Mitch — FYI — B.K Please 6/2

the operations of the Department and in evaluating legislative proposals.

The professionals at the Department and the users of the farm income estimates are aware of the uncertainty inherent in forecasts. As long as the inaccuracies are the result only of statistical estimating procedure, the public interest is served.

Mr. President, the level of farm income is an important indicator of the health of rural America. The level of farm income helps Congress to evaluate whether or not legislative action is required to preserve our vital food and fiber producing industry, an industry that contributes more to our balance of payments than any other. It is intolerable that we in Congress should be denied the information available to the Secretary of Agriculture.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2291

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 526 of the Revised Statutes (7 U.S.C. 2204) is amended by adding at the end thereof a new subsection (c) as follows:

"(c) The Secretary of Agriculture shall, by the fifteenth day of each month, make and disseminate estimates of gross farm receipts, production expenses of farmers, and net farm income for the past calendar year, the current calendar year, and, in the months of October through December, the forthcoming calendar year, based on the most recent data available to the Secretary.".

By Mr. METZENBAUM:

S. 2292. A bill to amend section 205 of the Federal Power Act (16 U.S.C. 824d) relating to inclusion of construction work in progress in the wholesale rate base of public utilities; to the Committee on Energy and Natural Resources.

WHOLESALE RATE BASE OF PUBLIC UTILITIES

Mr. METZENBAUM. Mr. President, this administration is rapidly developing a policy of requiring consumers to pay for the cost of energy, years before they receive any service. The first evidence of this policy came last year, when President Reagan proposed a series of waivers for the Alaska natural gas pipeline. Those waivers require consumers to pay for the principal and interest on $32 billion of debt capital for the pipeline before they receive any gas, and even though the project might never be completed.

Now this administration is seeking to bring this outrageous new policy to the electric utility industry through a highly technical accounting regulation known as construction work in progress, or CWIP. The Federal Energy Regulatory Commission presently is considering a regulation to allow utilities to include CWIP in their regulated rate base. If put into effect, this regulation would create a major new loophole that will permit utilities to require their customers to begin paying—with profit—for new electric generating plants before such plants are providing service.

Mr. President, the legislation I am introducing today is designed to prevent the adoption of this outrageous regulation that would force the Nation's consumers to massively subsidize the electric utility industry.

Utilities subject to Federal regulation were not permitted to use CWIP until 1975, when the Federal Power Commission, FERC's predecessor agency, issued order 555. That order permitted a utility to place CWIP in its rate base only in three situations:

First, to cover the cost of installing pollution control equipment;

Second, to cover the cost of converting an existing oil- or gas-fired generator to burn a more plentiful fuel, such as coal; and

Third, to cover the cost of constructing new generating facilities for utilities in severe financial difficulty.

I believe that the first two exceptions—pollution control and fuel conversion—are entirely reasonable. My legislation would retain them. But, Mr. President, this bill will definitely close the door on any inclination that may exist at FERC to substantially expand the ability of utilities to pass on CWIP charges to their customers. Specifically this legislation amends the Federal Power Act to prohibit FERC from allowing, except for purposes of pollution control or fuel conversion, the inclusion of CWIP in the rate base of any utility subject to Federal regulation.

There is ample reason to believe that unless the Congress intervenes, FERC will, in fact, take a permissive approach to CWIP.

On July 27, 1981, for example, FERC issued a notice of proposed rulemaking that would broaden the "severe financial difficulty" exception to permit a utility to use CWIP whenever its first mortgage bond rating for Moody's is Baa or lower or BBB or lower under Standard and Poor's, and when CWIP makes up at least 40 percent of the dollar amount of its rate base.

But FERC did not stop there. When the proposed rulemaking was noticed in the Federal Register, FERC also solicited additional comments on a number of issues designed to further expand the use of CWIP. It should surprise no one that dozens of private utilities, as well as Edison Electric Institute (EEI) asked that the final regulations allow CWIP in a utility's rate base regardless of circumstance. Speaking for the administration, the Department of Energy endorsed that position.

FERC appears eager to accommodate the request of the industry and the administration. Speaking before a utility conference sponsored by EEI on October 27, 1981, FERC Chairman C. M. Butler III, told utility executives that the proposed rule did not go far enough. According to Mr. Butler, consumers, not utilities, should bear the burden of demonstrating that CWIP should not be included in any given rate base.

It is clear, Mr. President, that what began as a narrow exception for CWIP is rapidly becoming a floodgate through which utilities will be permitted to take consumers' money now in exchange for providing them with new service in 8 to 10 years. The American Public Power Association, which represents municipal electric systems that purchase electricity at wholesale rates from private utilities, points out that a broadened CWIP regulation at FERC will add at least $1.17 billion to the electric bills of consumers each year.

But $1.17 billion a year is only part of the story. FERC regulates only wholesale sales, which account for approximately 10 percent of all the electricity generated each year in the United States. State public service commissions, which regulate the remaining 90 percent of sales, look to FERC for guidance in many instances. Were a broad CWIP rule adopted by the States, consumers would pay an additional $12 billion annually without receiving any additional service.

The utility industry has argued that CWIP is needed in order to counter severe financial difficulties. But is that true?

According to Standard and Poor's, over two-thirds of the Nation's utilities have a bond rating of A or better.

George Anders, writing in the November 12, 1981, Wall Street Journal stated that, "electric utility stocks have become one of this year's star performers."

Analysts for Smith Barney Harris Upham recently concluded, "overall, electric stocks for the past year have substantially outperformed the market and fixed income securities. . . ."

Argus Research predicts that "many electric utility stocks will prove attractive vehicles in the period ahead" and "warrant the favorable attention of investors today."

The Washington Post of January 31, 1982, quotes a market forecast by Bache Halsey Stuart Shields, Inc. as saying, "As the year 1982 unfurls, we are optimistic that a favorable market climate for electric utilities will evolve." Bache predicted that utility stock investors will earn a profit "of close to 18 percent per annum."

Even if, for the sake of argument, we accept the industry's claims of poor financial health, there is still no evidence that allowing CWIP in rate base would improve their condition. The American Public Power Association points out that many utilities have bond ratings of AA in States that do not allow CWIP. Conversely, States that allow CWIP have utilities with bond ratings of BBB. Standard and Poor's lists the quality of utility management and State regulation, not

Mitch — I would support, unless there are electric utilities in Mass. that are 1) Presently building new facilities and; 2) In financial difficulty.

CWIP, as the two most important factors in rating a utility's bonds.

Allowing a utility to place CWIP in its rate base would only heighten the opportunity for bad management decisions. CWIP would increase a utility's rates without consideration being given to whether a utility's management made a prudent investment in going forward with the construction of a new generating facility. If a utility can immediately recoup its costs and earn a profit on new construction, there is no incentive to hold down costs or to explore less costly alternatives, such as increased power pooling and wheeling, as well as innovative load management and conservation programs.

It is time, Mr. President, to put an end to this ever widening loophole through which consumers will be forced to pour billions of dollars each year. It is time to return to the "used and useful" principle established by the Supreme Court almost 100 years ago by making certain that consumers are not required to pay for the cost of a new facility until it is complete and service is being provided.

I urge my colleagues to join me in support of this legislation.

By Mr. HEFLIN:

S. 2293. A bill to amend the Internal Revenue Code of 1954 to exclude from gross income subsistence payments to certain law enforcement officers; to the Committee on Finance.

SUBSISTENCE PAYMENTS TO CERTAIN LAW ENFORCEMENT OFFICERS

Mr. HEFLIN. Mr. President, I am pleased today to introduce legislation which would allow State troopers, and other State law enforcement officers, to exclude from gross income subsistence allowances paid to them by the State.

For many years now, in Alabama, our State troopers and other State law enforcement officers have been given a subsistence allowance provided by statute of $5 per day. This cash allowance, which is generally used for meals, is not viewed by the State as compensation. It is considered a reimbursement for work-related expenses which are vital to the performance of the troopers' duties.

Section 119 of the Internal Revenue Code, which was enacted in 1954, excludes from an employee's gross income the value of employer-furnished meals if they are provided for the employer's convenience, on its business premises, and for substantially noncompensatory reasons. For several years, this provision was interpreted to include subsistence allowances paid to State troopers.

In 1972, the Internal Revenue Service ruled that subsistence allowances provided to State troopers do not fall within this statute and, therefore, may not be excluded from gross income for taxable purposes. The U.S. Tax Court reviewed the Service's decision and, with six members dissenting, also held against the troopers. While the Tax Court conceded that the meal allowances were furnished because it was more convenient to provide a meal allowance than to provide meals for the troopers, the court interpreted section 119 as excluding from tax meals received in kind, and not meal allowances. The case was then taken before the U.S. Court of Appeals for the Third Circuit. The appeals court agreed with the troopers' contention that such meal allowances are not taxable income. However, the Supreme Court, in Commissioner against Kowalski, reversed the appeals court ruling and declared that meal allowances paid to State troopers are taxable income and do not fall within section 119 of the code.

The Internal Revenue Service applied the Kowalski decision retroactively and held State troopers liable for taxes on their meal allowances back through 1971. The retroactive enforcement of that decision would have resulted in severe financial hardships for State troopers had it not been for the efforts of the late Senator Jim Allen of Alabama. Senator Allen sought to alleviate this financial burden, which would have proved disastrous to most troopers, by introducing legislation to exclude from taxable income the statutory subsistence allowance paid to State law enforcement officers. Through his efforts, legislation was passed amending section 119 of the Internal Revenue Code stating that Kowalski could not be applied retroactively by the Internal Revenue Service. However, the provisions of Senator Allen's bill which dealt with the prospective application of Kowalski were not adopted.

Mr. President, I do not believe it was the intent of Congress to exclude subsistence allowances to State troopers from section 119. The purpose behind this section is to allow an employer to provide meals to employees for substantially noncompensatory employment related reasons. The regulations for this section state that a noncompensatory purpose exists where employees must be present to deal with emergencies during work hours. It is unfair and unjust to exclude a State trooper's subsistence allowance from the benefits of this important provision of the Tax Code simply because meals are not provided on official premises and are in the form of an allowance.

Alabama, and many other States, instituted the cash allowance system in order to permit troopers to remain on call in their assigned patrol areas during their break. Often, the troopers' law enforcement duties carry them far from home. Since these officers are assigned on a countywide basis, many cannot return to their offices or homes for meals because of their responsibilities. An officer cannot call for relief at mealtime if his duties demand his presence. In fact, it is not uncommon for a trooper to order a meal and then be called away for an emergency before the meal is even set before him. He must remain at accident scenes, at scenes of disorder, at traffic congestion, at crime scenes, often eating a sandwich as he runs to an emergency call.

There can be little question that our State troopers perform one of the most difficult and demanding jobs imaginable. Our citizens' safety and well-being depend on their swift action in enforcing the law. State troopers take their meals only when and where the time allows because of the nature of their jobs. In essence, these officers must serve their State's needs before then can serve their own. I see no reason why this allowance for meals should not be excluded from their taxable income.

The bill I am introducing today would simply amend section 119 to specifically provide that subsistence allowances to State troopers are not taxable. I feel strongly that there is every need for this legislation, which will aid the State law enforcement officers of our Nation. Let me stress that this bill will benefit not only the State troopers in Alabama, but also those law enforcement officers of every State who receive subsistence allowances.

In conclusion, Mr. President, I urge the support of my colleagues for this legislation, and ask for its timely consideration, and I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2293

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (b) of section 119 of the Internal Revenue Code of 1954 (relating to special rules with respect to meals and lodging furnished for the convenience of the employer) is amended by adding at the end thereof the following new paragraph:

"(4) SUBSISTENCE PAYMENTS TO CERTAIN LAW ENFORCEMENT OFFICERS.—

"(A) IN GENERAL.—There shall be excluded from the gross income of a law enforcement officer an amount equal to the amount paid to such officer by his employer for meals if such payment is—

"(i) required or authorized by the laws governing the employment of such officer, or

"(ii) required by a contract negotiated in accordance with such laws.

"(B) $5 PER DAY LIMITATION.—The amount excludable from gross income under subparagragh (A) shall not exceed five dollars per day.

"(C) LAW ENFORCEMENT OFFICER.—The term 'law enforcement officer' means an individual who—

"(i) is an elected or appointed, full-time employee of a State, a political subdivision of a State, or a territory or possession of the United States,

"(ii) has the power of arrest, and

"(ii) is required by the terms of his employment to investigate, apprehend, or detain individuals suspected or convicted of criminal offenses.".