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# REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES

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## Management Improvements Needed In The Federal Power Commission's Processing Of Electric- Rate-Increase Cases

The Commission took over 5 years to process a Boston Edison Company wholesale electric-rate-increase case and three additional Edison rate cases are still in process. Edison may have collected about \$8.7 million in potential overcharges, which are subject to refund with interest, under three of the four cases.

The potential overcharges had minimal impact on Edison's municipal customers. As of January 1, 1976, however, many of the municipals' retail customers were paying higher electric bills than similar Edison customers while historically municipals' retail customers have paid less. In addition, the Commission's fixed-interest rate on overcharge refunds does not assure equitable treatment of the parties involved.

The Commission should reduce delays in processing rate increase cases, establish a more equitable interest rate on overcharge refunds, and take steps to provide that wholesale overcharge refunds be passed on to retail customers.

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SEPT. 7, 1976

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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-180228

C1 The Honorable John J. Moakley  
House of Representatives

Dear Mr. Moakley:

This report is concerned with the effects of potential electric rate overcharges on municipal customers and their retail customers, the reasonableness of interest rates on overcharge refunds, and the time the Federal Power Commission takes to process electric-rate-increase cases. We made the review in accordance with your request of September 5, 1975, as modified in later discussions with your office.

CS We invite your attention to the fact that this report contains recommendations to the Commission which are set forth on pages 8, 12, and 22. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Com- > 01500 mittees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appro- > 00200 priations made more than 60 days after the date of the report.

We will be in touch with your office in the near future to arrange for the release of the report to meet the requirements of section 236.

Sincerely yours,

  
Acting Comptroller General  
of the United States

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ABBREVIATIONS

FPC	Federal Power Commission
GAO	General Accounting Office
MDPU	Massachusetts Department of Public Utilities

D I G E S T

Since 1970 the Boston Edison Company has filed with the Federal Power Commission four whole-sale electric-rate-increase cases, identified as Rate S-1 through Rate S-4. The Federal Power Act authorizes the Commission to suspend proposed rate increases for up to 5 months pending its hearing and final action. If a proceeding is not concluded at the end of the suspension period, the utility can put a requested rate into effect. Any amount determined later to be excessive is subject to refund with interest.

The Commission took over 5 years to complete the S-1 case. Its final order is under appeal, and the issues in controversy could be sent back to the Commission for further consideration. The remaining three cases are waiting final Commission action which may lead to judicial review and possible additional Commission proceedings.

It is GAO's policy to refrain from expressing views on issues which are pending before courts or regulatory agencies for determination. GAO takes no position in this report as to whether all or any part of the increased rates put into effect subject to refund with interest should be found to be just and reasonable. (See pp. 1 and 3.)

In this report GAO is concerned with the

- effect of potential overcharges on Edison's municipal customers and their retail customers,
- reasonableness of interest rates on refunds, and
- time the Commission takes to process the proposed rate increases. (See p. 1.)

EFFECT OF POTENTIAL OVERCHARGES  
ON MUNICIPAL CUSTOMERS AND THEIR  
RETAIL CUSTOMERS

Boston Edison's wholesale customers have paid about \$29 million in increased rates--subject to refund with interest--from May 1970 to December 1975. About \$8.7 million of this increase ultimately may be found excessive.

A refund of about \$2.5 million plus interest was ordered by the Commission in the S-1 case and is under appellate review. Subsequently Edison made the refunds the Commission ordered but informed its wholesale customers that it would seek to recoup, with interest, any portion of the refunds the court deemed unwarranted or excessive.

An additional \$6.2 million in potential refunds plus interest was estimated in the S-2 and S-3 cases. (See p. 4.)

Although about 30 percent of the increased rates Boston Edison collected may be excessive, results of these potential overcharges on its four municipal customers--Concord, Norwood, Reading, and Wellesley--were minimal. These wholesale customers usually were able to pass the increases on to their retail customers. GAO found no evidence that the municipals lost retail customers or experienced a decrease in sales volume as a result of potential overcharges. (See pp. 4 and 5.)

Municipal and cooperative utilities historically have charged lower electric rates than privately owned electric utilities. However, data compiled by the Commission as of January 1, 1976, showed that although most municipals' commercial customers continued to pay lower electric bills than Edison's commercial customers, municipals' residential and industrial customers generally paid higher electric bills than similar Edison customers.

Municipals generally passed wholesale-rate increases, including potential overcharges, on to their retail customers, but refunds of such overcharges may or may not be returned because the Massachusetts Department of Public

Utilities does not require it and the Commission has no authority in such matters.

Three of the four municipals were waiting a circuit court opinion regarding the Rate S-1 case before deciding whether to return the refunds to their retail customers. The other municipal had returned almost all of the S-1 refund but is having problems locating some of its retail customers.

Although the Commission has no jurisdiction over retail rates, it should be concerned with the effect of its actions on consumers. In this regard the Federal Power Act provides for Commission cooperation with State public service commissions in such matters. (See pp. 6 and 8.)

GAO recommends that the Commission (1) advise the applicable State public service commissions when overcharges are refunded to wholesale customers and (2) confer with State commissions or their associations on what actions are necessary to assure that overcharge refunds are passed on to retail customers wherever possible. (See p. 8.)

#### REASONABLENESS OF INTEREST RATES ON OVERCHARGE REFUNDS

The act does not specify the amount of interest the Commission may require on overcharges. Interest rates were set on a case-by-case basis until the Commission established a fixed-interest rate of 7 percent in 1971 and revised the rate to 9 percent in 1974. GAO believes that fixed-interest rates on overcharges are not fair for either buyers or sellers because cases often take years to process and interest rates can fluctuate considerably during such a period, penalizing either buyer or seller.

GAO compared the interest rate Edison paid on potential S-1 overcharges and interest rates it may be required to pay on potential S-2 and S-3 overcharges to the interest paid on its short-term borrowings. The comparison shows that Edison may save about \$90,000 in interest costs under the S-1 case if the appellate review upholds the Commission's final order.

In addition, Edison may save about \$228,000 in interest costs under the S-2 and S-3 cases if the Commission's final order and any further judicial review support the Commission's staff estimate of potential overcharges. However, had the S-1 case been resolved in 1974, Boston Edison may have paid more interest on the refund than its cost of short-term borrowings. (See pp. 9 to 12.)

The Commission should revise its regulations to provide that interest rates on overcharges be set in accordance with each utility's effective interest rate for short-term capital during the period the overcharge is held. (See p. 12.)

#### DELAYS IN PROCESSING ELECTRIC-RATE-INCREASE CASES

The Commission's backlog of electric-rate-increase cases has dramatically increased from 2 rate-increase cases totaling about \$3.6 million annually pending final Commission action in 1970 to 118 cases totaling over \$600 million annually at the end of 1975. (See p. 1.)

The Commission recognizes that the backlog of rate-increase cases is a severe problem and has attempted to reduce it. On April 1, 1976, the Commission adopted the use of "top sheet" procedures for focusing early on important issues to facilitate prompt settlement discussions.

In July 1976 the Commission created an Electric Settlements Task Force to develop and recommend new procedures to

- streamline the processing of electric-rate cases,
- eliminate the current backlog, and
- prevent any further buildup.

In fiscal year 1977 the Commission was authorized additional staff to help reduce the backlog. (See pp. 14 to 22.)

The average processing time for a rate-increase case terminated by Commission opinion during 1973-75 was over 34 months. However, the first Boston Edison case, S-1, took over 5 years to process and the second and third cases, S-2 and S-3, have been in process for about 4 and 2 years, respectively.

These delays are attributable primarily to

- inability of the Bureau of Power to keep pace with the increased number of electric rate cases;
- inability of the Office of Administrative Law Judges and the Office of Special Assistants to keep pace with the increased number of electric, hydroelectric, and natural gas cases;
- higher priority natural gas cases; and
- numerous extensions of time granted to the parties involved: the electric utility, Commission staff, and wholesale customers. (See p. 14.)

Although steps are being taken to alleviate staffing problems, the Commission has taken no action to limit the lengthy time extensions granted to parties involved in the rate cases.

The Chairman of the Commission should instruct the Office of the Secretary and the Office of Administrative Law Judges to evaluate more critically requests for time extensions and to grant them only in exceptional cases. (See p. 22.)

#### AGENCY COMMENTS AND OUR EVALUATION

In commenting on GAO's recommendations, the Chairman

- questioned the Commission's authority to involve itself with the States regarding refunds of wholesale-rate overcharges to retail customers,

--disagreed that interest rates on amounts subject to refund could be equated with interest rates on short-term borrowings, and

--agreed that time extensions had been granted rather liberally and that in the future such requests would have to demonstrate exceptional need to delay the proceedings. (See pp. 8, 12, and 22.)

Although the Commission has no jurisdiction over retail rates, the Federal Power Act does provide for the Commission's cooperation with States regarding such matters. Also, GAO recognizes the difficulty in determining the appropriate interest rates on amounts subject to refund but believes that such interest costs most nearly equate to a utility's interest costs for short-term borrowings.

CHAPTER 1  
INTRODUCTION

The Federal Power Commission (FPC) is responsible for regulating interstate wholesale electric rates in the United States. Inflationary pressures have caused an increasing number of electric utilities to file for wholesale-rate increases since 1970. Wholesale-rate increases pending final FPC decision increased from 2 rate-increase cases totaling about \$3.6 million annually in 1970 to 118 cases totaling over \$600 million annually at the end of 1975. 258

2 Congressman John J. Moakley expressed concern over four wholesale-electric-rate increases filed by the Boston Edison Company between January 1970 and January 1976. As a result of his request and later discussions with his staff, we are providing information on the C. 01332

- effects of potential overcharges on Edison's wholesale municipal customers and the municipals' retail customers,
- amount of potential overcharges collected and the reasonableness of the interest paid on refunds, and
- time it takes FPC to process electric-rate-increase cases and whether regulatory delay is creating problems.

FPC is an independent regulatory agency operating under authority granted by the Federal Power Act, as amended (16 U.S.C. 792-825r), to regulate certain interstate activities of the electric power industry. FPC's jurisdiction covers only about 10 percent, by dollar volume, of all electric rates in the United States and generally does not extend to an electric utility's retail service or to the facilities used solely for retail services. These are generally subject to State regulation.

FPC is responsible for insuring that interstate wholesale electric power is offered at rates and under conditions that are just and reasonable to both buyers and sellers. Electric utilities are required to file all rates and charges for any transmission or sale of electricity that is subject to FPC jurisdiction. FPC seeks to insure that the rates are just and reasonable through (1) an analysis of industry rate filings and other regulated corporate transactions and (2) legal proceedings when necessary to insure that all factors in disputed matters are thoroughly investigated before an FPC decision is made.

## PROCEDURES FOR PROCESSING RATE-INCREASE APPLICATIONS

When a utility submits a rate filing for FPC consideration, the affected wholesale customers, State public service commissions, and other interested parties are notified of the proposed rate increase and allowed to file protests and petitions to intervene in the formal proceedings. Within 30 days of the filing date, FPC must issue an order which accepts, rejects, or suspends the proposed rate increase. In making its decision, FPC considers the preliminary analysis of the proposal its Bureau of Power prepared. Rate filings are rejected if they fail to adhere to specified regulations.

Staff recommendations for suspension are based on their assessment that the rate increases may be unjust, unreasonable, unduly discriminatory, or preferential. Before making a final decision, FPC also considers any letters of protest or petitions to intervene submitted by interested parties. If FPC decides to suspend the proposed rate increase, the suspension period, according to provisions of the Federal Power Act, may not exceed 5 months. Suspension periods, however, have been granted for as little as 1 day. If the suspension period ends before FPC has issued its final order on the proposed rate increase, the electric utility may begin charging the higher rates requested in the rate filings, subject to refund with interest, of any part found not justified.

The act does not require that one rate-increase case be terminated before another is submitted. As a result, two or more wholesale-rate increases can be filed by an electric utility and put into effect before a final decision has been made in the first case. This is commonly referred to as "pancaked" rate cases. Edison and 21 other electric utilities each had from 2 to 5 pancaked rate cases waiting final FPC approval as of April 6, 1976. The oldest case had been on hand more than 4 years.

Rate-increase cases are generally terminated by settlement agreement or FPC opinion. Settlement conferences between the parties may be held anytime before or during the hearings. Proposed settlements are reviewed by FPC and approved if they are reasonable and resolve the issues raised in the proceeding.

If an acceptable settlement cannot be reached, the case enters into a formal hearing. An FPC administrative law judge presides over the hearings and FPC staff, utility representatives, and wholesale customers participate in the hearings. Each party prepares direct testimony which is presented for cross examination. When the hearings are

completed, briefs are generally filed and the administrative law judge issues the initial decision. The initial decision becomes final in 40 days if there are no exceptions and no review is made by the Commission.

Generally, the parties to the proceedings file exceptions to the initial decision or the Commissioners initiate a review. This review is generally made for the Commissioners by FPC's Office of Special Assistants. When the review is completed, FPC issues a final opinion. FPC's final action may be appealed to a U.S. Court of Appeals by any party to the case. Final review rests with the U.S. Supreme Court. (See app. III for a more detailed description of FPC procedures for processing electric-rate-increase cases.)

### SCOPE OF REVIEW

Our review concentrated primarily on FPC's processing of Edison's four wholesale electric-rate-increase cases, the results of potential overcharges on municipal customers and their retail customers, and the reasonableness of the interest rates on refunds. The final order in the first case is now under appeal and the issues in controversy could be remanded for further FPC consideration. The remaining three cases are still waiting final FPC action which may also lead to further judicial review and the possibility of additional FPC proceedings.

Our discussions of potential overcharges in three Edison cases are based on FPC information--an FPC final order in one case and FPC staff estimates in the other two cases.

It is our policy to refrain from expressing views with respect to issues which are pending before courts or regulatory agencies for determination. We take no position in this report as to whether all or any part of the increased rates put into effect subject to refund with interest should be found to be just and reasonable.

Our review was conducted at FPC headquarters in Washington, D.C., and at Edison and its municipal wholesale customers in the Boston, Massachusetts, area.

We interviewed Edison officials, municipal customer officials, their attorneys, and FPC officials and administrative law judges.

We reviewed FPC records, policies, and procedures; rate filings; FPC orders, FPC-approved settlement agreements, and FPC opinions; and terminated rate cases and refund statements. We also reviewed Edison's records and analyzed its capital structure.

## CHAPTER 2

### EFFECTS OF POTENTIAL OVERCHARGES ON

#### MUNICIPAL CUSTOMERS AND THEIR RETAIL CUSTOMERS

From May 1970 to December 1975, Edison wholesale customers paid about \$29 million in increased rates. According to the Federal Power Commission, about \$8.7 million, or 30 percent, may ultimately be found excessive and ordered to be refunded with interest.

However, the effect of these potential wholesale-rate overcharges on Edison's municipal customers was minimal because they were usually able to pass the rate increases on to retail customers. We found no evidence to indicate that potential wholesale-rate overcharges caused a decline in the municipals' sales volume or a loss of retail customers.

Municipals and cooperatives have historically charged lower electric rates than privately owned electric utilities. However, data FPC compiled as of January 1, 1976, generally showed that although municipals' commercial customers continued to pay lower electric bills than Edison's commercial customers, municipals' residential and industrial customers paid higher electric bills than similar Edison customers.

Municipals generally passed wholesale-rate increases, including potential overcharges, on to their retail customers. However, they may or may not chose to pass overcharge refunds to their retail customers. The Massachusetts Department of Public Utilities (MDPU) does not require it and FPC has no authority in this matter.

#### MAGNITUDE OF POTENTIAL WHOLESALE-RATE OVERCHARGES

Edison's wholesale customers 1/ have paid about \$29 million in increased rates from May 1970 to December 1975 of which about \$8.7 million--composed of about \$2.5 million in refunds plus interest FPC ordered in the S-1 case now under appellate review and \$6.2 million in potential refunds plus

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1/ At the time of the S-1 increase, Edison had seven wholesale customers. However, two were lost in December 1972 and another was lost in November 1974. This report is concerned only with the four remaining municipal customers who are affected by all four Edison rate increases.

interest according to FPC staff estimates in the S-2 and S-3 cases--may be found excessive. The S-4 case did not become effective until July 1976.

FPC took over 5 years to complete the first case by issuing a final order. This order is now under appeal, and the issues in controversy could be remanded for further FPC consideration. Edison subsequently made the refunds FPC ordered; however, it informed its wholesale customers that it would seek recoupment with interest on any part of the refunds which the court deems unwarranted or excessive. The remaining three cases are still awaiting final FPC action which may also lead to further judicial review and the possibility of additional FPC proceedings.

#### EFFECT ON MUNICIPAL CUSTOMERS

The effect of wholesale-rate increases on Edison's municipal customers was minimal because they were generally able to pass them on to their retail customers. We found no evidence from FPC and MDPU statistics for 1969-74 to indicate that potential wholesale-rate overcharges caused a decline in municipals' kilowatt-hour sales or a loss of customers. Local municipal officials decide whether to absorb part of a wholesale-rate increase; pass the entire amount on to retail customers; how rate increases will be distributed among residential, commercial, and industrial customers; and when the increases will go into effect. Proposed rate changes are usually advertised before final municipal action to make retail customers aware of the proposed rate increases. Once the municipal officials approve a retail-rate increase, it is filed with MDPU which puts the new rate on public record and allows the municipal to begin charging the higher rate. MDPU officials said that the municipal filing amounts to tacit approval of the higher rate. The only restrictions MDPU imposes on retail rates municipals file are that (1) the rates cannot result in annual earnings exceeding 8 percent and (2) only one rate increase can be filed in any 3-month period.

Some of the four municipals--Concord, Norwood, Reading, and Wellesley--affected by each of Edison's rate increases chose not to pass the rate increases on to retail customers until several months after the wholesale rate became effective. For example, Norwood and Concord increased their retail rates about 7 months and 9 months, respectively, after the S-1 increase. In the S-2 and S-3 cases, the municipals increased retail rates when or shortly after the wholesale-rate-increases became effective.

## EFFECT ON RETAIL CUSTOMERS

FPC statistics show that customers of the Nation's municipal and cooperative utilities historically have paid lower rates than customers of privately owned utilities. Before Edison's first rate increase, the municipals' retail customer rates followed this pattern and they generally paid lower rates than Edison's retail customers.

Comparing, however, typical monthly electric bills for residential, commercial, and industrial customers of Edison and the municipals as of January 1, 1976, shows that the municipals' residential and industrial customers generally had higher electric bills than similar customers of Edison and the municipals' commercial customers generally had lower electric bills than Edison's commercial customers. The following illustrates typical monthly electric bills compiled by FPC.

	<u>Residential bills (note a)</u>		
Energy (kilowatt-hours)	500	750	1,000
Edison	\$23.84	\$34.32	\$44.80
Municipals:			
Concord	b/ 24.21	b/ 34.42	44.62
Norwood	<u>b/</u> 25.76	<u>b/</u> 36.81	<u>b/</u> 49.20
Reading	21.60	29.41	39.10
Wellesley	<u>b/</u> 25.26	<u>b/</u> 36.53	<u>b/</u> 47.80

	<u>Commerical bills (note a)</u>		
Demand (kilowatts)	6	30	40
Energy (kilowatt-hours)	750	6,000	10,000
Edison	\$62.71	\$354.44	\$527.63
Municipals:			
Concord	44.33	320.53	505.02
Norwood	49.99	b/ 374.11	b/ 621.06
Reading	41.50	257.39	405.92
Wellesley	57.31	342.85	<u>b/</u> 531.99

	<u>Industrial bills (note a)</u>		
Demand (kilowatts)	300	500	1,000
Energy (kilowatt-hours)	60,000	200,000	400,000
Edison	\$2,858	\$7,257	\$14,374
Municipals:			
Concord	b/ 3,194	b/ 7,756	b/ 15,218
Norwood	<u>b/</u> 3,378	<u>b/</u> 8,031	<u>b/</u> 15,886
Reading	2,598	7,208	14,146
Wellesley	<u>b/</u> 3,067	<u>b/</u> 8,003	<u>b/</u> 15,997

a/ As of January 1, 1976.

b/ Municipal bill higher than Edison.

Municipals' electric bills are increased not only by wholesale-rate increases but also by indeterminable expenses incurred by Edison and the municipals in connection with the rate cases.

Municipals generally passed wholesale-rate increases, including potential overcharges, on to their retail customers. However, they may or may not choose to pass overcharge refunds to their retail customers. MDPU does not require municipal

customers to pass on overcharge refunds to retail customers and FPC has no authority in this matter.

Concord, Norwood, and Wellesley were awaiting a circuit court opinion before deciding whether to pass the S-1 refunds on to their retail customers. A Reading official estimated that about 89 percent of its S-1 refund had been returned to retail customers but the municipal was having problems locating some customers.

### CONCLUSION

Edison's municipal customers generally passed on the wholesale rate increases, including potential overcharges, to their retail customers. However, overcharge refunds may not be passed on to retail customers. Because FPC, in the public interest, is responsible for assuring that wholesale rates are just and reasonable, we believe it should take steps to insure that refunds of overcharges are passed on to retail customers.

### RECOMMENDATION

We recommend that FPC (1) advise the applicable State public service commissions when overcharges are refunded to wholesale customers and (2) confer with State commissions or their associations on what actions are necessary to assure that overcharge refunds are passed on to retail customers wherever possible.

### AGENCY COMMENTS AND OUR EVALUATION

The Chairman, FPC, in commenting on our proposed report said that FPC had no authority under part II of the act over the retail rates of wholesale customers. He said, furthermore, it was questionable how receptive State public service commissions would be to the intrusion of a Federal agency in an area where State commissions exercise primary jurisdiction.

We recognize that FPC has no jurisdiction over retail rates, however, it should be concerned with the effect of its actions on consumers. In this regard, Section 209 of the Federal Power Act (16 U.S.C. 824h(b)) does provide for FPC cooperation with State public service commissions in such matters. We believe, therefore, that FPC should consult with State public service commissions to provide for wholesale overcharge refunds to be passed on to retail customers. In this regard, we plan to assess the nationwide effect of wholesale overcharge refunds on consumers to determine if FPC might need additional legislative authority to insure that such refunds are made.

## CHAPTER 3

### EQUITABLE INTEREST RATES

#### ON OVERCHARGES SHOULD BE ESTABLISHED

The Federal Power Commission set interest rates on electric utility overcharges on a case-by-case basis before December 1971. Subsequently, a fixed interest rate applicable to all refunds has been in effect. Although interest rates for both long- and short-term financing have fluctuated widely since 1970, FPC has made only one adjustment in its fixed rate. Because overcharges collected by utilities are substantially equivalent to short-term loans, the interest rate paid should be commensurate with the utilities' cost of short-term capital during the period that overcharges are collected.

The fixed interest rate that applied during the entire period Edison held the increased rates under the S-1 may allow the company to save about \$90,000 in interest costs if the appellate review upholds FPC's final order. In addition, Edison may save an additional \$228,000 in interest costs under the S-2 and S-3 cases if FPC's final order and any further judicial review support FPC's staff estimate of potential overcharges.

#### FPC PROCEDURES FOR SETTING INTEREST RATES ON OVERCHARGES

The Federal Power Act provides that FPC may require public utilities to refund with interest any overcharges collected pending FPC's final decision on a rate-increase request but does not specify the interest rate. FPC believes that interest rates on overcharges should not be so low as to unjustly enrich utility companies nor should they be so high as to penalize the company for seeking a rate increase. In a further elaboration of this policy, the Chairman, FPC, told us that in ordering utilities to pay interest on overcharges refunded to wholesale customers, FPC's intent is to preclude utilities from obtaining interest-free loans and also to compensate the customers for losing the use of such funds.

Before December 1971 FPC had set electric utility interest rates on a case-by-case basis which resulted in widely varying interest rates between companies, and at times, by the same companies on different filings. In December 1971 FPC issued regulations stating that, unless otherwise ordered, the interest rate would be 7 percent a year. In October 1974

the regulations were further amended to change the interest rate to 9 percent a year for all rate filings tendered on or after October 10, 1974. On May 19, 1976, the U.S. Court of Appeals for the District of Columbia Circuit ruled that FPC Order 513 establishing the higher rate was unreasonable and discriminatory because the increased interest rate was not applied to all excess rates collected on or after October 10, 1974, without regard to the date in which the rate change was submitted. The Court also held that it should apply to interest accruing after that date on excess rates collected before October 10, 1974. On July 14, 1976, FPC issued Order 513-A which provides that the 9-percent interest rate will apply to all overcharges collected on and after October 10, 1974, without regard to the filing date of the proposed increased rate. It will also apply to interest accruing after that date on overcharges collected before that date.

The regulations which established a fixed-interest rate were based primarily on FPC's belief that they would (1) eliminate widely varying interest rates between companies and, at times, within the same company on different filings, (2) eliminate confusion among the interested parties which are to receive the refunds, and (3) simplify recordkeeping.

We agree that a fixed-interest rate offers the above benefits. However, because of the fluctuation in interest rates since 1970 and the length of time required to resolve rate-increase cases, a fixed rate can either reward or penalize a utility ordered to refund overcharges--a condition contrary to FPC's stated intent concerning the fairness of refund-interest rates. In the Edison rate cases, the fixed-interest rates appear to reward Edison.

#### EDISON RATE-INCREASE CASES

The three rate-increase cases Edison filed were allowed to go into effect provided that any overcharges would be refunded with interest. The rate cases and the applicable interest factor are shown below.

<u>Date</u>	<u>Rate case No.</u>	<u>Interest rate</u> (percent)
1970	S-1	8
1973	S-2	<u>a/</u> 7
1974	S-3	9

a/ FPC compliance with a U.S. Circuit Court decision changed this to 9 percent on all excess rates collected on and after October 10, 1974. It will also apply to interest accruing after that date on overcharges collected before that date.

In addition to meeting capital requirements by issuing equity stocks and long-term bonds, Edison has maintained average short-term debt balances (bank loans or commercial paper) in the amounts and at the costs shown below.

<u>Period</u> (July-Dec.)	<u>Amount</u> (000 omitted)	<u>Interest</u> <u>rate a/</u> (percent)
1970	\$26,312	7.01
1971	62,274	5.42
1972	82,891	4.79
1973	82,363	8.24
1974	114,347	10.98
1975	105,869	8.12

a/ The interest rate does not include the effects of compensating balances which can be defined as a requirement that a borrower hold a percentage of his loans in a non-interest-bearing bank account.

In August 1975 FPC ordered Edison to compute and refund to each wholesale customer the difference between the amount billed under the S-1 rates and that allowed by the order. The FPC order also specified that interest should be paid at the rate of 8 percent a year from the date of collection to the date of refund on all rates found excessive. As of October 1975 this amounted to \$2.5 million in overcharges and \$875,000 in interest costs. Edison subsequently made the refunds; however, it informed its wholesale customers that it would seek recoupment with interest on any part of the refunds which is deemed unwarranted or excessive under the court's decision. As of May 31, 1976, Edison had refunded all but \$347,853 of the overcharges and accumulated interest costs.

In our opinion, the increased rates collected are substantially equivalent to funds obtained by Edison in the short-term-capital loan market. Had the funds from increased rates not been available, Edison would have had to obtain this amount in short-term loans. Edison may have saved \$90,000 in interest costs--the difference between \$875,000 computed by Edison at the fixed 8-percent interest rate and the \$965,000 in interest costs we computed at Edison's effective interest rates (the effective rates include the cost of maintaining a compensating balance).

FPC has not ruled in the S-2 and S-3 rate cases which became effective January 1, 1973, and December 15, 1974, respectively. The FPC staff estimates, however, that about \$6.2 million in potential overcharges had been collected by Edison through December 1975. Based on Edison's cost of

short-term money, we determined that from the effective dates of these increases until December 31, 1975, it would have cost about \$1,027,000 to raise the \$6.2 million in potential overcharges in the short-term capital loan market. If FPC's staff findings are upheld and Edison is ordered to refund the \$6.2 million at FPC's fixed interest rate, 1/ the interest will amount to about \$799,000 resulting in a savings of \$228,000 to Edison.

### CONCLUSION

We believe that the interest rate paid on overcharges should be commensurate with the utility company's cost of obtaining short-term capital during the period the overcharge was held. Such a rate would tend to eliminate speculation that rate increases may be inflated to obtain capital at a low interest rate. It would be more reasonable because it would neither enrich nor penalize a utility seeking a rate increase, and there would be little administrative difficulty in computing the interest costs on any overcharges. In the Edison rate cases, the fixed interest rate and the lengthy processing time appears to favor the Edison company. However, had FPC settled the S-1 case before 1974, the 8-percent interest on refunds would have been unreasonably high when compared to market rates for Edison's short-term money costs; thus, the rate would have favored Edison's wholesale customers.

### RECOMMENDATION

We recommend that FPC revise its regulations to provide that interest rates on overcharges are set in accordance with each utility's effective interest rate for short-term capital during the period the overcharge is held.

### AGENCY COMMENTS AND OUR EVALUATION

The Chairman, FPC, said that we did not specify how a utility's interest rate should be computed. He also said that when FPC changed the fixed interest rate to 9 percent it considered but rejected using an interest rate based on the rate of interest for short-term debt because interest on amounts collected subject to refund cannot be equated with the interest on any one type of investment available to the collecting companies.

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1/ Seven percent from January 1973 to October 10, 1974, and 9 percent thereafter.

We did not intend to specifically comment on how the interest rate should be determined other than it should fluctuate depending on the company's effective interest rate for short-term capital. In this regard, however, we believe the interest rate should be determined as frequently as necessary to accurately reflect a utility's cost of short-term borrowings.

We noted that FPC's 1974 order changing the fixed rate to 9 percent justified the higher interest rate because short-term interest rates had significantly increased since the 7 percent rate was set in 1971. We recognize that it may be difficult to equate interest rates on amounts subject to refund to interest rates on a specific type of investment, but we believe that such interest costs are most nearly equated with a utility's effective interest costs for short-term borrowings.

## CHAPTER 4

### DELAYS IN FPC'S PROCESSING

#### OF ELECTRIC-RATE-INCREASE CASES

Rising industry costs, particularly capital, labor, materials and supplies, have resulted in a record number of electric utilities submitting rate-increase requests to FPC. Although processing time for rate-increase cases subject to refund provisions terminated by Federal Power Commission opinions from January 1973 through December 1975 averaged over 34 months, FPC took over 5 years before terminating by opinion the first Edison case (S-1).

Lengthy delays have occurred in FPC's processing of the four Edison electric-rate-increase cases. As of August 1, 1976, three cases still pending have been awaiting final FPC decision for periods ranging from about 6 months to 4 years. The delays are primarily attributable to (1) inability of the Bureau of Power to keep pace with the increased number of electric rate cases, (2) inability of the Office of Administrative Law Judges and the Office of Special Assistants to keep pace with the increased workload of electric, hydro-electric, and natural gas cases, (3) higher priority natural gas cases, and (4) numerous extensions of time granted to the parties involved--the electric utility, FPC staff, and wholesale customers.

FPC recognizes that the increasing backlog of electric and natural gas cases is a severe problem and is attempting to alleviate it by creating an Electric Settlements Task Force, obtaining additional personnel for fiscal year 1977, and revising its procedures to encourage more settlement agreements. In this regard, Edison has proposed a settlement agreement on the S-3 and S-4 cases.

#### GROWTH OF FPC'S BACKLOG AND LENGTH OF TIME TO PROCESS RATE-INCREASE CASES

During the 1960s an average of about eight electric-rate cases were initiated each year. However, beginning in fiscal year 1971, the number of electric-rate cases began to accelerate. During fiscal year 1971, 53 formal rate cases were initiated, nearly 7 times the earlier average.

The following table shows the cumulative growth of rate cases, including both rate increases and changes in terms and conditions of service since 1971.

Electric-Rate Cases Pending Before FPC

<u>Calendar year</u>	<u>Cases pending start of year</u>	<u>Cases received during year</u>	<u>Cases disposed of during year</u>	<u>Cases pending end of year</u>
1972	44	47	16	75
1973	75	75	22	128
1974	128	105	64	169
1975	169	119	59	229

At the end of 1975, over one-third of the above rate cases had been in process more than 2 years.

The 229 pending cases at the end of 1975 included 118 rate-increase cases submitted by 70 electric utilities. These proposed rate increases totaled more than \$600 million annually.

FPC approved 51 settlement agreements and issued 11 opinions involving electric cases subject to refund provisions during the 3-year period 1973-75. The processing time for cases terminated by settlement agreements--from filing date to FPC approval--ranged from 3 to 49 months and averaged about 17 months.

The processing time for cases terminated by FPC opinions--from filing date to opinion date--ranged from 21 to 63 months and averaged over 34 months.

CONSIDERABLE INCREASE  
IN FPC STAFF WORKLOAD

FPC officials stated that the primary reason FPC requested time extensions during the processing of rate cases is lack of adequate personnel in the technical bureaus. Technical bureaus are responsible for investigating rate-increase-supporting material. For example, the Bureau of Power's Section of Electric Rate Investigation helps prepare the staff's evidentiary presentations relating to just and reasonable rates. Its rate-increase case workload has greatly increased during recent years as shown below.

	<u>1/73</u>	<u>1/74</u>	<u>1/75</u>	<u>1/76</u>
Number of professional staff	9	14	17	20
Case workload (rate increase cases)	37	65	94	114
Average case workload per staff member	4.1	4.6	5.5	5.7

Administrative law judges preside over not only electric utility proceedings but also hydroelectric and natural gas proceedings. Although the authorized number of law judges increased from 17 to 20 from January 1973 to January 1976, the number of judges actually assigned was generally below the authorized level, ranging from 13 to 19 judges. The judges' case workload has increased dramatically during the 3-year period as shown below.

	<u>1/73</u>	<u>11/73</u>	<u>11/74</u>	<u>11/75</u>
Number of judges	15	14	18	19
Case workload	90	149	181	262
Average case workload per judge	6.0	10.6	10.1	13.8

The Office of Special Assistants is responsible for helping FPC prepare opinions, orders, and other legal documents; analyzing exceptions; and preparing summaries of facts and issues. The Office's workload consists of electric, hydroelectric, and natural gas cases.

The case workload of the Office has also increased substantially as shown below.

	<u>1/73</u>	<u>1/74</u>	<u>1/75</u>	<u>1/76</u>
Number of professional staff	7	8	11	12
Case workload	47	58	95	116
Average case workload per staff member	6.7	7.3	8.6	9.7

PRIORITY CASES AND NUMEROUS TIME EXTENSIONS  
HAVE DELAYED EDISON RATE CASES

Edison has filed four pancaked rate increases since 1970. Each rate increase superseded the previous increase and was effective for a certain time period. The table below details the rate increases.

<u>Rate case</u>	<u>Filing date</u>	<u>Suspension period</u>	<u>Effective date</u>	<u>Requested annual increase over previous rate (millions)</u>
S-1	1/29/70	1 day	5/01/70	\$2.7
S-2	6/02/72	5 months	1/01/73	9.5
S-3	6/14/74	5 months	12/15/74	1.0
S-4	1/23/76	5 months	7/24/76	2.5

The following schedule shows significant dates and where delays have occurred in FPC's processing of Edison's rate-increase cases.

Number of months  
between significant checkpoints

<u>Significant checkpoints</u>	<u>S-1</u>	<u>S-2</u>	<u>S-3</u>	<u>S-4</u>
Filing date	1/29/70 (3.5)	6/02/72 (12)	6/14/74 (10.5)	1/23/76
Hearings began	5/19/70 (18.5)	6/12/73 (8.5)	4/30/75 (14.5)	(a)
Hearings concluded	12/03/71 (5)	2/26/74 (8)	7/20/76	
Briefs filed	4/24/72 (15)	10/16/74 (19.5)	(b)	
Judge's initial decision	7/19/73 (4)	6/02/76		
Briefs filed	11/09/73 (18)			
Commission opinion	5/13/75 (3)			
	<u>c/</u> 8/04/75			
Total number of months in process as of August 1, 1976	<u>d/</u> 63	50	25.5	6

a/ Top sheets due September 24, 1976; informal settlement conference schedule for October 5, 1976.

b/ Reply briefs due October 21, 1976.

c/ Edison and the municipals filed applications for rehearing of Opinion No. 729 subsequent to its issuance on May 13, 1975. FPC issued Opinion No. 729-A on August 4, 1975, denying the applications for rehearing.

d/ Edison's only completed rate increase case took about 63 months from the filing date to the date of FPC's opinion.

Much time was spent preparing both the S-1 and S-2 initial decisions. As shown in the schedule, FPC's administrative law judges took about 15 and 19 months, respectively, to render initial decisions in the S-1 and S-2 cases. We could not obtain specific reasons for the length of time taken in the S-1 case, however, it was probably due to the case's complex nature, the many issues raised during the proceedings, and the higher priority natural gas cases assigned to law judges. The judge in the S-2 case told us that initial decisions were not always handled sequentially. Some cases, such as natural gas curtailment or certificate cases, received high priority because they were the most urgent in terms of serving the public interest. He said electric cases were not as urgent as some gas curtailment cases because electric utilities can begin collecting the higher rates after the suspension period; wholesale customers can pass the rate increases on to retail customers; and overcharges, if any, are refunded with interest.

Following the initial decision in the S-1 case, a number of further delays were encountered that added about 22 months to the processing time before FPC finally issued its opinion on May 13, 1975. Additional time was granted to Edison and two of the municipals which delayed filing of briefs on the initial decision for about 2 months. About 3 more months elapsed before the case was assigned to a staff member in the Office of Special Assistants.

The Office of Special Assistants took about 16 months to prepare and forward a draft opinion to FPC on the S-1 case and another 3 months elapsed before FPC issued its opinion. An FPC staff member said it took him about 1 year to draft the opinion primarily because natural gas curtailments and other gas cases were receiving priority.

In addition to priority being given to gas cases, numerous other delays have occurred in FPC's processing of Edison rate-increase cases. FPC officials recognize that one of its regulatory process problems is delay caused by time extensions granted to utilities, intervenors, and FPC staff during rate case proceedings.

Time extension delays occurred before, during, and after hearings, although, occasionally, the parties involved did not unanimously agree that the extensions were necessary. Requests for extensions were refused only in rare instances.

The beginning of hearings was delayed in the S-1, S-2, and S-3 cases because of time extensions granted to the various parties to the proceedings. For example, in one of the cases several time extensions were granted to FPC staff, Edison, and the municipals which delayed the beginning of hearings for over 5 months.

The judge in the S-1 case pointed out in his initial decision that recesses occurred on several occasions because of delays in presenting witnesses as a result of an 84-day strike by Edison's employees and because the intervenors and FPC staff needed extensions of time to prepare their direct cases.

Hearings in the S-2 case were postponed on several occasions by FPC staff, Edison, and the municipals because of time extensions due to conflicting schedules involving other hearings or witnesses not being available. The parties also requested a few recesses for settlement purposes, which did not materialize. After the hearings were completed, four extensions of time were granted to various parties which delayed by about 5 months the filing of briefs.

More than 2 years have elapsed in the S-3 case since the filing date. Hearings in the S-3 case were delayed when Edison was granted more time to prepare supplemental evidence in light of the S-1 Opinion No. 729 and another opinion regarding deferred income taxes. Several other time extensions for filing of supplemental testimony, exhibits, and rebuttal testimony were granted to all parties, amounting to about a 10-month delay before hearings were reconvened. Hearings were held intermittently over more than 14 months before being concluded July 20, 1976.

#### FPC ACTIONS TO REDUCE CASE BACKLOG

At the end of 1975, 118 proposed electric-rate-increase cases were pending final FPC action. These rate-increase cases totaled more than \$600 million, of which more than \$576 million had been suspended. FPC had not taken action on the remaining amount.

To reduce its backlog, FPC has

- adopted the use of "top sheet" procedures to encourage settlement agreements;
- created an Electric Settlements Task Force which will develop and recommend new procedures to streamline the processing of electric cases, eliminate the current backlog, and prevent further buildup; and
- received authorization to hire additional personnel in fiscal year 1977.

## Top sheet procedures

✓ On April 1, 1976, FPC issued Administrative Order No. 157 which adopted the use of top sheet procedures to aid in expediting litigation of natural gas pipeline and public utility rate cases. Top sheets summarize comprehensive studies and schedules to facilitate prompt settlement discussions.

FPC believes that, in some cases, these procedures will make unnecessary detailed staff testimony and exhibits. FPC contemplates the rate of return would be part of a top sheet presentations by FPC staff to focus on that significant issue at an early stage.

FPC believes that top sheets will

- reduce the time required to serve the FPC staff's position on the parties,
- permit more effective use of staff, and
- expedite the disposition of a number of litigated questions in rate cases.

FPC believes that to the extent that settlement can be reached on all issues, including rate of return, the staff will be able to concentrate on those issues and cases where settlements are not reached. FPC therefore believes that, to the extent that staff resources are made available to work on unresolved issues, the top sheet procedure should facilitate more expeditious and thorough consideration of such issues and proceedings.

FPC has determined that using top sheet procedures can speed up the processing of the Rate S-2, S-3 and S-4 cases. On April 30, 1976, FPC's staff counsel requested Edison to submit to FPC and serve on all parties, interested State regulatory commissions, and customers a settlement offer which can serve as a basis for the expeditious resolution of the Rate S-2, S-3, and S-4 proceedings.

On June 18, 1976, Edison submitted a settlement offer in the Rate S-3 and S-4 cases. Edison does not plan to make any settlement offer in the S-2 case until it completes a revised cost-of-service analysis as ordered in the June 1976 initial decision on the case.

## Electric Settlement Task Force

On July 9, 1976, the Chairman, FPC, announced creation of an Electric Settlements Task Force to streamline the processing of electric cases under the Federal Power Act.

The task force, composed of FPC staff members, will develop and recommend new procedures to eliminate the backlog of electric cases now pending before FPC and prevent any further buildup.

After the new procedures are instituted, the legal and technical staff assigned to a case will work closely with members of the task force to expedite resolution of pending cases by settlements. The task force will supervise daily settlement activities.

The task force will seek to streamline cost-of-service analyses so that top sheet procedures, announced April 1, 1976, can be completed within the established guidelines.

## Request for additional personnel

FPC was authorized 32 new positions in fiscal year 1977 for processing applications, investigating energy sources and use, inspecting hydroelectric projects, and evaluating electric utilities and natural gas rate filings. Also, FPC was authorized 13 new positions for its legal programs to help reduce the case backlog. These positions will include attorneys, administrative law judges, and supporting personnel needed to cope with the massive backlog of proceedings confronting FPC. At the end of fiscal year 1975 a total of 543 hydroelectric, electric utility, and pipeline cases were pending FPC action. By the end of fiscal year 1977, despite the 13 new positions, this backlog is expected to increase 50 percent, to 814 cases. It is anticipated that additional positions will be requested in fiscal year 1978.

## CONCLUSION

Numerous delays occurred in FPC's processing of the Edison cases primarily because of the increasing number of rate cases, higher priority natural gas cases, and time extensions granted to the electric utility, FPC staff, and wholesale customers. The FPC staff generally requested time extensions because of lack of adequate staff in the technical bureaus. Although FPC is taking steps to increase its technical staff, it has taken no action to limit the lengthy time extensions granted to the parties involved in the rate cases.

## RECOMMENDATION TO THE CHAIRMAN, FPC

We recommend that the Chairman, FPC, instruct the Office of the Secretary and the Office of Administrative Law Judges to more critically evaluate requests for time extensions and to grant them only in exceptional cases.

## AGENCY COMMENTS

The Chairman said he recognized that in the past time extensions had been granted rather liberally to the staff and to other parties in the proceedings for a variety of reasons, particularly because of limited personnel resources. He said to expedite the regulatory process and thereby reduce both the lag in completing rate cases and FPC's backlog, it was anticipated that in the future requests for time extensions will have to demonstrate exceptional need to delay the proceedings.

APPENDIX I  
JOHN JOSEPH MOAKLEY  
9TH DISTRICT, MASSACHUSETTS  
COMMITTEE ON RULES

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

APPENDIX I  
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DISTRICT MANAGER  
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B-180228

September 5, 1975

The Hon. Elmer Staats  
Comptroller-General  
General Accounting Office  
Washington, D. C.

Dear Mr. Staats:

Since the beginning of the century, the Town of Norwood, Massachusetts has operated a municipal utility. The Norwood Light Company has -- until 1970 -- been able to pass this savings on to consumers resulting in lower utility rates than in adjacent towns.

In recent years, however, there have been three increases of 20, 46 and 10 per cent. The first increase was imposed in 1970 and has only recently been turned-down in part by the Federal Power Commission. Boston Edison, the bulk electric supplier, is now planning to appeal the case in the courts, a procedure which could delay justice for another five years. The other increases -- all being collected -- are still under review at FPC. At this point, Edison has announced its intention of imposing another 13 to 14 per cent hike.

I have asked the Anti-Trust Division of the Justice Department to initiate an investigation of Boston Edison's apparent anti-trust violations in using the pricing mechanism to force a competitor out of business.

A second aspect of this situation is the potential for taking advantage of the pace at which the FPC moves to float what amounts to a compulsory bond issue. Eventually Edison will be overruled on a portion of almost all the hikes and required to repay the overcharges.

--continued--

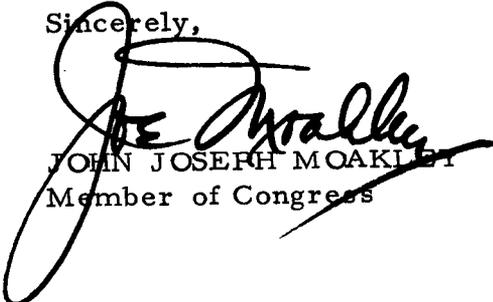
However, at that point, further increases will have been imposed and under FPC scrutiny allowing the Company to collect from the very consumers they are ordered to repay, the amount they are paying out. At any given moment, the amount of overcharges they are holding represent a form of corporate financing for which they do not have to pay interest until the refund. This process, in itself, results in lower interest costs than any other avenue of corporate financing.

I am sure similar situations exist nationwide and I am seeking an audit by GAO to determine the price tag to consumers of the anti-competitive practices in force here and to determine the role of the FPC in making these practices possible.

I look forward to meeting with your staff to discuss this matter further.

Thank you for your interest and cooperation.

Sincerely,



JOHN JOSEPH MOAKLEY  
Member of Congress

FEDERAL POWER COMMISSION  
WASHINGTON, D.C. 20426

JUL 27 1976

Mr. Monte Canfield, Jr.  
Director, Energy and Minerals Division  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Canfield:

This is in reference to your letter of July 23, 1976, transmitting for review and comment a proposed report to Congressman John J. Moakley on the Federal Power Commission's procedures for processing electric rate increase cases.

On the whole, the draft report is a rather straight-forward account of the Commission's rate regulatory responsibilities, its procedures for processing electric rate increase applications, and some problems that are responsible for delays in completing action on rate increase cases. There are, however, certain recommendations contained in the report that warrant comment.

Chapter 2 of the report deals with the impact of overcharges on municipalities and retail customers. On page 11, it is recommended that the Commission "arrange" with the National Association of Regulatory Utility Commissioners and state public service commissions to ensure that wholesale customers pass on overcharge refunds to retail customers, wherever possible. The nature of the "arrangements" contemplated by the recommendation is not clear. Except for rather limited jurisdiction over retail rates, conferred by Part I, Section 19 of the Federal Power Act, the Commission has no authority under Part II of the Act over the retail rates of wholesale customers. Furthermore, it is questionable how receptive state public service commissions would be to the intrusion of a Federal agency in an area where they exercise primary jurisdiction. It should be noted that, in connection with its rate regulatory responsibility, the Commission monitors the refund obligations of electric utilities to their wholesale customers by requiring submittal of a report showing the refunds and interest paid to such customers.

A second recommendation is contained in Chapter 3, which deals with interest rates on overcharges. On page 17 it is recommended that the Commission revise its regulations to provide that interest rates on overcharges be set in accordance with each utility's effective rate of interest for short-term capital during the period the overcharge is held. The recommendation lacks specificity on how a utility's interest rate



Mr. Monte Canfield, Jr.

- 2 -

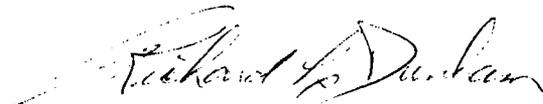
should be computed. Since revenues are collected monthly, it would seem appropriate that, in accordance with the recommendation, the interest rate should be determined monthly. However, it is not readily apparent whether the interest rate should be determined on the basis of the outstanding short-term debt for that month or, alternatively, on some uniform rate for the company. The latter approach would seem to be subject to the same criticism directed by the report to the Commission's present practice of using a fixed interest rate. It should be noted that in the course of its deliberations which led to adoption of a 9 percent interest rate on refunds by Order No. 513, issued on October 10, 1974, the Commission considered but rejected the use of an interest rate based on the rate of interest for short-term debt. In this regard the Commission stated that "...the fund representing amounts subject to refund is a highly speculative figure and is relatively unreliable as a source of (short-term) capital and though theoretically it might be stated that companies could artificially inflate their filings to provide for a larger fund of this type, the speculative nature of the fund coupled with the expense of undergoing extensive litigation in regard to the filing would mitigate any probable benefits the company might derive from such a tactic. Accordingly, based on these facts, we believe that interest on amounts collected subject to refund cannot be equated with the interest on any one type of investment available to the collecting companies."

It is recognized that in the past time extensions have been granted rather liberally to the staff and to other parties in the proceedings for a variety of reasons, particularly because of limited personnel resources. In order to expedite the regulatory process and thereby reduce both the lag in completing rate cases and the Commission's backlog, it is anticipated that in the future request for time extensions will have to demonstrate exceptional need to delay the proceedings.

Apart from the above comments, there are several minor changes that should be made in the text of the report. These suggested changes are set forth in the enclosed Appendix.

I appreciate the opportunity to review and comment on the draft report.

Sincerely yours,



Richard L. Dunham  
Chairman

Enclosure [See GAO note.]

[GAO note: These minor changes were incorporated into the text of the report.]

FPC PROCEDURES FOR PROCESSINGRATE-INCREASE REQUESTS

Under Section 205 of the Federal Power Act, public utilities are required to file all rates and charges for any transmission or sale subject to the Federal Power Commission's jurisdiction together with all information relating to such service. These filed wholesale rate schedules determine what a utility may charge for specified services. In applying for a rate increase of \$50,000 or more, a utility must submit to FPC cost-of-service data involving supporting statements and file testimony and exhibits that would serve as the company's case-in-chief if the matter is set for hearing.

Copies of the electric utility's rate increase filing are served upon FPC, jurisdictional customers of the utility, and each State public service commission within which a purchaser sells electric energy. The electric utility must also file a form of proposed rate-increase notice with FPC suitable for publication in the "Federal Register" so that other interested parties are made aware of the proposed changes. Wholesale customers, State public service commissions, and other interested parties are thus given an opportunity to file protests and petitions to intervene in FPC proceedings.

Filing of protests and petitions  
to intervene

Any person, including any State or local commission, objecting to the approval of any matter which is, or will be, under FPC consideration may file a protest. A protest is intended solely to alert FPC and other interested parties of the fact and nature of the protester's objection to a rate-increase filing. Filing a protest does not make the protester a party to the proceeding; a separate petition to intervene is required for this purpose.

Petitions to intervene and notices of intervention may be filed anytime following the filing of a notice-of-rate change. Wholesale customers and other interested parties generally file petitions to intervene in the proceedings within a time frame established by FPC. FPC will grant or deny the petition in whole or in part, or may, if appropriate, authorize limited participation. FPC considers protests and petitions to intervene in setting suspension periods.

FPC's preliminary analysis and order  
on proposed rate increase

Within 30 days of the filing date, FPC must accept, reject, or suspend the proposed rate increase. During the 30-day period, FPC's Bureau of Power, which monitors electric-rate filings, has 3 to 7 working days to prepare a preliminary analysis of the rate filing and recommend to FPC whether to accept, reject, or suspend the proposed rate increase with possible initiation of full formal proceedings.

Each rate schedule filing is first reviewed to determine whether the electric utility has complied with FPC regulations. If the filing fails to adhere to the regulations, the utility is advised that no action will be taken until the deficiency is corrected.

In some instances a proposed rate increase is unopposed by the utility's wholesale customers and is approved if found to be just and reasonable.

In most major rate increase cases, however, wholesale customers of the filing utility submit petitions to intervene. FPC's action generally has been to suspend the effective date of the proposed rate increase.

Rate increase suspension provisions

According to provisions of the Federal Power Act, rate increases which appear to be unjust, unreasonable, or unduly discriminatory or preferential may be suspended for any period not exceeding 5 months, for further FPC review, including full hearings. Suspension periods, however, have been granted for as little as 1 day. The Chairman said that by specifying the maximum period of suspension, the Federal Power Act intended that FPC could use its independent judgment to order suspension periods of shorter duration, otherwise the act could just as well have provided that all periods of suspension be for 5 months. He said it was further intended that, during the period of suspension, FPC would conduct a full hearing and if possible conclude such hearing within the suspension period. However, if the hearing is not concluded during the suspension period and FPC cannot issue its final order until after the suspension period has expired, the order, when issued, would direct the public utility to refund with interest such amounts, if any, that may have been collected but not found to be justified.

In setting suspension periods of less than 5 months, FPC considers a number of factors that seem to bear upon the appropriate suspension period. FPC considers (1) excess revenues, (2) financial condition of the utility, (3) fuel

clause, (4) notice period, (5) corporate relationship of parties, (6) specific pleadings of the parties, (7) magnitude of the rate increase, and (8) customer's ability to change its rates.

### Formal proceedings

Rate-increase cases are generally terminated by settlement agreements or FPC opinions.

Frequently, the parties in a formal proceeding may resolve issues through settlement which satisfies FPC that the public interest has been served.

Settlement conferences between the parties to a proceeding may be held at anytime before or during the hearings. FPC approves proposed settlements if they are reasonable and resolve the issues raised in the proceeding. If a settlement cannot be reached before the hearing stage, the case must then enter an FPC formal hearing.

An administrative law judge, selected by FPC's Chief Administrative Law Judge, presides over the hearings. Generally the FPC staff must develop a case and present it before an administrative law judge. Direct testimony must be prepared and presented for cross examination. Other witnesses must be cross-examined, staff briefs prepared, briefs of other parties analyzed, and oral arguments prepared and presented. When the hearing is completed, briefs are generally filed and the administrative law judge later issues the initial decision. The judge's decision becomes final in 40 days if there are no exceptions to the initial decision by the parties or by the Commissioners.

Generally, the parties to the proceeding file exceptions to the initial decision or the Commissioners initiate a review. This review is generally made for the Commissioners by FPC's Office of Special Assistants. Sometimes an oral argument is held as part of the review. When the review is completed, FPC issues a final opinion.

Any final FPC action may be appealed to the U.S. Court of Appeals by a party to the case. Final review rests with the U.S. Supreme Court.