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The formation of the Omaha Public Power District

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THE FORMATION OF THE OMAHA PUBLIC
POWER DISTRICT

A Thesis
Presented to the
Department of History
and the
Faculty of the Graduate College
University of Nebraska at Omaha

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
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Accepted for the faculty of The Graduate College of the University of Nebraska at Omaha, in partial fulfillment of the requirements for the degree Master of Arts.

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CHAPTER ONE

The People's Power Bill

On December 2, 1946, Nebraska became the first state to acquire complete control and operation of its electrical utilities. On that date, Omaha purchased the properties of the Nebraska Power Company (NPC) for $42,000,000. This sale brought to a conclusion a four-year struggle in the city to acquire the company and ended a fourteen-year conflict within the state to achieve one-hundred percent public ownership of the electrical power companies.¹

During the conflict in Omaha over the disposition of the electrical plant, every means of public media was employed to sway public opinion and every level of government became entangled in the struggle. Not only was the city government embedded in the conflict but, also, the state and national governments. Included within those agencies affecting the outcome in Omaha were the local,

¹On April 23, 1917, the Nebraska Power Company was incorporated in the State of Maine. The company was controlled by the American Power and Light Company of Maine which, in turn, was a subsidiary of the Electric Bond and Share Company of Maine. On June 1, 1917, the NPC took over the electrical properties serving Omaha and continued operation until December 2, 1946. Prior to this takeover, the city
district, state and federal courts, the Nebraska Railway Commission, the Federal Power Commission, the Securities and Exchange Commission, and the Congress of the United States. Attorney W. C. Fraser, who had been deeply involved in the affair, noted in retrospect that the question of public ownership in Omaha was one of the most fiercely contested issues in the history of the city. Remarking on the four-year struggle, he pointed out that "no one event in the history of Omaha or in the State of Nebraska can account for such a diverse quantity of litigation." 2

On several occasions between 1938 and 1942, both the Consumers Public Power District and the Loup River Public Power District attempted to purchase the NPC. In 1938, the state hydro systems collectively offered the American Power and Light Company (APL) $40,000,000 for the NPC. In 1939, the Loup River Public Power District publicly stated several times that they were in the process of negotiating for the acquisition of the Omaha properties. Efforts, however, were to no avail. None of the prominent city officials, was served at various times by eight different companies. The frequent changeover is accounted for by the fact that companies were continuously "beset by difficulties in financing and by rapidly changing conditions which rendered generation and distribution equipment obsolete soon after it was installed. It often happened that much of the available earnings of a system had to be reinvested in newer and more modern equipment rather than being distributed to investors." Robert E. Firth, Public Power in Nebraska, A Report on State Ownership (Lincoln, Nebraska: University of Nebraska Press, 1962), p. 186.

2W. C. Fraser, Attorney, interview of June 20, 1969.
businessmen or owners of the company favored a change in the control or operation of the company which would result in public ownership. 3

Although both Judson King and Robert Firth have suggested that opposition to the state hydro acquisition of the NPC resulted from the fact that public ownership smacked too much of socialism, many persons apparently believed that NPC as it existed was providing satisfactory service. A review of local publications between 1938 and 1942 does not reflect dissatisfaction with the company's operations. There is no evidence available suggesting public indignation over such key factors as over-valuation, profiteering, lack of reinvestment, or inefficiency, conditions which normally precede a demand for public assumption of a utility. A formal statement issued by the Omaha City Council on May 22, 1942 illustrates the apparent good relations which existed between the city and the power company when it was observed that "There is no general demand in Omaha for the sale of the Nebraska Power Company. This company has furnished our city with splendid service and is a fine citizen." 4

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3 Firth, Public Power in Nebraska, p. 186; Judson King, "Nebraska, The Public Power State," Public Utilities Fortnightly, March 27, 1947, pp. 423-424. Consumers was organized in 1939 for the purpose of acquiring private utilities and marketing power for the Loup and other state hydro districts.

The first significant indication of concern in Omaha over the attempts by the state hydro systems to acquire the Nebraska Power Company came in the wake of a Consumers Public Power District proposal on May 22, 1942 to purchase the power company for approximately $40,000,000. In announcing the overture, Charles B. Frick, President of Consumers Public Power, noted that the district had been moved to make the offer because:

It is now the only private power company in Nebraska not purchased by consumers. . . . the state's publicly owned hydroelectric system now sells large amounts of power to Nebraska Power. Nebraska Power makes a profit on this power we sell. We do not feel it is proper that a private company should make a profit on power generated in a government financed plant. We feel the savings should be passed on to the people.  

Several days later, Frick observed that if the district were successful in its attempt to acquire the NPC, it would mean that the "... dreams of pioneer Nebraska hydroelectric boosters have come true. Then practically every power outlet in the state will be publicly owned."

Of importance to the hydro district's position was also the fact that Consumers was unable to furnish a sufficient amount of power from its hydroelectric developments and, 

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5Columbus Daily Telegram, (Columbus, Nebraska), May 22, 1942.

6Evening World Herald (Omaha), May 21, 1942.
therefore, the lines connecting the hydroelectric plant to the NPC steam plant were carrying NPC current to meet Consumers' demands.  

Concurrent with the district's public statement, notification of the bid was filed with the Omaha City Council and a conference requested to discuss the merits of a Consumer takeover. In asking for the conference, Frick remarked that if the city would step aside and allow the district to acquire the NPC properties, numerous advantages would result for Omaha. Among others, he cited that (1) Consumers could obtain low interest bonds free of federal taxation; (2) revenue gained under public ownership would not be taxable by the federal government; (3) the operation of the utility would be on a non-profit basis which would result in a savings of $2,500,000 a year for Omaha consumers; and (4) provisions could be established so as to allow Omaha the opportunity to purchase those properties serving the municipal area.

City government's response to the Consumer venture was chilly. Neither acknowledging the alleged benefits which would result for Omaha nor indicating a willingness to discuss the matter with Consumers, the City Council announced the appointment of a private Citizens Investigating Committee on May 23, 1942. Appointed to the committee were

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7Columbus Daily Telegram, May 22, 1942; "Fury in Omaha," Business Week, August 26, 1944, pp. 42-44.

W. J. Coal, Dale Clark, L. J. Tepoel, Sam Reynolds, Linn P. Campbell, H. M. Bushnell, T. L. Davis, D. B. Woodyard, Gerald Collins and L. O. Barr. In disclosing the committee's establishment, the Council prefaced its statement by noting "... there is no general demand in Omaha for the sale of the Nebraska Power Company. This company has furnished our city with splendid service and is a fine citizen." Mayor Dan Butler, in voicing his opposition to the Consumers proposal, commented:

Why not let a substantial group of Omaha businessmen get behind the proposition and save for Omaha the million dollar commission that financial promoters would take out of Omaha. ... Omaha can act in its own best interests without the help of some outside agency or group.9

Though members of city hall did not directly express opposition to the concept of public ownership, their animosity toward the Consumer proposal possibly resulted in part from a dislike of the idea and, in part, from fear of outside control over service and rates.10

The Omaha World-Herald, the city's major newspaper, reacted to the overture with similar apathy. Reviewing the events which had transpired, Editor Henry Doorly stated:

... vital interests and essential rights of Omaha call for home ownership and home rule. If it be true that the property must be sold, then Omaha should be vigilant to acquire it for the

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9Evening World-Herald, May 22, 23, 26, 1942.
10Roy N. Towl, Former City Councilman, interview of July 12, 1969.
protection of the people it serves. Columbus, be it said in all amity, is not so well qualified or entitled to rule Omaha as Omaha is entitled and qualified to rule itself.\textsuperscript{11}

During the next several months, little interest or discord was apparent over the possibility of the Consumers District acquiring the electrical utility. The City Council received a second request for a meeting between the Council and representatives of Consumers on August 12, 1942. Although the Council initially voted four to zero to meet with the district, a second resolution was introduced and passed which provided the request be turned over to the Citizens Investigating Committee for consideration.\textsuperscript{12}

The low ebb of activity may be accounted for by several factors. First, the American Power and Light Company, while not rejecting Consumers' offer, indicated upon receipt of the bid that a transaction involving the sale of the company would not be completed unless it met with the approval of Omaha's city government.\textsuperscript{13} Secondly, since the American Power and Light Company was required under contract provision to provide the city with a 180-day notice of intent to sell, city officials were assured sufficient flexibility


\textsuperscript{12}Omaha City Journal 182, Document Nos. 2505-4635, June 20-December 31, 1942, Document No. 3233, August 18, 1942, pp. 18596-18599; Document No. 3234, August 18, 1942, pp. 18599-18600.

\textsuperscript{13}Columbus \textit{Daily Telegram}, May 26, 1942.
to counter the Consumer proposal by either negotiation or initiation of condemnation proceedings.¹⁴

Suddenly, however, the Omaha picture changed when on August 22, 1942, the Securities and Exchange Commission ordered the dissolution of the American Power and Light Company. The issuance of the order under Section 11 (b) (2) of the Public Utility Holding Company Act of 1935 was predicated on the finding that the company was controlled through a "pyramid-like structure" by the Electric Bond and Share Company. In reference to this organizational arrangement, the Commission stated that not only was it unnecessarily complicated but that it allowed an "... unfair and inequitable distribution of voting power." Though the commission gave considerable emphasis to the holding company's organizational structure, it also stressed the fact that the Electric Bond and Share system did not serve any useful purpose. In conclusion, the SEC noted that the APL had been created as a separate entity in November, 1935, shortly after the effective date of the Public Utility Holding Company Act with the intent of evading the provisions of that statute. Summarizing its findings, the Commission pointed out:

It cannot be doubted that the dissolution of these companies which not only have never served any useful purpose but have been a medium of much harm will effectuate the provisions and policies of the

¹⁴Evening World-Herald, May 21, 1942.
Act and will in all respects be beneficial to the public interest and the interest of investors and consumers.15

On August 28, 1942, the SEC denied the APL's petition for a rehearing of the Commission's findings. With the rejection of the appeal motion, it became evident to Omaha city leaders that the NPC would now have to be sold. Aware of the Consumers' bid and the now increased possibility of an acceptance by the APL, Mayor Butler and the City Council embarked on a course which would insure that Omaha could acquire the properties.16

As concern in the city over the utility question began to mount, several civic groups began to form in an attempt to influence future developments. Late in August one such group, The Omaha Public Ownership Committee, concerned with the possibility of a rate reduction under public ownership, addressed the City Council demanding that an immediate investigation be initiated to determine the merits of the Consumer offer. The committee's plea before the Council resulted from its belief that the Mayor's Special Investigating Committee had not taken any action on the proposal. Another pressure group, The Omaha On-Guard Committee, appeared before the City Council on September 18, 1942. The committee's action was prompted inasmuch as

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Frick was attending the Council meeting in an effort to arrange a meeting between Consumers and city government officials. Frank C. Heinisch, Chairman of the On-Guard Committee, raised considerable opposition to a Consumer takeover during the Council session. Noting that Omaha could derive the same advantages by assuming operation of the utility that would result from a Consumer takeover, he strongly emphasized that if the Council stepped aside and allowed the district's proposal to go through, the Omaha Home Rule Charter would be jeopardized. In concluding, Heinisch remarked that if any outside group were allowed to gain possession of the electrical properties, the city would most probably lose its control over both service and rates. Frick, commenting on the objections raised by the Committee, noted that "... they are on guard against the shadows of their own creation."\(^{17}\)

During the next few months, both Mayor Butler and the City Council pursued a policy of watchful waiting. The only action taken during this period was the passage by the Council of a resolution strengthening its position by declaring its intent to keep the 180-day notice provision in effect. The action by the Council might well have been intended to serve notice to both the APL and Consumers that the city did not plan on allowing the electrical properties

\(^{17}\)Omaha City Journal 182, Document No. 3234, August 1, 1942; Columbus Daily Telegram, September 18, 1942.
to be sold to any outside group. Behind the apparent calm, the Mayor and other civic leaders, however, were vigorously laboring to design enabling legislation, to be introduced at the next session of the Unicameral, which would provide Omaha with the needed authority to gain control of the utility. On January 25, 1943, Mayor Butler's endeavor culminated in the introduction by Senators Sidney Cullingham, Peter Gutowski and Charles Tvrdik of Legislative Bill 204. The bill, supposedly written by Mayor Butler and L. J. Tepoel, member of the Mayor's Special Investigating Committee and Dean of the Creighton University Law School, provided for the formation of a separate utility district in the Omaha area and authorized the formation of a People's Power Commission to acquire and assume operation of the NPC. 18

The bill, as originally written, empowered the People's Power Commission to carry on all functions of government except the levying of taxes. The bill specifically removed the Commission from the provisions of Senate File 310 which, at that time, covered the operations of utility districts in the state. The Commission was authorized to issue fifty thousand dollars of bonds over a

three-year period to start proceedings. Further, the bill allowed the City Council to set utility rates and restricted any competing utility districts from operating within the Commission's jurisdiction until all obligations had been removed. The Commission itself was to be composed of seven members to be initially appointed by the Mayor and the City Council and self-perpetuating thereafter. The Commission was empowered to negotiate or initiate condemnation proceedings. The need for the special legislation in place of S. F. 310 resulted because under that statute the operation of a public electrical utility in Omaha would have become the responsibility of the Metropolitan Utilities District, a public agency which operated the gas and water systems in the city. As a private firm, NPC was paying some $800,000 annually in local taxes; therefore, MUD acquisition of the NPC would terminate this very important source of revenue.  

Immediate response to the bill was favorable. Attorney Clarence Davis, speaking for Consumers, described the special measure as "... a model vehicle for public utilities." Apparently, Consumers did not feel the bill was against their interests.  

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that it would protect the city's Home Rule Charter, assure
the operation of the utility on a non-profit basis and
assure continued receipt of local governmental revenues
received from the utility's operation. Mayor Butler and
the Council also enthusiastically endorsed the special
legislation. The Mayor also addressed the Unicameral Public
Works Committee on February 10, 1943, in an attempt to
expedite the advance of the bill to the general file.
Endeavoring to secure the Committee's acceptance of L.B. 204,
Butler presented numerous petitions supporting the bill.
Included were petitions from Arlington, Ralston, Hooper,
Papillion, Valley, Louisville and Cedar Bluffs, communities
all adjacent to Omaha.

With little opposition apparent, the bill advanced
on February 18, 1943, from the Public Works Committee to the
floor and was placed on the general file. From this
moment on, however, until its final passage in May, a
considerable amount of opposition to the bill's passage
would be encountered. The antagonism and undercurrent which
L.B. 204 generated was to result in substantial modification
of the special proposal.

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21 Editorial, Ibid., January 26, 1943.
22 Ibid., February 11, 1943.
23 Nebraska Legislative Journal, February 18, 1943, p. 441.
The first serious opposition was encountered on March 10, 1943, with the Nebraska Association of Rural Public Power Districts publicly asserting that the measure was "... undemocratic, monopolistic and contrary to honest public ownership." The Association's outcry tended to have immense political influence across the state since the allegations were delivered by former United States Senator George Norris, founder and leader of the state's fourteen-year struggle to gain public control of the power systems within Nebraska. Norris, delivering his comments before a dinner of the Association at which members of the State Legislature were present, characterized the special act as "disgraceful." The former Senator, observing that the bill would not pass and would not "... stand any show of getting to first base," declared the Legislature would not disgrace the state by it.24

The Association, demanding that L.B. 204 be "killed," noted four inadequacies of the measure which made it imperative that the Legislature not adopt the bill. First, it was noted that the bill was undemocratic since the Commission was appointed rather than elected, removing the people's control over the management and operation of the utility. Secondly, because L.B. 204 allowed the Commission to use revenues obtained from the operation of the utility

24Columbus Daily Telegram, March 11, 1943.
for "charitable and civic purposes," savings entitled to consumers under public ownership would not be realized. 25 Thirdly, by not restricting the operations of the Commission to the municipal boundaries of Omaha, the proposed district could become "... the owners of all property of public power districts in Nebraska." Lastly, objection was raised against the provisions of the bill which prohibited all rural districts from operation within the territory served by the Omaha group. 26

Both the Columbus Daily Telegram and the Lincoln Star provided front-page coverage for the Association's protest with the Telegram printing Norris' charge of "Disgraceful, Undemocratic, Monopolistic, and Contrary to Honest Public Ownership" in one-inch bold capital letters. The Columbus newspaper editorially stated that the purpose of L.B. 204 was to "... make Nebraska Power Trust a present of a white horse and a silver trimmed saddle." Concluding, the paper noted that all those who "believe in public ownership" must

25 Revenue used for "charitable and civic purposes" was to be allocated for the promotion of social welfare. Included as suggested usages were 1) the defraying of lighting costs at public places, 2) establishing and maintaining parks, and 3) charitable enterprises. No limit was set on the amount of revenue which could be used for this type of expenditure. Evening World-Herald, January 25, 1943.

26 Morning World-Herald, March 11, 1943.
stand in opposition to Legislative Bill 204. The Lincoln Star, reviewing the previous night's events, commented that:

No one could object to the desire of the people of Omaha to own their public electric facilities. The machinery has existed under which they could have acquired at any time within recent years. Then why this bill, and why its broad and sweeping powers? That is the question for the legislature to determine and for the people of Omaha to study.

The Lincoln Star's reference to the city's ability to acquire the utility under existing law referred to the provisions of Senate File No. 310 under which the electric plant could be obtained through either negotiation or condemnation. As noted earlier, action under this law would have resulted in the properties of the NPC reverting to the control of the Metropolitan Utilities District, a consequence which apparently city hall did not support.

Simultaneously with the Nebraska Association of Rural Public Power District's uproar, the Omaha Metropolitan Utilities District declared itself in opposition to the bill. Indicating that the MUD board was against the implementation of the measure "as it is," the directors voted three to two in favor of Commissioner Francis P. Matthews' resolution declaring disfavor with L.B. 204.

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28 Lincoln Star, March 11, 1943.
29 Morning World-Herald, March 18, 1943.
Apparantly Matthews favored a Consumers takeover of the Nebraska Power properties since this, in turn, could allow eventually for the MUD to purchase those facilities serving Omaha once the Consumers indebtedness on those properties was removed. Several months earlier Mayor Butler, in a public statement, had charged Matthews with acting against the best interests of Omaha. The Mayor's comment was in reference to a meeting which had taken place between Matthews, Consumers, broker Guy C. Myers of New York, and Howard Aller, President of American Power and Light Company. Although Matthews would not reveal what had transpired at the meeting, Butler concluded that such a get-together could only be a move by Matthews to give support to the Consumers purchase offer. While Matthews publicly claimed that he had made no pretense of representing the Metropolitan Utilities Board at the meeting, his activities certainly suggested that he had at least considered the possibility of a MUD takeover of the Nebraska power properties.  

Adding to the schism over the bill's implementation was Governor Griswold's dissatisfaction with the manner in which the People's Power Commission was to be appointed.

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30Interviews with both Assistant General Manager Boyd Miller and MUD director Frank Frost did not provide any further insight into the district's role in the power controversy during this period. No MUD records are available dealing with the meeting which Matthews attended. September, 1970.
The Governor, noting that no provision allowed for representation on the utility board by individuals living outside of Omaha but served by the facility, declared that in his judgment this aspect of the bill was both undemocratic and unacceptable. Thus, by early May, 1943, a substantial amount of opposition was apparent over the issue of Omaha's acquisition of the Nebraska Power Company.31

Responding to the sudden barrage, the World-Herald answered by characterizing the opposition's assertions as confusing and bewildering. In justifying L.B. 204, the paper noted that the bill had been drafted and introduced in the Legislature to assure Omaha of continued control over rates and services and continued receipt of local tax revenue derived from the utility's operation. The newspaper, observing that existing state law provided for the MUD to assume control of the NPC, remarked that this was unacceptable since both city regulation and continued payment of taxes would be eliminated. The World-Herald, noting that these considerations were of vital importance to Omaha's welfare, concluded that the special legislation was imperative if the city's interests were to be protected.32

Between March 25 and May 5, the State Legislature

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31 Morning World-Herald, January 21, 1943.
attempted to resolve the controversy. Endeavoring to settle one of the most controversial provisions of the act allowing commissioners to succeed themselves by board nomination, Senator George Craven of Lincoln moved that the act be amended to provide that future membership be determined by popular election. On March 30, Senator C. Petrus Peterson responded to the proposal by introducing an alternate procedure. Peterson's proposal provided that the commission consist of eight members, six to be appointed by the Omaha city government and two by the Governor. One of the features of the Senator's amendment restricted board membership to residents of the area served by the proposed commission, a limitation which certainly must have been to the liking of the Mayor and Council since it assured continued city control and operation over the utility. The Peterson amendment also provided that the Governor would appoint two members from outside Omaha, thus negating Governor Griswold's criticism of the bill. In addition to these provisions, Senator Peterson also suggested that the measure be modified to require that any purchase agreement entered into by the board be approved by a referendum.

33 The original bill had provided for a seven-member board to be appointed by the Mayor and City Council with staggered terms. Upon the expiration of a term, the board itself was empowered to fill vacancies without confirmation by the city government. Evening World-Herald, January 25, 1943; Morning World-Herald, April 7, 1943; Nebraska Legislative Journal, pp. 812-814.
After rejecting the Craven proposal, the Unicameral on March 31 adopted the Peterson amendment. 34

Yet the issue was far from over. On April 6, Senator Sidney Cullingham of Omaha entered the controversy. Attempting to insure that the Commission would retain its power to appoint succeeding members to the Board, he proposed that the initial amendment introduced by Senator Craven be reintroduced and modified allowing the commission to appoint succeeding members who would be subject to confirmation by the City Council and recall. On April 7, the Legislature took the latest proposal under consideration and, after discarding Senator Peterson's plan, voted in favor of adopting Cullingham's plan. 35

Immediately, Senator Robert Crosby of North Platte rebuked Cullingham's amendment declaring "... if the council can be trusted to set up the important first commission which will acquire the property and shape policies, surely it can handle succeeding appointments." Crosby, requesting that the Cullingham amendment be reconsidered, presented a counter bill providing that the Mayor appoint members to the Commission with the confirmation of the City Council. Senator Cullingham, replying to Crosby's remarks,

34 Ibid., pp. 841-842, 850; Morning World-Herald, April 1, 1943.
35 Nebraska Legislative Journal, pp. 888-890, 924, 929.
noted that such a procedure would be unacceptable since it would allow for politics and patronage to influence Council appointments. Shortly thereafter, Senator Crosby's amendment went down in defeat with Senators who opposed public ownership voting with those Senators who wished to keep the original bill intact.36

Calling a short recess, Senators Tvrdik and Gutowski of Omaha suggested that a compromise was in order if eventual passage of L.B. 204 was to be achieved. The Senators' concern might well have been in response to a statement made earlier by an opponent of the special measure when it was noted that "It will be lots easier to kill the bill if the commission remains a self-perpetuating body." Tvrdik, aware of the broad opposition to the self-perpetuating feature and fearful that it might bring about the defeat of L.B. 204, recommended that the Omaha delegation fall behind the Crosby proposal. With the Legislature called back into session, Senator Tvrdik moved for reconsideration of the Crosby proposal which the Unicameral subsequently passed.37

36Morning World-Herald, April 7, 1943.
37Lincoln Star, April 7, 1943; Nebraska Legislative Journal, pp. 924-929. Opponents to L.B. 204 attempted to stop the proposal from being reconsidered but were defeated 19 to 8. Crosby's concern over the manner of selecting board members was a reflection of a bigger picture. A bill regarding the method of determining board members for Consumers Public Power had been in the mill for several years and a bill, L.B. 405, allowing the Governor to appoint directors, was under consideration. Reflecting on the overall state law, Crosby pointed out that to allow the
With the settlement of what method would be employed in the selection of commissioners, further consideration of L.B. 204 proceeded smoothly and several other amendments were adopted.38

No sooner had the Legislature seemingly resolved the conflict over the bill than several Senators, intent upon indefinitely delaying final reading of the bill, succeeded in having a resolution adopted requiring that each of the fifty-five sections of the measure be considered separately, thus assuring the bill's delay beyond the adjournment date of the Unicameral. Senator Peterson, aware of the possible danger to the special legislation, announced on April 7 a plan providing that all but the first seven sections of self-appointive feature to remain in L.B. 204 would be contradictory to his position in regard to L.B. 405. Senator Peterson, commenting on the Crosby amendment, noted "I believe appointment by an elected body, responsible to the people, squares more with our present concept of government."

38 Morning World-Herald, April 7, 1943; Evening World-Herald, April 7, 1943. Subsequent amendments to L.B. 204 included Senator C. Petrus Peterson's proposal that territorial limitations to be placed upon the Omaha district's operation limiting the commission's authority to Douglas and adjoining counties, but permitting operations of a few NPC lines extending another tier of counties away; Senator Cullingham's proposal for a recall provision which was revived and readopted; and Senator Peterson's amendment introduced on March 30 which provided for public confirmation of any purchase agreement concerning the acquisition of the Nebraska Power properties. On April 8, still another amendment was adopted which specifically clarified the right of Omaha to procure all properties of the Nebraska power system yet fully guaranteed the properties within the area of the Rural Electrical Association from encroachment by the commission. Lincoln Star, April 7, 1943.
L.B. 204 be killed and replaced with existing power district law. Such a procedure, the Senator hoped, would allow for speedy consideration of the bill and, yet, would not affect the intent of the measure since the sections to be deleted were repetitious of existing state law.

Senator Crosby, commenting on the Peterson plan, observed that it appeared that a great deal of the opposition to L.B. 204 had not been in "good faith" and had been directed by individuals who stood to gain financially "... from other deals for Nebraska Power if Omaha public ownership could be blocked." Crosby, declaring his support of the plan, pointed out that it would not only allow Omaha the opportunity to acquire the utility but would, also, provide sufficient limitations to remove the apprehensiveness of the Rural Electrical Association. Concluding, the Senator declared that the Peterson proposal reduced the debate over the measure "... to one of reason versus prejudice."

Senator Peterson, commenting on his proposed plan, stated:

I am going on the theory that where peculiar local conditions justify a departure from established power district law, Omaha should have its own law. But where universal principles can be applied,


40 *Sunday World-Herald*, April 11, 1943.
they should be the same for all. It will not be too much to expect that these two groups, Consumers and Omaha Power, which have been sniping at one another, accept as a fact that the state is not apt to consider seriously different treatment where the problems are the same. So far as can be foreseen, it is wholly unlikely that Consumers will be regarded as a suitable instrument to operate the electric utility in Omaha. If any Omaha group ever had visions of a second Consumers with statewide activities, they have probably by now observed that such a program is not acceptable.

Continuing, the Senator noted that not only had the initial bill been written with little attention given to public policy, but that the bill had been prepared solely to protect the interests of the power company and those of the prospective bond purchasers. Concluding, Peterson observed that the bill as amended by the Unicameral would now protect the interest of the people of Omaha. 41

On April 12, Senator Frank Sorrell of Syracuse moved to kill L.B. 204 arguing that all state utility systems should operate under one law. The attempt, however, was defeated when the Unicameral accepted the revised Peterson Plan which passed by a vote of 28 to 0. Some anxious moments passed when Senator Dudley Thompson of Genoa, supporting Sorrell's motion, presented a letter from Phil Hockenberger, Vice President, Consumers Public Power District, indicating that the district was willing to allow Omaha to form its own district, providing it was accomplished under

41 Lincoln Star, April 12, 1943.
existing state statute. Senator Peterson, responding to the communique, declared:

This puts Consumers on record as wanting to do in Omaha what they did in taking over the Lincoln Electric property. I don't want this to happen again anywhere. That is why I don't want Omaha to operate entirely under S. F. 310. I don't want its power commission extending all over Nebraska. I don't want purchase prices decided in private conference without regard to true worth or welfare of rate payers.42

Though Sorrell had withdrawn his motion to kill L.B. 204 at the request of Senator Craven, the Senator was far from through. Commenting on future intentions, he remarked, "It will save time if we hold our ammunition to kill the whole bill."43

With the passage of the Peterson plan, the Unicameral spent the next several days debating proposed amendments which related to peculiar problems of Omaha and which were intended to be included in the first seven sections of the bill. Included within those amendments offered by Senators and accepted were: 1) a provision for the inspection of Commission books or property by the Omaha Comptroller and city engineers; 2) a stipulation that the recall provision be restricted to city rate payers and require the signatures of fifteen percent of those casting votes in the last general election; 3) a protective clause

42Lincoln Star, April 12, 1943; Nebraska Legislative Journal, pp. 934, 972.
43Morning World-Herald, April 15, 1943.
for the REA disallowing the Omaha district from extending
into or buying REA mortgages or properties; 4) a proviso
barring membership on the board of directors to any individ-
ual with financial interest in public utility securities;
5) a requirement that the Commission pay the state and local
government subdivisions an amount equal to full taxes and
that they continue payment to the city of a three and one-
half percent occupation tax on gross revenue; and, lastly,
the inclusion of a section whereby the Omaha district was
empowered to acquire the Nebraska Power system by either
negotiation or condemnation.44

Until May 4, no further debate occurred over L.B. 204
because Senators agreed to await any further action on the
bill until such time as all bills dealing with public
utility law reached the floor. This merely recognized that
amendments to existing law could affect the Omaha bill. On
that date, Senator Crosby introduced two more amendments
which the Legislature adopted.45 With the passage of the

44Nebraska Legislative Journal, pp. 974-978; 1018-
1019; Morning World-Herald, April 13, 15, 16, 1943.

45Morning World-Herald, May 5, 1943; Nebraska
Legislative Journal, p. 1239. The first amendment provided
that if no commission was formed within six months of the
effective date of the bill, a public vote could force the
Mayor to act and, if the commission thereupon failed to
initiate proceedings within one year, the directors could
be forced through a public vote to initiate condemnation
proceedings. The second amendment provided that in the
instance of foreclosure proceedings, the power plant
properties could not revert to private ownership.
last two amendments, the bill was advanced on May 11 to the Select File by a vote of 23 to 2. 46

The amended form of Legislative Bill 204 was greeted with enthusiasm. The Omaha World-Herald editorially characterized the revised measure as a "perfected L.B. 204."

Commenting on the legislation, it said:

We believe the legislative intent has been to make of L.B. 204 the best law possible. . . we are confident that the bill, as finally agreed upon and enacted into law, will give to the people of the community vitally affected what they want and need. 47

Not all shared the paper's optimism. As early as May 5, Senator Dan Garber of Red Cloud introduced legislation which proposed that the price of the NPC be fixed jointly by the State Railway Commission and the Federal Power Commission. Although his recommendation was defeated 27 to 8, the Legislature's Public Works Committee on May 15 endorsed a proposal by Senator Craven for a future interim investigation of electrical affairs. Of importance to Omaha was the specific provision that the investigating committee check into any deal made by the People's Power Commission for the NPC properties. 48 The acceptance of the recommendation would later provide considerable insight into the misguided power struggle that was to ensue in Omaha.

46 Nebraska Legislative Journal, p. 1357.
48 Ibid., May 5, 1943; Sunday World-Herald, May 16, 1943.
On May 12, L.B. 204 was referred for engrossment and, upon completion of its third reading, was passed on May 24, 1943, by a vote of 25 to 12. Response to the bill was generally favorable. Governor Griswold, in giving executive approval, noted that "... perhaps they could have passed a better bill" but that Omahans were protected "... from an excessive price for the plant and, in turn, from being confronted with exorbitant charges." Mayor Butler, commenting on the amended form, noted:

The bill has been given very careful, honest consideration by the legislature and it's really a better bill now than when it started. I feel they have recognized the fact that the Nebraska Power Company must be sold, and that the people of Omaha ought to have an opportunity to buy and operate it.

Linn Campbell, President of Byron Reed Company, Inc., said "I believe it is one of the most important matters ... It will preserve for Omaha control of its own electric energy supply." Alvin Johnson, President of the Livestock National Bank, observed "It is the answer to the situation. I'm for it because it will give the people ... their deserved right to operate their own power plant." Numerous other endorsements were offered by civic leaders. Sam W. Reynolds, President of the Chamber of Commerce, commenting on the bill said:

19 *Nebraska Legislative Journal*, pp. 1377, 1491, 1602, 1622.

50 *Lincoln Star*, May 25, 1943.
If the power company is to be sold, no fair-minded man would deny the City of Omaha the first right to purchase. If Omaha acquires the property, it should be permitted to do so under terms which will guarantee efficient operation divorced as far as possible from politics, continuance of the taxes which are vital to city finances, some control over rates and make certain that the sale shall be for the benefit of Omaha, . . . This is what L.B. 204 would accomplish. Opponents did not succeed in pulling the wool over the eyes of our legislators with harmful amendments. 51

Thus, it seemed by mid-May that Omaha was well on its way toward acquiring the electrical plant and all seemed in agreement as to the manner in which it would be accomplished. 52 Herein should lie the end of this narrative; however, it is but the beginning. Had the Omaha World-Herald and other prominent city leaders pondered the dissenting comments of Senator James Doyle, much of what was to transpire over the next several years might have been more apparent to all concerned. "I voted no," said Doyle,

because the American Power and Light Company of New York own nine percent of voting stock in Nebraska Power Company and Nebraska Power

51 Sunday World-Herald, May 23, 1943.

52 It was suggested in testimony before the Legislative Committee probe conducted in August, 1943, that both city government officials and the Nebraska Power Company were in agreement that if the properties were to be acquired by Omaha, it would be accomplished through negotiations rather than condemnation as provided in the special act.
is the only company which had paid lobbyists for the passage of this act. This legislation is for American Power and Light, New York.\footnote{Nebraska Legislative Journal, p. 1605.}
CHAPTER TWO

The People's Power Commission

The Unicameral had enacted Legislative Bill 204 to permit Omaha to acquire possession of the Nebraska Power system under the impression that all parties concerned were in accord. However, shortly after its passage on May 24, 1943, it became apparent that "certain individuals" were intent upon impeding the formation of the People's Power Commission. The first indication of dissent over Omaha's special act was revealed on June 30, 1943, when Harold Krammer, Manager of the Loup River Public Power District, made known that the Consumers District was "... considering a referendum petition to halt operation of the Omaha People's Power Commission Law." Speaking of the recent defeat encountered in the Unicameral by the "public power circles," he noted that the Consumers offer was still on file and that the district's opposition to the bill's implementation "... stems from the desire ... to expand its holdings by acquiring Nebraska Power Company." Although V. M. Johnson, General Manager of Consumers, denied the assertion, noting "... we have had no connection with anyone who may have that purpose and haven't considered a referendum ourselves," Krammer's assertion and Johnson's
reply heralded the divisiveness which was developing over L.B. 204's implementation.¹

The utility question was further intensified when some Omahans charged that the special act had been contrived solely as a means to thwart a Consumers purchase and that the city had no intention of appointing a commission to acquire the electrical plant. Senators who had supported passage of the amended bill vigorously denied the assertion. Senator Elmer Rankow of Neligh stated that "... if the power commission law ... is not to be carried out, I am certainly disgusted with Omaha for taking up all the time they did with the Legislature." Senator James H. Anderson of Scottsbluff declared "... the Legislature never would have spent the weeks of study on the bill, nor would the bill have finally passed, if the only purpose was to keep Consumers out of Omaha." Senator C. Petrus Peterson of Lincoln, advocating a special legislative session if the city did not move under L.B. 204, noted: "If Omaha fails to create a People's Power Commission to acquire the Nebraska Power Company, it will be breaking faith with the forty-three legislators who adopted the Omaha Power Commission enabling act."²

By August 5, 1943, newspapers across the state were

¹Morning World-Herald, June 30, 1943.
²Sunday World-Herald, July 4, 1943.
denouncing L.B. 204 as nothing more than a scrap of paper.

The Nebraska City News noted:

Out of it all emerge a number of disillusioned members of the Unicameral. Out of it all, too, emerge thousands of good Nebraskans outside Omaha who cynically remark that it was a typical "Omaha trick" and, please, just try to sell a similar fast one again.

The Omaha World-Herald, responding to the criticism, said that such adverse remarks were the manifestation of "... attempts by a few misguided and misrepresentative Omahans to stab L.B. 204 in the back." In vindicating Omaha city government, the newspaper urged that Omaha not be tried, condemned and executed, and declared that Mayor Butler would act under the provisions of the enabling legislation.

The first alarming omen that implementation of L.B. 204 would meet with substantial opposition came on June 15, 1943, when the Omaha Central Labor Union declared its opposition to both the formation of a power commission and to the sale of the power company. The Union's opposition to L.B. 204 stemmed from its fear that public ownership would endanger the employees' collective bargaining rights with the NPC. Hostility became more evident when, on

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3 Nebraska City News, (Nebraska City, Nebraska) August 4, 1943; Lincoln Star, August 6, 1943; Columbus Daily Telegram, August 5, 1943.


July 27, the Nebraska Power employees presented the City Council with a unanimous resolution declaring their wish that the company "be left alone" since, in their opinion, city acquisition of the plant would bring political control. Further, the employees alleged that the NPC no longer had to be sold. Mayor Butler responded to the turmoil which had developed over the power plant by charging that the Nebraska Power Company, itself, had instigated the commotion. Commenting on the recent ripples of enmity, he declared:

Mr. Bozell and Mr. Jacobs of Bozell and Jacobs, advertising representative of the Nebraska Power Company, American Power and Light, seem to be the leading individuals in this small group, and have made it very plain to certain businessmen that they will fight the creation of a power commission and the acquisition by the city of the Nebraska Power Company.

At this critical juncture, however, an unexpected event transpired which considerably altered the Omaha situation. On Friday evening, August 6, J. E. Davidson, President of the Nebraska Power Company, announced the properties were no longer for sale. This declaration of the company's revised stand was accompanied by arguments defending Nebraska Power's sudden turnabout in mid-stream. Since the company had increased its on-hand cash from seventeen million to twenty-four million dollars to cover

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7 Sunday World-Herald, July 4, 1943.
its forty-four million dollar debt, Davidson declared that the justification for the SEC's dissolution order had been removed. Further, he charged that because the originally drafted bill had been amended so as to make condemnation "a practical certainty," such a course of action would eliminate electoral approval. This would negate the right of the company and of Omahans to determine their own destiny concerning municipal ownership. Further, Davidson pointed out that even though the Unicameral may have adopted the injurious aspects of the bill inadvertently, NPC was left with no alternative but to resist the forced sale of the company. He concluded by proclaiming that the Nebraska Power Company would do everything in its power to support the efforts of the On-Guard Committee to secure petition signatures to force the city government to place the issue before the electorate.  

Davidson's allegation concerning condemnation was without legal basis. L.B. 204 provided that the provisions of S. F. 310 would apply should Omaha initiate condemnation proceedings under the special act. S. F. 310 specified that a condemnation court could only be appointed after a vote of the electorate and the result of that vote certified to the Supreme Court. Apparently, Davidson wished to gain

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8Morning World-Herald, August 7, 16, 18, 1943. The On-Guard Committee was formed and financially supported by the NPC. See Final Report of the Nebraska Legislative Council, Sub-Committee on Public Power submitted to the Nebraska Legislative Council September 27, 1944, pp. 25-38.
public support in his effort to block acquisition of the NPC by the city under L.B. 204. It may have been believed by the NPC that Omahans would not accept a price approximating the $40,000,000 previously offered by Consumers. Should the city electorate reject a negotiated settlement, the city would then proceed under condemnation provisions of the law; an alternative certainly not to the liking of the power company.

The outcome of the company's revised stand was that many leading businessmen, who had previously been in doubt, opted for municipal ownership. Among them was editor Henry Doorly of the Omaha World-Herald who unremittingly defended the bill and the concept of public ownership. The World-Herald was quick to disparage the Nebraska Power Company and its standing in the community. In an August 8 editorial, it referred to the demand for nullification of L.B. 204 as "ugly" and it declared that the propaganda of Nebraska Power would hoodwink Omahans into "self-stultification." With no punches pulled, the newspaper asserted that the firm's revised attitude came from an "...overshadowing monopoly, sentenced to death for its sins, that thinks it can safely play horse with Nebraska." Doorly doubted that Omaha's city government could be

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deceived by the "slick trick" and would move under the bill. He noted that Nebraskans "... may be regarded as country bumpkins out here on these plains, but we aren't quite that dumb and easy." The editor lashed out against the Omaha utility as a tenacle of the mighty "octopus corporation," American Power and Light. The paramount issue, as he saw it, was whether Omaha was a "... free city or ... under the shackles of the American Power and Light Company, subject to its domination under whatever changing circumstances further its own interests and plans."  

The Lincoln Star, referring to the recent turn of events, charged American had been motivated by political considerations. The Star, a staunchly Democratic paper, noting the Republican Congressional gains in 1942 and the forthcoming 1944 Presidential election, pondered whether the holding company was "hoping" the Holding Company Act "... would be erased from the statutes in house cleaning under which every last vestige of the New Deal will be erased."  

The Columbus Daily Telegram labeled the situation as "bewildering." The paper alleged that Nebraska Power had endorsed L.B. 204 to force Consumers to "largely increase its offer to purchase" the Nebraska properties, and it was overjoyed by the stand taken by the World-Herald. In

reviewing the Omaha paper's past anti-Roosevelt position, the Democratic Telegram was delighted to see the newspaper:

... denouncing the ravaging holding company system as surely as William J. Bryan ever denounced it and to see that ... newspaper now going as far as President Roosevelt ever went in denouncing that system, gives rise to the hope that newspaper, which held first place as an evangelist in support of the progressive principles of William J. Bryan ... may once again put its neck in the collar in behalf of governmental principles looking to the welfare of the common herd, and in defiance of the wishes of that mighty organized wealth from which the World-Herald has been so suddenly and so positively divorced.12

On April 12, the World-Herald opened its drive to discredit Davidson's stand. In answering Davidson's assertion that the Commission could secure the power plant without the consent of the people, the paper observed that the law required electoral approval of either negotiation or condemnation. Claiming the Nebraska Power Company was creating a false premise for Councilmen to hide behind, the World-Herald asserted the shield was made of "tissue paper" and the wrath of the Legislature, of Nebraska and Omaha would surely follow. The following day, the paper again took issue with Davidson's remarks. The newspaper cited Dean Tepoel of Creighton Law School who reassured Omahans of their prerogative to determine municipal ownership by printing the complete particulars of L.B. 204 concerning

procedures for acquisition by either negotiation or condemnation. Opponents of the bill, he claimed, were feeding Omahans "a lot of hooey." He referred to Nebraska Power Company's endeavor as one of "confusion and deception," and declared "... no Councilman can vote to betray his trust under the pretext of protecting the right of the people. That bomb shelter is demolished." The Lincoln Star responded to the World-Herald's editorial fury by pointing out that the newspaper had been aware that the NPC had written L.B. 204 and questioned why the paper had not brought this fact out when the Legislature was considering the measure. Commenting on the bill, the Star stated the act was "... the most fantastic trick that has ever been rubbed into the hides of the members of a Nebraska Legislature."

13 Editorial, "The Blitzkrieg," Morning World-Herald, August 12, 1943. Tepoel, in reviewing the condemnation provisions of the state statute, declared "Nowhere in the laws of Nebraska does the Supreme Court have power to appoint a condemnation court without first a vote of the electors, and the result of that vote certified to the Supreme Court. It follows inevitably that without such vote, no proceedings under condemnation can be instituted or carried forward. First, for the reason that the statute requires the vote to be taken and, second, for the reason that until such a vote is taken and an affirmative result, favoring the institution of such proceedings certified, there is no means or method by which a condemnation court can be organized." Certainly Tepoel's interpretation must have carried considerable weight since he had served as Mayor Butler's legal representative on the Committee which drafted L.B. 204.

In addition to the question of the people's right to determine municipal ownership, an issue which played a large role in the newspaper's assault upon the Nebraska Power Company was the claim that the utility was an externally-controlled operation existing for the benefit of financial interests in the East. The thirteen prominent Omaha directors, he claimed, were a facade to cover a mammoth superholding structure. The World-Herald remarked that control of the company in Omaha was directed by Eastern utility wizards at 2 Rector Street, New York.

Noting the fact that the American Power and Light Company controlled eighty-nine percent of Nebraska Power Company's preferred and common stock, the World-Herald alleged that outside rule of the properties was absolute. Nebraska's directors had only three percent of the voting power and even this trivial amount was an absurdity since American Power and Light held an option to buy stock back upon demand. 15 The paper left little doubt that the directors of the power plant were vassals of the American system since the stock they held was on a "lease-lend basis," distributed at the time of employment and redeemed at the discretion of the holding company. Disclosing

15 Distribution of voting stock, common and preferred, in Nebraska Power Company in 1942 was: American Power and Light Company, 89.8 percent; local directors, 3.2 percent; and preferred stockholders, 7 percent. The newspaper obtained these figures from reports filed with the Federal Government agencies.
American had split its common stock in 1931 to assure a twenty-to-one voting superiority over preferred holders, the paper revealed that even though the preferred stock was in the hands of the general public, this was an illusion since the company controlled one million shares of common stock while only seventy-five thousand shares of preferred stock were in the hands of the public.16

The controversy over L.B. 204's enactment reached a new plateau when several Senators requested that the Unicameral launch an immediate inquiry into the Omaha power situation. Senator Stanley Matzke of Seward, Chairman of the State Legislative Council, announced on August 14 that Senator Cullingham had asked for the probe because the power company did not "... care a rap about the people ... they only wanted dollars; the more the merrier."17 Matzke, commenting on the Senator's proposal, noted that the issue was of such a vital interest to Nebraska that the Council would not neglect it. Also endorsing the recommendation were Senators John Mekota of Crete, Martin Mischke of Crofton, and C. Petrus Peterson of Lincoln. Peterson, in observing the recent efforts to stop the establishment

16 Morning World-Herald, August 14, 1943. Statistics concerning the NPC's stock, as presented by the World-Herald, were later verified by the Sub-Committee on Public Power. See Final Report of the Nebraska Legislative Council, Sub-Committee on Public Power submitted to the Nebraska Legislative Council, September 27, 1944, pp. 1-35.

17 Ibid., August 14, 1943.
of a Commission, claimed the resistance to L.B. 204 had been
initiated by the Nebraska Power Company since it opposed a
popular vote on a negotiated settlement. Cullingham
asserted that the company's antagonism stemmed from the fact
that Nebraska wanted to "... prevent action under L.B. 204
until such time as a special session or the next regular
session ... can be induced to repeal L.B. 204 so that the
Nebraska Power Company can be sold to Consumers Public
Power District for about fifty million dollars." 18

On August 16, Senator Cullingham presented his
request to the Council, then meeting in North Platte. The
outcome had been a foregone conclusion since the State
Legislative Council's Committee had previously declared
unanimous support for the proposal. Senator Walter Raecke
of Central City announced that the Committee would arrive
in Omaha on August 26. He stated that the Committee's main
objective would be to determine the reasons for the
opposition to L.B. 204 and to evaluate all arguments
regarding the bill. 19

The two arguments which had most frequently been
cited against L.B. 204 over the past several weeks were that
it would most probably force condemnation of the Nebraska

18Sunday World-Herald, August 15, 1943; Morning
World-Herald, August 16, 1943.

19Ibid., August 17, 1943.
Power properties without a vote of the people and that the company no longer had to sell its property. Such was the argument presented by the On-Guard Committee in its petition drive and such, also, was the case presented to editor Doorly in a personal communiqué from Davidson on August 6. The World-Herald withheld its reply to the letter for several weeks. When the appropriate moment arrived on August 15, Doorly reprinted Davidson's communication and his answer thereto on the front page of the Sunday World-Herald.

In a review of events since August, 1943, Doorly remarked "the issue now . . . as I see it, is the good faith and integrity of the people of Omaha and their accredited representative before the Legislature." Following this remark, the editor proceeded to lay a bombshell in the lap of Nebraska Power when he disclosed a conference which had occurred shortly after the Unicameral's adjournment between Howard Aller, President of American Power and Light, Davidson, Mayor Butler and representatives of his special committee. Doorly, pointing out that Aller had asked the Mayor to postpone the appointment of the People's Power Commission because judicial proceedings to enjoin the SEC had commenced, disclosed that the Mayor had answered Aller by declaring that the city would proceed with condemnation if negotiations were unavailing. Aller thereupon walked out asserting he would "fight that indefinitely." The
paper reaffirmed its stand for the bill and charged that those who supported the Nebraska Power position were not only endeavoring to leave Omaha "... stranded and helpless," but were "... selling their own city and its future down the river." 20

Opponents to L.B. 204 had commenced their campaign drive against the bill shortly after Davidson's public statement of August 6. A series of radio broadcasts was initiated denouncing the special act and asking citizens to sign petitions, opposing the implementation of L.B. 204, being circulated by the On-Guard Committee. Davidson, endeavoring to sway opinion, also issued several public pronouncements over the next several days that reiterated his position of August 6. Further, the Nebraska Power Company dispatched letters to all Omaha utility consumers expressing the company's position. 21

Adversaries of the act on August 17 culminated their efforts by answering the World-Herald's extensive blitzkrieg. Before three hundred businessmen at a luncheon at the Paxton Hotel, Davidson again claimed the law would endanger the home rule rights of Omaha. Referring to the Sunday World-Herald's indictment, he denied Doorly's allegation and

20 Editorial, "Changes Have Taken Place, the Issue is Our Integrity," Sunday World-Herald, August 15, 1943.

pointed out that Aller had informed the Mayor that the company had taken steps to enjoin the Securities Exchange Commission from enforcing its order, thereby removing circumstances necessitating sale. In referring to claims that Nebraska Power Company was endeavoring to destroy the special law, he remarked "... we never have or never will make any effort to sabotage L.B. 204. If, at any time in the future, the city is to acquire this property by condemnation or otherwise, the bill should remain on the books."  

Sam Reynolds, former President of the Chamber of Commerce, then addressed the gathering and noted that the luncheon had become necessary because the city was cursed with one newspaper and could not get "... a few facts" across. He described the special act as a precautionary measure for "... putting up a tent in case it rains," and he added that "... there wasn't a cloud in the sky." Since Reynolds believed that the city's need for acquisition of the utility no longer existed, he recommended that the whole thing be called off. The entire issue had arisen over a "play of words," he remarked, and no grounds had been cited to justify city acquisition of the Nebraska Power Company. Concluding, Reynolds pointed out that forty-seven thousand citizens had signed petitions circulated by the On-Guard Committee and the City Council had no alternative

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22 Ibid., August 18, 1943.
but to respond by passing the requested resolution.23

Over the next several days, the World-Herald turned
to economic considerations in the dispute, possibly
because Doorly believed they afforded sufficient grounds to
justify an immediate Council resolution forming the People's
Power Commission. American Power and Light, he declared,
had acquired control of Nebraska Power's operation by
"watering" the stock to the extent of "about seven million
dollars." He pointed out "... not only did the holding
comp any get control . . . for nothing, but they got some
money--a sort of bonus--besides."24 In revealing that the
initial purchase by Electric Bond and Share of the Omaha
utility in 1917 was occasioned by an extensive write-up in
the amount of $7,387,516.93,25 the World-Herald concluded
by claiming that not only did the holding firm gain

23Ibid.

24In 1917, Electric Bond and Share purchased the com-
mon and preferred stock of the Omaha Electric Light Company
for $4,632,047.42. Shortly thereafter, Electric sold these
stocks to its subsidiary, American Power and Light, for
$5,865,941.33. In turn, American Power and Light sold the
preferred stock and bonds to its subsidiary, Nebraska Power,
for $10,449,500.00, while retaining Nebraska Power's common
stock. The Federal Trade Commission, in its investigation
conducted in 1931, concluded that the American Power and
Light Company got Nebraska Power control free, plus
$407,000.00. These figures were obtained by the World-Herald
from reports filed by the Federal Trade Commission after it
had conducted an investigation into APL's financing in 1932.

25On May 31, 1917, the fixed capital of the Omaha
Electric Company was $6,432,637.02. On June 1, 1917, the
fixed capital, with Nebraska Power's operation commencing,
had increased to $13,500,000.00.
possession of the Nebraska system without ". . . a penny of actual investment," but Omahans:

ARE STILL PAYING ELECTRIC RATES WHICH KEEP THAT INFLATED CAPITALIZATION GOING--RATES WHICH MAKE THE FREE COMMON STOCK HELD BY AMERICAN EXCEED-INGLY PROFITABLE.26

The paper then declared that Omaha was annually drained of $1,250,000 by a "foreign firm." Since 1917, the city had paid out over twenty-one million dollars. The World-Herald stated that not only would these profits have better benefited the city, but:

INCIDENTALLY, THAT AMOUNT OF MONEY, APPLIED IN PAYING FOR NEBRASKA POWER COMPANY, WOULD HAVE PRETTY WELL PAID FOR IT BY NOW.27

Following its story, the World-Herald proceeded to unfold an extensive breakdown of projected operating expenses of the utility if municipally-owned. Doorly asserted that Omaha could pay for the properties within twenty-five years without the indebtedness becoming a liability to the city. He remarked that the utility could be accompanied by an annual profit of $1,800,000 over operating costs. In conclusion, it was noted that a privately-owned company's indebtedness would not normally be retired but would be carried as a permanent investment because ". . . if the money had to be set aside . . . dividends

26 Morning World-Herald, August 17, 1943. Newspaper's emphasis.

27 Ibid., August 18, 1943. Newspaper's emphasis.
would be sharply reduced."  

Editorially, the paper turned its attention to the running debate over condemnation and the provisions of L.B. 204 which related to the rights ofOmahans to vote if the People's Power Commission employed such a technique. Reproducing Section 13 of L.B. 204 and relevant statutes dealing with condemnation procedures, the World-Herald left no doubt that a popular vote was a mandatory prerequisite before condemnation could be initiated. The newspaper referred favorably to a recent proposal from Mayor Butler that the Council, in its resolution to act under L.B. 204, include a proviso stipulating "that in event of condemnation . . . a prior vote . . . shall be required." The paper continued by asserting that enemies of the special act were ". . . raking a dust cloud to confuse the people." The proviso would remove the cloud, doubly guarantee the people's rights and provide American Power and Light with what purportedly they had requested. Finally, the editor asserted that such a resolution would settle the Omaha controversy and ". . . thereupon, the dispute will be determined in such a way that everyone, who has been talking in good faith, should be content and happy."  

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28 Ibid., August 19, 1943.
Throughout the remainder of August, the newspaper continued its financial analysis of the Nebraska Power Company's operation. In emphasizing the advantages of municipal ownership, the paper compared rates paid by Omaha users under private ownership to Fremont consumer charges paid under public ownership. Disclosing a considerable variance, such as a light bill of $9.92 in Omaha to one of $6.29 in Fremont, the *World-Herald* noted that Omaha, under city ownership, "... should be able to allow lower rates than Fremont." Additionally, the paper observed that Omaha consumers paid an average of 3.5 cents per kilowatt hour, while Fremont's residential rate averaged 2.1 cents per kilowatt hour; and that Omaha's commercial-industrial users paid 1.87 cents per kilowatt hour, while the Fremont rate was 1.6 cents. Stating that Omaha, in fact, had the advantage in operating at lower costs because of size, the *World-Herald* ascertained that Fremont's low rates were the consequence of "... its power system ... never being subjected to holding company financial funny business." The newspaper pointed out that the Fremont utility was fully owned without indebtedness and was "... one of the finest in the country," that it carried a five percent depreciation rate and that the directors had on hand 550,000 dollars reserve. The paper concluded that the Fremont system, its manner of operation and the resulting advantages to users compared very closely to the proposed Omaha operation under
Yet, in another article, the paper claimed the Nebraska Power Company could not reduce its rates because "... it pays extraordinary high interest on money it has borrowed." Further, the World-Herald observed that Nebraska Power's payment of 5.1 percent on its entire funded debt could be refinanced under municipal ownership at three percent. The paper noted that the excessive cost passed on to Omaha users was paying for "dead horses" resulting from "... frenzied finance that came with holding company control," and concluded that Nebraska Power could not refund its debt because it would lead to the SEC's requiring the company to make much larger depreciation allowances, thereby cutting the profits to American Power and Light.31

The Nebraska Power Company responded to the World-Herald's bombardment by addressing Omahans over the radio and asking "... why is the newspaper so interested in getting Omaha's citizens to take on a forty million dollar burden during wartime?" The newspaper answered in an editorial headed "The Burden of Monopoly." Omahans are "... carrying the burden ... as patrons of Nebraska Power when they pay their bills and they pay it in interest rates and on preferred stock ... they pay, in a word, exorbitantly, through the nose." Pointing out that the

30 Sunday World-Herald, August 22, 1943.
31 Morning World-Herald, August 24, 1943.
burden would be lifted by city acquisition because there ". . . would be no twenty percent profit for stockholders . . . no six or five percent interest charges to be paid bondholders . . . no federal taxes . . . and no such large expenditures . . . for miscellaneous purposes," the newspaper declared the people would own the plant and ". . . the profits will accrue to the people themselves - in the way of greatly reduced rates."32 The paper, addressing itself to the NPC drive to induce Omahans to sign petitions through a telephone campaign on August 24, asserted that the effort was a gimmick to trick the people. In reproducing the On-Guard Committee's petition, and after carefully spelling out the law, the World-Herald remarked:

The entire amazing campaign precipitated upon Omaha is a brazen eleventh hour effort to reduce it into betraying the purpose of the law, is an affront to the intelligence and self-respect of this community and its governing body.33

The Unicameral's intended investigation of the Omaha power situation had received statewide support. The Lincoln Star, in endorsing the legislative probe, noted ". . . there never had been any justification for two power laws" and declared Omaha could achieve their objectives under the provisions of the State Power Law, S.F. 310. The Columbus


Daily Telegram also declared its support for the investigation and asked how many lobbyists had been hired by the Nebraska Power Company "... to hypnotize the non-partisan legislators into a mental condition prerequisite to their support of the bill?"  

On August 25, 1943, the Unicameral Investigating Committee arrived in Omaha. The World-Herald, overjoyed by the Committee's arrival, delightfully endorsed its intentions by wishing it "... abundant success in its efforts to find an answer to the Omaha mystery." The paper, in noting Nebraska Power's about-face on L.B. 204, commented that the Legislature did not "... like to be played horse with" and that NPC intended that the "storm" which had developed over the formation of a People's Power Commission would "... frighten or seduce the Council from proceeding under the law that everyone wanted only three months ago."  

On August 26, the Committee called its first witness, Ralph V. Svoboda, attorney for Nebraska Power Company. Testifying that he had drafted the original enabling act and a number of subsequent drafts at the direction of

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35 Editorial, "The Omaha Mystery," Morning World-Herald, August 26, 1943.
Davidson, the witness was asked why the bill had not included a provision for voter approval. Svoboda said that such a provision was not included because a majority of the Mayor's Committee had opposed a vote by the people on condemnation or negotiation settlement. When asked "Who paid for this work," he replied "... my firm is on retainer for Nebraska Power Company." "Then all the pay came from the power company?" asked Senator Mekota. "Yes," replied Svoboda, "because Mr. Davidson directed us to make ourselves available to members of the Mayor's Committee." Upon questioning as to what members of the Mayor's Committee had opposed a people's vote, Svoboda asked to be excused and the Committee did not pursue the point.\(^{36}\)

Davidson was next requested to take the stand. Addressing the witness, Attorney General Rush Clarke asked, "If you were so interested in protecting the right of the people to vote, why didn't you put it in the original bill?" In spite of Svoboda's remarks, Davidson said "Well, that was something the Mayor's Committee put in." "But," asked Clarke, "you didn't make any suggestion to them?" "No," Davidson replied. Turning his attention to Davidson's initial support of L.B. 204, Clarke asked if his firm had approved of the original bill because it would have established an Omaha Power Commission as competitive bidders

\(^{36}\)Ibid., August 27, 1943.
against Consumers. Denying such intent, Davidson retorted, "Now the big objective is that the property might be taken by condemnation." Davidson concluded his remarks by enumerating several reasons why the company had taken its revised stand. Included were: (1) The public attitude had turned against government in business; (2) Congress had become favorably disposed toward utilities; (3) The SEC had also revised its attitude toward utilities; (4) The company's securities had "greatly advanced in value"; and (5) American Power and Light had curtailed preferred stock dividends, thus increasing its cash balance.

Next called was Leo B. Bozell of Bozell and Jacobs, advertising firm for Nebraska Power. Remarking that he opposed the amended bill inasmuch as it had not contained a "... vote for the people," he added that he "... fundamentally opposed any form of public ownership of the power company." Senator Mekota then asked, "Have you ever considered whether taking over the plant would raise or lower the rates of electric users?" "Not seriously," said Bozell. "After all, that's the fundamental question, isn't it?" continued Mekota. "No," Bozell replied, "I think the question is whether the socialization of the electric industry in Nebraska is to be continued." 37

Further light was shed on the question of Nebraska

37Lincoln Star, August 26, 1943.
Power's reasoning for its revised position with the testimony before the Committee of Glen Walker, Sales Manager for Nebraska Power and legislative lobbyist. Senator Mekota, noting that the company objected to the section of the bill which allowed condemnation because it did not include a proviso for voter approval, asked when the objection had been raised. Walker replied it was about a week before the Legislature adjourned. Senator Cullingham then pointed out that he had objected to another amendment giving the people the right to vote on a negotiated purchase at the time of its introduction. Walker answered by declaring that he "... was told to support the bill as originally drawn and introduced. They wanted the bill without amendments. That was what we were attempting to provide." Mayor Butler, testifying before the Committee, noted he had "... always felt the people should vote on any purchase of the power company, either by negotiation or condemnation." Senator Raecke, inquiring about the Mayor's initial attitude toward public ownership, questioned "... at the time the Committee was first formed, you weren't primarily interested in buying the company if it did not have to be sold?" "No," Butler replied, "We got along with the power company for a good many years. I want to say now that they have given good service to the city. They have an efficient force from
On August 28, the Committee resumed its hearings and heard testimony from Henry Doorly, World-Herald publisher; Seymour L. Smith, Consumer's Attorney and former City Attorney; Sam Reynolds, former Chamber of Commerce President and member of the Mayor's Special Committee; Glen Walker, Sales Manager of Nebraska Power and legislative lobbyist; Ellsworth Moser, banker and member of the Mayor's Committee; Lawrence Forsythe, radio speaker for NPC's campaign drive against L.B. 204; and L. J. Tepoel, Attorney and a member of the Mayor's Committee.

Doorly, testifying before the Committee, delivered a lengthy statement which reiterated the arguments presented in his newspaper over the last three weeks. Commenting that the Nebraska Power Company was nothing more than a front for American Power and Light, he declared Davidson and his fellow directors were "... highly subsidized dummies" and that they, along with Bozell and Jacobs, "... have circulated petitions in the city ... and have told the people ... all kinds of airy stories as to what will happen if L.B. 204 is put into effect by the city commission ...." Doorly claimed that Davidson had opposed Omaha acquisition because "... he foresaw that it meant he would lose his job, as obviously a municipal plant would not pay

38Morning World-Herald, August 28, 1943.
Mr. Davidson forty thousand dollars a year and expenses." Concluding, he warned that if the people "... neglect this opportunity of buying ... they are going to pay increasing tribute to American Power and Light for many and many a year to come." 

On August 29, 1943, Davidson declared, "I have been publicly berated by Henry Doorly ..." and demanded that he be allowed to answer "... the torrent of unfounded and uncalled for ..." abuses. Asserting his impeccable record of service to the city, he challenged Doorly by stating that he was more than willing to place his record and that of Nebraska Power's against the newspaper's. Referring to the power controversy, he stated "Every Omaha citizen, in this controversy, who has refused to bend the knee and bow the head to Mr. Doorly ... has been pilloried by the World-Herald in its editorial column." Referring to the advantage of non-taxable status as a publicly-owned utility, as claimed by the World-Herald in one of its economic appraisals of public ownership, Davidson turned his remarks to a nationalistic tone, declaring that such a result would:

... be the same as asking the people of Omaha to cut down their purchase of war bonds, ... backing up our fighting men, furnishing to them airplanes, the guns and the shells. Mr. Doorly, in order to make a financial showing for a public

39 Ibid.
power plant, would have you chisel the fighting men on the battle fronts. This is not only an insult to our fighting men on the battle fronts of the world, but it is an insult also to their parents, their families and their fellow citizens who are being urged by Mr. Doorly to join in this socialistic venture.

Another aspect of the utility controversy came to the front with Sam Reynolds' appearance before the Committee. Reynolds, asserting that he spoke for the business community, stated that L.B. 204 had appeared to him "... as fire insurance, not to be used unless the city was compelled to buy Nebraska Power." "The company never had to be sold," he remarked, "and we businessmen are coming more and more to realize that public ownership at any time or any place can never be as desirable as private ownership" and "Omaha businessmen are 99 to 1 in favor of keeping Nebraska Power in private hands." "Do you mean to tell me there is no minority group?" asked Cullingham. Reynolds replied, "I put it at one percent, didn't I? Well, if it will help the situation at all, make it five percent or ten percent." "Would you not favor public ownership if it would bring lower power rates?" asked Mekota. Reflecting on the implication of the question, Reynolds observed:

The attitude of businessmen is that we get low rates. The savings through municipal ownership would be infinitesimal. If the city owned Brandeis, I might be able to buy a hat cheaper, or if the city owned the World-Herald, we might

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40 Sunday World-Herald, August 29, 1943.
not have to pay a thousand dollars a page for advertising.

Dismissing Reynolds, Mekota reflected, "It seems to me you businessmen ought to be interested in seeing that your city gets low rates rather than that Aller gets a big sum." 41

Throughout the three-day Committee hearings, Senators asked those appearing endless questions about motives, appropriateness of methods, and accuracy of public pronouncements and continuously were led to the conclusion that Nebraska Power had instigated the opposition to the formation of the People's Power Commission. This conclusion was further substantiated with the testimony of Frank Heinisch, Chairman of the Omaha On-Guard Committee. Questioned as to his relationship between the Committee and Nebraska Power, Heinisch stated that his group's financial backing was primarily from NPC. Further, he indicated that the Committee's campaign was directed by Bozell and Jacobs who were on retainer from Nebraska. Although the Committee did not publish its findings, the detailed reporting in state newspapers provided a fairly realistic framework from which Omahans could make several valid deductions. 42

It was evident that a schism of considerable

41 Lincoln Star, August 27, 1943.
42 Sunday World-Herald, August 29, 1943.
proportion had developed not only between civic leaders but, also, within the business community. Further, little doubt remained that the initial legislation had been drafted by a coalition of Nebraska Power Company and city government officials, and that both parties initially felt that electoral approval of either negotiation or condemnation was not necessary. It was also clear that the initial intent of L.B. 204 was to impede any possibility of a Consumer's takeover of the utility serving Omaha. Yet, the Committee hearings also demonstrated that most Omahans were content with Nebraska Power's operation of the electric utility and the furor over city acquisition was the consequence of assuming that the company had to be sold. In the Committee's effort to determine if the NPC had actually indicated whether the company had to be sold, Seymour Smith, Consumer's Attorney, testified that while he was in New York and visiting Howard Aller, President of American Power and Light, Aller had informed him that "... while Nebraska Power need not be sold, it would have to be disposed of by some method. This might be done by distribution of stock." Glen Walker, Sales Manager of NPC, also questioned about the matter, noted no such statement had been made to the Legislature, but that there had been speculation as to whether the company would have to be sold.43

43 Editorial, "Too Little, Too Late," Lincoln Star, August 17, 1943; Morning World-Herald, August 28, 1943.
Several implications of the testimony are evident in retrospect. Opposition to L.B. 204's implementation, to some extent, resulted from a fear of socialism and that the threat to free enterprise was of too great a consequence to justify public ownership, regardless of the financial benefits which might follow. The hearings suggested that Nebraska Power's hostility to the implementation of the special act stemmed from three possibilities. First, the future Republican gains expected in Congress might result in the repeal of the Holding Company Act; secondly, Consumers might attempt to outbid Omaha for the properties; and, thirdly, if Omaha undertook condemnation proceedings, the financial interests of American Power and Light would be affected. The second course of action was available to Consumers only if L.B. 204 was repealed since the bill barred Consumers from purchasing the properties. It was, therefore, alleged by some that Nebraska Power's attempt to stop the formation of the People's Power Commission resulted from its hope that the delay would allow time to bring about the repeal of the special act at the next Unicameral. It was certainly apparent that Nebraska Power's public statements after August 6 calling for electoral approval of condemnation proceedings were public relation gimmicks to confuse the issue and, thereby, forestall the city
government from acting under the provisions of L.B. 204. The attitude of City Councilmen toward municipal ownership and, in particular, toward enacting an appropriate resolution establishing a People's Power Commission may have, to some extent, undergone modification between August 6 and September 14, 1943. To what extent the legislative probe or the campaigns conducted by Nebraska Power and the World-Herald preconditioned Councilmen is indiscernible. Certainly, the fear of socialism, played on so extensively by Nebraska Power, had to be an influence on the Councilmen since they were businessmen. The awareness of Aller's comment that the company "... had to be disposed of ..." and its opposition to the bill because of L.B. 204's inclusion of electoral approval of a negotiated settlement may have, however, carried even a greater impact on the minds of the Councilmen.

The City Council began hearings on the appointment of a People's Power Commission on September 14, 1943. The first day of hearings witnessed the culmination of the On-Guard Committee's efforts. Immediately, Frank C. Heinisch, Chairman of the On-Guard Committee, and Henry Monsky, attorney for Bozell and Jacobs, presented the Council with a petition alleging that if the Council acted on the formation of a commission, without prior voter approval, the

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people's rights under the Home Rule Charter would be abridged. The Council referred the petition to the City Legal Department for its opinion. Throughout the remainder of the day, considerable debate raged over whether the petition should be acted upon or a vote should be taken on Mayor Butler's proposal for immediate appointment of the commission. Throughout the session, Heinisch and Monsky directed disparaging comments at the World-Herald. Heinisch, noting Doorly's editorial policy during the controversy, declared that the newspaper was "... trying to sandbag and blackjack the Council and the people of Omaha to accept 204 instead of a private power company the people are almost unanimously satisfied with." Monsky, addressing the Council, declared "... you have apparently been misled by a lot of publicity and propaganda and thought this represented the voice of the people of Omaha ... It meant only the voice of the publisher of the World-Herald ... No citizen of Omaha can speak his mind without being ascribed motives sinister and alliances that are corrupt." 45

Of considerable importance to the Council's decision, which was to follow a week later, was the testimony given by City Attorney William W. Wenstrand. Requested by Mayor Butler to indicate the opinions of his department as to the
legality of the petition, he commented that the document was "... loaded and, in his opinion, ... illegal because the petition made ... false and misleading ..." comments. Wenstrand was referring to the preamble of the document. Citing the assertion that amendments to L.B. 204 were "... adopted in the last days of the Legislature," he stated such a statement was objectionable since the amendments had been accepted by the Unicameral over thirty days before its adjournment. He also found objectionable the inclusion of a remark declaring that L.B. 204 deprived the people of a vote on condemnation and that Nebraska Power did not have to be sold. The first, Wenstrand declared, was wholly untrue and the second, he stated, was opinion and not fact. ⁴⁶

Opposition expressed on the formation of a commission was not limited to that delivered by the On-Guard Committee and Nebraska Power representatives. The Nebraska Federation of Labor, which had previously adopted a resolution opposing implementation of L.B. 204, also presented its declaration against the act. James Carpenter, in presenting the Federation's position, reiterated those arguments which Davidson had previously cited. Of interest is not the resolution itself but, rather, that Carpenter was an employee

⁴⁶Ibid.
of the Nebraska Power Company. 47

On the following day, the Council resumed hearings. 48

After an extensive eight-hour debate, the Council voted four to three to delay final action for one week. The meeting was marked by a struggle between Mayor Butler, who headed a movement to obtain an immediate vote on the formation of the commission, and Commissioner Harry Knudsen, who desired a week's recess to allow more time for consideration of the bill. Commissioner Walter Korisko, endorsing Knudsen's resolution, noted that after "... almost twenty-four hours of listening to debate on both sides, I still feel I am not ready to vote ... I would like to put this off, and I assure you I will not be subjected to pressure in the meantime." Commissioner Harry Trustin, in declaring his position, stated:

I have every confidence in our City Attorney

47 Omaha City Journal 184, Document No. 2899, September 14, 1943, pp. 20259-20260.

48 Speakers favoring the power company at the afternoon session were Martin Nelson, President of Electrical Workers' Union; Sam Reynolds, former President of the Chamber of Commerce, who sold coal to the power company; Pete Mehrens, one-time member of the School Board; R. B. Hasselquist, lawyer and owner of the Omaha Posten; Anton Tusa, former Election Commissioner; C. C. Galloway, Editor of the Omaha Guide; Arthur A. Westergard, insurance man and former City Commissioner; the Reverend F. C. Williams, Pastor of Zion Baptist Church; and Clinton McKenna, representative of the Packing House Workers' Union, CIO. Those in support of the Commission were Senator Sidney Cullingham, principal introducer of the bill; Leonard Hammes, Attorney, Foster May, radio commentator; John S. Samson, Attorney; and William E. Kavan, Secretary of the Municipal Ownership League.
We have never got more clear and concise opinions than we have from the present Legal Department. Yet, I would like to check for myself on the proposition of the 180-day notice deal. I want to be sure that the people have a right to vote on condemnation.

During testimony, Davidson arose and declared that Nebraska Power Company would pay for the election asked for by the On-Guard Committee. Butler, reflecting on Davidson's remark, queried "What do they want? A power company private election? Bought and paid for by the power company? When the people of Omaha vote, they can pay for the election themselves and don't need to have the power company paying for it--with money they get from the people on electric rates."

On September 21, 1943, the Omaha City Council again resumed hearings concerning the resolution authorizing the formation of a People's Power Commission. The meeting opened with the reading of the resolution. Commissioner Roy Towl moved for approval. The roll was taken and the resolution unanimously accepted. Mayor Butler then named six members to the Commission and the Council unanimously approved them. The Council, after approving the formation

49Evening World-Herald, September 15, 1943.

50Ibid.

51Commission members appointed were D. B. Woodyard, Chamber of Commerce Vice President and Manager of the Penney's store; Gerald E. Collins, South Omaha attorney and civic leader; Grant McFayden, auto dealer; Edward F. Leary, attorney and former Director of the Metropolitan Utilities
of the Commission, took action on petitions previously filed by the On-Guard Committee. With the Legal Department's ruling that they were illegal, the Council voted to place them on file. The Council's vote forming the Commission was accompanied by explanations of votes by five of the seven members. Only Mayor Butler and Commissioner John Kresl voted without comment. All those who offered remarks were satisfied that Omahans could vote on acquiring Nebraska Power by either condemnation or negotiation.  

The appointments received favorable response from the World-Herald. Doorly, commenting on the Mayor's nominees, noted:

Never before has better or more careful judgment been used than in the appointment. . . . they are, every one of them, public spirited citizens of impeccable character and exceptional ability . . . Together with the members named by Governor Griswold they constitute a Commission in which the people can repose their confidence.  

The Columbus Daily Telegram reacted to the Commission

District; G. F. Ashby, Vice President of the Union Pacific Railroad; and T. H. Maenner, real estate man and County Republican leader. L.B. 204 also provided that the Governor appoint two members and that the Mayor serve as an ex-officio member. Previously appointed by Governor Griswold were Dr. B. H. Baer of Ashland and Emil E. Wolf of North Bend. Evening World-Herald, September 21, 1943.

52 Omaha City Journal 184, Document Nos. 3012 and 3013, September 21, 1943, pp. 20307-20309.

53 Editorial, Morning World-Herald, September 22, 1943.
appointments by asserting that even "The Omaha Bee, under the guidance of Edward Rosewater, never fought and won a more certain victory over the corporation cormorants of his day than the World-Herald won yesterday when Omaha officially accepted Bill 204."  

Opponents, however, were not to be denied. Within several days, adversaries of the measure would devise obstacles which would totally nullify the ability of the Commission to function or fulfill its prescribed responsibility under L.B. 204.

CHAPTER THREE

Rule by Injunction

Events transpiring after the establishment of the Commission were hardly surprising since anti-municipal ownership interests had earlier declared their intent to initiate referendum procedures if the City Council acted under the provisions of L.B. 204. On September 28, 1943, Martin W. Nelson, on behalf of Local Union B-763, International Brotherhood of Electrical Workers, and Edward A. Hofmann, Independent Employees Association of the NPC, presented the City Council with petitions containing 26,126 signatures requesting that Resolution 3012 (creating the PPC) be reconsidered or that it be submitted to the electorate at a special election. The Council, after consideration, deferred action in order to allow necessary time for the city's Legal Department to make appropriate recommendations.¹

In a written communique, the Legal Department pointed out that because Resolution 3012 was administrative and judicial in its scope, it, therefore, did not fall within the provisions of the referendum law. In advising the

Council, it was noted that L.B. 204 was a general state law not applicable to Omaha alone and, as such, it could not be nullified by the people through a city referendum. The Legal Department also contended that since Resolution 3012 did not involve a question which affected the Omaha government, it precluded the use of the referendum law inasmuch as it applied only to legislative acts. Accordingly, City Commissioner John Kresl entered a resolution that the petitions presented by Hofmann and Nelson be placed on file without further action. The Council, in a unanimous vote, supported the motion. 2

The World-Herald responded to the recent development by asserting that the purpose of those submitting the petitions was "... one of befuddlement and delay." The law, it stated, already provided for an expression of the people's will since voter approval was required whether the Commission obtained the utility by negotiation or condemnation. Noting the opinion of the City Attorney's office, the newspaper concluded that the petition effort would have no legal consequence on the activities of the PPC. 3

2Ibid., Document No. 3125, October 5, 1943, pp. 20354-20358; Lincoln Star, October 5, 1943. Of considerable importance in the decision was the case of Central Power Company vs. Nebraska City, 112 Fed. (2) 471 and Lennox vs. Housing Authority of Omaha, 137 N. 582. For a full position statement concerning the Legal Department's recommendation, see Omaha City Journal 184, Document No. 2896, September 14, 1943, pp. 20245-20258, and Document No. 3125 as cited above.

3Morning World-Herald, October 7, 1943.
In an attempt to short circuit opponents of municipal ownership, members of the PPC adopted a resolution on October 4, 1943, declaring their intent to permit citizens to vote at a general election upon any plan of acquisition of the NPC. The World-Herald supported the resolution, observing that the committee's action doubly guaranteed the voters' rights. The Lincoln Star, commenting on the motion, remarked that the Commission's judicious act was an expression of their "... desire to allay public uncertainty and to remove confusion." Their action, the paper concluded, would establish a model for developments of this kind in the future.4

Whatever the legitimacy of the petitions, opponents of the PPC now sought to obstruct its functioning by using these documents as the basis of their legal opinion. On October 6, 1943, attorneys for the firm of Monsky, Grodinsky and Cohen and attorney Dan Gross filed a suit of mandamus on behalf of the 59,685 persons who had signed the On-Guard Committee petition presented to the City Council prior to the passage of Resolution 3012. Although the suit was brought by Frank Heinisch and Arthur A. Westergard, Heinisch served as attorney in the suit. Naming the City Council and the PPC as defendants, the suit requested that a special election on Resolution 3012 be ordered by the court and that

the Commission be enjoined until such time as the court had decided the issue.5

Concurrently, attorneys for the firm of Kennedy, Holland, DeLacy and Svoboda filed a similar suit on behalf of the 26,126 persons who had signed petitions circulated by the NPC. Representing Edward Hofmann and Martin Nelson, attorneys argued that the PPC should be enjoined from acting on the grounds that the Council's action was inoperative because of its legislative nature and the subsequent petitions submitted to the city government for appropriate action.6 Within several weeks, another suit was filed requesting similar action. Attorney David Weinberg, representing the AFL Union of Nebraska Power employees, declared that the PPC should be enjoined because, under municipal ownership, the Union would lose its bargaining rights and other privileges.7

The Power Commission, attempting to outmaneuver adversaries and shorten delays, turned to the state for assistance. On October 21, 1943, the PPC appealed to Governor Dwight Griswold to initiate proceedings to bring the matter immediately before the Supreme Court, believing such action would hasten a determination of the constitutionality

5Evening World-Herald, October 6, 1943.
6Hereafter referred to as the Hofmann-Nelson suit.
7Lincoln Star, October 6, 1943; Evening World-Herald October 6, November 16, 1943.
of L.B. 204 and clarify the power situation. In response, Governor Griswold ordered the State's Attorney General, Walter R. Johnson, to bring a quo warranto proceeding in behalf of the state to test whether the PPC had the right to act. On October 23, Assistant Attorney General Edwin Vail presented the state's plea for the high court to entertain the case. In addition to the right of the Commission to act, Vail asked the court to determine if the law created an improper monopoly and whether the Legislature could delegate powers to Omaha which extended beyond the city limits since such legislation was discriminatory and prohibited by the State Constitution.8

On November 6, attorneys Edwin Vail and William Wenstrand, representing the PPC, presented oral arguments before the high tribunal. In their attempt to persuade the Court to entertain the case, Vail remarked that the Court's immediate attention was required since the suit was of such high public interest and concerned vital problems of Omaha. Wenstrand, joining Vail, pointed out that the Commission would be greatly handicapped without the immediate review by the Court since:

Omaha's Power Commission, in carrying out its duties, would have to issue revenue bonds and that no underwriters would approve bonds in a case with

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8Lincoln Star, October 23, 1943; Sunday World-Herald, October 24, 1943. Vail, in questioning the constitutionality of L.B. 204, hoped that such a question might sway the court to accept a quo warranto proceeding.
so many conflicting interests, unless backed by a high court decision.

Their efforts, however, were fruitless. The Supreme Court decided not to hear the case, noting that it could be brought before the court through normal appellate procedures.9

Legal aspects became more entangled, and the uncertainty of the Commission's legal status became more pronounced when attorney Seymour L. Smith filed a petition in District Court on behalf of Clarence J. Calobria, President of the Service Exchange Bureau and Truck Terminal. The petition, brought by Smith as a taxpayer "... for himself and all other taxpayers," alleged that L.B. 204 was unconstitutional. Smith, in presenting his petition, observed the bill was unconstitutional because it:

(1) conferred rights on the PPC which were denied to other public power organizations; (2) denied Consumers Public Power District the opportunity to purchase the NPC properties; and (3) gave Omahans authority over areas outside the geographical limits of their municipality. Further, the attorney stated, because L.B. 204 was "special legislation" prohibited by the State Constitution, the suit was being filed as a petition of intervention. In summation, Smith declared that if an election were to be ordered by the Court

9Lincoln Star, November 6, 1943.
before the constitutional question was decided, ten thousand dollars in tax funds would be wasted.\(^{10}\)

Compounding the legal complexities even further was another suit of intervention filed by Attorneys George B. Bolard, Fred S. White, Paul Garrotto and Rudolph Tesar, representing eight NPC preferred stockholders. Jointly filed with the Hofmann-Nelson suit, the petition asked that the PPC be enjoined because, if the uncertainty over the power controversy was to continue, the value of their stock would diminish.\(^{11}\)

The *World-Herald*, reviewing legal developments, wrote the entire affair off as an attempt by NPC attorneys to destroy the PPC through "confusion, deception and delay."

The paper, returning to its theme of outstate control and exploitation, characterized the NPC attorneys as "stooges" of the American Power and Light Company. In outlining cases involving the power question, the *World-Herald* pointed out, in its usual sarcastic manner, that if:

\[\ldots\text{ all the attorneys involved in the Omaha power controversy suit in District Court were laid end-to-end, they almost would reach to the state of Maine and the City of New York, home grounds of American Power and Light Company, the gigantic holding company which controls Nebraska Power.}\]

In conclusion, the editor pointed out that, since the attorneys

\(^{10}\) *Evening World-Herald*, November 6, 1943.

\(^{11}\) *Morning World-Herald*, November 6, 1943.
opposing the city were such an "impressive array of legal talent," Omahans could now only trust to the "... courage, the integrity, the legal wisdom and sound judgment of their courts for justice, for protection of their rights and for the vindication of the law." Whether this remark was indirectly intended to exert political pressure upon Judge Francis Dineen, who was hearing the cases and would soon be up for reelection, is uncertain. Whatever the purpose, if the Court were to rule in favor of the NPC position, Dineen would suffer the political misfortunes of being in the opposite corner of the World-Herald.  

Across the state, little awareness was evident over the dispute in Omaha. Major newspapers, other than the Lincoln Star, seemed to have become so apathetic and unconcerned over the matter that they neither noted the petitions entered in the court nor followed the developments over the next several months. For its part, the Lincoln Star said that the PPC was composed of outstanding men. It added that the quickest way to settle the issue and allow for the people of Omaha to act was to settle the constitutionality question. 

The tempo of the campaign for the municipal purchase

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of the utility increased with the founding, during November, of the People's Power Ownership Committee. Not surprisingly, the city's major newspaper welcomed the group with jubilation. The paper, noting the outstanding membership of the committee, expended considerable type and space to endorsing the noble and civic purposes of the group. The World-Herald, in pointing out that the committee's purpose would be to place accurate information before Omaha and to act to defend the best interests of the city, declared with an explosive note that Omahans would now receive the true facts surrounding the power controversy. Interestingly, the Committee, even before the investigation of the power dilemma, declared that the best interests of Omaha could only be achieved through public acquisition of the NPC. Because of their one-sided vantage point, the Committee lost its objectivity and became a spokesman for the World-Herald's editorial position. The group made no attempt to determine whether the opposition was justified in questioning the constitutionality of L.B. 204.15

On November 8, 1943, City Attorneys Harold Linahan

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14 Committee members included: Bernard R. Stone, attorney, former City Commissioner and occasional columnist for the World-Herald; Mrs. A. L. Rhode; John S. Samson, attorney; and Herman H. Averbach, real estate man. Later investigations conducted by the Special Legislative Investigating Committee noted that the Omaha World-Herald editor, Henry Doorly, was behind the organization and establishment of the Committee.

15 Morning World-Herald, November 14, 1943.
and G. H. Seig and attorneys W. C. Fraser and W. W. Wenstrand filed answers with the District Court to the Westergard-Heinisch suit. Linahan, in presenting the city's position, declared that the suit was invalid since both Heinisch and Westergard had filed their petitions as employees of the NPC rather than as citizens of Omaha. In reference to the relief sought, Linahan pointed out that such relief already existed because L.B. 204 necessitated voter approval before the NPC properties could be acquired by the PPC. Wenstrand, in arguing that the suit be dismissed, based his position on the grounds that the petitions used in support of the plaintiffs' case were ambiguous, misleading, inaccurate, confusing and garbled. After hearing arguments by City Attorneys for an extended delay so that the city might file answers to the Smith suit, Judge Dineen declared a recess until November 16, 1943.16

On November 16, 1943, Judge Dineen resumed hearing testimony. Fraser, Wenstrand and Linahan immediately again asked for an additional delay to provide time to file written briefs to the Smith suit. Monsky, representing the Hofmann-Nelson suit, asserted that no delay was justified since the constitutional question did not belong in the case and that these points could be argued at a later date. In response, Fraser pointed out that the question was

16Evening World-Herald, November 8, 1943.
pertinent because, if the enabling legislation was unconstitutional, then there could be no commission and, in turn, no case before the court.¹⁷

With the Court ruling against the delay motion, arguments from attorneys representing the principal case, the Hofmann-Nelson suit, began. DeLacy prefaced his remarks by contending that the decision of his case rested on whether the Council's resolution creating the PPC was legislative or administrative in nature. The attorney, declaring it was legislative in character since it affected all Omahans on a permanent basis, concluded that the resolution must be submitted to a vote since appropriate petitions had been presented to the Council. Testimony ended with Linahan and Wenstrand answering that Resolution 3012 was administrative in scope since its purpose was to place a state law into operation and it merely acted as a contingency to effect a general law.¹⁸

The following morning, hearings were continued. Shortly after testimony began, a sharp dispute commenced between City Attorney Seig and DeLacy. The flare-up of tempers started as Seig was cross-examining Nelson concerning


¹⁸Evening World-Herald, November 16, 1943.
the origins of the petitions submitted to the City Council. Nelson testified that he had not ordered the printing of the petitions nor did he know who had; Seig then asked where he had obtained them. DeLacy immediately objected, to which Seig retorted, "We want to find out who is responsible for these suits. We want to determine if he is merely a straw man and that the action was started by the Nebraska Power Company and this is a watered lawsuit." In reply, DeLacy admitted the interest of the power company but noted "... whether it paid for the petitions or whether it is paying for the attorney is immaterial; Seig is just talking for the press." With Judge Dineen upholding the objection, tempers cooled. Shortly thereafter, while Seig was cross-examining Hofmann along similar lines, DeLacy again objected and Dineen, once again, sustained the motion. Seig, turning to the bench, queried "... are we just going to try one side of this law suit...?", to which DeLacy retorted "... no reputable attorney and, especially one representing the city, should make such a remark to the court."\textsuperscript{19}

Also of concern was the question of the cost of the special election requested by the plaintiffs. Election Commissioner Joseph Vojir testified that a special election would cost the city fifteen thousand dollars; yet if thc

\textsuperscript{19}Ibid.; Morning World-Herald, November 18, 1943.
resolution was submitted at a general election, it would
cost three thousand dollars. Attorneys representing the PPC
pointed out that such an expenditure would be a "waste"
since the enabling legislation required the voters to approve
the acquisition of the NPC by the PPC. On November 17,
Davidson testified that the NPC was willing to finance the
election. Smith, representing Calobria, asserted that this
would be objectionable since Omaha had no authority to
accept such funds for an election. Smith's objection to the
testimony was of considerable importance since his case
partially rested on the grounds that such an election, held
before the determination of the constitutionality of
L.B. 204, would be a waste of tax funds. 20

The World-Herald, reviewing the legal arguments
presented by opponents of the PPC, declared their fight in
the courts was motivated by a concern for "... extortionate
charges and profits of private monopoly." The paper, quoting
Chairman Woodyard of the PPC, noted that the NPC had paid
out $32,834,855 in dividends and interest without a reduction
in its debt over the past twelve years. This, the newspaper
remarked, alone could pay for the utility and, additionally
pay "... all taxes, in full, protect all employees' rights
and benefits, and effect rate reductions during the period
the debt" was being retired. In summary, the paper observed

20 Evening World-Herald, November 18, 1943.
that "... however long and hard the way, Omaha will never lay down arms in defense of its rights to protect its interests, to assert the sovereignty of the law." 21

By mid-November, the People's Power Ownership Committee had organized and was commencing a rigorous public relations campaign. Addressing the North Omaha Improvement Club, John S. Samson, Executive Secretary, declared that the best interests of Omahans would be achieved by acquisition of the electrical utility. Samson, referring to a recent decision by the Third U.S. Circuit Court of Appeals upholding a "death sentence" imposed against the United Gas Company, commented that this decision totally refuted the position taken by the power company and its holding company that it did not have to sell the NPC. 22

The following day, the committee's campaign received a boost with the World-Herald providing front-page coverage for comments of Committee Chairman Bernard Stone. Stone, alluding to a $2,060,000 yearly loss by Omahans, remarked that, with the city's purchase of the utility, this undeserved drain would be halted. The Chairman, pointing out that the financial take was "unwarranted," remarked that it was the result of NPC paying annually $1,250,000 on common stock and

21 Editorial, "This is the Fight," Morning World-Herald. November 18, 1943.

22 Ibid., November 19, 1943.
five and one-half percent interest on its $27,500,000 indebtedness. If Omaha was to borrow the same amount, Stone noted that the city could fund the debt at two and one-half percent. The refinancing of the debt under municipal auspices would cost $690,000 per year; whereas, under private ownership, it was costing citizens $1,500,000 annually. The difference, Stone observed, could be directed toward the retirement of the debt which could easily be achieved within twelve years. 23

Several days later, Leonard Hammes, Chairman of the Speakers Bureau, addressed the Benson Commercial Club. The legal moves employed by the power company, he declared, were for the purpose of allowing sufficient time to bring about the repeal of L.B. 204 and were not a reflection of any NPC concern for the rights of Omahans. Hammes said that the NPC desired to bring Consumers Public Power District back into the picture as a competitive bidder for the utility properties, and this could only be achieved if the enabling legislation were repealed.

Hammes, turning his attention to the financial aspects of the controversy, declared that if the city were to purchase the NPC, it would save three million dollars a year. He arrived at this figure by deducting, in addition to dividends and interest costs, a $500,000 yearly.

23 Ibid.
management fee and the $1,000,000 Federal tax payment. Remarking that twenty-six cents out of every consumer dollar went for dividends and interest, Hammes commented that a substantial decrease in this category would not only provide "cheap power" and attract industrial development, but it would cut twenty-five percent off of consumer rates and provide sufficient capital to allow for an additional twenty-five percent increase in employee wages.24

On December 6, 1943, proceedings in the Hofmann-Nelson suit were resumed. City solicitors, offering the legal opinion of their department on which the City Council had refused to consider the debated referendum petitions, entered a motion that all cases against the PPC be dismissed because of insufficient evidence to warrant further proceedings. The following day, after Judge Dineen reserved ruling on the City Attorney's motion, the Court ordered all oral arguments to be presented, only to be confronted with considerable opposition. Disagreement developed between attorneys and the Court over whether written briefs should be filed prior to the hearing of oral arguments. After several lawyers had requested an additional thirty-day delay to prepare written briefs, a procedure previously agreed to by all attorneys involved, Judge Dineen remarked:

... he had many other cases set for trial and

24 Ibid., November 24, 1943.
that it would not be proper to inconvenience the Court and push other cases aside to please attorneys in one case.

In response, Fred White, representing NPC preferred stockholders, remarked that "... a matter involving property valued at some 40 million should not be handled in haste and that the decision was an abuse of the discretion of the Court." Wenstrand, also displeased, said that the delay should be allowed so that careful presentation could be made of all points of law since the case involved the largest amount of property and money of any suit in the history of Douglas County and because it was of such great public interest.25

On December 19, attorney DeLacy, in a surprise move, called Mayor Butler and three members of the PPC to testify after both sides had previously declared they were ready to present their oral arguments. Butler remarked that the Commission had promised to submit the question of condemnation to a vote before proceedings would be instituted. Asked if steps had been instituted to begin condemnation of the NPC, he replied "No," and added that the "... commission representatives were trying to negotiate a purchase agreement, but that they had not met with much success and that the holding company hadn't entirely foreclosed our

25 Ibid., December 7, 8, 1943. See pages 69 and 70, Chapter III.
representatives and that progress was under way." Commissioners Gerald Collins, T. H. Maenner and Edward F. Leary supported the Mayor's remarks.26

Butler's remarks had a greater consequence than the Chief Executive anticipated. The following morning, Davidson released a telegraph from Howard Aller, President of the American Power and Light Company, declaring that the Mayor's remarks were in contradiction to the "... sworn statement of the PPC in its intervention application to the Securities and Exchange Commission." In reference to the testimony, Aller pointed out that although the Mayor commented that the PPC had not initiated condemnation proceedings, the PPC had notified the Securities and Exchange "... that it had attempted to open negotiations for the purchase of the properties of the NPC, but had been informed that they are not for sale and that, in all probability, the People's Power Commission would institute condemnation proceedings." Aller also refuted the Mayor's statement that negotiations were progressing, saying that American Power and Light did not want to sell the NPC and that it did not have to sell the properties. Of considerable importance at this point is not the Mayor's ambiguous testimony but, rather, the fact that the PPC was considering condemnation.27

26 Evening World-Herald, December 20, 1943.
27 Ibid., December 21, 1943.
This consideration, coupled with the recent decision by the U.S. Third District Court of Circuit Appeals upholding the dissolution of the United Gas Company, must have caused appreciable apprehension among APL directors as a condemnation price might well be considerably less than the forty million dollars which the Consumers Public Power District had previously offered.

Between December 20, 1943, and January 6, 1944, arguments before the Court were concluded. During these last hectic days, attorneys for the City and the PPC continued to argue that Omahans were guaranteed a vote and were protected by the law, thereby removing the necessity of the plaintiffs' appeal. Seig, in reasoning that the case should be dismissed because of insufficient evidence, alluded to the history of L.B. 204. The attorney, in pleading his case, observed that the NPC had written the original act and had supported its passage until amendments by such Senators as C. Petrus Peterson of Lincoln and Walter Raecke of Central City were incorporated which protected the citizens. Svoboda, DeLacy's partner, thereupon interrupted declaring "Let's get the record straight. I thought you had been saying I wrote the bill. Now you say these men did." "Oh yes," replied Seig, "... you were the original scrivener. But the Legislature revised it and improved upon it. As you wrote it, it provided for no vote of the people, but the Legislature saw to it that the people of Omaha were
protected." Continuing, he remarked, "They provided for a vote on the question. After writing a bill that didn't provide for a vote, and after the Legislature gave the people their rights, you are here in Court asking for a vote of the people." 28

Seig and Wenstrand, on several occasions during the hearing, observed that the entire suit was nothing more than a "false front," an attempt to gain two opportunities to win an election; one as provided by the enabling legislation and another through the Court. Opponents of the PPC continued to point out that "All we ask is a vote of the people." DeLacy continued to contend that Resolution 3012 was legislative in nature and, therefore, subject to the provision of the referendum law. 29

On December 21, attorney David Weinberg, representing the AFL Electrical Union Employees of NPC, remarked to the Court that his clients' suit resulted from a concern to "Preserve the collective bargaining contract which the union has with the company and other rights such as those under the wage-and-hour and social security laws." The attorney, admitting the people's right to vote under L.B. 204, remarked that because public ownership jeopardized the work status of electrical employees, the "... labor union wants an earlier

28 Ibid.

29 Ibid., December 20, 21, 1943.
vote which would nip the move toward municipal ownership in the bud." Concluding, Weinberg pointed out that municipal employees were underpaid and the union had entered the power controversy because:

MUD has refused to enter into a contract with an Employees' Union. One of the principle purposes of municipal ownership is to lower rates. Why have lower rates when employees are underpaid? 30

Several days later, attorney Smith, representing Calobria, presented his views on the subject. In asserting that L.B. 204 was unconstitutional, Smith remarked that previous State legislation adequately met the needs of the city. Continuing, he remarked that if L.B. 204 were upheld, "...there is no home rule in Omaha since the Charter contained sufficient flexibility to acquire the utility and manage it without the special legislation." Additionally, Smith observed that the Legislature did not have the prerogative to override Omaha's Charter in a purely local matter. In conclusion, he said that the enabling act added insult to injury by the inclusion of a section which provided that L.B. 204 was not limited by the Charter. Attorney White, representing the preferred stockholders, joined with Smith in arguing against the constitutionality of L.B. 204. Over the next several days, White cited eighty-eight specific points in his argument that the bill was unconstitutional. 31

30 Ibid., December 22, 1943.
31 Ibid., December 23, 27, 31, 1943.
On December 31, Svoboda concluded the plea of those opposing the PPC's acquisition of the utility. In summation, he declared "... that there will be no negotiated sale because owners don't want to sell so that if the Commission acquires the company, it will have to be by condemnation." W. C. Fraser, in presenting concluding remarks for the PPC, observed that the people were assured a vote not only by the State law but, also, through the city resolution so ordering. Fraser, in noting the endeavors of those who opposed implementation of L.B. 204, declared:

L.B. 204 has caused what seemed to be the greatest popular uprising in history. . . . 40 thousand signatures were presented on petitions to the Legislature to pass the law, then 59 thousand were presented before the City Council on one occasion and 26 thousand in another to keep the law from being effective. And all the signatures came through the same channel - Nebraska Power Company, with the proper organization, five thousand signatures can be obtained within one hour on almost any question.32

In an article in the World-Herald on December 26, 1943, the Chairman of the People's Power Ownership Committee again struck out against the continued private ownership of the NPC, declaring the utility's holding company was marking up hydro power for Omahans by one thousand percent. Stone, noting that the company purchased power from the state hydro system at about one-third of a cent per kilowatt hour, remarked that the privately owned company was reselling this

32 Morning World-Herald, January 4, 1944.
at a rate of three and one-half cents per kilowatt hour, thus resulting in more than a ten-fold markup. The Chairman, pointing out that twenty-eight percent of the current in 1942 was supplied from the state hydro system, indignantly observed that it did not seem to him that the federally-financed plants should be "... operated for the benefit of a private power company controlled by New York Holding Companies."

On January 1, 1944, J. E. Davidson opened the new year with a radio broadcast in a renewed bid to gain local support for this position. Reviewing the utility situation, Davidson charged that the editor of the World-Herald was misrepresenting the truth. The NPC President, citing statistics published by the newspaper, declared that the editor was guilty of "... misrepresentation, high crimes, and misdemeanors." The paper, apparently accepting the criticism that not all of its statistics were accurate, wrote the affair off as an "honest mistake." Returning to the offensive, the editor proclaimed that Davidson's efforts were motivated by a concern to "... keep the company's hold on Omaha so that his employers can continue to enjoy the large dividends on stock they vote to themselves, free of charge, and so that he can continue to hold a very well paid job as local agent." The World-Herald pointed out that it

33 *Sunday World-Herald*, December 26, 1943.
was only "... seeking to protect Omaha and to enable this city to own its light and power plant so that it may not be required to continue indefinitely to pay unearned tribute to American Power and Light." In conclusion, the newspaper remarked that Davidson's attack upon the paper was a compliment since it proved that the World-Herald was doing its job in protecting its own city.  

On January 8, 1944, the Omaha People's Power Committee began their radio programs to offset the NPC broadcasts. Stone, attempting to persuade listeners of the advantages of public ownership, presented a comparative analysis between the privately-owned utility in Omaha and the publicly-owned system in Lincoln. Observing that in Lincoln the price for six thousand kilowatt hours of commercial consumption was $126.02, he noted that in Omaha the equivalent amount of power would cost $209.06. This difference, Stone reflected, might have been the basis for both the Goodyear Rubber Company and the Western Electric Company selecting Lincoln for their location. As to the argument that public ownership threatened free enterprise, he observed that there was no question of free enterprise vs. public ownership since the "Wall Street holding company" was enterprising:

... only insofar as the word signifies the

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34 Editorial, Morning World-Herald, January 4, 1944.
furthering of its own selfish ends by taking huge profits from us when they didn't pay a single cent for their control of Nebraska Power.

Stone explained NPC's intense opposition to public ownership as a simple matter of greed. The company, he said, did not want to lose their "... take of more than $1,250,000 each year - $1,250,000 picked each year from your pockets by means of high electric rates... that is their game - picking pockets by high electric rates while at the same time loudly beating their breasts and shouting with maddening endurance, 'I Serve.'" 35

During the remainder of January and February, 1944, both sides continued to bombard the public with their familiar arguments, employing every news media available. However, on February 2, 1944, events suddenly took a turn for the worse for supporters of municipal ownership when Judge Dineen ruled in favor of the Hofmann-Nelson suit. In announcing his verdict to issue an injunction against the PPC, Dineen remarked that his decision was based on the fact that the City Council's action creating the PPC, as provided for by L.B. 204, was legislative in nature and, therefore, subject to referendum procedures. Dismissing the constitutional question as inessential, the Judge overruled all motions which had previously been made by attorneys representing the city and the PPC. Within several days, four motions for a

35 Sunday World-Herald, January 9, 1944.
new trial were presented to the Court. Smith and Weinberg, whose suits had rested on constitutional questions, remarked that a new trial was justified since the Court had failed to rule on their petitions. Attorneys, presenting motions for the city and the PPC asking for a new trial, observed that such a trial was justified since the decision by the court had been "... contrary to the evidence and contrary to the law." Little satisfaction, however, was gained with Judge Dineen ruling against all four motions.36

W. C. Fraser, representing the PPC, in remarking on the Court's decision, observed that it was merely a temporary setback. The Omaha World-Herald's response to the Court's decision was furious. The paper, in saying that the evidence presented totally refuted the Court's judgment, struck out against the Judge. Reviewing the Judge's record over the past several years, the World-Herald editorially noted that sixty-one percent of all cases tried and reviewed by the State Supreme Court were reversed. The paper pointed out that this percentage was excessively high, as compared to a 38.3 percent figure for all other district judges, and remarked that Judge Dineen should be removed from the Court. The editor, in commenting that the World-Herald believed "Francis M. Dineen should be soundly defeated in the primaries . . . ," observed that the Judge's record should

show his incompetence and, therefore, his presence on the bench resulted in "no citizen being safe."^{37}

Supporters of public acquisition of the electrical utility, however, were not to be denied. Within several months, concerned citizens were to devise a way of purchasing the power plant, regardless of the Court's order or the wishes of the City Council and the Mayor. Yet, it was also apparent by March, 1944, that NPC would use every delaying tactic possible in order to improve its position in the bargaining for the NPC properties.

CHAPTER FOUR

A Utility is Purchased

With the Court's ruling prohibiting the PPC from acting to acquire the NPC, it appeared that the Mayor, the City Council and the PPC had been severely set back in the quest to bring the electrical properties under municipal ownership. Omaha, in 1942, had found itself faced with the dilemma of either allowing Consumers Public Power District to purchase the properties or instituting action to bring the plant under municipal ownership. With the concurrence of many civic leaders, a course was implemented to allow for city purchase of the utility under the provisions of Legislative Bill 204, a law which had not only the approval of the Mayor and the City Council but, also, the wholehearted approval and backing of the NPC organization. However, no sooner had the special act been approved by the Legislature than hostility to its implementation began to appear. With a well planned effort at sabotaging the special act, opponents of municipal ownership set in motion a strategy that delayed and confused the matter beyond all expectations during 1943 and 1944. Although supporters of the measure fought diligently and with great perseverance, the effort seemed for naught.
Statistics presented by the *World-Herald* in noting the economic liability of the out-of-state and privately-owned NPC had demonstrated that the city was losing close to two million dollars annually to the NPC's holding company. It was becoming evident that not only had the city lost nearly four million dollars during the past two years but, also, that if the issue were to continue to drag through the courts, several more million dollars would leave Omaha for 2 Rector Street, New York.

As of March 6, 1944, several contingencies existed which were to force supporters of municipal ownership to act irrespective of the injunction. First, if the controversy was to continue indefinitely in the courts, as it seemed it might, many millions of dollars would be lost. Secondly, if accusations that opponents were waging their fight to provide time for the repeal of L.B. 204 were correct, then there might be a possibility of Consumers Public Power District reentering the picture as a competitive bidder. Thirdly, if the State Supreme Court was to declare the enabling act unconstitutional on any one of the many questionable points presented by Attorney Seymour L. Smith, several more years might well elapse before revised legislation could be enacted. There would still remain the problem of its implementation, a task the city would probably find difficult. However, there were several courses of action available to the city to offset these contingencies and hasten the day when the city
might acquire possession of the utility. Omaha could institute condemnation proceedings under the provisions of the Omaha Home Rule Charter and the appropriate state law. However, if this was not considered appropriate, concerned citizens could organize themselves into a non-profit group and attempt to purchase the controlling stock of the NPC and then form a Public Power District under the provisions of S.F. 310.

Whatever the contending forces were contemplating, debate continued over public versus private ownership on radio, in the major newspaper and the Benson Weekly. Bernard Stone continued to assert that Omaha's interests could only be assured through city acquisition of the NPC. On May 20, 1944, he again reiterated his position in the Omaha World-Herald. Stone, referring to a recent American Power and Light Company stockholders' report, commented that public purchase of the NPC could result in a twenty-five percent savings in light bills for Omaha consumers since the NPC had expended $273,000 in 1943 for propaganda and $92,000 in legal fees in their fight against the PPC and that twenty-two cents out of every consumer dollar was expended for "miscellaneous" purposes and dividends. Emphasizing that the APL had obtained the NPC common stock free through "financial funny business," Stone returned to the long-debated issue of the company indebtedness by concluding that the NPC's stock was "pure water" and that the "exploiters were still getting more
than a million dollars a year from it through high consumer rates."

On June 10, 1944, the Legislative Power Investigating Committee returned to Omaha and reopened inquiries into the city's utility struggle, which were to continue through September, 1944. Allen T. Hupp, Secretary of Omaha's Associated Retailers and registered lobbyist for the Mayor's 1942 Power Committee, was the first witness called. Testifying that he had received $17,500 in payment from the NPC for his efforts as a lobbyist supporting L.B. 204, Hupp remarked that although he was to be reimbursed by the NPC, he was to "... report to Ellsworth Moser and L. J. Tepoel of the Mayor's Committee." Further testimony revealed that the supposed deal was arranged because Jack Kennedy and Davidson had asked D. B. Woodyard, President of the Retailers Association and member of the Mayor's Committee, if he would have Hupp act as a lobbyist. It was during a meeting between Kennedy, Hupp, Woodyard and Davidson that an agreement was worked out that Hupp would use his influence to help bring about the passage of L.B. 204 and, in return, would be reimbursed $2,500 if the bill failed and $7,500 to $10,000 if it were enacted. Concluding testimony before the Committee tended to support a conclusion that the close coordination achieved during the period that L.B. 204 was being considered

1Sunday World-Herald, May 21, 1944.
resulted from the assumption by President Aller (APL) that the NPC sale was certain and, therefore, that the Mayor's Committee and the NPC organization were both headed in the same direction.²

The Legislative Investigating Committee again resumed hearings on September 7, 1944. At this time, several aspects of testimony shed greater light on the role of the Nebraska Power organization in opposing the implementation of L.B. 204 between 1943 and 1944. Leo Bozell, partner in Bozell & Jacobs advertising firm and advertising agent for the NPC, in testimony before the Committee, noted that the NPC had "... paid a large majority of the expenses of the Omaha On-Guard Committee and all expenses of the Citizens Committee to Keep Nebraska Power." Although his testimony could have surprised few, of importance was the fact that J. E. Davidson had previously testified that his company "... may have paid some expenses of the On-Guard Committee but he didn't think so." Also contradicting previous remarks concerning the degree of Nebraska Power's participation in the anti-municipal fight was Bozell's testimony noting that the NPC had paid over fifteen thousand dollars from September 1, 1943 to September, 1944 on previously reported "unlisted expenditures" which included confidential payments to persons working for Nebraska Power in opposing municipal

²Lincoln Star, June 9, 10, 1944.
ownership. George DeLacy, one of the attorneys who had represented interests opposing the implementation of L.B. 204, remarked before the Committee that not only did his firm receive an additional payment of $35,000 for special work from 1942 to 1943 which involved the preparation of L.B. 204, but that the NPC had paid the expenses of all attorneys in the recent litigation, except for Smith. This charge had been leveled earlier by Fraser during the first days of the court hearings in the Nelson-Hofmann suit.

Included in the expenditures cited by DeLacy was a payment of $1,553 in 1942 to the Greater Nebraska Magazine, an Omaha monthly periodical published by Mark Shaw. The payment, it was noted, was for two one-page advertisements at $75.00 per page. The remainder, declared Bozell, was for a "... contribution to the Greater Nebraska Club."

Asked about the club by Committee member Raecke, Bozell observed that the club was organized throughout the state and had a lot of members; however, Shaw was "mostly the club." A second expenditure noted during testimony was $10,000 to Attorney Fred White representing Nebraska Power stockholders who had joined in the case against the PPC.

Of great interest to those who might have been of the opinion that opponents in Court were motivated by a concern for a substantial loss in the stock premiums was the testimony of Edwin A. Joos, one of the stockholders who had intervened in the Nelson-Hofmann suit. Joos, remarking on
why he entered the controversy, commented that:

his wife had talked to White when she happened
to be in his office about protecting our interest
in the five shares of Nebraska Power preferred
stock they owned and that they hadn't paid
White anything for his work in the lawsuit and
didn't expect to.

John A. Gentleman, another preferred stockholder represented
in the suit of intervention, remarked before the Committee
that he had been approached by Attorney George B. Boland
and asked "if he would be willing to take part in a court
action with the power company."³

On September 28, 1944, the Special Investigating
Committee on power affairs submitted its findings to the
Interim Council of the Legislature. The report, unanimously
accepted, declared the Nebraska Power Company guilty of
improper practices in fighting municipal ownership. In its
findings, the Special Committee noted that substantial
savings could be effected under public ownership because
of the utility's high interest payments on borrowed money,
high dividend payments, federal tax levies and lavish promo-
tional expenditures. In regard to misconduct by the company,
the Committee observed that such was the case because of
secret and undisclosed employment of a highly paid lobbyist.
Additionally, it was noted that one lobbyist had failed to
register or report and that others had not filed complete

³Lincoln Nebraska State Journal, September 8, 1944; Lincoln Star, September 7, 1944.
and accurate reports. The Committee also disclosed that the
NPC had been involved in the financing of citizens committees
engaged in fighting acquisition of the utility by the PPC.
Further, the investigation report revealed that the power
company had made secret and lavish payments of attorneys'
fees for litigants other than Nebraska Power Company in
connection with L.B. 204.4

In regard to the connection between Mayor Butler's
Committee and the NPC at the outset of the attempt to obtain
passage of L.B. 204, the Committee absolved the Mayor's
actions noting that his Committee had acted "in good faith,
believing that an emergency existed and that a sale or
disposition of the Nebraska Power Company by American Power
and Light was imminent." The report, noting the reversed
position of the power company on L.B. 204 after its passage,
concluded that "... following enactment of the bill, the
American Power and Light Company and the Nebraska Power
Company took the position that no sale or disposition of
said properties was necessary and have taken every step in
their power to prevent acquisition of the property under
L.B. 204."

The Committee, concluding that the final decision
on NPC ownership rested with Omahans, recommended only one
change in L.B. 204. Considering the disputed section of
the law dealing with condemnation, the Committee recommended

4Lincoln Star, September 29, 1944.
that this section of the statute be deleted and "condemnation power be set up in the same manner as now provided for first and second class cities." Although the Committee's disclosure that the NPC had led the fight financially against L.B. 204's implementation was not surprising, the disclosure that the Citizens Power Ownership Committee had obtained $725.00 in contributions from the PPC, with more than half of this money from Henry Doorly, publisher of the *Omaha World-Herald*, and his assistant, Story Harding, could have surprised some. What had seemed a fight between the city and the Nebraska Power Company began to appear to be a war waged on the one hand by the Nebraska Power Company at the direction of its holding company and, on the other, by the *Omaha World-Herald*.

Preceeding these developments, attorneys representing the PPC and the City Attorney's Office, as well as attorney Smith representing the Calobria suit, had filed briefs with the State Supreme Court in their attempt to obtain a new ruling on the question of the PPC authority to operate. In presenting his request for a review of the Dineen decision, Wenstrand, representing the PPC, commented that the decision by the District Court was erroneous because the resolution

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which had established the PPC was administrative and those various parties who had sought the injunction "had an adequate remedy at law." Smith, his motivation being to have the act declared unconstitutional, repeated the same positions which he had pointed out earlier during the Nelson-Hofmann suit; namely, that L.B. 204 was special legislation and, therefore, prohibited under state law since it violated the Omaha City Charter which provided for methods of taking over a utility.6

It was not until October that the Supreme Court decided to accept the cases and rule upon the questions involving L.B. 204. During the Court's hearing of oral arguments, W. C. Fraser, attorney for the PPC, declared the intent of the referendum petitions was merely an attempt by the power company to assure an "extra chance to knock out municipal ownership." The power company, he continued, "if successful, will make another attempt at a referendum if an effort is made to purchase the utilities at a negotiated price and still another if there is an attempt at condemnation."

While Fred White, attorney representing preferred stockholders, declared before the Court that L.B. 204 "... had some novel ramifications," City Attorney G. H. Seig remarked "however novel it may be, L.B. 204 was much more novel when the Nebraska Power Company brought it down to Lincoln

6Lincoln Star, June 28, 1944.
and submitted it to the Legislature." Though George L. DeLacy objected, Seig continued, noting:

L.B. 204 was sponsored by Nebraska Power and when submitted to the Legislature had a great many features much more novel than those being argued here. The Legislators, however, examined the bill and put in some safeguards to protect the people. Why, when Nebraska Power representatives brought it to Lincoln, they had not even put in any provision for a vote by the people."7

On October 4, 1944, Mayor Butler, in a surprise move, announced that the city would immediately move toward condemnation of the electrical utility. On the following day, the Council adopted the resolution calling for the drafting of a condemnation ordinance.8 The Mayor, in commenting on the move, stated that he had been prompted to act because of the expiration of the contract between the city and the American Power and Light Company which guaranteed a 180-day notice to the city by the holding company of intent to sell. Noting that if the holding company were not to give the city such notification, Omaha would:

. . . lose the control over the operations of the Nebraska Power Company and place the properties and the operation therefore in the hands of interests hostile to the best interests of Omaha and its citizens, and thus bring irreparable harm to the people of Omaha.9

7Morning World-Herald, October 3, 1944.
8City Ordinances Index Journal 15, 1942-1945, pp. 270-271, Ordinance No. 15225.
9Business Week, October 14, 1944, p. 18.
The world-herald, commenting on the possibility of condemnation, observed that the city government was attempting to assure continued flexibility for omaha if the holding company should decide to sell the NPC without giving appropriate notice to the city. Additionally, the paper noted that the Mayor was acting to discourage any finance houses from taking bonds of any group who might attempt to buy the utility at a price of forty or fifty million dollars. Of interest at this time was the fact that, up until this date, no mention had been made publicly of any group, other than Consumers, attempting to acquire control of the NPC. Somebody knew something but was keeping quiet.¹⁰

With the possibility of condemnation becoming a reality, the City Commissioners began to align themselves for a possible battle. Commissioners Walter Korisko and Harry Trustin, in declaring their intent to support a condemnation resolution, remarked that although they were against city acquisition of the NPC, they would support condemnation if it "... became the only way to head off acquisition of Nebraska Power by some other governmental subdivision or private group." Although the Commissioners did not elaborate on specifically who this was, there is the probability that they were referring to either a non-profit group locally organized, the MUD or Consumers Public Power.

¹⁰ Morning World-Herald, October 5, 1944.
Commissioners Richard Jepsen, Harry Knudsen, John Kresl and Roy Towl declared their support for public ownership. In commenting on what method Omaha might use to acquire the utility, they observed that whatever means were utilized, the arrangements would have to insure the continuation of contributions to local governments and public schools equivalent to the taxes presently being paid by the Nebraska Power Company. Commissioner Towl, while endorsing city purchase of the electrical plant, commented that "... negotiations on any reasonable basis would be far preferable to condemnation."

While Jepsen and Knudsen declared that they favored negotiation over condemnation since the latter was both slow and expensive, Kresl, in explaining his vote favoring the resolution, noted:

I favor condemnation until a later date when I know more about it. I supported the introduction of the condemnation ordinance, but that doesn't mean anything. It is in the introductionary stage only and nothing more will be done until we know a lot more about all angles of condemnation, ..."

Commissioner Korisko, noting he would support such a method if no other way would assure continued city government control of the utility, asked "... why own a utility any more than a newspaper, grocery or drug store? I don't think government should be in business." Trustin, who believed that the people of Omaha were opposed to municipal ownership, remarked of his vote in support of the resolution that now
"The next move is up to the power company owners back East. If they don't respond, it will be our move again. At least, we have put any prospective buyers on notice that if they purchase Nebraska Power, they are buying a law suit." While it appeared that a majority of the Council was willing to employ condemnation if the necessity arose, Mayor Butler, who to date had been quite vocal on his position, refused to go on record concerning the resolution. He simply declared that "In good time, I'll tell the public all about that; I'll have something to say on that shortly." Since several commissioners had alluded to the possibility of a move by a non-profit group to purchase the NPC and that the condemnation resolution was merely an attempt to forestall such a development, Mayor Butler may well have been waiting for further developments along this line, which were not far off.\[11\]

By December, 1944, further evidence was becoming noticeable that there was an organized group which was intent upon buying the Nebraska Power Company common stock from the American Power and Light Company. The first indication of such a group's activity was revealed when George Woodward, Jr., publisher of the Valley Enterprise, brought a suit in District Court alleging that certain individuals, some in the East and some in Nebraska, were

\[11\]Sunday World-Herald, October 15, 1944.
attempting to gain control of the utility's common stock and, thereby, circumvent the injunction against L.B. 204.

Defendants named in the suit included all members of the People's Power Committee and President Aller of the APL.

The petition further declared that the group was intent upon acquiring the properties without submitting the price and terms of purchase to the people as intended by L.B. 204.

Naming Michael Myers, Omaha bond broker, as the agent engaged to secure the stock for forty to fifty million dollars, the suit asked that the transaction be stopped.\(^{12}\)

Aller, commenting on the allegation, remarked that he was unaware of any such pending deal and declared "It sounds like a perfectly ridiculous proceeding."

Several members of the PPC contacted by the *World-Herald* remarked that they were unaware of any such transaction in progress.

Mayor Butler, speaking for all members of the City Council, except Councilman Towl, declared that the City Council would "... take every step possible to prevent the proposed sale." Continuing, he remarked that if such a sale were to transpire, the City Council "... would file suit to have the Court set aside any purchase which may be made if any member of the PPC is a part thereto." The Mayor, speaking of the possible involvement of members of the PPC, noted that they should not be a part to such a transaction since

\(^{12}\) *Lincoln Star*, December 3, 1944.
"... they pledged themselves to make no purchase without submitting the price to the people of Omaha." Continuing, the Mayor noted "... the City Council does not propose to stand by and see the people trimmed by sharp promoters who are interested only in fat commissions for themselves and by fees for lawyers."  

Within several days, the aspirations of those who feared the possible purchase of the Nebraska Power Company by a private group were realized. On December 11, 1944, a non-profit group purchased the common stock of the utility company for $14,125,000.00 with a total base price of $40,680,000.00. The group, incorporated as the Central Irrigation District, later changed its name to the Omaha Electric Committee, Inc. (OEC) once secrecy regarding the purchase was no longer needed. Membership of the group initially included Sidney J. Cullingham, State Senator and Omaha attorney; Bernard J. Stone, Omaha attorney and president of the Omaha People's Power Ownership Committee; and C. Russell Mattson, Lincoln attorney. It was, however, Theodore H. Maenner, a member of the PPC and leading Omaha real estate dealer, who was responsible for getting the negotiations started. Maenner, aware of the inability of the PPC to act because of the injunction issued against

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13 Morning World-Herald, December 9, 1944; Sunday World-Herald, December 3, 1944.

14 Columbus Daily Telegram, December 12, 1944.
them, apparently contacted Guy C. Myers, a nationally-known New York utility dealer who had been active in previous public utility ventures in the hope that he might start things moving. Guy Myers was retained by the group for a commission of $550,000. It was Guy C. Myers who recommended that the group be formed and purchase the common stock of the Nebraska Power Company which would thereby allow the members to control the company. The non-profit group could then manage the utility until a public power district was formed at which time the properties could be turned over to that body and the non-profit group dissolved. With this plan in mind, Myers recommended that the Loup River Public Power District pledge its securities and obtain a loan from an eastern banking concern and lend the cash obtained on its bonds to the non-profit group. 15

The group, publicly announcing that the purchase had been completed, declared that they had acted to "... carry out the spirit of L.B. 204." The Omaha Electric Committee (OEC), in a public statement appearing in the Omaha World-Herald, remarked that the reason for the purchase was to assure that the best interest of Omaha would result from the power controversy. The group asked that "... all join now for the best interests of the city and for efficient, low cost municipal ownership." The OEC, commenting that it

15 Firth, Public Power in Nebraska, p. 188.
believed both the Mayor and the City Council would approve of the purchase, declared that as soon as city officials had all the information regarding the transaction, they would "... be a party to each step taken in the future to the end that this whole program may be completed along the lines laid out by the Mayor and the City Council over two years ago." However, no mention was made regarding either Loup River Public Power District's involvement or specific provisions of the purchase, thus leaving a great many citizens unaware of exactly what had transpired or the implications for future municipal ownership.

The OEC, attempting to assure "peace" and to unify such divergent Omaha groups as labor, city government and the business leaders, declared its intent to retain all employees, including the heretofore arch enemy of public ownership, James Davidson. Further, the Committee announced that those in the armed forces were to be re-employed, all union contracts would be recognized and, because of the purchase, a savings of ten million dollars would result for the people of Omaha.

The new owners, possibly seeking support from the State Legislature, also declared their intent to operate the electric utility in full cooperation with the several state public power districts. Leaving no stone unturned, the OEC,  

16 *Lincoln Star*, December 12, 1944.
in an elaborate display of concern for the public's best interest, enumerated seventeen reasons which the group felt justified its departure from "trusting in the wisdom of the courts." The more important reasons mentioned were that the purchase of the common stock removed the future possibility of American Power & Light Company from interfering with the city in its attempt to acquire the utility and, secondly, that by utilizing a non-profit group to acquire the properties by negotiation, the unfavorable consequences of condemnation would be avoided. The OEC, in discussing city condemnation of the NPC, commented that such a course of action would be too costly, approximating one and one-half million dollars for proceedings alone with an additional ten million dollars lost in revenue while litigation dragged through the courts. Both of these points, however, were subordinate to OEC's main argument that condemnation would result in disallowing future local revenue, approximately $850,000 annually, if acquired through this means.\textsuperscript{17} Equally persuasive was the observation that L.B. 204 was constitutionally questionable and, should the State Supreme Court nullify the bill, considerable cost would result for Omaha in lost revenue and, possibly, indefinitely delay municipal ownership.

Of interest to followers of the power struggle must have been comments noting that the means employed by the OEC

\textsuperscript{17}See Chapter I, page 12.
to acquire control of the NPC were in line with a scheme conceived by Mayor Butler's Investigating Committee in 1942. The plan, with the Mayor's approval, called for the financing of the NPC's common stock by the issuance of notes of a non-profit group and for a price approximating that negotiated by the OEC. Additionally, the proposal called for the passage of legislation by the Unicameral allowing for the establishment of a state subdivision to take control of the NPC. This would assure continued receipt of local taxes and, at the same time, achieve local ownership.

"The new owners, intent upon removing any doubts over the somewhat questionable procedure used, noted that secrecy had been of paramount importance because "... certain interests in Omaha, which desired that Nebraska Power Company continue in the ownership of American Power & Light Company, have resisted through court action and otherwise every effort on the part of our group to accomplish its purpose." It is quite conceivable that the reference to "certain interests" meant the Mayor and the City Council. 18

In concluding, the new NPC owners noted that the question as to whether the American Power & Light Company wanted to sell or had to sell its subsidiary was now settled. The OEC, possibly attempting to remove any doubts over the

18 Lincoln Star, December 12, 1944.
question of whether they had paid too high a price for the NPC, noted that the price had been arrived at by the "... same formula as proposed by Consumers Public Power District in 1942 and, also, was accepted and used by the Mayor's panel." The new owners further noted that this same price, derived by the same formula, was also offered to the holding company by George Ashby of the Executive Committee of the PPC with the Mayor's full approval prior to the issuance of a court injunction against the PPC. As if tying in the Mayor to the acceptability of the negotiated price were not enough, the new owners also referred to a 1943 appraisal of the NPC properties by Black & Veatch, in evidence before the SEC, which showed the fair value of the company "... to be several million dollars more than the formula figure."19

The Mayor and the City Council responded to the announcement by declaring their intent to nullify the transaction.20 The World-Herald responded to the Mayor's position with dismay and bewilderment. The paper, observing that Butler as an ex-officio member of the PPC had favored a negotiated sale at a price nearly the same as offered by

19Columbus Daily Telegram, December 12, 1944; Evening World-Herald, December 12, 1944.

20The chief executive's irritation over the announcement became evident during a press conference when Butler, asked if he could provide any further insight into the transaction, replied, "How the hell can I say anything about it, I don't know anything about it. No one consulted me." Columbus Daily Telegram, December 12, 1944.
the OEC, declared the purpose of the Mayor and Council was:

... not to bring about public ownership, but
to embarrass and possibly block any non-profit
group which might seek to acquire the property
for the people.

The editor, remarking that the NPC had a "huge war chest," noted that the "local power company crowd" could use this resource to stop any possible public takeover of the utility. The paper warned that should city government follow the course which the Mayor advocated, it would be accomplishing exactly what the "... power company wants." The World-Herald, though not specifically declaring the Mayor a member of the "local power company crowd" who opposed municipal ownership, left little doubt that, in its opinion, Mayor Butler was indeed a leading playmate in the crowd.21

Whatever the creditability of the new owners' arguments or the editorial policy of the World-Herald, the City Council showed absolutely no inclination to be cooperative in the venture. On December 12, 1944, the Council, in a nearly unanimous vote, declared its support for Mayor Butler. Six of the seven city commissioners, with Commissioner Roy Towl dissenting, voted to proceed with condemnation and tentatively set the date of May 15, 1945, for a popular vote on the issue. During the debate over the resolution, Councilman Towl and Mayor Butler found

opportunity to exchange a few remarks that reflected the considerable division between the Councilman and his associates. Towl, asking for delay of the motion, pleaded:

Let's not jump at this proposition. Let the matter stand until we hear more about the new ownership. Let's get our feet on the ground. Why should we deliberately attempt to embarrass the new owners of the Nebraska Power Company?

Butler, responding, noted "We've been embarrassed quite a bit by not being taken into their confidence." To this, Towl retorted "There's a reason for that too, maybe."22

Apparently, the dissatisfaction with the purchase of the NPC was based on the belief that the new owners simply had paid too much for the properties. The Mayor, commenting on the price settlement, observed that not only had the OEC paid too much, but that Omaha could acquire the utility for far less.23

Butler, not content with the ordinances authorizing a rate reduction and condemnation, turned to the Federal Government in his hope to preclude the transfer of the properties to the OEC. In telegrams to both the Securities Exchange Commission and the Federal Power Commission, Mayor Butler requested an immediate investigation of the


transaction since, in his belief, the affair had been "illegal." Butler, referring to a cost figure of forty-four million for the properties if Omaha obtained the NPC from the new owners, remarked in his telegrams that the amount considerably exceeded the fair value of the properties.

He added that:

... we protest this alleged sale and demand an immediate investigation thereof, and that all steps be taken to prevent promoters from carrying out this scheme to unload this property on these people [the citizens of Omaha] at an exorbitant price.25

Response, however, from both agencies was of little satisfaction to those individuals opposing the OEC. In communiques from both the FPC and the SEC, the Mayor was advised that the new owners had previously advised their offices of the proposed purchase and nothing had been found which was considered unacceptable. Although the Mayor apparently had the best interests of the city in mind, his assertion regarding the negotiated price must have been dubiously received in some quarters if, as the new owners said, Butler had once found a similar price acceptable.26

This was not the first time the Federal Government had become involved in the Omaha controversy. During June,

24 Lincoln Star, December 13, 1944.

25 Morning World-Herald, December 13, 1944; Evening World-Herald, December 12, 1944.

26 Lincoln Star, December 13, 1944; Evening World-Herald, December 12, 19, 1944.
1944, the Federal Power Commission conducted an investigation because questions had arisen as to whether the company had concealed expenditures made to oppose L.B. 204's implementation in its fiscal report submitted to the FPC. Also in November, 1944, the SEC conducted inquiries to determine whether the holding company had violated the Public Utility Holding Company Act by political involvement in the Omaha utility controversy. 27

The World-Herald responded to the passage of the condemnation resolution by declaring the action to be merely a smoke screen thrown up by the city government "... to do anything possible to obstruct a sale of the eastern holding company's stock in Nebraska Power to a non-profit group of Omaha citizens." The paper, observing that "ordinarily, Omaha's City Commissioners could hardly wind their watches in the time they required yesterday to consider, discuss and finally pass the so-called Nebraska Power Condemnation Ordinance," proceeded to make war upon both Mayor Butler and the City Council in an unrelenting attack upon their creditability, efficiency and alleged special interests.

Although the newspaper declared that it would not pass judgment upon the recent transaction, it clearly followed a line of benevolent neutrality toward the OEC.

27 Sunday World-Herald, June 11, 1944; Morning World-Herald, September 8, 28, November 10, 16, 1944.
The World-Herald, in its crusading manner, observed that:

... the Omaha men concerned are men of good reputation who, it must be assumed, are acting in what they deem to be the public interest. Surely, the thing they are trying to do should be examined in a fair-minded spirit by the Omaha public as soon as the details are known.

In conclusion, the paper remarked that the Council "... was of no mind to view the matter judicially" and had to jump to the conclusion that the non-profit group was "... scheming against the public welfare." In pointing out the grave responsibility associated with condemnation action, the World-Herald observed that because of the Council's obligation, it:

... would do well, we think, to reconsider its action of yesterday while there is still time. It would do well to find out what it is shooting at before it pulls the trigger. 28

The World-Herald's favorable endorsement of the "Omaha men" and its hostility to the recent actions of the Mayor and City Council could have left little doubt as to the stand the paper would take during the on-coming struggle, regardless of its declared objectivity.

On December 15, 1944, the OEC announced the appointment of several additional members to the non-profit group. Included were Gerald Collins, who was to act as Director of the new group; T. H. Maenner, Don B. Woodyard, Edward F. Leary, Dr. Bryan H. Bare and Emil F. Wolf. The announcement

also declared the intent of the OEC to ask both Bernard Stone and Mayor Butler to serve as "ex-officio members." Of considerable importance in attempting to untangle who was and who was not active in the secret negotiations for the purchase of the stock is the fact that all members, previously appointed by the Mayor and Governor Griswold to the PPC, accepted appointment to the new Board of Directors of the OEC, a development which would not set well with Mayor Butler.

The now expanded non-profit group, commenting on future plans, declared that should L.B. 204 be found constitutional, it would take the necessary steps to submit to the electorate the question of whether the people wanted the utility turned over to the PPC. The announcement, in pointing out the possibility of L.B. 204 being nullified by the State Supreme Court, declared that the OEC would, under such a contingency, attempt to have the Unicameral establish a "public commission" to operate the properties for the city. In closing, the new owners assured Omahans that the OEC was a temporary measure to be "... ultimately succeeded by a public body."29

The intent of members previously appointed to the PPC to serve on the OEC Board of Directors met with considerable antagonism. Mayor Butler, in declaring that he would

29 *Evening World-Herald*, December 14, 1944.
ask for their resignations from the PPC, reproached the "public spirited" citizens for agreeing since the OEC stood against the position which he and the City Council had taken.\textsuperscript{30}

Between December 18 and December 22, the OEC made several attempts to arrange for a meeting between the new owners and the city government. However, in each instance, Mayor Butler rebuffed their overtures on one pretext or another; a development which certainly should not have been too great a surprise for the OEC.

On December 18, a meeting had been arranged; however, cancellation became necessary when only three councilmen appeared. Again on December 20, a proposed meeting had to be called off because, at the last minute, both the Mayor and the councilmen became unavailable. Little doubt could have existed that the "old power crowd" was up to something since it had been the declared purpose of the OEC to disclose to the Mayor and the Council the details surrounding the NPC transaction.\textsuperscript{31}

It was not until December 22 that the intentions of the Mayor and the Council became evident. The Council, requesting that the Omaha Electric Committee meet with them that afternoon, hurriedly passed a rate reduction ordinance

\textsuperscript{30}Ibid., December 16, 1944.

\textsuperscript{31}Morning World-Herald, December 22, 1944.
of approximately one-half million dollars before the OEC members arrived. The effect was explosive. The OEC members, learning of the somewhat hasty resolution, declared their intent not to appear, commenting:

We do not care to appear before a judge and jury who have entered the judgment and written the verdict in advance. We will give our information in detail to the people as they are entitled to all the facts, and we are going to see that they get them.  

As in the case of the condemnation ordinance, the only dissenting vote once again was Councilman Roy Towl. Towl, in remarking on the resolution, noted that the Mayor's attack on the OEC was a "... maneuver seeking to embarrass the new owners of the Nebraska Power Company and trying to defeat something that is for the good of the city." Continuing, Towl noted:

It strikes me as a camouflage and an attempt to defeat the city's best interest. At best, let the matter stand until after the meeting this afternoon with the members of this new group. Let's hear what they have to say. They have said they plan a reduction in rates. Let's do this in an orderly manner.

Whether or not Towl meant to imply that his fellow Commissioners and the Mayor were attempting to block municipal ownership he did bring about the enmity of Mayor Butler who retorted "... nothing that would be said or done at this meeting this afternoon will affect my position." Towl,

32Lincoln Star, December 22, 1944.
commenting on the Mayor's unyielding stand, countered "... nothing will affect you as long as you live." Mayor Butler, not to be outdone, noted he did not have a "... damn bit of confidence in the members of the new Board of Directors." Butler, continuing, commented that the PPC members had been appointed to obtain control of the utility as a "commission" and, after being temporarily halted by court action, they commenced to act outside of their authority. Towl thereupon interrupted observing that "... maybe they don't have confidence in you, Mr. Mayor. I know that I haven't under the circumstances."33

Mayor Butler, discussing the refusal of the members of the OEC to appear before the Council, noted that the new NPC owners had no desire to meet with the city government officials or they would have appeared as requested. For some unknown reason, the Mayor apparently found it unnecessary to comment on the passage of the rate reduction ordinance prior to the scheduled appearance of the OEC members. As to the refusal of the new owners to now meet with either the Mayor or Council, Butler said that their action suggested to him an old melody that went:

I won't whistle down your rain barrel,
I won't slide down your cellar door;
I won't play in your yard,
I don't like you anymore.

The World-Herald struck out vigorously against the Council for its action. In a front-page editorial titled "The Irresponsible Six," the newspaper declared the Council was "... playing an exceedingly irresponsible role in this city's power controversy with their purpose being to embarrass and block public ownership." Contending that the Councilmen were using their authority "... to do the greatest possible mischief," the editorial said that in their many years in office these men had made no previous attempts to reduce rates when "... absentee owners of the NPC had been paying huge dividends on watered stocks, [and] have been maintaining a far flung and costly political machine at the rate payers expense." The newspaper, attempting to show what might have motivated the supposed "irresponsible six," observed that the Mayor's political machine was being directly jeopardized since Butler would lose the generous assistance which the company, under private ownership, had given him over the years.  

There was obvious merit in the newspaper's assertion that the Council's action was hasty, for that body had produced no evidence to justify the rate reduction ordinance. However, the direct attack upon the Council and Mayor was anything but fair or rational. Whether the city government

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34 Evening World-Herald, December 21, 1944; Morning World-Herald, December 22, 1944.
had been motivated by a dislike for municipal ownership, or whether they were acting in what they deemed the best interests of Omaha, the World-Herald was certainly not rendering a fair and impartial analysis. Many questions still unanswered might well have justified doubts in the minds of the Mayor and Councilmen. Where had the OEC obtained its funds to purchase the NPC common stock? What imposition would be placed on the city during negotiations if it was to take over the NPC properties? What deals had been made with promoters? What relationship would now exist between the NPC and the Nebraska state hydros? Lastly, what obligations had the electric utility assumed under the new owners' contract? Possibly, the editors of the World-Herald knew more than they wished to divulge, but from the city government's vantage point, the NPC sale might well have appeared dubious and underhanded. It might have been advisable for the World-Herald, in its attack upon the city hall, to have kept in mind that it had not been the Mayor, the Council or the World-Herald who had initiated action to bring about municipal ownership of the NPC; rather, the controversy had grown out of action taken by the SEC under the authority of the Public Utilities Holding Company Act of 1935.35

Mayor Butler, not to be outdone by the World-Herald, declared publicly several days later that, if a rate reduction would destroy municipal ownership, he could not understand what the controversy was about, a comment probably directed to appeal to the utility consumer. The Mayor, referring to Bernard Stone's and the World-Herald's involvement in the recent purchase, remarked that they had helped to bring about the formation of the non-profit group because of their "... inability to wait for a decision by the court" concerning the PPC.

Tossing a few stones of his own, the Mayor charged that although the OEC claimed to be for public ownership, it was for city acquisition only on its own terms and that private profit for certain promoters was involved in the deal. In conclusion, Mayor Butler referred to a World-Herald editorial of April 19, 1944, in which the paper had advocated a one million dollar rate reduction. Referring also to suggestions made previously by individuals now serving on the Board of Directors for the NPC, who had also called for a considerable reduction in rates, the Mayor declared that the World-Herald and members of the OEC now opposed such action because "... they wanted the people of Omaha to continue to pay high rates."36

The OEC quickly responded to the Council's resolution.

36Sunday World-Herald, December 24, 1944.
by filing a suit on December 25, 1944, in District Court asking for an injunction to be imposed against the city to stop the rate reduction from being implemented. The suit, in charging that the ordinance had been passed in an "...arbitrary and capricious manner and was not arrived at by an orderly process of notice and hearing," observed that the Council's action would "...cause irreparable injury to the company." When the Mayor learned of the action and the issuance of a temporary injunction until January 15, 1945, at which time evidence was to be taken, he remarked, in his now accustomed fervid and bold style, "If they want to go to court, we will raise the ante to two million dollars before we are through."37

Completion of details for the purchase of the NPC by the non-profit group and for the establishment of a new Board of Directors for the company got underway when representatives of the OEC and other concerned parties departed for New York on December 26 to meet with President Aller of the American Power and Light Company.

Mayor Butler, learning of the impending meeting in New York, took the opportunity to announce that he had received information from "certain Columbus sources" that not only was Consumers going to participate in the meeting, but that their representatives were "...trying to come

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in by the back door by helping finance the purchase of the Omaha utility by a non-profit group." In observing that he felt Consumers representatives would not be elected to the new Board of Directors of the NPC, the Mayor stated that Consumers would not reveal their hand through such a move. "All along," he concluded, "I have said they were right up to their ears in the utility purchase, and the trip to New York ties them up in the deal."38

The Mayor's disclosure probably did not set well with many civic leaders in the city since, to a great extent, the decision to bring about municipal ownership and the legislative activity in getting L.B. 204 on the books had been inspired by a deep concern in Omaha to keep Consumers out.

Whatever the impact of the Mayor's remarks, representatives in New York concluded negotiations the following day. On December 27, a new Board of Directors for the NPC was announced. The new members included T. H. Maenner, Omaha real estate and insurance man; D. B. Woodyard, Manager of the J. C. Penney Company, Omaha; Edward F. Leary, Omaha attorney; Gerald Collins, Omaha attorney; Dr. Bryan H. Baer, Ashland physician; Emil Wolf, North Bend banker; W. C. Fraser and W. W. Wenstrand, OEC attorneys; and J. E. Davison, President of NPC.

38Lincoln Star, December 26, 1944.
With the announcement of the new Board of Directors, Mayor Butler, the City Council and the public finally became aware of how the transaction was financed. Initially, Loup River Public Power District put up $15,600,000 of its refunding bonds as security and, with these serving as collateral, a group of New York bankers loaned $15,600,000 to Loup which, in turn, passed the money on to the Omaha Electric Committee. 39

Yet, the new Board, in disclosing the intricacies of the transaction, left several important questions unanswered. The OEC directors did not explain what financial arrangements had been made with promoters and, more importantly, they did not say what benefits the Loup River Public Power District would receive for its financial assistance. Obviously, Mayor Butler, the City Council and aroused civic groups would demand answers to these questions.

The new owners reiterated their intent to turn the properties over to the PPC. In so doing, they disclosed an interesting provision of the agreement between the OEC and the Loup River Public Power District. The new owners, in declaring their intent to effect public ownership, noted that should the PPC not assume ownership of the NPC by January 1, 1948, the properties would revert to the Loup River Public Power District. The implication of the

39 *Columbus Daily Telegram*, December 27, 1944.
provision was far-reaching. Should the city not find the price offered by the new owners acceptable and condemnation proceedings result, the process would very possibly take anywhere from five to ten years, a period of time which would go beyond the 1948 deadline. Secondly, should L.B. 204 be found unconstitutional, considerable delay might be experienced in attempting to provide new enabling legislation, a contingency which also might delay a city takeover beyond the January 1, 1948, deadline.

Since the newly-appointed Board of Directors included, among others, the same individuals who were serving as members of the city's PPC, it was not surprising to find the Mayor demanding the resignation of all members appointed to the People's Power Commission. The Mayor, in declaring that the PPC members had placed themselves in a position inconsistent with the provisions of L.B. 204, said that if their resignations were not forthcoming, he would take legal action to have them removed. In conclusion, Butler remarked:

They are already threatening the city council and we have no doubt that they will attempt to impose their will upon the people of Omaha. They believe that they can control the local newspaper; they hope to be able to control the weekly papers . . . and unless these men are stopped, and stopped now, Omaha will find itself in the grip of a power group which can ruthlessly destroy any man who

Members of the People's Power Commission agreed to serve on the NPC board of directors as individual citizens and not as public agents authorized by L.B. 204.
The *World-Herald* responded to the appointment of the new NPC Board of Directors by declaring that it would remain impartial in the entire matter and reserve its judgment of the transaction. However, once again in the paper’s somewhat distorted concept of impartiality, the editorial staff found it permissible to point out that the purchase by the OEC had been motivated by the concern of highly civic-minded individuals for the benefit of the people and that it had pledged to turn the properties over to the city as soon as it was legally feasible.

Avoiding the question of what it might now cost the city to acquire the NPC, a matter of concern to Mayor Butler and the general public, the *World-Herald* indulged in a bit of legal gymnastics. The newspaper’s retaining attorneys, A. C. Munger and Raymond C. Young, who the paper said were men of ability and integrity, set out to provide an "unbiased observation" upon the OEC transaction. The lawyers, declaring the contract to be too involved and technical to be analyzed in detail, offered their opinion that:

If all goes well, if the new management receives sincere cooperation from the community and the State Legislature, electricity users henceforth will benefit to the tune of more than three million dollars a year.

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The World-Herald continued by pointing out that because of the "magnitude" of the transaction, there were "endless opportunities for finding fault. Possibly some small minds are engaged in that sterile occupation at this very moment." The paper, shunning the faults of the purchase, declared that the "... broad facts of the situation which have developed should be deeply gratifying to those who love Omaha." The World-Herald, pleading for unity and an end to the intra-city feud, declared that now the opportunity was at hand to conclude the power struggle in a manner "that common sense can approve." Concluding, the newspaper remarked that:

... to solve our many and pressing problems, we need to close ranks, bury uncalled for animosities, and face the uncertain future a united people in comradely cooperation. That is the way to build Omaha. We know of no better way. Certainly fighting each other without end is not the right way.42

With Mayor Butler attempting to schedule a meeting between the NPC and the city government, another opportunity availed itself in early January, 1945, for the new owners of the NPC to strike out once again against him. In a letter to the Mayor from a group of citizens associated with the PPC, the group asked Butler if he had been motivated to ask for a rate reduction because he wished to influence investment bankers not to provide the needed funds for the purchase.

Attacking the creditability of the Mayor's concern for the best interests of Omahans since he had never considered such action when the NPC had been owned and operated by the private holding company, the letter questioned why he had not acted in April, 1944, when members of the PPC had asked him to take such a move. Declaring that the Mayor's sole purpose was to block municipal ownership, the group charged Butler with initiating the rate reduction in order to assure continued ownership of the NPC by the American Power and Light Company. The World-Herald, allowing no opportunity to slip by which might advance the cause of the OEC, printed a facsimile of the letter to Butler in its Sunday issue, an action which seemed to contradict its plea for closing ranks. Yet the plea to close ranks obviously meant that the Mayor and City Council should totally accept the position of the new owners of the power company.\textsuperscript{43}

Matters became more complicated and the possibility of a united front more unlikely when Omaha's air once again began to bristle with the possibility of injunctions. On January 6, the Mayor filed a suit in District Court asking that ownership of the common stock of the NPC be returned to the American Power and Light Company because the sale, it alleged, was "illegal." A second suit, brought in Federal District Court on January 9, 1945, also asking that all

\textsuperscript{43}Sunday World-Herald, January 7, 1945.
phases of the negotiations between the OEC and holding company be voided, was brought by several NPC preferred stockholders. This suit further requested that a receivership be established to assure continued operation of the utility until the court reached a decision. The action, brought by George S. Wright, Council Bluffs, Albert W. Hubert and Steve Kiliborda, was initiated because it was feared that the Mayor was going to demand that the new owners of the NPC surrender their franchise which, it was asserted, would result in a considerable reduction in the value of the company's assets and jeopardize the rights and interests of preferred stockholders. 44

The basis of the city's suit calling for the invalidation of the contract between the OEC and the APL was based on the allegation that negotiations for the purchase of the properties had occurred prior to October 4, 1944, the terminal date for a provision of the Holding Company's contract with Omaha which had required a 180-day notice to be given to the city of intent to sell the NPC. Though the contract proviso had expired October 4, the suit alleged that Guy C. Myers, agent for the OEC, had entered into formal agreement with the American Power and Light Company on September 19, 1944. 45

44 Columbus Daily Telegram, January 8, 1945.
The suit brought by the preferred stockholders, naming as defendants the NPC, OEC, Loup River Public Power District and the banking investment firms involved, should not have been surprising to those who were following developments. The action, however, did bring forth several facets of the transaction, unknown to this point, which would contribute over the next several months to intensifying the debate over the intentions of the new owners. Attorney William Ritchie of Omaha, and Addison G. Kistle of Council Bluffs, in presenting their suit, argued that the financial arrangements between the non-profit group and the Loup River Public Power District was, at all times, based on the agreement that the stock would be acquired "... so that the NPC properties might ultimately be sold to the Loup River Public Power District" which was in violation of L.B. 204. To concerned citizens intent upon assuring a locally-owned and operated utility, this allegation could only have had the effect of creating more divisiveness. If this disclosure was not enough, those in opposition to the OEC must have found some satisfaction in the disclosure that the loan to the OEC for the purchase of the properties included a commission of $530,000 to Guy C. Myers, agent for the OEC, and $300,000 to Mike Myers, Omaha agent. Further, the suit charged that the price that had been paid for the common stock exceeded the book value by approximately $9,400,000.00 and that the cost to the OEC had exceeded the
amount paid to the American Power and Light Company by $1,800,000.00.\textsuperscript{46}

Loup River Public Power immediately issued a statement regarding its involvement in the transaction, declaring it was only acting in what the District considered to be the best interest of Omaha. Harold Kramer, General Manager of the hydro district, commenting on the district's part in the purchase of the NPC common stock, noted that its participation was a "cooperative one in the interests of all Nebraskans" and that Loup River Public Power District had no desire to gain control of the NPC. A. R. Miller, President of the LRPPD, speaking of the recent lawsuits, noted that because of these actions, the District was finding difficulty in refinancing the debt incurred. Miller, pointing out that the initial loan was transacted for a thirty-day period at three percent, observed that:

> These people in Omaha must be either misinformed or misguided and, by their activities, are causing the piling up of unnecessary costs and expenses, which will, in the final analysis, be borne only by consumers of electricity in Omaha and surrounding towns served by the NPC.\textsuperscript{47}

Expectations of those preferred stockholders, who had brought a recent suit against the OEC to enjoin the transfer

\textsuperscript{46}Morning World-Herald, January 9, 10, 1945; Sunday World-Herald, January 7, 1945.

\textsuperscript{47}Columbus Daily Telegram, January 10, 1945; Lincoln Nebraska State Journal, January 17, 1945.
of the NPC common stock, found realization when Mayor Butler announced on January 17 his intention to ask the City Council to pass a resolution requiring that the NPC surrender its franchise. Butler, in declaring he would ask the Council at its next meeting for such authorization, pointed out that the NPC's franchise was being revoked since the holding company had failed to provide the city with the required 180-day notice of intent to sell the NPC as required by the contract between Omaha and the American Power and Light Company.\(^4\)  

W. C. Fraser, OEC attorney and member of the NPC Board of Directors, observed that the Mayor had "no basis in law or fact" for such action and that he was motivated by his "... sense of political survival." Fraser, declaring that the new owners would resist all efforts by the Mayor to sabotage the purchase of the NPC, remarked that of all Butler's previous actions, this one was the "... most asinine move the mayor had made in the power matter to date." In conclusion, the attorney commented that Butler, in this matter, as well as in the rate reduction and condemnation ordinance, acted:

\[\ldots\] because a city election is soon to be held and the mayor concluded sometime ago the old Nebraska Power influence was his best bet for reelection; and having reached that conclusion and having attempted to block the sale of

\(^{4}\) \textit{Lincoln Nebraska State Journal}, January 18, 1945.
Nebraska Power, he now finds himself so far out on a limb that he cannot get back.\textsuperscript{49}

Whereas, in mid-May 1943, it appeared that Omaha was well on its way toward gaining ownership of the NPC and all persons apparently were in agreement, by early 1945 little, if any, unity existed in the city over the question. There was dissention among businessmen, civic groups and the city government as well. It was beginning to appear that the division within Omaha might spell defeat for public ownership.

\textsuperscript{49}Morning World-Herald, January 18, 1945.
CHAPTER FIVE

Formation of the OPPD

With the power situation considerably altered by the non-profit group's purchase of the NPC and one of the state hydro districts involved in the struggle, the State Legislature once again became entangled in the Omaha controversy. C. Petrus Peterson of Lincoln, shortly after the opening session of the 1945 Unicameral, introduced L.B. 139 providing for the repeal of L.B. 204.¹

Mayor Butler responded to the bill's introduction with considerable disfavor. The Mayor, in his usual warlike rhetoric, stated that the repeal of L.B. 204 was "... obviously designed to facilitate the present attempt of Guy C. Myers and associates to acquire the Nebraska Power Company for the Loup River Public Power District."² Harold Kramer responded favorably to the bill's introduction. While endorsing the action, Kramer noted:

We wish to compliment the distinguished senator from Lancaster County for his proposed repeal of L.B. 204. The Loup fought this bill two


²Morning World-Herald, January 17, 18, 1945; Business Week, January 20, 1945, p. 42.
years ago while he was urging its passage. ³

Within twenty-four hours, it was learned that once again petitions were circulating around Omaha but, this time, their intent was to bring about the formation of a public power district in the metropolitan area, including Ashland, Morse Bluff and North Bend. Under provisions of S.F. 310 allowing for the formation of public power districts within the state, all that was needed was to obtain the signatures on petitions of fifteen percent of the residents within the proposed district who had voted at the last gubernatorial election and file the completed petitions with the State Roads and Irrigation Department. The petition effort received the full backing of the OEC-NPC and the NPC Board of Directors. In declaring support for the petition drive, the OEC-NPC board declared that the establishment of such a district would assure the continuation of local revenue from the operation of the utility. ⁴

Mayor Butler announced his opposition to the establishment of the proposed district. In a communique to the State Department of Roads and Irrigation, he declared that Omaha would object to the formation of a power district and should petitions be presented, the city wanted an opportunity to be heard before action was taken. One civic group,

³Columbus Daily Telegram, January 18, 1945.
⁴Lincoln Star, January 18, 1945.
The Citizens Committee to Keep Power Control in Omaha, declared that circulators were being paid ten dollars a day to obtain signatures. The group, announcing their opposition to the petition effort and asking Omahans not to sign, declared on a local radio station that the repeal of L.B. 204 and the formation of a public power district were "deceptive" proposals designed to prevent local control.

On January 17, 1945, the City Council passed the previously requested resolution of the Mayor demanding that the new owners of the electric properties surrender their franchise. The NPC reacted to the resolution by alleging that the Mayor and the Council were trying to "black out" Omaha in violation of the law and property rights. Butler, scoffing at the idea of a "black out," pointed out the action would result in terminating the perpetual franchise of the NPC and, henceforth, the usage of lines and poles in the city would be a mere privilege, exercised at the discretion of the city. The Mayor said that within ten days of the notice ending the company's franchise, the new owners would no longer be "... privileged to assign the right to the

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5This committee, supported by the "old power crowd," apparently was opposed to any type of public ownership. Both the impetus for the formation of the committee and its financing had come from this group.

Loup River Public Power District or some other district."^7

If matters were not confused enough with legal complexities, yet another suit was brought against the new owners of the NPC on January 18, 1945. Filed in Federal District Court by Harry A. Eckert of Council Bluffs, the suit named as defendants the NPC, APL, OEC, LRPPD, Guy C. Myers, Theodore H. Maenner, Edward F. Leary, Emil E. Wolf, Don B. Woodyard, Bryan H. Baer, Bernard R. Stone, Sidney J. Cullingham and William W. Wenstrand. The suit alleged that Woodyard, Wolf, Baer, Maenner and Leary, as Directors of the PPC, Wenstrand as attorney for the PPC, Stone as organizer of the Peoples Power Ownership Committee and Cullingham as one of L.B. 204's sponsors, entered into a conspiracy with Myers, the APL and NPC to violate L.B. 204. Further, it was charged that the defendants had entered into an agreement to transfer and assign the steam generating plant of the NPC and all its earnings to the Loup River Public Power District and to buy electric energy from the Loup District at a fixed price for twenty-one years; thus precluding a rate reduction to customers.

The suit, asking that the court require an accounting of all money rights and advantages involved in the transaction, further alleged that, while the defendants were acting as agents for all consumers, they entered into

agreements for fees, salaries and other advantages to themselves as private citizens in an amount exceeding four million dollars.8

In an attempt to determine what course of action would achieve the city's best interests, a new civic committee was formed in late January by leading businessmen in Omaha. Members appointed to the new Civic Committee on Power included E. A. Baird, President of the Conservative Savings & Loan Association; W. Dale Clark, President of the Omaha National Bank; Ellsworth Moser, Vice President of the United States National Bank; and Karl E. Vogel, General Manager and Executive Vice President of the Omaha Steel Works. The new civic group, declaring its belief that the city's best interests were "...grounded in sincerity and the honest desire to find a reasonable way out of the present complicated power situation," proposed to determine what areas of agreement existed which would allow for all factions to move forward together. The group's formation and declared objective met with approval throughout the city. While attorney Fraser observed that he and the new owners of the NPC felt the move "was a step in the right direction," Mayor Butler declared that he was "glad to see it." Although the group received a warm welcome and all wished it success, possibly Omahas in 1945 had lost their

faith by this time in civic committees intent upon discovering their city's best interests. 9

By the end of January, 1945, legislative activity concerning the Omaha power controversy had increased in its tempo with two more bills being introduced. Once again, C. Petrus Peterson introduced the bills. L.B. 297 would restrict the formation of a public power district by the new owners while L.B. 298 provided that the NPC properties would be taken over by the MUD. Yet another bill, L.B. 222, introduced on January 25 by Senator Walter R. Raecke of Central City and Senator Sidney Cullingham of Omaha, clarified L.B. 204 by specifically requiring that acquisition of the NPC by condemnation would be approved by a vote of the people. 10

T. H. Maenner, Chairman of the NPC, reacted to the Peterson bills by declaring the action "...a stymieing move - just another move to prevent acquisition of Nebraska Power by the public." Senator Peterson, commenting on his bill to repeal L.B. 204, pointed out that his action had been prompted because the situation had developed in such a way so as to make the statute's application to the situation "totally impossible." Continuing, he proclaimed that


10 Nebraska Legislative Journal, January 29, 1945, pp. 203, 175.
since the members of the PPC were also serving as members of the NPC Board of Directors, whose property was to be acquired by the public through an agency which owned the property, an obvious conflict of interest prevailed. These directors, he said, are not in a position to represent the public in negotiations for the acquisition of these properties. Certainly, Senator Peterson's comments must have given many persons second thoughts when he noted that the negotiators for Omaha "... would be on both sides of the counter, attempting to represent both seller and purchaser."\(^{11}\)

The following day, Peterson, who realized that a basic consideration of the city would be the continuation of local revenue from the operation of the NPC properties, offered another bill intended to complete his plan. Designed as a companion to L.B. 298 which would place the power company under the operation of the Metropolitan Utilities District, this measure, L.B. 334, provided that MUD would pay the city three and one-half percent of the gross revenue from the sale of electricity.\(^{12}\)

Although MUD remained silent on L.B. 298 and L.B. 334, apparently some tentative approval had been given since both


Bills had been drafted by Dan Van Dusen, MUD General Counsel. Also, there had apparently been a meeting between board members of the MUD, city commissioners and Senator Peterson preceding the bill's introduction. Yet it was quite apparent that the MUD Directors were uncertain as to their position on the matter. This uncertainty became apparent when Senator Charles Tvrdick of Omaha announced that no Omaha Senator had been sounded out about the legislation. Tvrdick said that:

The least the Directors of the MUD could do would be to give us the courtesy of telling us what they are doing. It seems to me that this bill, being Omaha business exclusively, should have been discussed with the Omaha delegation.

In mid-February, Mayor Butler carried through with his previously announced threat to end the NPC's perpetual franchise. On February 13, by a vote of six to one, with Commissioner Towl again dissenting, the Council passed an ordinance ordering the utility to surrender its franchise. Towl, asking for a delay on the Mayor's motion to allow the Council an opportunity to consider any recommendations that might be forthcoming from the Civic Committee on Power, was rebuffed by the Mayor when he noted that Omaha was not restrained by anything the Committee does or recommends and

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13Boyd Miller, Assistant General Manager MUD. No records are available concerning the alleged meeting mentioned by several Nebraska newspapers, September, 1970.

that the resolution was "... just a legal matter we can't delay action on." Supporting the Mayor's plea for immediate action to end the franchise, City Attorney Seig testified before the Council that the motion was necessary "... to protect the legal rights of the City of Omaha." The city solicitor further pointed out that under the provisions of S.F. 310, no utility could be operated in a metropolitan area by a power district without a franchise. Because petitions to form an Omaha Public Power District were now circulating, the NPC franchise could "be assigned to it overnight," thereby jeopardizing Omaha's legal rights. 15

Consideration by the Public Works Committee on legislative bills dealing with the Omaha controversy began on February 16. Senator Peterson, testifying before the Committee, observed that his bill to repeal L.B. 204 had been introduced "... to unwind the tangled skein of the Omaha power controversy." The Senator, declaring the activities of the OEC to be "totally unlawful," commented that he felt the legislature should "... act to repudiate the transaction by the repeal of L.B. 204."

Peterson, commenting on the involvement of the LRPPD in the purchase of the common stock, declared their action was in "supreme contempt of the law." The allegation was

based upon provisions of S.F. 310 which required that any bonds sold by any state hydro system were to be sold by public bidding, a legal point apparently overlooked by the Loup officers. The creditability of the charge, however, was somewhat questionable since the LRPPD had sold the bonds on a temporary basis for thirty days at three percent and had called for public bids on the refunding of the debt on December 26, receiving by January 10 thirty-two queries from banking houses asking for detailed information on the sale of the bonds. Although there was apparently some question as to the legality of the procedure used, it might well have been necessary to maintain secrecy. With the Mayor and City Council doing all they could to stop any transaction, an open sale of the bonds might have precluded any firm from purchasing them, except at prohibitive rates.

Also appearing before the Committee were Mayor Butler, Commissioner Towl, and City Attorney Seig, all testifying against the repeal bill, L.B. 139, and declaring their support for L.B. 204. Peterson, in additional remarks, reverted to the much debated issue of the people's right to determine the question of municipal ownership. The Senator, pointing out that since L.B. 204 had required such confirmation and since no election on the acquisition of the NPC

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16 The Lincoln Star, February 17, 1945.
17 Morning World-Herald, January 10, February 17, 1945.
had been held, L.B. 204 should be repealed and in its place legislation enacted to prevent the new owners of the properties from selling the company to themselves. To achieve this end, Senator Peterson observed that his bills would prevent the NPC from forming a public power district and would give the public the power to acquire the properties by condemnation if necessary, a step which certainly the present owners would not invoke against themselves acting as the PPC since such action would be against their interests.18

T. H. Maenner, Chairman of the NPC, in commenting on the developments in the Public Works Committee, declared that the NPC Board of Directors and the OEC had always been willing and anxious to go along under L.B. 204. Senator Cullingham, Vice President of the NPC and Secretary of OEC, in commenting on the Peterson bills in the first definitive statement as to what the new owners' intentions were, declared that the "group" would "... continue to work toward formation of an Omaha Public Power District under S.F. 310."19 The fact that a member of the NPC Board of Directors was also a state legislator was certainly to afford the new owners a considerable advantage in effecting the plan, an advantage the Mayor might well have envied.

18 Lincoln Nebraska State Journal, February 17, 1945.
Yet, Cullingham's position obviously would allow all comers to question his impartiality in the matter.

Whatever political division was to be forthcoming over which course of action would best fulfill Omaha's interest, L.B. 139 did provide the impetus for unifying Omaha city government. On February 16, Councilman Towl introduced a resolution affirming the Council's "...faith in L.B. 204 as the method of acquiring control of Nebraska Power Company for the public benefit." In a unanimous vote, the Council adopted Towl's resolution, an action which finally concluded the disunity in the council chamber which had lasted over twelve months.20

On February 15, 1945, several legal developments occurred simultaneously which intensified the power situation. While in State District Court, Judge James T. English was signing a restraining order preventing the city from demanding the surrender of the NPC franchise, the Nebraska Supreme Court was overturning Judge Dineen's injunction issued against the PPC. In the action brought by the NPC to prevent the loss of its franchise, it was alleged that the Council's ordinance was unlawful because the franchise was perpetual, and the ordinance would impair the company's stocks, bonds and contracts in violation of the State Constitution. Further, the petition noted that the Council's

resolution violated the due process clauses of both the United States and Nebraska State Constitutions. Lastly, it was declared that the action was illegal since it interfered with interstate commerce because the NPC transmitted power over the company's lines to Kansas. In the State Supreme Court's decision allowing the PPC to resume its activities, the Court held that the Council's action forming the PPC was administrative in nature and, because it executed a proviso already existing in state law, the action did not require approval by the electorate. Of interest to those advocating L.B. 204 as the best method of obtaining the utility properties was the upholding by the Supreme Court of Judge Dineen's ruling that the question of constitutionality did not belong in the case. Because of the Court's decision, it was now possible, as Senator Peterson saw things, for the PPC to buy the NPC from themselves at whatever price they might feel appropriate.

By February 17, 1945, the Civic Committee on Power had concluded its investigation. In regard to assuring the best interests of the city, the committee recommended that the electric properties be acquired by negotiation under the provisions of L.B. 204 and that NPC's proposed plan, calling

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21 Lincoln Star, February 16, 1945.
for the formation of a public power district, be rejected. Further, the Civic Committee recommended that a properly "constituted authority, duly and legally qualified to represent Omaha" initiate steps to nullify all contracts or agreements between the non-profit group and the financers and, if negotiations did not prove fruitful, condemnation proceedings be instituted. The committee's report seemed unaware of the events which had previously transpired. The properties had already been acquired by negotiation and it hardly seemed feasible that any group, non-profit, government or otherwise, would acquire ownership of the properties without paying the sums already given by the non-profit group and previously offered by both the Consumers Public Power District and the Mayor's Committee. Secondly, although the committee declared that negotiation should be arrived at through a properly "... constituted authority, duly and legally qualified," the Committee failed to establish how the new agencies would become duly and legally qualified should L.B. 204 be declared unconstitutional. Lastly, the recommendation that should negotiations fail, condemnation proceedings be implemented seemed to declare support for what was already the course of action selected by the city government. Since the City Council and Mayor had previously declared the price paid by the OEC to be excessive and their intent, therefore, was to condemn the
properties, the Committee's proposal seemed more like a trek through history than a positive recommendation to end the controversy.\textsuperscript{23}

The Committee's report met with a "... favorable and generally enthusiastic" reception in the community. The Omaha Industries, Inc., which included nearly all Omaha manufacturers and consumed almost one-half of electric power produced in Omaha, offered its cooperation to implement the group's report.\textsuperscript{24}

The \textit{World-Herald}, also praising the Committee for its notable service, declared that the recommendation "... cut through the acrimony and dissention which have befogged the issue and comes to a sensible and good humored conclusion." The newspaper, aligning itself with those advocating the use of L.B. 204 to achieve municipal ownership, observed that the bill was tailored to "... fit the needs of Omaha" and questioned why the Unicameral should spend time in deciding "... the best interests of Omaha" again and why the bill should be repealed since it was "... acceptable two years ago and is obviously as good today as it was then." Governor Dwight Griswold, also offering his thanks to the group for their work, announced his belief that the Omaha controversy should be resolved

\textsuperscript{23} \textit{Lincoln Star}, February 19, 1945.
\textsuperscript{24} \textit{Evening World-Herald}, February 18, 28, 1945.
under the provisions of L.B. 204. However, not all found the proposed plan acceptable. The City Council, while commending the Committee's effort, issued a statement reaffirming the city's intent to acquire the NPC by condemnation. The Metropolitan Utilities District, announcing its disapproval of the Committee's recommendation pointed out that since several bills in the hopper affected the MUD and the Committee had not consulted the MUD, it could not endorse the report as it referred to the implementation of L.B. 204. The public statement concluded by noting that the MUD, by necessity, had become involved in the utility controversy and found it impossible to approve "through silence" the recommendation that the PPC "... continue to represent the people in the final solution of the problem." The Metropolitan Utilities District held this position since it concluded that the NPC and the PPC would, in fact, be the same individuals.  

On March 2, 1945, the Public Works Committee began hearing testimony regarding L.B. 298 which provided for a MUD takeover of the NPC. The hearing, reported as a "free for all" by the World-Herald, was highlighted by an allegation by Senator Peterson that the purchase by the non-profit group allowed the American Power and Light Company

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to remain in the "saddle" because the holding company had:

... bought $5,200,000 worth of the securities issued to finance the purchase of its Nebraska Power common stock by the Omaha group. Thus, American Power and Light Company, the sellers, financed one-third of the purchase and holds one-third of the securities as well as a lien on the stock. The purchase was a deal which does not stand the light of day; it should be cut out by the roots.

Attorney W. C. Fraser, representing the new owners of the NPC, pleaded the innocence of the non-profit group, declaring the OEC only sought "but one end," which was public ownership of Nebraska Power. Defending the Loup River Public Power District's involvement in the transaction, the attorney remarked that the hydro had not obtained "one dollars" worth of the NPC. In conclusion, Fraser commented that resistance to the new owners "centered" in the Committee to Keep Power in Omaha which desired private ownership to continue. The lawyer, declaring NPC's opposition to L.B. 229, observed that the MUD should not assume control of the electric utility because the "... naturally competitive gas and electric utilities should not be managed by the same agency."

Other persons, appearing before the Committee, included Mayor Butler, G. H. Seig, NPC Vice President and former City Attorney, and William E. Kavan, Secretary of the Omaha Municipal Ownership League. Mayor Butler and Seig both testified against L.B. 298, asking that the Committee let Omaha solve its own problem. Kavan, also testifying
against the measure, commented that the Committee should not report the bill out since several members of the MUD board opposed public ownership of the utility.  

Although apparently some common ground for agreement between the MUD and city officials over the possibility of a MUD takeover of the NPC was evident, it was not surprising to find that even this group could not agree on the specific provisions of the plan. Mayor Butler, commenting on L.B. 298, observed that, since the bill would result in a loss of revenue approximating $800,000 annually because the district would not be required to pay local taxes, the measure was unacceptable. In regard to the payment of three and one-half percent of MUD's net revenue to the city in lieu of taxes, as provided in L.B. 334, the Mayor expressed little satisfaction over this possibility.

Harold C. Linahan, City Attorney, discussing L.B. 334, alleged that the "... MUD would be allowed to pay what they wanted, when they wanted." Further, the city solicitor remarked that since the MUD could only make payments in lieu of taxes when outstanding bonds were retired, the district could issue new bonds whenever they wanted, leaving Omaha without the revenue it was now receiving from the operation of the utility.

Senator Peterson, responding to the remarks of city

officials, declared that he had submitted the bill to the Legislature as a companion measure to accompany L.B. 298 and that the proposal had accompanied other material forwarded to him by MUD officials. The Senator, remarking on the controversy developing in Omaha over the bill, observed that the city reminded him "... of the Irishman who didn't know what he wanted but wasn't satisfied until he got it." Whether the enactment of L.B. 298 and L.B. 334 would result in providing the city with payments in lieu of taxes or not, the fact that a three and one-half percent payment would result in payments approximating $150,000 annually could hardly have pleased the city government since the "in lieu" payment would have left the city still short nearly $650,000.27

During the early days of March, debate continued over what course of action would result in assuring the best interests of Omaha. While Governor Griswold recommended that the legislature go "slow" and allow Omaha time to settle its problem, Fraser and other members of the NPC continued to support the idea of forming a public power district under the provisions of S.F. 310.28 Yet by March 10, the issue had been considerably refined with the Power Committee killing three of the four major power bills

27 Morning World-Herald, March 8, 1945.
under consideration. Killed by the Committee were L.B. 297, which would have prevented the OEC-NPC from forming a public power district, and the MUD bills, L.B. 298 and L.B. 334. This left L.B. 139, the measure to repeal L.B. 204, to be considered on the floor of the Legislature.

The consequence of the Public Works Committee's selectivity resulted in removing for the moment the possibility of a MUD takeover of the electrical utility. Further, by not recommending the repeal of L.B. 204 and by reporting out of Committee L.B. 139, the Committee left the issue to be decided by the entire Legislature. Although it would cost the Unicameral considerable time, Omaha supporters of L.B. 204 were to be given a second opportunity to work their problem out under the special legislation and additional time to regroup their forces for the forthcoming struggle.

The Mayor, dissatisfied with the Committee's action, commented that its decision in the matter clearly indicated that a majority of the group supported "... ratification of the illegal transaction made with Guy Myers." Butler, observing that time would tell whether the Legislature supported Omaha or Guy Myers, accused committee members of Sidney Cullingham of Omaha and Senator Ed. F. Lusienski of Columbus of having conflicting interests since Cullingham was one of the NPC Vice Presidents and Lusienski headed

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the contract department of the Loup District.

The Mayor's disappointment possibly resulted because he was anxious to have the Committee kill L.B. 139 which threatened L.B. 204 and pass L.B. 297, precluding the formation of a public power district. It was the failure of the Committee to kill L.B. 139 and recommend the passage of L.B. 297 which accounted for Butler's inference that the two Senators were not giving the city fair and impartial treatment. Senator Peterson, commenting on the Committee's action killing his proposed legislation, remarked that the Senators would "... never live long enough to forget it if they do not do something at the session to halt completion of the new owners plans." 30

On March 14, 1945, Senators Cullingham and Peterson reached an agreement on how to solve the Omaha controversy. The compromise plan, which called for the reintroduction and amendment of L.B. 297, provided for the formation of a fifteen-member board to serve as directors of an Omaha Public Power District. The proposal provided for the appointment of six members by the City Council, three members by the Governor and six NPC owners to serve on the Board. The result of the compromise plan, it was alleged, would be to stop the NPC owners from selling to themselves the NPC once they formed a district. In addition to the amendment

of L.B. 297, the plan proposed the repeal of L.B. 204 by L.B. 139 and passage of L.B. 260, a bill introduced on March 14, providing for a MUD takeover if Omaha acquired the NPC through condemnation. 31

City government, remarking on the proposal, showed little willingness to see L.B. 204 repealed. In commenting on the compromise plan, Mayor Butler alleged that financial circles would favor such an arrangement since they could "... make a deal with a fifteen-man board." The Mayor, in endorsing L.B. 204, noted that under that law it would be impossible to make an underhanded deal allowing for an "exorbitant price" for the utility since the statute provided for a popular vote on a price settlement by the PPC. 32

The MUD responded with mixed emotions. 33 Although the MUD Directors refrained from taking a formal vote on whether the utility district should support L.B. 260, remarks during a board meeting over a proposal to endorse that bill revealed the considerable disunity. While Board member Allan Tukey observed that the entire issue was "too controversial" and that becoming involved would not

31 Lincoln Star, March 14, 1945.
33 Frank Frost, previous MUD Board member. No records are existent regarding the debate over L.B. 260, September, 1970.
contribute to maintaining goodwill with the Unicameral, W. H. Quigly, a fellow member, retorted that it was "... high time that the MUD - spell out - tooted its own horn - 100 percent in favor of the bill." Tukey, responding, observed that since many well informed citizens believed that one district board could not adequately operate both utilities, "We can't set ourselves up as holier than all on the thing." In reply, Frank Frost, the Chairman, said that if the MUD had taken an earlier stand and exerted positive leadership, the controversy would not have developed and the district would be managing the utility. Concluding the discussion, Tukey noted that such leadership would have been to no avail since the Legislature would have interpreted such an effort as "... grasping for power" on the part of the Metropolitan Utilities District.34

The *World-Herald's* response to the Peterson-Cullingham proposal also reflected disfavor with the repeal of L.B. 204. The newspaper, observing that because the struggle was being conducted against a backdrop of over two years involving personalities, pride and political prestige, all factions involved had come to believe "... that a harmonious settlement of the power issue is of greater importance than the number of the law under which public ownership shall be brought about." The paper, declaring the repeal of

L.B. 204 would be arbitrary and wasteful, observed that such a course might "... plunge the committee into more months of wrangling and, possibly, into a condemnation election."

The paper's stand on the issue was the first instance in which it opposed the position advocated by the new owners of the NPC. The paper's belief that L.B. 204 would be more expedient was partially based on the fact that previous members of the PPC had resigned their posts and new appointments were forthcoming. With the replacement of the PPC by new appointees, the criticism that the NPC would be selling its properties to itself would be eliminated.\(^{35}\)

Governor Griswold reacted to the compromise legislation by declaring his intent to veto L.B. 139. The Governor, commenting on the recent development, noted that it was unsatisfactory since it was "... tremendously involved and would only create additional controversy and confusion." In reasserting his support of L.B. 204, the Governor noted that it should be used as the vehicle for Omaha's acquisition of the NPC since it provided for voter approval of a negotiated price, a step which the Governor felt was "absolutely necessary." Senator Cullingham, responding to the Governor's statement, declared that Griswold "... had joined those interests in Omaha whose sole objective is to delay to the utmost the full public

Meanwhile, by March 1, 1945, all previous appointees to the Omaha PPC had resigned. With the resignation of Edward F. Leary and Gerald Collins, the pathway was clear for Mayor Butler and Governor Griswold to appoint a new public agency by authority of L.B. 204. On March 16, Mayor Butler, with the unanimous approval of the City Council, appointed five new members, including Samuel L. Cooper, President and Treasurer of Orchard & Wilhelm Company; David Goldman, Secretary-Treasurer and Manager of Herzbergs, Inc.; C. E. Metzer of the Roberts Brothers firm and Rose Livestock Commission; Charles D. Saunders, Vice President, First National Bank; and J. M. Harding. The Mayor, announcing the appointments, urged all parties involved in the power dilemma to unify behind the PPC and start over since the past was now "water over the dam." On March 19, 1945, Governor Griswold announced the appointment of two additional members to the PPC, Ray E. Bett of Hooper and Karl C. Brown of Papillion. The Governor, commenting on the appointments, noted that now a strong public agency was in existence and that he, therefore, felt that they should "... be permitted to function under the law now in

36 Lincoln Star, March 20, 1945.

On March 22, 1945, the Public Works Committee once again opened hearings on the resurrected and revised L.B. 297. The compromise plan, already altered to provide for nine members appointed by the Governor, began with Senator Peterson testifying against L.B. 204. The Senator observed that if L.B. 204 were not repealed considerable time could be lost in testing the bill's constitutionality. He added that while Omaha city officials were supporting the measure, they were "... submarining it by their condemnation action." In conclusion, Peterson charged that:

Many of those in Omaha who ask that the legislature do nothing about the power situation have a financial interest in that they own or represent persons who own Nebraska Power Company preferred stocks and bonds. The longer full public ownership is delayed, the more dividends they collect.

Whether or not the Senator was referring to Mayor Butler or the City Council in his remark "or represent persons," a statement issued by the LRPPD left no doubt as to the district's opinion when it declared the city hall's support of L.B. 204 resulted from "... playing politics because the election is up." Attorney Seig, testifying against L.B. 297, observed that the non-profit group had paid ten to fifteen million dollars too much for the NPC and charged "All of the Public Power District will use all the votes they can influence to put this deal over in

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38 *Lincoln Star*, March 9, 1945.
The World-Herald, continuing its plea for retention of L.B. 204, remarked editorially that the bill was "good" and it established an "... efficient form of public ownership." The editor, noting that the OEC opposed L.B. 204 because of its questionable constitutionality, declared that the opinions of lawyers, who "... may or may not be unbiased, should not be made the basis for deciding public policy." In conclusion, the paper declared that the question of L.B. 204's constitutionality should be decided in court and "... not by a straw vote taken on Farnam Street or Lincoln's 'O' Street." 40

Governor Griswold, stepping up his campaign to retain L.B. 204, dispatched letters to all members of the Legislature appealing for their support of L.B. 204. The Governor, noting the bill "... is today the law of Nebraska" and his disapproval of the non-profit group transaction, declared:

As a public official, I do not feel that I can overlook this action, and I do not believe it is good public policy on the part of the Legislature to, in any way, condone these acts by passing a new law which will permit the completion of a deal which is contrary to existing statute. 41

41 Lincoln Star, April 6, 1945.
Further support of L.B. 204 in the city became evident when the Associated Retailers of Omaha, speaking for fifty retail firms, announced the adoption of a resolution endorsing the statute. Also announcing disapproval of the repeal of L.B. 204 was the Omaha Manufacturers Association.42

Between April 10 and April 24, several more changes were made to L.B. 297 in an attempt to resolve the controversy. While Senator Peterson called for the removal of Loup River Public Power District directors for "mal-administration," Mayor Butler continued to oppose any solution other than L.B. 204, declaring his intent to institute condemnation proceedings should that law be repealed. With the City Council postponing the condemnation vote from May 15 to June 26 to await the Legislature's disposition of the pending power bills, a new plan emerged which found acceptance by a great many groups. The new plan, under L.B. 297, now calling for the appointment of seven members to be appointed by the Governor, contained several new provisions including the granting of condemnation power to the Board and prohibiting the purchase by any other state hydro district of the NPC properties.43

On May 7, 1945, the Legislature passed, without a


dissenting vote, the compromise plan. With the passage of L.B. 297, the Legislature also enacted L.B. 139, which repealed L.B. 204, and L.B. 260, providing for a MUD takeover of the NPC should the properties be acquired by condemnation. Several days later, Governor Griswold signed the measures into law. Under L.B. 297, three steps, identical to those contained in S.F. 310, were included to provide a procedure to attain municipal ownership. First, petitions would be circulated within the proposed district. When at least fifteen percent of the voters in the proposed district who had cast ballots in the last gubernatorial election had signed the petitions, the second phase of filing the petitions with the State Department of Roads and Irrigation would be undertaken. Should the petitions be certified as prescribed, the third step of establishing an OPPD and appointing directors to the new board could be implemented.

The bill provided for five directors to be appointed from Omaha and two from the area served by the OPPD outside the Omaha boundaries. The area outside Omaha was divided into two subdivisions, the Southern District and the Northern District. The Southern District included southern Douglas County, southern Saunders County, Sarpy, Cass and Otoe Counties. The Northern District was to include northern Douglas County, northern Saunders County, Washington, Dodge

and Colfax Counties. One Director was to be chosen from each of the two areas. 45

Mayor Butler, opposed to the plan, declared that it was unacceptable since no appraisal of the NPC properties was required by the law, thus making possible "... another Board of Directors to negotiate a purchase at an exorbitant price." Butler, declaring the "sole hope" of Omahans would depend on the individuals appointed by the Governor, noted:

If these directors should exercise the condemnation rights given to them, the people may be protected but, if the new directors embark upon negotiations without any appraisal of the value of the property, the results are likely to be disastrous. 46

Governor Griswold observed that he felt the Legislature had done a good job in "... working out a worthwhile plan." The Governor pointed out that since the Board to be appointed would be independent of the new owners and armed with condemnation powers, the city could get a "reasonable price." Apparently this was sufficient to remove his earlier displeasure with the bill's lack of a provision for voter approval of a negotiated price, a provision L.B. 204 had contained and one the Governor earlier believed was necessary.

Senator Walter R. Raecke of Central City, Chairman of the Legislative Council's Power Investigating Committee,

45 Lincoln Star, May 7, 8, 1945.
discussing the new bill, noted that it removed the criticism that ". . . special legislation was being enacted and that the state had two conflicting power laws." Further, the Senator noted that by granting the power of condemnation to the Board, it would have sufficient means to assure a reasonable price for the NPC. Raecke, remarking on the Board's composition, observed that by disallowing any member of the NPC to serve, the possibility of continued control by the new owners would be eliminated. Senator Peterson observed that the bill provided "... a basis which is sound and which gives promise of being successful." 47

While Mayor Butler was announcing his disapproval of the compromise legislation and his adversaries were calling his policy one of "rule or ruin," steps were initiated by business and civic groups to secure petition signatures for the formation of an Omaha Public Power District under S.F. 310. By mid June, 1945, the group had acquired over five thousand signatures. 48

Response to the utility dilemma was not limited to the state level. On May 27, 1945, Walter Winchell, on his Sunday national radio broadcast, declared that the SEC was going to initiate ". . . a bare knuckle fight on the sale of Nebraska Power Company." Ganson Purcell, SEC Chairman, 47 48

47 Lincoln Star, April 25, 1945.

48 Morning World-Herald, May 1, June 1, 2, 1945.
commenting on Winchell's statement, remarked "I guess that's just Mr. Winchell's best guess. We don't tell anyone, including Mr. Winchell, when and if we are making investigations."

The *Omaha World-Herald*, speculating on the source of Winchell's information, noted that the commentator's remarks possibly resulted from a letter which had been sent to the SEC on May 26 by Representative Ben Jensen, Republican of Iowa, asking for an investigation of the NPC transaction. Jensen, in his communique to the SEC, alleged that the purchase involved fraud since the American Power and Light Company continued to hold interest in the NPC because it had purchased five million dollars of the bonds issued to finance the sale while the holding company declared to the SEC that the American Power and Light Company would be "... divested of all interest in the NPC" after the purchase. Further, the Representative charged that because the OEC had financially backed "... a whole slate of candidates in the May 15 municipal election in Omaha," the OEC should be charged "... with openly and flagrantly violating the corrupt practices section of the Holding Company Act." Although the OEC declined comment on the American Power and Light Company's involvement in the purchase of the NPC, W. W. Wenstrand, one of the OEC attorneys, replied that the non-profit group "... had nothing to do with the May 15 election. It took no part in it
and contributed no money."49

Further federal concern in the utility controversy surfaced on July 6, 1945, when Representative Lyle H. Boren, an Oklahoma Democrat and Chairman of the House Interstate Commerce Subcommittee which was conducting hearings on the Public Utilities Holding Company Act of 1935, charged that the sale of the NPC was a "... gigantic swindle which threatens to wreck the 1935 Holding Company Act and to damage the United States Treasury."

Representative Boren, noting that his remarks were based on information received from William Ritchie, attorney for NPC preferred stockholders, further charged that the OEC had been established in order to "... fake public ownership of power companies so Federal taxes could be evaded." The Omaha sale, as Boren put it,

... is one step in a scheme by shrewd manipulators who would convert the 18 billion dollar private utility industry to a form of tax-free fake public ownership by the formation of non-profit corporations. This scheme already has worked in Omaha where the 32 million dollar Nebraska Power Company has been sold to a fake non-profit corporation of four men for the swindle price of 45 million dollars. As a conspiracy against the United States Treasury--tax free public ownership threatens to remove 468 million dollars of government revenue which would support approximately 20 billion dollars of national debt.

Declaring the entire affair a "simple scheme," Boren continued:

Wall Street bankers would convert the eighteen billion dollar private utility industry to a form of tax-free but fake ownership by the formation of a non-profit corporation. These corporations then issue bonds against the revenue of the property. But the bankers, in estimating annual revenue to determine the amount of bonds that can be issued include as revenue the amount of money formally collected from customers and paid to the Federal Government. The former tax revenue would not be passed on to the public in reduction of electric rates but diverted to their own pockets in the form of interest on these revenue bonds. The stakes are high - this bonanza dwarfs the snag of Teapot Dome. But with this difference. It appears to be legal.50

T. H. Maenner, Chairman of the NPC, and Bernard Stone, President of the OEC, commenting on Boren's allegation, noted that the non-profit group was not a "fake" and that it was "... merely a temporary expedient" which would be dissolved when the properties were turned over to a public power district. The men, continuing, noted in their public statement that no swindle was in the making since no revenue bonds had been issued and there was no intention of issuing any. W. C. Fraser, NPC counsel, remarking on attorney Ritchie's part in the Boren allegations, charged that the lawyer was attempting to delay public ownership to allow for continual dividends of six and seven percent to be paid on preferred stock held by his clients. Concluding, attorney Fraser alleged that Ritchie was acting out of

50 See Subcommittee Hearings on Holding Company Act, House Interstate and Foreign Commerce Committee, Part I, p. 273; as cited in Firth, Public Power in Nebraska, p. 190.
desperation and that the information he had given Boren was based on "... prejudice and not on facts."

Not to be bypassed by Representative Boren were Guy Myers, OEC Agent, and Howard Aller, President of the APL. Boren, charging that the two men were the "chief" instigators of the "Swindle, Inc.," alleged that:

It was Aller who unloaded the common stock of Nebraska Power Company on Myers' synthetic non-profit corporation, ... for $14,000,000--stock that cost the American Power $105 thousand dollars and which had a legitimate earning value that might possibly justify a price of five million collars. The Omaha Electric Committee, Inc., sets the pattern for Swindle, Inc. Aller's company received three times the rightful price for his property and Flash Myers got an agent's commission of a known 530 thousand dollars. A sweet deal for everybody--except for you and me and all the rest of the taxpayers.

President Aller, in response to the Boren blast, remarked that he did not know of any "trick" to swindle the public and that the Representative's allegations were "ridiculous."^51

Within several days, the Oklahoma Congressman softened his attack on the NPC transaction. Shortly after the Subcommittee met in executive sessions and approved plans to study the "Omaha deal," Representative Boren remarked that because he had not been aware that the OEC was a "temporary vehicle," he could understand how his comments "... might appear as prejudgment" which, he declared, was not his position. Boren, stating that his committee did not intend

to "... intervene in the Omaha situation," declared the further inquiry would be used to furnish information "... to guide us in recommending changes in the Holding Company Act." The Subcommittee hearing continued for another nine months; however, no further disturbing charges echoed from Capitol Hill.

Between April and July, 1945, Omaha's attention was diverted from the power struggle to the question of local politics. Whether or not the NPC conflict influenced the voters, Mayor Butler and several of the Councilmen were not reelected to office. It was later alleged that the non-profit group had paid for the campaign to defeat them. Subsequent evidence, however, revealed that the OEC had in no way contributed financially to the forces opposing Mayor Butler. The result of the election was of paramount importance to the outcome of the power struggle since both the newly-elected Mayor and Councilmen supported the OEC and were not inclined to follow the line previously taken by Mayor Butler. By July 10, the new City Council was in operation and was initiating action to repeal both the rate reduction and condemnation ordinance. Further, the Council, by a five to two vote, passed three additional resolutions to (1) ask dismissal of the City's suit requesting that the

52 Ibid., July 10, 1945.
53 Firth, Public Power in Nebraska, pp. 190-191.
OEC's purchase be nullified, (2) rescind the previous Council's action cancelling the NPC franchise, and (3) withdraw Omaha's protest to the SEC. The resolutions introduced by Mayor Charles Leeman were supported by Commissioners Joe Dolan, Carl Jensen, Arthur Weaver and Roy Towl. Both City Councilmen Trustin and Knudsen opposed the action.

Certainly, the Council's action must have found considerable favor since it finally allowed for a closing of ranks within Omaha, thereby bringing closer the possibility of municipal ownership. Mayor Leeman remarked that the action had been taken to remove any obstacles which would impair the formation of a public power district. The Mayor, remarking on the previous administration's actions, noted that they had been instituted for only one reason, "... to block public ownership" of the NPC.

Both Knudsen and Trustin opposed the repeal of the action, noting that further consideration and study should be given to the matter. Commissioner Weaver, pointing out that he and the other new members of the Council had already thoroughly discussed the matter, noted that the two dissenting Commissioners had been members of the Council "... a long time and all through the power fight knew all about it." Weaver, observing that the city could renew the previous actions if necessary, declared, in response to the dissenting Commissioners' remarks that if they did not know all about it, "... the Lord knows when you will know..."
about it if you don't know now."  

Some factions, however, were still opposed to the formation of a public power district, contending that too high a price had been paid for the properties. On July 13, the City Council held open hearings on the power measure. Among some fifty people present, several spoke out against the repeal of the previous Council's actions. Former Commissioner Walter Korisko, taking issue with Mayor Leeman's remarks, declared that the previous Council's action was motivated by a concern to purchase the NPC at a reasonable price and not out of a desire to block city acquisition of the plant. He also denied that the former Council had acted in bad faith as alleged by Commissioner Carl Jensen.

M. L. Donovan, Omaha attorney representing two Council Bluffs clients, the Pennsylvania Consumers Oil Company of Council Bluffs and Harry A. Eckert, in a Federal suit which asked the OEC's purchase be set aside as illegal, followed Korisko and charged the purchase was "... the most outrageous thing I have ever seen in 35 years of specializing in fraud litigations." Also appearing before the Council in opposition to the action were attorneys Frank G. Odell and Eugene D. O'Sullivan; Peter Mehrens, 

real estate man; and City Solicitor G. H. Seig. The main contention of all speaking out against repeal of the ordinance was the belief that the OEC transaction had resulted in too high a price for the NPC properties.

Appearing before the Council in support of repealing the disputed ordinance was T. H. Maenner. Testifying before the Council, Maenner remarked that the new owners were prepared to sell the NPC for at least one million dollars less than they paid for it.55

Further developments in the power controversy during July and August concerned the retirement of preferred stock by the NPC. The par value of the outstanding NPC preferred stock stood at 7,452,000 dollars in July and earned a six or seven percent dividend payment. The NPC, desiring to reduce operation costs and economize, requested authority to issue seven million dollars worth of serial notes backed by first mortgage bonds, with the notes to be issued at a 2 1/2 percent rate. The retirement of the stock, it was believed, would result in an annual savings to the company of 318,000 dollars. To this end, the NPC filed an application with the Nebraska State Railway Commission for authorization to issue the notes. Simultaneously, the power company also filed an application with the Federal Power Commission for permission to refinance the stock although

taking a position during the hearing that the FPC did not have jurisdiction. 56

Considerable opposition was generated against the NPC's application during hearings before the Railway Commission by the Chemical Bank and Trust Company of New York. The Company, represented by attorney Allen Aitken, contended throughout the hearings that the authorization should not be granted since the retirement of the stock would result in placing the company's 3,500,000 dollars in debentured bonds in a junior position to the contemplated serial notes to be issued by the NPC. Also objecting to the proposed action by the power company was the Omaha Ice and Cold Storage Company, Inc., which contended that the financial plan would impair the NPC's financial structure.

The hearings before the Railway Commission included testimony relating to every aspect of the OEC purchase agreement. Among points argued by contesting attorneys were questions including whether the price paid for the common stock by the OEC was too high, whether the purchase of the NPC was authorized, whether the contract between the OEC and LRPPD should have been approved by the FPC and

whether L.B. 297 was constitutional.  

The Federal Power Commission hearings regarding the NPC's application to retire its preferred stock, although involving arguments over every facet of the long power controversy, primarily dealt with whether the FPC had jurisdiction in the matter. Attorney William Ritchie, representing the Omaha Ice and Cold Storage Company as users of power, contended that since the contract between the OEC and LRPPD involved facilities used in interstate commerce, it therefore required FPC approval. Since the OEC failed to obtain the approval of the Commission, the lawyer argued that the FPC should void all contracts involved in the OEC transaction. During the two weeks of testimony, Ritchie let no opportunity pass to air his contention that the entire purchase was a "swindle" and that Senators Cullingham and Lusienski had acted out of personal interest during the Public Works Committee's hearings on power bills since Senator Cullingham was a member of the OEC and Senator Lusienski was connected with the LRPPD. The attorney also spent considerable time probing members of the OEC regarding their motives in the purchase of the properties.

The NPC, represented by John B. Dawson, contended that the FPC did not have jurisdiction in the matter since.

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the OEC was a political subdivision of the state. Dawson also said that approval of contracts between the OEC and LRPPD did not require FPC approval because the NPC was indirectly owned by the LRPPD. Lastly, the NPC argued that since the OEC was an "... agent, authority or instrumentality" of the state, the OEC did not fall within the provisions of the Holding Company Act.59

Factions supporting the NPC position also used these hearings as a sounding board for the contentions. W. C. Fraser asserted before the FPC that organized private utility interests were the "... real forces behind opposition to the public power ownership in Omaha." Fraser, noting that the retirement of the stock was intended to reduce costs, reduce debt retirement and hasten rate reductions, declared that Ritchie:

... as an attorney will appear for anybody to thwart this transaction for public ownership. This is only a continuation of the fight all over the United States by private interests against the transition to public ownership.

On August 10, 1945, the FPC ended its fifteen-day hearing after compiling two thousand pages of transcript, including fifteen exhibits.61 Although the FPC did not issue a decision and the NPC had to wait six months before the

59 Ibid., pp. 21-29.
60 Evening World-Herald, October 29, 1945.
61 Federal Power Commission Reports, pp. 31-32.
Commission declared that it did not have jurisdiction in the affair, the State Railway Commission did reach a decision which reflected the state's wish to keep jurisdiction of local matters within Nebraska. The State Commission, in granting permission to issue the bonds, overruled all objections. The decision, noting that the primary concern of the Commission was to "... determine public good" and that protection of investor interests was a secondary consideration, declared that there could be no doubt that the NPC was in the process of becoming a publicly-owned utility. In reference to objections raised by opposing groups, the Commission remarked that although the matters were of vital concern, the Commission had no jurisdiction and that charges of "... fraud, duress, intimidation, coercion, mismanagement and misrepresentation must be decided by a court of competent jurisdiction."62

T. H. Maenner, while saying that the NPC would await a decision by the FPC, remarked that the Railway Commission decision "... was a vital step in clearing the way for refinancing of the preferred stock." W. C. Fraser was most enthusiastic over the Commission's decision, declaring that it showed the desire of the Commission to keep jurisdiction of the affair within the state. William Ritchie responded to the decision by announcing his intent to take the matter

before the State Supreme Court. 63

On January 26, 1946, the FPC, by a three to two vote, ruled that it did not have jurisdiction on the NPC's stock refinancing since the OEC was an instrument of local government. 64 T. H. Maenner, discussing the decision, observed that it proved the OEC was right and "... will mean that interest rates can be reduced greatly, to the benefit of power users." William Ritchie responded by asserting his intent to appeal for a rehearing and, if necessary, to bring action in the U.S. Circuit Court of Appeals. In arguing that the FPC did have jurisdiction, Ritchie reiterated his belief that the entire non-profit group transaction "stinks." 65

Hoping to secure the reversal of the OEC transaction, Ritchie initiated several law suits during 1945 and 1946. In late 1945, he filed a suit in the State District Court on behalf of preferred stockholders asking that the NPC transaction be cancelled since it would be detrimental to the interests of this group. On March 1, 1946, Ritchie and G. H. Seig filed another suit asking that the Court void


64 Federal Power Commission Reports, p. 21.

65 Evening World-Herald, January 26, 1946.
the OEC transaction. This suit, brought in behalf of the Omaha Ice and Cold Storage Company as power users, alleged that the OEC refused to negotiate with any public agency of the city "... except at the price they paid, plus fees and commissions." As if these actions were not enough to complicate the issue, Ritchie also had pending before the State Supreme Court a suit appealing the decision by the State Railway Commission giving the NPC authority to borrow seven million dollars to retire its preferred stock.67

With the passage by the 1945 Legislature of L.B. 297, which had provided for the formation of an Omaha Public Power District (OPPD), the city could proceed toward acquisition of the NPC regardless of the opposition spearheaded by William Ritchie. Under the provisions of the bill, petitions for the establishment of the OPPD were circulated between May and August, 1945. The drafting and circulation to obtain the required number of signatures got off to a good start with the Governor endorsing the petition effort. Among the prominent city groups endorsing the petition effort were the Omaha Manufacturers Association, the Board of Directors of the Associated Retailers, the Keep Power Control in Omaha civic group and the Omaha Chamber of Commerce. On

66 Ibid., March 1, May 31, 1946.

June 18, Election Commissioner Joseph A. Vojir announced that approximately one-fourth of the signatures required had been obtained and, by July 14, over 13,000 signatures were secured. By August, the required number of signatures had been obtained and presented for certification. On August 24, 1945, State Engineer Wardner Scott signed the necessary certificate allowing for the establishment of the OPPD. Mayor Leeman hailed the accomplishment as a move which would terminate the power struggle and assure public ownership of the NPC for the benefit of the city.\footnote{Evening World-Herald, June 25, July 14, August 24, 1945.}

On the same day that the petitions were approved, Louis F. Armburst filed a suit in the Lancaster County Court to test the constitutionality of L.B. 297. Armburst, represented by Eugene O'Sullivan of Omaha and H. B. Muffly of Lincoln asked the Court to enjoin the Governor from appointing a Board of Directors for the OPPD. Further, the suit requested that State Engineer Scott be prohibited from receiving or approving the petitions for the formation of the OPPD. The suit also repeated the old charge that the OEC had paid a price for the NPC which was "flagrantly excessive."\footnote{Lincoln Star, August 29, 1945.}

Since no action against the Governor resulted from the suit, Governor Griswold proceeded to appoint seven
members to the Board of Directors of the OPPD on September 15, 1945. Appointed to serve as Directors were Samuel L. Cooper, President and Treasurer of the Orchard and Wilhelm Company; David Goldman, General Manager and Secretary-Treasurer of Herzbergs, Inc.; J. M. Harding, former President of the Harding Cream Company and Assistant World-Herald Publisher; Charles D. Saunders, Vice President of the First National Bank; Carl A. Swanson, President of Carl A. Swanson & Sons; Roy E. Bott, Hooper, Nebraska, of J. R. Bott & Son Implement Company, and Karl C. Brown of Papillion, Vice President of the banking firm of A. W. Clark. The last two members were to serve as representatives from territory served by the power company outside the Omaha city limits.\[70\]

Governor Griswold, in announcing the appointees, observed that he had "... every confidence in the abilities of these men to competently and honestly bring public power ownership to Omaha and the territory comprising the district."\[71\] Mayor Leeman, endorsing the appointments, noted that the sooner the Board acted to acquire the NPC, the quicker the city would benefit from lower consumer rates which are expected from public ownership. The Omaha World-Herald, declaring the Governor's action to be "good," observed that

\[70\] Lincoln Nebraska State Journal, September 15, 1945.
\[71\] Ibid.
the interests of the people would be assured. The newspaper, noting the outstanding traits of the Directors, reflected:

... it won't be easy to find in this community better business brains, sounder business experience or more earnest devotion to public service than are represented on the new Board. 72

During 1946, little activity was apparent over the question of public power ownership. As the several suits in State and Federal Courts languished, the transaction for Omaha's purchase of the NPC was finally completed on December 2, 1946, in a meeting at the Guarantee Trust Company in New York. With fifty-five persons present representing the OPPD, OEC and LRPPD,

J. H. Cleveland, President of Guarantee Trust, handed a check for $42,000,000 to J. M. Harding, Chairman of the Omaha Public Power District Board. Mr. Harding, in turn, handed it to T. H. Maenner, President of the Omaha Electric Committee. Mr. Maenner gave a check for $13,503,511 to Ed Kelly of the Loup River Public Power District to complete the repayment of the loan made by the Loup District in 1944.

With the payment to Loup, the OPPD was, at last, in possession of the former NPC and the Omaha area, thereby, acquired a public power system. 73

73 Ibid., December 2, 1946.
CHAPTER SIX

CONCLUSION

The transfer of the Nebraska Power Company to the Omaha Public Power District on December 2, 1946, allowed Nebraska to become the first State to obtain complete ownership of the electrical plants within its borders. Business Week, reviewing the termination of the power controversy, observed that the sale marked the "... passing of the last privately owned utility in Nebraska." Further, the publication noted that the conclusion of the struggle ended the State's public ownership drive inspired initially by Senator George Norris.¹ Newsweek, commenting on Omaha's acquisition of the utility properties, remarked that it was a triumph for Henry Doorly who year in and year out supported the cause of municipal ownership.² The Omaha World-Herald, remarking on the closing of the long arduous conflict, observed that not only had a fair settlement over terms and price been achieved, but that the people who had been responsible for bringing the struggle to such a satisfactory conclusion deserved the gratitude and thanks

¹ Business Week, December 23, 1944, p. 74.
² Newsweek, October 7, 1946.
of all Omaha citizens.\(^3\)

Many questions, however, remained unanswered in 1946. Had Mayor Dan Butler acted to impede municipal ownership and was his opposition to the OEC based on political considerations or out of concern for the interests of Omaha? Was the charge leveled by Representative Boren that the non-profit group was a "fake" intent upon swindling taxpayers substantiated by later developments? What accounts for the Loup River Public Power District's concern over the Omaha power controversy and what did it have to gain by assisting the supporters of public ownership? Did the non-profit group pay too great a price for the electrical properties and would it have been wiser for the city to acquire the facilities by condemnation? Did Omaha citizens benefit by public ownership as forseen by the advocates of this approach?

As to the Mayor's involvement with the NPC in the initial preparation of L.B. 204, evidence suggests that both Butler and Aller assumed that the utility would have to be sold and that the transaction could be completed by negotiation with both parties working in cooperation. With the passage of the act, why then did the holding company suddenly reverse its position? The answer to this question is difficult to determine and several possible answers may

explain the turnabout. It is conceivable that the American Power and Light Company believed that its petition before the Federal District Appellate Court in Boston would be granted and the SEC dissolution order overturned. It may also be that the *Columbus Daily Telegram* was correct when it observed that the holding company was attempting to bring about the repeal of the special act to allow the Consumers District the opportunity of re-entering as a competitive bidder against the city.

Yet another explanation is that the APL feared the special act since it provided for electoral approval of a negotiated settlement or for condemnation which, in either instance, could have resulted in a reduction in the price offered by the City for the power plant. Whatever the reasons for the APL's stand, it is apparent that with the dismissal of its suit by the Federal District Court in 1943, the holding company set out to secure the most advantageous terms possible.

What of the Mayor's activities following the passage of L.B. 204? All available evidence indicates that his actions from the passage of the bill until the completion of the OEC transaction were above reproach and that he was motivated by a deep concern for the welfare of Omaha. Although L.B. 204 had been drastically altered by the Unicameral, Butler not only acted to implement the amended measure but fought vigorously against those who attempted
to sabotage the People's Power Commission. It is more difficult, however, to understand the Mayor's reasoning following the purchase of the properties by the non-profit group. Although Butler declared that he opposed the transaction because the group had paid an exorbitant price for the plant, the fact remains that his Special Investigating Committee and the People's Power Commission had offered, with his approval, a similar price for the properties. In addition, the Mayor had given consent in 1942 for his Committee to obtain the utility by methods quite similar to those which the non-profit group later employed.

Whether Mayor Butler acted out of revenge because he had been excluded from the OEC negotiations, as some persons alleged, or whether he concluded that developments following the purchase were endangering the city cannot be ascertained. It might well have been that the Mayor believed that voter approval was mandatory on any purchase agreement and, therefore, his opposition to the non-profit group increased as he became aware that the new owners were opposed to using L.B. 204 as a vehicle to bring about municipal ownership. There is little likelihood that either the Mayor or the City Council members were attempting to stop public ownership so that the "old power crowd" could continue to own and operate the utility. Although both the Omaha World-Herald and civic groups supporting the new owners made this indictment, there is no evidence whatsoever
to substantiate such an assertion. Available evidence indicates that this accusation, in all probability, was based on the prejudiced opinions of those who stood against the city hall's backing of L.B. 204.

The creditability of Representative Boren's pronouncement that the OEC was intent upon swindling the public and that the non-profit group was a fake is not born out by the subsequent events following the OEC's transaction. The Congressman's charge revolved around his belief that the entire affair was a swindle on the part of "Wall Street" to establish a private non-profit corporation as a means of evading federal taxes. In the first instance, Boren's assumption that the OEC was a misrepresentation is not confirmed by later developments since the non-profit group did dissolve itself and transferred the utility properties to a public agency. Neither can it be implied that initially the new owners were intent upon permanently retaining possession of the power plant. From the very beginning, the group continuously declared its objective to be public ownership and that it was only acting in a temporary capacity until that aim was realized. Corroboration of the OEC's intent is provided by the remarks of the Federal Power Commission when it noted in its report on the group's activities:

... we are satisfied that their purpose is certain and obvious; that under no circumstances should the Nebraska Power Company be operated after
December 26, 1944, on other than a non-profit basis and for the benefit of the general public of the State of Nebraska, and that of Greater Omaha in particular. The evidence shows that the course of action taken by the Omaha Electric Committee is well within the framework of the settled policy of the State of Nebraska in favor of public ownership and operation of the utilities of the State. It thus appears that the declared purpose of the Electric Committee and Loup District is that the applicant's utility properties will ultimately be turned over to the direct ownership and operation of a political subdivision of the State of Nebraska. It also appears that throughout the year 1945 the applicant's facilities were operated in accordance with such purpose.4

Why had the Loup River Public Power District become involved in the dealings? From the evidence which was gathered by the State Railway Commission and the Federal Power Commission, it was evident that the Loup District was not attempting to obtain control of the Nebraska Power Company. Apparently what seems to have motivated the Loup District was its desire to obtain available markets for the power it was producing. To understand the hydro's concern over the operation of the NPC, it is necessary to review briefly its historical development.

With the formation of the state's hydro system during the latter 1930's, a major obstacle standing in the way of its future success was where it could dispose of the power produced by the Kingsley Dam. Generating 500,000,000

kilowatt hours of prime power in a well developed field occupied by indifferent municipalities and hostile private systems, the marketing of the energy nearly became an insurmountable task. Either the hydro system could sell out to the private companies, or it could accept the challenge and attempt to find the necessary outlets. Having determined to continue with the venture, the jointly managed system determined in 1936 to acquire ownership of the competing companies. If the endeavor was successful, the hydro system would not only be assured an outlet for its power but would also effect a unified State-wide system.5

The story of how the hydro system set its plan into motion and the subsequent purchase of the private power companies between 1940 and 1943 is not germane. The importance of the activities between 1936 and 1943 is that they shed light on why the Loup extended a helping hand to Omaha. Not only did the public hydro system compete for markets with the NPC, but as long as the NPC continued to be privately owned and operated, a fully unified and coordinated state power grid could not be realized.

Examination of the contract entered into between the OEC and the Loup District suggests that the district's

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5For a complete history of the development of the State's hydro system, see Gene E. Hamaker, "Irrigation Pioneers: A History of the Tri County Project to 1935" (unpublished Ph.D. dissertation, University of Nebraska, 1958), Chapters 15 through 18.
involvement was predicated upon its concern for power distribution and not upon eventual control of the NPC. The agreement provided that the Loup's Eastern Division facilities were to transmit to the Nebraska Power system 80,000 kilowatt hours of power per day. However, the Eastern Division did not possess a generating plant in December, 1944, and had previously only retransmitted "dump" (surplus) power from the Western Division's plant to the Nebraska Power Company. Additionally, considerable concern prior to the OEC purchase had arisen over the Loup's ability to continue to meet the growing Omaha market requirements with its Western Division facilities since its outstate power demands on that system were rapidly increasing.

With the problem on the one hand of how to meet increased Omaha needs and, on the other, increased outstate demands, a decision was reached calling for the construction of a generating plant, thereby allowing the Eastern Division to provide Omaha directly with 50,000 kilowatt hours of power per day. The financing of the plant would be provided for by an increased profit of 15,000 dollars a month resulting from the additional power sale called for in the contract between the OEC and Loup's Eastern Division. Paul E. Hampton, chief electrical engineer for the Loup, testifying before the FPC concerning the contract provisions, noted that the building of the new plant would allow the
Loup to meet the future Omaha area demands.  

The allegation by those opposing the OEC transaction that the non-profit group was intent upon turning the NPC properties over to the Loup does not appear to be valid. In the first instance, existing state law at the time that the OEC and the Loup District entered into their agreement prohibited the hydro district from acquiring the facilities. In the second instance, available records indicate that the Omaha Electric Committee was at all times a separate entity from the Loup system as illustrated by the following conditions. The OEC was not controlled by the Loup District and the non-profit group selected its own committee members. Further, the relationship between the Loup and the new owners was limited to "arms length" negotiations which resulted in the contract for the financing of the stock purchase and the interchange of electric power. The Committee's members never acted on behalf of the Loup District and did not take orders from them. All evidence indicates that the new owners were sincere in their desire to act on behalf of the interests of the city as distinguished from the interests of the Loup District. The reasons motivating the District to become involved in the Omaha controversy were amply illustrated when the Federal Power Commission noted:

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6Morning World-Herald, August 11, 1945.
The evidence shows also that Loup District was vitally interested in the acquisition of the applicant's properties by a public power agency so as to enable it to work out an economy flow of power with the applicant by combining the output of the applicant's steam generating plants with that of Loup District's hydroelectric plants, together with other hydro districts connected to Loup District's system.\footnote{Federal Power Commission Reports, pp. 12-32.}

Whether the price tag for the utility was excessive or not is debatable. There are, however, several points which tend to justify the decision reached by the OPPD to purchase the properties for approximately $43,747,530. Not only had the Mayor's Citizens Committee recommended a similar price in 1942 but, also, the People's Power Commission, with Butler's approval, had offered the APL in 1942 a price approximating that paid by the OEC. That the Consumers Public Power District had also offered a similar price for the properties is further evidence of the appropriateness of the figure. Yet another consideration which might have warranted the OPPD's purchase agreement was that the formula used in determining the value of the NPC was the same as used by Consumers in purchasing private companies across the state between 1940 and 1943. Lastly, an appraisal by the firm of Black and Veatch in 1943, submitted to the SEC, estimated the value of the utility to be in excess of forty-two million dollars.

Those opposing the purchase declared support for
condemnation of the properties because of their belief that the price was excessive. Several consequences of such a method suggest, however, that condemnation might not have resulted in Omaha acquiring the utility at any savings. Estimations of the cost to the city for litigation alone were set at over one and one-half million dollars. Additionally, the OPPD would have lost over two million dollars annually while the issue was fought out in the courts. Thirdly, the properties would have reverted to the control of the MUD, thus discontinuing the annual payment of over 800,000 dollars in local taxes by the NPC. Another consequence weighing against this method was that there was no guarantee that the price set by a condemnation court would be any less than the amount paid. Lastly, there was a legal question as to whether Omaha could condemn a generating plant producing power used in another state.

The cost of the utility to the OPPD was approximately $43,747,500; however, the actual cost was $37,747,530. The difference in these figures is accounted for by the fact that the overall price included the properties serving Council Bluffs, Iowa, and the company's net current assets which, at the time of the OPPD acquisition, were estimated at a value of more than six million dollars. Also making the price attractive was the company's reduced indebtedness and the accumulation of funds which had resulted during the OEC's management of the utility. While those opposing the
negotiated settlement were unable to cite specific facts and figures to justify their recommendation, the previously noted considerations regarding the use of condemnation suggest that the agreement entered into between the OEC and the OPPD was the only feasible solution to the problem confronting Omaha.

Whether the public purchase of the power plant was justified must ultimately revolve around whether the purchase directly benefited Omahans. At the close of the district's first seven years of operation on December 31, 1953, public ownership of the NPC had resulted in both increased efficiency and reduced consumer rates. Customers being served in 1947 averaged 84,593, compared to 102,946 in 1953. Gross annual revenues had increased from $12,949,000 to $18,197,051. Kilowatt hour sales increased from 673,798,000 to 947,108,800. Generating capacity increased from 115,000 kilowatts to 215,000. In respect to growth and efficiency, the publicly-owned and operated utility had certainly fulfilled expectations of those who so devoutly supported the cause during the arduous conflict.

The assertion of those backing public ownership that city acquisition would result in reduced rates to consumers also was verified shortly after the OPPD takeover. Between 1947 and 1965, the District effected two major rate reductions which considerably benefited Omahans. On April 1, 1948, the first reduction of $1,200,000 was brought
about and, in 1965, another reduction was effected totalling $2,500,000. The impact of the rate reductions was extensive. Whereas, in 1946 the average residential cost of kilowatt hours was 3.24 cents, the cost fell to 2.86 cents in 1948 and to 1.88 cents by 1965. Additionally, the average residential cost of 500 kilowatt hours was $16.20 prior to the OPPD takeover; however, by 1948 the cost fell to $14.30 and to $10.25 in 1965.  

Some cried "socialism" when civic leaders proposed the purchase of the NPC. There was dissention between those who supported private ownership at any consequence and those who felt that Omaha's purchase of the utility was the only means to assure continued local control. There was also division between those who advocated public acquisition. As the District developed, it fulfilled the promise of better service and reduced costs. The OPPD takeover of the NPC in December, 1946, not only brought complete public ownership to Nebraska but, also, gave the Omaha area the best possible service at the least cost. Those persons who believed in the advantages of public ownership and who had labored for this goal had been justified.

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