricity was a commodity.

SENATOR MAHER—That is the only thing about the case that is of

particular interest to the Committee.

MR. HINCKLEY—But it seems to me it is necessary for the layman to have the supreme court say that electricity is a commodity as gas is a commodity, which has been said before, or any other product. There is nothing new, as Judge Maher suggests, except that.

Now the suggestion has been made, and it seems to me as lawyers we should consider it very closely, that now, under the law keeping the power within the State of Maine, that the State of Maine Supreme Court would hold that law constitutional, although Senator Carter says it is probably the consensus of opinion of lawyers who have studied the question, and I presume he is in that category, because he is an expert on such law, that he will agree that it is unconstitutional. The supreme court will sustain it, hence we are safe. And the intimation is clearly made that if a law is passed by the Legislature that will permit electricity to be shipped outside the State, then the United States court can intervene and there is some way to get into the United States court.

I do not believe there is any lawyer who ever studied the question or knows anything about procedure but what would agree if some foreign corporation, even with the Fernald law now in existence, should attempt to ship power out of the State of Maine and our Maine court held it to be constitutional, I guess most any ordinary lawyer would find a way to get that to the Supreme Court of the United States. That wouldn't be hard at all. Of course it is not necessary to wait until there is a law forbidding shipment out of the State when great lawyers like Senator Carter admit it is unconstitutional to have such a law. Certainly they cannot argue for a moment that it is impossible to get beyond the Supreme Court of the State of Maine under the circumstances. That is all I have to say.

MR. WYMAN—Mr. Chairman, may I ask Senator Carter a question?

CHAIRMAN GRANVILLE—You may, through the Chair.

MR. WYMAN—Mr. Carter, I understood you to say—perhaps you

would state what you did say—my memory may be at fault—that about 40 per cent of the people of Maine were served with electricity. As I understood your remark, it indicated that the amount of power required to serve the remaining 50 or 60 per cent would be about the same as is required to serve those now having electricity. Is that the impression you intended to give?

SENATOR CARTER—I think, Mr. Wyman, that my statement was that less than half the communities in Maine were today served by electricity and about 40 per cent of our power was developed. But the same ratio, as far as I know, if all our communities were served, it would take double the amount or 80 per cent of power to serve them.

MR. WYMAN—Do you yourself know of any large community with large manufacturing plants which does not now have electric service, within this State?

SENATOR CARTER—I do not know. I made no industrial survey. I don't know what you mean exactly. I know a few years ago—I have been connected with the Great Northern Paper Company about five years—there was a large industry not served by any public utility company.

MR. WYMAN—That was because the industry did not care to have a public utility.

MR. CARTER—I think so.

MR. WYMAN—You took the State of Maine by communities?

MR. CARTER—I think the figures which I used were taken from some kind of governmental survey.

MR. WYMAN—You took Maine by communities, and not by population?

SENATOR CARTER—Certainly. I took it from the government report. I know nothing personally about it. I made no canvass of the State of Maine.

MR. WYMAN—Wouldn't it be your judgment there would be a great difference between a community like Fayette and one like Lewiston in the consumption of power?

SENATOR CARTER—I suppose it depends entirely upon the population and industry.

MR. WYMAN—Fayette and Lewiston? You would rather think so?

SENATOR CARTER—I don't understand what you are driving at. More people will burn more electri-

city, if that is what you mean; sure they will.

MR. WYMAN—Taking the State by communities, you would hardly set a community like Lewiston against a community like Fayette?

SENATOR CARTER—In the consumption of anything? No. They would need more power. They would use more coal. It depends entirely upon the population and the industries there.

MR. WYMAN—So if there were a thousand communities like Lewiston served and a thousand communities like Fayette unserved, it wouldn't take anywhere near as much power to serve the ones not served as it takes to serve those served now?

SENATOR CARTER—No; take Keene's Corner and Castine.

SENATOR HINCKLEY — Mr. Chairman, I wish to make a correction in my previous statement. I inadvertently used the words "Interstate Commerce Commission" when I meant "Congress." Congress has the only authority to interfere, and it has passed no legislation up to this time along that line.

SENATOR CARTER—If I correctly understood Brother Hinckley's statement, it is what I stated, that the power is vested in Congress, and the Interstate Commerce Commission has no jurisdiction and never did have.

SENATOR HINCKLEY—That is correct.

CHAIRMAN GRANVILLE — Are there any other questions to be asked or remarks to be made before we close the hearing upon these two measures?

MR. FRANKLIN D. CUMMINGS (Portland)—Mr. Chairman, I have but very little I desire to say. I am here, I will say, at my own expense, and prompted only by what I believe to be a duty and obligation of a citizen of Maine.

In a general way, I am in favor of the Carter bill. I would like very much, however, to have another feature added to that bill. I desire to leave in the minds of the Committee that neither in that bill nor in any other bill which you are to consider in the water power bills that will come before you is there any provision for helping the people of the State of Maine by regulating rates or by limiting capitalization of actual investment. It is a matter, gentle-

men, that ought to be taken care of; it ought to have been taken care of years ago.

I am quite willing, and always have been, to see the hydro-electric power of the State of Maine developed by private capital if we can have fair and honest public regulation, so that the people of the State may not be burdened today and tomorrow and forever with excessive rates and over-capitalization. That is why I ask you gentlemen to add a feature to this bill to cover that point; and I am going to ask you to incorporate in that bill this amendment:

Amend Senate Document No. 6 by inserting the following section, to be numbered Section 4; change what is now Section 4 to Section 5, and amending Section 5 by striking out the word "three" in the first line of said section and inserting in place thereof the word "fourth."

"Section 4. Every company or corporation whose charter is amended or altered or drawn by or under the provisions of this act shall in its rates and charges be limited to such rates as will pay a net return not in excess of 8 per cent per annum on the amount of money actually and prudently invested in such enterprise, whether such rates are fixed voluntarily or by the Public Utilities Commission; and betterments derived from income shall not be charged to capital account. And every such company or corporation shall on the tenth day of January of each year file with the Governor of this State a schedule showing the amount of money actually invested in its enterprise to January 1st of that year; and if such schedule does not supply sufficient information for use as a basis for rates under the provisions of this section, the Governor shall summon the president or directors or both president and directors of such company or corporation to testify before the governor and council under oath, and also require the production of such books, papers and records as may be deemed necessary for the purpose of obtaining the necessary information; and the schedule herein referred to and all information acquired through the testimony and hearing shall be considered as public records and shall be available as such; and any company or corporation violating the provisions of this section shall thereby forfeit its

charter and its franchise shall become the property of the State of Maine."

If you gentlemen will incorporate in that bill a provision of that kind, you will stop this tremendous over-capitalization. Talk about public regulation! You all know you never had it. We haven't got in in Maine and we have never had it. You know no doubt that the total capitalization of our hydro-electric companies in Maine today represents probably only a quarter that has been paid in actual cash. Now in all fairness to the people of this State I want you to seriously consider if it is right and just, and if that ought not to be done for the purpose of obtaining the necessary information, even if a little burden is placed upon this capitalization that has never represented money paid in.

Now if the limit of net return which I have placed there of eight per cent. is not large enough—and it seems to me that is a good return on an investment—but if it is not, then I would be glad to have anyone who opposes it tell me what would be a satisfactory and a fair return.

I want to leave with the committee, so that each member, or at least the chairman of your several committees of which this committee is composed, may have a copy of this proposed amendment, these copies; and I want you to consider this seriously; and I want you to ask yourselves whether it is not your duty as members of this Legislature to consider the welfare of the people to that extent.

MR. HERBERT K. FURBUSH (Mt. Vernon)—I am an ordinary laboring man. I dare say you won't find one in the house come forward and stand here today in our country. In the name of God, what is next going to happen in our house? I appeared before the Fish and Game Commission—

CHAIRMAN GRANVILLE—Do you wish to address us in relation to the two Senate Documents under consideration. If you do, will you please confine yourself to the subject. Let us have it quiet. We have under consideration Senate Document 6 and Senate Document 7. Do you wish to address the Committee in relation to those documents?

MR. FURBUSH—Yes, Sir.

CHAIRMAN GRANVILLE — You will please confine yourself to the subject.

MR. FURBUSH—I will ask this question. I have repeatedly advised the hydro-electric powers to start a business in Mount Vernon, Maine. I see that it is advertised that there is surplus power. For consideration, gentlemen, why am I not supplied with that power? If I could get that power I would start a business in this State of Maine, a citizen of the State. Failing to obtain that power since 1920, I am at a standstill as a manufacturer, being an inventor of novelties and of medicines, the natural resources I draw from in the State of Maine. Now I require that power as a manufacturer. Another question I would like to ask the gentlemen, our roads

CHAIRMAN GRANVILLE — Mr. Furbush, I shall have to again request you to confine yourself to the subject under discussion.

MR. FURBUSH—I say for this reason, our roads—

CHAIRMAN GRANVILLE — We are not considering the subject of roads; we have under discussion Senate Document 6 and 7.

MR. FURBUSH—Well, that may be. You have to go miles around—  
(Laughter)

CHAIRMAN GRANVILLE—Is Mr. Earl Hayes in the House? Mr. Hayes, you will please see the gentleman preserves order.

Is there anything further to be said in connection with Senate Documents 6 and 7?

MR. CHARLES F. FLAGG (Portland)—Mr. Chairman, I want to say something about those two bills. I am not to be classed as a proponent, but if it be in order I will say that I come here at my own expense, because of my own interest, an interest which is not only natural, but is in a way a duty; because my good fellow citizens of Maine have given me from time to time several opportunities to come in close touch with this subject of the water powers of Maine, and because my business as an investment banker has brought me in touch with some of the security developments in different parts of this country; so I have seen developments and actual happenings beyond the state line,

and perhaps I take somewhat of a different view-point than I would if I had not had that experience.

I want to say in the first place that I consider I personally owe a word of appreciation to Senator Carter for clearing the atmosphere. There are several bills before this Committee, concerning the export of power beyond the borders of this State, and I venture to say that not one of them would have ever got by—the people of Maine would have come right back again. But there would still have been the difficulty in deciding the way and condition of exporting it, and you would have fallen back upon the question we haven't decided at all—whether we are going to export it at all. As Senator Carter has brought in very fairly, the first thing is to decide what is to be the policy of Maine, to keep it here as he says, or whether you are going to send it out under conditions and limitations.

I find myself perhaps in disagreement with both sides in some respects here. One side says, don't you let it out; keep it for Maine; don't allow a kilowatt to go beyond the border; and the other side say the law of 1909 is in no sense sound, that it never was; and there you are. We have heard of that awful crime, letting the wood forests go. Well, back in those days they wanted sunshine and a chance for farming. I think they did right. Again, in 1909, a condition confronted this State, and they passed that law, and I am glad they did. If I had been in the Legislature, I should have voted for it. In all my State Board of Trade work I voted for it. I consider that it was a very great and a very wise law for the State of Maine.

What are the conditions? Take it back in 1905, if anybody had said at that time that the water powers of Maine could be taken down into New Hampshire, you might have expected the audience to laugh, or Daniel Webster to have risen from his grave and say, "As well might the granite hills of New Hampshire come down into Massachusetts as the water powers of Maine." In 1907 they were beginning to whisper it; in 1908 they were beginning to talk it; in 1909 they knew it was a possibility, that

these water powers could do down into Massachusetts. And what was the ownership of these powers at the time? It was held in Massachusetts. No one thought that the owners of the great octopus as it was then called would get that power down into Massachusetts and turn the wheels of industry there; they never thought of it except, as Senator Carter said, as a power station. There always has been that danger in rail-roading, and also in this water power situation, and perhaps in other things, that Massachusetts never could get over that idea that Maine was a province, as she had been before the year 1830; and Massachusetts was going to make Maine a province, and today, Mr. Chairman and gentlemen of the Committee, we should have had no question of water powers, if we had let it go, it would have all been down in Massachusetts and there would have been no surplus. Now the years have gone by and great changes have occurred, and today I consider that the law of 1909 has served in some measure its purpose, so that we may contemplate certain modifications or overridings of it.

One of the changes that has occurred is that the ownership of these great water powers is no longer down there in Massachusetts. We have gotten what we have been waiting for, a national ownership, that now is coming in, backed up by heroes of industry, backed up by great capital. When the Insulls come in—I might as well talk it straight—when the Insulls come into a region—I have seen them develop other places, and when they come into a region they take that same view that Morgan used to take of the railroads: What can we do to build up this territory? This road is not doing business enough. What can we do to build it up? This Company has manifested a purpose to build up this State, and they are in a position to do so. I cannot say that I am in sympathy with either that attitude that Maine money should never go to the West, or that western money should not come here. I think it makes us nearer in a national position, and we shall benefit very greatly by that national ownership.

Again, Massachusetts is not in the same position with regard to power that it was in the year 1909. They were hungry for it at that time. I do

not see the signs that they are so hungry now. There are some people, I believe, who are not particularly anxious for it to go down there. They recognize that there are powers over in Connecticut which may be developed; and down at Everett—I may not have the place right, but down there on the coast they are erecting, the Boston Edison Electric, a 100,000 k. w. station; and it is capable of being developed into a 500,000 k. w. station, and that comes pretty near, in that one station which can easily be developed, being equal to all the power we have here in Maine.

And then the third thing which we should bear in mind is this: that steam generated electric current is now beginning to press very closely upon hydraulic current. I am a director in a Maine corporation. Two men got together twenty-five years ago, friends of mine—and they make heavy electric machinery, and among other great things they have done they have made the electric coal handling towers for the New York Edison Company down there on the water front in New York. Some people said it couldn't be done, but they have done it. At Hell Gate they have a very large station, and they are breaking the ground, about fourteen acres on the New York water front, for another enormous station to make electric current by steam; and those two stations alone are going to make an amount of electric current which is well up to all the hydro-electric current we have in Maine, developed and undeveloped. There are facts to think about. Any State which has a coast line is not in the position of begging hydro-electric state ownerships to come down and supply them with electricity. I may not give away the secrets of the New York Edison, but I may tell you that the costs of making electricity by steam are getting down lower and lower. Only the other night I heard an engineer of the United States Federal Water Board say that in the last few years they had gone from two and one-half down to one; that is a unit of electricity, a kilowatt hour, which it would take two and one-half pounds of coal to make they brought it down now so that one pound of coal will make it. I have sat opposite the president of a company down in the South, talking over with him in his New York office the ways in which

developments can be made, and very serious consideration is being given by him to putting up a coal plant right beside the water plant. I was interested in handling the bonds of a great company down in South Carolina, and it finally passed over into a separate power company, and one of the first things they did—and this was a good water power company, impounding water twelve miles back—one of the first things they actually did was to put a steam plant right alongside the water.

Now I cannot, in view of these things, consider that the State of Maine is doing wisely in holding fast to one good custom, because one good custom may corrupt the world. Here you are confronted with this condition, and the next legislature, and even the next generation is going to be confronted with the same condition. In producing electric power today you have got to do it on a big scale or you don't get it at a low cost. You have got to interconnect it and swiftly shuttle the current back and forth.

I helped distribute the bonds of a company in the south, where the Ricker Hotel people have recently erected a hotel, so Maine is interested in the South; and the thing that made that small company great and brought it to a position of strength was because they built 110 miles of high tension line; and at night they send the current out to a big power company, and in the day-time they draw current the other way; and it is that shuttling back and forth, that interconnection, which is necessary in order to give power the cheapest. We people who are interested in these companies don't know the word "state lines". I have been interested in companies that do not know anything about this awful fear of Federal control. No doubt various legal points have got to be worked out, but this is no bugaboo to me. Look at that map of Maine. There is not a state in this Union that is following the policy of Maine as to the awful fear of crossing state lines. If these developments are to be made, they must be made on a big scale. That octopus of old, the Indian Island development on the headwaters of the Kennebec—no company can af-

ford to wait years and years before that great power can be used. If you continue in this way there is no choice; you may regulate, but you will have nothing to regulate, and that is where we shall stand. And if they do develop it they must sell some power in the market, otherwise you don't get it cheap.

Why, I had a conversation with an official in Maine, who stood high and who had given great consideration to the subject, and we were having a very friendly conversation, and finally he said again and again, "I believe in State control". "That is all right," I said, "I don't dispute you," but I ended the whole conversation and discussion because incidentally I asked him what he meant by State control and what it was going to do; and away went his whole argument. He said, "Er - Er - really I don't quite know." And that is the next question you are going to find before this Legislature. I think the people in this State are going to settle it eventually; I think they are never going to be satisfied until you let them do it. And when you decide, as I believe the State of Maine has got to decide, that the Fernald law has got to be modified, then the next question is going to be that of state control, and to decide what that is to be, and you have a big problem. May God be with you.

CHAIRMAN GRANVILLE — Is there anything further to be said for or against Senate Documents 6 and 7?

MR. J. W. WOOD (Topsham)—I want to say a few words in regard to the hydro-electric power situation from a farmer's standpoint. I want to express my views on this question as to why hydro-electric power should not be exported from this State and why some way should not be provided whereby the farmers can have all the electric lights and all the electric power they need on the farm at a reasonable rate. Now in making my statement I may get out of order, and I would ask the Chair to be lenient with me.

Now I expect to be opposed by some of the smartest, some of the ablest men in this State of Maine who are not taking the right view of this question in solving this



power problem satisfactorily to the people. It seems to be the height of their ambition to get this Legislature to permit them to export hydro-electric power from this State regardless of the effect it will have on the farmer, the farming industry, the general public, and the further development of this State for the benefit of the people.

Now I want to call your attention to conditions on the farm with no electric lights or no electric power compared with the city. I stay at Long View farm; I own the farm and stay there. Long View farm is situated five miles east of Brunswick on the State Road leading to Augusta. When I have been asked by out-of-state people if I was a native of Maine I have always been proud to say yes, a Maine product, born and raised in Maine, thirty-three miles south of the capitol.

In 1925 tourists commenced to drive into my yard, asking to be accommodated for the night. My wife and I decided we would open our home to tourists. Since then we have sheltered and fed tourists from California to Maine and from St. Petersburg to Quebec. We have taken care of 27 head of cattle, milked from 14 to 16 cows; and besides this we have taken care of horses, poultry and pigs; with no electric light, no electric power to run my separator, run my milking machine, pump the water for my cattle, run the vacuum cleaner, run the churn, run the electric iron. And we did all this with no help, excepting a boy ten years old and a woman over seventy in the house to help my wife.

Now I own one nice place right in the heart of Topsham village on the State Road leading to Augusta, on the electric car line, five minutes to church, eight minutes to school and postoffice, with electric lights and city water. Now which would you advise me to do? Would you advise me to stay on the farm and work from fourteen to sixteen hours six days a week, with no modern conveniences, or would you advise me to abandon the farm, move to the village, and live where I can have all the modern conveniences that I cannot have on the farm where I do not have electric light and power? You might say, Move to the village. That is just exactly what is being

done in this State today, and that is why we have so many abandoned farms. Is that going to continue because they cannot have electric light and power? Has the farmer got to leave the farm? That is one reason, and altogether the reason, perhaps.

Now I am going to say further, if hydro-electric power is exported from this State it will build up industry in other states; it will take the boys and girls from our farms, leaving mother and father alone, and when mother and father are not able to carry on the farm they too will abandon the farm. Our resources are gone; our boys and girls gone; father and mother gone; our farms are abandoned. We might just as well start right in and close our churches, schools, abandon our homes, and go to other states where our electric power is building up industry.

Now I would suggest, if it would be in order, that this Committee report "ought not to pass," but recommend and use their influence to this Legislature to have a committee appointed under the control of the Governor and Council, made up of farmers, lawyers and business men, to investigate the power problems of this State by towns, cities and counts, and report to a special session of this Legislature, and see if some way cannot be provided whereby all the farmers and all the people can have electricity at a reasonable rate. I thank you very kindly.

(Applause).

(Hearing adjourned to 1:30 P. M., Friday, February 25.)

Friday, Feb. 25., 1:30 P. M.

CHAIRMAN GRANVILLE — The time to which this hearing was adjourned having arrived, we will proceed with our hearings as advertised. The first paper to come before us is Senate Paper 28, Senate Document 15, "An ACT Regulating the Exportation of Hydro-electric Power from Maine." We will be pleased to hear any proponents of this measure.

SENATOR BENEDICT F. MAHER—Mr. Chairman and gentlemen of the Committee, I shall be extremely brief in what I say upon this matter. I do not propose this Act at all as a panacea for the many ills of Maine, nor as a horn of plenty from which wealth will flow to arid places. It is merely suggested as a step from the murk and the fog of the existing

situation. It is not a joke, as I have heard suggested; nor is it offered expecting that it will be adopted. Frankly, I am appearing before you stating that I do not expect this Committee to unanimously report this bill; but I am going to suggest this bill just the same, in order that it may take its place in the thought relative to this subject, because ultimately considerably more will be said anent this subject than is said today.

The basis for it occurred to me in the quoted remark of Dr. Van Dyke, who, when asked what the difference was between New England and New Amsterdam, said that as near as he could see the chief difference was that one was a commercial community with religious principles, and that the other was a religious community with commercial principles. He said he didn't know which was the better, but he was inclined to believe that he felt he knew what was the happier to live in.

Now the trouble with the whole situation, as I view it here, is that it gets back in the last analysis to the pocket nerve. That is the basis all the discussion today is going to get down to—what from a selfish standpoint is the best thing for Maine; legitimately selfish, but whether wisely selfish I will not say.

Personally, I believe that we are an integral part of the nation. I believe that neither by indirect or by direct methods do we want to hark back to the attitude of the mother state at the time of the embargo, when the constitution was new. And this whole discussion since 1909 in Maine has been based upon a premise of embargo, upon a premise of taking Maine out of the nation. I think that is not sound or wise; but it has been the policy. What is it that we are really interested in so that we can get something where Maine will have an edge on the situation, because we are close to the border. That is rates, isn't it? All you want is to have some proposition that will show your rates to be more advantageous in Maine than in the neighboring states.

This occurs to me. Relatively speaking, day after tomorrow all of this discussion about transmission companies and the taking of power out of Maine will not be a moot question nor an academic question, but will be ancient history.

Mr. Marconi, in the latest interview which he has given to the world, to the International Press Association in London a few weeks ago, was asked about the transmission of power without wire. He said, "That is not only a possibility and a probability, but it is an actuality, because I have done it over a distance of eighty miles, and by parallel beams." I say relatively day after tomorrow over the State of Maine there will be going millions of power from the great northland power houses and the houses of your constituents. There won't be any proposition of transmission lines or transmission companies when they are shooting it through the air.

Now we want to make developments in Maine, we want, if we can to get out of our potential resources that result so that the people of Maine will be situated so as to have, as I said, a bit of an edge.

Suppose that it would take, relatively speaking, fifty million dollars to develop all the power that could be used, usable power in the State of Maine, so that everyone who wanted to be electrified, whether in city or on the farm, had all that they needed. I say fifty million would be necessary. That is just merely an arbitrary term. But to actually develop all the power that there is in Maine would take a great many millions more, say one hundred and fifty million more—I don't know how much, but it would be safe to say it would take three times as much to develop to its full the electric possibilities, the unused power, the potential power. Suppose the beam proposition comes in, and there has been developed in the State of Maine all the power that Maine has and it has been developed solely along the line of what is usable or reasonably usable, and we are left with a situation where transmission lines become of small value. Who is going to pay the freight back here in Maine? Who is going to pay for the actual value, which the courts have said is the real test of rates.

This act provides simply this: That no rate fixing body shall ever fix rates in the State of Maine taking into consideration any factor at all other than that necessary to produce the electricity actually used in Maine, plus a reasonable surplus, arbitrarily fixed at ten per cent. Some one will say that is what the Public Utilities

Commission does today. All right. It does not do a bit of harm to write it into the law and make it definite for all time that that is the policy of Maine, because when you do reach the second stage—and I commend it to the companies and I commend it to the citizens and to this committee—when you do reach what is inevitable, some national regulation of this subject and you come to a national rate fixing commission or tribunal, if you have a definite fixed law in Maine that rates in this State cannot take into consideration any factor of intangible value, or any factor of actual value in the plants more than enough to actually furnish Maine, that outside Federal rate fixing body will be obligated in fixing rates here to use the law that is in force in Maine.

Those two purposes are the object in the introduction of this bill; and, as I say, I do not expect the measure will pass; but it is not a joke, and some day, perhaps to some members of the Legislature in this day, the principal involved in this bill will make appeal.

Not to take any more of your time, but just to contribute my view as to what has been more or less discussed here, in regard to what is now admitted apparently by all people, the unconstitutionality of the Fernald law; and all the agitation, and all the letters—in my morning's mail I got ten—with reference to strengthening the Fernald law—gentlemen, I commend to you the absurdity of the proposition of attempting to breathe life into that which is admittedly without life and is dead, to strengthen that which I say is without force, except the coercive force upon public opinion, but which has not the weight of law.

One step more, I insist, as just my own personal view, that the crux of the question before this Legislature is here—whether or not we will make a law that by accommodation will permit a legal use of power development and power results in Maine or whether we will attempt to incorporate into charters that which we say by the general law is unconstitutional. To the laymen, and unnecessarily to the lawyers of the committee, I suggest this: That when the 1909 act was passed, that became then incorporated into all the charters of every corporation incorporated under the laws of the State

of Maine as if it had been a part of their charter. To now attempt to specify and put it in definitely, is an attempt to accomplish, gentlemen, by indirection what they admit the supreme court says you cannot do directly. I have got rather an idea that the supreme court—just as a guess—would say that the reason of the law is the law, and that if any state cannot do a thing directly we wont cognizance an attempt to do it indirectly; that the real thing is interstate commerce and the imposition of a charge thereon.

Gentlemen of the Committee, I have taken considerably more time than I had intended, but I trust that I have made my attitude clear with reference to Senate Document 15.

CHAIRMAN GRANVILLE: Is there anyone else who wishes to appear for Senate Paper 28? Anyone wishing to appear in opposition?

Mr. NEIL A. DONAHUE: Mr. Chairman, I live in Auburn, Me. I came here, sir, primarily interested in the legal phase of this water power question, and had gathered my ammunition so far as I have gathered it, primarily to help some of the people of the State of Maine understand better that certain proposed legislation here ought not to pass, because it would be unconstitutional.

I was in the hearing yesterday afternoon, and the hearing closed without an opportunity for me to say what I wished to say in regard to the Carter bills; but it is not yet too late in a brief way to call your attention to what I wish to say in that regard, because it is in general in regard to our water power situation in which we are all interested.

In regard specifically to Mr. Maher's bill, I had prepared what I thought would be an opposition, but I find the situation in regard to this bill somewhat as I found it with Mr. Carter's bill,—Mr. Maher does not expect it to pass, and I doubt if he thinks it ought to. I think that his bill is unconstitutional, too. Mr. Carter has taken the words from me, or at least he has left me where it is useless to say that his bill is unconstitutional. Mr. Chase has said that the Fernald law has failed. I don't know whether it has failed or not, but I don't think it could ever succeed.

In this morning's paper, in relation to a case tried there February

24th., Chief Justice Taft made the remark that no corporation had a right to go into a state without its permission unless engaged in interstate commerce. Well, that is the latest word from the highest court, and the Chief Justice of it—"unless engaged in interstate commerce"—and there is a world of meaning in that. When they are engaged in interstate commerce they have different rights than if they are not.

I had hoped that I might meet this issue of the constitutionality of the Fernald law, but it is hardly necessary. Mr. Carter himself has said, if I heard him right and he is quoted aright in the paper, and if it is not so, I will be corrected, "I believe the consensus of opinion today, particularly among those lawyers versed in law applicable to hydro-electricity and public utilities, both intra and inter state, is that the Fernald law is not constitutional."

SENATOR CARTER—The quotation is correct, I think.

MR. DONAHUE—The quotation is correct.

Again—"I believe the United States Supreme Court would hold the Fernald law to be a general statute of Maine, which places a burden on interstate commerce."

SENATOR CARTER—That quotation, I think, is correct.

MR. DONAHUE—Thank you.

If the Fernald law is unconstitutional, none of us can say that Mr. Carter's first bill would not be unconstitutional. It has the same provisions of the Fernald law, except it extends it to more corporations and makes it more general. The proposition is this, gentlemen, if you are asked at all to pass this bill of Mr. Carter's you are asked to pass an unconstitutional law, a law which you have fair warning concerning right now is in the belief of its proponents unconstitutional, that is against the constitution of the United States. And I believe that there is something here to be taken consideration of. There are 151 representatives in this hall, 31 in the Senate, and one governor concerned in the making of the laws of the State of Maine. Every one of these gentlemen before he embarks upon his occupation of law-making raises his right hand and

swears to support the constitution of the United States. Gentlemen, you may not pass laws that you know are contrary to the constitution of the United States.

You have heard a great deal here about a principle, the principle that the State of Maine wants the water powers and the electricity kept in the State—not the law, but the principle—and you have heard very much of the principle of conservation. With your permission I shall leave with you a brief, rather too extended to expect you to indulge me with this afternoon. It is the same that has been printed in the public press, and with which some of you may be familiar.

I call your attention to a brief article taken from an address given before the American Bar Association at its last meeting in Denver, by Thomas J. Naughton, of the Chicago bar, an article dealing with the encroachments of national powers upon state authority, and the encroachment of state authority where the Union was supreme.

"Many states made at that time the unsound contention that their own resources should be developed and husbanded for local benefit. On the contrary, all the people of the nation are entitled to enjoy without restriction the production of every state."

Gentlemen, our state is one star in the flag, and there are 47 others; and I do not believe that if the people of Maine understand this situation aright that they want any Chinese wall put up to keep us away from the other 47 or the other 47 away from us.

But some say electricity though it be a commodity must be a separate commodity, it must be treated with separately. You gentlemen have listened to an ex-Governor of Pennsylvania, who tells you that electricity is everything. Well then, if this commodity which is everything must be taken out of the constitution or treated differently, what is the situation? The constitution was made to guard the states from just such things as this. In 1889 they adopted the constitution, primarily for the regulation of commerce and to stop interference with commerce from state to state. Now gentlemen, what is the situation of our corpora-

tions here in Maine that have these hydro-electric plants. The State of Maine sees a private owner owning a brook or a river or the banks of it, and it says to that private owner, this private property of yours will be more valuable for the uses of the state if some private owner puts up a dam there and develops electricity, some of it to be used for the public, and enters into an arrangement which is a contract with this other private owner to take over and pay for out of its own funds this property, giving it the right of eminent domain to take the property away from the first owner and assume it for himself. The new owner, having bought it with his money, not with the money of the state, owns the property, but how? Impressed with a public use; impressed with a public use to the extent stated in the charter. For instance, like one corporation, it is impressed with a public use to supply electricity to Waterville and neighboring towns named in the charter. That corporation may develop electricity, one-tenth of which will be used for public uses. And I call your attention right here to the fact that public uses in the State of Maine by the supreme court decisions are for light and heat. The corporations that have received their charters today in the State of Maine have received them for the purposes set forth in their charters and with the authority to develop electricity and generate it for light, for heat, for power, for mechanical purposes. Now gentlemen, if one-tenth is used for the public, nine-tenths must be private, and it is sold. These corporations are generating electricity, and they are supplying the towns and the people their charters call for, impressed with the public use. On and beyond that they develop electricity which is not impressed with a public use in that the public use is all satisfied and the surplus electricity generated by them belongs to them, just as much as your own chairs in your own houses belong to you, that is their property, to do with as they will, and they have a right to sell it anywhere under that flag.

Now, gentlemen, as to legislative aids, we are up against this proposition. I wish to remind you right here that I appear as a citizen and not for anyone else. I am not interested for anyone in this except as a citizen. There are six bills before

this committee, and I am against every one of them.

(Laughter).

Now I will be through very soon, but there is one point which I wish to call your attention to, and that is that these private corporations which own electricity which is theirs and which they have a right to sell under this flag, those private corporations are entitled to support from this legislature. This legislature not only has not the power under the constitution to put up a barrier that they may not sell other than within the state, but this Legislature is impressed with a duty to so enact laws that these corporations may sell that product. It is a duty that they have assumed when they took their oath to support the constitution of the United States; and you don't need to take my word for it, for I have somebody else to speak for me whose words are more impressive than anything I could say.

In 1858 a question like this, or involving the same principal, came up in the debates of Abraham Lincoln and his opponent Stephen Douglas. Abraham Lincoln had proposed the question, "Can the people of the United States territory in any lawful way against the wishes of any citizen of the United States exclude slavery from its limits prior to the formation of a state constitution," and Judge Douglas said that they could, and he told how it could be done. As I understand him, Mr. Lincoln said he holds that it can be done by the territorial legislature refusing to make any enactments for the protection of slavery in the territories, and especially by adopting legislation unfriendly to it. No man in America hated slavery any more than Abraham Lincoln did, and history will bear me out in that; but Abraham Lincoln loved the constitution. The constitution, and the laws as interpreted by the United States Supreme Court had said that slaves were property and as property they were entitled to the protection of the laws, and Abraham Lincoln stood on the constitution. After reciting this question, Abraham Lincoln, in a debate at Jonesboro, September 15, 1858, said:

"I will ask you, my friends, if you were elected members of the legislature, what would be the first thing you would have to do before entering upon your duties? Swear to

support the Constitution of the United States. Suppose you believe, as Judge Douglas does, that the Constitution of the United States guarantees to your neighbor the right to hold slaves in that Territory—that they are his property—how can you clear your oaths unless you give him such legislation as is necessary to enable him to enjoy that property? What do you understand by supporting the Constitution of a State, or of the United States? Is it not to give such constitutional helps to the rights established by that Constitution as may be practically needed? Can you, if you swear to support the Constitution, and believe that the Constitution establishes a right, clear your oath, without giving it support? Do you support the Constitution if, knowing or believing there is a right established under it which needs specific legislation, you withhold that legislation? Do you not violate and disregard your oath? I can conceive of nothing plainer in the world. There can be nothing in the words, "support the Constitution," if you may run counter to it by refusing support to any right established under the Constitution."

Gentlemen, that was in debate. Since that time the Supreme Court of the United States has said not only that a state is bound not to make laws that shall interfere with interstate commerce, but it has said this: "No state can by action or inaction prevent, unreasonably burden, discriminate against or directly regulate interstate commerce or the right to carry it on." Gentlemen, those are the words of the United States Supreme Court, 221 U. S. 229. Simply saying the same thing that Abraham Lincoln did, that where there is a right under the constitution it is the duty of the legislature to legislate so that those rights may be exercised. These bills I find are so designed that they not only do not allow a man who owns property to sell it and dispose of it under the flag, as is his constitutional right, but they deny him that privilege itself, for the reasons I have spoken of.

SENATOR MAHER—Mr. Donahue, I understood you at the outset of your remarks to state that Sen-

ate Document 15 which is now under consideration you considered unconstitutional and thought that I did. Won't you just indicate to me on what you premise your statement as to its unconstitutionality?

MR DONAHUE—Yes; I would be glad to. This particular law introduced by the Senator burdens interstate commerce.

SENATOR CARTER—Pardon me just a minute. I just want an answer. Why do you consider it unconstitutional?

MR. DONAHUE—I am going to answer.

SENATOR MAHER—You say it burdens interstate commerce?

MR. DONAHUE—Yes.

SENATOR MAHER—In what way?

MR. DONAHUE—In this way: while allowing electricity to be shipped out of the State it says that if a company ships out of the state, it might be nine times as much out of the state as it is in the state, but for that which is shipped out only to the extent of one-tenth of what is used in the state may be considered in regulating the rates.

SENATOR MAHER—What do you understand the law is as to the principle of regulating rates now?

MR. DONAHUE—I don't know just what point you refer to.

SENATOR MAHER—I couldn't make it plainer. I will reiterate it. What do you now understand is the law with reference to the regulation of rates of public utility companies?

MR. DONAHUE—The regulation of rates for those doing interstate commerce is dealt with by congress and by the national board; those intrastate by the state board.

SENATOR MAHER—I perhaps do not make it clear. What do you understand is the rule of law, not what the body is having jurisdiction—what do you understand is the basis of law in the regulation of rates of public utilities? Upon what basis of law.

MR. DONAHUE—The basis of rates is that the public utility supplying electricity must furnish a safe and convenient and reasonable service, and that for that the public utility is entitled to a reasonable

compensation for the service rendered.

SENATOR MAHER—Based upon what?

MR. DONAHUE—Based upon its investment, and the present worth of its property at all times.

SENATOR MAHER—And that is all?

MR. DONAHUE—No; that is not all.

SENATOR MAHER—No; that is not all.

SENATOR MAHER—What else?

MR. DONAHUE—Your bill—

SENATOR MAHER—No; you are helping us. Is that all the rule, as you understand it?

MR. DONAHUE—That is the rule.

SENATOR MAHER—Have you read the case of McArdle vs. Indianapolis Water Company?

MR. DONAHUE—I wouldn't be sure. I have read some cases.

SENATOR MAHER—Judge Butler's recent opinion, do you recall having read that, with reference to what shall be the law of the land with respect to rates of public utility companies?

MR. DONAHUE—I am not sure that I have read that case.

SENATOR MAHER—Have you read the March number of the Harvard Law Review, with Mr. Riceburg's article in criticism of Judge Butler's opinion?

MR. DONAHUE—No, sir.

SENATOR MAHER—In your study of this situation have you never run across the proposition in the court decisions that in addition to the elements of value that you now recite the rate fixing body must take into consideration the intangible assets of the corporation?

MR. DONAHUE—I would take that to be the law; but I would take it that this provision provides exactly the opposite.

SENATOR MAHER—Precisely. Would you say that the law-making body of the State of Maine cannot prescribe a rule of law that shall be constitutional, leaving off intangible value? Do I make my question clear?

MR. DONAHUE—I don't know as that is anything I have covered specifically.

SENATOR MAHER—That is

what you meant when you said that this bill was unconstitutional?

MR. DONAHUE—I would think that that provision was absolutely unconstitutional.

SENATOR MAHER—So as to set you right, you stated that you thought I thought it was unconstitutional. Quite the contrary. I think it is constitutional; but the debatable point is something that you haven't touched at all, and that would be whether or not this State could without due process of law take away property without paying therefor, and that when they created these corporations and conferred upon them the right to an intangible asset that another section of the constitution, which you have not even averted to, would be invoked by these gentlemen to say that you are taking our property and not paying for it. That is the bite and the danger.

MR. DONAHUE—Of course that is the bite. That is the final answer to that particular question.

SENATOR MAHER—It is not final. It has not been determined.

MR. DONAHUE—The constitution has been made a long time, been in force ever since.

There is a second provision in this particular law to which I call your attention.

MR. ALDRICH—Before you go on with that matter, I would like to ask you a question. Are we to understand that it is your opinion that the imposition of rates by the Public Utilities Commission in this State is imposing a burden upon interstate commerce?

MR. DONAHUE—As regulated and provided by this law—

MR. ALDRICH—You don't understand me. Does the regulation of rates by the Public Utilities Commission in this State impose a burden upon interstate commerce? I understood from what you said that you are of the opinion that it does.

MR. DONAHUE—The law would go further than that. The law would regulate the expense to be borne, not only by what is in the State of Maine but also by what is outside.

Referring to the second section, a contract is called for. This contract

provides that the corporation shall have the right to distribute electricity beyond the State of Maine.

SENATOR MAHER—Pardon me, there is nothing in that section that they shall have the right. I recognize that they now have the right.

MR. DONAHUE—They do have the right.

I will read the section if you don't mind.

SENATOR MAHER—We have got it in front of us.

MR. DONAHUE—"Any company, corporation—

SENATOR MAHER—Mr. Donahue, you needn't take the time of the committee to read it. The Committee have the act right in front of them.

MR. DONAHUE—Yes; and if you will observe the act it says "As a condition precedent to so doing they shall sign a contract." If that doesn't mean they cannot do it without signing a contract, then I can't read law.

SENATOR MAHER—You think they have the right now?

MR. DONAHUE—Absolutely.

SENATOR MAHER—Why?

MR. DONAHUE—That is why this condition precedent is not constitutional, gentlemen.

Now one case is sufficient to prove this, and I again cite you the case in the Supreme Court of the United States, 20 Wallace 455. That says that no state can require a corporation organized in another state as a condition to doing business therein to surrender a right given by the constitution of the United States, and, gentlemen, that case hinged upon a proposition just like this, that where a corporation had a right granted by the constitution the law of the state legislature required them to surrender that right, and that would be what would be required here—the corporation has a right to sell in interstate commerce.

SENATOR CARTER—Judge Donahue, in referring to that case where the state attempted to take away the right of a foreign corporation, why couldn't it take away the right?

MR. DONAHUE—Because the corporation has a constitutional right, or it has the right as a citizen to do interstate commerce.

SENATOR CARTER—It had the

right of anything in its charter, hadn't it?

MR. DONAHUE—The corporation is a citizen of the state where it is incorporated, and under the interstate commerce laws it enjoys citizenship with individuals.

SENATOR CARTER—And the reason it has any rights at all or as a citizen is because of its charter, isn't it?

MR. DONAHUE—Absolutely.

SENATOR CARTER—And what rights are in the charter are the only rights that it has?

MR. DONAHUE—They are contract rights.

SENATOR CARTER—Now reverting to Senate Document 6, as you didn't appear in opposition to it this is the first time I have had an opportunity to ask you—are you familiar with the case of Bank of Augusta vs Earle, 13 Peters U. S. Supreme Court 519? You wouldn't want to say that case has been overruled?

MR. DONAHUE—I don't know of the case. If I do, I don't recall.

SENATOR CARTER—In that case—I read to you a citation—"It may be safely assumed that a corporation can make no contracts and do no acts either within or without the State which creates it, except such as are authorized by its charter."

Do you agree with the supreme court?

MR. DONAHUE—I do not differ with the supreme court. I say that is absolutely correct.

SENATOR CARTER—"And those acts must also be done, by such officers and agents, and in such manner as the charter authorizes." Do you agree with the court?

MR. DONAHUE—Yes, sir.

SENATOR CARTER—And if the law creating such a corporation does not, by the true construction of the words used in the charter, give it the right to exercise its powers beyond the limits of the State, all contracts made by it in other States would be void." Do you agree with that?

MR. DONAHUE—Yes, sir.

SENATOR CARTER—Now do you doubt the right of the State of Maine to amend the charter of an existing company?

MR. DONAHUE—Within degrees



it would be possible, but it would not be true that they could do that where to do so would confiscate property.

SENATOR CARTER—I agree with the confiscation, absolutely. And you agree with the supreme court in saying: "A general statute reserving to the State the right to amend or repeal charters is a part of all special charters thereafter passed even though not expressly made a part thereof."?

MR. DONAHUE—No; I do not agree with that. I do not think that can hold.

SENATOR CARTER—In that you differ with the supreme court?

MR. DONAHUE—I differ with them.

Pardon me, Senator Carter, I understood you to call attention to the constitution of the State of Maine?

SENATOR CARTER—Yes.

MR. DONAHUE—And legislation under that?

SENATOR CARTER—And Section 2 of Chapter 51 of the Revised Statutes of Maine. You are familiar with that?

MR. DONAHUE—Yes.

SENATOR CARTER—Which says "Acts of incorporation, passed since March 17, 1831, may be amended, altered or repealed by legislature, as if express provision therefor were made in them, unless they contain an express limitation: but this section shall not deprive the courts of any power which they have at common law over a corporation or its officers."

You are entirely familiar with that statute?

MR. DONAHUE—I am familiar with the statute. I don't agree that that is the law. I do not think this Legislature has any power to enlarge upon its own jurisdiction.

SENATOR CARTER—But you will agree that is the law on the statute books?

MR. DONAHUE—That is the law on the statute books, yes.

SENATOR CARTER—And under which we are existing?

MR. DONAHUE—Yes.

SENATOR CARTER—In full force in this State?

MR. DONAHUE—I don't think it has any value under the constitution.

SENATOR CARTER—That is not the question. It is a law in full force in this State?

MR. DONAHUE—It might be so

interpreted. It has never been ruled upon, I would say.

SENATOR CARTER—Are you familiar with John Marshall's opinion—

MR. DONAHUE—I think this present law we are speaking of was made since the days of John Marshall.

SENATOR CARTER—Wasn't it based upon John Marshall's opinion and passed upon by the Legislature of Maine in 1831.

MR. DONAHUE—John Marshall's opinion, given in 1818, in the Dartmouth College case, held that a charter given by the King of England to Dartmouth College was a contract and that a contract could not be changed by the legislature, a law passed by congress could not change that charter, substitute a new board of directors; that that contract given before the Constitution was to be sustained after the Constitution; that the property rights after the constitution were just what they were before the Constitution, and the Constitution of the United States provides that contract rights may not be legislated away.

SENATOR CARTER—Judge Donahue, on the question of the case in 20 Wallace, where one state could not take away the rights of a corporation organized in another state—I hardly agree with that law—but can a foreign corporation do business in this state in any other way except that permitted by the State of Maine?

MR. DONAHUE—A foreign corporation engaged in interstate commerce—

SENATOR CARTER—Will you please answer my question?

MR. DONAHUE—Cannot be denied the right to do interstate commerce in the State of Maine.

SENATOR CARTER—You simply read the quotation from 20 Wallace. Would you answer the question?

MR. DONAHUE—I think I answered your question.

SENATOR CARTER—I will withdraw that, if you prefer.

In Bank of Augusta vs. Earle case, "It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of the law and by force of the law, and where that law ceases to operate and is no longer obligatory the corporation can have

no existence. It must dwell in the place of its creation and cannot migrate to another sovereignty. But although it must live and have its being in that state only it does not by any means follow that its existence there will be recognized in other places. And what greater objection can there be to the capacity of an artificial person by its agents to make a contract within the scope of its limited powers in a sovereignty in which it does not reside, provided such contracts are permitted to be made by the laws of the place." Do you agree with the Court in this?

MR. DONAHUE—Yes; absolutely.

SENATOR CARTER—So that a foreign corporation seeking to enter Maine to do business, Maine can set a limit upon the business which it can do in Maine without touching its charter?

MR. DONAHUE—I don't know as I understand just how you are putting that; but I would say that a foreign corporation doing a business that is interstate commerce may not be denied the privilege of doing interstate commerce in any state in the Union.

SENATOR CARTER—Wherein would you say specifically that Senate 6 is unconstitutional?

MR. DONAHUE—This bill provides that as a condition precedent to so doing—

SENATOR MAHER—He is talking about Senate 6, not Senate 15.

MR. DONAHUE—Senate 6 is the Fernald law enlarged to include all corporations in the state, all of the State of Maine corporations, public and private. The constitutionality of the Fernald law is practically admitted. Senator Carter has said that it is the consensus of opinion of lawyers of Maine—he has said that if that bill comes to the supreme court of the United States it is his opinion that it will be pronounced unconstitutional. And now he says we must keep it away from the United States Supreme Court so that they cannot say it is unconstitutional; and that is the whole bite of this matter, gentlemen, that the right of using this privately owned property is denied to these owners; the right which they have under the Constitution to sell that property anywhere under the flag is

denied by the lack of legislation, just the same as Abraham Lincoln spoke of in respect to the unfriendly legislation advocated by Stephen Douglass.

There is no hope for these corporations that have bought and paid for private property in this State except they have legislative relief in this House. If the members of this Legislature do not obey the injunction of their oath and give these corporations what they are entitled to under the constitution, there is no relief for them. But that oath is sufficient to guarantee them their rights, and when properly understood I do not doubt that the members of this House and of this Legislature will make the proper laws to give these corporations the right to do business as proper laws have been made to give railroads and other corporations and individuals the right to do business.

MR. THURSTON—Judge Donahue, if we should export this power, could we at any time recall it?

MR. DONAHUE—As I understand it, the recalling so referred to is taken care of in another way. These corporations are given charters to do a public business in one, two, three, four or five towns or cities; and, gentlemen, where you are asking them to supply you with electricity all over the State you haven't ever given them the authority to do it. If they are incorporated in Lewiston and have the right to give public service there they have no right to give public service in Bangor. They may not give public service in any place except those places named in their charters; and some would say they must supply all Maine before they can go out of the State; but they have not the right to do it, their charters do not give them the right to supply the public in any place except as named in their charters.

MR. THURSTON—Assuming it is exported four or five years, and then manufacturers come in here and want the power. Can it be recalled?

MR. DONAHUE—I understand it like this, that if a corporation has a charter with the right to do business in Lewiston and in adjacent towns it is under a public burden, that business is impressed with a

public use—and that is the proper term—to supply electricity for public purposes, which are light and heat, and no other purposes, in that territory covered by its charter. Other electricity that they may develop is private property and they may sell it; but the corporation is always impressed with the public use to supply electricity for public purposes in that territory covered by its charter.

MR. CHASE—Did I understand you to say that interstate commerce in electric power is dealt with by Congress?

MR. DONAHUE—In this way—

MR. CHASE—Do you not mean "may be dealt with by Congress?"

MR. DONAHUE—No; I will not say may be. I will say this: Interstate commerce under the constitution is in Congress, and the United States Supreme Court has said to this effect: what Congress says in regard to interstate commerce is the law. If they say something, that is the law. If they say nothing, that is the law. In other words, if they make no regulation it is free, and there is no jurisdiction in any other tribunal to legislate on that subject.

MR. CHASE—Do you know of any case anywhere in the United States where "Congress has exercised its power to regulate interstate commerce in electric power?"

MR. DONAHUE—I do not. But I do know that the United States Supreme Court has said that when Congress has not legislated on a subject that it means that that subject is free from state interference, if that covers the ground.

MR. CHASE—If I may be permitted, Mr. Chairman, I believe Judge Donahue quoted me as saying that the Fernald Law had failed. I believe my statement was that the Fernald law had failed to accomplish its original purpose. Will you recognize that correction?

MR. DONAHUE—Certainly.

MR. THURSTON—Judge Donahue, I don't think you quite understood my question in regard to the exportation of power or the shipping of power outside of the State. Suppose we ship it outside of the State for five years and after five years we want to recall that power, as-

suming we built up manufactures enough?

MR. DONAHUE—What I think, sir—I endeavored to make it plain—the situation is this, that today you need 10,000 horsepower in a city like Lewiston, for instance and two years from now you need 50,000 horsepower, and you wish to recall 40,000 to keep it up.

MR. THURSTON—In Lewiston—that is intrastate. I mean outside the State.

MR. DONAHUE—What I am saying is that beyond the 10,000 needed now they may sell the 40,000 to go outside the State, but always being impressed with this public service there; they must keep enough in that area which their charter calls for to supply the public needs. Additional legislation is not necessary for that. These corporations are always impressed with the public use to supply electricity for public industries in the area their charter covers. If tomorrow you require more electricity and electricity is being shipped out of the State, this excess that is being shipped out of the State must be curbed and kept back, because the public in that area has a prior use that this corporation under the present laws must always recognize.

MR. THURSTON—Shipping it out of the State becomes interstate commerce. If it is under interstate commerce or Congress, you couldn't recall it, could you?

MR. DONAHUE—The principle of recall of electricity and that particular phrase can serve us no good purpose. There is nothing involved in that that makes this case either good or bad. The principle is right here: these corporations are always impressed with the public service to supply as much electricity so far as they can as is necessary in a particular area covered by their charter.

MR. CHASE—Is that true of the Union Water Power Company of Lewiston, which generates electric power?

MR. DONAHUE—Of course the Union Water Power is sold out to another corporation. But that is true of all corporations generally.

MR. CHASE—You mean public utilities, don't you?

MR. DONAHUE—If they have a charter to serve the public, that is true. I am not familiar with their particular charter.

MR. CHASE—It is not true of all companies which generate hydro-electric power, is it? It is not true of the Rumford Falls Power Company or the International Paper Company?

MR. DONAHUE—There is a thing which I think ought to be plain, but which is confused some, I think, and that is that hydro-electricity is electricity and that water power is not electricity. Now a great many people have been led to the idea that the State of Maine and the people of Maine own the water powers. The water power is the force exerted on the water wheels, and it dies with the turning of the wheels; the water power is not being transhipped anywhere; the water power is not owned by anyone except those who own those water wheels and the mills to which they are hitched. But electricity is a manufactured product. It is not water; it is not water power; it is nothing at all but electricity, and it is a commodity; and when the public is supplied as much as its charter requires, it is a commodity owned in entirety by the corporation that is paying for the plant and manufacturing it.

MR. POWERS—Judge Donahue, supposing we had been shipping electricity out of the State of Maine for five years, and we went to discover that we needed it in the State of Maine at the end of five years, could we withdraw it in spite of anything the Interstate Commerce Commission said?

MR. DONAHUE—That is all provided for in advance. The whole is the sum of its component parts. The whole of the electricity generated in the State of Maine is generated by the whole number of corporations, each one covering its own particular territory, and as that particular territory needs more electricity it must be kept back for use there. But there might be some locality in the State of Maine that could not be served. You might have a locality where you could develop only 25,000 horsepower, and you need 50,000 horsepower, but you have not in that area companies chartered and having the power to supply that. Now these other corporations have not that territory to go into. As as I have said, you don't allow a corporation in Lewiston to ship to Bangor or other towns. Complaint has been made years ago because electricity is not

shipped to this town or that town, where, as a matter of fact, there is no corporation in the State of Maine that has a charter that will permit it to go into those towns.

MR. POWERS—You think they would be permitted to go out of the State?

MR. DONAHUE—Any electricity in the State of Maine which is not impressed with a public use demanding it may be shipped out of the State and sold anywhere under the flag. The supreme court of the United States has said in matters of interstate commerce there are no state lines. That subject recognizes no state lines. You take the maps of the interstate commerce commission, and you will find they look like that one, absolutely blank as far as state lines are concerned; they don't go by state lines. States have for years and years tried to do those things. They have passed laws saying that railroad trains must go to the state line and stop and then another train start and go across that state and stop, and then another one, so that the different states may regulate their costs of transportation. But what does Congress say? What does the Interstate Commerce Commission say? What does the Supreme Court say? "Hands off! Interstate commerce is free; there are no state lines in interstate commerce." The whole sum and substance of it is, gentlemen, while we all want what is the best for the State, this Legislature under the Constitution has no more right to regulate interstate commerce than the city fathers in Lewiston; and it has no more right to say that electricity cannot be shipped out of the State of Maine than the city fathers in Lewiston or any other city in Maine. That is altogether out of their jurisdiction; it is not a subject delegated to this body. The states put this power in the hands of the national government.

Gentlemen, I didn't intend to take so much time, but if you will permit me just a little further, I have another matter I would like to call your attention to. It is simply the division of the powers between the nation and the state. When the Constitution was framed the people realized that some powers must be with the nation and others must and should dwell and forever be with the State. And beyond that, gentlemen, there are other powers. The powers were divided

three ways, not two: some to the nation, some to the state, and some forever with the people. I think that this particular right of a man owning property in any state to ship it anywhere under the flag belongs to that one always reserved to the people but I am certain that if it is not so reserved that it is with Congress and nowhere else. Gentlemen, I wish to quote from the book of James M. Beck, a great constitutional authority, whose recent book was prefaced with an introduction by President Coolidge.

"Previous to the Constitution it had not been thought possible to divide sovereignty, or at least to have two different sovereigns moving as planets in the same orbit. Therefore, all previous federated governments had been based upon the plan that a league could only effect its will through the constituent States and that the citizens in these States owed no direct allegiance to the league, but only to the States of which they were members. The Constitution, however, developed the idea of dual citizenship. While the people remained citizens of their respective States in the sphere of government which was reserved to the States, yet they directly became citizens of the central government, and, as such, ceased to be citizens of the several States in the sphere of government delegated to the central power; and this allegiance was enforced by the direct action of the central government on the citizens as individuals. Thus has been developed one of the most intricately complex governmental systems in the world.

Under the Constitution, governmental power is—like ancient Gaul (according to Caesar)—"Divided into three parts." The first is the power granted to the central Government. The second, that reserved to the States, and the third and most important of all—although the fact is not generally recognized—the power reserved to the people under the many inhibitions both of State and Federal legislation.

As for such reserved rights, guaranteed by Constitutional limitations, and largely by the first ten amendments to the Constitution, a man, by virtue of his inherent and God-given dignity as a human soul, has rights, such as freedom of the press, liberty of speech, property rights, and religious freedom, which even one hun-

dred millions of people cannot rightfully take from him, without amending the Constitution.

Sixty-five powers are given to the Federal Government and seventy-nine are withheld, of which thirteen are denied both to that government and to the constituent States. Forty-three of the sixty-five powers given to the Federal Government are expressly denied to the States; while, as to eighteen powers, the grant is concurrent. —Thus the Federal Government was given plenary power over foreign commerce and commerce among the States."

MR. SPEAR—May I ask a few questions, for information, from Judge Donahue of Auburn?

You have read all five of these bills before the Legislature?

MR. DONAHUE—All six.

MR. SPEAR—All six. Do you regard them all unconstitutional, the whole six?

MR. DONAHUE—I have prepared specific objections to the bills, and I am not prepared to say now whether it was all upon the principle of constitutionality.

MR. SPEAR—Do you regard the Oakes Bill as unconstitutional?

MR. DONAHUE—I believe the Oakes bill provides that the State, or at least the intent of the bill is that the State and other States may with the consent of Congress make an arrangement. Now then, that is perfectly true, under the constitution they may; but if Congress sanctions the Fernald Law, to do so would still be unconstitutional. Of course whether the constitutionality of the Oakes bill should ever be attacked would depend on what they agree upon. That is not stated in the bill. But if Congress sanctioned the Fernald Law today it would still be unconstitutional. Congress has not the power to deny interstate commerce; it has only the power to regulate.

MR. SPEAR—I don't care about the Fernald Law; it is not before us. All I want to know is, do you consider the Oakes Bill unconstitutional?

MR. DONAHUE—No; I do not.

MR. SPEAR—That is all.

CHAIRMAN GRANVILLE—Will any other gentlemen wishing to appear before this committee intending to make general remarks direct-

ed to any or all of the measures under consideration please the Committee by refraining until all the bills have been heard, that is until all the opponents and proponents have appeared for their measures. I think your Committee would be better able to sense the drift of your remarks. Is there anyone else to appear against the matter under consideration, Senate Paper 28? If not, I will declare hearing upon this measure closed, and it will lie upon the table for executive session.

The next measure to be considered is Senate Paper 100, Senate Document 40: "An Act to Provide for the Organization of Electric Transmission Companies, with Limited Powers, and to Provide for Issuing Permits to Electrical Companies and Others to Sell Electricity Thereto for Transportation and Sale Outside of the State of Maine under Certain Specified Conditions." The Committee is ready to hear anyone appearing in favor of this measure.

MR. EDWARD F. MERRILL—My residence is Skowhegan, Maine. I am the duly authorized legislative agent and counsel for the Central Maine Power Company, and in their behalf I appear as a proponent and supporter of Senate Document No. 40, commonly referred to as the Smith bill, which was introduced by Senator Smith of Somerset County.

This has necessarily been a long hearing, for I think we can only look at the matter of the hearings on all of the bills as a combined hearing; but the subject matter is of so much importance and has aroused so much widespread public interest that the time and patience of the Committee is well warranted in being spent in the consideration of these questions:

So far as I am concerned personally in this matter, I shall attempt to conduct the hearing in behalf of the proponents, and so far as questions of fact are concerned I shall rely upon others to prove the facts which I may feel necessary to state in bringing out the points which I personally am to call before your Committee.

It will be shown, if it has not already been proven, that there is today in Maine a surplus of electric

energy which is wasted every year. Energy of a sort and character for which there is no present market in Maine. It will further be shown that there are undeveloped water powers ready and waiting to be developed, but that there is no immediate market in Maine for the energy that will be generated thereby. The only thing that prevents the utilization of the present waste and delays the development of these now idle and useless resources is the present policy of the State towards the export of hydro-electricity commonly called the Fernald Law.

I believe that no honest minded citizen wishes to see waste unnecessarily continue or great resources needlessly lie idle.

The chief objections that have been urged against the Fernald Law are two in number. The first of these objections which is commonly heard is that once you allow electricity to be exported from Maine, the State of Maine loses all authority to assure an adequate supply for its present and future needs and demands.

The second objection, and one which has been urged in opposition, not only on the street corner, but at this hearing, is the danger of the Federal control of our local hydro-electric business. And I suppose that danger is a fear on the part of our citizens, on the part of our companies, and on the part of the public that there might be a danger under Federal control that higher rates might be charged which we would have to pay for the local consumption of our electricity.

In the preparation of the Smith Bill the greatest care was taken to assure to the State a constant supply of energy for its present and future demands, and to prevent all danger of Federal Control of our local hydro-electric business.

To assure a constant supply of energy which will meet every present and future need of Maine, to the full capacity if necessary of every present and future plant, this bill allows no one who makes use of its provisions to sell to the Transmission Company anything but the surplus that is left after Maine is fully supplied.

To accomplish this result it places

in the hands of the State of Maine absolute control of the amount of electricity that can be sold to the transmission companies formed under its provisions. To avoid Federal control it divorces transmission from generation. No Transmission Company organized under its terms can own or operate a generating plant or own or control a generating company.

The Smith Bill therefore allows only surplus or waste energy to be transported out of the State of Maine.

It assures that the present and future demand of Maine to the utmost of its generating plants will be supplied, before they can sell a single kilowatt hour of energy that can be exported.

It also prevents Federal control of our local business even if export is carried on under other terms.

The underlying principle of law which establishes the efficacy of the Smith Bill is that in the creation of new corporations such corporations are mere creatures of the state, having only such powers and capacities as their creator may give them. They can only do those things which the state gives them authority to do in the act which creates them. They cannot do those things which the act which creates them forbids. The principle of law is so fundamental, so elementary that it would seem almost unnecessary to reinforce it by the citation of authorities. Senator Carter, in his address yesterday afternoon in support of his bill carefully reviewed many of the authorities which I have intended to cite before this Committee which clearly and concisely and fundamentally establish and recognize this doctrine as the recognized doctrine of the Supreme Court of the United States.

This fundamental and basic principle was recognized by the great Chief Justice Marshall, than whom no greater jurist ever sat upon the bench of this or any other country, in the now famous Dartmouth College Case; he said:

"A Corporation is an artificial being, invisible, intangible and existing only in contemplation of law. Being the mere creature of law it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to

its very existence. These powers are supposed best calculated to effect the object for which it was created."

Mr. Carter read to you numerous extracts from the later case of *Bank of Augusta vs. Earle*, where this doctrine was reiterated by the Court, and which, as he says, is a recognized and leading authority and binding upon the courts of this country today.

Again, in the *Oregon Railway & Navigation Co. vs. Oregonian Ry. Co.*, 130 U. S. L. the Court says:

"It may be considered as the established doctrine of this court in regard to the powers of corporations, that they are such and such only, as are conferred upon them by the acts of the legislatures of the several states under which they are organized. A corporation in this country, whatever it may have been in England at a time when the crown exercised the right of creating such bodies, can only have an existence under the express law of the state or sovereignty by which it is created."

"A corporation being the mere creature of the legislature, its rights, privileges and powers are dependent solely upon the terms of its charter."

Again, in *Hom Silver Mining Co. vs. State of N. Y.* 143 U. S. 305:

"The granting of such right or privilege (a corporate franchise) rests entirely in the discretion of the state, and, of course, when granted, may be accompanied with such conditions as its legislature may judge most befitting to its interests and policy."

Again, the Supreme Court of the United States has said that even after a corporation is formed and acquires property that the use to which that property may be put and the method of use may be controlled by the charter which created it.

In the case of *Perrine vs. The Chesapeake & Delaware Canal Co.* (9 Howard 172) the Court said:

"The corporation has no rights of property except those derived from the provisions of the charter, nor can it exercise any powers over the property it holds except those with which the charter has clothed it."

We see from these decisions that the underlying principle above stated, that the corporation has only such powers as are given to it, is well established by the Supreme Court of the United States.

Not only has the court established

the foregoing doctrine but it has gone one step further. The Supreme Court of the United States has held that the state, in creating a corporation, may withhold from it the power to do acts which it cannot prevent an individual from doing, because of those rights of the individual which are guaranteed to him by the Constitution of the United States.

In the case of Berea College vs Kentucky, in an opinion by Mr. Justice Brewer, the Court says:

"Again the decision by a State Court of the extent and limitation of the powers conferred by the state upon one of its own corporations is of a purely local nature."

In other words, that the interpretation of the rights which the State confers upon its creature the child of its own generation, the child which it makes, those powers are to be determined, not by the Supreme Court of the United States, but the power to do that rests only in the State court, because that question, with what powers a corporation has been clothed, is of a local nature.

Continuing, Justice Brewer said:

"In creating a corporation a state may withhold powers which may be exercised by and cannot be denied to an individual. It is under no obligation to treat both alike. In granting corporate powers the legislature may deem the best interests of the state would be subserved by some restriction, and the corporation may not plead that, in spite of the restriction it has more or greater powers because the citizen has."

"The granting of such right or privilege (the right or privilege to be a corporation) rests entirely in the discretion of the state, and, of course, when granted, may be accompanied with such conditions as its legislature may judge most befitting to its interests and policy."

Then, taking up the statute of Kentucky which compelled the segregation of whites and blacks by persons, firms and corporations maintaining schools, which was in violation so far as individuals and firms was concerned with the Federal constitution, the Court said:

"Such a statute may conflict with the Federal Constitution in denying to individual powers which they may rightfully exercise, and yet, at the same time, be valid as to a corporation created by the state."

These decisions of the Supreme

Court of the United States conclusively establish the following principles of law, that must be recognized by the Federal Government in all of its branches.

1. Corporations are the mere creatures of the state which creates them.

2. Corporations have only such powers or rights as their creator, the state, may at its discretion, confer upon them.

3. Corporations have no right to exercise any power which the state withholds from them in the act creating them.

4. In creating corporations the state may withhold from them rights and powers which even the Constitution of the United States guarantees to individuals.

5. The construction of the charter of a corporation and the determination of the extent of its corporate powers is of a purely local nature, and is for the State Court.

With these fundamental principles in mind, let us now analyze the Smith Bill, and the facts upon which it is based.

The Smith Bill is based upon the following facts:

1. There is now in Maine a considerable quantity of developed hydro-electric energy that runs to waste every year.

2. There are water powers in Maine susceptible of development, with their owners ready and willing to make immediate development if a market can be found for the electricity generated thereby.

3. With the local market for hydro-electricity now fully supplied, an outlet must be provided outside of Maine, but that only, until there be a demand for electricity for use here.

4. The complete utilization of present facilities and the development of additional resources now owned by private capital will be of great benefit to the State.

5. Such a course would tend to lower rates, increase taxable wealth and would provide the State with an abundant supply of low cost power, ready for immediate delivery to anyone desiring to locate in Maine and here establish an industry using power.

6. That it would be to the financial interest of any public utility



serving Maine to put forth every effort to induce power using industries to locate here, not only because of their immediate use of power, but also because the growth and prosperity of Maine would give them a wider, more diversified and better market for current for all other purposes.

7. That if water power will bring industries to Maine, developed water power will bring them far sooner and more surely than that lying idle, undeveloped and running to waste.

Today those corporations having a surplus of electricity for which they cannot find a market in Maine must let the same run to waste. Today they are faced with the same situation if they develop additional power. The Fernald law closes the door, it does not allow the export of even surplus or waste hydro-electricity. The Smith Bill is designed to meet and remedy this situation by providing an outlet for surplus power, and surplus power only. Whether the Fernald Law is constitutional or not the Smith Bill recognizes it, and anyone taking advantage of its provisions must obey the Fernald Law unmodified except as to surplus power, so long as he continues to operate under the Smith Bill. If he ceases to operate under the Smith Bill the Fernald Law remains unmodified and unchanged."

I now wish to take up with you the Smith bill in detail and point out just what it does, section by section, and show you how it takes advantage of these principles of law which I have just cited in protecting and safeguarding the interests of the State of Maine.

Section 1 provides: "Corporations for the purpose of purchasing electric current or energy however generated, upon the terms and conditions hereinafter prescribed in this act, and not otherwise \*\*\*" Mark you that these corporations are formed with the corporate purpose and the express corporate power to purchase electricity on the terms and conditions hereinafter prescribed in this act, and not otherwise; so that we are forming a corporation which has no charter power or authority to purchase any electricity except upon the terms

and conditions of the Smith Bill, which would thereby become limitations on their charter when formed under the general law. The corporations under this act are formed for purchasing electricity on the terms and conditions of the act from such persons, firms and corporations only as obtain and preserve the terms of the permit hereinafter provided for and the provisions of this act. Therefore, there is a second limitation in the charters of these corporations, that they can only purchase electricity from those firms who are obeying the permit provided for under this act; and not only must it be a person who obtains it, but it must be a person who observes the terms of it. So that we start out with a corporation formed with at least two special limitations in its charter. First, it can only purchase such power as this act provides it may purchase. Second, it may purchase it only from those persons who get and keep the terms of a permit later to be provided for in the act and which I will take up when I reach the appropriate section. They are further chartered for the purpose of selling the same only in accordance with the provisions of this act. So they are limited in their rights to purchase to the terms of the act; they are limited to the person from whom they may purchase by the terms of their charter; and they are finally limited in the transmitting and selling of the same by the terms of the charter.

To avoid the difficulty of Federal control, Section one of the act contains the following provision: "no corporation organized under this act shall, nor shall it have the power or authority to own, operate or control any hydro-electrical generating plant or electrical company within the meaning of the definition of "electrical company" as contained in section fifteen of chapter fifty-five of the revised statutes of Maine for nineteen hundred and sixteen," which is the same provision Senator Carter provides in his bill, No. 6, to be placed upon the generating companies of Maine, and which he says is the first step in divorcing generation from transmission, which is the method and the proper method to avoid Federal control.

Section 2 simply provides that "Such persons, firms and corporations only as obtain the permit hereinafter provided for in this act, are hereby authorized to sell such electric current or energy as may be prescribed in said permit to corporations organized under this act for so long a time only as they and the corporations organized under this act observe the terms and conditions of this act and of said permit."

Section 3 provides that as long as the terms and conditions of the act and of the permit be observed by both the corporation organized under the act and the person, firm or corporation from whom it purchases electricity under the terms and conditions of this act, the transmission company shall have authority to transport and transmit the same within the state of Maine and to transport, transmit, sell and deliver the same outside the state of Maine in accordance with the provisions of this act and not otherwise. No corporation organized under authority of this act shall, nor shall it have authority to, sell electric current or energy within the territorial limits of the state of Maine. And that provision is put in there for the express purpose of avoiding the setting up of a transmission company which is doing both a local business in Maine and an interstate business in its export business, so that if perchance the Federal government did that which it has never yet attempted to do—regulate the rates in interstate commerce—it couldn't indirectly regulate the rates at which that transmission company was selling in Maine. It may be asked—How do you provide for supplying the market in Maine, if this transmission company cannot sell locally? That is all taken care of in the next section of the act, which provides that before the permit issues the local company which gets the permit to sell to the generating company must supply the local market.

Section 4 is the section of the act which sets up the machinery for obtaining the permits, prescribes the terms of the permits and the conditions under which these permits may issue. It provides first, that "Any person, firm or corporation organized under the laws of this state, or organized by special act of the legislature of this state, who generates, or is engaged in the business of the gen-

eration, sale or distribution of electricity or electric current or energy, however developed, may file a petition with the public utilities commission of the state of Maine, setting forth that it has already developed, or purposes to develop, water power for the generation of electricity or electric energy in a quantity or quantities which, together with that already developed by it, is in excess of that required to supply the available market therefor in the state of Maine in the territory in which it is authorized to sell the same \* \* \*". Therefore you see that this provision not only provides for a petitioner who now has a surplus but one who proposes to make a development which will give him a surplus petitioning to the Public Utilities Commission for permission to sell the whole or such part of said excess—that is the excess over what is necessary to supply the market in Maine—to a corporation organized under the provisions of this act.

To make sure that no corporation organized under this act can obtain a snap judgment from the Commission without everyone in the State having opportunity to be heard and to appear, the act says:

"Whereupon the public utilities commission shall appoint a hearing thereon and order public notice thereof in the state newspaper and at least two other daily papers published in the State of Maine, to be published daily, except Sunday, three weeks successively before the date of hearing, and shall further cause a copy of said petition and order of notice to be served on the secretary of state in behalf of said state, which service may be made on the secretary of state by leaving a copy of said petition and order of notice thereon at the office of the secretary of state in the state house at Augusta at least fourteen days before the date of hearing; the state shall be represented at said hearing by the attorney general, if requested by the governor."

The act then goes on to state that if at the hearing the facts stated in the petition are found to be true, that is that the petitioner then has a surplus over the needs of Maine or is about to develop a surplus which will more than supply the needs of this State, the Public Utilities Commission shall issue a permit to said petitioner,

authorizing it to sell to said corporation, that is the transmission company, such an amount of said electric current or energy generated by it as may be in excess of that required to supply the available market therefor in the State of Maine in the territory in which it is authorized to sell the same. Therefore, you see in the first place surplus is measured by being that amount which is in excess of all that is required to supply its own territory, the territory in which it is authorized to do business.

The local company could not go out into the other sections of Maine and supply demands there; but other public utilities are able to do it and demand, under a certain section of our statutes, that they be furnished with current if it had that current to supply.

So the act provides that in defining surplus, not only is it that which is in excess of that which is required to supply its own territory but that which is in excess of that required to supply other public utilities in accordance with section six of chapter sixty of the revised statutes, which is that section of the statute which allows them to build up to its line and demand any surplus which it has.

The act goes on and provides: "Said permit shall be expressly limited to continue for so long a time only as said petitioner is able to meet and supply, and does meet and supply, all demands for electric current for use in the available market therefor in the state of Maine in the territory in which it is authorized to sell the same," and such other demands as are made upon it by other public utilities in accordance with that section of the statute to which I have just referred.

So you see this corporation is only allowed to purchase electricity under the terms of its permit, and the permit would come to an end the moment the local generating company is unable to supply not only its own territory but all other public utilities which build up to its line and demand energy.

Not only must it supply these demands in the State of Maine, but the terms of its permit come to an end when it ceases to be able to

supply or ceases to actually supply these demands in accordance with such conditions as may be prescribed and at such rates as may be approved by the Public Utilities Commission. Furthermore, the permit itself provides that it shall continue in force only so long as both the petitioner, that is the generating company, and the corporation formed under this act, to whom permission is granted to sell, that is the transmission company, only so long as both of them shall observe and abide by the terms and conditions of said permit, of this act, the Smith bill, and the terms and conditions of the contract with the State of Maine hereinafter referred to.

The provision of this bill relative to that contract is as follows:

"Said permit, however, shall not issue unless and until the petitioner shall, in consideration of its issue, sign a contract to and in favor of the state of Maine, agreeing to abide by the terms of said permit, and that, during the continuance of said permit, it will not either sell or transport or sell to be transported beyond the state of Maine any electric current or energy, generated by water power, other than under that or a similar permit, or as permitted under section one of chapter sixty of the revised statutes of nineteen hundred and sixteen, without express authority therefor granted to it by special act of the legislature of the state of Maine \* \* \*"

And the contract further provides that the generating company will not while that permit is in force violate the terms of the Fernald Law.

Now an argument has been advanced against the Smith Bill among members to whom I have spoken. That is very well, but there is another provision of the Federal Constitution which provides that once a contract is made between two parties then under the Constitution of the United States no State may pass any law which impairs the obligation of that contract. In drawing this bill to meet that situation, Section 5 was placed in the bill:

"No person, firm or corporation, to whom such a permit is issued shall sell" (and here is the efficacious

part of it) "nor shall any corporation organized under this act have any authority under its corporate powers to **purchase any electric** or electric energy under this act unless the contract of sale shall contain a clause making such contract dependent upon the observance by both parties thereto of the terms and conditions of this act respectively applicable to them, the terms and conditions of said permit, and said contract with the state of Maine."

And, as I remember it, it was the case cited by Mr. Carter yesterday, and re-read by him this afternoon to Judge Donahue, which expressly provided that no corporation created by a state had any power to enter into any contract what was not permitted by its charter, either in the State, at home, or abroad; and therefore this provision that these transmission companies cannot make a contract which does not expressly in terms recognize the terms of this act is sustained by that old leading case, as I remember it, Bank of Augusta vs. Earle, decided many, many years ago in the Supreme Court of the United States.

Section 6 goes on and provides:

"When such permit is issued, and only so long as the terms of the same are observed by the corporation organized under this act and by said party to whom said permit is issued, and the contract with the state of Maine above referred to is kept by said petitioner, petitioner may continue to sell and deliver said current to the corporation created by this act \* \* \*"

for that time only, so long as both of these parties keep these provisions, recognize these safeguards provided for in this act, then and for so long a time only may the local company continue to sell to the transmission company notwithstanding the provisions of the Fernald Law, and shall not be subject to its penalties. And only during that time when both parties are abiding by the permit and are observing the terms of the act and the contract with the State of Maine, then and then only and during that time only may this transmission company transmit the electricity which it produces beyond the borders of the State of Maine.

Section 7 provides that if the terms

of the permit or the contract with the State of Maine provided for in the preceding sections be violated by any person to whom a permit is issued, upon the filing of a bill in equity in behalf of the State of Maine by the attorney general and prayer therefor, an injunction may issue, restraining the generating company from further sale and delivery of electricity and electric current in violation of the permit; and by the terms of that section express authority is granted under this act, which is a general law, a public act, express authority is granted the Supreme Judicial Court to hear and determine said bill in equity. Furthermore although not expressly written into the act, if any transmission company should purchase electricity outside of its corporate powers or otherwise exceed the authority as given to it under this act, the State of Maine without any express authority given to it in this act could immediately through its attorney general start quo warranto proceedings for the revoking of its charter and the dissolution of the corporation, and, according to the weight of authority, could bring an injunction against the transmission company to restrain it from further exceeding any of its corporate powers.

Under Section 8 anticipating the argument against Federal control, and while I believe absolutely that the separation of the generating company from the transmission company avoids it, if perchance the Federal government could reach through those safeguards, Section provides that any person, firm or corporation to whom a permit is issued under this act may surrender said permit by written notice thereof, filed with the public utilities commission, so that if Federal control attempted and succeeded in reaching through and attempted to regulate its local affairs the generating company could surrender its permit and there would be no further interstate commerce for anyone to regulate. The converse is true, and if the permit is violated Section 8 gives express authority to our public utilities commission on notice and hearing to revoke the permit; and, in addition to both of these provisions, to safeguard that very thing, the permit by its very terms is to expire if its terms are not kept. So that we have a permit which if violated automatically ceases; we

have a permit which if perchance the Federal government could reach through the generating company could surrender, and we have a permit which if violated the public utilities commission could terminate.

To insure that these transmission companies will be financially responsible for any damage that might be caused by an untoward event happening by the falling of a line or the escape of high tension electricity. Section 9 provides that no corporation shall be organized under the authority of this act with a capital of less than \$100,000, and that subscriptions to its capital stock to at least said amount shall be made at the time of its organization, and that no corporation organized hereunder shall do any business other than perfect its organization before said amount of capital stock is actually paid into its treasury.

Section 10 provides that no corporation organized under the authority of this act shall nor shall it have authority under its charter to accept delivery of any electric current or energy from any person, firm or corporation to whom a permit is issued under the provisions of this act, nor shall any person, firm or corporation to whom a permit is issued under the authority of this act deliver current or energy to a corporation formed under the authority of this act, at any place within one-fourth of a mile from the boundary of the State of Maine;" That is to insure that the delivery point from the generating company to the transmission company shall clearly be within the boundaries of our State of Maine. Of course down on the border there might be somebody generating electricity whose plant was within that quarter of a mile limit of the state border, and thinking of this, as this is a general law which can be taken advantage of by anyone having the capital to start it, I provided that nothing in this section shall prevent delivery and acceptance of delivery at the generating plant of the permittee, if such plant be less than one-fourth of a mile from said boundary.

In the formation of these companies no rights of eminent domain are asked, no rights to use the highways as a place for setting the poles for a transmission line are asked. Of course it may be necessary to get across a highway, and therefore Section 11 provides that the same

authorities which now grant electric companies the right to cross a highway can grant the crossing right to such a transmission company; but to safeguard the manner in which these crossings are made, Section 11, which refers to that branch of the subject provides:

"provided, however, that upon petition therefore the public utilities commission of the state of Maine shall prepare and furnish plans and specifications for the construction of said transmission line at the point where it crosses such highway, and said transmission line where it crosses such highway shall be built and constructed only in accordance with the plans and specifications so furnished."

Section 12 provides that this act shall not take effect unless and until it is submitted to the voters of the State of Maine at a referendum to be held next September and passed upon and accepted by the people.

Such, gentlemen of the committee, are the salient provisions of the Smith Bill.

It has been urged by certain opponents that this bill is not adequate to protect the interests of the State of Maine. They say that its provisions for limiting operations under it to surplus power are ineffectual. This argument is based upon the fact that once the energy is shipped into another state it is the subject of interstate commerce; that having allowed surplus energy to get into interstate commerce, the state is powerless to later confine the business to surplus.

Opponents of the Smith Bill will tell you that you cannot repeal a fact by a law. And there was an article which I believe appeared last night in the Lewiston Journal under the same heading, that you cannot repeal a fact by a law,—that the interstate shipment of surplus electric energy is interstate commerce. Our opponents will tell you that in West Virginia they started to ship surplus natural gas into Ohio and Pennsylvania; that later West Virginia attempted to confine interstate shipments of natural gas to surplus; and that the Supreme Court of the United States held the State of West Virginia was powerless so to do. In support of

this theory they cite the following case: Penn. vs. W. Va., 262 U. S. 553

The case, cited by the opponent whose article appeared in the press, stands for no such doctrine, and no one who reads that case with care from the standpoint of a lawyer versed in interpreting decisions can successfully establish that it does.

While "you cannot repeal a fact by a law" may be a catching phrase with which to head an article in the public press, I say to you "You cannot start out with a false premise of fact and reach a correct conclusion of law."

The argument of our opponents, based on the West Virginia case, starts out with a false assumption of fact.

In the West Virginia situation it was not surplus gas that they started shipping in interstate commerce. In West Virginia they started out with unrestricted and free shipment of natural gas in Interstate Commerce, by corporations that were public utilities in free states. That is the premise upon which the West Virginia case is based. At the outset in the West Virginia situation there were no restrictions whatever, either imposed or even suggested. West Virginia not only allowed but encouraged the building up of a free and unrestricted interstate commerce in natural gas. After stating that the production of natural gas began in West Virginia about thirty years prior to the decision of the case in question, and pointing out that at first it was regarded as a nuisance and wasted, and soon after regarded with favor for heating and lighting, the Supreme Court of the United States said, referring to gas:

"Its use within the state became relatively general, but was far less than production, so the producers turned to neighboring states, notably Pennsylvania and Ohio, for a further market".

And, mark you, I am quoting verbatim from the facts as stated in the opinion of the Supreme Court of the United States:

"West Virginia sanctioned that effort. She permitted the formation under her laws of corporations for the purpose of constructing pipe lines from her gas fields into other

states and carrying gas into the latter and there selling it. She also permitted corporations of other states to come into her territory for that purpose. And she extended to all of these (both local and foreign) —

Those last two words are interpolated by me— "the use of her power of eminent domain in acquiring rights of way for their pipe lines. In no way did she then require, or assert any power to require, that consumers within her limits be preferred over consumers elsewhere."

There is the bite of this important decision by the Supreme Court of the United States. In the Smith Bill we are providing that no permit shall issue until the local market is supplied, but in the West Virginia case, in the words of the Supreme Court of the United States, regarding the State of West Virginia:

"In no way did she then require, or assert any power to require, that consumers within her limits be preferred over consumers elsewhere."

The opinion is too long to quote the whole of it, so I will have to summarize parts of it. After showing the great growth of this business to a capitalization of \$300,000,000, the Court said:

"The pipe lines are all operated as public utilities, that is, in supplying gas to the public, and this is true in Pennsylvania, and Ohio, as well as in West Virginia."

So you see here you had corporations that were public utilities clothed with public duties by permission of the State of West Virginia and under the duty to supply not only the citizens of West Virginia but also citizens of Ohio and Pennsylvania; and it was a question of selecting between those persons which they were required equally under the law to serve which was in question in the West Virginia case; but under the Smith Bill our public utilities are not allowed to go out into the other states; they are simply allowed to turn over to a transmission company any electricity only under a permit provided for and obtained in accordance with the provisions of the act.

The Supreme Court of the United States in this West Virginia case went on further, after pointing out the great use of the gas by the various classes of customers in the three states, the Court says:

"All gas going into Pennsylvania and Ohio is carried and supplied under prior engagements respecting its disposal,—most of it under long-time contracts exacted or preferred by the purchasers or consumers.

So that the West Virginia case was again complicated by the fact that unrestricted contracts for the sale of this gas had been entered into, and of course the State could not, under the Federal Constitution, violate or impair its obligations to those companies. But section 5 of the Smith Bill is prepared to take care of just that situation, so there could not be a continuing valid contract between the generating company and the transmission company provided for in this bill which the State had no power to upset or regulate.

After showing that there was not a sufficient production of gas to supply the demands in all three states, the court points out:

"In Pennsylvania the gas is used by 300,000 domestic consumers caring for 1,500,000 people and in Ohio by 725,000 domestic consumers caring for 3,625,000 people. This is where no other natural gas service is available. To change to other fuel would require an adjustment of heating and cooking appliances at an aggregate cost exceeding \$30,000,000 in Pennsylvania and \$72,000,000 in Ohio."

With this situation before it, West Virginia passed a statute requiring all pipe lines to the extent of gas produced in that state to supply all demands for use in that state. The necessary effect of compliance with such a law was to compel the pipe lines to shut off customers in Ohio and Pennsylvania.

The court found as facts that compliance with the act would cause immediate curtailment of the amount of gas going into the other states and would ultimately stop it altogether.

The court held that the act interfered with interstate commerce and was void.

That situation is as different from that of the Smith Bill as black is from white.

In the West Virginia case you have great interstate public utilities built

up based on free shipment of gas by corporations with unrestricted charters doing business in several states, and bound to furnish gas under long-time contracts. Surplus was never thought of until there was a shortage. Then West Virginia attempted to interfere with an interstate business that had been conducted freely and without restriction from its inception. The court held and properly so that it could not do this and prefer its own citizens over those of other states by interfering with established interstate commerce. Interstate commerce in what? Surplus natural gas? No! Unrestricted interstate commerce in natural gas.

The West Virginia case holds—Having permitted unrestricted interstate commerce in a natural product you cannot later confine it to surplus.

The Smith Bill avoids the result of the West Virginia case by creating a transmission company with restricted and limited powers. By the very act of incorporation the Transmission Company has corporate power or capacity to buy transmit or sell surplus only. By the very act of incorporation the Transmission Company can buy only under permits. Those permits are for surplus only. Those permits run only so long as there is surplus. Those permits automatically end when the surplus ends.

The very contract of sale between the generating company and the transmission company can be for surplus only, and must be made dependent upon the terms of the Smith Bill. The transmission company is specifically denied corporate authority to make any other kind of a contract for energy.

In other words, the complete control of what the transmission company can buy is vested in the State of Maine by its very charter.

Therefore, the West Virginia case is no authority for the allegation that once surplus power is shipped out of Maine under the authority of the Smith Bill, the State loses all future control over all power in Maine.

The complete answer to that contention is that the transmission company is the creature of the State and the State has given it no power to deal in anything but surplus.

There was another case, which is a familiar case, which was cited in this same article headed "You cannot

repeal a fact by a law," and this was cited as showing that the Smith Bill is ineffectual—that is the case of *West vs. Kansas Natural Gas Company*, 221 U. S. 229,—which was apparently dug up as a new find with which nobody was familiar.

Senator Carter and myself know that this case was talked about in the corridors of the Legislature as far back as 1917 when we had the first Water Power Commission bill up, and when the Dutton Ontario plan of government ownership was attempted to be foisted upon the people of the State of Maine. Everyone who has been familiar with the power situation or has looked into the law concerning the constitutionality of the Fernald Law has been familiar with *West vs. Kansas Natural Gas Company*. It is as familiar to people looking into that subject as the Dartmouth College case is to the historian. This case is cited as an authority for the contention that you cannot by a limitation in a charter prevent a corporation from entering into interstate commerce.

Oklahoma passed a statute providing for the formation of corporations for the transportation of natural gas. It placed a provision in all charters prohibiting corporations from exporting gas or selling the same for export. The statute further provided that no person, firm or corporation could transport gas in the state except such a corporation. It further provided that no foreign corporation for the transportation of gas should ever be licensed to do business in the state of Oklahoma. Two foreign corporations and two individuals, citizens of other states, sought to have the law declared unconstitutional as denying to them the right to engage in interstate commerce.

The Court found the act as a whole was a total prohibition of interstate commerce in gas, and was as to these foreign citizens and foreign corporations void. The question of the right of a corporation organized under the act to engage in interstate commerce was not decided, and it was not even mentioned or adverted to by the Court. Therefore, this case of *West vs. Kansas Natural Gas Company* has no bearing and cannot be cited as holding that a state cannot create a corporation with a limitation in its charter which prevents it from engaging in interstate commerce.

The Oklahoma State was a direct prohibition of all interstate commerce in gas. It was void.

The Smith Bill does not attempt in anyway to prohibit interstate shipment of electric energy against the will of anyone. The act is permissive, not mandatory. Those who wish and are willing to deal in surplus electricity only, are welcome to use its provisions as a means to that end. No one has to sell current to the transmission companies formed under the act. The generating companies are free agents. If they desire to sell surplus and surplus only, they are afforded an opportunity to do so under this act. So long as they continue to make use of this act to sell surplus, they agree not to export other than under this act, the Fernald Law or a special act of the Legislature. If the Fernald Law is valid, this act does not weaken it. If the Fernald Law is void, you at least have every generating company which makes use of this act bound by a contract not to violate the Fernald Law, at least for so long a time as it continues to take advantage of the provisions of the Smith Bill.

I think I have taken more time than I intended, although I did intend to go over the legal phases of this situation and explain the provisions of the Smith Bill. I have here two witnesses whom I wish to call upon, and if it would be as convenient to the Committee, if no one has any questions to ask me. I will call on the witnesses first.

SENATOR CARTER—Mr. Chairman, I would like to suggest I think all of us have sat here for two hours and a half in seats which are very uncomfortable, and I would suggest we take about fifteen minutes recess; then I would like to ask Mr. Merrill two short questions.

CHAIRMAN GRANVILLE — We will declare a recess for fifteen minutes.

(Recess).

CHAIRMAN GRANVILLE — The hearing will come to order. Senator Carter.

MR. CARTER—Mr. Merrill, in this bill commonly called the Smith Bill, Senate Document No. 40, that bill does not in any way affect the characters of already existing generating companies, as I understand?

MR. MERRILL—No.

MR. CARTER—And if under the



existing laws the Smith Bill, were passed and the local companies, the generating companies did in fact go out of Maine without seeking a permit of the public utilities commission, you would have no protection except the Fernald Law?

MR. MERRILL—None except the Fernald Law, which I might state in my opinion is an amendment of each and every charter according to the doctrine laid down by the Supreme Court.

MR. CARTER—Exactly. But at the present time that is a moot question?

MR. MERRILL—Possibly. It is a moot question because that particular law has not been before the courts. But I cannot see how, in face of the College case the court can do anything else but hold the Fernald Law to be an amendment to charters already passed.

To make it directly responsive to your question—there would be nothing but the Fernald Law to prevent it.

MR. CARTER—To simply get it in the record, you referred to an article which appeared in the Lewiston Journal, I think it was on Wednesday night. Was that an article put together and written by Mr. Franklin Fisher of Lewiston?

MR. MERRILL—I have not seen the article in the print, and have no personal knowledge; but I have seen what purported to be a typewritten copy of it, and understood he was the father of it.

MR. CHASE—Mr. Merrill, I would like to ask a question, prefaced by a brief statement or assumption.

Now the Central Maine Power Company, or possibly a subsidiary, is said to own some 200,000 horsepower on the upper Kennebec River, which we will assume if developed would be capable of generating possibly six hundred million kilowatts. Assuming further what is not likely but what is not impossible, that the Central Maine Power Company should sell those undeveloped powers to me, and I should own those powers in a corporation under the general law, which we will call the Chase Power Company, and should proceed to develop those powers so as to be capable of producing six hundred million kilowatt hours a year, and

had no market in which to sell the same and was not authorized to serve anyone in any territory. Under those conditions I would go to the Public Utilities Commission and say that all of my power was surplus because I had no place to sell any of it, and ask for a permit to sell all of that surplus power to a transmission company which I might organize or which you might organize under the general law. How could the Public Utilities Commission deny me the permit to sell all of that six hundred million kilowatt hours outside of the State of Maine directly or indirectly through the transmission company. Do I make my point clear?

MR. MERRILL—I think that if anyone who was not a public utility developed a power in Maine, of course there is no law to make them sell anything to anyone, except that an electric company must furnish to public utilities under this act that build to its lines. You couldn't sell it either here or outside if you were not chartered to supply it. Just the moment you develop your power and commence to take on customers other than use it yourself, you would then become a public utility and would have to serve every one. If you couldn't serve anyone in that territory, then under section six of chapter sixty anyone that built up to your line, under the provisions of this bill, when they built up to your line you would have to furnish any public utility that built up to it.

MR. CHASE—Only if my company was a public utility. Is not that true?

MR. MERRILL—I would have to consult the statutes. I am not sure about that.

MR. CHASE—I do not want to press the question without giving you an opportunity to look it up. But assume under the circumstances the Chase Power Company is not a public utility company, and it is true that one can generate power without being a public utility company; it is now being done—

MR. MERRILL—Yes; a private citizen can do that.

MR. CHASE—And not being either authorized or required to serve anyone and not having any

right to give public service in any territory and not having any market for a single k. w. h. of that energy, isn't all of that six hundred million k. w. h. surplus power within the meaning and definition of the Smith Bill? If you want to look up the statutes on it, I won't press the question at this time.

MR. MERRILL—I should have to consult the statutes in respect to that particular situation.

MR. THURSTON—Under your bill who is to determine whether they have a surplus or not?

MR. MERRILL—The Public Utilities Commission, at the hearing on the permit. Under the bill, they file a petition stating that they have a surplus or propose to develop such powers as will create a surplus. The Public Utilities Commission appoints a public hearing, and they proceed like anyone who sets up a proposition that has to be proved before the tribunal which is making a determination, which in that case is the Public Utilities Commission.

MR. ALDRICH—Do I understand correctly that the generating company today would have the power to sell the electricity anywhere they wanted to except for the provisions of the Fernald Act?

MR. MERRILL—Why, they might have to make their delivery in the State of Maine.

MR. ALDRICH—I mean as a general proposition.

MR. MERRILL—I know of no other law today on the books that restricts the purpose for which electricity may be sold and delivered within their chartered territory.

MR. ALDRICH—That is what I was getting at. Is their chartered territory limited?

MR. MERRILL—Yes; every corporation so far as I know has some chartered limit within which they can perform service. That would be true of the public utilities. Undoubtedly there are private corporations which are not engaged in public utility service which were chartered and which under their charters could make electricity, like the Great Northern Paper Company, and might not be limited as to where they could transmit it.

MR. THURSTON—But it is your

judgment, if I understood you correctly, that by reason of the Fernald act, regardless of any limitation that may have been placed upon these companies by their original charter, there is now a provision in the bill that prevents them from exporting from the State?

MR. MERRILL—Yes. They would have to make their delivery in their own territory.

MR. CUMMINGS—I would like to ask through the Chair if the attorney of the Central Maine Power Company would tell me, if he can, and if he cannot if he will express an opinion as to the percentage of profit which the corporation created by the Smith bill will be satisfied to make on its investment in the transmission company.

MR. MERRILL—Inasmuch as the transmission company which is created under the Smith Bill is not a public utility, is not holding itself out as a public utility like any other corporation engaged in a purely private business, that company would be allowed to make any profit it could in the other state, and inasmuch as they have no profit here in Maine I should think anybody would say, "Make all you can and God speed you, because you are not making anything here."

MR. ALDRICH—Do I understand it is your judgment that at the present time, with the Fernald law in operation, transmission companies could be organized in this state which would have the power to transmit electricity outside of the state if that power were delivered to them by our generating company?

MR. MERRILL—If they were Maine corporations, my opinion would be no.

MR. ALDRICH—Suppose they are foreign corporations?

MR. MERRILL—My opinion under the Fernald law is this, that if a foreign corporation came into the State of Maine and could acquire power—that is I am speaking now of electric energy—if a foreign corporation bought a private right of way into the State of Maine and could buy electric energy from anyone but a Maine corporation the State of Maine would be powerless to prevent it from exporting it.

MR. ALDRICH—Is it your judgment then, under those conditions, that this privilege which the State of Maine is being asked to accord to these transmission lines is of any particular value to them or to any of our generating companies in this state, and if so have you any idea as to what would be a fair capitalization of that value?

MR. MERRILL—It would be of advantage, of course, if there is any advantage in the transmission company, it would be of advantage to the transmission company to buy it and resell it. It would be of advantage to the local company as affording it a means without repealing the Fernald law of allowing the surplus and waste energy to be sold by it, thereby enabling it to reduce rates, run its present plants to their full capacity 24 hours a day, and allow them to build new plants and make great developments, which in turn, in my opinion, would draw industry here and would create general business in the State of Maine and give them a further opportunity to market it at a profit; but as far as having an idea of what it could be capitalized in dollars and cents, I don't know; but I feel there should be a minimum amount of free capital over and above any bond issue or anything of that kind that should be paid into the treasury of the transmission company to insure financial responsibility in case of accident.

MR. ALDRICH—You have stated \$100,000 as a minimum, but there is not any limit to the amount for which a company might be incorporated?

MR. MERRILL—No; that is the minimum.

MR. ALDRICH—What I had in mind and wanted to be clear on, if this Smith Bill were enacted by the Legislature in this State, if this privilege is of any material value to any corporation which avails themselves of the privilege. What I am trying to get at is what would be an equitable arrangement, if any, between those corporations and the State of Maine by which not only would these corporations have this privilege but the State of Maine also would receive some definite consideration for the privilege without waiting for the prospective hope

that something will follow later that will be of concrete value to them. I don't know as you have considered that; but I don't see, in connection with any proposal you make, any suggestion that anything will be given to the State for this privilege, if it is of value, which I will assume from the interest that is expressed in this entire matter it must be.

MR. MERRILL—Of course the transmission company itself, the only privilege it is getting from the state is the privilege of taking its charter out here, and an opportunity to buy from the Maine corporation, which is otherwise forbidden.

MR. ALDRICH—Let me see if I understand you correctly. You say that a corporation organized here and receiving its electricity from a corporation which is already here under existing conditions could not sell it out of the state; therefore it is necessary, if that is correct, for us to pass a statute of this kind to give this privilege to sell it outside.

MR. MERRILL—I think you do not get my answer. I said I thought it was getting but two privileges from the state. One was the privilege of doing business here; the other was the privilege of buying from Maine corporations which otherwise could not sell to them.

MR. ALDRICH—All right, put it that way. That would be the same privilege that I had in mind.

MR. MERRILL—I felt this way about that situation, that it was a means to an end for local companies to develop Maine, with the ultimate view of producing cheap power in Maine for consumption here and developing industry, and that putting a heavy franchise tax upon the business of selling for export would be detrimental to Maine, and for that reason I felt that the ordinary fees for the organization of corporations would be sufficient. That is just what I felt, to be frank. And, furthermore, I felt as far as local corporations were concerned if you attempted to put a tax on them for that privilege of selling in interstate commerce you might run up against the interstate commerce law. It would be just the same as they attempted to do down in Pennsylvania in making us pay a tax up here on coal.

MR. ALDRICH—The result so far as Maine is concerned must be more or less speculative and a matter of judgment.

MR. MERRILL—It is absolutely problematical, except from the general experience that has taken place in other states with large developments that did ultimately attract industry.

MR. ALDRICH—Didn't Pennsylvania have a tax on coal?

MR. MERRILL—Yes; but that same tax applies to coal consumed in Pennsylvania as in Maine, or the rest of the country; but the amount they send out is so much greater than the amount consumed at home they are willing to pay the tax from their state treasury.

MR. L. J. COBURN—Mr. Chairman, no one asked me to speak on this, and no one told me I could not—

CHAIRMAN GRANVILLE—Do you wish to address the committee, or ask a question?

MR. COBURN—I would like, if I am in order, to ask Mr. Merrill a question.

In case this becomes a law can any public utility or generating company, whatever you may call them, transmit its power out of the state, or is it confined exclusively to the Central Maine Power Company?

MR. MERRILL—Oh, anybody else can do it. It is a general law, applying to everybody alike.

MR. ALDRICH—Mr. Merrill, as an attorney, would it not be your judgment that in the organization of these transmission companies, if any are organized, their capitalization to some extent at least would be based upon this privilege which they are receiving?

MR. MERRILL—I think under the Maine law that you cannot capitalize your corporate franchise. You can only capitalize cash of its equivalent paid into the treasury.

MR. ALDRICH—Can you, in purchasing a company, pay anything for a franchise which it has?

MR. MERRILL—Yes, you may; but that company cannot capitalize its franchise, if it is formed under the general law of the State, and this is to be formed under the general law.

CHAIRMAN GRANVILLE—Now, Mr. Merrill, the Committee understands you are conducting the case for the Smith Bill, so-called.

It wishes then that you would call upon the proponents in the order you wish.

MR. MERRILL—I will call upon Mr. Walter S. Wyman, President, Central Maine Power Company.

MR. WALTER S. WYMAN—Mr. Chairman and gentlemen of the Committee, this whole matter is of such great importance, it seems to me, for the people of Maine, and has so much dependent on it for immediate business future, that I think we ought to approach it with a thorough appreciation of the facts, and that facts should not be lightly dealt with.

A good many things fail in this world because facts are really fiction. Things that are put out as facts are twice or three times or ten times what they really are, or, as one gentleman prominent in the State said to me the other day, "Figures don't amount to anything anyway"—when I told him he had said ten times what he ought to have said, "It is just a question of knowing what they are."

Now the underlying fact in this whole gathering here today and yesterday is that the people of Maine realize that the State of Maine is not getting ahead in an industrial way in the same way that nearly all the other states in this country are doing. Now that is the real underlying fact.

I am not a pessimist. Every dollar that I have in the world is invested in the State of Maine and its future, and it will stay there. But it seems to me we must admit that a great many things in the industrial situation here in this State do not satisfy us, and we must admit that there is a very great and growing anxiety on the part of our people as to what will become of our agricultural communities and of our smaller towns.

Now last Sunday in reading the Boston Herald I saw a letter written by a man who lives in Massachusetts, who was born in Maine, and I thought that he expressed in better language that I could ever hope to the circumstances which surround some of our smaller villages, and if I may have your attention for a moment I will read it. It is addressed to the Editor of the Herald, and entitled "An Old New England Village." It was written by Charles Orin Varney, who was born in the town of North Dixmont. He says:

"During the summer of 1926, I had occasion to visit the little Maine village in which I was born and where I passed my boyhood days. At that time, nearly 50 years ago, the village street was a fairly busy place. It boasted two general stores where anything from a spool of thread to a keg of nails could be bought. In one of them the Post Office was located. Like almost all the little towns in rural Maine it had its grist mill and on the other side of the stream (we didn't call it a river) was a saw mill to which the farmers for miles around would haul their logs to be sawed into boards and "joist." Near the end of the street stood the blacksmith shop, and the cheery ring of the hammer on the anvil could be heard from morning until night except at such times as the Smith stole a few minutes for a smoke and chat on the steps of the store nearest the shop. Likewise the harness maker across the street from the store was usually busy. The school house was comfortably well filled, especially during the winter term. In the G. A. R. hall were held parties, socials and dances, at frequent intervals throughout the winter, memories of which will linger when many events of more recent days will have passed into the limbo of forgotten things.

But the old town has changed. The mill dam has washed out, and the pond which furnished such superb skating during the winter, and pickerel, bass and a fish which I know only by the name of "chub" in the summer, is a disheartening expanse of bushes, rushes and a sort of tall grass through which the stream wanders in a zig-zag fashion. Of the mills hardly a vestige now remains and on their former site good sized trees are growing. Only one of the stores has survived. The blacksmith, finding his occupation dwindling with the coming of the auto, maintained his shop as a garage for a while, but has now retired and the shop is deserted. The old harness maker is dead and no one has taken his place at the bench. What were formerly three school districts have been consolidated into one and the scholars are carried to school in an auto bus and home again in the same manner after an all-day session.

The G. A. R. hall has long been unused. The door is nailed up and grass is growing round the threshold.

Many of my boyhood friends are sleeping in the little cemetery where stately elms and maples, amid whose branches the robins nest, keep watch over their slumbers. Others have left the old place, lured by the superficial glamor of the city. Throughout the countryside the eye is greeted by the sagging roofs and gaping windows of abandoned farm houses, and once fertile fields are fast being reclaimed by the forest.

Unless some economic upheaval serves to stem the tide which now carries the country boy and girl toward the large centres of population, many a little New England village, like the one I have attempted to describe, seems destined to pass out of existence."

Now that is not any picture of anybody's imagination, that is a fact that has taken place in the last forty or fifty years in a great many Maine towns and villages, even those where the foot of the horrible octopus that dwells in Chicago has never trod; and it is going on now, and it will go on, and it is beginning to invade some of our larger towns, and it is a thing that gives very grave concern to a great many people. And I say again, that that is the real root and reason why we have introduced the Smith bill into the Legislature and why we stand here today asking the Committee of the Maine Legislature to give it most careful consideration.

Now the Smith bill was the result of my own feeling that I have just outlined. In the winter of 1925 I discussed this matter before the State Grange at considerable length, this question of repealing the Fernald Law. I spoke on that subject in a good many places in the state during the next six or eight months; and it became evident to me during that time that whatever the evils of the Fernald Law might be, there were a great many people in Maine to whom it was a sort of religion, believing that as a matter of principle the Fernald Law did throw about us a great protection. And so in the fall of 1926 I selected five lawyers in the State of Maine, men whom I think we all regard as able lawyers as there are in this State, and I asked them to draft a law which we might introduce into the Maine legislature which would afford the State the protection that it now receives under the Fernald Law and would still al-

low surplus power, power which is not needed by us, to be sold outside the State, and bring money into the State. Those five men were Mr. Merrill, Mr. Carroll Perkins, Mr. Skelton, Mr. Harry Verrill, and Mr. Leonard Pierce. Mr. Merrill did the work of drawing the bill, and the others collaborated with him, and he consulted with them. Those five men say today that the Smith Bill as drawn and as now before the Legislature does not in any way weaken the control which the State of Maine has over the water power resources of the State which its citizens may now want or which they may want at some time in the future. And I say to you that there is not a man here that in his heart believes that any one of these five men would give an opinion for money that he did not actually believe.

Now as to what we want to sell this power for, there are two underlying fundamental reasons why the complete embargo on the sale of power outside of this State which exists today is holding things back. In the first place, there is the question of surplus power which may be had from the power stations and mill dams already in existence. You have heard it stated here yesterday that there is no surplus power developed in Maine at the present time. And I want to say to you that that statement is absolutely without foundation.

The Central Maine Power Company, after taking into account what it sells the Cumberland County Power and Light Company, and also taking into account the power they will have go to waste on their dam, will generate in the year 1927 200,000-000 kilowatt hours, and there will go to waste, on the dams which exist and water which could be put through the water wheels that are in existence, another 125,000,000 kilowatt hours. In other words, the amount of power is shown by these two pictures on the wall in a sort of graphic way, one representing by length the amount of power which is used and the other representing the amount of power which would be wasted, and the proportion is 8 to 5.

Now Mr. Carter said yesterday that that wasn't so. He said that was a kind of power you couldn't sell, so it wasn't surplus power. I do not know just what that means. I would like to have Senator Carter

explain it. But it is a fact if there is the average amount of rain in the year 1927 that there will be water run to waste over the dams of the Central Maine Power Company and the Cumberland County Power and Light Company, enough to produce 125,000,000 k. w. h. And it is also a fact that every hour of every day in the year the steam plants of New England will be generating more than 200,000 horsepower by steam. Now if you can tell me any good reason why any surplus power that may be available at any hour of any day cannot be sold to take the place of some of that coal, I would like to know what it is.

Of course that power cannot be sold to somebody who doesn't want it; it cannot be sold in the State of Maine. In order to sell the most of that power you have got to have a steam plant that is running at peak capacity all the time. We cannot guarantee that power for fifteen minutes. The chances are that it will be months at a time it may run, but it is beyond the company's power to guarantee that service at all. It simply says to the steam plant, we will back up to your door and deliver power to you today at the rate of 10,000 horsepower, and you will shut down one of your steam turbines or slow it down, and cut off on that amount of coal you are burning, and use that power ten months or ten hours or ten weeks to take the place of that amount of coal; and if that steam plant is generating enough power so it can do that, you can sell any odd amounts of power that may be generated.

If we were experimenting with a new thing, if this was something that nobody ever heard of before, I can understand the reluctance, the feeling that it could not be done. But that thing has been done right in our own State. The thing that has made the Central Maine Power Company possible, the thing that has enabled it to begin with a small beginning and grow, has been the putting together of different generating plants and systems and using up the power that used to go to waste. I think right down in Brunswick, Maine, is about the best illustration of it I know of.

In 1915 the Central Maine Power Company bought of some gentlemen in Portland and Bath who owned it,

the Bath and Brunswick Light and Power Company. That company owned a dam at Brunswick which supplied power to these two towns. Previous to our buying it it had never generated more than 2,200,000 k. w. h. in a year. That was all that they could use. The water ran over the dam, except what generated that amount of power. Sometime in 1916 that plant was connected into the system of the Central Maine Power Company, where it had access to a load of from five to twenty-five thousand kilowatts all the time, and in the year 1917 that steam plant, without any additional machinery generated a little over ten million kilowatt hours, or nearly five times what it had generated before. Before, it had just a small load that came up a little in the morning and run off at noon, came up in the afternoon and then ran up a little more in the evening and then dropped down again. At the end of the second year it had a load that ran 24 hours a day, whenever there was water. That is precisely the thing we want to do in backing up the Boston District Steam Plant. It is not a favor to them; they are not the ones who are going to get the benefit. They have got to get steam, or they won't do business. They have got to make something out of it; but for every dollar they make the State of Maine will make two or three or four, and when I say State of Maine I mean the people of the State of Maine so far as the public utilities are concerned.

Yesterday there was an amendment to one of the bills introduced which indicated that the gentleman who put it in was forming a new method of regulating public utility rates; but I think most of you men on the Committee are aware that public utility rates are regulated by the laws of Maine, that the return which our public utility companies can earn is regulated by the laws of Maine and by the laws of the United States. Whenever in the judgment of the Public Utilities Commission the Central Maine Power Company or any other public utility in this State is earning more than a reasonable return upon the fair value of its property, then the rates must be reduced; and I do not believe, as a matter of fact, that any electric utility of any size in the State of Maine ever yet earned that full fair return

as laid down in most of the supreme court cases. We have just been whacking away and trying to reach it.

Now the map of Maine which has been prepared and which is on the easel over in the other corner, shows by the black lines the outlines — not attempting to go into detail, because it would cover the map all up—the outlines in black are the present Central Maine Power Company 33,000 volt distribution system. It also shows a few of the lines of the Cumberland County system, and the line running over into the Bangor territory. The map was rather hastily prepared, and we did not attempt to cover all the lines in the State. The black circles represent some of the principle power stations now in existence. The red lines which are shown on that, extending from the upper waters of the Kennebec River, from Bangor, and tapping into the Central Maine system around Augusta, and running over to Lewiston and Portland, represent what might become the kind of system that Mr. Chase was talking about to you yesterday. The red circles on the upper end of it represent the possible water power development sites on the upper part of the Kennebec River and the Dead River. As has been mentioned here, the Central Maine Power Company does itself own and does not intend to sell a very considerable part of that power.

We began to buy land up there in 1908 buying the farm of Mr. Robinson in Bingham, and we have been steadily acquiring property there and rights, hoping some day to build a number of power stations which will produce the cheapest power available in the United States east of the Mississippi River, with the exception of Niagara Falls. In that whole territory all those red dots represent about a billion, four hundred thousand kilowatt hours of very cheap potential hydro-electric power. We have a great desire to develop it. —I have personally, I don't know as anybody else has. Sometimes I am beginning to think most everybody does not want to develop it. But I have worked for that, as you know, for the last twenty years, and I want to make those developments. I want to begin now. It is time we began to do something. Last year

I had a man here from the Gressel Chemical Company, who wanted to buy 18,000 of continuous horsepower, building a plant costing \$3,000,000, with the statement that if he was successful he would duplicate it with another plant costing \$3,000,000, and then later build a third one. The matter was taken up with his company; they decided that the price at which power could be generated, up there was one at which they could afford to come down here in Maine and buy it. The question was, when can we get it? The answer was, sometime within two or three years, if we can find some place to put the other forty or fifty or sixty thousand horsepower that we will have to develop along with yours in order to get an average load price. He said, "No, we can't do business on that." He said, I want to know whether I can get it, so I can go and talk with my engineers and get ready to build there next spring." I had to say that was all we could do, we haven't 18,000 horsepower of cheap horsepower developed; we haven't any of what Mr. Chase yesterday called cheap power. We have power, but we haven't any of what the chemical company calls cheap power, 2-½ of 3 or 4 mills a k. w. h. The cheapest energy we have today is something over five mills per k. w. h.

Now that is the kind of thing we want to carry out. Modern business changes the old situation. A great many manufacturers use raw materials consisting not of stuff just as it comes from the earth or the mine but rather materials that have been taken into the electric furnace or the electric oven and made into something else. That is what these electric chemical companies make to a great extent. They must locate not twenty miles from cheap power but at a cheap power where the electricity can be generated in the form of direct current and put at once onto their machines.

There is another kind of chemical industry that may locate at some distance, might locate fifty or sixty miles from a water power, but it must get fairly near, and it cannot afford to pay the price of a long transmission.

I firmly believe that if we can find a way to utilize the surplus

power which that upper Kennebec River might develop that within the next ten years more than fifty million dollars of taxable property can be created in that immediate neighborhood from the development of hydro-electricity alone, and that much more than that amount would be created by industries that would be attracted by this cheap power, because that particular kind of power does not exist in many places. It is going to exist in many places before many years, because water power is not the only way to make electricity. Since I have been in the electric business the amount of coal which is required to produce a kilowatt hour in the average generating plant has been reduced from something like four pounds to less than one pound, and the end is not yet.

Now if you look way ahead in the future 150 or 200 or 250 years, of course you see a time when coal is going to get scarce and is going out of sight in price; but if you look ahead to your children and grandchildren you are going to see a time when the price of steam power is going to be cheaper than the price of the lowest water power there is. It may not be much, but it is going to be some; and it is the future of your children and grandchildren you are looking out for, and not the future of some generation that won't be born for 150 years.

Now this matter has been discussed by several people here touching on the subject of farm land, and it has been stated in this hearing that the great need of Maine was for the use of this electricity on the farm, and that it must not go out of the State until the farmers got their power.

I just want first to make clear one fact in connection with that, that the abundance of electricity or electrical generating apparatus within the State of Maine has nothing whatever to do with the cost of getting electricity to the farmer. The cost of the farmer's service is first, last and all the time,—unless he gets to be a fellow who uses a lot of it—the cost of getting the current to him.

At the present time the Central Maine Power Company is lighting more rural homes, furnishing elec-



tricity to more rural customers than any other company I have been able to find in the United States. The Texas Power and Light Company boasted a little while ago that seven per cent of their customers were rural customers, and they called that a record; but the Central Maine Power Company has fourteen per cent. of its customers rural customers. Last year it electrified 800 rural homes, and it has invested in that business of lighting and furnishing power to farms here in this State more than a million dollars. It had to do that, and I think you can all understand why. No company can do business unless it makes money. If the Central Maine Power Company or the Maine Central Railroad Company or the Great Northern Paper Company or any other corporation begins to lose money and does not have enough left out of its year's income to pay its expenses and its interest and its dividends to the people who put their money into it, it has to stop going ahead and quit. If it is going to maintain its credit it must make a profit. Now what has the result been in our business and in the business of every company supplying rural electricity? The result has been that every year we built a few services, sometimes more and sometimes less, and the result on our company's business at the end of the year has been that it was a little bit poorer than it would have been if we had not built those services. We haven't had quite as much money left. We have gone every year as far as we dared to go in cutting down that balance by building rural lines, and we intend to keep on going just as far as we dare to go. But I want to make that thing plain, that whether there is 10,000 surplus horsepower or 50,000 or a million in the State of Maine doesn't affect the problem of lighting the farmer any more than it would if it was located in South America. The problem of lighting the farmer is the problem of getting somebody to bear the burden of building and maintaining the lines to get the electricity to the farmer.

Now I do not think that is a difficult thing to understand. It costs \$1000 a mile to put two wires on some poles along the highway,

sometimes it costs more than that. It is a very rare farm road that you get ten customers to the mile; it is more apt to be five. But if you take ten, there is \$100 gone before you do anything. Then you have got to add \$30 to \$75 to that to connect up that customer on the line, and for every farm customer we have got \$150 invested. Not the kind of money Mr. Cummings was talking about yesterday, but real, good, hard dollars that the 13,000 stockholders in this State have earned and put into the stock of the Central Maine Power Company. That is what you have got invested in the farmer's service.

We have to pay interest and dividends on that money, and it costs on an average of about six per cent. We have to maintain those lines, and it costs from two to three or four per cent. We have to pay taxes on every mile of those lines, and that costs from one to two or three per cent.

Now you take your \$150 that is in the farmer's service before you furnish him with one kilowatt of electricity, and reckon that ten or eleven or twelve per cent on it that it really costs us out of pocket, and you have got more money that 80 per cent of the farmers, people living on the rural roads of Maine, are willing, and, in many cases, able to pay for electric service, and you haven't paid for a kilowatt of electricity.

Besides that farm distribution line there is perhaps 20 or 30 or 40, or even 50 miles of transmission lines running back to the station; there is the power station itself, and the men who run it; there are all the bills that are not paid and have to be charged off; all the men who have to be employed to run a business of that kind; all those things have got to be paid for out of the money that is paid to us, and the problem is a very very big problem. I will say a little something more about it later.

There is one thing Mr. Chase in his bill has sort of omitted, it seems to me. I appreciate all the earnestness of purpose Mr. Chase is putting into his bill, and think he has shown a great deal of ability in dealing with the problem; but it appears to me that he deals with it as a new prob-

lem, a new field where nothing has been done. Now for forty years the people of Maine have been building up an electrical system over the State, and it is pretty much completed. The whole western part of the State after you leave the Penobscot River is tied together with a pretty comprehensive distribution system, and any power of any reasonable size that is available in any one part, in any one town in that territory is also available in every other territory. I don't mean that without limitations, but whenever a definite case has come up where it wasn't in the experience of the Central Maine Power Company, and I think I can speak for the other two companies in the same way, it has been immediately made available. There are outlying cases of small power customers that are just like the farmers, where the cost of transmission is so very great it is difficult to get to them, but in the main a system has been built up in the western part of the State that transports power from the mill man who has a surplus and is able to sell it to the customer who wants to buy it. In the eastern part of the State the Bangor Power Company has built a system that, if it doesn't now, will soon reach up from Bangor to Calais and Aroostook County, covering the whole territory with a net-work of high tension lines. In the spring the Central Maine Power Company and the Bangor Power Company are to build a transmission line to connect those two systems together for the purpose of interchange, a line capable of transmitting 20,000 k. w. h. When that line is done there will be an interlocking network of power systems for the use of Maine's people of Maine's power.

Mr. Chase spoke of this bill as the Wyman bill. I have looked at it from another point of view. I have tried to look at it from the point of view of the facts: that there are companies regulated under the police powers of the State that are now serving a part of the people of Maine that can be served. I have tried to provide a way by which the surplus that these companies might have would be exported. I did not think it was proper to ask the Legislature of Maine to confer on any one company a monopoly of that right to export; I did not think that the company whose line crosses the bound-

dary of the State of Maine should be a public utility; and I do think that a company that sells power within the State of Maine should be a public utility and should be regulated by the authority of the State. So we prepared the Smith bill on those terms.

Just a word again about this farm electrification. Attention has been called to an advertisement which we put out a few weeks ago in which we called attention to the fact that if the power which will go to waste in 1927 could be sold at five mills a k. w. h. it would bring in net something like \$500,000; and that advertisement made the statement that probably one-half of that could be used to build up rural lines in Maine.

Now as a kind of sporting proposition, and showing the good faith which we have in doing business in the State of Maine, I am going to suggest this amendment to the Smith bill, which I will be glad to give the Committee in writing; and that is that as a basis of getting a license to sell power to one of these transmission companies under the Smith bill that any public utility which gets a license must put into its contract with the State of Maine as a condition of that license that it will spend for ten years only one-half of the money gross that it gets for power sold for export in building farm lines, rural lines, in towns which it is authorized to serve, under the direction of the Public Utilities Commission of Maine—

(Applause.)

putting a limit on that amount of \$250,000 a year for one company. I don't think it would be fair to require them to spend millions of dollars a year if the export business should run to that amount.

We figure that it would take about \$4,000,000 to completely electrify the farm roads in our territory that are not electrified, and there are many miles of them where there really is no call for electrification. I have measured up myself in one small locality where there was not a single house that was occupied, but the roads were kept open, where the roads were entirely untenanted from end to end.

I don't know that I have anything more to say about the Smith bill except that I very earnestly hope it will pass.

I would like to have the Committee

allow me to say just a word about the Central Maine Power Company and its new ownership, which has been talked about a good deal in connection with this, because I feel a very serious and grave injustice has been done in much that has been said.

You all know the history of the company. You all know that it was built up by the money of the people of Maine, who put their money into it on my invitation. You all know, I think, that no man has yet, in twenty-five years, accepted an obligation of the Central Maine Power Company or bought a share of stock in it that he did not receive his interest money, his dividends, or his principal. Many of you know from experience, in the very trying times of 1916 until 1922 or 1923 that there were a great many people in Maine who had to raise money; they had to have it; and I know that hundreds, and I don't know but thousands of people came into my office and wrote me and told me that the stock of the Central Maine Power Company that they owned was the only thing that they could sell and not make a substantial loss. Now I feel personally responsible to the people of Maine for the support which they have given that company.

In the spring of 1925 it became perfectly evident to me that I could not hope, unassisted, to keep control, by merely friendly relations with people, of the Central Maine Power Company. There were at least three holding companies that were making bids for that stock. There were people who thought it was worth more than \$25 or \$40 a share. I felt that something had got to be done to consolidate the control of it or it might come into the hands of what I regard as some very unprincipled people in the business.

I went over the holding company situation in the United States, and as a result of studying what they were doing I went to see Mr. Martin Insull, who has had a most remarkable history in the public utility business of this country. Mr. Insull studied our balance sheet and our situation, and we finally sold him my stock and that of some of my associates, agreeing to give every stockholder a right to come in at the same price, for \$150 a share; and that was in cash, it wasn't wind or water. I think Mr. Insull thought then and

thinks now that the stock which he paid \$140 a share for was worth \$140 a share. His past career does not indicate that he has been buying things for \$140 which were worth only \$50 or \$40 or \$25.

It has been stated publicly over the radio that the government had valued the stock after the sale at \$25 a share. I don't know but the government may have done that. The only case I know or can think of where they would value it was for the purpose of figuring income taxes on a value as of March 1, 1913, twelve years before the sale took place. Now I have had a little experience with stocks, and I have known the price of some of them to go up within twelve years and some to go down.

Mr. Insull's first steps after buying this property were to organize a company to supervise the operations of his New England companies and to assist in financing them. I asked him where that company's office was to be, and he said, why, he hadn't thought much about it but he thought that Boston was probably the place for it. I said, "If I am going to have anything to do with it it can't be there, because I can't live in Boston; I have got to live in Maine, in Augusta." He says, "I don't know but that would be a good place for it." So he organized and formed the New England Public Service Company, paid in \$16,000,000 working capital, and located its head office in Augusta, Maine, with three or four Maine directors on a board of seven or eight, who practically run the company. He made directors of the Central Maine Power Company a majority of State of Maine people who had been on the board before, and put the whole thing into the hands of Maine folks. And that is the main reason why I chose to approach Mr. Insull instead of other companies. His policy throughout his career has been to have the companies which he had control of through his company operated by local people, operated on the principle of getting the rates down just as fast as you can. That is what he is always talking about, operating on the principle of low rates instead of high rates; and we have made more rate reductions since the Central Maine was sold to the Octopus in Chicago than we did in any time of twice the length before. Mr. Insull has shown

his good faith and his good intentions toward the State of Maine in every possible way that I can think of; and I see no reason, unless he does some overt act, does something to the State of Maine contrary to our laws or our principles, why we should not treat him properly. He is very much interested, and he is ready to go ahead and finance or assist in financing hydraulic developments and even industrial properties. His company is responsible for an investment of nearly \$60,000,000 in this State, and for its own selfish reasons it cannot afford to do anything but assist in every way in its power in the prosperity of the State. I thank you.

(Applause.)

MR. WOOD—Mr. Chairman, may I ask Mr. Wyman if he can tell how much difference there is in the cost between the telephone company putting their line along the highway and the Central Maine Power Company putting their line along the highway? Now I have a telephone at my house, and I pay \$1.80 a month, and I think as a user of electric power and light if I had it that it would be something like \$4.00 a month, which is \$2.00 more than I pay for my telephone. Now how far would that \$4.00 go towards the difference in paying the rate which he would have to have to put the line up to my house, over what the telephone company would have to get if they should put it up, provided I didn't have it? Do you understand my point?

MR. WYMAN—I understand your point. May I ask Mr. Thompson for some information about the telephone costs?

MR. WOOD—Your electric power line, as I understand, costs \$1000 a mile, approximately. How much would the telephone line cost, in your opinion, per mile?

MR. WYMAN—If the Chairman will permit me to ask Mr. Thompson who is here and who is in the telephone business, I would like to have him answer that question.

MR. WOOD—He can if he will, as far as I am concerned, and give the Committee some light as to the difference in cost between the two lines. You claim your line will cost \$1000.

MR. THOMPSON—Mr. Chairman, answering as to the cost of telephone lines is like answering as to the cost

of a house or a lady's hat, to some extent, but such a telephone line as the gentleman refers to would probably cost from four to five hundred dollars a mile, constructed along the highway.

CHAIRMAN GRANVILLE — Does that answer your question?

MR. WOOD—That answers my question.

At the rate of \$1000 a mile which it would cost you to put your line to my house, how far would \$4.00 go to reimburse you as a rate per month that you would get in return for putting out that \$1000 for me, and take other residents along the line that would take it practically on the same basis. Could you afford to do it at that rate, at \$4.00 to a consumer for two miles, for instance, if there would be fifteen consumers that would pay about \$4.00 each per month?

MR. WYMAN — That would be about \$100 a year, Mr. Wood?

MR. WOOD—Two hundred dollars, if I used to the capacity of \$4.00 fifty-two weeks, it would be \$200, wouldn't it?

MR. WYMAN — That is \$4.00 a month you are talking about. That would be only \$50.

MR. WOOD—That is right.

MR. WYMAN—So for the two it would be \$96. You say there are two miles to build?

MR. WOOD—About two miles or such a matter from where the high tension poles go on the State Highway, Brunswick to Augusta. I think my place is about two miles; and I wondered if you could afford to do it provided you got \$4.00 a month revenue from the number of inhabitants on that two miles.

MR. WYMAN—How many are there, Mr. Wood?

MR. WOOD—Mr. Campbell, who is your division manager at the Brunswick station when I took the matter up with him we found there were something like sixteen. I found that he couldn't go any further in the matter under present conditions, and I thought when the time came right I would take the matter up here in the Legislature and see what might be done by the Legislature to help out in electrifying the rural districts; and I find that you claim it costs approximately \$1000 for a mile.

MR. WYMAN—For a mile of line.

MR. WOOD—And I would probab-

ly pay about \$4.00 a month for what I would use, and I think there are about fifteen or sixteen others within the two miles that might use as high as that, and I wondered if that would reimburse you sufficiently to put the line there.

MR. WYMAN—Mr. Wood, if I thought there was any place in the State of Maine within our lines where the condition you describe exists, I should go to the telephone just as quick as I could get out of here and have somebody go and look at it.

MR. WOOD—I thank you. That is encouraging. That is all I have to offer in regard to it at the present time.

MR. WYMAN—If there were sixteen people in two miles who will pay \$4.00 a month apiece, we want them as quick as we can get them.

MR. WOOD—I don't go on record as guaranteeing that amount, but I thought like this, that I would use something like \$4.00 a month at the house for all purposes on the farm. I could not bind myself to the statement that others would do the same thing, but that would come out through investigation.

MR. WYMAN—It would make quite a difference, Mr. Wood, whether there is one who pays \$4.00 or sixteen.

MR. WOOD—That might come out through investigation.

MR. WYMAN—We will be very glad to investigate it again.

MR. CHASE—Mr. Wyman, from what industries within your territory do you buy electric power, and approximately what amount?

MR. WYMAN—We buy from the Pejepscot Paper Company at Brunswick whatever they have developed and have to sell. I am not very sure that we buy from anybody else. We buy from other public utilities, but we find it very difficult, Mr. Chase, to get what you call private mills, that is manufacturers, who, as they say don't owe anybody anything and don't want to, to allow us to put our lines into their yards for the purpose of buying power. They don't want to do it. I nearly got arrested one day for going in to see a man about it.

MR. CHASE—Now if by reason of river regulation these private companies, which constitute a large part of the power in Maine, should become able to largely increase their

power production, what will be the status of these companies which might come about if the Smith bill should become a law?

MR. WYMAN—That would depend very much on the characteristics of the mills who are running those industries. We have one industry in our territory whose power house is located directly across the road from our sub-station, and in a certain year there was twenty-five thousand dollars worth of water that went over that dam which they might have sold. We offered to guarantee them twenty-five thousand dollars for the excess power if they would allow us to take the excess for two years. They said they would not allow us to take any. They preferred to let it run over the dam. That is not an exaggerated experience. There are dozens of mills that feel they don't want their own mill law mixed up with anybody else's electric system that extends out of the State. Those are not the small mills, but the big mills, that are self-contained and own the big water powers. I find they are unwilling to mix in their own power business with that of public utilities.

MR. CHASE—That is under existing conditions?

MR. WYMAN—I will speak about that. Go ahead.

MR. CHASE—In speaking of the bill which I advocated yesterday, you thought that to do this what we call super-power proposition in one company would give one company too much power. Now if such a company should be formed in which several, we will say, or perhaps many of the industries in Maine would be joined, how would that company have any more power than your particular transmission companies will have if they are built up through the system of companies which are controlled by the Insull interests?

MR. WYMAN—Well, we could only build up a company or companies in that way which were actually owned by somebody who is affiliated with the Insull interests. Your company, if you secure the charter which you ask for, is going to be owned by somebody very shortly. It is going to be a comparatively short time before somebody gets control of that company that has the exclusive privilege to transmit electricity outside the State. I am not making a

bid, but I believe that certainly would take place.

MR. CHASE—Even if that should come about within the period of monopoly, which is only five years, and one company should own that company, would it be any worse off than it would to build up a transmission system which would from the very beginning and inception of it be controlled by one interest?

MR. WYMAN—Well, Mr. Chase, as you pointed out yesterday all of the public utilities in the State only own thirty per cent of the water power, they own less than 30 per cent of the undeveloped power. If these companies have any great desire to have a company of their own, they would have no difficulty in getting an export company under this law, or two of them, or three of them; so that there is a duplication of lines, and you come to the question you brought up yesterday, the concentration of this power in New Hampshire. That would not happen so far as companies interested in the public utilities in this State; the power would be concentrated in the transmission lines they own in the centers for which they are responsible, and the surplus would be exported outside the State.

MR. CHASE—But these transmission companies could not sell power in the State of Maine?

MR. WYMAN—They could send it outside.

MR. CHASE—But what good would it be to have them concentrated in these particular centers if they could not sell it there?

MR. WYMAN—They could sell to the utilities, if they would. We would be glad to buy power instead of generating it ourselves. Of course right now we wouldn't.

MR. CHASE—And it says, Mr. Wyman, on Page 3, that no corporation organized under authority of this act shall nor shall it have authority to sell electric current or energy within the territorial limits of the State of Maine.

MR. WYMAN—I am not talking about selling it within the State of Maine. I am talking about the public utility companies which may buy it and which may sell within the State of Maine, in the parts of Maine in which they are incorporated to supply current at the present time.

MR. CHASE—But the public utility companies in Maine cannot buy

from the transmission companies which are organized under the Smith bill?

MR. WYMAN—They don't need to. MR. CHASE—They can't, under the bill?

MR. WYMAN—There is no occasion for it.

MR. THURSTON—How many undeveloped water powers does the Central Maine Power Company control or own?

MR. WYMAN—I don't know as I could tell you off-hand. I can tell you the general situation. I say it that way, because what one man might consider one water power some other man might consider two. They own the riparian rights on the Kennebec River from Bingham to The Forks pretty much as a whole; some strips belong to others, but they own practically all of the dam sites. They own three-quarters of the stock of the Kennebec Company, which owns a strip of land on each side of the Kennebec River from The Forks to Indian Pond. The other quarter is still owned by Chase and Harriman. That is the principal undeveloped power the Central Maine owns. In addition, it owns some on the Dead River and also some on the tributaries of the Kennebec. Does that answer your question, or did you want it in horsepower? A very large part of it is on the Kennebec River.

MR. POWERS—To get back to the farm problem, you say that the Central Maine has lost money on the farm proposition. Has that been voluntary, or by orders of the Public Utilities Commission?

MR. WYMAN—By very few orders from the Commission. It has most all been voluntary.

MR. POWERS—To go back to the \$200,000 or less that would be expended, do you propose to expend that at a loss to the sum agreed?

MR. WYMAN—I do not think there is a farming community in our territory that can be supplied with electricity as a whole, reckoning the price of electricity at zero, without making a loss.

MR. POWERS—Isn't the disposition of the Public Utilities Commission to make the rates so you won't make a loss?

MR. WYMAN—It cannot be done, sir, that is the trouble. The people have got to be induced to pay the rates; and if you charge the smaller

farmer, or, in many cases, the large one, a rate which would secure a fair return, he just won't have it. That is our opinion, and the opinion of the Commission, I judge. The Commission in several cases where they have issued orders have cut the rates down below what they themselves thought was a fair return.

MR. THURSTON—What do you think from your experience would be the effect upon the agricultural development of this State, in other words, is it your judgment that if the farming community as it exists today is supplied with electricity it is likely to make any change in conditions which will induce agricultural development?

MR. WYMAN—That is a hard question. I couldn't run my farm without electricity, quite a lot of it, but quite a lot of folks do.

MR. THURSTON—But the presence of electricity naturally would tend to agricultural development?

MR. WYMAN—I haven't any doubt but what it will. We have a letter from a man in a community where we had put in electricity the year before, and we had an extremely appreciative letter from the selectmen of the town, telling us what benefits the little village and the surrounding farms had received from having the electricity. It really surprised me. I would be glad to find the letter and show it to you.

MR. THURSTON—Would you mind stating again what you have said you would be willing to have submitted as an amendment to this bill?

MR. WYMAN—My suggestion was that this bill be amended by putting a condition into the permit which would be granted to the generating company to sell to the transmission company and which would apply to all public utilities—it would not apply to anybody else—that made an application for a license, that they should invest only for a period of ten years one-half of their gross receipts from the sale of energy to this transmission company for export, not to exceed \$250,000 in the case of any one company per year.

MR. POWERS—Why do you set it at ten years?

MR. WYMAN—Because it is my idea—it is a hard thing to figure it—but I think somewhere around two to four million dollars in our territory, which is all I really have to go

by, would supply practically every farmer in that territory with electricity; and it would be quite a job to do it right off the bat, you have got to have some time to do it in. It is really quite a job. I suppose the thing would have to be done under the guidance of the Commission, and there would have to be a schedule of who was going to have it first. Ten houses or sixteen houses in two miles using \$4.00 apiece ought to come ahead of roads where there are two houses to a mile using \$1.00 apiece, and some schedule such as that would have to be worked out with the Commission.

MR. CRAFTS—My Wyman, would you care to state about what percentage of gross income you request on new construction?

MR. WYMAN—For country lines, in order to get a fair rate?

MR. CRAFTS—That is what I want.

MR. WYMAN—I won't tell you on the start what we require, but I will get at it in this way: In order to get a fair return as nearly as we can figure it, it takes nearly 30 per cent of the cost of the average farm line. You understand it makes a good deal of difference what kind of a load is put on at the different places; but in the average farm situation in order to get ten per cent on the capital used, after paying the expenses it takes about thirty per cent of the average cost of the ordinary farm extension.

Now as a matter of fact, we stopped asking for thirty per cent some time ago, and we slid down the scale until we got down to where we made extensions as low as 21 per cent; and in these cases I am very sure the company on the start realized no pay for its electricity, hardly got enough to pay the cost.

MR. CRAFTS—I know a few years ago you were requesting 30 per cent.

MR. WYMAN—We started that way, but we found we just couldn't get it.

Mr. Chairman, Mr. Chase called my attention to a matter in the printed circular that has been put around here, and I agreed to explain it. I have forgotten what it was. If he would tell me, I would be glad to explain it.

MR. CHASE—The bill, on Page 3, says, "No corporation organized under authority of this act shall, nor shall it have authority to, sell electric

current or energy within the territorial limits of the State of Maine." Mr. Merrill explained that in great detail to the audience which is here, but the pamphlet which has been circulated which describes the Smith bill does not contain that I can find any such definite declaration, and I thought inasmuch as Mr. Merrill did explain it very clearly that that minor difference should be pointed out.

MR. WYMAN—I hope the press will take notice of it, and I am sure the omission was entirely inadvertent.

CHAIRMAN GRANVILLE — Mr. Merrill, could you give us any kind of estimate as to the time it will take to complete your hearing? An hour or more, will it be?

MR. MERRILL—The only other person I intended to call on was Mr. Skeiton, and he says he won't take over ten minutes, but there are quite a number of people here who want to speak.

CHAIRMAN GRANVILLE—Yes; I had in mind recessing until 7:30. We will recess until 7:30 this evening.

(Recess.)

Friday, 7:30 P. M.

MR. MERRILL—Mr. Chairman, Mr. Leslie McIntyre is here. I understand he is a proponent for the bill, and that he has to leave early. I wish he might be given an opportunity to speak at this time.

CHAIRMAN GRANVILLE — The case is entirely in your hands, Mr. Merrill.

MR. LESLIE E. MCINTYRE (Oxford, Maine)—Mr. Chairman and gentlemen of this Committee, it is true I have waited here quite a while just to say a word to you gentlemen, and in my judgment it is necessary only to say a word now. Certainly we have had all the legal points there can be brought up, and most any other points. If I had had an opportunity before certain things were brought out I might have touched on rural conditions a little more, but I haven't got the time, and you haven't got the time to listen. I have to be in another part of the State tomorrow and will have to get to Lewiston tonight, and I thank you for being so kind in listening to me now.

I want to tell you gentlemen that I was in favor of the Fernald bill and did all in my power to help enact

that into law. My brother Fernald—and I have the right to call him brother, because he was a brother granger—was a man that I admired and one of my close friends. I am proud to say that I was a close friend of Brother Bert M. Fernald, and I would not ever have felt right in my mind if I had not taken the time that afternoon to visit that little church on the side hill where the last services were held for Bert M. Fernald. I am not ashamed to stand here and tell you that I did that from the bottom of my heart, because I wanted to. And I will tell you in connection with that that the sentiment of Maine in regard to that Fernald bill, the respect that they have for Senator Fernald is the main reason why that has not been attacked and has been left where it is. I would do anything I could to leave it that way that is right.

Now I am not going to take your time to bring up some of those points. If I had a little more time I would have picked up some of the conditions where my brother farmer, Mr. Wood, left them. I know what his conditions are. Unfortunately, I happen to have some that are more serious than his.

Now to illustrate that, and show you what it means to me. Quite a number of years ago the telephone company put a line through the town of Waterford. At that time my brother and others lived in this neighborhood and there were subscribers enough to build practically three miles of line into that neighborhood. Today, gentlemen, I am the last sole subscriber on that line, and at the end of the line. Now that will perhaps get you in touch and give you a little idea of the conditions in sections of Maine when you talk about electrifying the last farm in Maine before you pass out any electric power—it is absolutely impossible. We have got thousands of farms in Maine today that cannot be farmed, that cannot profitably be maintained; but we have some that can and should be.

Now before I leave you I want to tell you what is in my mind, and what I am here now to say to you at this time after what I have listened to, and you will pardon me for thinking, if I assume too much, that in my judgment, Mr. Chairman and gentlemen of this Committee, you have the opportunity of your lives at



this time to do the most wonderful thing for Maine that there has ever been an opportunity to do. I think that you will do it. If not, why not? You will pardon me for using the word "we," because I, as a citizen and taxpayer of Maine am going to say, are we afraid, are we afraid of the people of this State of Maine? Are we afraid of the Legislature made up and picked by the people of this State? Are we afraid of them? Are we afraid of our Public Utilities Commission? Are we afraid of the Supreme Court? If we are not, certainly we are in a position to go ahead and set the wheels of industry moving in Maine and stop some of this decay that I am in touch with on the outskirts of the rural sections.

If I had time I could draw you a picture that you would say wasn't pleasant. My friend Wyman touched on one of these themes. Unfortunately they are true in many, many sections.

I would not want to leave unless I congratulated Mr. Chase on the wonderful work that he did in presenting his bill, the fairness of it, regardless of whether I agree with the contents of the bill, and the spirit in which he has worked unselfishly to better conditions in Maine. Maine ought to be proud that it has got young men who will do as much work as that, and I know that they are and will be.

Now I am not going to plead. I am just going to repeat it once more, that I haven't any doubt in my mind that you men after considering all these things, that you will see your way clear to present to the people this bill. I am not going to say that it should not be changed any, but after Mr. Wyman presented the amendment that he did, to be used to electrify rural Maine, can you ask for anything more, can you expect anything more? My friends, I hope that when you have this golden opportunity you will take it. I haven't any doubt that you will.

Now if you will pardon me for being a bit personal, I will bid you good night, and I think that I have the right to say, "God be with you all."

(Applause.)

MR. MERRILL—Mr. Chairman, before supper Mr. Chase asked me a question relative to that section of the bill defining surplus and asked me if I thought that a private corporation could be formed and then in

connection with the transmitting company transmit its product of electricity outside the State without supplying the demands upon it for its product here. I have read the statute, I have read the section of the bill which he called to my attention, and it is my unqualified opinion that no private corporation, as distinguished from a public utility corporation, could sell current to a transmission company if anyone in the State of Maine who desired electricity where it could sell it wants it, and that it would be compelled under section 6 of chapter 60 to supply all demands of public utilities that built to its line before it could sell to a transmission company, and that if it failed to supply any demand upon it, either by a private individual where it was authorized to sell it, or the demands of a public utility company, the permit that had been issued to it would automatically cease, in the same way that that of a public utility corporation would cease.

MR. CHASE—Mr. Merrill, assume then that instead of a corporation having this surplus that an individual or a trust or a partnership had such a surplus.

MR. MERRILL—If an individual, a trust or a partnership had electric current to sell and it sold under one of these permits, the individual, the trust or the partnership being authorized to sell to public utilities and being authorized to sell to other individuals in non-competition with public utilities, would be bound by the terms of the permit. On the other hand, there is no restriction whatever today on the private individual, the partnership or the trust selling electricity to go out of the State or transport itself, if it has the power to transport. They have that authority today, and the Fernald Act does not in any way attempt to prohibit either the individual, the so-called Massachusetts Trust, or the partnership for either transporting or selling to be transported; but if they did avail themselves of selling to one of these transmission companies they could only do it by getting a permit, and that permit would cease if they failed to meet the demands in Maine.

MR. CHASE—You mean the demands upon them in the territory which they are authorized to serve?

MR. MERRILL—Including the de-

mand of any public utility that came to them.

MR. CHASE—Do you claim an individual who owns power is required to furnish that to a public utility company or a trust or a partnership?

MR. MERRILL—No; but by the terms of the permit if they do not furnish them, the permit ceases.

MR. WING—Would they have to have a permit to sell their own property?

MR. MERRILL—To this kind of a corporation, because this corporation is chartered only with the power to purchase from persons, firms or corporations they have a permit, but they don't have to have anything to do it except own their own power or transmission lines. I felt opportunity should be given to individuals or corporations who had generated water power to turn it over to this transmission company if they had a surplus. They have a right to transmit it within the State and sell it within the State, and there is no law that even pretends to prevent them.

I will now call on Mr. Skelton.

MR. WILLIAM B. SKELTON (Lewiston)—I wish to speak very briefly and principally with a view to tying the Smith bill, so-called, in with what I think is the general position of many if not most of those who appear to be opposed to its passage, for the purpose of seeing to what extent we can reconcile the views of the proponents and the opponents, and to see if we are not or cannot get upon common ground, either entirely or to a considerable degree. This I mean without questioning the good faith of any who happen to disagree with us, but purely to point out what seems to me to be in many instances at least similarities of our views and purposes, if we checked them up.

I believe in the first place that most of us feel that there is no objection, and a great many that there is a strong reason for some provision for the saving of what is otherwise waste power, if it can be accomplished without subjecting our hydro-electric industry to the control of outside interests or Federal authorities. I am aware that in this respect there is a very radical difference of view from what has existed in the past. Many of us—and I frankly include myself in that group—who are now favoring some method

of getting a return for what otherwise is waste power and encouraging development, have felt in varying degrees that the Fernald Law in its strictest interpretation was the only wise thing for the State.

So far as I am concerned, and I think many others, we have been disappointed in its failure, or the failure of the State with its assistance to gain new industries where they were expected.

As we check the history of the State over during the past eighteen years it is difficult to call to mind any or any number of new industries which have come into the State of Maine, manufacturing industries using power. We have seen enlargements of those which have existed here, especially during the years when the war boom was on, many of them going back since that time, but we have seen practically no new ones of importance.

There is another condition which we cannot ignore which makes it less probable that any such restrictive legislation can be of future benefit, which makes it less desirable in theory and I think in practice, and it is the changed industrial condition that prevails throughout New England as a whole.

Looking back to the time when the Fernald Law was enacted, and the years before that, we had in New England a large part if not the major part of the textile and boot and shoe manufacturing of the country. It was then largely a rivalry between the different states of New England to see which should have the business, and there was much more reason under those circumstances for expecting that the keeping of our hydro-electric power here would help the State of Maine in competition with other New England states than there is now when the textile business has moved so largely to the South, with the strong competition there, and the boot and shoe industry has found so much competition in the west and the southwest. So it has come to be a time when it is more of a struggle of New England, all of the states acting together, to save their business in competition with the rest of the country than for the individual states of New England in competition with the other states.

As I have said, the necessity for something of this sort seems to be conceded by those who have made

the strongest objecting to the letting down of the bars at all for the export of electricity.

I have before me, and I am going to quote them, because they are suggestive of the existence of a feeling that it ought to be accomplished, if it can be done, without lessening our control over it if we need it here—I am going to read to you two extracts from an address made by Senator Carter before the Lewiston-Auburn Kiwanis Club, January 6, 1926, just a little over a year ago, indicating what he thought and what I assume that he still thinks, as I shall claim, in connection with legislation now pending before you, of the necessity for something of this sort. He was reported at great length in the paper. I regret that he is not here to correct the report if it is incorrect, but I have seen no criticism of it, and it apparently was a prepared report for the newspapers.

"To harness every water power in Maine means but a comparatively small payroll in Maine. To use the power generated from this water horsepower in Maine means that Maine's payroll is quadrupled. This is development. The first step towards this development is the harnessing of the water horsepower that private capital may develop water horsepower. It must have a market for the commodity it produces. That is electricity. With all water horsepower in Maine harnessed Maine at once cannot absorb all the commodity produced. Capital must have a chance to sell that commodity. There is but one place, and that is outside the state. I think I go along thus far with the power company."

From the same address:

"Maine needs water power development so that industries may be increased, Maine cannot absorb at once all of the increased electricity, but Maine needs and wants the right to use more electricity in the future as its industries grow and demand it. The power users of Maine want and need plenty of power now and in the future at the cheapest possible rate. This means the right to absorb more and more electricity as the user needs it, if power companies want the right to develop Maine as they deem it more profitable to them."

Those two quotations record Senator Carter's belief at that time, unchanged so far as I know, and they are entirely in accord with the

theory of the proponents of this measure. They prefer to sell their product in Maine if they can. They offer an act which they think and honestly believe will retain control for the State of Maine, and they ask now for exactly what Senator Carter said then was necessary, namely, that "capital must have a chance to sell their commodity, there is but one place, and that is outside the state. I think I go along thus far with the power company."

And now, to keep to that element of the case, we find introduced at this session of the Legislature, before this bill is introduced or its plans fully completed or known, what you have before you as Senate Document 7, which provides for transmission companies who shall not own or control generating companies. I might read to you other extracts and statements by Senator Carter proposing something of that sort to carry into effect exactly what is admittedly necessary in the quotations I have read.

What I want to emphasize now is this: We have under our present law general authority for the organization of corporations for the manufacture, distribution, transmission and sale of electricity. They may be organized for one or any more of these purposes. There can be nothing in the way of transmission of electricity in the State of Maine that cannot be accomplished by these corporations. There could be no reason for presenting Senate Document No. 7 for the creation of transmission companies alone, corporations which can only transmit and which cannot own or control hydro-electric plants, except to take the preliminary step toward the transmission of surplus power outside of the State of Maine; and it must have been surplus hydro-electric power, because nobody can conceive of a transmission company in the State of Maine solely for the purpose of carrying outside the State steam generated current.

So I say that we find the stage set with a vehicle for the transmission of surplus power beyond the borders of the State before the Smith bill is offered for your consideration. I assume therefore that Senator Carter at least still believes that the most efficient development of the electric power of the State of Maine, the water power for generating electricity, can be made only by provid-

ing for a market beyond the State boundaries of the surplus power, exactly as he stated in his remarks to the Lewiston-Auburn Kiwanis Club, thirteen and one-half months ago, and as apparently the vehicle is devised and presented to you at this hearing to accomplish.

Now is it possible to protect the rights of the State of Maine, or, putting it another way, so far as we are concerned with the Smith bill, does the Smith bill weaken the Fernald Law? If it does not weaken the Fernald Law, we are no worse off than as though we didn't have it, so far as that is concerned, that can be no objection.

I want to say in the first place, although I am somewhat reluctant to state an opinion positively in the face of some of the legal opinions that have been stated here—in the first place I believe that the Fernald Law as it stands today is constitutional so far as it affects corporations organized under the laws of the State of Maine. I do not believe it is competent for the State of Maine to prevent individuals or firms from transmitting electricity beyond the State, and nobody claims it is. That is not in the Fernald Law, it is not in issue here. I do not believe that it is competent for the State of Maine to prevent a corporation organized under the laws of another State, if it has a supply of electricity in the State of Maine, from transmitting it beyond the boundaries of the State. I believe that the Oklahoma case that has been referred to clearly establishes that principle; but that does not militate against the Smith bill, because nobody can deal under the Smith bill with such a company without obligating themselves, as Mr. Merrill has already explained, to comply with the requirements of the so-called Fernald Law.

I think the Fernald Law is an amendment of every charter that existed at that time and has since been granted by this State, just as effectively as though it had been written into it. But we do not stop here. It has been felt by some that the Fernald Law might be strengthened by some such amendment as is offered in Senate Document 6. Personally, I do not think it strengthens it, because I believe it was just as strong before. That is the only reason. I think the legislation is entirely competent. I say to you that

we have no objection to the passing of Senate Document 6 along with what we are asking for, so that there can be no argument upon that subject as between the proponents and the opponents of this measure.

I do want to call your attention to what I conceive to be two inconsistencies between the amendment and the original Fernald Law that should be carefully considered. If you adopt Senate Document 6, it may be and probably will be found that you have repealed the provision of the Fernald Law that excepted corporations already authorized to do business across the State line, which may not be so important, though it is a matter worthy of consideration. But more especially the amendment leaves out the right to sell electricity to steam railroads that operate interstate. I do not believe that any of you want to do that, and I have heard no argument in favor of it. I think, however, if you should adopt Senate Document 6 as it stands it might be considered to have that effect.

I might quote to you, but it does not seem to be necessary to do so to any extent, the opinion of others that it is entirely within the power of the Legislature to create corporations like that the transmission companies that we are asking for under this bill that will not have power to do anything except the powers you give them in their charters.

In the first place, the offering of Senate Document No. 7 seems to indicate Senator Carter's opinion that they may be so limited. I think he has made it sufficiently clear in his statement here. I quote from his statement yesterday, "Corporations can make no contract except as they are authorized by their charter."

He was quoted in the newspapers, and I haven't seen it contradicted, in an address before the Portland Lions Club, March 16th last, as saying:

"Maine, by a special act, should amend the charter of every hydro-electric company—which Number 6 proposes to do—which has a right to deliver, generate, transmit or distribute electricity, so that every existing company would be prohibited from transmitting electricity beyond the borders of the State. In that way every existing company would be prohibited from ever doing a public business in any other state or territory of the nation. \* \* \*"

which is clearly a recognition of the right of the legislature to create corporations with limited powers that cannot do anything outside of the powers which you confer upon them.

In that connection, I wish to quote to you an endorsement of the same theory, found in the last radio address of former Governor Baxter. It wasn't made for the purpose of endorsing the Smith bill, but if the rule of law announced there was good there it is good here.

"The State on granting a charter to a corporation gives it life. It is a creature of the State; has no power to do any act not specified in its charter, and is subject to such limitations as the State imposes, one of which is the non-export law. Since 1917 this limitation has been added to all new and amended charters, and Senator Carter's bill seeks to complete the work it has begun. For example, the State charters a street railroad to operate in Bangor. It cannot go to Old Town unless specifically empowered. The Portland Railroad is chartered to serve Portland. It cannot serve Augusta. The State limited the Central Maine Power Company in Maine. It cannot go to Massachusetts. The individual goes anywhere—not so with the corporation."

I say to you that if that is good law with respect to the Carter amendment for hydraulic corporations it is equally good law with respect to the limitations that we have incorporated in our proposed charter for the corporations described in the Smith bill.

So, to summarize that element of the case, we have prepared and offer to you at this session of the Legislature what we conceive must be the substance of the proposal in the mind of the author of Senate Document No. 6 and Senate Document No. 7, if No. 7 was prepared and offered as anything except an empty gesture; and I do not for one minute suggest that I believe it was offered for any such purpose. No. 6 was intended to strengthen the Fernald Law, preventing hydro-electric companies from transmitting their current beyond the boundaries of the State. No. 7 was prepared and presented to create a class of corporations which could certainly serve no purpose whatever except to transmit electric current outside of the State, because everything else is done by those that

have the several powers just as effectively; and it never can serve any purpose except to cumber up the statute books until you take the immediate step that connects up your hydro-electric plant with your transmission company with limited powers. So I say to you in absolute good faith we have presented to you now what must have been in the mind of the author of these bills as a step necessarily to be taken sooner or later and fitting exactly into those two measures, and incorporating either directly into our own bill every precaution that appears in these bills, or, as I have already said, saying frankly that we are perfecting willing that the rest of it shall be done by the adoption of Senate Document No. 6, offered for the purpose of strengthening the Fernald Law itself; except I want to repeat the caution, that to adopt that amendment as it now stands would interfere with what apparently was always in the mind of all those advocating the Fernald Law, that there should be no restriction upon the sale of electric current to operate steam railroads running into the State even though they also run beyond the State line. Now it seems to me that under those circumstances either there can be no objection to our present bill, except it may seem to some to have come before they are quite ready for it, or that the proposals contained in those other bills do not accomplish what they are intended and are recommended by their authors to accomplish.

The next question simply comes to this: When should it be done?

I have heard or read two proposals as to time besides what is contained in our own measure. If these radio addresses have been correctly heard, the first proposal was to wait until 1940; not that it never should come, but you should wait thirteen years longer. I read in a newspaper editorial within a day or two that instead of submitting this to a referendum on this bill now the matter should be threshed out in the next State campaign, and members of the Legislature should be elected partly at least on the question as to whether they favored or opposed some such measure as this.

We ask not that it be passed through now, hurriedly as some might say, although I submit it has

been discussed for some time—we ask that it be submitted to a referendum; but we think it is better that that referendum, if this thing is as we all think it is, both those in favor and those against—we think it better that that referendum should come where the people will vote directly upon this bill rather than where they will be asked to elect members of the Legislature solely upon the question as to whether they are for or against the bill, without consideration of any other qualifications for any other business that may possibly come before the next session of the Legislature. And if you get this thing out of the way in a referendum next September it may be that there will be more time and better opportunity to consider other important matters which have been neglected not only during this session of the Legislature but for many sessions in the past.

It has been suggested in some of these addresses that the people were either not sufficiently interested or not sufficiently informed to pass safely upon it, and, I think, that some of the members of this Legislature were not calculated to give this thing fair consideration. I do not believe we have reached a time when these matters cannot be as safely, intelligently, dispassionately, and perhaps as disinterestedly considered by the Legislature of the State of Maine as they can by some individuals whose advice is obtained whether it is asked for or not.

(Laughter.)

By that I do not question the right of everybody to give advice. But all we ask for is consideration of these questions upon their merits, remembering that we are here prepared to tie into them all of the precautions that those who have most continuously opposed the proposal have conceived to be necessary to protect the rights of the State of Maine.

(Applause.)

MR. CUMMINGS—Mr. Chairman, one question of Mr. Skelton through the Chair.

I would like to inquire of Mr. Skelton if Senate Document No. 6, the Carter Bill, so-called, was enacted into law if in his judgment that would prevent, in the event of the passage of Senate Document No. 40, the creation and operation of the

corporation provided for in that bill? Would the enactment of the Carter bill, Senate Document No. 6, prevent, in the event of the passage of Senate Document No. 40, the creation of the corporation provided for in that Senate Document No. 40. Is there anything in Senate Document No. 6 that would prevent the creation and the operation of the corporation provided for in Senate Document No. 40?

MR. SKELTON—I cannot hear what you say. Do you mean whether they could go along together.

CHAIRMAN GRANVILLE—He means are they inconsistent.

MR. SKELTON—They are not inconsistent. That is what I tried to make plain.

MR. CUMMINGS—That is my view of it, that the Carter bill does not in any way prevent the enactment of your bill.

MR. SKELTON—No. If the two bills are passed they can go along together. That is what I tried to make plain to the Committee.

MR. MERRILL—Mr. Chairman, so far as the proponents are concerned, this closes our case as prepared. I have been informed that Mr. James Boyd of Portland and Mr. W. B. Kendall of Bowdoinham would like to speak, and I suggest the Chair call on them.

MR. JAMES C. BOYD (Portland)—I am a consulting engineer in Portland, Maine. I appear here entirely for myself as a citizen of Maine, and came here at my own expense entirely.

I have been for some time very much interested and have worked to the best of my ability in Portland, through our Chamber of Commerce there, in an endeavor to bring additional industries into Maine, and without success, I might say.

The reasons for our lack of success have been the things which I have given pretty serious thought to; and it has come to my mind that perhaps my business experience, which has been up until the last five years entirely outside of Maine as an engineer, has given me perhaps an opportunity to see the situation here perhaps from a slightly different viewpoint than those who might have been more closely confined to the State. Perhaps you will agree with me that sometimes when we get far enough away a thing looks a little different to you; and, if you will pardon me, I am going to do something

I don't like to do—I am going to tell you a little of my own experience so you can see why I say this.

My first experience happened to be in the State of Maine. I came here fresh from college and went through the construction of the Bangor and Aroostook Railroad. Since that time I have been out of the State.

Most of my active life has been in New York, where, first as consulting engineer, then as chief engineer, and later as vice-president in charge of the company, I was for about eighteen years with the Westinghouse Church Company. Our business was that of engineers and constructors, and was intimately connected with public utility concerns pretty much all over the United States, also with large industrial plants, both in their design and building. And so that you might get an idea perhaps of the extent, I was looking at a record of them just before I came up here, and I found that we had done work in 45 different states in this country and in 12 foreign countries; that we had performed work in over 640 different cities and towns in the United States; that our engineering, that is work that we designed or constructed, or that we designed and others constructed, amounted to practically six hundred millions; and we had appraisal work that was about half as much more. So that it did give us an opportunity to get in touch with a great many of the big manufactures and a great many of the utility concerns and the men that run them. It also gave us this opportunity, which is what I am trying to come at.

Many of the big industrial concerns who called on us for assistance also asked us the question of where they should put the new plant they were talking about; so that it became our duty very frequently to look into all the reasons which appeal to the industrial manufacturer as to why he should put his plant here or there. I cannot tell you off-hand how many of those there were, but there were a great many. But it is interesting, I think, because as far as my memory serves me, in only two instances did we locate an industrial plant where the first and governing reason was the cheapness of the power. I think, gentlemen, if you accept that statement you will realize what it means when we try

to satisfy ourselves in the State of Maine that we are going to bring industries here solely on account of power. To my knowledge, the only type of industries which will come wholly on that account and where that is the governing reason is just the type that Mr. Wyman mentioned to you awhile ago, like the Bauer Chemical Company. I know them pretty well, and have done lots of work for them. That is the electro-chemical companies or metallurgical companies that use a very large amount of power, and, as he has already told you, must be very close to it.

We built two of the biggest users of that sort of current in the country, that is the American Cyanide Company, located right on Niagara, and the nitrate plant which is down at Mussel Shoals; and both of them are so close that the current is low voltage and we use heavy bus bars to bring it there, no high tension transmission at all.

So I have felt, since I came back to the State of Maine—which I did in 1920, and transferred all my interests here, while I cannot say as Mr. Wyman has said that every dollar I own is invested in the State of Maine, yet 99 out of every 100 is here; and I have a family of boys I expect to bring up and expect to stay here. The business in which I have got my investment here is one that depends not only on the prosperity of the businesses but on the farmers of Maine. I suppose I am looking at this from a selfish standpoint, but I am perfectly sincere in wanting to see everything done for the State of Maine that can be done.

I have felt ever since I came back here in 1920, that the Fernald Law was a detriment to the State of Maine. I felt that very strongly; and that was of course on the assumption which the layman has here, that it does prevent the export of power. If it does not, then certainly I cannot say that is the trouble. But I do know from my experience as an engineer that you cannot develop these big water powers—and Mr. Wyman again took the words almost out of my mouth when he told you about the Gressel Company. There was a company that wanted a large block of power; and a man would have to hunt a long while before he found anywhere in the United States, not just in Maine, a power which could

be developed at its maximum efficiency for just the amount they wanted, if it ever does happen, and we are always confronted with the finding of a market for the excess of power over that immediately wanted by the manufacturer, in order to bring the whole of it, average it low enough for him to use. So that I feel that perhaps I cannot add, and I am not trying to add a thing to what Mr. Wyman said in that respect; but it is exactly in accordance with my experience extending pretty well over this country and Canada.

I also wanted to speak of the opinion that I had formed of the big men handling our public utilities. I have run into them all over the United States, and my general impression is that those men who have made a success of it are men that are pretty good men to trust. Their own interest—and I presume they get right back as I do, that it is a selfish one in the end—is to make the territory they are working in or owning companies in a prosperous one; and they are mighty able men to do that. I have seen it done all over the country; and therefore I came here with the one thought, to urge you gentlemen not to hedge these men round with restrictions that make it hard for them to do these things, and to give them as much freedom in carrying out their plans as it is possible to do. Whether the last bill, the Smith bill, is the right bill, or whether there should be a modified bill, I do not know; but I do want to urge a bill which will allow the export of power and without too many restrictions.

I will say I ran into a case that might interest you. While I am not of course as familiar as these power men here with the details of what they have got for transmission and for powers, but I did know that there must be surplus power in the Central Maine system, and I will tell you why—because if they didn't have some I know very well they would have a big power station to take care of their peaks and fluctuations, and they haven't got it, and therefore I said I knew it must be so, that they had a large amount of surplus power. Mr. Wyman has told you that they have, and the very facts, the engineering facts of the case would prove that.

And another thing more, Mr. Flagg, you will remember mentioned

the fact about the steam stations; and I just want to cite a case of operation which is going on next door to what we generally look upon as the best water power proposition in the country, and that is the great Niagara powers, which are absolutely continuous power. In Buffalo, the Buffalo General Electric Company, which is a distributing and lighting power company, handle their system in this way. They buy from Niagara, which is only 25 miles away, a base load of this continuous power, and then they have a 100,000 k. w. h. steam station that is taking the peaks and the fluctuations; and that is the cheapest way they can operate their system.

Now steam power generated in such quantities as they are talking about gets down way below the cost of anything but a pretty efficient water power; and when we talk about in the dim future sometime when we are going to have our places full of electric current all over the state and there is not any left, I am willing to stake my reputation that I could build them, if some one doesn't do it better, a steam station to give it to them pretty near as cheap as they get it now, and perhaps a good deal cheaper.

I have a couple of farms here in the State myself, and I have got a case which I think perhaps illustrates again something Mr. Wyman has already told you better than I can, but I am going to repeat it because it is something I know from my own experience. Three years ago we wanted light and power there. I sat down with the engineers of the Cumberland County Power and Light Company and they very quickly showed me what they were up against, and it is just exactly the story you have heard here. The consequence was four of us on that road got together and made a guarantee for five years. They showed us there were 16 possible users, all of them being farmers except the four of us. I have a farm, but I don't call myself a good farmer. The four of us guaranteed the returns on that investment for five years, or at least the guarantee they asked us to make. The sixteen farmers on that line, if they each would take their share, we figured it would relieve us of about a year. Three years have passed and I have paid just about the same guarantee I did three years ago, and



only a very, very few of those farmers have taken that, although it passes right in front of their doors. And it might interest you to know, because they give me a statement of the exact takers on that line and exactly what they pay when they figure out how much my guarantee amounts to, I haven't seen a farmer on that line that has paid over \$16 a year. And I can readily understand, with the cost of these outlying lines, the very great difficulties the power companies are confronted with when they are attempting to give this wide service to the farmers. I hope they will be able to do it, but it is not an easy thing and it never will be a cheap thing.

In closing, I would just like to say this much. I have known about Mr. Wyman for a great many years. He has not been hidden down here in Maine. The public utility men, the men in that game, as they call it, have been watching what has been going on down here, and I have heard them talk about it and heard them talk about the Central Maine Power Company; and I think, and I would very much like to say that I believe that Mr. Wyman has performed a tremendous service to the State of Maine, and I believe he is a man we ought to be proud to have here, and I rank him with several other men in the State of Maine that I think have really done things, like the Goodall's down to Sanford, like Mr. Cram did when he put through the Bangor & Aroostook Railroad, and what Mr. Gould did further north in Aroostook; and I for one hope, after you have listened to him as you have, that you will feel as I do about it. What he has said to you today I think bears out everything I anticipated, although I had not the slightest idea of what he was going to say and had never talked about these matters with him, except possibly in a casual remark after I had heard him talk, and I shook hands with him and said I agreed to it. I am not here on his account in any way, excepting I do feel we people here in Maine ought to be grateful for what he has done for us.

(Applause.)

MR. ALDRICH—Mr. Chairman, might I ask Mr. Boyd a question. Considering the matter from the standpoint of the Insull interests, is it your judgment that if this bill is

passed it will be to the interests of the Insull's to have as much power remain in this State as it is possible to have here, and if so will you state your reasons for believing it will be to their interests to have power used in this State rather than transmitted out of the State.

MR. BOYD—If I understand you correctly—I will answer it anyway, and if I do not cover your point you may correct me—I think it would be to the interest of any company to develop just as far as they possibly could the sale of power just as close to the point they make it as possible. They get the best return on it at that point. They get the very least return on it at the other end of a long transmission line. And of course as they build up, as they bring in an industry, it brings in additional people, and the local load there is helped outside of what they may sell direct to the industry. They have every reason for doing that.

MR. ALDRICH—Then in your opinion it would be to the interests of these capitalists to exert their influence towards bringing industries to the State of Maine, if it were possible for them to exert it?

MR. BOYD—Absolutely, I do.

MR. W. B. KENDALL (Bowdoinham)—Mr. Chairman and gentlemen, I was intending to get out of here quietly in a few minutes if it had not been suggested by Mr. Merrill I wanted to say something. He knew I wanted to say something, because I am interested in Maine things. He didn't ask me whether I was or not—he knew it.

When the Central Maine Power Company came to Bowdoinham we had been carrying kerosene lamps around the different corners of the village year after year. They contracted to put in lights for us and light the village for five years for \$1.50 a night, just what we had been paying a man for going around and lighting the kerosene lights. And when that five years was up I said to some of our boys, "Don't say anything, and perhaps they will forget our contract is out and won't charge us much more; but probably they will double it up." The time limit went by, and nothing was said. I hinted to George Williams one day that they were using us pretty well down to Bowdoinham, but I told him he needn't mention it to anybody

else. He said, "We don't intend to put it up, Mr. Kendall." So you see, gentlemen, it pays to tell the truth sometimes, even among your good friends.

When we wanted electricity they said they couldn't afford to come to Bowdoinham, but they finally said they would run the line eight miles up where we were. When a man uses you pretty well, when your friend uses you pretty well, you have got to use him well. They came around to sell stock in Bowdoinham. We felt we were a pretty mean crowd in Bowdoinham if we wouldn't take some stock. I was paying \$20 a day for interest money to run my business, but, like every one of us, when we are faced with a proposition, you can always draw this conclusion: if we want to do a thing bad enough we will do it. The only reason we don't have what we want in this world, gentlemen, is because we don't want it bad enough; if we did, we would get it.

(Applause.)

Now I am not a forecaster, but if Mr. Wyman wasn't here I would say Mr. Wyman wants to spread out and do business. He is a constructive man. You know of all the dull, dead weights men ever bear sure none can weigh the soul down like consciousness of power unused. He has got a lot of it buttoned up under his jacket, and he has not touched the limit of it yet. And he wanted to do business so bad in this line of extensions that his afternoon he put on an addition to that liberal bill of his, so it would be used for the benefit of the farmer. He wanted it bad. He is going to get it. Of course he is going to get it. He cannot help but get it.

(Applause.)

I left off by saying I was paying \$20 a day for interest money in my business. I had to take a lot of Central Maine Power preferred stock, had to; but I needed the money in my business, and so I lugged it off to some bank. I am paying them five and one-half per cent. and they are getting six and one-half per cent. They are satisfied and I am satisfied, and my business is going on just the same.

(Applause.)

Now my friend Wood over here said that he is very anxious to have some power. He happened to sit opposite me in the car coming up this morning from Gardiner, and he told

me a story. He said he had been in to see the Governor. He said he had lived in Maine sixty-five years and had never met a governor face to face before; and of course he enjoyed it. "But," he says, "Kendall, we need power out in the country. If we are going to let it go out of the State—I don't believe in those out there being served first; we ought to be served first—and if we let it go out there we won't have the same chance."

Now it seems to me that man doesn't look quite far enough. If he did, he would know if the power goes out into Massachusetts Mr. Wyman or the crowd that runs it will see that they pay in the cities a little might more for their power so there will be a surplus left to take care of these little communities here and there. All big business is done in the same way. You cannot exactly impose a tax on the cities, but it comes about in such a way that the poor fellow is helped out and in time he grows up and becomes a part of the great whole. So if the farmers of Maine know where their interests lie they want to see this business go off into Massachusetts or some place and get a surplus of money, so these little rivulets will be dammed up. I wish I was a part of your committee so I could take that up inside when you are in executive session.

It seems to me, gentlemen, that this whole problem, after we look back at it in two or three years will seem a darned simple thing. There are only three things to do. One is that you can drive business out of Maine, but you can't drive it in gentlemen. That is point one. The second is, this overflow I just spoke of, if that can be hooked up with a lot of cities where there is a lot of money, it will bring some of it in here and develop our rural sections better. The third point is, if we should grant this and we should get this business down here in Maine and lots of money flowing into somebody's pocket, whether we would not be abused when these people would have got so rich they would put it in their pocket and put the screws on us. You know what I mean by that. In the old time people used to do such things, but they don't do things that way nowadays. You can't do it. It is not according to up-to-date principles. The trusts do

not do it; the principles of life do not allow it; democracy does not do it; real men do not do it. It is not done, and if it should be attempted to be done there are ten thousand investors all over Maine looking out for their interests, and they would come into this Legislature and twist them harder than they could ever twist us. Look at the great expenditures of money they are putting into the hands of the Legislature. This Legislature can impose any tax it sees fit on that property, on the dams, buildings and wires running through here.

By the way, just before the war a friend of mine closely associated with the American Cyanide Company said that company sent its engineer down here to the headwaters of the Kennebec River, the position of the old original baby octopus, and investigated to see if they couldn't get some power up there to run a line down to the seashore and make cyanide. They couldn't find power enough. If they had known of this magnificent Bingham power and had got possession of it—and those people have grown big enough so they are talking about buying Mussel Shoals—if they had taken that power down there and had a village of four or five hundred people, what would it have amounted to? They would have tied up that magnificent power for all time.

Now if this company, as suggested, is going to run a line clear across the State of Maine, you have got something to tax it on, so if they come at us pretty hard don't worry. You know the microbe of fear kills more people and disheartens more operations than all other combinations in the world; and when we get up where we are 70 years old we don't fear anything—we are going to live 70 years more, microbes don't get hold of us, we don't fear this any. The time to fear it is when it has grabbed hold of us, and then bust its eye.

(Laughter.)

Just a minute, gentlemen. You are good-natured, and, with the Chairman's permission I would like to go back and tell you just twenty years ago this month I was a member of this House, and this is the first time I have spoken before a committee of any size since that time, so you will excuse me if I take another five minutes. Perhaps I will guarantee I

won't come back for ten years more.

Twenty years ago this month, in 1907, we had some such a case as you have before you, although we handled it with one committee. We old-time fellows had real men on our committees.

(Laughter.)

That was the last year, you remember, the Maine Central Railroad gave free passes to all of us fellows to come and go on. Prior to that time we never had an auditor, and all the State officers presented their bills to the State Treasurer, and they were paid. Well, even in those good old times, as honest as we were, some people got a little careless, that was all.

(Laughter.)

We were on the Committee on Education, I had the privilege and pleasure of being on the Committee on Education with Carl Milliken and George Stearnes; and at that time Stetson was superintendent of schools. Stetson was a big-hearted, large-sized man. He couldn't be small if he wanted to. He had a big heart, he had to have, because he was big himself. And of course going around over the State he used to address a great many communities and women teachers, and they would give him a lot of applause, and it is a pretty dangerous thing for a man to have a lot of applause from a thousand women. But he was careless, and he spent too much money on his expenses. He didn't mean anything by it. So when the time came for investigation Mr. Stetson was pulled up pretty hard, and the hearing came before our committee. We had a hearing about as large as there has been here this afternoon. It was a pretty serious proposition; a man's moral character was brought up, and that pretty closely. Many people held he did it intentionally, and we had to stand as a buffer.

Governor Cobb had an eye on things all the time. He was our commander-in-chief in more ways than one, I assure you. Governor Cobb took himself and one or two other members of the committee in a quiet way and talked with us separately in the Augusta House and explained the situation to us, as to what our conscientious thought would be in regard to exonerating Mr. Stetson in regard to this expenditure. He felt pretty keenly that

Mr. Stetson never meant to take a cent from the State of Maine under any conditions, and he was afraid we would censure him. I never met a live governor before that time either. I am glad I had my admission way along back there.

(Laughter.)

I went into the Maine Central Railroad office once to get a claim adjusted. I went to see Mr. Hobbs. I was a little glib. I will admit that he got onto me a little might. I didn't mean to overstate things, but I was taking a little too much rope. Mr. Hobbs says, "Kendall, tell it just as it is." That is all I wanted, and I told him just how it was, and just where I thought they were at fault, just as clear as a man ever talked. When I got through he not only exonerated me but he gave me more than I expected in the way of a rate; and he wrote out an order which I don't think he had a right to give me permitting it. He said, "Kendall, tell it just as it is." He spoiled me, for ever since that time I have always told the truth. I intended to make that remark relative to my previous remark. I guess you will see the point all right.

Governor Cobb gave me a talking to in that room, and I want to tell you gentlemen that when I came out of that room I was a better man, and I have been a better man ever since. That is some governor. But couldn't Governor Cobb swear elegantly; couldn't the Governor of the State of Maine at that time swear magnificently.

(Laughter.)

I had a friend up in the town of Sydney a few years ago. He was a farmer and quite a comical fellow, and he had a brother who is an eminent divine located in Lewiston, Maine, and he used to say, "I swear a little and my brother prays a little and the Lord knows neither one of us mean it."

And when our commander-in-chief, when our Governor in 1907 used to swear he didn't mean much by it. It came about because of the chicanery an duplicity of his compatriots in the Republican party that said they would stand up under the prohibitory law of Maine and didn't do it.

And he never vetoed a bill during the whole session. I know that to be a fact. And the reason he didn't veto a bill during the session of 1907-1908 was because if he saw anything

looking up pretty bad he would call in some of the boys and say, "Adjust that thing. It ain't what it ought to be." It went through splendidly and we passed some good laws. I wish Governor Cobb could have been here tonight to hear me say how he could swear elegantly. But I don't believe for the past twenty years there has been a Governor in the State of Maine who could swear elegantly, magnificently. (Laughter)

I read a couplet the other day that went like this. When I try to quote poetry I always forget it. Give me half a minute and I will recall it, I think. I have got to give it up, because I cannot get the connection.

However, getting back to the Central Maine Power Company, I said sometime ago that a certain man did something because he just couldn't help it, because he had a big heart.

Now it is just as natural, gentlemen, for some people to be honest—we all know this—as it is natural for other people to be dishonest. We shouldn't give a lot of people credit for the things that they do because it is so natural for them to do them. It is awful natural for Mr. Wyman to be constructive. It is just as natural for a lot of other people to be just as destructive. They look at it that way and they cannot help it. They are honest in it. All is, a quiet, cool, collected committee like this are just the people to sit by and let everybody fire off his bazoo and then we will know just what to do, and that is what you are here for. You are going to have a little fight among yourselves to eliminate this and that, but before it is all over it will be beautifully done and successfully done and properly done, I know it will.

Mr. WOOD—Mr. Chairman, as my friend Mr. Kendall referred to me in regard to having electric lights and power, I will say I did the Central Maine Power Company a favor and did Mr. Kendall a favor and I paid for it out of my own pocket. Let me tell you. The Central Maine Power Company wanted to put a line across the Androscoggin River to connect with Bowdoinham and the feldspar mill, and the neighbors that owned land adjoining the Androscoggin River the Central Maine wanted to go across did not want to give them permission for a right of way. The agent came to me. My land near the river was at the point the Cen-

tral Maine engineers wanted to put the line across. I said, I want to accommodate the Central Maine Power Company, but at the same time I would like to have the Central Maine Power Company accommodate me. The consequence of it was I talked the matter all over with the engineer and the right of way agent and helped them survey the line through nearly half way to Bowdoinham free of charge, because I thought in having the line go through there they could put on a transformer for me, because it was about 500 feet from my house where I designated the line for them to go across my property. I thought they would put a transformer onto the line and give me some electric power for the accommodation; and when I found I could not get it I saw to it they paid me for the right of way. I afterwards sold the place to another man and gave a warranty deed. He sold it, and the consequence was the man who bought it came onto the man I sold it to, because I hadn't specified in the deed there was a pole right which had been granted to the Central Maine Power Company, and the consequence was I had to pay the man more than I got. I am feeling kind of sore because I don't have any electric power, and that is also why I think now I ought to have it. I have helped the Central Maine Power Company and have helped Mr. Kendall out, and it would seem as if there ought to be something done for Mr. Wood. (Applause)

MR. WYMAN—I would like to say, Mr. Chairman, I entirely agree with Mr. Wood.

CHAIRMAN GRANVILLE—Is there any one else to appear in behalf of Senate Document 40? If not, the Committee is ready to hear any opponent.

MR. DONAHUE—Mr. Chairman, I said this afternoon when I spoke on another bill that I was opposed to six of the bills. I am here primarily tonight that that matter shall not be misconstrued. I am interested in all the bills, and in this one.

I wish to call your attention to a provision in this bill which proposes to take the place of that of Senator Maher. In Section 2, a permit is required of the company that will transmit electricity out of the State. This provision is like that of Senator Maher's, except, of course a breach of the provision would not

be held up to such a drastic penalty.

Then again, another section of the bill provides for the transmitting companies, taking the place of Senate Document No. 7 presented by Mr. Carter. Mr. Carter is not here. I believe, but there is a difference in these two sections which it might not be improper to call your attention to. I have no complaint as to the provisions of Senate Document 40, but I think it may be proper for us to consider a moment the difference, if there is a difference, in these two bills. Senator Carter, if you will recall, this afternoon spoke regarding that difference in that his bill provides for and touches corporations now existing, while Senate No. 40 would only apply to corporations to be incorporated hereafter. This to my mind is absolutely proper. If I read the Carter bill correctly, Senate Document No. 7, it says that these companies organized for the purpose of transmitting electricity—that means companies now in existence who have that as a purpose and who have these other purposes too—that they are expressly limited in their corporate powers to the transmission of electricity, which means that these companies now having the right to transmit electricity and the right to generate and sell electricity may not hereafter do anything but transmit electricity, that they may not own their plants. It has not the corporate power to own, operate, control any hydro-electric generating plant.

Now, Gentlemen, this law does provide for the companies now existing. This first section is made strictly applicable to those companies, and it proceeds to say "and each and every corporation hereafter incorporated." But this hits at the companies, goes directly as if it named them, to those companies now operating, and it says to this effect, that if this law takes effect to-day they may not own the property which today they do own.

MR. MERRILL—May I interrupt a moment. Mr. Carter offered an amendment, saying that no transmission company,—and this he interpolated—"which does not have power to own or generate." He omitted that in the original draft of the bill. He made the correction and offered it yesterday.

MR. DONAHUE—That is entirely proper, of course. That is the ob-

jection I find in the bill, that if it went into effect as originally presented it would mean nothing less than confiscation of all the properties owned by these companies who are transmitting electricity, and of course they all are. Of course if you change it as is proposed it then applies to corporations hereinafter to be organized, like the Wyman bill.

Gentlemen, I have abused your patience today, and I haven't much more to say.

The Wyman bill to my mind is as good a bill as could be found. I think it is absolutely sound. I used to know Senator Fernald. I met him in Washington last June and had a talk with him. I used to know him, and respected him and loved him. I respect the Fernald Law, but, gentlemen, I have given you my reasons why I think that the Fernald Law will never be a success. But this Wyman bill—the gentleman here who has given us such good entertainment tonight has said if you want a thing bad enough it will come through—and I have felt the same way in regard to the Wyman bill, that they did not want it bad enough. But now I think that is past, and it is true that they do; and I think the citizens of Maine want bad enough to accomplish what this bill will accomplish; and from the study of all of the bills I want as one citizen to say that to my mind this bill is sound in every particular.

(Applause)

CHAIRMAN GRANVILLE — Is there anyone to appear against Senate Document 40?

MR. CUMMINGS—Mr. Chairman, I would like to say just a few words.

Now you have had a very pleasant and entertaining hearing this evening, but the time may come when this will not seem such a joke. I have read somewhere that in the multitude of counsellors there is wisdom. Sometimes yesterday and today I have been inclined almost to doubt it, and to come at last to the conclusion that where you have a multitude of counsellors true wisdom was more difficult to get at, and surely where you have a multitude of bills confusion seems quite likely to result.

I notice one surprising confession or conversion of the gentleman who has last spoken. This forenoon he

was opposed to all of the bills, and now this one has arrived at perfection.

Now I think that I know some of the things that the people of Maine think about this proposition and about the permission to export what is current surplus. You remember the old story about the shepherd and the wolf. You know that the wolf had put his flock in great jeopardy, but the conditions were such and his age was such that the wolf thought it wise to make terms with the shepherd, and they agreed together that the wolf should have all the dead sheep. And it went along, and after a time the shepherd discovered that if he saw a sheep that today was ailing tomorrow it was gone, and after a time his well ones began to disappear, and he discovered that the wolf had learned to look upon the sick sheep as already dead and the well ones as sick.

And they are afraid if they give them authority to take the so-called surplus that it will be but an entering wedge, it will be but an opening of the door. You know the story of the old Arab who permitted his camel to put his head within the tent to escape the elements, and the camel kept crowding in and in until at last he filled the tent and the Arab had to go outside; and this may be the camel's head within the tent.

I think there may be two sides to this question. The bill itself I have read with some little care, and it appears to be a straightforward bill, well limiting what we will call the intent and purposes of the bill, and, so far as I can see, clearly stated. But there is one thing I want to call to your attention, and that is one of the evils in this country today, and a very great and growing evil. That is the holding company. Another great evil is the organization of outside corporations which are organized and exist for the purpose of milking the other corporations, and which thrive in that way. It has made some companies almost worthless, as you know, by that process. You are creating in the Smith bill a company of that character. It will be a company financed and owned by cer-

tain interests who own the companies from which they are purchasing power, and it can be so manipulated to do almost anything. And I want you to take that into consideration; I want you to think about that a bit.

You will recall that I asked a question this forenoon as to the profits that this company might make, and the answer was that not being a public utility there was no limits to the profits that it might make, and the answer was in substance that they hoped they would be large. There will be an opportunity there to carry that out, and it may result in quite a serious thing in the course of the next ten or fifteen years, and it is worthy of consideration, and I do not believe that a company of that character should be organized in this state without a limit placed upon its net earnings. I was somewhat in sympathy with a bill that Mr. Wing presented, looking into the taxation of the product, but that is not fundamental. When you try to get regulation of any sort in that manner they will be able to take the amount of the tax out of you and you will pay it just the same. The only way we can escape those conditions is by a limitation of the net profit that such a corporation is permitted to earn. I think if you contemplate passing this bill there should be an amendment put in there to that effect, and I want you to consider that.

Now I recall the statement made by Mr. Wyman, and the almost painful picture, but true nevertheless, of the village blacksmith, whose hammer rang no more upon the anvil, and the harness maker who no longer punched, or buckled leather, because he had no more to do. I don't know as he thought the exportation of power from Maine would change those conditions, but I can assure him that what produced those conditions, what did away with the village blacksmith and the harness maker was the automobile and not the Fernald Law.

The hour is late, and I am never disposed to take up a great deal of time. Following the suggestion I made in relation to limiting the

earnings of this corporation, I am going to leave this suggestion with the committee. I think if that \$500,000 of net profit that might be secured to this company by the sale of their surplus that is now running to waste if they had a market for it at five mills, I think if Mr. Wyman could send it into Portland on that basis we would use it for heating and cooking.

MR. WYMAN—Will the gentleman kindly inform me who I can see about that?

MR. CUMMINGS—For heating and cooking?

MR. WYMAN—About any market where we can afford to sell it at five mills.

MR. CUMMINGS—I was referring to your ad where you made that statement.

MR. WYMAN—You mean to distribute it to the party using it?

MR. CUMMINGS—No, but the expense of getting it to Portland would not be so very much.

MR. WYMAN—All the power that Portland can use at the present time is being sold to it not at five mills but at five mills for the first 40,000 k. w. h. and four mills on the balance.

MR. CUMMINGS—Don't you think it is practical to use it for cooking and heating?

MR. WYMAN—Entirely so, but not at five mills a kilowatt hour distributed to customers.

MR. CUMMINGS—What would be the average cost of distributing it to the customer?

MR. WYMAN—Our present rate in our territory, not including Portland, is 3, 2 and 1 cents, depending on the quantity used. I think the rate in Portland is very nearly the same to the private user, and Portland is taking all of this surplus we can get them to take, and in order to stimulate the sale of it we recently reduced the price three mills.

MR. CUMMINGS—Is it used in Portland by large manufacturers?

MR. WYMAN—I do not know. It is distributed there through the Cumberland County Power and Light Company, with which I have nothing to do! but they have all the energy they need, and they can have more if they want it.

CHAIRMAN GRANVILLE—If there is nothing more to be said on Senate Document 40, it will lie upon the table for executive session.

We will now proceed with Senate Paper 177, "An Act to Create a Commission to Negotiate a Treaty regarding Water Powers and Electricity in New England."

SENATOR OAKES—Mr. Chairman and gentlemen of the Committee, the hour is not only late but very late, and I realized that this matter would be the last one to be considered by the Committee, and I have tried to arrange my matter in such a form that I can give it to you in the most concise manner.

Before taking up the discussion of the bill, I have dictated and had written out a memorandum which I would like to read.

Some publicity has been given to a report said to be current that this bill was introduced at the request of the Governor. In fairness to him, I am under obligation to say that that report is in error. I have no right to take any credit of that type. The bill must stand on its merits as far as I am concerned. I had not heard that the Governor was in favor of my bill until last Tuesday evening. I was informed yesterday that he has been seriously interested in this line of procedure for a great many months. I trust that we may return a bill in such form as to have his support. It would add strength to our judgment to have him coincide.

The most rapid growing and controlling factor in business today is electrical development and transmission. Statistics show the increase of industrial uses; everyone can, after a moment's thought, realize the number of new applications of electricity to individual uses.

A few years ago a 33,000 volt line was unusual. Now 220,000 volts, or even more is practical. This has made possible long distance transmission at relatively small line loss, the taking advantage of the varying requirements and varying sources of supply of localities of different types far removed from each other and a consequent balance of load and economical distribution.

Many leading engineers and other prominent men believe that the country naturally divides itself into several sections, one of which is New England, and there has come to be recognized a principle known as regional development and control. The provision of the federal constitution that states may not make compacts or agreements among themselves without the consent of Con-

gress and the converse legal situation whereby states may make compacts and agreements among themselves with the consent of Congress lends itself to this principle. And, by the way, my bill uses the word "treaty", may make treaties, compacts and agreements, and although many of the bills which have been offered use under this clause the word "treaty", there is a provision of the Constitution that the states shall not make treaties among themselves and the word is an unfortunate word to use, although it probably does not affect the legality of the bill; and if it should be approved I think it should be returned with that word left out, just using the words "compacts and agreements", as found in the next paragraph of the Constitution, which is the compact clause under which we are working.

Many instances are found in history and in the legal reports where states for various reasons have joined together by compacts to work out their joint problems. Many instances have occurred where boundary lines have been determined in this manner. Perhaps the most notable use of the principle is the compact regarding the Colorado River which was developed by Mr. Hoover, approved by Congress, and is now awaiting the approval of one state, Arizona, with some complications regarding Utah.

Now the New England Council, or a committee of it, have been considering the problem of Federal control, and they have by their committee worked out the problem by suggesting a clause to be inserted in contracts of power companies.

In connection with that clause a letter was written to the electric light and power companies of the New England States by several of the power interests, including Mr. Martin J. Insull. I read it merely to show the feeling of the power companies on the question of Federal control.

"We call your especial attention to that portion of the report which deals with interstate transmission of power and to the present lack of jurisdiction of the public service commissions and Departments of Public Utilities over such interstate contracts. There is grave danger that the present limited jurisdiction of the State commissions may invite federal control. Such a result in our opinion and in the opinion of many



others would be undesirable either from the point of view of the power companies or of the consumers of electricity in New England."

And Mr. Hoover, at a meeting of the New England Council last December, made a statement which I was going to read somewhat at length, on that point, but I will just read a very short portion of it, on account of the lateness of the hour.

"In New England, there is probably a larger interstate movement than in many other sections of the country. It may amount to as much as eight or ten per cent perhaps. But it is that fraction of power movement that gives the basis for agitation for federal regulation. So that, if you are able to find a formula by which you can solve that fraction of the problem, you will have incidentally saved yourselves from further encroachment of federal government in your own state authority."

Then he says:

"There is one other suggestion which I presume your Committee had canvassed in this connection: That, if it is found impossible to secure voluntary submittal of these questions there is an opening under the Constitution for solution without encroachment through interstate compacts. That is a constitutional function which the states have seldom exercised. I believe there are only a few occasions where our states have entered into such compacts involving more than two states. It might be possible if your program of voluntary submittal shall fail, for you to take the lead, in New England, in introducing a new idea in the decentralization of government by setting up an interstate compact by which the states delegate to their existing commissions, or to the representatives of their commissions, control of all interstate power within the compact area."

That is a statement by Mr. Hoover in December, and this is a stenographic copy of it. I think that is the only time Mr. Hoover has ever taken up the direct question as to the New England situation, although he has worked on this question of agreement under a contract clause in various other parts of the country.

Senate Document 75 provides for a Commission of three members representing this state who shall meet, with like Commissioners, if appoint-

ed by Massachusetts and New Hampshire, in joint session for the purpose of determining upon a contract covering the use and distribution of electrical energy among said states. It will be necessary as the bill is drafted to have these three states concur in order to arrive at a compact. The States of Vermont, Rhode Island and Connecticut are also invited to join in the joint conference, but their participation is not necessary. That is to say, if Maine, New Hampshire and Massachusetts join in the compact the compact is made; if New Hampshire and Massachusetts do not join, there would be no compact arrived at. Rhode Island, Vermont and Connecticut are invited, and if they join well and good, but if they do not join the compact would not thereby be held up.

As a member of the Judiciary Committee, I feel free to act on any of the several bills presented covering the water power question regardless of this measure. As far as has been determined to my knowledge this measure can be passed and become effective without interference with any of the other bills. Its passage will strengthen and perpetuate such policy of the state as is determined by the other bills and if none of the other bills should be successful in passage it will, provided Massachusetts and New Hampshire join, make progress in solving our water power question.

If this measure is presented with an emergency clause attached, notification can be given to the other Legislatures of the several states of New England which are now in session in time to have similar legislation passed in those states this winter. The joint commission could prepare the tentative compact for ratification or rejection at the next regular session of our Legislature or if the work could be accomplished and it were deemed wise, a special session held prior thereto. It is assumed that this commission will make a careful study and will make a canvass which will cover any constitutional questions and endeavor to meet all the problems that the policy of the state requires. If the work could be accomplished, the matter could be presented to a special session of the Legislature. If that is not feasible, it could at least be done two years from now. But with the other states in session as they are now if

we can pass it through with an emergency clause we could get other states to pass it at this winter session, so in the next two years time it could be worked out where our Legislature two years from now could ratify it. It could then go in force at once and become effective. And I might add, it has been suggested that not only could this bill be passed and any one of the other bills passed, but even this bill could be passed and all of them could be passed. For example, the Carter bill could be passed, to hold things in statu quo as far as it is effective, and the Smith bill could be passed, and the Chase bill, with possibly some modifications, could become effective as a part of the compact and determine the will of this Legislature and of the people as assisting the commission in drafting their compact.

If the compact is successfully completed it will enable our state to develop its electricity to the maximum, at once utilizing the excess to meet the demand which now exists in Massachusetts. It will enable a board to be perpetuated that will have control of the surplus electricity and recall it when required in this state, and if the time should come that Maine required more than it were possible to produce, it would enable us to call for electricity over the same wires from generating plants in other states. And I think that is a possibility we should carefully consider, perhaps not at present, but in the future, when our development is at least part way along.

In other words, it would create an elastic situation which would assist in solving the varying power problems in the several states according to the regional theory.

I will not go into the legal discussion of it at this late hour, unless there are any questions that are asked and anybody wishes to have that done. That is all I have to say.

**CHAIRMAN GRANVILLE**—Has any member of the committee any questions he would like to ask Senator Oakes?

**MR. THURSTON**—Why do you include Vermont, Rhode Island and Connecticut in this compact?

**MR. OAKES**—The bill provides New Hampshire and Massachusetts must join with us and enter into the agreement, or there will be no compact. New Hampshire is our next door neighbor and Massachusetts al-

most our next door neighbor, so without New Hampshire and Massachusetts there would be no object in having a compact. Vermont is further invited, and so are Rhode Island and Connecticut. The idea is that these states may join in the development if they desire to. But it is necessary to have Massachusetts and New Hampshire in order to have the compact be of any value. The other three states, as far as we are concerned, if they decided it was to their advantage they are invited to join, but their refusal so to do would not break up the compact.

**MR. CUMMINGS**—I would like to ask Mr. Oakes if this bill implies that Maine is incapable or unable to handle her own water power problems without the assistance of New Hampshire and Massachusetts.

**MR. OAKES**—It implies this, if we have a method whereby we can transmit our power to Massachusetts and have an opportunity to utilize this surplus as quickly as possible, give these companies an opportunity to develop as quickly as possible, it will be to our advantage, provided—and I think this would be a requirement of the people of the State at the present time—that there is a method of recall of that power when needed in this State to meet the requirements of this State, and this measure, provided the compact is worked out by the commission according to the will of the people, which I believe exists, would give that opportunity.

**MR. CUMMINGS**—What is the theory of the compact? Does it imply that these other states are to participate in the management of our hydro-electric problems?

**MR. OAKES**—The theory of the compact would be this, that a joint committee is formed, with three commissioners from Maine, three from Massachusetts, three from New Hampshire, and the other states if they coincide. It has also been suggested it might be well to have five commissioners from each state, because at times it would be impossible to have all commissioners present, and there should be three from each state present at each time.

**MR. CUMMINGS**—Of course the questions arising would be decided by vote.

**MR. OAKES**—Then these commissioners will jointly by conference

work out a compact or agreement to determine the method of use of the electrical power in Maine, New Hampshire and Massachusetts. That agreement would be of no avail unless ratified by the states themselves or by their legislatures, and also ratified by the Congress of the United States, as provided by the compact clause of the Constitution.

MR. CUMMINGS—Well, if it has to come back and be ratified by the Legislature, there is not so much danger. But doesn't it seem a bit like three boys, one of whom had seven apples, the other had three, and the other two, and the fellow that had two and the fellow that had three said, "Let us pool them and put them together and divide." If it does work that way, I don't believe we want to go into it.

MR. OAKES—It would, except that the electrical energy requires a generating plant to develop it, and they never will build generating plants until they get an opportunity to utilize power.

MR. BARTLETT—How long do these commissioners hold office?

MR. OAKES—The commissioners by their compact would work out the problem of future control. My theory would be the commissioners should merely hold office until they have made a report, and then that would end it, and they would provide that the future control would be in the Public Utilities Commission.

But I find that under some of the compacts, under the Delaware River compact, the commissioners are staying in power, continuing to elect and re-elect, and are regulating the use of the power on the Delaware River as conditions change from year to year on the river.

MR. BARTLETT—They shall just hold office until they have rendered this report?

MR. OAKES—The bill does not provide that these particular commissioners would, but they might provide themselves that some other commission should continue in the regulation, the public utilities commission for instance, and I think the public utilities commission should do it because they are better equipped.

MR. BARTLETT—The public utili-

ties commissions in each of the three states?

MR. OAKES—In each of the three states. Our state would never ratify it, we may just as well assume from the start, unless the provision was in the contract that our public utilities commission could always recall it when it was needed for use in this state.

MR. CHASE—Senator Oakes, do you know of any recommendation relative to water power made by either the Maine Water Storage Commission or the Maine Power Commission which was ever enacted into law in the Maine Legislature?

MR. OAKES—Well, they didn't make any recommendations that were to be compared with this type of recommendation.

To answer your question directly—no.

MR. CHASE—That is the general idea of a Commission as a means of accomplishing something as it has worked out in the State of Maine before.

MR. OAKES—I will agree with you that is so, but I do not agree with you that the analogy is good.

MR. LINNELL—I understand, Mr. Oakes, it is your idea that this will obviate the possible control by the Federal government of interstate commerce which might be extended to this transmission between the states, and that the making of the contract with the consent of Congress to that compact would thereby put the stamp of approval of Congress—Congress at present being the only body able to regulate interstate commerce as it sees fit between the states—would put the stamp of approval of Congress upon the commerce carried on between those states as they may agree to carry it on, and so far as any other state is interested in that commerce there would be no further reason for Congress to legislate with reference to that commerce. Is that the idea?

MR. OAKES—Yes; and further, that the present authorities in Washington and those people who are studying our water power problems are disturbed by the possibility of a condition arising among the states whereby Federal control will be found sufficiently necessary so that some action will bring about Federal control and take it away from the states,

and if something is not arrived at by the states themselves, either by a voluntary agreement, as has been suggested, by the power companies, or by some other means, both the people who are interested for the protection of the people themselves, as in this State, and the power companies who are interested for the protection of their own interests—they are disturbed that Federal control will take the place of state control. And Mr. Hoover has been very active on the question of avoiding Federal control and retaining State control by State bodies and by this regional control by several state bodies in the region, who can act better than the Federal government, can act for the entire United States where the problems are so diversified.

MR. CHASE—If power were transmitted from New York into Massachusetts, what would be the effect if the State of Massachusetts, being a member of this compact was itself engaged in interstate commerce in power to and from a state which was not a member?

MR. OAKES—That would be a question for the Commission to work out. My thought would be that the Commission would provide that Maine power or power from Maine if possible should not be so commingled as to get into interstate commerce between Massachusetts and New York. I am not sufficiently informed on that to work that out.

CHAIRMAN GRANVILLE—Has anybody else any questions they would like to ask Senator Oakes?

MR. DONAHUE—I may be expected to say something, in view of what I have said before—and one might as well be converted twice as once. I have no fault to find with Mr. Oakes bill except this, that it may possibly lead to delay, if this were adopted and not accepted as a final consideration of the Committee and the legislature I think it might be very well to call attention, at the top of Page 3, where the appropriation is made, to propose a correction of what might be necessary. I take it the intent is that \$10,000 shall be appropriated, and it reads "the sum of ten thousand dollars or so much thereof as may be necessary is hereby appropriated for the expense of the commission, to be paid to the state

treasurer monthly on vouchers approved by the governor and council." It might be considered each month \$10,000 was to be paid. I take it that is not the intention. I think it is not altogether clear.

MR. OAKES—That can be reworded, if there is any question on it.

MR. DONAHUE—It has been held that Congress as well as the states is forbidden to make any discrimination in any commerce regulations (12Wallace 431) It might be that all constitutional objections might be overcome. I see no danger at all in this bill except possibly one—that it might not be accepted as final and the Legislature might delay where I think there is an opportunity for constructive action at this time. I thank you.

MR. MERRILL—Mr. Chairman, I do not appear in opposition to the Oakes bill in behalf of the company which I represent, if the Oakes bill were to pass along with the Smith bill. I know it is not offered for the purpose of throwing a monkey wrench into the wheels of progress. I have no objection to it whatever. If, however, it is to be seized upon as a means of delay which will put off the time when the people having a surplus of power here can make use of it, I should object to it; but as drawn and as offered in good faith by Senator Oakes, whose good faith nobody would doubt, I would have no objection to the bill going along with the Smith bill, just the same as I would have no objection to the two Carter bills going along with the Smith bill, if anyone thinks they give any added protection to the State of Maine in its control over the surplus of power and tend to assure to the citizens of Maine an opportunity to be served first. But I do think I would be remiss in my duty to the Legislature in not pointing out to the Legislature that the compact clause so-called under the Constitution can be seized upon as an opportunity and a means to avoid Federal control.

Mr. Oakes stated in presenting his bill, or in answering a question that the compact could not deprive Congress of its power of control over interstate commerce. This question has been before the Supreme Court of the United States, and in discussing the effect of the compact clause of the Constitution on the power of

Congress to regulate interstate commerce, the Supreme Court of the United States said:

"It is also urged that this act of Congress is void for the reason that it is inconsistent with the compact between the states of Virginia and Kentucky at the time of the admission of the latter into the Union, and which compact was assented to by Congress at the time of the admission of the state."

This court held in the case of *Green vs. Biddle*, "that an act of the Legislature of Kentucky in contravention of the contract was null and void, within the provision of the Constitution forbidding a state to pass any law impairing the obligation of contracts. But that is not the question here. The question here is, whether or not the compact can operate as a restriction upon the power of Congress under the Constitution to regulate commerce among the several states. Clearly not. Otherwise Congress and two states would possess the power to modify and alter the Constitution itself. This is so plain that it is unnecessary to pursue the argument further." (*Pennsylvania v. Wheeling Belmont Bridge Co.*, United States Supreme Court, 18 Howard 421.)

So while I have no objection to the Oakes bill and have no objection to appointing a commission to investigate the compact clause, if ever after that Commission representing the State saw fit to enter into a contract, when once it had entered into a contract with these two other states as parties it would have forever tied the hands of itself to withdraw from that compact without the consent of both of the other contracting parties, and it would not in any way have prevented Congress from having every iota of power which it now has and had at the time the compact was entered into to control interstate commerce. So the compact clause cannot be relied upon as an effective means of preventing Federal control. Of course if the compact clause was assented to by Congress there might be less danger that Congress would withdraw the assent which it had once given; but no Congress by giving that consent could bind any future congress from withdrawing it, neither could it bind even that Congress which gave it from stepping in and

asserting its powers under the Constitution to regulate interstate commerce which takes place under the compact. And while I think it was Senator Oakes who said—it may have been brought out by a question—that that compact could not be questioned by anybody but another state, when the rights of the individual are called in question and are dependent upon the interstate commerce clause that individual, like the outside state can assert his constitutional rights and powers and can go to the Supreme Court of the United States to have them upheld. So that if you entered into this compact the only thing you would do so far as Federal control is concerned would be to have an expression of the then existing Congress as to what Congress's future policy might be, and you might get into a situation where Maine had tied its hands as a State with two other States from which it could not withdraw, no matter what the future presented in the way of problems that had to be worked out. So I say that while this compact clause is worth investigating perhaps it is an uncharted sea upon which we should not embark lightly; and if it is seized upon as a means for putting off the day when the citizens and the capital invested in Maine cannot make use of its surplus power, it is a snare and a delusion. I know Senator Oakes does not intend it in any such manner. Furthermore, if it was used and you attempted to come in under it as a substitute for the Smith bill, you have not only got to get the compact agreed upon by your commissioners but you have got to work it through three different legislatures and then work it through Congress, and I feel certain that when the power interests in Massachusetts saw the danger of some Maine power coming into Massachusetts under the compact clause there would be a trig put into the wheel that would very, very long postpone the day before any compact clause was ratified by the legislatures of the three states, and probably a very definite attempt would be made to trig the passage of the bill through the Federal Congress.

Now that is the only objection I have to the compact clause. If it is going along with a constructive program, well and good, I have no objection to the bill; but if it is

to be a substitute, you might as well accept our ex-Governor's statement—wait until 1940 and see what your problems are.

MR. OAKES—Mr. Chairman, the Supreme Court of the United States in another appearance of the same case cited by me, in 13 Howard 518, at page 566 said:

"This compact, by the sanction of Congress has become a law of the Union. What further legislation can be desired for judicial action. In the case of Green et al vs. Biddle this court held that a law of the State of Kentucky which was in violation of this compact between Virginia and Kentucky was void."

I agree with Brother Merrill, as I stated, that this is not final, and that Congress under the interstate commerce clause can assume control of the interstate commerce in electricity notwithstanding the treaty. This would require however, an act of Congress. At the present time Congress has taken no action; there is no affirmative law of the United States pertaining to the electrical situation here, and the states are free to act. Congress once having taken action under the compact clause would be less liable to change that action and reverse the law of the United States, as stated in this case than it would to take a case ab initio and decide on whatever method they wished to decide. In other words, I plead that this is the one strongest method that is in existence for controlling the situation. It is not perfect, but it is stronger than anything else.

One other thing occurs to me. Congress can, as we have seen in the Volstead act, determine what percentage of alcohol is contrary to the prohibitory law. Congress can determine what in the compact between the states is interstate commerce; and Congress can change that as it has changed the Volstead Act; but it would not be so apt to change the law as it would in a new matter.

There are several other arguments I could recite, but I know it is too late to do it. I will simply leave this point with you, that I do not think this law is permanent, I do not think it is final, but I think it is more final if we can once get it through. After we get it through,

we have those problems my brother speaks of; but I don't think they are as serious as he points out. If we can once get it through it is as near to being perfect and final as anything that has been advanced to my knowledge.

MR. MERRILL—Provided the compact clause was once entered into between Maine and two other states and that compact was ratified, in your opinion would either state have power to withdraw from that contract without the assent of both of the other contracting parties?

MR. OAKES—I do not think so. I have read in the paper that the State of Utah has done something about the compact matter—I do not know what, and have no information except from the newspapers.

MR. MERRILL—But if it became a final compact with the signature of all the states.

MR. OAKES—I think that is true. I do not know what has happened out there. I merely make a suggestion, which I would not want to venture as an opinion—I do not think that if the three states entered into a compact and worked out their problems that the states themselves could break the contract except by mutual agreement.

MR. WYMAN—I feel as though I ought to say just a word. I am a member of the New England Council and have worked on the committee of which Mr. Oakes spoke. Now I do not think I am saying anything I ought not to when I say that the whole scheme of regional power distribution and dividing the country up into districts is an attempt to make uniform the power rates in these regional districts, and after this contract was made the State of Maine would find itself at once in a controversy with its other competitors in trying to arrive at terms on which this power could be sold. I have seen this thing from the Massachusetts angle and the New Hampshire angle. There are two things talked about by the power companies. One is the compact, the other is the appointing of the public utility commissioners in these states as deputy interstate commerce commissioners for the federal government and letting them agree without any compact on the rates to be charged in interstate business. But

I think your whole compact scheme in New England is designed to make a level system of rates throughout those states, taking into account the various factors which are taken into account in making rates.

MR. OAKES—That would be true if a voluntary proposition were worked out, but this commission is working out a compact to meet the peculiar situation that exists here, namely a surplus of water power in Maine, a demand for water power in Massachusetts, an opportunity to sell water power cheaply in Maine if it is once developed, and not that opportunity in Massachusetts except by the efficient development of the steam proposition.

MR. WYMAN—What I meant was that sometime before this thing was finally in operation the desire on the part of Massachusetts and the other New England States to be put on an equal basis so far as Maine water power went would have to be met, and lengthy arguments might come up over it; and I should hate to

see the Smith bill held up until that controversy was settled. I am afraid the forty years would be overrun.

MR. OAKES—I will agree that is so, if you have to have a discussion. What I mean to say, the Commission would have to work that out, and if they could get a compact that will pass our Legislature it can be done.

MR. MERRILL—And in the meantime, Mr. Oakes, until the compact is worked out, unless some other bill is passed to take up the slack, in the meantime the rivers will run unharnessed to the sea.

MR. OAKES—If they don't agree they don't get power—but they will agree.

CHAIRMAN GRANVILLE — Is there anyone else to appear in opposition to the Oakes bill so-called? If not, the matter will lie upon the table for executive session.

Your Committee having heard all the bills as advertised, I now declare the hearing closed.