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Lawrence Potamkin

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# The Preference Clause Is Fair — And Necessary

By LAWRENCE POTAMKIN\*

## *PREFERENCE RIGHTS ARE OWNERSHIP RIGHTS*

An important part of the dispute over the merits of the preference provisions of the federal electric power marketing laws constitutes an interesting study in the field of semantics. Much of the confusion in the public mind grows out of the use of particular words—words which in their pure, dictionary meanings do not create unfavorable connotations but which in common usage have taken on those inferences of impropriety.

The words “preference” and “preferred” do not in their basic meanings carry any wrongful connotation of themselves. There is no implication in the dictionary meaning of the words that there is anything unfair or improper in having a preference or in being preferred. A preference in its pure meaning can be either justified or unjustified. If it is justified, then there is, of course, no question of unfairness to anyone else.

However, in common usage these words seem to have taken on an implication of impropriety. The words have so often been used to create an impression of unfairness to others that the first reaction of many people is that there is unfairness. And, of course, the opponents of the federal power marketing provisions have not only desired that such an impression be created, but they have gone to great lengths to create the impression.

Obviously, if you tell a group only that others are being preferred over them, and you do not tell them why the preference is being given, you necessarily create the impression that the preference is wrongful and that they are, therefore, being discriminated against. This has been one method used in the attack against the preference provisions of the power marketing laws.

The purpose of this paper is to examine the basic principle underlying the preference provisions and to demonstrate that the preference involved therein is a preference in the pure meaning of the word and not in the popular misconception of the meaning of the word. The purpose is to demonstrate that what we have here is a proper preference, a preference that grows from basic rights.

### *Historical Basis*

The waterways of our country belong to all the people of the United States and are controlled for them and in their interest by the government they elect to represent them. This concept is basic to our form of government. Prior to the development of the science of electricity and the discovery that these waterways could be used to generate electric power, the basic principle that the waterways were to be used and controlled for the benefit of the people was applied without question to matters involving fishing, transportation and water supply. The correctness of the concept was never seriously challenged.

Historically, the use of water for utility services constituted the first

\*Law Firm of Wise & Potamkin, Washington, D.C.; Secretary, Lawyers' Committee of National Rural Electric Cooperative Association. Member of the District of Columbia Bar. A.B., LL.B., University of Pennsylvania.

public utility service rendered and it was furnished by the government. As early as 312 B.C., the Romans constructed a water supply system with aqueducts having an aggregate length of 359 miles.

In our country, the Pilgrims developed public water power plants to run their grist mills only a few years after they first settled at Plymouth in 1620. The other early American colonies did likewise. Public ownership and operation of water power sites along the rivers existed long before the establishment of the United States of America. An early precedent was set by New Hampshire, and by the Colony of Massachusetts in 1638 when it erected its own saw mill using water power.

Where the government did not itself operate the facility, it regulated its operation. The right to use the waters to develop a form of power had to be received from the government. In the Colony of West Jersey, the government went so far as to destroy a dam which interfered with navigation. Thus do we find that from the earliest days of settlement in our country it was uniformly recognized that the waterways could not be appropriated by any one group for its own purposes, but that they belonged to the people as a whole. Therefore, any use of the waterways required the special sanction of the government so that this basic principle could at all times be protected and observed.

With the advent of electricity, a new problem arose. How was the basic principle of public benefit to guide us in controlling the use of waterways for hydro-electric generation? The problem was first faced squarely by President Theodore Roosevelt when, in 1903, he vetoed a bill providing for the erection of a dam and the construction of a power station at Muscle Shoals, Alabama, by private interests. In taking this historic step, President Roosevelt declared that the entire problem required a comprehensive study so that a general policy could be developed which would "best conserve the public interest." He continued to deal with the problem in like manner in other and later messages to Congress. Finally, in the Reclamation Act of 1906, there was established for the first time the beginnings of the principle which we have since come to call "preference"—the policy of providing to public bodies the first use or availability of federally produced and marketed power. It gave preference "to municipal purposes." Thereafter, in subsequent acts dealing with power marketing, congress developed the principle more fully and more uniformly, giving preference to public bodies and consumer organizations.

### *The Word "Preference" is Misleading*

It is extremely unfortunate that the word "preference" or the designation of "preferred customers" was ever used. Apparently it seemed to the draftsmen to be the most direct and simple way to express the right which was being defined. In those early days of the first use of these words and terms, apparently the misleading connotations which might flow from such use did not occur to the draftsmen. However, once the terms had been used in legislation, they became words of art which were continuously used by all those discussing the matter. Again, it was the simplest and most direct way of referring to the laws and customers involved.

Much of the misunderstanding about these provisions in our laws flows

from the use of these words. The problem arises out of the semantics of the case rather than the basic truths.

For, in fact, no preference in the ordinary sense of the word is involved. And it is the purpose of this paper to make clear what the real basis is and to define the actual meaning of this congressional action, in the firm belief that no one who understands the principle involved will oppose the rights of the rural electric cooperatives and the public bodies to their status under the federal power marketing statutes.

### *No Preference in Price*

We should first note that the so-called preference provisions of the federal statutes create only a priority in the right to purchase the power generated at these federally owned installations. It applies only to the availability of the power and not to the price of the power. Thus, the statutes are designed only to give the rural electric cooperatives and public bodies the first right to purchase federally produced and federally marketed power. The preference provisions come into play only when another type of user of electric power, such as a large industrial user or a commercial power company, and a cooperative or public body both want to buy federal power and there is not enough for both. In such a case, the cooperative or public body would be given the first opportunity to purchase what it needs.

This is all that the so-called preference clause provides—it merely defines the order of purchasers. It would be more accurate, therefore, to speak of the non-profit distributors, the cooperatives and municipalities, as having the first availability of the power when there is not enough for everyone.

Cooperatives and public bodies get no price preference. The marketing agency sets the price and all who purchase pay the same price for the particular type of power purchased. In practice, this often means that the cooperative pays more than the commercial power company—never less.

Hydro-electric installations usually have at least two kinds of power for sale: (1) Firm power, which is available at all times, and (2) secondary power, which is available only at those times when there is more water available than usual for power generation. Only those distributors who have their own generating facilities can use this secondary power. Those who do not have their own generating facilities must at all times buy firm power, since they must be sure that they will have their power when they need it. Because secondary power is not always available and cannot be used by everyone, it is sold for a lower price than firm power. And since the cooperatives and public bodies which purchase federal power do not usually have their own generating facilities, they are limited to the purchase of firm power. For the firm power they buy they pay the same price as that paid by the commercial power companies that buy it—and they are unable to buy the cheaper secondary power which is, therefore, almost always sold to the commercial power companies. The over-all result is that the average price paid for federal hydro power by commercial companies is less than that paid by the "preferred" cooperatives and public bodies.

This result is not brought about by any preference or lack of preference. It results solely and entirely from the fact that secondary power is

cheaper than firm power and only the commercial power companies are in a position to buy and to use secondary power. The result, nevertheless, is that the preferred groups, the cooperatives and public bodies, actually pay a higher average rate for their power than do the commercial power companies.

### *Ownership by the People*

In a democracy, the government is not something separate and apart from its citizens. Rather, it is the representative of its citizens. It is in effect the people themselves organized in a specific manner to perform their governmental functions.

It follows, therefore, that what the government owns, the people own. It may properly be said that whatever the government owns, it owns as trustee for the beneficial use of all the people. This is true whether we are talking about the buildings owned by the government, the land owned by the government, or hydro-electric generating plants owned by the government.

When a man owns an automobile, we do not say that he has or is entitled to a "preference" in the use of that automobile. We recognize that because it is his automobile, he has the right to use it when and as he pleases, subject only to such general rules and laws as have been made applicable to the use of all automobiles generally. And if a man owns a house, we do not question his right to live in it and to use it to the exclusion of others. Nor do we call these rights of exclusive use a preference in his favor or a discrimination against other people. It is merely an attribute of ownership.

The same doctrines of ownership must be applied whenever the government, which holds title to certain assets for the benefit of the people, decides that it can and should make these assets available for the use of the people.

This becomes obvious when we consider those cases where the government is able to and does make natural resources available directly to its citizens for their use. Thus it is that when public lands are distributed to the people for settlement and development, no one questions the wisdom or the moral and legal correctness of the rule which makes those lands available directly to the homesteader who will himself occupy and use the land before any land is offered to a land company. And where the government makes national parks available to the public, no one questions the fact that where possible the government does this directly and not by turning over the land to private profit-making organizations for operation. And when surplus foods are made available to the school children for free lunches or cheaper lunches, no one questions the fact that they are made available to the public schools and to non-profit cooperative schools, but not to the private schools operated for profit.

All of these things are done because whenever a trustee who holds some asset for the benefit of someone else decides to make that asset available for use, he not only should but he must make it available first, if possible, for the direct use of the beneficial owner or owners. Not to do this would be a violation of the trust. It would certainly be the worst kind of wrong for a trustee to say to the beneficial owner that the trust property is to be made

available to him only through a third party who will add his profits to the cost of the owner's use.

Are there any who would maintain that because there are private companies selling food to school cafeterias, the government should abandon its school lunch program as such and sell the food to the companies who are in that business? Would anyone contend that because there are private land development companies the government should never give land directly to the people for their settlement and development, but should make it available to them only through these land development companies so that these companies may make a profit on the transaction? Could it be argued that because some play and vacation facilities are privately operated by profit making organizations, the government should never provide recreation and play facilities on government land at no cost or at only nominal cost?

These activities of the government have been and still are accepted as proper and even necessary. The basis for them is that the government is the people; that what the government owns, the people own; and that government facilities should at all times be used for the direct benefit of the people and not for the profit of selected individuals or companies.

This is precisely the situation that exists with respect to the hydroelectric generating facilities owned and operated by the government. The government owns these facilities, not as a company or an organization separate and apart from the people, but only as trustee for the people—and the beneficial ownership of those facilities remains with the people. It follows, therefore, that when the government makes the benefits of such installations available, it must make them available for the direct and immediate benefit of its citizens and not through the medium of a profit-making organization which will exact its toll from the people. The stated purpose in the various statutes dealing with the subject is that the electric power and energy marketed by the government shall be marketed so as to bring the maximum benefit of it to the people—so as to encourage the most wide-spread use by the people *at the lowest cost*.

This is not a policy developed out of the abstract thinking of Congress. It is merely a statement of what would be implied, of what would be applicable even if that language were not used. It is, in fact, merely the statement of a cardinal principle governing the relationship of a trustee to the beneficial owner.

The federal government is not in the retail electric business. It does not construct or own distribution facilities for the delivery and sale of electricity to the individual citizen consumer. If, however, the federal government were in the retail electric business, could anyone argue that it should not deliver and sell power to the individual citizen consumer before it should sell and deliver any electric power to a commercial company to resell for profit? In such a circumstance, it would be obvious that it was not only proper to sell to the individual consumer first, but that it was the only thing that the government should or could do.

The fact that the federal government has restricted its activities to the wholesale power business and cannot, therefore, deliver electric power to the individual citizen consumer, does not alter the essential relationship between the government and its citizens. It does not destroy the rights of the in-

dividual citizens as the beneficial owners of this power. For example, assume that electricity were the type of commodity which could be packaged for individual use so that the individual consumer could come to the dam and buy and take delivery of a certain amount of electricity. Would anyone question the propriety of a policy, in such circumstances, which stated that the government would first sell to the individual citizens who bought solely for their own use before selling to companies that would resell to the individual citizen at a profit?

Yet, this is precisely the situation which we have under the so-called preference laws. Since the people cannot individually purchase and take delivery of electric power from the government, they have in certain places organized their own citizen groups, their cooperatives and their public bodies, for the purpose of serving themselves with electric power. Certainly they are entitled to the same rights of purchase through this joint action that they would have had as individuals if purchase at retail direct from the government were possible. Those citizens who have placed themselves in the position to exercise their rights of beneficial ownership cannot be denied the opportunity to exercise those rights.

The so-called preference for cooperatives and public bodies, therefore, is not a preference at all. It is merely the recognition of the rights of an owner to use his own property. These public bodies and cooperatives that the people have created to serve themselves with electric power are nothing more than the people doing as a group what they cannot do individually—but it is nevertheless the people.

The so-called preference provisions now have a 50 year background of congressional approval. In the beginning, before there were electric cooperatives, the preference was provided only for public bodies. When, however, the people began to organize non-profit cooperatives to serve themselves with their electric needs, the preference provisions were extended to apply to the cooperatives as well. The principle was first stated in the Reclamation Act of 1906 as applicable to public bodies. In the TVA Act of 1933 preference rights were extended to cooperatives. Since 1933, the preference provisions have applied equally to public bodies and cooperatives.

*“Preference” is a Recognition of Ownership Rights*

As previously stated, it is unfortunate that the word “preference” was used, since what we are dealing with is not a preference, but merely a right of ownership. The word “preference” probably was used because in drafting any legislation the draftsman seeks brevity as well as clarity. The simplest and shortest way of stating this right of first purchase appeared to be through the use of the word “preference,” and in the context of this use the meaning was clear. The unfortunate consequence, however, has been that the people talk and think in terms of preference only—in terms of the word out of context—instead of in terms of ownership and of safeguarding the public interest against exploitation. That Congress itself recognized this doctrine of ownership, and was not thinking in terms of *creating* a preference for one group against another, is easily ascertained by an examination of the natural resource laws and public power legislation.

The federal power marketing statutes clearly show that the so-called "preference" provisions were not conceived as, or intended to be, exceptions to the basic purpose of protecting the public in their use of the public resources—of seeing that they obtain the maximum benefits from our natural resources. The preference provisions were not something carved out of those benefits, nor were they included as an addition to those benefits. Rather, the preference provisions have been included solely as a means of carrying out those benefits.

The TVA Act of 1933 says just that. In one section it states the policy or principle to be used as a guide for those charged with the responsibility of marketing federal power. The policy is "declared to be that the projects herein provided for shall be considered primarily as for the benefit of the people of the section as a whole and particularly the domestic and rural consumers to whom the power can economically be made available, and, accordingly, that sale to and use by industry shall be a secondary purpose, to be utilized principally to secure a sufficiently high load factor and revenue rates which will permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity."

In another part of the Act, the TVA Board is authorized to sell the power "according to the policies hereinafter set forth [see above] . . . and in the sale of such current by the Board it shall give preference to states, counties, municipalities and cooperative organizations of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens and members."

There is the plain statement of the congressional understanding and the congressional policy. There is the statement by Congress that when a federal asset is used by the public, it should be done in such a manner as to bring to the people themselves the maximum possible benefits. And here, too, is the clear recognition that, because the sales by the government are to be at wholesale, this requires that the organizations of the people, created by them for the purpose of enabling them to use these benefits as directly as possible and at the lowest cost possible, must be given the first opportunity to purchase the power offered for sale.

Such a result would be required even if Congress had not said so in so many words. Once the principle is stated that the commodity is to be so sold as to bring to the people themselves the maximum benefits of that commodity at the lowest possible costs, it necessarily follows that they must have the first right to buy the commodity, and this right includes the right to buy it through their own service organizations just as surely as they would have had the right to buy it as individuals if there had been retail sales as well as wholesale sales.

#### *The Preference Clause as It Should Be Written*

If we were not dealing with statutory language and if we, therefore, had no worry about the use of additional words in order to add clarity, this is what Congress might say instead of the present preference language: "What belongs to the government, belongs to the American people. The government holds title only as trustee, for the benefit of the people. The

public is the real owner of everything that belongs to the government. Therefore, whenever the government decides that something that it owns can be made available for direct use by the people themselves, it shall always give them the opportunity to use it directly and without paying others profit for that use. Where, however, it is not proper for the government to make the commodity in question available directly to each individual citizen, then it shall make it available to the organizations of the citizens created by them for the purpose of bringing them the benefits of that commodity.

“As a matter of sound governmental policy the federal government has decided to restrict its activities in the field of electric power and energy to that of generation, high voltage transmission and sale at wholesale. Therefore, the government cannot deliver the power directly to the individual beneficial owners. This does not alter the fact that the people are still the owners and, therefore, when they have organized their own public bodies and their own non-profit cooperatives to obtain this power for them at wholesale and to distribute it to them, those organizations are in effect the people themselves acting in the aggregate instead of individually. Consequently, those organizations shall be given the first opportunity to purchase the power before any of the power is sold to commercial profit-making enterprises.”

#### *No Discrimination Against Customers of Commercial Power Companies*

The unfortunate use of the word “preference,” and the mistaken reasoning to which this has often led, has caused apprehension among some people as to whether this first availability to the organizations of the consumers operates as a discrimination against those consumers who purchase their power from commercial companies. There is no such discrimination.

In a civilization as complex as ours, it is never possible for any rule or law or principle to provide exactly equal benefits for all people. This fact, however, should never lead us to take the negative step of denying the rights of ownership to those owners who are able to use the benefits of ownership merely because there are other owners who cannot obtain those benefits.

Certainly the fact that only a limited number of citizens, usually those who live in closest proximity to it, will enjoy a public park is no reason to deny that limited number their rights to use the park directly and without paying profit to third parties. When the government makes public lands available for settlement and development by individual citizens, obviously the number who can take advantage of such an offer is small compared to the number who would like to but cannot, and it is infinitesimal compared to the full number of the citizens who own that land through their government. Surely, however, it cannot be argued that because of this no citizen should be given the right to settle and develop the land directly but that, instead, it should all be turned over to land development companies.

It is a function of our government to use our natural resources for the direct and maximum benefit of the people. It can, of course, do that only where the natural resources exist. It follows that the people living in the area where the natural resource exists will get the first and most direct benefit from it. This is a necessary and unavoidable circumstance, and ad-

vances no reason why such immediate and direct benefit should be denied to those citizen owners who can use it.

The reverse of the benefit situation also exists and has not been questioned. The same water resources of the country which, when properly harnessed, can bring such great benefits often, when not properly harnessed, bring disaster. The devastating floods of recent years are a fresh reminder of that fact. When disaster strikes through these natural resources the federal government has stepped in to try to alleviate the suffering and property damage that result. Special measures are taken for the immediate and direct benefit of the area involved and the people in the area. That this is a proper function of our government has not been questioned. We do not hear of any organized campaign against such action by the government in such cases, despite the fact that the action taken by the government in such cases means action on behalf of limited areas and limited numbers of people. In other words, the test has never been and cannot be whether the government action involved is for the immediate and direct benefit of everyone, or only some.

Similarly, the mere fact that all citizens cannot share immediately and directly in the benefits of a natural resource is no reason to deny to those citizens who can make such use the right to do so. If this were done, our natural resources would be put to use only at the whim of those whose primary purpose was to exploit the natural resource for a maximum of profit and the public interest would become secondary. The ownership of these natural resources would be transferred from the people to these private corporations.

The fundamental and controlling fact of life in every case involving the development of natural resources is that there will necessarily be some citizens who benefit more directly. And there will always be some who cannot obtain direct benefit from the natural resource. This must not, however, be permitted to affect adversely the rights of those citizens who, either by chance or by special effort, have placed themselves in a position where they can make direct use of the benefits offered by the government. The inability of some owners to use the jointly-owned property must not be made the basis for denying the rights of their ownership to those owners who can use it. Such a denial would be discrimination—discrimination in its grossest form—since it would deny to an owner his fundamental rights of ownership. There can be no question of discrimination in offering to the people themselves the first availability of the federally marketed power which they own. But if that first availability were denied them, then, indeed, would there be discrimination, but against them and not against commercial power companies and their consumers.

It is thus apparent that no preference is involved in the preference clause. The preference clause is merely a brief statement, unfortunate in its choice of language, which recognizes the fact that in the final analysis the people are the real owners of whatever the government owns and that, therefore, the people themselves, through their own electrical service organizations created by them for that purpose, should have the first opportunity of purchasing the electric power and energy which the government, as trustee for the people, is offering to sell.

### *FALSE ISSUES RAISED BY THE POWER COMPANIES*

This discussion of the "preference clause" has been limited to a consideration of the theory underlying it—to a demonstration that it is based upon the most elementary and fundamental principles of our type of society. There are, however, other important principles related to and involved in this issue which must be discussed. Let us not pull this preference issue out of context and discuss it in a vacuum. Let us place the discussion in its proper setting.

#### *Power Companies Are Not a Part of the Free Enterprise System*

The preference issue has been raised by the private power companies. These companies claim that the preference provisions are unfair to them and therefore to their customers. Thus it becomes necessary to consider the nature and function of a public utility such as a power company.

The electric power company is a monopoly, authorized to furnish a necessary service to the public. It is legally sanctioned and legally protected, but it is nevertheless a monopoly. As a monopoly, it is not part of the free enterprise system.

The two basic elements of the free enterprise system are (1) the right to earn greater profits through superior functioning—through greater efficiency, originality and vision—and (2) the regulating effect of competition. The drive for profits is what makes the system tick. It is the motivating force that makes the businessman constantly seek more efficient methods of operation and improved production and service. On the other hand, the profit motive alone might lead only to gouging the public. It must be kept within reasonable bounds—it must be regulated. And competition does this. To make more money, the businessman must do a better job than his competitor, so he is always trying to do that better job. But his competitor is doing the same thing. Therefore, prices cannot get out of hand. As long as there is full and free competition, the public can take its business elsewhere if one businessman raises his prices out of reason. And if the service rendered by a businessman becomes inferior, the public can go to his competitors. This is our free enterprise system.

Obviously, the electric power company is not part of that system. It does not operate under either of the basic elements of the free enterprise system. It is not entitled to earn unlimited profits nor is it subject to competition. Its rate of return is fixed for it by a regulatory body and rate schedules are determined which are calculated to produce that rate of return. If the system operated perfectly, the electric power company would end its year with an exact, predetermined net income. And this is what it is entitled to earn whether it operates efficiently or inefficiently. It is not entitled to any reward of extra profits. So the extra profit motive, as it exists in the free enterprise economy, is not available to the electric power company.

Similarly, it is not subject to competition from others. It alone has the right to serve in its prescribed area and, conversely, all those who wish electric service must get it from the company having a monopoly in that area or do without it. The company is free of competition and the customer is captive, so the basic element of competition is also lacking.

This is a fundamental point that must always be kept in mind in any discussion of anything that affects the electric power industry. It is not part of the free enterprise system and no analogies with free enterprise types of businesses are valid. Therefore, in discussing the preference provisions it is utterly without meaning to compare them with hypothetical preferences that might be extended to a free enterprise type of business, such as, for example, special mailing rates for one publisher as against a competing publisher, or the government going into the grocery business next to a grocery store. There is simply no connection between the two problems.

When we discuss the preference provisions we are discussing a public utility use of a natural resource. We are discussing the use of water power in the monopoly field of serving the people with an essential service. It has no relationship to other uses of other natural resources. In a basic sense, everything we have or use is the product of a natural resource—the food we eat, the clothes we wear, the vehicles we ride. But these other natural resources and their products are used in the free competitive society, and therefore no preference treatment would be proper. This is, however, far different from the right of the people to enjoy *directly* the benefits of our natural resources in the public utility field. This is far different from saying that the people must pay a profit toll to a monopoly for the privilege of using what is theirs.

Those who oppose the preference provisions constantly make these invalid references to and comparisons with competitive types of business. They apparently believe they are entitled to the combined benefits of a protected monopoly and of a free enterprise business. This they cannot have.

Monopolies have always been recognized as destructive of a free enterprise economy. As far back as the days of Queen Elizabeth I, the English courts held monopolies to be illegal. The courts emphasized the twin dangers of monopolies: (1) high prices and (2) poor quality of service. Only free and unrestricted competition could protect against these, and therefore monopolies were outlawed. In the public utility field, an exception was created. Monopolies were legally sanctioned and protected. But by being a monopoly the electric power company ceases to be part of the free enterprise system and so has no claim to the freedoms and privileges of a free enterprise business.

#### *No Question of Socialism Involved*

Out of this completely invalid analogy with competitive business comes what is probably the most absurd charge made by the power companies and their spokesmen, namely, that the preference provisions invite socialization of the power business. In the first place, just what is socialism? Is any government activity a form of socialism? If so, I'm afraid we have a great deal of socialism in our country. Is our public school system socialism? Are our city operated water systems socialism? Are our city operated sewage disposal systems socialism? Is our government postal service socialism? I think that most of us do not consider it socialism for the government to furnish its citizens with a necessary public utility type of service.

I think that most of us consider socialism to be the entry of government into the free enterprise type of business. And that we oppose.

I would like to suggest to those who use this argument that they are doing very real damage to the fight against socialism. If they succeed in misleading the public into identifying public ownership of essential public utilities with socialism, they may by the same token convert many millions of Americans into socialists. After all, there are countless millions of our citizens who like their municipal services. They don't consider those services socialism nor themselves socialists. But let the power industry convince those millions that those governmental services are socialism, and they may also convince them that socialism is desirable.

I am amazed that the power industry does not realize this. I am shocked that in their grasping for a weapon in their immediate fight against the preference provisions they fail to recognize the greater and long range danger of their misleading argument. I could well understand the Socialists' claiming that the governmental services are socialism, but I cannot understand the power industry doing it.

May I suggest to my power company friends that their socialist issue is very much like the little man in the poem:

As I was walking up the stair  
I met a man who wasn't there;  
He wasn't there again today.  
I wish, I wish he'd stay away.

I wish they would join me in this wish, and discuss the issues rather than the phantasies.

#### *Taxes a False Issue*

The socialist issue is very similar to the tax issue. We always hear about the taxes that the power companies must pay. Since they must pay taxes, they argue, why shouldn't government bodies pay taxes? Well, let us follow that line for a moment. In some cities, private, tax-paying water companies furnish the water the people use. In other cities, the local government does it. For the sake of "fairness," should the government be compelled to pay taxes? Private, profit-making schools pay taxes. Should the public school systems be compelled to do likewise? We could go on endlessly this way, selecting each and every governmental service and asking the same question. The answer is, of course, obvious. Under our system of separate governments, one government cannot tax another government. So when the power companies complain that they pay taxes and a municipal electric system does not, they are in effect questioning our entire governmental structure. I suggest that unless and until the power companies are ready to propose an entirely new system of government for us—until they have a comprehensive plan under which state and local governments must pay taxes to the federal government on all of their activities—they cease this meaningless complaint that a government body does not pay taxes on its power operations.

The tax issue, like the issue of socialism, simply does not exist. What matters it to a company operating in Pennsylvania that a municipal system in California does not pay taxes? The Pennsylvania company collects

from its customers the taxes it must pay. The investors don't pay the taxes—the customers do. And I cannot believe that this constant harping on taxes by the power companies is motivated by any desire to lower the customer's costs.

### *Power Companies Overcharge Customers*

Certainly, the power companies have shown no such concern for the customer in their other activities. It sometimes happens that power companies earn more than their allowable rate of return. This means they have overcharged their customers. Yet I have never seen them offer to return these overcharges. When a power company proposes new and higher rate schedules, it estimates its future expenses and income. To be safe, expenses are estimated on the high side and income on the low side. This is fine for the investor, but not for the customer, because it practically guarantees that the company will make more than it should and that the customer will pay more than he should.

When the power companies received huge benefits under the accelerated amortization certificates, did they offer to give any of these benefits to the customer? On the contrary, they fought to give the *entire* benefit to the investor.

And talk about subsidies! The power industry has received approximately \$3 billion in these rapid tax write-off certificates from 1951 to date. Assuming a normal depreciation rate of 3 per cent a year, this will reduce the tax payments of the companies by approximately \$1.3 billion over a five year period. How about some tears for the tax-payers on that?

The benefits to the power companies from this subsidy, over a 33 $\frac{1}{3}$  year period, will exceed \$4 billion. This is more than the government's total investment in federal power projects, from 1906 to 1953, of \$2.55 billion. But none of this benefit is for the customer.

And when the power companies spend countless millions to propagandize their own customers, to sell the political and economic ideas of their management, do they charge these millions to themselves and to their investors, as they should? On the contrary, they include those millions in the expenses of operation which they then charge their customers.

No, I am afraid that the record will show no real concern by the power companies for their customers. I am afraid that the record will show that the power companies think and act not in the terms of best service at lowest cost, but in profits over and above their allowable rate of return. And that is why they fight the preference clause and raise the false issues of socialism and taxes. What they desire is complete domination of the power field. What they want is the complete elimination of all governmental and cooperative power activities. Then they can really go to town!

The destruction of the preference clause would be the most effective single step in the destruction of many fine municipal and cooperative systems. It would be a giant stride toward the complete monopolization of our power facilities by the private power companies. It would make the final steps easy. And with that complete monopolization we would suffer the full, historic consequences of monopoly—higher prices and poorer service.

*PREFERENCE CLAUSE NEEDED TO PROTECT THE PEOPLE*

In the final analysis, the ultimate protection of the people is their right, if they so desire, to serve themselves through their own governmental and cooperative agencies. This right is fundamental in our law and our history. It must not be restricted or abridged. It must not be emasculated by creating artificial barriers against it. We must never say: Yes, you the people own the natural resources of the country; yes, you the people have the right to furnish your public utility services, such as electric power, through your own organizations; but, to make sure you cannot use that right, we will make you pay a toll to a power company for the use of your own resources. What a mockery that would make of this fundamental right!

I suggest that the private power companies stop spending their energy—and their customers' money—fighting the preference clause. I suggest that, instead, they devote their energy to giving the best possible service at the lowest possible cost. If they do that, they need have no fear of their future. But if they fail to do that, they may invite the very consequences they fear.