

July 2, 1935

Dear Mr. President:

I was about to leave this afternoon for the Cape to spend the Fourth of July. However, before I left it occurred to me that you might be interested in my observations on Section 11 of the Public Utility Bill currently the subject of discussion in the House.

This House Bill proposes to give our Commission a variety of duties and confers even apart from Section 11 wide powers of discretion in the administration of this Act. The Bill, among other things, requires us to register holding companies, to regulate all security transactions, with power to supervise even the underwriting arrangements. In addition, the Commission is to regulate the acquisition of all securities and capital assets of companies subject to the Act.

These duties while enormous can be discharged, I believe, with reasonable efficiency, by trained and competent personnel; but the burden cast upon us by Section 11 of the House Bill is simply staggering. I cannot be too vehement in urging upon you my feeling that this Section, as now drawn, is most unfortunate. I urge my objections upon two grounds. The first is simply the limitations on human capacity to achieve results. The second objection is based upon my conception of what is wisdom in government.

The task with which the Commission is confronted under Section 11 of the House Bill is that of determining whether it is "necessary in the public interest" to limit the operations of a holding company system to a single "integrated" public-utility system. If the Commission finds that such limitation is not necessary it is then under a duty to require limitation to "such number of integrated public-utility systems as it finds may be included in such holding company system consistently with the public interest."

The definition of "integrated public utility system" (in Section 2 (a) (27) of the House Bill) is not sufficiently precise to be of much help to the Commission in discharging this responsibility. It would be an almost impossible task to determine whether a given system is such as "under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management and efficient operation". The "public interest" is not defined.

Thus the Commission is given the two-fold task of determining whether a given system is "integrated" and deciding whether or not the "public interest" should permit the existence of two or more integrated systems under the control of a single holding company system.

The administrative burden involved in the duties required under Section 11 will just be overwhelming, no matter what the appropriation, no matter the size or the technical equipment of the staff.

The second reason and by far the more important one is my strong conviction that it is poor policy to vest in any one group of men the tremendous responsibility involved in this grant of power. Certainly, this is true unless such a grant is hedged with precise and defined standards set up by the Congress itself. I have an appreciation of the great need in our modern life of flexible language in statutes, so that the administration of the law may be responsive to an ever-changing existence. But in a matter of this kind where there are at stake the interests of millions of people, investors and the consuming public alike, I do not believe that any Commission should be given unfettered discretion to decide matters of such transcendent importance.

I know you will appreciate that it is only because I feel deeply on this matter that I bother you with it in this hot weather.

Respectfully,

The President  
WASHINGTON, D.C. JJ B / HA