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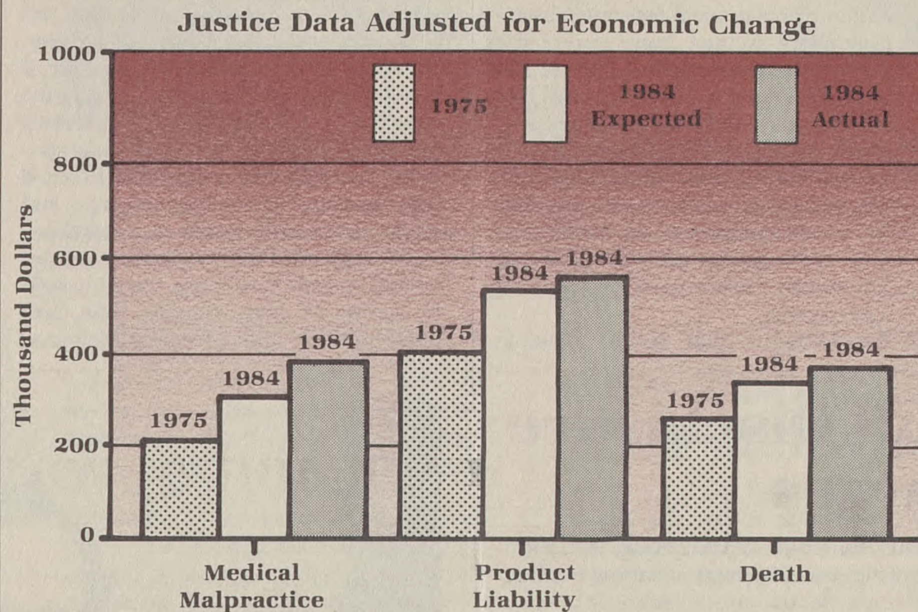
CFA Study Challenges "Runaway Jury" Myth

Rather than running wild, as the Reagan administration alleges, American juries are demonstrating the common sense of the American public, according to a report recently released by CFA. The report, titled "Trends in Liability Awards: Have Juries Run Wild?" shows that during the last ten years, juries and courts have increased awards for meritorious lawsuits by no more than the value of changing economic and social conditions.

"Not surprisingly, a jury of peers tends to increase awards over time by no more than the rise in medical costs, general inflation and the value of lost work," noted Dr. Mark Cooper, author of the report. "Recent changes in average jury awards and numbers of lawsuits filed mirror increases in average wages, medical costs, life expectancy and population growth," concluded Cooper (see chart).

"The Reagan administration and other supporters of caps on court awards have misused data to serve their political goals," charged Gene Kimmelman, CFA's legislative director. "It is easy to make level-headed jurors look irresponsible, if, like the administration, you just ignore how expensive it has become to treat and overcome severe injuries in today's world," Kimmelman pointed out.



The CFA report compares changes in basic economic conditions between 1975 and 1984—factors that juries take into account in determining awards—with disputed Justice Department data on jury awards during this period of time.

Even though this data exaggerates the growth of jury awards, the report shows that, between 1975 and 1984, the following changes account for virtually the entire increase in average product liability awards (150 percent) cited by the U.S. Justice Department in the recent report its Tort Policy Working Group:

- general inflation—an 83 percent increase;
- real income—a 17 percent rise;
- life expectancy—a 3 percent growth;
- medical costs (beyond general inflation) —a 23-56 percent increase; and
- elderly income—a 10 percent rise.

The CFA report challenges the premise behind proposals to cap recovery for non-economic loss, as in two bills being considered by the Senate Commerce Committee. One is sponsored by Sen. John Danforth (R-Mo.), which would place a $250,000 cap on pain and suffering awards; and the other sponsored by Sen. Robert Kasten (R-Wis.), which would impose a $100,000 cap on both pain and suffering and punitive damages.

"It makes no sense to reward manufacturers of defective products and penalize consumers injured by those products, just because people are living longer, their labor is more valuable and the cost of living is rising," claimed Gene Kimmelman.

"The most comprehensive data show that caps on court awards for injuries caused by defective products would deny innocent consumers the right to full compensation for their economic and social loss. We call on Congress to reject efforts to limit court awards for those most severely injured by defective products," Kimmelman concluded.

Senate Committee Reports Out Controversial Liability Bill

In late June the Senate Commerce Committee voted 10-7 to approve a highly controversial product liability bill (S. 1999). By including caps on recoveries, however, Chairman John Danforth (R-Mo.) may have doomed chances for Senate passage of the legislation this year.

Earlier in the week, all committee members except Sen. Ernest Hollings (D-S.C.) agreed in principle to a package that included several procedural rules and an expedited settlement system. Before trial, a defendant would have the opportunity to offer a settlement. A plaintiff rejecting this offer would be required to pay the defendant's attorneys' fees and court costs if the final judgment were less than the offer.

Defendants who lost their cases at trial would face a similar penalty for failure to settle. Some consumer groups, including CFA, endorse the goal of expediting settlements.

The committee rejected an administration proposal, advanced by Sen. Robert Kasten (R-Wisc.), that would establish a federal negligence standard. Such a standard would require victims to prove that manufacturer's were negligent. It would pre-empt a strict liability standard—the law in most states—that requires defendants only to show that a product was defective and responsible for injury.

Consumer advocates and many committee members maintain that a negligence standard would greatly limit compensation to victims, even when manufacturers were guilty of negligence. In most cases, negligence can be established only by internal corporate documents to which plaintiffs have difficulty gaining access.

Support for the legislation, however, eroded when the committee, in a split vote, added a provision weakening the doctrine of joint and several liability (the principle that defendants may be forced to provide greater compensation to plaintiffs than their proportion of responsibility). The proposal would limit joint and several liability to economic losses, such as medical bills and lost wages. For pain and suffering, defendants would be liable only to the extent of fault.

Consumer advocates charged that this provision would prevent many victims from recovering adequate damages when the party mainly at fault (for example, an uninsured driver) could not pay, or when losses (such as loss of fertility) involved little economic damage, but great pain and suffering.

Sen. Slade Gorton (R-Wash.), who led the opposition to gutting product liability protections.

Opposition to the bill increased when Danforth insisted on adding a settlement system with caps on pain and suffering. This cap would be $100,000 on settled cases and $250,000 on court awards to victims.

Because of the caps, three Democrats—Gore, Inouye, and Riegle—and three Republicans—Gorton, Packwood, and Stevens—joined Hollings in opposing the legislation. All agreed that the maximum $250,000 award could fail to adequately compensate someone facing many years of total disability caused by an unsafe product. As Sen. Daniel Inouye (D-Hawaii), who lost an arm in World War II, said, "It is easy for those who have not been the victims to be setting caps."

The bill is likely to be considered by the Judiciary Committee and could go to the Senate floor as early as September. Yet it is unlikely to go anywhere unless the caps on recovery are removed. An important reason is Sen. Slade Gorton (R-Wash.), who led the opposition to the Danforth proposal. In a letter to committee colleagues, he criticized the bill as "so deficient and inequitable that I. . .will feel constrained to object to any motion to proceed to its consideration on the floor."

CFA Legislative Director Gene Kimmelman said, "By including caps and undermining joint and several liability, Senator Danforth may have won the battle but lost the war. More important, segments of industry oppose the caps because they feel all settlements and jury verdicts will rise to the caps."

CFA Bank Fee Survey Shows Need for Improved Disclosure

Costs to consumers for routine bank services continue to increase, according to a survey released by CFA, San Francisco Consumer Action and 20 other consumer organizations from every region of the country.

The Third Annual National Survey of bank account fees was conducted in April at 225 banks and thrifts across the country.

Major report findings include:

- The cost of interest-bearing checking, or NOW, accounts climbed 12.3 percent in the year ending April 1986, following a 13.1 percent increase between 1984 and 1985. Consumers with small balances and moderate account activity now pay an average of $83 for NOW accounts—even allowing for interest income—and can pay as much as $210, the report said.
- Noninterest checking account costs increased 3.3 percent in one year, and bounced check charges rose 5.6 percent. Bounced checks now cost consumers an average of $14, and as much as $40.
- Twenty-seven percent of the institutions offer "basic" or "no-frills" accounts. But the report concluded that these accounts are unavailable in some parts of the country, and are often too costly to help low- and moderate-income consumers reduce their fees. The average annual cost for moderate use of these accounts was found to be over $75.
- Fees at the largest banks and savings and loans in the nation are only slightly above the national averages, but balance requirements to avoid fees are substantially above average. Every one of the ten largest banks requires over $1,500 to avoid fees on a NOW account, and some require as much as $5,000.
- Fees on statement savings accounts showed little change. Despite deregulation of interest rates on such accounts, few consumers received any benefit. Just 4 of 224 accounts surveyed pay over 5.5 percent, while six still pay less than 5.25 percent.
- Requirements that people opening accounts hold major credit cards are imposed on 13.5 percent of all NOW accounts and 11.6 percent of all noninterest checking accounts. The report called the practice a "significant barrier" for low- and moderate-income consumers, noting that only 42 percent of all families have such a card. While the practice was previously believed to be confined to California, the survey found institutions in Minnesota, Wisconsin, Maryland, Kansas, Arizona, Massachusetts, Florida, Idaho, Ohio, New York, Michigan and Washington, D.C. with such requirements.

Co-author Ken McEldowney, director of San Francisco Consumer Action, said the report "clearly shows a variety of serious restrictions on access to basic financial services for low-income consumers." He cited high opening balance requirements and credit card requirements as restrictions.

CFA Legislative Representative Alan Fox, a study co-author, said that "banking service prices are more complex than most other products, and as fees proliferate and increase, this complexity increases."

The following CFA member groups participated in the survey:

American Council on Consumer Awareness (Minneapolis-St. Paul); Arizona Consumers Council (Arizona); Association of Massachusetts Consumers (Boston); Consumer Action (California); Consumer Council of Maryland (Baltimore); Consumers League of Ohio (Cleveland); Detroit Consumer Affairs Department (Detroit); Florida PIRG (Tallahassee); Idaho Consumer Affairs (Boise); Iowa PIRG (Iowa); Kansas Consumer Affairs Association (Lawrence).

Also, Louisiana Consumers League (Baton Rouge); Michigan Consumers Council (Flint); Milwaukee Concerned Consumers League (Milwaukee); Missouri PIRG (St. Louis); Montgomery County Consumer Affairs (Montgomery Co., MD); New York State Consumer Protection Board (New York City); Niagara Frontier Consumer Association (Buffalo); Rhode Island PIRG (Rhode Island); Texas Consumer Association (Austin); and Wisconsin Consumer's League (Madison).

CFA Calls for Full Disclosure of Banking Charges

Congress should pass legislation to provide full, complete and comparable disclosure of all the elements of financial services pricing, two CFA representatives recently told a House subcommittee.

Testifying before the House Subcommittee on Financial Institutions Supervision, Regulation and Insurance, CFA Legislative Representative Alan Fox and San Francisco Consumer Action Executive Director Ken McEldowney noted that consumer banking options have grown dramatically under deregulation, but that this growth has not been matched with an expansion of the information necessary for consumers to evaluate options and make informed choices.

The public's positive response to pricing surveys by Consumer Action and other groups (see accompanying story on bank fee survey) shows that consumers strongly desire information on the products financial institutions offer, McEldowney pointed out. Yet full disclosure of such information never appears in radio and television ads and only rarely in newspaper ads, while brochures often ignore the potential for charges or merely indicate that unspecified fees may be assessed under certain conditions, he said.

Moreover, McEldowney testified, "Banking personnel often have a difficult time presenting clear and accurate explanations of banking practices. When disclosures are made they are often tied to unfamiliar and undefined terms. To compound matters, a lack of uniform terminology makes comparing accounts at different institutions difficult."

Showing the difficulty consumers have in obtaining accurate information, he noted that, in one instance, Consumer Action called four branches of the same bank to find out whether it offered a SuperNOW account. Employees at two branches told the group that it did not offer such an account; employees at the other branches assured them that it did offer the account.

Consumer Action now asks each institution to designate an executive to provide official information on prices and services. While this method meets the purpose of surveyors, McEldowney said, "I seriously doubt whether any official would be willing to field questions from all consumers who are comparative shopping."

McEldowney concluded his testimony by calling on Congress to pass legislation requiring financial institutions to reveal all fees and conditions of services; to present standardized terminology in describing services; and to offer disclosures in easy-to-understand formats, such as simple, standardized charts.

Fox, testifying on behalf of CFA, Consumers Union and the U.S. Public Interest Research Group, praised H.R. 2282, the "Truth in Savings Act," which is sponsored by Rep. Richard Lehman (D-Calif.).

He noted that consumers today have great difficulty in acquiring and comparing information from competing financial institutions. "The result is an inefficient market that fails to reward providers of the best values, fails to penalize deceptive behavior and fails to allow consumers to influence market behavior through rational purchasing decisions," Fox said.

He said that two sections of H.R. 2282 would alleviate many of these problems. Section 4 would require each depository institution to maintain a written schedule of fees, charges, terms and conditions. Fox echoed McEldowney's assertion that, to be useful to consumers, these disclosures must be comprehensive, the terminology must be consistent and disclosures must be consistent in format.

In addition, Section 3 of the bill specifies disclosures of interest rates and account terms in advertisements and other solicitations. While advertisements should be required to use consistent terminology to prevent misleading or confusing consumers, Fox said, the disclosures need not be as comprehensive as the full disclosures of account schedules. Consistent formatting of information also is not necessary, except when an advertisement refers to an account's yield.

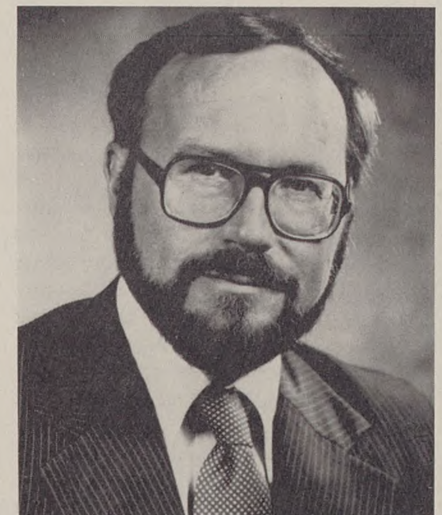
CFA Legislative Representative Alan Fox testifies on bank disclosure requirements.

Longtime CFA Supporter William Matson Dies

William F. Matson, a CFA board member and vice president since 1978, died on June 16, 1986 after a brief illness. President of the Pennsylvania Rural Electric Association (PREA) and of the Allegheny Electric Cooperative, Matson was one of the nation's leaders of the rural electric cooperative movement.

Matson also was an energetic and effective spokesperson for the rights of consumers. As well as supporting the work of CFA, he organized and served as chairman of the Pennsylvania League for Consumer Protection. In the latter capacity, he frequently lobbied the Pennsylvania legislature on a wide range of consumer issues.

"Bill's passing would have represented a much greater loss to the public interest," said CFA Executive Director Stephen Brobeck, "if he had not so effectively helped institutionalize effective consumer advocacy within the League and within CFA. Through these two groups, and through a strong PREA, his influence will continue for many years."



William F. Matson

Conference Addresses Electric Utility Issues

In mid-May more than 200 representatives of consumer, electric utility and government organizations participated in the second annual consumer electric utility conference. The meeting in Washington, D.C. was organized and co-sponsored by CFA, the American Public Power Association (APPA), the National Rural Electric Cooperative Association (NRECA) and Edison Electric Institute (EEI).

The conference featured a dozen sessions that focused on options for meeting consumer electric-utility needs. These options included constructing power plants, investing in conservation and load management, developing new energy sources and technologies, expanding the "wheeling" of electricity between regions, and offering new customer services.

Alex Radin, executive director of the American Public Power Association, speaks at the electric utility conference. Stephen Brobeck, CFA executive director, and William McCollam, Jr., president of the Edison Electric Institute (both pictured), and Charles A. Robinson, Jr., deputy general manager of the National Rural Electric Cooperative Association, also spoke at this session.

U.S. Rep. Claudine Schneider (R-R.I.) gave the keynote luncheon address.

In the opening session, CFA Executive Director Stephen Brobeck outlined the social context in which these options are being debated. He reported that "the relationship between electric utilities, on the one hand, and consumers and their advocates, on the other, is as good as it has ever been in the past decade." But he also pointed out that, according to surveys, most consumers are still dissatisfied with service, particularly with high rates and with their lack of control over costs.

EEI President William McCollam, Jr., stressed the importance of utilities' responding to this customer demand by offering more choice. Said McCollam, "Customer choice is our best basis for providing power."

APPA Executive Director Alex Radin also emphasized the importance of choice, referring to benefits produced when consumers can select between investor-owned utilities and either public-power systems or rural electric cooperatives.

In urban areas, some privately-owned utilities are facing challenges from groups seeking to convert them to public-power companies. But in rural areas, as NRECA Deputy General Manager Charles Robinson, Jr. explained, the reverse is true: Many rural electrics are under pressure to sell off hydroelectric facilities and transmission lines to private utilities. Those systems under greatest pressure to do so, noted Robinson, are often those with poor customer relations.

U.S. Rep. Claudine Schneider (R-R.I.), the ranking minority member on the House Natural Resources Committee, gave the luncheon keynote address on least-cost utility planning. She stressed the great societal benefits of regional planning for the use of energy resources at the lowest feasible cost. This planning should not slight conservation and efficient energy use, but should consider them to be equivalents of power production. Such an approach, stressed Schneider, would free tens of billions of dollars in capital investment for more productive uses.

In a general session on conservation's real potential, speakers supported Schneider's emphasis on more efficient use of energy resources. Steven G. Hickok, assistant administrator for conservation of the Bonneville Power Administration, took some utilities to task for "failing to treat conservation as an energy source." He asserted that conservation investments are "cost-competitive with coal and nuclear energy."

Alan Miller, an associate at the World Resources Institute, stressed that, from a technical standpoint, the potential for conservation is enormous. He compared state-of-the-art technologies with those currently being used, showing that highly efficient refrigerators, residential water heaters or electric heat could cut electric consumption 75 to 90 percent.

A unique feature of the conference was a survey of issue priorities of attendees. Ranking highest were issues related to demand-side management and residential rates and service. Considerable interest was also expressed in consumer-utility relations and in the environmental problems of acid rain and nuclear waste disposal.

CONSUMER FEDERATION OF AMERICA
1424 16th Street, N.W., Washington, D.C. 20036
(202) 387-6121

President: *Jean Ann Fox*
Executive Director: *Stephen Brobeck*
Legislative Director: *Gene Kimmelman*
Administrative Director: *Erika Landberg*
Legislative Representative: *Alan Fox*
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Administrative Assistant: *Miguel Carpio*

CFAnews Editor: *David R. Jones*

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Product Safety Update

CFA, Public Citizen Sue FDA Over Methylene Chloride Use

CFA and Public Citizen filed suit in U.S. District Court concerning the use of methylene chloride. The suit seeks an order directing the U.S. Department of Health and Human Services and the Food and Drug Administration to start proceedings to prohibit the use of the chemical in decaffeinated coffee. Methylene chloride is a chemical solvent used to remove caffeine from coffee. It is also found in other consumer products, such as paint strippers and aerosal spray paints.

Methylene chloride is used in the majority of decaffeinated coffees currently sold in this country. Since 1967, FDA has allowed the use of this food additive as long as the residual amount in coffee does not exceed 10 parts per million. Recent studies by the National Toxicology Program show that methylene chloride causes cancer in laboratory animals.

The CFA-Public Citizen suit argues that the "Delaney Clause" of the federal Food, Drug and Cosmetic Act, which prohibits the use of any food additive shown to cause cancer in animals, mandates the removal of methylene chloride from coffee. Until June 1985, FDA consistently took the position that the Delaney Clause required it to ban animal carcinogens from the food supply. In applying a new interpretation of the law, however, FDA now contends that a *"de minimis"* exception to the Delaney Clause permits continued use of additives if exposure to the substance will cause only a small number of cancers.

Dr. Sidney Wolfe, director of Public Citizen's Health Research Group, said the FDA decision to apply a *de minimis* exception is "disastrous and does not square with the Reagan administration's stated goal of a 50 percent reduction in cancer mortality by the year 2000."

Some manufacturers of decaffeinated coffee use safe alternatives, such as water, in the decaffeination process. "Unfortunately for consumers," commented Mary Ellen Fise, CFA product safety director, "it is impossible to tell which brands use methylene chloride simply by reading the label."

Food Processors Reject Alar

The public's exposure to Alar, a suspected carcinogen, in the food supply is being reduced because of publicity consumers have generated about the chemical's use by apple growers. Major food processors, fearful of losing consumer confidence, have told growers they will not buy Alar-treated apples from this fall's crop.

Alar, the trade name for daminozide, is made by Uniroyal Inc., and used as a growth regulator. It helps assure that the entire crop will ripen uniformly, improves the quality of the fruit and extends its storage life. It is one of 480 agricultural and household chemicals that were on the market before current health and safety rules were promulgated. It has been under attack by environmentalists, both because of studies suggesting a link between the compound and cancer, and because it enters the fruit and cannot be removed by washing.

In September 1985, the Environmental Protection Agency (EPA) issued a notice that it intended to ban Alar. Uniroyal fought back by criticizing the studies linking the chemical to cancer. The EPA's Scientific Advisory Panel, a White House-appointed panel, said there was insufficient data to justify a ban. In January 1986, the EPA withdrew its proposal to ban the chemical but imposed stricter limits on its use. This action was well publicized, as was the controversy surrounding the agency's decision to withdraw the proposed ban. Alar is currently one of 18 chemicals that the EPA has on "special review"—a process that could take three years to complete.

A scientist for the Natural Resources Defense Council said, "It's a scandal that the EPA allows a suspected carcinogen to remain in our food supply. . . it is an interesting demonstration of how the market works, the processors acting before the EPA."

Congress Rejects Administration Effort to Privatize Federal Power Facilities

Overriding strong objections by President Reagan, Congress has stopped administration plans to "privatize," or sell, the federal power administrations and the Tennessee Valley Authority, which are major sources of low-cost electricity for some 38 million consumers in 34 states.

On July 2 the president signed into law a congressional prohibition that bars the administration from spending any more funds to push for privatization of federal power. However, the president objected vigorously and said proposals to sell the power agencies should be pursued.

The funds cutoff, part of a 1986 supplemental appropriations bill, was a firm bipartisan rejection of administration plans to sell the federal power program to private interests. The president placed heavy emphasis on "privatization" in his 1987 budget which was presented to Congress on February 5.

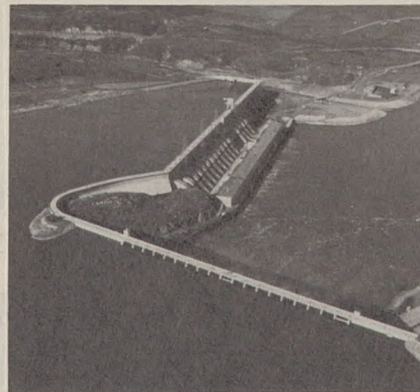
"Just five months after the administration made the sale of the federal power program a major goal, Congress acted decisively to shut down the privatization machine," said Larry Hobart, executive director of the American Public Power Association (APPA). "This is a major victory for consumers and taxpayers throughout the country and especially for regional and local economies that rely on relatively low-cost electricity from federal hydropower projects."

The ban against privatization spending applies to the Bonneville, Western Area, Southwestern, and Southeastern power agencies, and the TVA. The funds cutoff is permanent and prohibits privatization activities without specific congressional approval. In the opening weeks of the push to sell the power program, the administration spent more than $200,000, and projected spending for the remainder of this year was expected to reach $1 million.

The spending ban provides that no federal funds "shall be used by the executive branch for soliciting proposals, preparing or receiving studies or drafting proposals to transfer out of federal ownership" the four power marketing agencies and TVA. The Senate approved the measure last week—75-25—after turning back an administration attempt to continue privatization study and planning.

The proposed sellout had sparked a wave of opposition from state and local government organizations, and from consumer, labor, farm, environmental and utility groups. These groups warn that privatization of the federal power program would lead to higher electric rates, drive up consumer prices, eliminate jobs and threaten the power supply of more than 1,000 local, consumer-owned utilities throughout the nation.

"The rate shock promised by the administration's proposal would have been massive," said CFA Executive Director Steve Brobeck, "and consumers would have had nothing to show for it—there is no evidence to prove that quality or availability of service would have improved."



The Chief Joseph Dam, owned by the Bonneville Power Administration, on the Columbia River in the State of Washington.

The federal power-marketing agencies sell electricity generated at 126 multi-purpose dams owned and operated by the federal government. These dams, built by the Bureau of Reclamation and the Army Corps of Engineers, do more than produce electric power; they also ensure navigation, flood control and water supply.

Power produced at these facilities is sold at a relatively low cost to some 1,100 consumer-owned utilities that have, under law, a "first-purchase right" because they are non-profit and operated by cities, towns, counties or rural cooperative associations. These federal power customers pay all costs of producing and delivering the electricity and repay all capital costs, with interest, to guarantee full payback of the U.S. investment over a set time period.

APPA calculates that sale of federal power to private interests would have resulted in major electric rate increases. Sale at the administration's proposed $13.9 billion price would have made federal power rates soar $2.2 billion a year, or 68 percent. According to APPA, sale at the $66 billion price suggested by the Heritage Foundation, a conservative think-tank that supports privatization, could force rates up $12.6 billion per year—a whopping 390 percent increase.

Transfer of the federal power system to private interest also threatened to increase monopolization in the electric utility industry by hindering consumer-owned utilities' ability to compete and by increasing the market dominance of large, investor-owned utilities.

CFA and APPA joined with the National Grange, the National Farmer's Union, the National Rural Electric Cooperative Association, Environmental Action, the Consumer Energy Council of America and the American Federation of State, County and Municipal Employees to urge Congress to reject privatization. Their efforts were bolstered by endorsements from the National Conference of State Legislatures, the National Governors' Association, the U.S. Conference of Mayors and the National League of Cities' Energy Committee.

Despite this legislative victory, Brobeck warned that the privatization threat is still real. "I suspect this is simply one in a series of attempts to dismantle the federal power program. We must remain vigilant and united," he said.

Reagan Administration Moves to Deregulate Natural Gas

After half a decade of wrangling over decontrol of old natural gas and facing a complete legislative impasse, the Reagan administration has moved forward on two fronts in its efforts to achieve decontrol.

At the same time that the Department of Energy sent legislation to Congress that would completely decontrol prices, the Federal Energy Regulatory Commission (FERC) issued a rule (Order 451) that would raise the price of old gas by well over $1 per thousand cubic feet.

"The legislation is not needed and will not contribute anything positive to national energy policy," Dr. Mark Cooper, CFA's energy director, declared in June hearings before the Senate Energy and Natural Resources Committee. "Administrative decontrol is completely at odds with the Natural Gas Act and the Natural Gas Policy Act," he said.

The introduction of legislation has stimulated a flurry of activity in Congress. In addition to the Senate hearings, the Subcommittee on Fossil Fuels of the House Energy and Commerce Committee held hearings on wellhead pricing and transportation of gas. Legislation dealing only with contract carriage is in the offing, and a bill repealing the Fuel Use Act restrictions on burning gas under large boilers passed the Subcommittee on Conservation and Power of the House Energy and Commerce Committee. The mark-up on this bill took less than fifteen minutes.

"The most troubling thing about the legislative and administrative attack on old gas prices," Cooper said in his testimony, "is that we had been moving toward an effective marketplace solution in the natural gas industry.

"The court ruling which overturned the discriminatory contract carriage rules at FERC and the block billing proposal in Order 436 had set the framework for efficient, non-discriminatory pricing at the wellhead and in the transportation of gas," Cooper noted. "Consumers had the courts and the law on their side, but the major oil companies just would not accept defeat. They pressured the administration into a desperate, last-ditch effort to decontrol old gas."

The FERC rule currently is on hold while requests for rehearing are filed. Since no one expects the rehearing to change FERC's decision, the battle will shift to the courts.

"Few people believe that the FERC ruling has any chance of surviving in court," Cooper said. "But the big question is whether the courts will stay the order while it works its way up to the Supreme Court. If the order goes into effect, there could be severe dislocations for pipelines and consumers who currently have large quantities of old gas in their systems."

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Consumer Federation of America
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