

The Regulatory Dilemma of the Federal Power Commission, 1920–1977

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In the late 19th and early 20th centuries, progressive politicians such as Theodore Roosevelt and Woodrow Wilson believed that government regulation could curb the abuses of monopoly industry and balance the power between the corporation and the consumer. Reformers from both major parties advocated the creation of independent regulatory agencies at the state and federal levels staffed by experts who would administer new legislation on the public's behalf. Created by Congress with high hopes and great expectations, the regulatory agencies, dubbed the fourth estate of government by friends and foes alike, could not match the heady optimism of their supporters. Snarled in bureaucratic red tape, beset by lobbyists, unable to establish consistent policies, overcome by a massive workload, and at times captured by the very industries under their supervision, federal regulatory agencies failed to fulfill their early promise.¹

The Federal Power Commission (FPC) was no exception. Born on June 10, 1920, after a decade of controversy over a national policy with respect to hydro power under federal control, the Federal Power Commission operated under a series of administrative handicaps from the very beginning. Over the next 57 years, Congress and the executive branch tinkered with the powers and authority of the Commission, as did the Supreme Court. All the branches of government, however, could not cope with the changes spurred by technological advances in the industries regulated by the Commission. By 1961, a report prepared for President John F. Kennedy branded the 40-year-old FPC as “the outstanding example in the Federal Government of the breakdown of the administrative process.” Over the subsequent 16 years, the agency struggled to transform itself in order to cope more effectively with political pressures



Nominees to the Federal Power Commission at the Capitol, 1930. *Left to right:* Marcel Garsaud, Claude L. Draper, George Otis Smith, Ralph B. Williamson.

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¹ See *Time*, Jan. 6, 1961, 16.

and national policies and to administer the regulations pertaining to the country's electrical and natural gas energy programs.² But rolling brownouts and widespread blackouts demonstrated basic flaws in the electrical grid system far beyond the agency's ability to resolve. In addition, within the Carter administration, natural gas shortages demanded less federal regulation, not more government red tape. In the end, the energy crisis of the 1970s and the Commission's inability to resolve the seemingly irreconcilable dilemma of rising energy prices and dwindling energy supply led to its demise. This history of the FPC demonstrates the great challenge of administrative management of energy in 20th-century America. The evolving technology of energy development; the dramatic fluctuations in prices, supply, and demand; the inability to successfully mediate corporate and public needs; and the Commission's limited capabilities and ambiguous mission all guaranteed limited success. The story highlights the challenges of regulation in our society, that it must be clearly defined and empowered, and must be administered to serve both economic growth and the public welfare.

From Licensing to Regulation, 1920–1940

The first two decades of the Federal Power Commission's life divided into three distinct periods. The first 10 years, from 1920 to 1930, chiefly concerned the licensing of private waterpower developments. However, financial uncertainty, internal bickering, divided organizational responsibilities, staff shortages, investigative limitations, and the lack of any consistent policy greatly hindered the operation and performance of the Commission. From its first year of operation, the Commission begged Congress "to amend the Act, at least to the extent necessary to employ its own personnel." However, with the progressives who sought more effective regulation now in the minority, Congress ignored the Commission's pleadings. A bureaucratic orphan with little authority, the FPC accomplished little more than accumulating a significant backlog of applications during this first period of its operations.³

An explosion in the use of electricity due to expanded industrial applications, the growth of home lighting, and widespread purchases of labor-saving home appliances such as the electric stove, refrigerator, washing machine, and vacuum cleaner, plus the radio, led to greater reliance on electric utilities. The enormous growth in electric power holding companies in the 1920s, many of whom operated across state lines, "necessitated a corresponding increase in responsibility of the Federal Government for assuring ample supplies of

² Federal Power Commission, *First Annual Report of the Federal Power Commission*, June 30, 1921, 5 (hereinafter cited as FPC, *First Annual Report*); FPC, *1977 Final Annual Report*, July 1978, 6; *Time*, Jan. 6, 1961, 16.

³ FPC, *Twentieth Annual Report*, 1940, 2–3; FPC, *1977 Final Annual Report*, 6–7; FPC, *First Annual Report*, 16. The Commission was not able to hire its own employees until 1928; see FPC, *Ninth Annual Report*, 13.

power at low cost.” For the five years beginning in 1930, the Commission underwent a restructuring and entered a second phase, conducting pioneer power and rate surveys that “laid the foundation for broader regulatory and planning functions.”⁴

In the third period, the New Deal Congress extended the Commission’s functions under the Public Utility Act of 1935 and the Natural Gas Act of 1938 to include regulation of the interstate aspects of electric and gas utility companies and “provision for power development in connection with river-basin programs.”⁵

The law establishing the Federal Power Commission, the Federal Water Power Act of 1920, was a product of congressional progressives like Senator George W. Norris, a Nebraska Republican, and conservationists such as Gifford Pinchot. In embracing the policy of Theodore Roosevelt, Pinchot believed that the government should lease waterpower sites to private companies for a period of 50 years and, in return, the utilities would pay the government royalties. At the end of the lease, the property reverted to the government. Public opinion praised the legislation. “The public domain is a great public inheritance,” the *New York Tribune* argued. “Let us keep what remains of it, but not let it lie fallow indefinitely.” Others saw the enormous potential of economic development of cheap electric power, especially in the western states where coal was in short supply and rivers held great potential. “White coal” was a preferable source of energy to coal and oil. According to the Troy (NY) *Times*, “with the application of power available under the terms of the new law, particularly where great electrical energy is developed, it is not too much to say that the country will enter upon a new industrial era, with possibilities of production that only the future can demonstrate.”⁶

Yet, for all its promise, the new waterpower law was basically flawed. Under the provisions of the act, Congress placed the FPC under the direction of three cabinet secretaries, War, Interior, and Agriculture, all of whom had conflicting, overlapping, and sometimes parallel authority over various phases of hydro power. The creation of the Commission compounded the interdepartmental jurisdictional friction. Since the FPC could employ only one individual, an executive secretary, all other personnel had to come from the staffs of the three executive departments.⁷ But the three-headed executive branch cow had little interest in nourishing its new heifer, and the Commission spent much of its first decade crying for the authority to employ its own staff.

⁴ FPC, *Twentieth Annual Report*, 2.

⁵ *Ibid.*, 3–4.

⁶ *Literary Digest* 66 (July 10, 1920): 18–19.

⁷ Richard Lowitt, *George W. Norris, The Persistence of a Progressive, 1913–1933* (Chicago, 1976), 202; John Arthur Rotstan, “An Inquiry into the Political Order Underlying the Independent Federal Regulatory Commissions: A Case Study of the Federal Power Commission” (Ph.D. diss., Claremont Graduate School and University Center, 1966), 208–9 (hereinafter cited as Rotstan, “A Case Study of the FPC”).

This need would not be met. In the meanwhile, the Commission was overwhelmed with applications to develop waterpower sites on public lands and navigable streams and proved to be woefully inadequate in light of its responsibilities. Within the first five months, the FPC received three times the number of applications that the three departments had considered in the preceding 15 years. With borrowed staff and limited expertise, the Commission could decide only a small percentage of its cases.⁸

The election of Republican Warren G. Harding as President in the fall of 1920 marked a change in executive policies toward federal power. The Commission, initially created to act on behalf of consumers, now sought cooperation with the very groups it was to regulate, including the National Electric Light Association and the National Association of Public Utility Commissions. Even so, the Commission was incapable of doing its job. Ignored by the Secretaries of War, Interior, and Agriculture; starved for funds and personnel; and rife with dissension between its assigned staff and the commissioners, the FPC, according to a student of the agency, soon developed a reputation “for inefficiency and for failure to protect the government’s interests adequately against the aggressions of the power industry.”⁹

Throughout the 1920s, the Commission failed to evolve any consistent policy. Before it had been in existence 10 years, the FPC changed five times, twice in its entirety, there having been five different Secretaries of War, five Secretaries of Interior, and four Secretaries of Agriculture in that period. In addition, there was no core of public servants to provide continuity, as many of the Commission’s tasks were farmed out to the executive departments, which jealously guarded their contributions to the FPC and often worked at cross-purposes with each other. Perhaps most illustrative of the Commission’s fall from grace was the fact that the commissioners in the 1920s met on average 11 times a year, with meetings lasting about one-half hour each. Regulation of electric rates had never been discussed by the FPC. Consequently, the agency’s activities were limited to encouraging the development of the country’s waterpower resources under long-term licenses. The FPC was hardly part of what Secretary of Commerce Herbert C. Hoover had hoped to create in a commonwealth of business and government cooperation.¹⁰

⁸ FPC, *First Annual Report*, 16; Rotstan, “A Case Study of the FPC,” 211.

⁹ Rotstan, “A Case Study of the FPC,” 215.

¹⁰ *Ibid.*, 216–17; William P. McLauchlan, “Federal Hearing Examiners and the Federal Power Commission” (Ph.D. diss., University of Wisconsin, 1968), 109, 111–12 (hereinafter cited as McLauchlan, “Federal Hearing Examiners”); FPC, *Twentieth Annual Report*, 3; Laurence Todd, “Power Control Breaks Down,” *The Nation* 130 (Mar. 12, 1930): 289.

As a result, state governments took the initiative, led by Gov. Gifford Pinchot in Pennsylvania. Pinchot, who had played a key role in the original federal legislation, argued that “giant power and super-power are as different as a tame elephant and a wild one.” The first was a “friend and fellow worker of man, the other, at large and uncontrolled, may be a dangerous enemy.” The main object of giant power, Pinchot said, was to “assure better service and vastly cheaper rates to the consumer . . . through effective public regulation.” The chief idea was “not profit, but public welfare.” Super-power, on the other hand, was “the interchange of small quantities of surplus power at the ends of the distribution wires of each system.” The main object of the super-power idea was “greater profit to the companies.” Many viewed Pinchot’s plan as creating a fundamental change in the American economy. A Philadelphia paper praised Pinchot’s initiative, stating that his plan would usher in a new electrical age and “stimulate the creation of small manufacturing plants, check urban congestion, and develop the freer, more healthful existence of suburban and rural communities.”¹¹

At the federal level, the inefficiency of the three-headed administrative arrangement proved unacceptable. In 1928 Congress changed the Commission’s organization and procedures by giving the FPC funds and an independent staff, transferring the borrowed personnel to the FPC’s own employment rolls. At about the same time, the FPC changed its hearing procedures to allow formal hearings to be conducted by anyone the Commission selected, leading to a decline in the number of pending cases. Two years later, President Hoover urged Congress to create a full-time, independent Federal Power Commission. The Federal Power Act of 1930 established the Commission as a five-member, bi-partisan body appointed by the President with the advice and consent of the Senate and, in giving the FPC more independence and responsibility, began the second phase in the Commission’s growth.¹²

Hoover’s best intentions, however, foundered on politics and the appointment of a new group of commissioners. Through a lobbying effort of the major power companies, Hoover appointed three new commissioners: Chairman George Otis Smith, the former head of the U.S. Geological Survey; Colonel Marcel Garsaud, an engineer with close ties to the Public Service Corporation of New Orleans, a subsidiary of the large holding company Electric Bond and Share; and Claude L. Draper, head of Wyoming’s Public Service Commission. No sooner did they take office than the three new commissioners, each of who’s past marked them

¹¹ “Pinchot’s Plan to Tame the Elephants,” *Literary Digest* 84 (Mar. 3, 1925): 13.

¹² Todd, “Power Control Breaks Down,” 289; McLauchlan, “Federal Hearing Examiners,” 117, 119.

as partial to the large power interests, dismissed the Commission's chief accountant, Charles A. Russell, and its head solicitor, William V. King, two prominent staff members at the FPC with reputations for protecting the public interest and disliked by the power companies. "The men [Hoover] has chosen for the Power Commission," *The New Republic* complained, "on their first day in office, act[ed] precisely as they would have done if they had been taking orders from the power trust." Progressives in the Senate were outraged and threatened to reconsider their approval of the nominees. Hoover, *The New Republic* claimed, was "tied to the leading strings of the power trust." Many in Congress believed that Hoover's actions had made power, perhaps even the nationalization of power, a major issue for the 1932 election, equal to prohibition in importance.¹³

Hoover's Democratic opponent in the 1932 presidential election was New York Governor Franklin D. Roosevelt, who had already sided with the primacy of public power over private interests in the development of electrical power along the St. Lawrence River. In the absence of any federal action on that issue, Roosevelt asked the New York state legislature to create a body of public trustees "to undertake the St. Lawrence development by and for the people of this State." During the presidential campaign in 1932, Roosevelt demanded full publicity as to the activities of public utilities and called for the regulation of holding companies by the Federal Power Commission.¹⁴

After soundly defeating Hoover, Roosevelt and Congress moved to place public power advocates in control. Roosevelt replaced George Otis Smith with Frank R. McNinch as chairman of the Federal Power Commission. Ironically, Hoover had appointed McNinch, a Republican, to the Commission in 1928. However, in the four intervening years, McNinch pushed for additional regulation of electric power in interstate commerce, and his actions made him a favorite with the anti-utility forces in the Senate. Early in the New Deal, the government, through the Public Works Administration's National Power Policy Committee, began planning a central grid system—a power network coordinating existing and new generating and transmission facilities into a single entity to furnish large blocks of power at uniformly low rates. As an adjunct to this initiative, in the spring of 1934 Congress, drawing on a model established by Pinchot in Pennsylvania in the twenties, direct-

¹³ "Mr. Hoover and the Power Issue," *New Republic*, Jan. 21, 1931, 258; "The Power Commission Shows Its Hand," *New Republic*, Jan. 7, 1931, 206; Harris G. Warren, *Herbert Hoover and the Great Depression* (New York, 1967), 73–74; see also "The New Power Battle," *The Nation* 132 (Jan. 21, 1931): 60, and "Stormy Start of the Big 'Power Trust' Fight," *Literary Digest* 108 (Jan. 24, 1931): 5–6.

¹⁴ "The Roosevelt Fight on Morgan Superpower," *Literary Digest* 102 (Sept. 28, 1929): 10–11; James MacGregor Burns, *Roosevelt: The Lion and the Fox* (New York, 1956), 142.

ed the FPC to investigate and compile rates charged for sales of electrical energy by municipal and private companies to residential, rural, commercial, and industrial consumers throughout the nation. By 1935 the FPC had issued a preliminary Electric Rate Survey. The creation of the Tennessee Valley Authority (TVA) and the Bonneville Power Authority, which were used by the New Deal as yardsticks to measure the electrical rates of private utilities, constituted a second public power front against the private utility industry. David E. Lillienthal, chairman of the TVA, argued that the yardstick approach led “to a realistic re-examination of the financial feasibility of low rates” throughout the country. The Commission’s Electric Rate Survey became part of the factual data used to measure the yardstick’s success and to aid in standardizing rates. In addition, the Commission began its first National Power Survey, which analyzed the future growth of the country’s electric utilities. The survey became a continuing project with updated supplements published periodically.¹⁵

Roosevelt’s initiatives were in large part a reaction to changes in American society and the growing dependence on electrical energy, as well as the growing consolidation and strength of private power companies. By 1929, sixteen groups controlled 92 percent of the nation’s electrical power output. During the first decade of the FPC’s existence, the electric utility industries had undergone tremendous growth, far outpacing both state and federal regulation. Approximately 15 percent of the electricity generated in the United States moved across state lines, and the percentage was steadily increasing. A similar “regulatory gap” existed in the gas industry as well, creating a need for regulatory authority of the same scope as the service area of the utilities, since the wholesale cost of the natural gas or electricity imported from another state constituted an important component of the costs of retaining service within the importing state.¹⁶

The Roosevelt administration urged Congress to close these gaps. Based on a series of FPC investigations done in the early 1930s, Congress drafted Title II of the

¹⁵ “Power,” *Business Week*, Aug. 5, 1933, 16; *ibid.*, Aug. 11, 1934, 11; Arthur M. Schlesinger, Jr., *The Age of Roosevelt: The Politics of Upheaval* (Boston, 1960), 378–79, 380; *News-Week*, June 12, 1937, 18–19; David E. Lillienthal, *TVA—Democracy on the March* (New York, 1953), 24; Rotstan, “A Case Study of the FPC,” 232; Department of Energy, Federal Energy Regulatory Commission, *Federal Power Commission: 1977 Final Annual Report* (Washington, DC, July 1978), 7 (hereinafter cited as FERC, *Federal Power Commission: 1977 Final Annual Report*). See also, Federal Power Commission, “Fifteenth Annual Report—1934–1935” (Washington, 1935), 4–7.

¹⁶ Richard S. Kirkendall, *The United States 1929–1945: Years of Crisis and Change* (New York, 1974), 71; William H. Melody, “Public Utility Regulation: Economic Analysis, Accounting Control, and Federal Power Commission Rate Policy” (Ph.D. diss., University of Nebraska, 1966), 30 (hereinafter cited as Melody, “Public Utility Regulation”).

Public Utility Act of 1935, better known as the Public Utility Holding Company Act of 1935. Title II, also called the Federal Power Act of 1935, authorized the Commission to integrate the operating companies into regional systems on the basis of technical efficiency, at last implementing the policies pushed through the National Power Policy Committee a couple of years earlier. The legislation gave the FPC authority to regulate the wholesale rates of electric power transmitted between states. It also authorized the Commission to encourage, though not force, the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, so that “an abundant supply of electric energy” would be assured in all regions of the country and the “greatest possible economy” achieved in the use and conservation of natural resources. Importantly, the law also gave the Commission authority to adopt a uniform system of accounts for electric utilities and “to fix reasonable and not unduly discriminatory rates for interstate sales of electricity.”¹⁷

Three years later Congress plugged the second gap in passing the Natural Gas Act of 1938. This legislation provided the FPC jurisdiction over the natural gas pipeline industry by permitting the Commission to regulate the interstate transportation and sale of natural gas, much as the Federal Water Power Act of 1935 had done with electricity. Equally important, the act also gave the FPC the authority to prescribe a uniform system of accounts and to inspect the books and records of natural gas companies. The intent of this section of the act was to “eliminate hidden cost barriers to consumption and the development of comparative cost and price standards as a quasi competitive stimulus to better management.” Within two years, 20 states had adopted the uniform system of accounts proposed by the FPC, and another 20 states adopted an almost identical system drafted by the National Association of Regulatory Utility Commissioners (NARUC) in cooperation with the FPC.¹⁸

Increased Energy Demand Versus Regulation

On the eve of the United States’ entry into World War II, the FPC was working closely with a number of government agencies to insure that the country would

¹⁷ FERC, *Federal Power Commission: 1977 Final Annual Report*, 7; Melody, “Public Utility Regulation,” 32–33; Schlesinger, *The Politics of Upheaval*, 306; FPC, *Sixteenth Annual Report, 1935–1936* (Washington, 1936), 2. The Flood Control Act of 1938 gave the FPC the ability to make recommendations to the U.S. Army Corps of Engineers on Corps construction projects of hydroelectric generating facilities.

¹⁸ Melody, “Public Utility Regulation,” 33–34; FPC, *Twentieth Annual Report, 1940*, 4. By 1954 natural gas producers came under FPC regulation due to a Supreme Court decision, *Phillips Petroleum Company v. Wisconsin*, 347 U.S. 672.

have adequate power needs for defense industries. The Commission expanded the power surveys it began in 1935, and the data collected from more than 1,550 operating systems became the core information for the work of the National Power Policy Committee and the Advisory Commission to the Council of National Defense. The Commission translated defense orders into demand for power, gathering monthly information on power requirements and power capacity and projecting that data into future needs. The FPC also investigated the feasibility of a system of high-capacity transmission interconnections tying together the major power-market and industrial centers of the East to assure more economical use of existing capacity and less likelihood for interruption of service in any defense production area. Finally, with its new responsibility for natural gas, the Commission pondered a proposal to supply natural gas reserves in the Southwest to the markets in the industrial Northeast. But the transmission of natural gas would have to wait until 1947, when Big Inch and Little Inch, two major oil pipelines built during the war to bring oil from the Southwest to the Northeast pipelines, were converted to natural gas pipelines.¹⁹

Under the gun from a Congress looking to evade or overturn New Deal reforms, the Commission rallied to the principle of regulation. Pulled between the demands of wartime production and the Commission's traditional advocacy of low-cost power, in 1940 the commissioners analyzed the FPC's procedural problems over its first 20 years, concluding that the period witnessed "increasingly elaborate and protracted procedures devised by . . . private companies to delay or circumvent" the Commission's objectives. "Having obtained a status substantially free from competition," the commissioners declared that private utilities "now seek . . . to regain the arbitrary control of costs and rates which would be theirs under unregulated monopoly." They promised to be a "tribune of the people," to "fully protect the public against any semblance of arbitrary or unfair treatment."²⁰

Two controversial decisions in North Carolina illustrated the Commission's public power bias. In 1938 the Commission ruled that the Aluminum Company of America (Alcoa) had to secure a license from the FPC for a large hydroelectric project it planned to build on the Yadkin River. After Alcoa abandoned the project, the Commission granted the city of High Point the authority to build a \$6 million hydroelectric project on the river using a Public Works Administration grant. North Carolina Governor Clyde R. Hoey, a conservative Democrat, challenged the Commission's authority over

¹⁹ FPC, *Twentieth Annual Report, 1940*, 5–6, 9–10; Daniel Yergin, *The Prize* (New York, 1991), 430.

²⁰ FPC, *Twentieth Annual Report, 1940*, 13–14.

the river wholly within his state, arguing that the matter was a states' rights issue and that the FPC lacked authority to make that decision. The courts upheld the Commission, but the battle between public and private power advocates continued to simmer.²¹

After the Japanese attack on Pearl Harbor in 1941, each side agreed to a truce for the duration. Although the Commission did not publish any reports and the brief descriptions of its activities indicated a decrease in business, perhaps because of security reasons, its backlog of cases increased, especially in reference to natural gas. The FPC continued to regulate rates, though the Office of Price Administration participated as an intervener. More importantly, the rate study that the Commission had begun some years before became the basis of wartime planning for new generating facilities. Leland Olds, the chairman of the FPC, and J. A. Krug, who would head a power section in the War Production Board, quickly filed a plan for building 13.5 million kW of generating capacity between 1943 and 1946. Roosevelt blessed the plan against bitter opposition from private power companies. Olds continued to argue for more federal power during the war, but his predictions of power shortages proved greatly exaggerated, and he and the FPC lost much of its authority to Krug and the War Production Board.²²

When the war ended in 1945, the future of the FPC looked cloudy. Rumors circulated that the Department of the Interior, which had become the largest power producer in the nation during the war, wished to absorb the FPC because of its planning expertise and rate-making authority. The Commerce Department might pick up other parts of the FPC. But for all the power talk, much of the business of the Commission had shifted. Commissioners now faced a significant number of pending cases pertaining to natural gas pipelines, a testimony to the enormous growth in the usage of natural gas and the success of the major pipelines bringing the resource from the Southwest to the industrial East.²³

The war changed the natural gas supply and pricing. Pipelines laid to serve industrial markets boosted demand beyond available supplies, and the field wellhead price steadily mounted. Although the FPC did not regulate wellhead prices of independent producers, the regulation of the price that interstate pipelines could pay for gas from their own wells proved to put a brake on runaway prices. Prices of competing fuels, oil and coal, also rose after the war. However, profits on invested capital in the gas industry did not keep pace with its competition. If the major gas producers, who controlled about two-thirds of the

²¹ *Business Week*, Apr. 22, 1939, 23–24.

²² *Business Week*, July 26, 1941, 22–26; *ibid.*, Dec. 29, 1945, 20.

²³ *Business Week*, December 29, 1945, 21; McLauchlan, "Federal Hearing Examiners and the FPC," 132.

known gas reserves, could remove federal regulation, great profits would accrue. Experts estimated that an increase of five cents per thousand cubic feet would increase the value of the holding of Phillips Petroleum by \$389 million.²⁴

At the end of the war, the Commission emerged from its veil of secrecy with a different mix in its workload. A fourth phase in the FPC's history had begun. Although the total electric power capacity had increased from 40 to 50 million kilowatts and demand in the first full peacetime year exceeded that of the war period, applications for natural gas pipelines, a result of the Natural Gas Act of 1938, now constituted a major part of the FPC's pending workload. Fortunately, the Administrative Procedure Act of 1938, enabled the Commission to adopt a shortened procedure that permitted eliminating the hearings stage for uncontested applications, thereby speeding the approval process. The act also instituted the pre-trial conference, used after 1940 to narrow the issues in contested cases, as well as new procedural guidelines that all agencies had to follow. The changes lasted some nine years, from the end of the Second World War to 1954, when the Supreme Court decision in *Phillips Petroleum Co. v. Wisconsin* expanded the Commission's jurisdiction and necessitated additional revisions in procedures.²⁵

In the *Phillips* case, the Commission held that it could not regulate gas prices at the producer level. But the Supreme Court ruled otherwise, shocking the FPC as well as the oil companies and gas-producing states of the Southwest. Now the Commission had to exercise a power covering 140 interstate pipeline companies and more than 2,300 independent gas producers. The fact that the Commission established rate ceilings and state regulatory bodies set a floor under those rates, both in the interest of encouraging exploration and development of new fields and avoiding waste through overproduction, compounded the bureaucratic turf wars. Threats from producers to withhold gas from interstate pipelines made the FPC's position more precarious. Since transportation and handling costs accounted for up to 90 percent of the price of gas, prices would rise sharply if the pipelines were partially empty. Furthermore, if the FPC pegged the rates too low, exploration would be cut and the total gas supply reduced, pushing up rates. Although most thought such a legislative action to remove government from gas regulation action was unlikely in an election year, the potential of gas shortages could very well change the equation.²⁶

²⁴ Rotstan, "A Case Study of the FPC," 236–38.

²⁵ McLaughlan, "Federal Hearing Examiners and the FPC," 133–34; FPC, *Twenty-sixth Annual Report, 1946*, 1; *ibid.*, *Twenty-seventh Annual Report, 1947*, 10; McLaughlan, "Federal Hearing Examiners," 135–37.

²⁶ *Business Week*, Feb. 23, 1952, 25; *Time*, June 21, 1954, 94–95.

The *Phillips* decision also greatly increased the Commission's workload. Since 1948 the FPC had received steadily declining appropriations from Congress and studied neglect from the executive branch, forcing it to switch staff from one section to plug into another. The court ruling also aggravated the flood of applications and filings that poured in from the independent gas producers. In the year before the decision, applicants had instituted just over 1,000 cases under the Natural Gas Act. In 1955 the number soared to nearly 7,000. The mass of applications continued to overwhelm the Commission, even with an increase in the number of hearing examiners. After the 1954 *Phillips* decision, natural gas work far outweighed the electric segment of the Commission's responsibilities.²⁷

Congress and the courts largely changed the responsibilities and authority of the Federal Power Commission for the decade-and-a-half following the Second World War. The FPC, one scholar noted, was an arm of Congress, yet the congressmen "exercised a rather clumsy continuing control." Through controlling the agency's budget, assigning it additional responsibilities, and adding demands to its organizational structure, Congress altered the operation of the Commission. The FPC's attempts to provide recommendations to Congress, largely through the Annual Reports, often went unanswered, especially pleas for additional staff. The Natural Gas Act gave the Commission an entirely new field to regulate, requiring new procedures and expertise, but the explosive growth of the Commission's business during the postwar years raced ahead of the agency's ability to successfully handle that growth. At the same time, the Administrative Procedure Act, under which hearing examiners were selected by a method independent of the Commission, elevated the position of examiner. Required by the law to issue a decision, hearing examiners could be questioned by all parties, including the FPC, and the Commission had to consider the examiner's decision before making its own ruling. The procedure slowed applications at the same time that new applications poured in.

²⁷ McLauchlan, "Federal Hearing Examiners," 136–42; FPC, *Thirty-fourth Annual Report, 1954*, 147. With too few hearing examiners to handle the existing caseload of natural gas applications, the FPC introduced a new procedure, the Area-Rate proceeding, to cope with the overflow of independent producer rate cases. This type of hearing established maximum rate levels for all gas producers in a definite geographical area, unless a producer could make a case for exclusion from the general rates. In this approach, the Commission the advantage of setting uniform rates for all parties in an area, but gas producers, however, believed that each producer was unique and should be considered separately by the FPC. Eventually, producers took the procedure to the Supreme Court, which in 1968, in a 7-1 decision, sustained the Commission's initiative in *Permian Basin Area Rate Cases*. FPC, *Thirty-fourth Annual Report, 1954*, 143–45.

Attempts at Organizational Reforms

By 1960, someone estimated that it would take the FPC, under its present procedures, “until 2043 to catch up with its work, even if the staff were tripled in size.”²⁸ It was at this time that James M. Landis began his review of the Commission.²⁸ Born in Japan, Landis came to the United States as a prep school student and later graduated from Princeton and Harvard Law School. He arrived in Washington in 1933 and, with Thomas Corcoran and Benjamin Cohen (the three men were known as “Frankfurter’s Happy Hot Dogs”), helped draft the Securities Exchange Act of 1934 and the Public Utility Holding Company Act of 1935. After a stint on the Securities and Exchange Commission (SEC), he served as dean of the Harvard Law School.²⁹

Landis enjoyed a superb reputation in Washington for his work on the SEC, especially his ability to organize the agency and make it efficient. Right after John F. Kennedy’s victory over Richard Nixon in November 1960, the President-elect called on Landis to prepare a report on federal regulatory agencies. Landis produced his report in less than six weeks. The study, according to the leading scholar of government regulation, “was a merciless dissection of the commissions’ failures, informed not only by the author’s years of study and experience but also by a bitter sense of the historical betrayal of the regulatory ideal.” Landis denounced the Truman and Eisenhower administrations for years of regulatory neglect and called for major reforms in all the regulatory agencies. He saved his harshest criticism for the Federal Power Commission, accusing it of acting “as a virtual Chamber of Commerce for the oil and gas companies.” The gas producers, who feared that the Landis Report might make things tougher for them, did not agree. They complained that their industry had none of the guaranteed markets of a utility and should not, therefore, be subject to utility-type price regulation. Rather, they hoped that Congress, through Speaker of the House Sam Rayburn and Vice President-elect Lyndon B. Johnson, would “make the FPC responsive to the needs of Texas.”³⁰

The FPC came under fire from several directions other than Landis. Electric and natural gas applicants damned its regulatory red tape; its own staff condemned the pro-utility leanings of the commissioners; and federal bureaucrats at the General Services Administration, which purchased the government’s power, complained

²⁸ Ibid., 146; *Time*, Jan. 6, 1961, 16.

²⁹ Thomas K. McCraw, *Prophets of Regulation* (Boston, 1984), 154–206.

³⁰ Ibid., 206–7; “The Alphabet Agencies Carry a Big Stick—Is That Good or Bad?” *Newsweek*, Jan. 2, 1961, 58.

frequently and loudly against rate increases. Landis suggested that the Commission clear much of its stagnant natural gas rate docket by freeing all producers under a certain size from all regulation. “Top administrative positions appear to have been sought frequently as stepping stones to further preference, or to positions of importance within the industries subject to regulation,” Landis noted. He urged that the President appoint qualified people to run the regulatory agency. The recommendation was particularly appropriate for the FPC because the terms of all the commissioners were soon to expire.³¹

Kennedy moved quickly to reform the Commission. He appointed Joseph C. Swidler, the former general counsel of the Tennessee Valley Authority, and Howard V. Morgan, a former public utility commissioner in Oregon, who he believed would represent consumers. Swidler became the new chairman. Since both men had electric power backgrounds, Kennedy needed someone with natural gas experience. Into this vacuum, Vice President Johnson pushed fellow Texas Democrat Lawrence J. O’Connor, an oil executive who, true to Johnson’s earlier Senate position on the FPC, enjoyed the firm support of the Texas gas producers. By the end of 1961, Kennedy had replaced all the commissioners with his own appointments, including Harold C. Woodward of Illinois, a former judge, and Charles R. Ross, a liberal Republican and former chairman of the Vermont Public Service Commission. Morgan and Ross, who turned out to be the strongest advocates of the public interest, soon found themselves in a minority position. Morgan resigned, sending a blistering letter to Kennedy complaining that utility regulation “can easily become a fraud upon the public and a protective shield behind which monopoly may operate to the public detriment.” To a friend, Morgan commented that “the New Frontier just shuffles paper faster.” In the opinion of *The Nation*, Kennedy “flubbed a fine opportunity to renovate the regulatory agency his own expert singled out as the worst example of the breakdown of the administrative process.”³²

Morgan’s resignation reflected motives beyond his frustration with his fellow commissioners and the regulatory environment, and much of what he said did not hold up to careful scrutiny. Indeed, the Commission under Swidler’s chairmanship had done much to unsnarl the regulatory mess in natural gas rates. Im-

³¹ “The Alphabet Agencies Carry a Big Stick,” 58; “Landis on Regulation,” *Commonweal*, Jan. 16, 1961, 6–7; “The Regulatory Agencies,” *Commonweal*, Jan. 13, 1961, 401–2.

³² FPC, *Forty-first Annual Report, 1961*, 1; *Newsweek*, Feb. 11, 1963, 68; “The Public Be Damned,” *The Nation* 196 (Feb. 23, 1963): 150–51.

portantly, Swidler accepted the Phillips decision and, rather than fight it with inaction, he set out to change old procedures and to add sufficient staff to deal with the increased workload generated by the decision. In General Policy No. 61-1, the Commission initiated organizational changes to speed up the processing of gas cases. He abandoned the old policy of deciding cases on a company-by-company approach and divided the country into 23 producing areas, each with a price ceiling based on the area's average costs. The Bureau of Natural Gas underwent a top-to-bottom reorganization. The FPC established a field office in Houston to be closer to its "clientele." Swidler encouraged settlements of long-standing cases and, to emphasize its improving relationship with those it regulated, established a Natural Gas Advisory Board and offered incentives for new exploration. Within two years of his appointment, Swidler was earning high praise from the industry in clearing up the backlog of natural gas rate cases. The head of Brooklyn Union Gas Co. was so pleased he told *Business Week* that "I feel kindly toward the FPC." Swidler had bypassed formal rate proceedings and urged industry and consumers to negotiate rate settlements.³³



Joseph C. Swidler (left) greets President Lyndon Johnson at the LBJ Ranch, near Stonewall, Texas, December 5, 1965.

At the same time, Swidler launched an investigation into the earnings of the gas pipeline companies. He also began investigating the rates charged for the transmission of interstate electric power, especially over extra-high-voltage (EHV) transmission lines, by increasing the staff from 4 to 70. But Swidler was also solicitous in industry, preaching the notion that intelligent regulation that brought down rates could benefit companies as well as consumers. Under Swidler, who saw the FPC as the logical forum for bringing together the conflicting parties in the electric power and natural gas transmission industries, the Commission became as much of a mediator as it did a regulator.³⁴

³³ Gilbert Burck, "The FPC is Backing Away from the Wellhead," *Fortune* 86 (Nov. 1972): 111; "Extra-high-voltage at the FPC," *Business Week*, Sept. 21, 1963, 72–86.

³⁴ "Extra-high-voltage at the FPC," *Business Week*, Sept. 21, 1963, 72–86; FPC, *Forty-second Annual Report*, 1962, 27.

The FPC continued to make procedural and administrative changes as its staff grew. By the fall of 1964, the Commission had embraced electronic data processing, installing its first mainframe computer, a Honeywell H-200. Commission officials encouraged employees to attend classes in clerical, technical, and administrative training courses. The FPC intensified its college recruitment program, particularly emphasizing quality candidates from engineering, accounting, and legal backgrounds. By 1964 the Commission estimated that it had reduced the time to rule on a gas pipeline application from 12 to less than 7 weeks.³⁵

Energy Crisis and Blackouts

Simultaneously, the center of controversy shifted to the electric power industry. Technological advances in the electric industry served to magnify the importance of the FPC and once more change its principal focus. Before World War II, the producers of electric power controlled the industry. Afterward, it became the parties who controlled the transmission of electricity. By the 1960s most power in the United States was pooled, because utilities bought power from one another in accordance with supply and demand. To facilitate this system, the utilities established power grids or networks, many crossing state boundaries, in which utilities could interchange power. Ideally, the savings would benefit consumers, and grids would provide insurance against power failures and blackouts. But the massive and historic blackout that occurred in the northeastern United States and Canada on the evening of November 9, 1965, which threw some 30 million people into darkness, stunned the electric industry and was a sobering reminder of the fragility of the grid supply system. The utilities responded by establishing a regional coordinating council made up of 22 companies to facilitate better planning within the northeast power system. But when a second blackout occurred in June 1967, many argued that the FPC should have the authority to prescribe the building of adequate interconnections in the public interest. “The story is familiar,” *The Nation* complained, “great potential advantages from technological innovation only partly realized because of a lag in government policy.”³⁶

The blackouts resulted from significant changes in the utility industry by the mid-1960s. Frequent brownouts drew increasing attention from government authorities and consumers. In many areas of the country the demand for electricity, rising

³⁵ FPC, *Forty-second Annual Report*, 1962, 27; *ibid.*, *Forty-fifth Annual Report*, 1965, 23–24. The commissioners believed that “the prospects for expanded use of ADP [Automatic Data Processing] as a tool in the regulatory process are considerable.”

³⁶ “Power Blackouts and the FPC,” *The Nation*, June 19, 1967, 773; J. A. Pratt, *A Managerial History of Consolidated Edison, 1936–1981* (New York, 1988), 149–50.

by 7–10 percent a year, outstripped the ability of the companies to generate and transmit it. The FPC noted that in the two years after the Northeast blackout in 1965 there had been 20 major power failures in the United States. The demand for additional power led to the construction of more power plants, many of them nuclear and coal-fired, and hundreds of miles of transmission lines. Conservationists, soon to be called environmentalists, joined to block construction of both generating stations and transmission lines. The utilities also faced mounting public and government concern over air and water pollution. Montgomery County, Maryland, for example, ordered the Potomac Electric Power Company to burn coal containing less than 1 percent sulfur, forcing the company to seek new coal sources or convert to oil. Public opposition to utilities delayed building additional capacity, frustrating company officials who had operated for decades with minimal interference. As a result, to head off stronger regulatory authority proposed for the FPC, private regional power pools shifted their primary focus from economic savings to the reliability of interconnections during periods of peak power demand.³⁷

By 1970, in the Federal Power Commission's 50th year, its goals remained much the same, "to assure adequate supplies of electric power and natural gas to meet increasing consumer demands." However, changes in the energy environment of the sixties had added a new perspective, that the Commission's regulations were "compatible with the national commitment for a quality environment." The public's increased energy usage and its resistance to construction of generating plants and transmission lines that might impair the environment now forced the Commission to re-examine its long-standing rate-making policies. Also, reserves of natural gas were declining. Several pipeline companies announced strict limits on increases in daily and annual gas deliveries to industrial customers, and 12 major interstate gas pipeline companies anticipated a "significant deficiency in meeting incremental demand for the 1970–71 winter." Shrinking supplies put pressure on the Commission to review earlier policies, such as area price ceilings on natural gas. As a result, the Commission stimulated the development of new natural gas reserves by expanding its review of gas rates to determine if higher rates should be established for future gas supplies dedicated to interstate commerce.³⁸

The Commission was less successful in coping with the nation's worsening shortage of electricity. In the spring of 1970, the Nixon White House transferred the

³⁷ "It's Open Season on Utilities," *Business Week*, July 22, 1967, 41–44.

³⁸ FPC, *Fiftieth Annual Report, 1970*, 1–2; see also, "FPC Wins Double Victory on Gas," *Business Week*, May 11, 1968, 36–37.

FPC's task of coordinating federal efforts to ease electricity shortages during peak periods to the Office of Emergency Preparedness, the government's agency for mobilizing the country's natural resources in times of national emergencies. The electric power issue had become highly politicized. Democrats in Congress accused the FPC of dereliction and threatened to pass legislation to give the federal government a larger voice in planning future generating capacity. The Commission opposed such a move, arguing that it would jeopardize management's traditional prerogatives in planning. Congress countered that the nation could see power rationing by 1971 if nothing was done.³⁹

Congress missed its forecast; there was no power rationing in 1971. There were, however, 25 power interruptions during the year. After reviewing the estimated gas reserves, the Commission's chairman, John N. Nassikas, a New Hampshire lawyer appointed by President Nixon in 1969, became convinced that the country would soon run out of available supplies of natural gas. Producers needed incentives to drill new wells. He urged a price increase as the best incentive. Nassikas's position set off a heated debate. In spite of a congressional investigation into the extent of natural gas reserves, Nassikas's policy held, leading the FPC to emphasize the search for new sources by increasing the ceiling price on wellhead gas, by providing price escalations tied to the attainment of specific dedicated reserve goals, by reducing filing requirements for small producers, and by approving emergency short-term imports of liquefied natural gas (LNG) from Canada and North Africa. In effect, the policies simply reduced existing regulatory requirements to meet market demands.⁴⁰

Newly instituted federal environmental regulations posed significant changes for the way electric utilities and pipeline companies did business. The passage of the National Environmental Policy Act (NEPA) in 1969 extended the Commission's authority over the environmental impact in the planning and construction of gas pipelines and hydroelectric dams. Within two years the Commission now required applicants to meet environmental guidelines and to collect utility power plant air and water quality data. In addition, the FPC issued regulations establishing for the first time aesthetic guidelines to be followed by natural gas pipeline companies in planning, locating, clearing, and maintaining pipeline rights-of-way and building new pipeline facilities above ground. By 1972 the Commission issued a report entitled "Managing the Electric Power Supply and the Environment." The Com-

³⁹ "Power Shortage Gets Emergency Treatment," *Business Week*, May 16, 1970, 32.

⁴⁰ FPC, *Annual Report, 1971*, 1-3; "FPC Chief Faces a Grilling on Gas," *Business Week*, July 17, 1971, 40; FPC, *Annual Report, 1971*, 3.

mission's National Gas Survey also had a section on gas production "compatible with the protection and enhancement of environmental values."⁴¹

"Every day the shortage of natural gas grows worse," *Fortune* warned its readers in the fall of 1972. Indeed, in terms of Btu's, gas cost less than either oil or coal. The dilemma outlined by *Fortune* went to the heart of the energy policy debate that occupied the Federal Power Commission in the early 1970s. One side argued that gas supply and demand could only be balanced if the FPC was given additional authority over prices, production, and final use. The other major point of view held that gas producers should be wholly free from controls and gas prices should be left to find their own level in the marketplace. The FPC under Nassikas had allowed prices to rise to reflect market conditions, but other voices within the Nixon administration such as the Council of Economic Advisors and the President's Oil Policy Committee repeatedly urged deregulation, arguing that gas production was competitive enough to be decontrolled. In effect, the Commission believed that the public interest was best served by ameliorating the gas shortage, and that could be done only if the wellhead prices of interstate gas rose enough to spur a large increase in exploration and development.⁴²

There was considerable resistance to the Commission's pricing policies. Swidler, the former chairman appointed by Kennedy, called for more regulation or none at all. The present system, he said, was "a system of private irresponsibility." He called on Congress to give the FPC more responsibility, such as authority over intrastate as well as interstate gas, or to simply amend the Natural Gas Act to deregulate gas completely.⁴³

The worsening natural gas shortage, the slow growth of new electric generating capacity, and the expanding demand for energy in the United States became the central focus of every American with the Arab oil embargo in October 1973. The oil crisis aggravated the country's shortages and, according to the Commission, "revealed [a] surprising weakness in the Nation's energy supply system." When the Nixon administration, in its final months, announced "Project Independence," a program to accelerate the availability of domestic energy resources and achieve national energy self-sufficiency within 10 years, the Commission stressed that the new energy initiative "dovetailed with FPC policies that [have] been in progress for several years," referring to the increases in natural gas rates.⁴⁴

⁴¹ FPC, *Annual Report, 1971*, 3; FPC, *Annual Report, 1972*, 2.

⁴² Burck, "The FPC is Backing Away from the Wellhead," 108–9.

⁴³ *Ibid.*, 111, 180.

⁴⁴ FPC, *Fifty-fourth Annual Report, 1974*, 1.

The push to conserve energy hit the electric industry in an unexpected way. The annual growth in national electricity consumption declined to about half of what it had been the previous year, and in some areas there was no growth at all. Conservation contributed to great savings in fuel and other resources, but threatened the financial health of the electric power industry. Successful conservation measures reduced sales and loads in an industry operating on the basis of growth. The oil crisis had turned the postwar world of electric power on its head. In the 1960s and early 1970s, utilities planned for additional generating capacity through construction of larger generating units and dozens of nuclear power plants, both of which took additional construction time. To offset the delays, utilities purchased low-efficiency gas turbine generators to meet peak demands. Inflation, rising costs of construction, and delays in obtaining rate increases put significant financial pressures on the utilities. The jump in fuel prices, especially oil, which had become the major fuel for generating electricity, led to declining profits and an inability to secure adequate financing.⁴⁵

Impossible Mission and Demise

Amid the swirling changes and soaring fuel prices generated by the 1973 oil embargo and ensuing energy crisis, antagonism to the FPC's policies grew. Opponents crowded when the General Accounting Office (GAO) charged the Commission with improperly granting rate increases to companies in which several of its top officials held stock. The Commission admitted that nearly half of its top officials had failed to make full financial disclosures. Further, the GAO estimated that out of the \$3.3 billion in increases collected, only one-third went to producers as an incentive to enlarge gas supplies, undercutting Nassikas's position that the rate increases were necessary to promote exploration and development. The other two-thirds went to the pipeline companies, according to the GAO. The report contributed to a spreading dissatisfaction with the Commission in Congress and among consumer groups, who referred to the FPC as "Commission Impossible."⁴⁶

The debate over natural gas reserves and price controls overshadowed all other responsibilities of the Commission. By pushing for deregulation, the FPC seemed to be chipping away at its own existence. Proponents said that the

⁴⁵ *Ibid.*, 9–11. In 1974 electric utilities filed \$164 million in wholesale rate increases and reported almost \$2 billion in retail increases, the largest on record at the FPC. Part of the increased income was due to skyrocketing fuel prices, some as much as several hundred percent higher than in 1973.

⁴⁶ "Fattening Gas Prices," *Time*, Sept. 30, 1974, 89–90.

FPC's position was "a laudable act of self-denial." There was no question that the commissioners had loosened regulatory provisions, especially regarding pricing, since 1970 to increase the supply of natural gas in the interstate market. The central question revolved around what options the Commission realistically had.⁴⁷

In the opinion of many, the Commission had few other choices than to rely on the natural gas and pipeline industries for the information upon which it based its decisions to deregulate prices. The FPC was one of the smallest agencies in Washington, and most observers agreed that it was woefully understaffed. By the mid-1970s, one industry expert noted that the Commission was "so occupied with changing the price of natural gas that the rest of its jurisdiction has floundered." The FPC could satisfy no one. If it held down the price of natural gas produced in one state and consumed in another, the gas producers screamed that there were no incentives to find further reserves. If the Commission allowed prices to rise, the 45 million consumers whose businesses and homes burned natural gas set up a howl. The FPC had become an agency without friends.⁴⁸

The commissioners were painfully aware of the agency's sorry reputation. In 1976 presidential candidate Jimmy Carter was proposing a single federal agency to handle all energy matters, a position that would abolish the FPC. In June of that year, the Commission tried to restructure the agency in an attempt to recapture some support. First, it awarded a contract for a management study of the Commission's organizational structure and workflow, then rushed to implement some of the recommendations. Among the changes was the creation of a Regulatory Support System to handle records management, dockets, registry and service, central files, and mail. To respond to congressional critics, the Commission placed control of congressional mail in the executive director's office to expedite responses. Another major reorganizational change took the financial analysis section of the Office of Accounting and Finance and placed it into two operating bureaus, natural gas and electric power. Such a move, the FPC said, would speed up "the process and at the same time rais[e] the quality of analysis through increased coordination." The Office of the General Counsel saw its workload redistributed and staff realigned, and in January 1977 the Commission's economic analysis functions were consolidated into a new Office of

⁴⁷ "The Reluctant Regulators," *Business Week*, May 19, 1975, 94.

⁴⁸ "Agency Without Friends," *Time*, Nov. 29, 1976, 40.

Policy Analysis. To answer criticism from the utility industry about the growing backlog of electric rate increase cases, the Commission created an Electric Rate Settlements Task Force. To appeal to consumers, the FPC announced plans for a new position of special assistant for consumer affairs to “hopefully encourage public participation in and understanding of Commission decisions.”⁴⁹

The changes, which were hastily implemented, might have made a slight difference but came far too late to receive a full trial. By 1976 the FPC had become a bureaucracy hopelessly entangled in federal red tape. Before the Commission could set a price for natural gas, it had to consider legal precedents in hundreds, if not thousands, of federal court rulings. It still operated under the strictures of the Administrative Procedure Act and the National Environmental Policy Act. Finally, the FPC had to consider the opinions of approximately 25 other federal agencies with some kind of jurisdiction over energy matters. “In other words,” *Time* suggested, “the FPC has about as much room to maneuver as a trussed chicken.”⁵⁰

Even the FPC’s chairman, Richard L. Dunham, believed that the basic charter of the agency was “badly out of date.” Congress wanted the Commission to ensure adequate supplies of natural gas and to keep the price low. That could be done in the days when gas was plentiful but not when consumption ran far ahead of new reserves and every winter threatened a fuel shortage. Dunham did not see how the FPC could solve its price versus supply dilemma and sided with President-elect Carter that the agency should be abolished. Whatever happened to the FPC, observers noted, the key issue remained unresolved: unless Congress chose low prices or ample supplies, a new energy agency would inherit the “task of reconciling the irreconcilable.”⁵¹

Soon after taking office, President Carter suggested that the Federal Power Commission be fully integrated into the proposed Depart-



Richard L. Dunham, Chairman of the Federal Power Commission, February 1977.

⁴⁹ FPC, *Fifty-sixth Annual Report, 1976*, 1–3.

⁵⁰ “Agency Without Friends,” 40.

⁵¹ *Ibid.*, 45.

ment of Energy, thereby handing out a death sentence to the Commission as an independent federal agency. Few on the President's staff believed that there was much reason for keeping the FPC, often rated the worst regulatory agency in Washington. Events after the election in 1976 and 1977 did little to dislodge them from their position. During the frigid winter of 1976–77, the natural gas supply situation reached critical proportions. The Commission responded with the same emergency measures it had used in the past, primarily allowing prices to rise. Congress took some of the controversy about rising gas prices away from the FPC with the passage of the Emergency Natural Gas Act in February 1977. The emergency legislation gave the President the power to authorize extended emergency gas transactions without regard to FPC ceiling prices and to order allocation of gas supplies from one region or company to another. On the night of July 13, a massive blackout darkened New York City and surrounding areas, affecting some eight million people. According to the federal government, "the incident was one the most severe power failures ever to befall a major electric power system." The nation's apparently fragile electrical power grid systems came under public scrutiny once again, and the FPC began an investigation into the design and operation of Consolidated Edison Company's system. The Commission was unable to finish its investigation before going out of business, and the Federal Energy Regulatory Commission (FERC) completed the work, even though the responsibility for such investigations had been transferred to another agency, the Economic Regulatory Administration. Finally, after considering for more than three years the selection of a pipeline system to transport natural gas from Alaska to the lower 48 states, the Commission was still divided and could not decide between two competing proposals. In September, President Carter stepped in and selected the Alcan Pipeline Company to build the largest privately owned and financed undertaking on the North American continent, estimated to cost more than \$10 billion.⁵²

Although Congress was willing to give the President emergency authority to handle energy crises, it was not willing to grant the executive branch too much authority. To kill the Federal Power Commission and place its responsibilities in the new Department of Energy, a cabinet agency, was to give the executive branch more power than most congressmen believed was warranted. By the provisions of the Department of Energy Organization Act, Congress granted the

⁵² "The FPC Gets a New Life, New Name and New Responsibilities," *National Journal*, Oct. 10, 1977, 1649; FPC, *1977 Final Annual Report*, 9–10; Federal Energy Regulatory Administration (FERC), *First Annual Report, 1978*, 10–11.

FPC a reprieve in a sense, letting the Commission die on September 30, 1977, and then resurrecting it the following day as the Federal Energy Regulatory Commission (FERC). The major change was that Congress had placed the new commission in the unusual position of operating as an independent agency under the umbrella of



President Jimmy Carter signs the Energy Bill, November 9, 1978.

the Department of Energy. The odd administrative location for FERC was highlighted by the fact that it would move from its long-time location at 825 North Capitol Street, NW, to the Department of Energy's headquarters in the Forrestal Building at 1000 Independence Avenue, SW. Nonetheless, the new commission inherited virtually all of the FPC's regulatory functions of controlling interstate sales of natural gas and electric power. In addition, the legislation transferred the authority to set oil pipeline rates and to establish the value of oil pipelines for rate making purposes from the Interstate Commerce Commission to FERC.⁵³

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For most of its 57-year life, the Federal Power Commission was caught between the hopes of its creators—for the government to ensure plentiful supplies of low-cost electric power and, later, natural gas—and the demands of powerful producers and their congressional allies for less regulation and greater pricing freedom.

⁵³ Although it maintained most of the FPC's authority, FERC did lose some of its predecessor agency's functions. The department now held prime responsibility over proposals for imported natural gas, FERC would retain jurisdiction over such gas once it was mixed into interstate commerce. According to the organizational plan, FERC's chief link with the Energy Department would be the Economic Regulatory Administration (ERA), a unit that took over the oil pricing and allocation responsibilities of the old Federal Energy Administration and also was to perform the FPC's function of drawing up curtailment priorities for natural gas customers. FERC was to hear appeals on individual oil pricing cases that are heard by the Economic Regulatory Administration. In addition, after the Con Ed blackout, the ERA, not FERC, would investigate any problems that might arise with regional power grids or a national electric power network. At birth, FERC had a number of confusing bureaucratic relationships to define if it was to maintain its independence from the Department of Energy while the government tried to shape a national energy policy. "The FPC Gets a New Life," 1649, 1651; FERC, *First Annual Report*, 1978, 1.

Soon abandoned in the early 1920s by its congressional supporters, the Commission was rarely, if ever, adequately funded or staffed and largely failed to please any part of its constituencies, either producer or consumer. Occasional reorganizations achieved only limited gains. To complicate operations further, politically appointed commissioners were often at loggerheads with their professional staff. Hearings were slow, workloads increased, the backlog of cases mounted. Frequent attempts to change administrative procedures to speed up the rate-making process were effective primarily in the short term but proved to be mostly a band-aid solution in the long term. The addition of natural gas regulation in 1938 and the *Phillips Petroleum* decision in 1954 served to compound the Commission's administrative weaknesses, leading to the agency's weak bureaucratic reputation highlighted in the 1960 Landis Report.

If the Federal Power Commission was limping along during a period of energy abundance, the coming of energy shortages through the decline of proven natural gas reserves and the Arab oil embargo of 1973 insured that it would not recover. Slow to adopt electronic data processing and unable to recruit and hold quality professional and technical staff, the FPC continued to struggle in the 1970s in a dramatically changed energy environment, pleasing only a few. Accusations of inefficiency and favoritism, when coupled with sharply higher energy costs, doomed the Commission and the purpose for which it had been established. Perhaps a commissioner's twin responsibilities—planning policy for industry expansion and deciding on rates—one requiring vision into the future, the other demanding specific disinterested judgments, were incompatible. For years, critics of regulatory agencies had suggested that the policy-making function be transferred to the executive branch, leaving the regulatory commissioners as quasi-courts to decide individual cases in accord with the policies established by Congress and the executive branch. How the FPC's successors would deal with this dilemma would determine the level and efficacy of regulation.

The Federal Trade Commission's story also illustrates the larger paradox in U.S. regulatory history, that of the difficulty in defining and achieving a clear bureaucratic mission and structure for federal regulatory agencies in an open political system. Compromises between opposing political and economic interests often

Photo credits: Federal Power Commission appointees, Library of Congress; Joseph C. Swidler, Lyndon B. Johnson Library, photo by Robert Knudson; President Carter signs bill, and Richard L. Dunham, Jimmy Carter Library.

leave weakened and easily manipulated federal regulatory bodies with unclear and distorted mandates and powers. While not always as dysfunctional as the FTC, U.S. government agencies are subject to the priorities of contesting political factions and demands. The long-term success of our nation may depend on the degree in which all sides recognize the basic societal needs, regulatory protections, and institutional flexibility necessary for effective governance.

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