

*Oil and Petroleum*

**The Chairman:** Is the amendment agreed to?

Amendment (Mr. Drury) agreed to.

Clause as amended agreed to.

On clause 35—*Proclamation*.

**Mr. Baldwin:** Mr. Chairman, I have a fairly lengthy amendment to this clause and I have given it to the minister. I will send a copy to the chair. First, I will read it and then explain it. I assume that after my explanation there will be ready acceptance of the amendment.

Clause 35 is the clause which brings into effect this division of the bill and it is where, by following clause 36, the government takes unto itself the right unilaterally to fix prices either when there has been an agreement which has been terminated or when a new agreement is entered into. Even if an agreement has been entered into, if in the opinion of the governor in council it is not effective, the governor in council may, by regulation, establish maximum prices unilaterally.

As we have argued—and I will repeat it with a new twist—this permits the federal government to reach into provincial jurisdiction and fix the prices not only of crude oil and gas but of derivatives, which I say cannot be done under the constitution. However, we will come to that in a minute. The amendment I move is:

That the bill be amended in clause 35 by striking out lines 1 and 2 of page 15 and substituting therefor the following:

“Commencement of Division

**Proclamation** 35(1) This division shall come into force on a day to be fixed by proclamation but no day shall be fixed except the House of Commons adopt the motion to concur in an order under subsection (2)

**Declaring national emergency** (2) where no agreement is entered into pursuant to section 22 with the government of a producer-province, or any such agreement is terminated by the declaration of the parties, or, in the opinion of the Governor in Council, is not effective or is not capable of being effective, and where a national emergency exists in fact, the Governor in Council may, by order, declare that a national emergency exists by reason of such circumstances.

As members of the committee will recall, that is the clause which permits an agreement to be entered into between the federal government and the provincial government of a producer-province which can be symbolized by order in council. That is the meat of the argument I am making with regard to jurisdiction. From thereon the clause proposed in the amendment goes on to establish a procedure which is copied almost verbatim from the procedure contained in the bill on energy allocation which was passed by the House and is now a statute. Clause 11 of that bill contains a procedure which I have added to subclauses (1) and (2) which I have read. My amendment goes on to read:

(3) A notice of motion to concur in an order made under subsection (2) shall be laid on the table of each House of Parliament by or on behalf of a minister of the Crown within seven days after the order is made if Parliament is then sitting.

Then there is a procedure for debating in the House of Commons the particular notice of motion; it gives the House the opportunity to survey the situation and to permit the government to establish that it has made a case

[Mr. Macdonald (Rosedale).]

and to justify its action in this regard. If it does not, of course, the House can defeat the notice of motion and the proclamation then falls to the ground.

In addition, there is a provision that the matter shall be laid on the table of the Senate. Of course, apart from one or two members of the House, we do not propose to try to elaborate on what should be the procedure of the other place. That is what we propose in this regard. It seems to me that I should review briefly, with some additions, the ground upon which the amendment is based and what we propose. It is our view that the government has no right to move into a province and fix the price of a commodity in the way that is being sought in the bill before us.

We can go right back to the genesis of legislation of this kind. In 1907, the then Liberal government, under that very distinguished Canadian, Sir Wilfrid Laurier, enacted the measure referred to as the fluid export energy and electricity bill. This is chapter 16 of the statutes of 1907: an act to regulate the exportation of electric power and certain liquids and gases. In 1953 that bill led to the export-import act, chapter 27, 1953-54. That bill was brought about because in the preceding two or three years the government had lost the powers it had gained under the emergency regulations during the Second World War and was driven to obtain this legislation in order to cover its practices with regard to the regulation of trade and commerce.

● (1430)

It has been possible for the Government of Canada, acting first under the original bill, chapter 16, followed by the law passed in 1953-54, followed in due course by the law passed by the Diefenbaker government in 1962, through the licensing system, through the use of conditions attached to licences granted, to in fact regulate the price of petroleum and natural gas to consumers in Canada and also in the international market. It is very simple; it is done through the issue of licences and attaching conditions to those licences. There has been no complaint about it and it has worked effectively. There is no reason why it could not have continued to work.

With some very minor amendments to the National Energy Board Act, the minister, if necessary, would be able to obtain in constitutional fashion the capacity to fix domestic prices using legislation already in existence. We contend that it is not necessary to legislate as the minister and the government seek to do under this clause. At one time I suspected there was some conflict between the minister and the Minister of Industry, Trade and Commerce. The other legislation, with the exception of the Export and Import Permits Act, fell under the jurisdiction of the Minister of Industry, Trade and Commerce, and I can understand that the Minister of Energy, Mines and Resources felt that as petroleum and natural gas were matters falling under his control, he would have preferred his own legislation. We probably would not object to that, but we must object to the extent to which the government seeks, in an unconstitutional and improper way, to reach into a province and fix prices with regard to commodities which are covered by legislation.

If I had the time and the opportunity I would read the remarks made by Sir Wilfrid Laurier and by the then