

Private utilities seeking exemption from federal act

Energy Utilities

by DEAN KATZ
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WASHINGTON — Northwest private utilities quietly are lobbying Congress and the executive branch for authority to form a subsidiary company that would be exempt from federal regulations aimed at protecting consumers and utility stockholders.

If they succeed, it would be the first time Congress ever has granted a legislative exemption to the Public Utility Holding Company Act, passed in 1935.

Indications are that the Bonneville Power Administration, which supports the exemption, has in at least one instance issued misleading information on the subject to members of Congress.

The private utilities say the exemption is necessary to permit

them to form a jointly owned independent subsidiary company that could build new electrical-generating plants in the Northwest.

The utilities contend the exemption would help them get low-cost financing which would mean lower rates for consumers.

But the American Public Power Association (A.P.P.A.) has questioned whether there might be other motives behind the utilities' push for the exemption — such as more control over the Northwest's energy resources.

THE A.P.P.A. fears that formation of a major new utility company, owned by existing private utilities, could put more pressure on public utilities. And it says it thinks the private utilities don't need the exemption to form a subsidiary company anyway.

Supporters of the exemption insist nothing is sinister about their motives and contend the Holding Company Act is not applicable to the kind of activity they are planning.

The Justice Department previously has indicated opposition to the exemption but is reviewing its position.

The Securities and Exchange Commission, which administers the Holding Company Act, has come out in support of the exemption, although it also said recently that "the commission takes no position on whether the creation of an electrical-generation company under the conditions proposed in the bill would be in the public interest."

The "bill" is the Northwest regional-power bill, which contains

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Private utilities say exemption from law would save money

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the legislative exemption. That bill is pending in Congress.

Andrew MacDonald, assistant chief counsel for the S.E.C., said the Holding Company Act was passed after disclosure in the 1920s of "a lot of questionable practices that were detrimental" to ratepayers and stockholders of private utilities.

The abuses included instances in which holding companies, with very small investments, were controlling "far-flung utility empires," MacDonald said. Ratepayers were "gouged" and stockholders in some cases were "screwed," he said.

But MacDonald said the Northwest's private utilities aren't planning to engage in the practices of the 1920s and therefore were not intended to come under the com-

BUT MacDONALD said most of the private utilities that would form the jointly-owned subsidiary company now could receive an administrative exemption without much difficulty, and without the need for legislation.

He said private utilities which might have a problem obtaining an administrative exemption are the Pacific Power and Light Co. and, to a lesser extent, the Washington Water Power Co.

Other companies which could be involved in forming a generating subsidiary include the Puget Sound Power & Light Co., the Idaho Power Co., the Montana Power Co. and the Portland General Electric Co.

The Bonneville Power Administration, in an apparently misleading statement to members of Congress, said that "although exem-

Act.

The A.P.P.A. argues that Congress passed the law for a reason and no legislative exemptions should be granted. If an administrative exemption can't be obtained, then the private utilities simply should have to comply with the act, the association says.

THE S.E.C. has flip-flopped on whether it would be possible to grant the private utilities an administrative exemption from the holding-company act.

In a letter last September to Representative John Dingell, Michigan Democrat and chairman of the House subcommittee on energy and power, the S.E.C. said "it appears that one or more of the existing provisions of the act provide exemptive authority to this commission" as an alternative to a legislative exemption.

In a subsequent memorandum this year to Dingell, the S.E.C. reiterated that position, although it indicated it preferred legislative action.

Tied to the private utilities' push for a legislative exemption from the Holding Company Act is another provision in the regional-power bill that would give the Bonneville Power Administration authority to guarantee the purchase of electricity from new utility plants, whether publicly or privately financed.

By forming a jointly owned but independent subsidiary company to build new power plants, in conjunction with the B.P.A. purchase authority, the private utilities say they could issue bonds, rather than stock, for most or all of the money needed for construction.

Because such bonds would have a lower interest rate, the private utilities contend they would be able to save money and pass the savings on to ratepayers.

Under language the S.E.C. has proposed for the legislative exemption, the private utilities would be able to form a jointly owned generating subsidiary only if the sale of power would be "primarily" to the B.P.A.

THE POWER THEN would be distributed throughout the region to public and private utilities and some industrial users served by the B.P.A.

One congressional source questioned whether the private utilities are seeking the legislation as a means of removing themselves from direct liability — through formation of a jointly owned subsidiary — in the event there are problems in construction or operation of nuclear-power or other generating plants.

John Cary, attorney for Puget Sound Power & Light, said "it's not really clear yet to what extent the private utilities would be responsible in the event their subsidiary had problems."

(The Holding Company Act) on a case-by-case basis, the exemptions are not applicable to the Northwest I.O.U.s (investor-owned private utilities)."

Harvey Spigal, head of the B.P.A. contract-negotiation section and author of the statement, said, "I can't remember why I wrote that."

Later, Spigal said questions about his statement "are going to cause me to look and check to see if it should be modified. If we made an error at some point we will try to correct it." He said he based the statement in general on information from the S.E.C. "and some familiarity with the utility business."

The B.P.A. statement, part of a report on the regional-power bill, also mentioned that the S.E.C. "has recommended that Congress grant the exemption."

But it failed to note that the S.E.C. did not take a position on whether creating the kind of company sought by the private utilities would be in the public interest.

Alex Radin, executive director of the A.P.P.A., said of the proposed legislative exemption: "There may be more to this than meets the eye. There is a tremendous potential for abuse." He said the utility companies' efforts are "part of a long-time campaign to create something like this."

FOUR NORTHWEST utilities tried unsuccessfully in the 1950s to obtain a legislative exemption from the Holding Company Act in order to form a jointly owned subsidiary to build hydroelectric generating facilities. In that case, Cary said, the utilities would have used the power themselves rather than selling it to the B.P.A.

The S.E.C. opposed that exemption, saying "the corporate organization, control and financing of a project of this type create the possibility of evils against which the act is designed to guard," the A.P.P.A. said in a recent report.

The S.E.C. said then that the absence of a legislative exemption would not necessarily prevent the private-utility companies from joining to build hydroelectric plants "except to the extent that the sponsors would be unwilling to undertake compliance" with the Holding Company Act, the report said.

MacDonald, who wrote the S.E.C.'s present position papers on the subject, said he is not familiar with the previous exemption sought by the Northwest private utilities — but he said the 1950s "were the good old days of militancy in the S.E.C."

With or without a legislative or administrative exemption, it would be possible now for private utilities to join and form an independent subsidiary company to build nuclear or coal-fired power plants.

The A.P.P.A., in a position paper on the subject, raised a question about subsidiary companies now owned by private utilities which develop and supply fuel, primarily coal.

If the private utilities join to form a generating subsidiary and decide to build a coal-fired generating plant, it is likely the coal would come from one or more of the subsidiaries owned by the same private utilities, Cary said.

The A.P.P.A. said "there is a clear potential for excessive charges to consumers resulting from arrangements between the coal subsidiaries of the Pacific Northwest (utilities) and their proposed generating subsidiaries.

"It is this type of transaction, along with the potential for large holding companies to dominate the energy field, which the Public Utility Holding Company Act was designed to address and prevent."

Cary said any such transactions between a coal subsidiary and a generating subsidiary could be scrutinized in rate reviews by state utilities commissions and the Federal Energy Regulatory Commission.

In the case of the Northwest private utilities, the Holding Company Act now would apply if they were to acquire 10 per cent or more of the stock in another utility company, such as the jointly owned generating subsidiary they are proposing.

ties could not get an exemption, it would have to comply with the Public Utility Holding Company Act.

The Pacific Power and Light Co., in particular, fears that it would have to divest some of its holdings in that case, MacDonald said.

Cary said the basic problem with forming a holding company is "the pervasive system of regulation by the S.E.C." He said a secondary consideration is whether any of the private utilities would have to divest themselves of any interests in order to comply with the act.

Cary and MacDonald both said they are convinced there would be adequate protection under existing law and through the proposed legislative exemption to protect consumers and stockholders in the Northwest.

The A.P.P.A. disputes that contention.

Public-employee leaders to meet

A three-day regional leadership conference of the American Federation of State, County & Municipal Employees will begin tomorrow in the Washington Plaza Hotel.

Jerry Wurf, president of the union, and Grace Hartman, president of the Canadian Union of Public Employees, will speak.

*(Walt Evans is on jury duty.
His column will resume Sunday.)*