

# United States Senate

WASHINGTON, DC 20510

April 26, 1988

Chairman Martha O. Hesse  
Federal Energy Regulatory Commission  
825 North Capitol St. N.E.  
Washington, DC 20426

Dear Chairman Hesse,

We are writing to you to express our serious concern about the fashion in which the Commission has chosen to implement section 3(b) of the Electric Consumers Protection Act of 1986 dealing with comprehensive river plans.

As you are aware, the Electric Consumers Protection Act (ECPA) contains a number of provisions designed to grant the states and Federal agencies a stronger role in determining what rivers should be developed for hydroelectric power and what rivers should be preserved because of their outstanding recreational, natural, or other values. One of the most important provisions is section 3(b) of the ECPA, which directs the Commission, when deciding whether or not to approve a hydroelectric proposal, to consider "(t)he extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways" that is prepared by a state or Federal agency.

In October 1987, the Commission issued Order 481 announcing the adoption of a new rule that explains how the Commission intends to implement this important provision. The rule sets forth a number of requirements that a comprehensive plan must satisfy. The rule states that a "comprehensive plan," whether prepared by a state or Federal agency, must reflect "the preparers' own balancing of the competing uses of a waterway." The rule also identifies specific river resource issues that a plan must address, including, "among others," navigation, power development, energy conservation, fish and wildlife, and other aspects of environmental quality. Finally, the rule states that a comprehensive plan prepared by a state must be prepared pursuant to a "specific" act of the state legislature.

This rule has been the subject of substantial controversy. We understand, for example, that petitions for rehearing have been filed with the Commission by the following state agencies: the Minnesota Department of Natural Resources, California Water Resources Control Board, Kentucky Department of Environmental Protection, the Vermont Agency of Natural Resources, the New

MAY 02 1988

York Department of Environmental Conservation, and State of Washington Department of Ecology. In addition, petitions for rehearing were filed by the Northwest Power Planning Council and by leading national conservation organizations, including American Rivers, Environmental Policy Institute, Friends of the Earth, National Audubon Society, and National Wildlife Federation.

On December 16, 1987, the Commission granted a rehearing on this rule, and we understand this rehearing will be on the Commission's agenda for its meeting of Wednesday, April 27, 1988. We urge the Commission to take prompt action to resolve the concerns raised by the petitions for rehearing.

We are concerned that the rule adopted by the Commission on October 20, 1987 defines comprehensive planning so narrowly that few existing plans will qualify as comprehensive plans under section 3(b). As a result, many state and Federal agency river plans will not receive the consideration from the Commission which they are entitled to under this provision. Moreover, the rule appears to exclude from section 3(b) the approximately 30 state scenic rivers programs that exist across the country. We believe that these programs and state and federal river protection plans deserve to be included under any reasonable interpretation of section 3(b).

To help us better understand the effect of the rule on state river management efforts, we request that the Commission provide responses to the following inquiries:

1. What state and federal plans has the Commission recognized as "comprehensive plans" within the meaning of section 3(b) of ECPA?

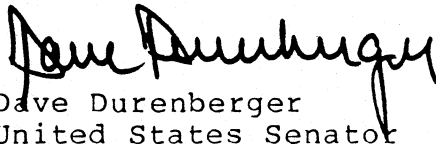
2. How many hydroelectric projects has the Commission approved in the states of Minnesota, California, Kentucky, New York, Vermont, and Washington since the enactment of ECPA? Please provide a list of these projects. On which, if any, of these projects did the Commission consider whether the project would be consistent with any state river protection program? If an applicable state river protection program was not considered, please explain why it was not considered and cite the legal authority relied upon by the Commission in deciding to not consider the state river protection program.

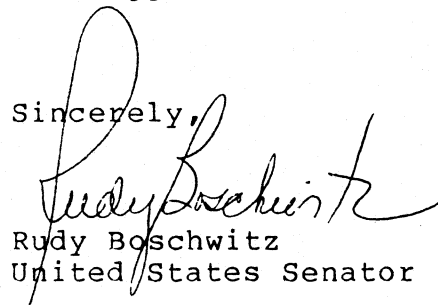
We are equally concerned with the Commission's failure to provide the states, other Federal agencies, and interested groups and individuals, an opportunity to review and comment on a draft of the rule before it was adopted. Providing a period for notice and comment would have allowed the Commission to gather relevant facts from outside sources and, equally important, would have provided interested persons a forum in

which to express their concerns. We believe that the Commission erred in not providing an opportunity for advance comment on this important subject.

In view of the significance of the comprehensive plan issue to the future of implementation of the ECPA, we urge the Commission to act promptly to address the issues raised in the petitions for rehearing. We believe that the most appropriate course of action would be for the Commission to issue an order immediately suspending the existing rule and to initiate promptly notice and comment procedures on a revised rule.

We look forward to obtaining your response to our inquiries and to receiving your reaction to our suggested course of action to resolve this important issue.

  
Dave Durenberger  
United States Senator

Sincerely,  
  
Rudy Boschwitz  
United States Senator

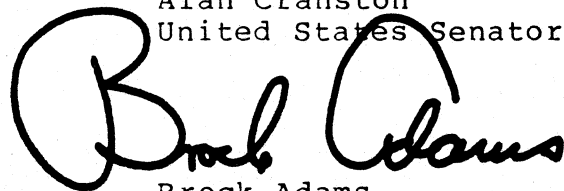
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Brock Adams  
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cc: Commissioner Anthony A. Sousa  
Commissioner Charles G. Stalon  
Commissioner Charles A. Trabandt  
Commissioner C. M. Naeve  
Catherine Cook, FERC General Counsel