

November 13, 1941

Mr. L. A. Moyer  
Executive Director and Chief Examiner  
United States Civil Service Commission  
Washington, D. C.

Dear Sir:

The Securities and Exchange Commission respectfully requests that it be designated by the Civil Service Commission as a defense agency. The reasons for this request are threefold: vis., (1) The highly expeditious functioning of the Commission's activities is increasingly essential to defense industry; (2) a substantial number of special defense assignments in the field of finance have been turned over to the Commission by defense agencies because of its expertness; and (3) members of the Commission and members of the staff have been called upon to serve as members or to render advisory financial assistance to a number of newly created defense committees and boards. A detailed explanation of each of these reasons is presented below.

(1) A HIGHLY EXPEDITIOUS FUNCTIONING  
OF THE COMMISSION'S ACTIVITIES IS  
INCREASINGLY ESSENTIAL TO DEFENSE  
INDUSTRY

The operations of the Securities and Exchange Commission laws have a direct impact upon the affairs of corporations representing over half the total assets of American industry. Whenever any of these corporations seek to do public financing, list their securities on a stock exchange, solicit proxies from their security holders or undertake numerous other vital corporate activities, they must conform to requirements of the S.E.C. laws. The volume and complexity of such corporate transactions resulting from the defense effort has naturally increased very substantially. But, above all, the importance of getting the job done quickly has become paramount. Authorizations from stockholders to build a new defense plant and the process of raising the money to undertake the expansion must be accomplished with an absolute minimum of delay. Impairment of the maximum efficiency of the Securities and Exchange Commission,

where these matters must be administratively treated with by the Commission, must inevitably handicap defense industry.

In this connection, it should be noted that the Acts administered by the Commission require a full and truthful disclosure of all "material" facts. "Materiality" has perforce taken on some very new aspects as a result of the national defense effort. It has obviously become "material" to know to what extent a registrant is participating in national defense production and to what extent the proceeds of an issue of securities are to be used for national defense purposes. In other words, the circumstances of national defense are of sufficient "materiality" as they relate to a particular issue of securities that they could not legally be ignored by the Commission. To deal adequately with this new development, it has been necessary for the Commission to establish and maintain the closest kind of contact with the various defense agencies, such as War, Navy, O.P.M. and O.P.A. A registrant, for example, who claims that he is working on defense projects is not telling the full truth unless he can show what priorities or allocations he has been given, or what contracts or subcontracts. Similarly, a registrant raising money for a non-defense project such as an apartment house would seriously mislead investors unless he showed either that he could or could not get the necessary materials. The Securities and Exchange Commission's insistence upon this kind of vital disclosure has, for example, resulted in the withdrawal of several registration statements for non-defense projects. In this connection, it is noteworthy that during the last war it was necessary to set up a Capital Issues Committee to review securities issues to determine which were needed for wartime production and which were not. While the Securities and Exchange Commission does not perform the function of refusing to permit the sale of issues for non-defense purposes, its operations frequently tend in the same direction since, obviously, an issuer who states in his selling literature that he will not be able to get the necessary materials is not going to be able to sell many securities.

As we have pointed out, the solicitation of proxies from security holders by all companies whose securities are listed on exchanges is subject to Securities and Exchange Commission regulation. The soliciting material must conform to S.E.C. requirements and is subject to S.E.C. review to make sure that it does conform. The importance of matters which corporations desire to lay before their securities holders at a time like this is very great. And the importance of getting prompt action is almost too obvious to mention. Nearly every one of these great and vital corporations solicits proxies from its security holders at least once a year – sometimes two or three times. The loss of personnel efficiency in the Securities and Exchange Commission in this field would be of very grave import to these industries, a large proportion of which are already active in defense work with the number increasing daily.

In the field of stock exchange regulation, the work of the Commission is of vital importance to the nation. It need only be recalled how seriously the capital markets were clogged during the last war when the violence of war news early forced the closing of the exchanges. Much more violent news during this war – such as the fall of France – has not however had the same effect, largely because of the operations of the Securities and Exchange Commission in eliminating and keeping out of the market those factors which

produce market instability. At the time of the fall of France, nonetheless, the market situation was sufficiently serious to make it advisable for the Chairman of the Commission to discuss with the President the advisability and probable effects of suspending all trading. Securities and Exchange Commission experts were, during that crisis, essential in obtaining and transmitting coherent market information on which the vital judgment could be made. Without their detailed reports on the inside condition of the market which revealed not only the superficial fact of the volume of buying and selling but the actual quality of the buying and selling, a different and perhaps exceedingly demoralising judgment might have been made. In this connection it should be noted that the Securities Exchange Act of 1934 specifically grants emergency powers to the Securities and Exchange Commission to close the markets with the approval of the President. This is an emergency power which cannot be overlooked in a period of declared national emergency.

Extremely vital to national defense are the operations of the Public Utility Holding Company Act, for under that Act the Commission regulates nearly every financial transactions of two-thirds of the electric power industry of the country – every holding company and, more important in this context, every operating subsidiary of a holding company. It is well recognized that power expansion is one of the great needs of the defense program, and the great bulk of this new power must be supplied – and financed – by companies regulated by the Securities and Exchange Commission.

Many of these vital operating public utility companies are in bad shape. They are obliged to support holding company parents and grandparents – and sometimes great-grandparents. They must defer important defense judgments until they have received word from these bosses often trying to manage local affairs from financial centres a thousand miles away. They must be kept free from excessive service charges from the holding company. They are financially oppressed by the top-heavy debt structure of the holding companies above. One of the Commission's major jobs – and a highly important contribution to national defense – is to rid these operating companies of these burdens and permit them to have the benefit of local management which understands and can keep abreast of local problems of power production.

Two very recent cases may be cited. They relate to two companies serving vital defense areas including the National Aviation Centre at Pensacola, Florida and numerous Army cantonments. They are the Gulf Power Company and the Mississippi Power Company. Both urgently (and obviously) needed money for national defense. They had arranged to get this money at 4 per cent from a private source, and brought their plan in to the Securities and Exchange Commission for approval. A glance revealed that if either of these companies took this move, their capital structures would be so exceedingly top-heavy that they would be virtually foreclosed from all future expansion financing. At this stage of the defense program, such a contingency could not be permitted to occur. As an alternative, our staff of experts laid out a program for them which not only enabled them to get the money they needed at a cost of 3 per cent, but completely rehabilitated their capital structures so that today they could go out and raise more money at excellent rates. One company wrung more than \$10,000,000 of inflation out of its property account,

increased its depreciation reserves by more than \$500,000, paid off with common stock about \$2,000,000 of its debt held by its holding company parent and refunded all of its outstanding debt at substantial annual savings in interest – in addition to saving one per cent on the money it needed for defense expansion. The story in the case of the other company was virtually the same, with different figures in each case, of course. In short, these two vital but shaky operating companies were transformed into sound companies with clean corporate structures capable of financing any further expansion which the defense program may require. Without the technical understanding which our staff was capable of bringing into the problem, the story would certainly have been quite different and much less satisfactory from the standpoint of defense. The Commission has presently before it several other cases involving expansion and corporate rehabilitation problems of the first magnitude from the standpoint of defense. One of these is the Virginia Public Service Co. which serves numerous vital defense projects such as shipyards, a torpedo plant and military posts, but also serves tons of thousands of government employees in Northern Virginia. Another is the Florida Power & Light Company.

The Commission has, of course, made a thorough study of the probable physical requirements which the defense program would place upon each company within its jurisdiction, so as to know what the probable financial requirements would be. This was necessary to prepare ourselves for expeditious disposition of various applications for financing which might come before us. It was also necessary in acquainting us with situations in which defense might be seriously handicapped unless we proceeded quickly with our duty to eliminate the various holding company burdens. We have, of course, planned our activities so that we shall, wherever possible, be ahead of the defense program. For example, in the two cases mentioned above, we were fully prepared before the companies came to us and were able to present our program to them on the very day on which they came in. We had, in short, been able to anticipate the needs of the companies and the national defense program. In furthering this effort we have, of course, found it necessary to maintain the closest contact with the Federal Power Commission and the schedules of that agency have been most helpful in many respects. By the same token, furthermore, we have been able to give them valuable information on the financial condition of companies operating in regions where a need for increased power is anticipated.

The duties given to this Commission under Chapter X of the National Bankruptcy Act also have a direct relationship to the defense effort. It is, for example, highly important that corporations in bankruptcy which might be important producers of defense materials be rehabilitated most expeditiously and the Commission's staff must therefore make every effort to complete its portion of this work in the shortest time possible. A recent example is the Los Angeles Lumber Company case. This Company, which has been out of bankruptcy now only a few months, is an important West Coast producer of small Navy boats.

Under its administrative supervision, through the Investment Company Act, there is one of the largest pools of investment capital in the country. This statute specifically

provides for the establishment of investment companies which could make available funds for expansion of defense industries by permitting each of the registered investment companies to contribute up to a certain amount of its capital for such a purpose. In addition, it is important that the affairs of these investment companies be promptly rehabilitated in accordance with the objectives of the statute because of the almost certain importance they will have in the financing of the post-war reconstruction of industry.

These are all matters which arise before the Securities and Exchange Commission in the course of its normal operations. In other words, simply in the course of doing its duty under its own statutes, the Securities and Exchange Commission has become inextricably enmeshed with the defense effort. Our duty to defense, in these circumstances, is to perform our functions in the most expeditious manner possible and to see to it that our operating efficiency is not permitted to slacken. The maintenance of our high standards of personnel is, of course, vital in this effort.

In this connection, it should also be noted that the maintenance of high standards of corporate finance under the Commission's laws is of particularly vital importance in the current emergency. The maintenance of these high standards has had the result, indirectly if not directly, of insuring that financing is fair to the investing public as well as advantageous to the industry securing the financing. Unless these standards are maintained in a period of greatly expanding financial activity, the national economy will necessarily face a disastrous loss of stability in the period of readjustment following the emergency.

(2) A CONSIDERABLE NUMBER OF SPECIAL  
ASSIGNMENTS HAVE BEEN TURNED OVER  
TO THE S.E.C. BY DEFENSE AGENCIES  
FOR COMPLETION.

The Office of Price Administration has requested this Commission to supply it with daily statements regarding transactions on commodities exchanges. The information is compiled, analyzed for its significance, and submitted daily to the O.P.A.

The Commission has assisted the Treasury Department in the drafting of Executive Orders covering the freezing of foreign funds and the rules and regulations promulgated as a result of these Executive Orders, and has been assigned various enforcement cases in this connection.

The Commission has assisted the Navy Department from time to time by making some of the field investigations of companies which requested advances on defense contracts. These involved special studies and analyses of the financial condition and future prospects of the corporations requesting the advances, frequently based on information available in our files.

The Commission's Research and Statistics Section, during the past year, has spent a large portion of its time in developing statistics and preparing reports based on industrial facts and figures from material filed with the Commission at the request of various defense agencies. This section furthermore prepares regular reports drawn from Commission information which are widely used by O.P.A., O.P.M. and the Research Section of Treasury Department. Also, the Head of this section serves as Co-Director of the Defense Finance Section of O.P.A.

These are but a few of many special assignments given to this Commission. Up to the present we have been able to complete them with our present staff, but any further impairment of that staff or of our opportunity to recruit replacements will seriously weaken our ability to perform these services.

(3) MEMBERS OF THE COMMISSION AND EMPLOYEES ON  
THE STAFF OF THE COMMISSION EITHER SERVE AS A  
MEMBER OF OR RENDER ADVISORY FINANCIAL  
ASSISTANCE TO A NUMBER OF THE NEWLY CREATED  
DEFENSE COMMITTEES AND BOARDS.

Several of our Commissioners and a number of employees on the staff of the Commission now spend much time and effort in serving as members of or in the rendition of advisory financial assistance to a number of the newly created defense committees and boards, such as-

The National Power Policy Committee  
The Price Administration Committee  
The Economic Defense Board  
The National Defense Power Committee  
The National Defense Petroleum Administration

The above statements are not all inclusive, but they do indicate illustrations of changes in the scope of the Commission's activities and increases in work which the Commission has had to absorb as a result of the national emergency.

It is the Commission's sincere belief that if the Securities and Exchange Commission is not designated as a defense agency, the operations of many defense industries will be seriously impaired and the work which we are doing in the defense field will be adversely affected. We therefore respectfully request that it so be designated.

By direction of the Commission:

Edward C. Eicher  
Chairman

EASheridan:emg